

**Alice Eleanor Knee**

**v.**

**City of Concord**

**Docket No.: 27286-14EX**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “City’s” 2014 denial of her request for an elderly exemption as provided under RSA 72:39-a.

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 72:23-m; Tax 204.05. For the reasons stated below, the RSA 72:39-a exemption is granted.

**Background:**

The Taxpayer filed her appeal with the board on August 26, 2014. After the board determined the application for exemption was timely filed with the City, a hearing on the merits was scheduled for December 10, 2014. On December 5, 2014, the parties notified the board they had an “Agreed Statement of Facts” and requested leave to submit separate legal memoranda in lieu of attending the December 10, 2014 hearing.

The board granted the parties’ request and the City and the Taxpayer filed their respective memoranda of law on December 22, 2014 (“City’s Memorandum”) and December 23, 2014 (“Taxpayer’s Memorandum”).

The board has thoroughly reviewed these documents as well as the case law cited and makes its findings based not on any single piece of evidence but on the totality of the evidence.

The “Property” on which the exemption is being sought is 110 Rumford Street and is identified on the City’s Tax Assessment Maps as Map/Lot 53/4/9. The Taxpayer resided in the Property since 1954 with her husband until his death on December 2, 2013 and she continued to reside there. For approximately 10 years prior to Mr. Knee’s death, the Knees qualified for the elderly tax exemption as a married couple. After his death, the City notified the Taxpayer, a 95-year old widow, “she would have to reapply for the elderly exemption as a single person.” Upon receipt of the Taxpayer’s exemption application, the City notified her that she was not eligible for the elderly exemption in 2014 because she has “exceeded the income limit (\$33,000) for 2014.” The issue before the board is whether the Taxpayer’s net income from all sources in 2013 disqualifies her for an elderly exemption in 2014. (See Agreed Statement of Facts.)

**Board’s Rulings:**

Based on the evidence, the board finds the Taxpayer carried her burden of proving she is entitled to an RSA 72:39-a elderly exemption and the appeal is therefore granted.

Qualification for an elderly exemption requires fulfillment of the requirements set forth in RSA 72:39-a which states in part:

- I. No exemption shall be allowed under RSA 72:39-b unless the person applying therefor:
  - (a) Has resided in this state for at least 3 consecutive years preceding April 1 in the year in which the exemption is claimed.
  - (b) Had in the calendar year preceding said April 1 a net income from all sources, or if married, a combined net income from all sources, of not more than the respective amount applicable to each age group as determined by the city or town for purposes of RSA 73:39-b. Under no circumstances shall the amount determined by the city or town be less than \$13,400 for a single person or \$20,400 for married persons. The net income shall be determined by deducting from all moneys received, from any source including social security or pension payments, the amount of any of the following or the sum thereof:

- (1) Life insurance paid on the death of an insured;
- (2) Expenses and costs incurred in the course of conducting a business enterprise;
- (3) Proceeds from the sale of assets.

According to the Agreed Statement of Facts, the Taxpayer had a total net income in 2013 of \$20,676.54 (including pension income of \$9,969.84, social security income of \$9,718.80 and interest income of \$987.90). The City calculated the Taxpayer's 2013 "net income from all sources" to be \$37,639.02 (including the Taxpayer's pension income and social security income, as well as Mr. Knee's \$16,426.80 pension income and \$535.68 in "other income").

The City argues the Taxpayer's net income was \$37,639.02 in 2013 and the statute "does not authorize the City to exclude any income attributed and made available to Ms. Knee while her husband was living and after his death." The sole reason for the denial of the elderly exemption was the City's belief the Taxpayer's "net income from all sources" exceeded the City's income limit for a single person of \$33,400 for 2014.<sup>1</sup> See City's Memorandum, p. 5.

The Taxpayer, however, states "[b]y focusing exclusively on the taxpayer's marital status on April 1 of the tax year, the City treats Mrs. Knee as being *married* in 2013 for purposes of determining her income for that year, but *single* for the purpose of determining which income eligibility threshold to apply to her application" and the City's interpretation of the statute is "internally inconsistent, contrary to logic, and utterly fails to consider the statute as a whole." See Taxpayer's Memorandum, p. 2 (unnumbered).

