

**Benjamin M. Mikulis, Jr.**

**v.**

**City of Nashua**

**Docket No.: 27696-15EX**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “City’s” tax year 2015 denial of his application for an RSA 72:28 veteran’s tax credit. For the reasons stated below, the appeal is denied.

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 Taxpayer argued he qualified for the RSA 72:28 veteran’s tax credit because: (1) in 1957, he enlisted (‘signed a contract’) for six years of service in the U.S. Army, a “total commitment,” and received two honorable discharges, first from active service (on November 10, 1960) and then from the reserves (on October 31, 1963), as shown in Taxpayer Exhibit No. 1;

- (2) because of a service connected disability incurred while on active duty, he could not continue in that capacity and therefore was transferred to the U.S. Army Reserves (in November, 1960 for the remainder of his six year military service obligation);
- (3) the City granted him the veteran's tax credit for a number of years (from 1988 through 2004) and then, without his knowledge, removed the credit in 2005;
- (4) the City's emphasis on the "active duty" definition in the department of revenue administration's ("DRA's") rules to disallow the credit is erroneous; and
- (5) the veteran's tax credit should be granted.

The City argued the denial of the veteran's tax credit was proper because:

- (1) the City began an ongoing audit of this and other tax credits (as well as exemptions) in 2002 and concluded, in 2005, the Taxpayer did not qualify and removed the previously granted credit in that year, and denied the Taxpayers application in 2015 when he applied again;
- (2) the wording of RSA 72:28, along with certain DRA rules set forth in Municipality Exhibit A (regarding "[a]ctive duty" and "[s]ervice [r]equirements"), support the conclusion the Taxpayer did not satisfy the "90 days" requirement in the statute (because of the specified timeframes);  
and
- (3) the appeal should be denied.

### **Board's Rulings**

Based on the evidence presented, the board finds the Taxpayer did not meet his burden of proving the City erred when it denied him an RSA 72:28 veteran's tax credit for tax year 2015. The appeal is therefore denied for the following reasons.

The Taxpayer claims entitlement to the \$500 annual veteran's tax credit available in the City because of his military service. The undisputed facts pertaining to his military service are

reflected in the documents included in Taxpayer Exhibit No. 1, including his “DD 214” form, and his testimony at the hearing. He entered the U.S. Army and began his service in the infantry on November 12, 1957. After being wounded in Germany while on active duty and enduring a long stay in the hospital for his injuries, he was transferred to Fort Dix in New Jersey for six months and subsequently, on November 10, 1960, received a transfer to the “US AR [Army Reserve].” He remained a reservist (able to reside in his home in the City) until October 31, 1963, the date indicated on an “Honorable Discharge” certificate included in Taxpayer Exhibit No. 1. The City concluded from its review of these documents the Taxpayer actively served in the military only until November 10, 1960 and the remainder of his military experience (as a reservist until 1963) did not entitle him to the tax credit because of the specific 90 day requirement (during a “qualifying war or armed conflict” as listed in the statute).

The board recognizes the sacrifices for their country made by military veterans like the Taxpayer. There is no dispute the Taxpayer “served” his country by enlisting for six years in the military and risked life and limb in doing so; in fact, he was injured while on active duty in Germany during the Cold War and suffered a “40% disability,” a disability that continues to this day. Unfortunately, the benefit at issue in this appeal (a \$500 tax credit) is not available to all veterans, but only to veterans who meet the specific, additional requirements in RSA 72:28.

The parties have not cited, nor has the board found, any supreme court decisions interpreting or applying this statute. The board’s task is to construe the specific provisions in RSA 72:28 at issue in this appeal in the context of the statute as a whole and the entire statutory framework promulgated by the Legislature, not simply by looking at isolated words or phrases. See, e.g., Pennelli v. Town of Pelham, 148 N.H. 365, 366 (2002); Barksdale v. Town of Epsom, 136 N.H. 511, 514 (1992); and Great Lakes Aircraft Co. v. City of Claremont, 135 N.H. 270, 277

(1992). In other words, if there are questions regarding the language used in a statute that affect the outcome of an appeal, the board must “look to the intent of the legislation, which is determined by examining the construction of the statute as a whole, and not simply by examining isolated words and phrases found therein.” Appeal of Town of Newmarket, 140 N.H. 279, 283 (1995). Accord, Petition of Carrier, 165 N.H. 719, 721 (2013) (“We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include. [Citation omitted.]”).

