

Thomas and Laurie Wright

v.

City of Manchester

Docket No.: 27157-14EX

DECISION

The “Taxpayers” appeal, pursuant to RSA 72:34-a, the “City’s” 2014 denial of the Taxpayers’ request for an RSA 72:37-b disability exemption. For the reasons stated below, the appeal 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 72:37-b; and Tax 204.06.

One of the Taxpayers (Thomas Wright) attended the hearing and argued they were entitled to the RSA 72:37-b disability exemption because:

- (1) he was a railroad employee for 35 years and became disabled in 2008, qualifying him for disability benefits under the Railroad Retirement Act (45 U.S.C. § 231, et seq.) from the Railroad Retirement Board (see Taxpayer Exhibit Nos. 2 – 4);
- (2) because of his status as a railroad employee, he was not part of the Social Security system (see Taxpayer Exhibit No. 5) and is precluded from receiving “Social Security” benefits; and

(3) although no specific provision in RSA 72:37-b mentions railroad employee disability benefits, they are “equivalent” to Social Security disability benefits and therefor the exemption should have been granted.

The City argued the denial of the RSA 72:37-b disability exemption was not erroneous because:

(1) RSA 72:37-b (Municipality Exhibit A) restricts the disability exemption to persons who are “eligible under Title II or Title XVI of the federal Social Security Act for benefits to the disabled”;

(2) the Taxpayers do not dispute Mr. Wright is not eligible for Social Security benefits;

(3) neither the City nor the board has the authority to change the wording of the statute in order to grant the Taxpayers the exemption they seek; and

(4) the appeal should be denied.

Board’s Rulings

Based on the evidence and arguments presented, the board finds the Taxpayers did not meet their burden of proving the City erred when it denied them the RSA 72:37-b disability exemption in tax year 2014. The appeal is therefore denied for the following reasons.

Mr. Wright made a persuasive presentation that railroad employee disability benefits serve the same purpose as Social Security disability benefits and are equivalent to them. It is also reasonably clear that a railroad worker (like Mr. Wright) had no choice regarding which disability benefit he or she can receive: each disability benefit system functions independently of the other and each has its own qualification provisions and compensation schedules.

Nonetheless, the board is unable to find error in the City’s denial of the disability exemption.

The City relies on the express wording of the disability exemption statute, RSA 72:37-b, which grants the exemption only to those applicants who meet each of its eligibility requirements. In particular and on its face, the statute earmarks eligibility only to one specific category of disabled persons: namely, “any person who is eligible under Title II or Title XVI of the federal Social Security Act for benefits to the disabled.” Mr. Wright does not meet this statutory requirement.

The City does not challenge the fact Mr. Wright is a disabled person or that he qualifies for disability benefits under a different federal program established for railroad workers. That program is administered by the Railroad Retirement Board, headquartered in Chicago, an “independent agency” in the Executive Branch of the U.S. Government; because of this agency, created in 1934, “railroad workers do not participate in the United States Social Security Program.”¹

There is nothing in the language of the statute that would allow the board to discern a legislative intent to qualify for this specific elderly exemption persons who are eligible under a different disability program (such as a program that functions exclusively for railroad workers). To the extent the Taxpayers believe otherwise, their remedy is to ask the legislature to amend the statute to expand the class of persons eligible for a disability exemption, such as disabled railroad workers not covered by Social Security.

¹ Cf. http://en.wikipedia.org/wiki/Railroad_Retirement_Board (last accessed on August 27, 2014).

The board further notes disabled railroad workers appear to receive much higher benefits under this program than they would under Social Security. See April, 2013 “Railroad Retirement Information” document in Taxpayer Exhibit No. 3 (stating, at the end of fiscal year 2012, the average award for a disabled railroad worker was \$2,900 per month, compared to an average Social Security award of \$1,190 per month).

The board cannot expand the class of persons eligible for a disability exemption under well-settled principles of law (separation of powers between the three branches of government) and statutory interpretation. See, e.g., Appeal of Wilson, 161 N.H. 659, 662 (2011):

We first examine the language of the statute and ascribe the plain and ordinary meaning to the words used. [Citation omitted.] We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.

Cf. Appeal of City of Nashua, 164 N.H. 749, 751-53 (2013) (interpreting language in the RSA 72:39-a elderly exemption statute to deny exemption, reversing a decision of the board, even if applying the “plain and ordinary meaning” may arguably result in an “unfair and unequal” outcome for a particular taxpayer unable to meet).²

For all of these reasons, 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

² On the one hand, it does appear to be “unfair and unequal” to exclude a disabled railroad worker from a benefit he or she would have received if he was either not employed at the time of the disability or employed in some other industry. The board, however, has no authority to rule otherwise based on the facts presented in this appeal. On the other hand, as noted in fn. 1, disabled railroad workers receive, on average, much higher monthly benefits than they would have received under Social Security. It is entirely possible that the legislature had this difference in mind when it drafted the exemption statute to apply only to those eligible under Social Security.

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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

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Thomas and Laurie Wright, 52 Pasture Drive, Manchester, NH 03102, Taxpayers; and Chairman, Board of Assessors, One City Hall Plaza-West Wing Manchester, NH 03101.

Date: 9/2/14

Anne M. Stelmach, Clerk