"We construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result. Moreover, we do not consider words and phrases in isolation, but rather within the context of the statute as a whole. This enables us to better discern the legislature's

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<sup>1</sup> For purposes of RSA 72:39-a, the City's income limit for a married couple was \$45,800 and for a single person was \$33,400 for tax year 2014.

intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme.” Zorn v. Demetri, 158 N.H. 437, 438-439 (2009).

The parties agree the purpose of the elderly tax exemption “is to protect elderly homeowners from loss of their homes by reason of taxation beyond their means.” See Pennelli v. Town of Pelham, 148, N.H. 365, 368 (2002); see also City’s Memorandum, p. 3 and Taxpayer’s Memorandum, p. 3 (unnumbered). “A tax exemption statute is construed not with rigorous strictness but ‘to give full effect to the legislative intent of the statute.’” Wolfeboro Camp School, Inc. v. Town of Wolfeboro, 138 N.H. 496 (1994); accord, Town of Peterborough v. MacDowell Colony, 157 N.H. 1, 5 (2008). As further noted in ElderTrust, 154 N.H. at 701 (2007) (quoting from “84 C.J.S. Taxation, §323” at 391-92 (2001)), “each case must be decided on its own peculiar, or particular, facts.”

RSA 72:39-a, I states that an exemption will not be allowed “unless the person applying therefor” satisfies the criteria as stated above. In this instance, the board finds the “person applying” is the Taxpayer. Due to the death of her husband, the Taxpayer was a single person as of April 1, 2014. The Taxpayer’s 2013 net income from all sources, according to the Agreed Statement of Facts, was \$20,676.54, well below the income limit established by the City of \$33,400.

The board finds the City’s denial of the elderly exemption is inconsistent with the purpose of the elderly exemption statute, as well as contradictory with the statute as a whole. It is also distinguishable from several cases cited in the City’s Memorandum. For instance, in Patient v. City of Manchester, BTLA Docket No. 21051-05EX (March 17, 2006) the board upheld the City of Manchester’s denial of an RSA 72:37-b disability exemption for tax year 2005 (where a change in marital status made the disabled person ineligible for social security

benefits). See RSA 72:37-b, I. This appeal can also be distinguished from Hagan v. City of Concord, BTLA Docket No. 26531-12EX (March 8, 2013), where the board found Medicare Part B premium reimbursements are to be considered in the calculation of net income.

The board disagrees with the City that, in order to grant the exemption, the board would have to “exclude income attributable to Ms. Knee.” See City’s Memorandum, p. 5. To the contrary, the board finds the City erred by considering income attributable to Mr. Knee in the calculation of the Taxpayer’s net income from all sources. By treating Mrs. Knee as married in 2013 for determining her income for that year but single for determining which income eligibility threshold to apply to her application is not within the tax abatement scheme envisioned by the legislature. See GGP Steeplegate, Inc. v. City of Concord, 150 NH 683, 686 (2004): “The tax abatement scheme is written to make the proceedings free from technical and formal obstructions. *Arlington Mills v. Salem*, 3 N.H. 148, 154 (1927). ‘It should be construed liberally, in advancement of the rule of remedial justice which it lays down.’ *Id.* (quotation omitted).”

For all these reasons, the board finds the appeal of the RSA 72:39-a elderly exemption is granted.

If the taxes have been paid for tax year 2014, the amount paid 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

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Michele E. Lebrun, Member

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Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Elliott Berry, Managing Attorney, New Hampshire Legal Assistance, 1850 Elm Street, Suite 7, Manchester, NH 03104, Attorney for the Taxpayer; James W. Kennedy, City Solicitor, 41 Green Street, Concord, NH 03301, counsel for the City of Concord; and City of Concord, Chairman, Board of Assessors, 41 Green Street, Concord, NH 03301.

Date: February 11, 2015

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Anne M. Stelmach, Clerk