Robert Frese

v.

Town of Exeter

Docket No.: 26682-13EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the "Town's" 2013 denial of the Taxpayer's application for an RSA 72:37-b disability exemption. For the reasons stated below, the appeal is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, he was entitled to the statutory exemption for the year under appeal. See RSA 72:34-a; RSA 72:37-b; and Tax 204.06.

The Taxpayer argued he was entitled to the RSA 72:37-b disability exemption because:

(1) he has been disabled since 1995, when he started receiving Social Security disability benefits;

(2) the payments "stopped in 2012" (as indicated in Taxpayer Exhibit No. 1) due to an inheritance from his father's estate, but he continues to be disabled and his disability status has not been "revoked"; and

(3) the Town erred in denying the disability exemption.

The Town argued it did not err in denying the disability exemption because:

(1) as indicated in Municipality Exhibit A, the Town adopted guidelines for the RSA 72:37-b disability exemption and has followed them;

(2) in 2013, the Town conducted a "five-year review" of all exemptions and credits;

(3) the Town correctly determined, based on the information submitted by the Taxpayer in 2013, that he did not qualify for the RSA 72:37-b disability exemption; and

(4) the appeal should be denied.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to meet his burden of proving the Town erred when it denied the RSA 72:37-b disability exemption. The appeal is therefore denied.

RSA 72:37-b (Exemption for the Disabled) contains a number of specific requirements. One requirement is that the person applying for the exemption must be "eligible" for Social Security "benefits." (See RSA 72:37-b, I.) The Taxpayer argued he has been "disabled" since 1995, but the Social Security benefit payments "stopped" in 2012 because he received an inheritance from his father's estate and no longer, according to the Social Security Administration, met the financial requirements to qualify for benefits. According to the last page of Taxpayer Exhibit No. 1 (a May 10, 2012 "Notice of Change . . ." sent to the Taxpayer by the Social Security Administration), his "resources" exceeded the "$2,000 resources limit" and therefore he was "not eligible for SSI [Social Security Income payments]."

The board finds eligibility for Social Security benefits, as required in RSA 72:37-b, I encompasses both a health status component and a financial resource component. The Town did not dispute the Taxpayer's claim that he continues to be disabled based on his health status. In

fact, the Taxpayer presented evidence that the Social Security Administration determined the Taxpayer was no longer eligible for benefits for financial reasons (the inheritance he received), not because of any change in his health status.

At the hearing, the Taxpayer cited a further provision in the statute, RSA 72:37-b, I-b which applies in limited circumstances to a person "who is no longer eligible for such federal benefits due to reasons other than the status of that person's disability." The board finds the Taxpayer cannot qualify under this section for a simple reason: there is no evidence he ever supplied the Town with the "affidavit from a physician licensed in New Hampshire that attests to the fact that the person continues to meet the criteria for disability. . ." that is specifically required by this provision in the statute.

In order to qualify for an exemption, a taxpayer bears the burden of proving he or she has satisfied all of the requirements enumerated in the statute and the board has no discretion to ignore specific requirements the legislature has enacted. Cf. Appeal of Emissaries of Divine Light, 140 N.H. 552, 555-57 (1995) (in an exemption appeal, "[t]he taxpayer bears the burden of proving its entitlement to a tax exemption."); and, generally, Appeal of Land Acquisition, 145 N.H. 492, 494 (2000) (board's jurisdiction and powers are limited by statute). The board finds the Taxpayer failed to meet his burden in this appeal and therefore the 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

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Michele E. LeBrun, Chair

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Albert F. Shamash, Member

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Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Robert Frese, 43 Hayes Park, Exeter, NH 03833, Taxpayer; and Chairman, Board of Selectmen, Town of Exeter, 10 Front Street, Exeter, NH 03833.

Date: 9/6/13

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Anne M. Stelmach, Clerk