BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,	)	
Appellant,	)	DOCKET NO.: PT-1999-14
-vs-	)	
LOWELL E. MCGHIE,	)	FACTUAL BACKGROUND, CONCLUSIONS OF LAW, ORDER and OPPORTUNITY FOR JUDICIAL REVIEW
Respondent.	)	

Counsel for the parties agreed the subject issue primarily involved legal argument and agreed to submit the matter on briefs. The hearing date of August 1, 2000 in Cut Bank was therefore vacated.

By order dated July 14, 2000, the Board established a briefing schedule with final submissions due on October 15. Having received the legal arguments in a timely manner, the Board considered the matter fully submitted for its determination. The duty of this Board is to determine whether the taxpayer's residence properly qualifies for an exemption, based on a preponderance of the evidence. The Department of Revenue is the appellant in this proceeding and, therefore, has the burden of proof. Based on the evidence and testimony, the Board finds that the Department

of Revenue failed to meet that burden and affirms the decision of the Glacier County Tax Appeal Board.

AGREED STATEMENT OF ISSUE

Must a veteran be presently, rather than only formerly, rated 100% disabled because of a service-connected disability to qualify his residence as exempt from property taxation?

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

> Lots 4 and 5, Block 25, Cut Bank Second Addition, City of Cut Bank, County of Glacier, State of Montana and the improvements located thereon.

3. The taxpayer filed an appeal with the Glacier County Tax Appeal Board on February 3, 1999, citing Section 15-6-211 (ii), MCA, as his reason for seeking property tax exemption on his residence.

4. The Glacier County Tax Appeal Board approved the appeal, stating:

The GCTAB went with the appellant on the basis of the new law change (MCA 15-6-211) in 1997. Legislative session changing the wording on veteran proof of 100% disability from "be" to "has been". The DOR is using outdated general procedures to interpret this law. Ref Exhibit #1 dated 1/10/96.

5. Lowell McGhie contracted tuberculosis while on active duty in World War II. He was rated 100% disabled because of a service-connected disability by the Veterans Administration from March 20, 1946 to February 11, 1948 and from August 12, 1948 to May 21, 1949 and from December 1, 1949 to February 10, 1951.

6. Since then, Lowell McGhie has not been and is not now rated 100% disabled.

7. The Veterans Administration is the predecessor to the Department of Veterans Affairs, and the name was changed from Veterans Administration to Department of Veterans Affairs in 1989 when it became a cabinet department.

8. Lowell McGhie has an annual adjusted gross income, as reported on his latest federal income tax return, of not more than $30,000.

9. Lowell McGhie is not married.

10. Lowell McGhie was born on July 28, 1919 and is presently 82 years of age.

11. Lowell McGhie was honorably discharged from the United States Navy on March 9, 1946.

DEPARTMENT OF REVENUE'S CONTENTIONS

Mr. McCue argues that a veteran must have been in the past, and be currently, rated 100% disabled because of a service-connected disability in order for his residence to qualify for exemption from property taxation, pursuant to Section 15-6-211, MCA:

> *A residence, including the lot on which it is built that is owned and occupied by a veteran or a veteran's spouse is exempt from property taxation if the veteran: . . (b) if living: . . (ii) has been rated 100% disabled because of a service-connected disability.*

The DOR agrees that Mr. McGhie has satisfied the income and discharge status requirements of subsections (1) (b) (i) and (1) (b) (iii) of Section 15-6-211, MCA. Mr. McGhie was honorably discharged from active service in the armed forces on March 19, 1946 and his annual adjusted gross income, as reported on his latest federal income tax return, is not more than $30,000, both requirements of Section 15-6-211, MCA.

The only obstacle remaining toward granting of property tax exemption for his residence is that he is not currently rated as 100% disabled because of a service-connected disability. Mr. McGhie has not been rated 100% disabled by the Veterans Administration since 1951. Mr. McCue's interpretation of Section 15-6-211 (1) (b) (ii) is that the

"past tense of the verb 'has been' refers to having received in the past and maintaining into the present a disability rating of 100%."

Further support for this argument lies in the remainder of Section 15-6-211, MCA, as it pertains to the surviving spouse of a 100% service-connected disabled veteran:

> *(2) The property tax exemption under this section remains in effect as long as the property is the primary residence owned and occupied by the veteran or, if the veteran is deceased, by the veteran's spouse and the spouse:*
> *(a) is the owner and occupant of the house.*
> *(b) Has an annual adjusted gross income, reported on the latest federal income tax return, of not more than $25,000;*
> *(c) is unmarried; and*
> *(d) has obtained from the United States department of veterans affairs a letter indicating the veteran was 100% service-connected disabled at the time of death or that the veteran died while on active duty or as a result of a service-connected disability.*

According to the above statute, when a veteran was not 100% service-connected disabled at the time of death, the surviving spouse could not qualify their primary residence for the exemption. Mr. McCue argues that the exemption statute, read as a whole, "shows no intent to generously grant the exemption to every living veteran who was ever rated 100% disabled, although he or she no longer is so rated, on the one hand, yet on the other hand parsimoniously

limit the exemption for surviving spouses to only those spouses of veterans who were themselves 100% disabled up to and including the time of death." (DOR's initial brief, page 5).

