

Raymond and Joan Tague

v.

Town of Derry

Docket No.: 27164-14EX

DECISION

The “Taxpayers” appeal, pursuant to RSA 72:34-a, the “Town’s” 2014 denial of the Taxpayers’ request for an RSA 72:39-a elderly 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 or credit for the year under appeal. See RSA 72:34-a; RSA 72:39-a; and Tax 204.05.

The Taxpayers argued they should be entitled to the elderly exemption because:

- (1) as stated in Taxpayer Exhibit No. 1, the Taxpayers received the exemption for a number of years until the Town denied the exemption in 2014 because of the \$45,000 income limit;
- (2) their income has increased over time from below this amount to just above it (“from \$42,234 to \$45,647”) due to “cost of living” increases;
- (3) because of health and other issues, their living expenses have increased substantially over time, leaving them “in a worse financial position” in 2014 despite their higher income;

(4) they cannot afford the property taxes on their home and have become dependent on the tax relief they have been receiving from the Town through the elderly exemption; and

(5) the appeal should be granted.

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

(1) the Taxpayers qualified for the exemption in 2008 when they first applied for it and also received it in subsequent years;

(2) in 2014, however, based on a periodic review the Town is required to do (see Municipality Exhibit A), the Town discovered the Taxpayers' income exceeded the \$45,000 limit shown on the "Elderly Tax Exemption Qualifications Worksheet"; and

(3) the Taxpayers do not qualify for the RSA 72:39-a exemption in 2014 and the appeal should be denied.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not meet their burden of proving the Town erred when it denied the elderly exemption in tax year 2014. The appeal is therefore denied.

The Taxpayers testified they became eligible for the elderly exemption in 2008 and continued to receive the exemption each year until the Town determined they were no longer eligible in 2014 because their income of \$45,647 exceeded the \$45,000 ceiling. They noted this \$45,000 "threshold" has not changed over the five year period. Further, one of the Taxpayer's has serious health issues which have resulted in additional medical expenses and payments for assistance with yard care, snow removal and other necessities.

While there is no dispute regarding the Taxpayers' health and financial status, the board has no authority to grant the relief they seek in this appeal. 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 \$45,000 income ceiling adopted by the Town.¹

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 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).

¹ In prior decisions involving taxpayers in other municipalities, the board has consistently applied the statute to deny the elderly exemption to claimants who exceed the net income ceiling, even if they do so by a relatively small amount.

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: Raymond and Joan Tague, 8 Brookview Drive, Derry, NH 03038, Taxpayers; and Derry Assessor's Office, 14 Manning Street, Derry, NH 03038.

Date: 8/20/14

Anne M. Stelmach, Clerk