

Bruce Gowan

v.

Town of Bow

Docket No.: 27579-14EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” tax year 2014 denial of the Taxpayer’s request for the RSA 72:28 veteran’s tax credit (“credit”) on 7A Dunklee Road, Map 35-2, Lot 159-G (the “Property”). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, he was entitled to the statutory credit for the year under appeal. See RSA 72:34-a; RSA 72:28; and Tax 204.05. The board finds the Taxpayer met this burden.

The Taxpayer argued he was entitled to the credit because:

- (1) he has owned and resided on the Property since 1992;
- (2) the Town granted him the credit for many years, but denied the credit in 2014 because of a change in mailing address form he filled out in June, 2013 (see Taxpayer Exhibit No. 1);

(3) the additional documents in Taxpayer Exhibit No. 1 confirm that he lives and conducts his personal affairs at this residence in New Hampshire and has no other residence ‘in any other state or country’;

(4) due to “mail delivery problems” experienced several years ago, he chose to establish mailing addresses in Las Vegas, Nevada and in Hooksett and Concord, New Hampshire to receive his mail; and

(5) the Town erred in denying the credit.

The Town argued the denial of the credit was proper because:

(1) when the Taxpayer filed the change of address form in June, 2013, the Town’s Assessing Clerk, Janette Shuman, said the Taxpayer stated “he was moving to Las Vegas” (see Municipality Exhibit A);

(2) the Town does not believe the Taxpayer satisfies the residence requirement in the governing statutes (RSA 72:28 and RSA 72:29) and denied the credit in tax year 2014 for this reason; and

(3) the Taxpayer has not met his burden of proof and the appeal should be denied.

Board’s Rulings

Based on the evidence presented, the board finds the Taxpayer met his burden of proving he was entitled to the RSA 72:28 veteran’s tax credit for tax year 2014. The appeal is therefore granted.

The Town denied the credit because of a change of mailing address form the Taxpayer duly filled out and filed with the Town in June, 2013, contending he no longer resides at the Property. (There is no dispute the Taxpayer satisfies all of the other statutory requirements for the credit.)

As noted above, the board heard conflicting testimony at the hearing regarding what the Taxpayer may have stated when he visited the Town's office to file this form. On balance, the board finds the Taxpayer's sworn testimony that he did not state he was 'moving to Las Vegas' to be supported by the weight of the evidence. (See also Taxpayer Exhibit No. 1.) His sworn testimony to this effect is also corroborated by the sworn testimony of another witness (Bill Domenico) who testified he knew the Taxpayer for many years and that he continues to reside at the Property.

For these reasons, the board finds merit in the Taxpayer's arguments that the Town erred in denying the veteran's tax credit for tax year 2014. He met his burden of proving, by a preponderance of the evidence, the Property is his principal place of abode, notwithstanding the change of mailing address. (See RSA 72:29, II.) The Town acknowledged other taxpayers who have mail delivered to other addresses (Florida, for example) without losing their status as Town residents. A mere change in mailing address is not sufficient to disqualify an applicant for a veteran's tax credit and the Town has cited no legal authority to the contrary.

The appeal is therefore granted. The Town is directed to credit the appropriate amount for tax year 2014, refunding to the Taxpayer any excess taxes, interest and penalties paid.

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

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mr. Bruce Gowan, 848 N. Rainbow Blvd. - Unit 4205, Las Vegas, NV 89107, Taxpayer; and Chairman, Board of Selectmen, Town of Bow, 10 Grandview Rd., Bow, NH 03304.

Date: April 3, 2015

Anne M. Stelmach, Clerk