

**Albert and Esther Hagen**

**v.**

**City of Concord**

**Docket No.: 26531-12EX**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 72:34-a, the “Town’s” 2012 denial an RSA 72:39-a elderly exemption on the “Property,” a single family home at 28 Cabernet Drive, U-1. For the reasons stated below, the appeal for exemption is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, they were entitled to the statutory exemption for the year under appeal. See RSA 72:34-a; RSA 72:39-a; and Tax 204.05.

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

- (1) their total gross income was \$ [REDACTED] which is below the limit of \$45,000 set by the City;
- (2) the City is seeking to apply Medicare Part B twice on the gross income form by including it in the pension income and social security income;
- (3) Medicare Part B should only be included once and to do otherwise would provide an inaccurate income total; and
- (4) the evidence supports the Taxpayers qualify for the elderly exemption and the appeal should be granted.

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

- (1) the Taxpayers total combined income is \$ [REDACTED] which exceeds the maximum amount of \$45,000 passed by resolution of the City to qualify for the elderly exemption;
- (2) the City properly included “all” pension benefits for purposes of determining the Taxpayers’ net income; and
- (3) the City renews its motion to dismiss as the Taxpayers have not carried their burden and the appeal should be denied.

### **Board’s Rulings**

Based on the evidence, the board finds the Taxpayers failed to meet their burden of proving eligibility for the RSA 72:39-a elderly exemption. The City’s “Motion to Dismiss” is therefore granted and the appeal is denied for the following reasons.

To qualify for the elderly exemption, an applicant must satisfy all of the statutory requirements. A plain reading of RSA 72:39-a, conditions for elderly exemption, must include application of the “net income” requirement for the preceding year (“[h]ad in the calendar year preceding said April 1 a net income from all sources,... of not more than the respective amount applicable to each age group as determined by the city or town for purposes of RSA 72:39-b.”).<sup>1</sup> Further, RSA 72:39-a I(b) states the “net income shall be determined by deducting from all moneys received, from any source including social security or pension payments....” The only exceptions to the “net income” requirement are: 1) life insurance paid on the death of an insured; 2) expenses and costs incurred in the course of conducting a business enterprise; and 3) proceeds from the sale of assets.

---

<sup>1</sup> The City of Concord’s Resolution No. 8454, passed on April 11, 2011, modified the elderly exemption pursuant to the provisions of RSA 72:7-A. Included in these provisions was “[t]he property owner must have a net income from all sources of not more than \$32,800 if single and \$45,000 if married.”

The City based its denial of the Taxpayers' elderly exemption application for tax year 2012 because it determined the Taxpayers' net income to be \$ [REDACTED]<sup>2</sup>. For the following reasons, the board concurs with the City. The only issue between the parties is whether \$ [REDACTED] in Medicare Part B premium reimbursements should be considered as part of the Taxpayers' net income.

Taxpayer Exhibit No. 1 includes a June 25, 2012 letter from Rocky Flats Benefits Center ("RFBC"). This letter resulted from a June 7, 2012 request for information from the Taxpayers regarding their pension benefit and Medicare Part B reimbursement. RFBC notes in paragraph 2 the Taxpayers Medicare Part B Reimbursement 2011 monthly benefit totaling \$ [REDACTED] was paid to the Taxpayers and shows up as income on the 1099R. They note however, "this benefit is a non-taxable benefit, but could still be considered income by some sources." (Emphasis added.) The yearly total for this benefit is \$ [REDACTED] (\$ [REDACTED] for Mr. Hagan and \$ [REDACTED] for Mrs. Hagan times 12 months). The RFBC pension plan benefit is \$ [REDACTED] per month (or \$ [REDACTED]) before taxes. As shown on Municipality Exhibit B at line 12b, the Taxpayers taxable amount for pensions and annuities was \$ [REDACTED] which is confirmed by the RFBC letter. However, this taxable amount does not include the \$ [REDACTED] pension benefit provided to reimburse Albert and Esther Hagen for Medicare Part B premiums. Exhibit C in the City's Motion to Dismiss shows the gross distribution from RFBC of \$ [REDACTED] which is the total income received by the Taxpayers which, by statute, must be considered in the calculation of net income.

The board has no option but to apply the exemption statutes as presently enacted. See, generally, Penelli v. Town of Pelham, 148 N.H. 365, 367-69 (2002) (construing elderly exemption statute by following the principle that "all of the words of the statute must be given

---

<sup>2</sup> This income calculation includes \$ [REDACTED] in pension payments, \$ [REDACTED] social security, \$ [REDACTED] dividend income, \$ [REDACTED] interest income, and \$ [REDACTED] state cash.

effect” and legal outcome cannot be altered when “the plain language of the statute speaks for itself”); applied in Coburn v. City of Nashua, BTLA Docket No. 19336-02EX (denying RSA 72:37-b disability exemption where applicant failed to meet statutory occupancy requirement); and Patient v. City of Manchester, BTLA Docket No. 21051-O5EX (March 17, 2006) (denying RSA 72:37-b disability exemption where change in marital status made disabled person ineligible for social security benefits). Additionally, the board has consistently found that Medicare Part B premium reimbursements are to be considered in the calculation of net income. See Motion to Dismiss at paragraph 7.

In summary, the board finds the City properly included all of the pension benefits for purposes of determining the Taxpayers net income and thus the 2012 elderly exemption appeal is denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Michele E. LeBrun, Chair

---

Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Albert and Esther Hagen, 28 Cabernet Drive – Unit 1, Concord, NH 03303, Taxpayers; and Danielle L. Pacek, Esq., Deputy City Solicitor, 41 Green Street, Concord, NH 03301, counsel for the City of Concord.

Date: 3/8/13

---

Anne M. Stelmach, Clerk