

C & M Family Realty Trust

v.

Town of Seabrook

Docket No.: 26621-12EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2012 denial of the Taxpayer’s request for a veteran’s tax credit as provided under RSA 72:28. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, it was entitled to the statutory credit for the year under appeal. See RSA 72:34-a; RSA 72:28; and Tax 204.05.

The Taxpayer, represented by its trustees and beneficiaries, Clarence and Mary Fowler, argued it was entitled to the veteran’s tax credit because:

- (1) Mr. Fowler is a veteran of the U.S. Army and his official record shows six months of active service (see Taxpayer Exhibit No. 1);
- (2) the Town granted the credit for a number of years prior to tax year 2012 (going back to 2004);

- (3) the Town denied the credit but advised Mr. Fowler the denial could be appealed and referred him to a 2011 board decision (Heinz v. Town of Hampstead, BTLA Docket No. 24973-10EX) where the credit was granted; and
- (4) the appeal should be granted.

The Town, represented by its assessor, argued the denial of the veteran's tax credit was proper because:

- (1) the Town engaged in a periodic (five year) review of veteran tax credits and denied a number of them, including the credit previously received by the Taxpayer;
- (2) as stated in its September 7, 2012 letter (included in Taxpayer Exhibit No. 1), the "denial is based on advice from the Department of Revenue"; and
- (3) the assessor followed this advice in denying the tax credit, but acknowledges the statute (RSA 72:28) does not contain an "active duty" requirement.

Board's Rulings

Based on the evidence, the board finds the Taxpayer met its burden of proving the veteran's tax credit should have been granted. As the board ruled from the bench, the appeal is granted.

The Taxpayer is entitled to the veteran's tax credit for many of the same reasons stated in a prior appeal decided by the board. See Heinz v. Town of Hampstead, BTLA Docket No. 24973-10EX (January 24, 2011), pp. 2-3:

[T]he Town acknowledged the Taxpayers had applied for a credit under RSA 72:28 and this statute does not contain the phrase "active duty" at all. Instead, this statute simply requires "service" for a period of "not less than 90 days. . . ." (See RSA 72:28 IV (a) and V.)

While administrative rule Rev 401.01 defines the term "active duty", this definition has no relevance to RSA 72:28 as that statute has no such requirement at all. To the extent other

taxpayers in the Town were similarly treated in tax year 2012, the Town should reconsider its policies in light of both Heinz and the board's findings in this appeal.

For all of these reasons, the abatement is granted. The Town is directed to credit the appropriate amount for tax year 2012, refunding any excess taxes paid with appropriate interest from the date of payment to the date of refund.

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

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: C & M Family Realty Trust, Clarence and Mary Fowler, Trustees, 72 Railroad Avenue, Seabrook, NH 03874, Taxpayers; and Chairman, Board of Selectmen, Town of Seabrook, PO Box 456, Seabrook, NH 03874.

Date: 12/4/12

Anne M. Stelmach, Clerk