The board has undertaken a careful review of the wording and legislative history of RSA 72:28. This statute is not without its complexities, as the City’s representative readily admitted at the hearing. RSA 72:28, as amended in 2013, reads, in relevant part, as follows:

IV. The following persons shall qualify for the . . . veterans' tax credit:

- (a) Every resident of this state who served not less than 90 days in the armed forces of the United States in any qualifying war or armed conflict listed in this section and was honorably discharged or an officer honorably separated from service; or the spouse or surviving spouse of such resident, provided that Title 10 training for active duty by a member of a national guard or reserve shall be included as service under this subparagraph;
- (b) Every resident of this state who was terminated from the armed forces because of service-connected disability; or the surviving spouse of such resident; and
- (c) The surviving spouse of any resident who suffered a service-connected death.

V. Service in a qualifying war or armed conflict shall be as follows:

- (a) "World War I" between April 6, 1917 and November 11, 1918, extended to April 1, 1920 for service in Russia; provided that military or naval service on or after November 12, 1918 and before July 2, 1921, where there was prior service between April 6, 1917 and November 11, 1918 shall be considered as World War I service;
- (b) "World War II" between December 7, 1941 and December 31, 1946;
- (c) "Korean Conflict" between June 25, 1950 and January 31, 1955;

- (d) "Vietnam Conflict" between December 22, 1961 and May 7, 1975;
- (e) "Vietnam Conflict" between July 1, 1958 and December 22, 1961, if the resident earned the Vietnam service medal or the armed forces expeditionary medal;
- (f) "Persian Gulf War" between August 2, 1990 and the date thereafter prescribed by Presidential proclamation or by law; and
- (g) Any other war or armed conflict that has occurred since May 8, 1975, and in which the resident earned an armed forces expeditionary medal or theater of operations service medal.

This statutory wording requires a conclusion that not every veteran who has been “honorably discharged” and “served not less than 90 days in the armed forces of the United States” is entitled to receive the credit. To the contrary, the legislature has prescribed in this statute at least one more requirement, a requirement emphasized by the City and one that cannot be ignored: namely, the 90 days required must have been during one of the qualifying periods (of “war or armed conflict”) prescribed in RSA 72:28.

The board finds the City did not err in denying the veteran’s tax credit based on its determination the Taxpayer did not have at least 90 days of active service during a qualifying event. (Cf. RSA 72:28, V(d) and (e), quoted above.) The City based its denial both on the statute and on several DRA rules (Rev. 401.01 defining “Active duty” and Rev 403.02 stating “Service Requirements”) submitted in Municipality Exhibit A. While the Taxpayer stated his disagreement with the applicability of these rules, the board finds merit in the City’s position that it did not err in construing RSA 72:28 to require active duty rather than standby time spent in the reserves or the national guard.

The legislative history of RSA 72:28 supports this finding. This statute was amended in 2013 to add the phrase in paragraph IV(a) that ‘Title 10 training for active duty by a member of a national guard or reserve shall be included as service under this paragraph.’ The sponsor of this amendment (Representative Alfred Baldasaro) testified as to its purpose at a legislative hearing held before passage of this amendment.<sup>1</sup> His testimony in support of this amendment<sup>1</sup> clarifies the intention that only a specified portion of time spent in either the national guard or the reserve (namely, Title 10 training for active duty) should entitle a veteran to benefits under RSA 72:28.

At the hearing, the Taxpayer answered questions from the board regarding the time he spent as a reservist to help determine whether he qualified for this veteran’s tax credit. The board, however, could find no evidence sufficient to support a finding he met his burden of proof on this issue. There is no question the Taxpayer is sincere in his belief he is entitled to the credit; nonetheless, the wording of RSA 72:28, as amended in 2013, compels the board to find he did not meet his burden of proving the City erred in denying the credit in tax year 2015.

For all of these reasons, the appeal is denied.

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<sup>1</sup> See electronic audio file of April 17, 2012 hearing at:  
[http://www.gencourt.state.nh.us/bill\\_status/BillStatus\\_Media.aspx?lsr=2139&sy=2012&sortoption=&txtbillnumber=hb1353](http://www.gencourt.state.nh.us/bill_status/BillStatus_Media.aspx?lsr=2139&sy=2012&sortoption=&txtbillnumber=hb1353).

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 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: Benjamin M. Mikulis, Jr., 8 Corona Avenue, Nashua, NH 03063, Taxpayer; and Chairman, Board of Assessors, City of Nashua, PO Box 2019, Nashua, NH 03061.

Date: December 22, 2015

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Anne M. Stelmach, Clerk