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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

KATHI F. FIAMINGO
JUDGE



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September 12, 2022

VIA eCourts
Edward H. Hill, Esq.
Attorney for defendant

VIA regular mail
Michael Hutchings
529 Fairview Avenue
Lawnside, N.J. 08045
Self-Represented plaintiff

RE: Michael Hutchings v. Borough of Lawnside
Docket No. 013702-2018

Dear Counsel and Michael Hutchings:

This letter constitutes the court's opinion with respect to defendant's motion for summary judgment affirming the judgment of the Camden County Board of Taxation denying the exemption from tax of the subject property under N.J.S.A. 54:4-3.30. For the reasons explained more fully below, defendant's motion is granted.

FACTS AND PROCEDURAL BACKGROUND¹

Michael Hutchings ("plaintiff") is the owner of the property known as 259 Fairview Avenue, Lawnside, NJ 08045 ("subject property"). Plaintiff was in active service with the United States Armed Forces twice, from July 27, 1975 to August 8, 1977, and from August 30, 1977 to

¹ The following facts were obtained from the unopposed statement of material facts submitted by defendant in support of its motion for summary judgment.

August 28, 1981. Plaintiff was declared a 100% disabled veteran by the Veteran's Administration on May 9, 2009. In "2015 and 2018" plaintiff filed a claim for property tax exemption due to a disabled veteran.² The claim made by the plaintiff in 2018 was disallowed by defendant's assessor on September 12, 2018 for failing to satisfy active duty in time of war.

Plaintiff appealed the denial to the Camden County Board of Taxation which affirmed the denial. Plaintiff thereafter filed a timely appeal with the Tax Court. On August 3, 2022, the Borough of Lawnside ("defendant") filed the instant motion seeking summary judgment and dismissal of plaintiff's complaint. No opposition was filed.

LEGAL ANALYSIS

Summary judgment should be granted where "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact challenged and the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). In Brill v. Guardian Life Insurance Company, 142 N.J. 520 (1995), the New Jersey Supreme Court established the standard for summary judgment:

[W]hen deciding a motion for summary judgement under Rule 4:46-2, the determination whether there exists a genuine issue with respect to a material fact challenged requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.

[Brill v. Guardian Life Ins. Co., 142 N.J. at 523.]

² There is no indication of the date of application in 2015 or the action taken with respect thereto. It appears that the application was denied, but there is no indication that a timely appeal of that determination was filed by plaintiff.

Here, there is no dispute of material fact. Rather, the only issue is whether, under the facts presented, plaintiff qualifies for the exemption under N.J.S.A. 54:4-3.30(a).

“Tax exemption statutes are strictly construed, and the burden of proving entitlement to an exemption is on the party seeking it.” Abunda Life Church of Body, Mind & Spirit v. City of Asbury Park, 18 N.J. Tax 483, 485 (App. Div. 1999) (citing New Jersey Carpenters Apprentice Training and Educ. Fund v. Borough of Kenilworth, 147 N.J. 171, 177-78 (1996); Princeton Univ. Press v. Borough of Princeton, 35 N.J. 209, 214 (1961)).

The Veteran’s Exemption provides special tax treatment for property owned by certain veterans of war. The relevant statute, N.J.S.A. 54:4-3.30(a), provides in part, that:

The dwelling house and the lot or curtilage whereon the same is erected, of any citizen and resident of this State, now or hereafter honorably discharged or released under honorable circumstances, from active service in any branch of the Armed Forces of the United States, who has been or shall be declared by the United States Department of Veteran’s Affairs or its successor to have a service-connected disability . . . from other service-connected disability declared by the United States Veterans Administration or its successor to be a total or 100% permanent disability . . . shall be exempt from taxation, on proper claim made therefor, and such exemption shall be in addition to any other exemption of such person's real and personal property which now is or hereafter shall be prescribed or allowed by the Constitution or by law but no taxpayer shall be allowed more than one exemption under this act.

