Robert and Sharon Spacone

v.

City of Manchester

Docket No.: 27595-15EX

DECISION

The "Taxpayers" appeal, pursuant to RSA 72:34-a, the "City's" 2015 denial of the Taxpayers' request for an RSA 72:37-b disability exemption. The appeal is granted for the reasons stated below.

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 204.05. The board finds the Taxpayers satisfied this burden.

The Taxpayers, represented by Richard A. Dryer,[1] argued they were entitled to the disability exemption because:

(1) the Taxpayers are married and the City does not dispute one of them (Robert Spacone) is disabled;

(2) the City denied the exemption only because the net income it calculated for 2014 ("$50,421," see Municipality Exhibit A, p. 2) exceeded the City's $50,000 maximum for married persons;

[1] Mr. Dyer holds a Durable Power of Attorney from Robert Spacone, one of the Taxpayers (see Taxpayer Exhibit No. 1).

(3) the Taxpayers' actual net income, however, was under the $50,000 maximum ($48,644, as computed and explained on Taxpayer Exhibit No. 3) and therefore they qualify for the disability exemption;

(4) the sole difference between the City's net income calculation and the Taxpayers' actual net income arises from one item: the employer portion of the Social Security "Self-Employment Tax" ($1,778) paid by Mrs. Spacone, who operated her hairdressing business as a sole proprietorship [cf. Taxpayer Exhibit No. 2 (the 2014 Form "1040" federal joint income tax return filed by the Taxpayers, line 27); and Municipality Exhibit A, page 10 (the "Schedule SE" filed by Mrs. Spacone as part of that return)];

(5) this employer portion is a "business tax," equivalent to what a corporation would pay for each employee, is a cost and expense of the business and does not constitute income for Mrs. Spacone; and

(6) the appeal should be granted.

The City argued the denial of the disability exemption was proper because:

(1) the only point of disagreement with the Taxpayers, an issue of first impression for the City, concerns whether the $1,778 should be deducted from "net income," as defined in RSA 72:37-b, III(a) [copied in Municipality Exhibit B], for the purpose of determining whether they satisfy the $50,000 maximum net income qualification for this exemption;

(2) while this statute allows the deduction from net income of the "expenses and costs" of a "business enterprise," it makes no specific mention of taxes and the City did not err when it did not deduct this $1,778 item in calculating the Taxpayers' net income; and

(3) the appeal should be denied.

Board's Rulings

Based on the evidence and arguments presented, the board finds the Taxpayers met their burden of proving Mr. Spacone qualified for the RSA 72:37-b disability exemption on the "Property" the Taxpayers owned and occupied in the City for tax year 2015. The appeal is therefore granted for the following reasons.

As noted above, the only disputed issue is whether or not the employer portion of a Social Security tax obligation in 2014 ($1,788) should be deducted in calculating "net income" for the purpose of determining qualification for the RSA 72:37-b disability exemption. This tax consists of two components, with the employer and the employee each required to contribute one-half (7.65%) of the total (15.3%) tax obligation. In this appeal, the $1,778 amount in dispute pertains to the 7.65% tax on the employer, the amount also shown as a "[d]eductible" item on Line 27 of the Taxpayers' Form 1040 federal income tax return. (See Taxpayer Exhibit Nos. 2 and 3.)

The board finds merit in the Taxpayers' arguments that this $1,778 item is a deductible business expense of the hairdressing business owned and operated by Mrs. Spacone as a sole proprietorship. As noted in Taxpayer Exhibit No. 3 (the March 10, 2015 letter to the City from the Taxpayers' representative): "This is the employer portion of the social security tax . . . [and] is a deductible expense to any employer including a self-employed individual. This is not an employee responsibility." Support for this conclusion is contained in "IRS Publication 535 (2014) Business Expenses," available online at http://www.irs.gov/publications/p535/index.html, which explains a business must pay certain "Employment Taxes" with its own funds, including its share of "social security . . . taxes as an employer," and these employment tax expenses are deductible from business income.

While the City is correct in noting RSA 32:37-b does not explicitly mention "taxes" in its definition of net income ("all moneys received" less allowable deductions), the board finds this tax imposed on every business with employees does qualify as an allowable deduction under the category of "[e]xpenses and costs incurred in the course of conducting a business enterprise," a broad category of deductions allowed in this statute without further enumeration. [See RSA 72:37-b, III (a).] This finding is more reasonable than the City's contrary interpretation that this business tax should not be a deductible 'expense and cost' in calculating net income.

The Taxpayers' representative correctly pointed out this issue would not have arisen if, for example, Mrs. Spacone conducted her hairdressing business through a corporation rather than as a sole proprietorship. A corporate tax return deducts the employer portion of the Social Security Self-Employment Tax as an allowable business expense and cost in determining taxable income. The corresponding federal "W-2" form (the "Wage and Tax Statement") issued by the corporation to its employee(s) would not reflect, as income, this employer portion of the Social Security tax, but would only show each employee's separate Social Security tax obligation (which the employer is obligated to withhold from the employee's compensation and remit to the federal government). The board finds the net income calculation for the purpose of qualifying for the disability exemption, insofar as the employer portion of the Self-Employment Tax is concerned, should not be different if a business is operated as a sole proprietorship rather than as a corporation.

When the $1,788 employer portion of the Social Security Self-Employment Tax is deducted, the parties agree the Taxpayers meet the City's maximum income and all other qualifications for the disability exemption in 2015. Consequently, the appeal is granted.

If the taxes have been paid, the amount paid without taking into account the disabled exemption 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, Chair

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Albert F. Shamash, 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: Richard Dryer, 901 Union Street, Manchester, NH 03104, representative for the Taxpayers; and Chairman, Board of Assessors, City of Manchester, One City Hall Plaza-West Wing, Manchester, NH 03101.

Date: 7/22/15

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Anne M. Stelmach, Clerk