

Joseph T. Czarnecki

v.

City of Manchester

Docket No.: 27175-13EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “City’s” 2013 denial of the Taxpayer’s request for an RSA 72:39-a elderly exemption on 161 Mason Street (the “Property”). For the reasons stated below, the appeal is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, he was entitled to the statutory exemption or credit 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) the asset at issue (which the City contends results in the Taxpayer exceeding the \$75,000 net asset limit in 2013¹) is a savings account at St. Mary’s Bank opened approximately 40 years ago for the Taxpayer’s son, Joseph J. Czarnecki (hereinafter, “the Son”), who was 13 at the time and needed an account to put his savings from a job at a movie theater;
- (2) until recently, the account was in the name of three people: the Taxpayer, his wife (who passed away 22 years ago) and the Son;

¹ In 2014, according to the City, this limit was increased to \$90,000.

- (3) the bank issued one passbook for the account and this passbook has remained in the possession of the Son at all relevant times;
- (4) a letter from St. Mary's Bank dated March 20, 2014 confirms the Son, not the Taxpayer, is the sole owner of the savings account; and
- (5) the appeal should be granted.

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

- (1) although the Taxpayer had received the exemption in prior years, in 2013 the City discovered the St. Mary's bank account which was held in the names of the Taxpayer and two others;
- (2) when the balance in this account (\$36,795.79) is included, the Taxpayer's net assets exceed the \$75,000 maximum that was applicable in 2013 to qualify for an elderly exemption in the City (as shown in Municipality Exhibit A);
- (3) the City has a policy of including assets held by an elderly applicant and his or her children or other family members when applying the criteria for elderly and other exemptions;
- (4) even if the board finds the Taxpayer met the net asset qualification in 2013, the City believes the elderly exemption should be "prorated . . . under RSA 72:41" because of language in the Quitclaim Deed (Municipality Exhibit B) and the fact both the Son and the Taxpayer's daughter (Sandi McGurry) live on the Property and the City also believes part of the Property should not be excluded from the net asset calculation since "other adults live on the Property"; and
- (5) the appeal should be denied.

Board's Rulings

Based on the evidence and arguments presented, the board finds the Taxpayer met his burden of proving the City erred when it denied the RSA 72:39-a elderly exemption on the Property. The appeal is therefore granted for the following reasons.

The City denied the Taxpayer's elderly exemption on September 13, 2013 on only one ground: based on its review, the Taxpayer's "ASSETS EXCEED LIMIT." (See the signed PA-35 form attached to the appeal document in the board's file.) According to the City's calculations, the Taxpayer's net assets at the time of his application totaled "\$89,095" ('without furniture and jewelry') if the St. Mary's savings account is included in the calculation, well above the \$75,000 maximum.

The Taxpayer argues the City erred because the calculation should not include money in a savings account owned and controlled by the Son. Persuaded by the credibility of the sworn testimony of the Taxpayer's daughter and the Taxpayer, the board agrees.

They testified the savings account was opened four decades ago when the Son (who is now in his "fifties") was 13. The account was funded solely with the Son's money and the tax reporting documents prepared by the bank are addressed to the Son, not the Taxpayer. Because he was a minor, the account could not be opened in his own name, resulting in the inclusion of the names of his parents. At all relevant times, and for all intents and purposes, the Son was the sole owner of the account. He continues to have sole possession of the passbook signifying ownership and, at his direction, St. Mary's Bank deleted the Taxpayer's name from the account on September 20, 2013. According to the unrefuted testimony at the hearing, the bank dealt solely with the Son and did not require the Taxpayer's consent for this change.

The board finds the Son had full ownership and control of this savings account. There is no evidence to suggest the Taxpayer funded this account, withdrew money or had access to it at any time, even if his name (and that of his wife, who died 22 years ago) was also on the account. These specific facts distinguish this appeal from other arrangements such as when an elderly person and a child or other trusted person have joint custody and control of a checking or savings

account to allow the elderly person to pay for his or her own needs while giving immediate access to the account should the elderly person become incapacitated or die.

For these reasons, the board finds the St. Mary's account should not have been included in the calculation of net assets of the Taxpayer for the purpose of determining his eligibility for an elderly exemption. When this account is excluded from the calculation, there is no dispute the Taxpayer meets the \$75,000 asset limitation for an elderly exemption. The board will next address two supplemental, but erroneous, arguments made at the hearing by the City.

The first argument contends, in the event the board grants an elderly exemption, 'proration' should be applied. The board does not agree. Proration is not warranted because the Taxpayer has a continuing, undivided life estate in the Property even after a Quitclaim Deed recorded in April, 2009 (see Municipality B) transferred the Property from the Taxpayer to himself and his son as "joint tenants with rights of survivorship." Cf. RSA 72:29, VI (qualifying those who have "equitable title or the beneficial interest for life in the subject property" for the statutory exemptions). The City's reliance on RSA 72:41 (Proration) is misplaced because there is no evidence of "fractional interest" ownership in the Property.

The City's second argument is also erroneous. The Taxpayer is an elderly person and the fact one or two of his children have chosen to live with him on the Property from time to time is not a valid ground for denying or limiting the exemption. The plain meaning of the elderly exemption statutes is that the combined income of "married persons" is to be included in the calculation, but the statute is entirely silent as to other relatives (children, caregivers or others, for that matter) who may also reside on the Property.

For all of these reasons, the board finds the Taxpayer was entitled to the elderly exemption for tax year 2013. The appeal is therefore granted.

If the taxes have been paid, the amount paid on the value in excess of the amount that would be due after application of the elderly exemption shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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(g). 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

Albert F. Shamash, 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: Joseph T. Czarnecki, 161 Mason St., Manchester, NH 03102, Taxpayer; and Chairman, Board of Assessors, City of Manchester, One City Hall Plaza-West Wing, Manchester, NH 03101.

Date: 10/7/14

Anne M. Stelmach, Clerk