[N.J.S.A. 54:4-3.30(a)]

However, prior to December 3, 2020, the statute required a disabled veteran to have served in “time of war” in order to qualify for the exemption. For these purposes, N.J.S.A. 54:4-8.10-1(a) defined “time of war” as active service “at some time during” (1) Operation Iraqi Freedom; (2) The period of rescue and recovery of the victims of the terrorist attack on the World Trade Center serving at the site of the attack; (3) Operation Enduring Freedom; (4) Operation Restore Hope in Somalia; (5) Operations Joint Endeavor and Joint Guard in the Republic of Bosnia and

Herzegovina; (6) Operation Northern Watch and Operation Southern Watch; (7) Operation Desert Shield/Desert Storm; (8) The Panama peacekeeping mission; (9) The Granada peacekeeping mission; (10) The Lebanon peacekeeping mission; (11) The Vietnam conflict; (12) The Lebanon crisis; (13) the Korean conflict; (14) World War II; (15) World War I; (16) The Spanish-American War; and (17) the Civil War.³ However, N.J.S.A. 54:4-8.10 was amended to delete subsection 1(a) in its entirety, thus eliminating the requirement that a N.J. active service veteran who was declared to be 100% disabled due to a service-related injury.

The Legislature provided that the amendment to the statute eliminating the requirement of service in time of war would be effective on the date of approval, January 21, 2020, but would remain inoperative until a constitutional amendment authorizing the extension of the exemption to service members who did not serve in a time of war or other emergency was approved by the voters of the State. N.J.S.A. 54:4-3.30 n.8. The Constitutional amendment was approved at general election November 3, 2020, effective December 3, 2020. N.J. Const. Art. 8, §3. At the time of plaintiff's application for exemption the statute, prior to amendment was in effect.

Plaintiff did not serve during any of the conflicts listed in N.J.S.A. 54:4-8.10-1(a). He was therefore ineligible for the exemption provided by N.J.S.A. 54:3-3.30. See eg. Bentz v. Township of Little Egg Harbor, 30 N.J. Tax 530 (Tax 2018) (service during the 1986 conflict with Libya, which was not within the conflicts listed in N.J.S.A. 54:4-8.10-1(a) as a time of war, did not qualify disabled veteran for exemption); Fisher v. City of Millville, 450 N.J. Super 610 (App. Div. 2017), cert. den. 231 N.J. 149 (rear detachment services performed in Missouri for veteran's unit in Afghanistan did not qualify for exemption); but see Galloway Township v. Duncan, 29 N.J. Tax

³ With the exception of the Vietnam conflict, the Korean conflict, the World Wars, the Spanish American War and the Civil War, additional service requirements were required for qualification. See N.J.S.A. 54:4-8.10-1(a) (amended 2019).

520 (Tax 2016) (service by physician veteran in the U.S. during Operation Enduring Freedom qualified for exemption even though veteran was not physically present on battlefield); Wellington v. Township of Hillsborough, 27 N.J. Tax 37 (2012) (disabled veteran injured by chemical exposure at California base during Northern Watch/Southern Watch qualified). In all of the matters reviewed, the disabled veteran had to have “active service in time of war.” In the case before the court, plaintiff’s service did not occur during a time of war and, therefore, under the statute as it existed during the years in question, he was not qualified for the exemption from tax under N.J.S.A. 54:4-3.30. Accordingly plaintiff’s appeal of the County Board of Taxation denying plaintiff’s application for exemption for tax year 2018 is denied.

Although plaintiff’s complaint asserts a claim for tax years 2015 through 2018, the only timely appeal before the court is that for tax year 2018.⁴ N.J.S.A. 54:51A-9 requires that any appeal of a determination of a County Board of Taxation be filed with the Tax Court within forty-five days of service of that judgment. The Tax Court is a court of limited jurisdiction. McMahon v. City of Newark, 195 N.J. 526, 546 (2008). “The statutory requirements for the filing of appeals from judgments of county boards of taxation are strictly construed and they must be filed in a timely fashion. See Newark v. Fischer, 3 N.J. 488 (1950); Prospect Hill Apts. v. Flemington, 172 N.J.Super. 245 (Tax 1979).” Tolentino v. Oxford Twp., 4 N.J. Tax 173, 183 (1982). The only timely appeal before the court is for tax year 2018. Any appeal of a denial of the exemption for any prior year for which no appeal was timely filed is not properly before the court and is denied.

⁴Any attempt by plaintiff to apply the correction of errors statute, N.J.S.A. 54:51A-7, to the prior tax years is rejected. That statute applies solely to “typographical errors, errors in transposing, and mistakes” not involving the tax assessor’s judgment or opinion. See Hovbilt, Inc. v. Township of Howell, 263 N.J. Super 567, aff’d 138 N.J. 598 (1993).

CONCLUSION

For the reasons set forth herein, defendant's motion for summary judgment is granted. Plaintiff's complaint is dismissed with prejudice.

Very truly yours,

/s/ Kathi F. Fiamingo

Kathi F. Fiamingo, J.T.C.