

Dorothy and William Knightly

v.

City of Nashua

Docket No.: 26073-11EX

DECISION

The “Taxpayers” appeal the “City’s” denial of the Taxpayers’ request for a disability exemption for tax year 2011. The Taxpayers have the burden of showing, by a preponderance of the evidence, they were entitled to the statutory exemption or credit for the year under appeal. See RSA 72:34-a; RSA 72:37-b; and Tax 204.06. For the reasons stated below, the board finds the Taxpayers failed to meet this burden and the appeal is denied.

The Taxpayers argued they were entitled to the disability exemption because:

- (1) the Taxpayers received a disability exemption in prior years, but in 2011 the City denied the exemption because the Taxpayers net income exceeded the City’s income maximum of \$40,000;
- (2) a large portion of their 2010 income was a social security payment for \$25,729.14, none of which included any benefits for 2010;
- (3) as shown in Taxpayer Exhibit No. 1, the social security payment included social security disability benefits of \$2,643.64, \$6,996, \$7,164 and \$7,572 for years 2006 through 2009,

respectively, plus \$552.50 in Medicare Part B premiums and \$6,000 paid directly by social security to the Taxpayers' attorney;

(4) even if the Taxpayers received the social security payments in the years they were due but not paid, they would have qualified for the exemption because their net income would have been below the City's income limit as their income is less than \$20,000 per year;

(5) the City should utilize the amount the Taxpayers actually received from social security (\$25,729.14) in their calculation of net income, not the net benefit (\$31,950.14); and

(6) the appeal should be granted.

The City argued the denial of the disability exemption was proper because:

(1) the City computed their income as \$45,751.03 in 2010;

(2) the City's ordinance establishes an income maximum of \$40,000 for the disability exemption;

(3) the Taxpayers qualified for the exemption in prior years, but not for tax year 2011; and

(4) the appeal should be denied.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to meet their burden of proving they were entitled to the statutory exemption. The appeal is therefore denied.

To qualify for an exemption, an applicant must satisfy all of the statutory requirements. A plain reading of RSA 72:37-b, the disability exemption statute, must include application of the "net income" requirement. For this statute, the legislature defined net income very broadly to include "all moneys received, from any source, including social security or pension payments." The statute lists only three categories of deductions, none of which apply here. See RSA 72:37-b, III, (a) and (b). The board has no authority to modify this statutory definition. See, generally,

Appeal of Land Acquisition, 145 N.H. 492, 494 (2000) (board's jurisdiction and powers are limited by statute).

The board finds the Taxpayers' net income in 2010 exceeded the maximum (\$40,000) prescribed in the City's ordinance. There is no dispute a large portion of that income was a retroactive payment of social security benefits. The Taxpayers and the City disagree on whether the entire retroactive payment should be included in their calculation of net income for 2010, and, if so, whether the amount included in the calculation should be the total benefit (\$31,950) or the actual payment received by the Taxpayers (\$25,729).

The board addressed a similar issue in a prior decision denying the exemption. In that decision the board found, "[b]ased on the 'moneys received' wording in the statute, the taxpayer's argument that part of the social security lump sum payment in 2009 was an accrual of benefits she was entitled to for prior years (2007 and 2008) is unavailing, unless and until the Legislature decides to amend the statute."¹ Therefore, the board finds the City did not err in the inclusion of those funds in the calculation of the Taxpayers' net income.

The next issue is the whether the amount included in the calculation of net income should be the total benefit (\$31,950) or the actual payment (\$25,729) received from social security, which included payments on behalf of the Taxpayers for Medicare Part B Premiums (\$552.50) and for attorney fees (\$6,000).

The board addressed whether Medicare premiums are considered net income in a prior decision and found "Medicare premiums deducted by the Social Security Administration (before payment of other benefits to the recipient) should be treated as 'social security. . . payments and, therefore, part of the Taxpayer's net income from all sources' under the elderly exemption

¹ Duchesne v. Nashua, BTLA Docket No. 24749-10EX (August 11, 2010).

statute.”² No contrary authority exists that would allow the board to conclude the City erred in the inclusion of the Medicare premiums in the calculation of net income. With the inclusion of the Medicare premiums as net income, the Taxpayers’ 2010 net income was \$40,082.53, which exceeds the City’s limit of \$40,000. Since the Taxpayers do not qualify for the exemption based on this calculation, any remaining issues are moot.

For all of these reasons, the appeal is denied.

A motion for rehearing, reconsideration or clarification (collectively “rehearing motion”) of this decision must be filed within thirty (30) days of the clerk’s date below, not the date this decision is received. RSA 541:3; Tax 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; Tax 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board’s decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(f). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board’s denial.

² Moran v. Seabrook, BTLA Docket No. 18087-99EX (November 8, 2000).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Dorothy and William Knightly, 10 Demanche Street, Nashua, NH 03060, Taxpayers; and Chairman, Board of Assessors, City of Nashua, PO Box 2019, Nashua, NH 03061.

Date: 2/21/12

Anne M. Stelmach, Clerk