

Norma J. Wagner

v.

Town of Warren

Docket No.: 27179-14EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2014 denial of the Taxpayer’s request for an RSA 72:39-a elderly exemption on the “Property,” described as Map 229, Lot 11, 704 New Hampshire Route 118. For the reasons stated below, the appeal for the exemption on the Property is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, she 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’s representative, her daughter Davin Pope, attended the hearing and argued the Taxpayer was entitled to the elderly exemption because:

(1) the Taxpayer’s husband (Ms. Pope’s father), who owned the Property, passed away on March 5, 2014 and therefore there was excusable delay in filing the exemption application after the April 15, 2014 deadline (prescribed in RSA 72:33);

(2) the Taxpayer is entitled to the exemption because she is elderly (83 years old) and she does not own any house other than the Property; and

(3) the Town should have granted the elderly exemption.

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

(1) the Town initially denied the exemption because the application was untimely but this reason for denial was set aside by the board (because of the “accident, mistake or misfortune” exception provided in RSA 72:23, I-a) after the Taxpayer filed her appeal;

(2) at the hearing on the merits, Ms. Pope admitted the Taxpayer did not reside at the Property and, in fact, resided in an apartment in Manchester at all relevant times even when her husband lived on the Property;

(3) the statute (RSA 72:39-a) requires residency on the Property by the person who claims entitlement to the exemption; and

(5) the appeal should be denied.

Board’s Rulings

Based on the evidence, the board finds the Taxpayer did not qualify for the RSA 72:39-a exemption on the Property for tax year 2014. (The board so ruled from the bench at the October 2, 2014 hearing of this appeal after receiving testimony and reviewing Taxpayer Exhibit No. 1.) The appeal is therefore denied.

Eligibility for the RSA 72:39-a elderly exemption requires a showing the Taxpayer has met all of the statutory requirements. One important requirement is residency on the Property for which the exemption is claimed and the legislature has defined residency to mean more than

mere ownership. See RSA 72:39-a, I (c):

“Residence” means the housing unit, and related structures such as an unattached garage or woodshed, which is the person's principal home, and which the person in good faith regards as home to the exclusion of any other places where the person may temporarily live.

There is no dispute the Taxpayer did not reside on the Property on April 1, 2014 or at any other time. Her daughter testified the Taxpayer preferred to live in a city and therefore had an apartment of her own in Manchester, New Hampshire and did not live on the Property. This is also borne out by the evidence presented in Taxpayer Exhibit No. 1, which includes a copy of the Taxpayer’s driver’s license showing a Manchester, New Hampshire address.

Ms. Pope testified her father passed away on March 5, 2014 and the Property was not occupied by the Taxpayer or anyone else after that time. Ms. Pope testified the Property was not used after the passing of her father and is being closed up for the winter. The fact that ownership may have passed to the Taxpayer after her husband’s death does not qualify her for the elderly exemption.

The burden of proof for satisfying the residency requirement in the statute rests with the Taxpayer, as it does for all of the eligibility requirements established by the legislature.¹ The board has no authority to waive or modify the applicable statutory requirements, see Appeal of Land Acquisition, 145 N.H. 492, 494 (2000), including those set forth in RSA 72:39-a. Cf. Gamache v. Town of Hudson, BTLA Docket No. 25543-11EX (February 16, 2012) (affirming denial of elderly exemption when taxpayer moved from residence for which exemption was claimed to another state).

¹ See RSA 72:34-a; and Tax 204.05 (“The Taxpayer shall have the burden to prove (he or she) was entitled to the statutory exemption, deferral or tax credit for the year under appeal”).

For these reasons, the board finds the Taxpayer did not meet the eligibility requirements for an elderly exemption on the Property in tax year 2014. Her appeal is therefore 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(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

Michele E. LeBrun, Chair

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: Davin Pope, 7 Donna Drive, Pembroke, NH 03275, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Warren, PO Box 40, Warren, NH 03279; and KRT Appraisal, 191 Merrimack Street, Haverhill, MA 01830, Contracted Assessing Firm.

Date: October 10, 2014

Anne M. Stelmach, Clerk