

John J. Dow, Jr.

v.

Town of Exeter

Docket No.: 26689-13EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2013 denial of the Taxpayer’s request for an elderly tax exemption as provided under RSA 72:39-a. For the reasons stated below, the appeal for abatement 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 72:39-a; and Tax 204.05.

The Taxpayer argued he was entitled to the elderly exemption because:

- (1) he is over 65 years of age and has received the exemption from the Town for a number of years; and
- (2) the Town should have granted the exemption for tax year 2013.

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

- (1) the Town has a maximum income requirement of \$51,976 for a married person claiming the elderly exemption (see Municipality Exhibit A);

(2) as shown in Taxpayer Exhibit No. 1, the Taxpayer's income in 2012 exceeded this maximum; and

(3) the appeal should be denied.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove he was entitled to the elderly exemption in tax year 2013. The appeal is therefore denied.

The Taxpayer's son testified the Taxpayer had received the elderly exemption in prior years from the Town. When he applied for the exemption in 2013, however, the Town inquired as to whether the Taxpayer met the income requirements stated on the exemption application. As shown on Taxpayer Exhibit No. 1, the Taxpayer's income exceeded the Town's \$51,976 maximum and no evidence was presented disputing this fact.

The legislature authorized each municipality to establish income requirements as a condition for eligibility for the elderly tax exemption. See RSA 72:39-a and RSA 72:39-b. The board has no authority to modify the income requirements established pursuant to these statutes. The right to a statutory exemption is entirely dependent on the ability to meet each of the statute's stated requirements, including, in this appeal, the income requirement.

Consequently, 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 erroneo us

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, Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: John J. Dow, Jr., 4 Whippoorwill Lane, Exeter, NH 03833, Taxpayer; and Chairman, Board of Selectmen, Town of Exeter, 10 Front Street, Exeter, NH 03833.

Date:

Anne M. Stelmach, Clerk