Mr. McCue quoted a Montana Supreme Court decision (**State v. Stanko** (1998), 292 Mont. 214, 225,974 P.2d 1139, 1148) that held, "when construing a statute, it must be read as a whole, and its terms should not be isolated from the context in which they were used by the legislature."

Mr. McCue presented portions of the legislative record surrounding the 1997 legislation which amended the wording of Section 15-6-211, MCA. Mr. McCue argues that the only purpose of the amendment was to increase the income limitation requirements in the statute, which are set forth in subsections (1) (b) (iii) for a disabled veteran and (2) (b) for the surviving spouse of a veteran and not to expand the class of veterans who are eligible for property tax exemption.

Section 15-6-211, MCA (1997) formerly provided:

> *(1) A residence, including the lot on which it is built, owned and occupied by a veteran or a veteran's spouse is exempt from property taxation under the following conditions. The veteran must . . (a) if living . . (ii) be rated 100% disabled due to a service-connected disability by*

the United States department of veterans affairs or its successor. (Emphasis supplied.)

The current law, as noted above, specifies that a 100% service-connected disabled veteran is eligible for exemption from property tax on his primary residence if he <u>has been rated</u> 100% service-connected disabled. The key word change, from "be rated" to "has been rated" in Section 15-6-211, MCA, is the crux of the issue in this appeal.

Mr. McCue contends that the legislative history provides no clear indication that the legislature intended to expand the class of veterans eligible for property tax exemption to include all veterans who were ever rated 100% disabled; rather, the intent, and final outcome, was to increase income limitations necessary to qualify for the exemption for both 100% service-connected veterans and their unmarried surviving spouses.

Further evidence, according to Mr. McCue, of the legislators' intent solely to increase income limitations can be found in the Compiler's Comments to the amended code section. The Compiler's Comments are the Legislature's official summary of the effect of amendment of the statute. The Compiler's comments for Section 15-6-211, MCA, in the

1997 edition of the Montana Code Annotated, and also in the Annotations to the Montana Code Annotated, state in full:

> *1997 Amendment: Chapter 301 in (1) (b) increased the income limitations from $15,000 to $30,000 for a single person and from $18,000 to $36,000 for a married couple; in (2) (b) increased the income limitation from $15,000 to $25,000;* <u>*and made minor changes in style*</u>*. Amendment effective January 1, 1998.* (Emphasis added.)

Mr. McCue additionally contends that statutory exemptions from taxation, if ambiguous, are to be narrowly construed <u>against the taxpayer</u>. **Montana Bankers Ass'n v. Montana Department of Revenue** (1978) 177 Mont. 112, 117, 580 P.2d 909; **Flathead Lake Methodist Camp v. Webb** (1965), 144 Mont. 565, 573, 399 P.2d 90; **State ex rel. Whitlock v. State Board of Equalization** (1935), 100 Mont. 72, 84-85, 45 P.2d 684.

<u>TAXPAYER'S CONTENTIONS</u>

Mr. McGhie argues that the 1997 amendment to Section 15-6-211, MCA, signifies that, since the Veterans Administration has rated him as 100% service-connected disabled in the past, this is the only requirement specified by statute, not that the veteran currently carry that rating.

In its assertion that the veteran must maintain his 100% disability rating into perpetuity, the DOR's interpretation of Section 15-6-211, MCA, is not consistent

with the plain wording of the statute itself, which specifies merely that the veteran has been rated 100% disabled because of a service-connected disability.

Regarding the disparate treatment of the 100% disabled veteran and the surviving spouse, Mr. Peterson counters that such treatment is entirely consistent with allowing the exemption for the veteran if he or she "has been" rated 100% but is not currently rated 100% disabled. The spouse of a deceased veteran is clearly treated in a different manner in this regard than a veteran. The income level requirement was lowered for a spouse and the spouse is specifically required to present a letter indicating that the veteran was 100% service-connected disabled at the time of death. In addition, the veteran can be married to receive the exemption but the spouse cannot. If the legislature had intended to treat the veteran and the surviving spouse precisely the same, it would not have different income level requirements and different marital status requirements and would have retained the wording "must be" in the statute instead of changing it to "has been". The legislature allowed the exemption for a living veteran who previously was rated 100% disabled, but did not allow it for a deceased veteran's spouse unless the veteran was rated 100% disabled at the time of death. There would be no other reason to include the

words “at the time of death” other than to limit the benefit to a spouse while allowing it to the veteran, as was the case with lowering the income level requirement from $30,000 for a single veteran to $25,000 for a spouse of a deceased veteran, and with requiring the spouse to be single.

Mr. Peterson argues that the language of the governing statute is so clear and unambiguous that there is no need to resort to an analysis of legislative history in order to develop an opinion of legislative intent and cites **Estate of Garland** (1996) 279 Mont. 269, 273-274, 928 P. 2d 928, 930. “Where the language of the statute is clear and unambiguous, the statute speaks for itself and we will not resort to legislative history or other extrinsic means of interpretation. . . Where the intention of the legislature can be determined from the plain meaning of the words used, our role in interpreting the statute is at an end.”

Additionally, the language of the statute is so plain and unambiguous that it is unnecessary to point out that statutory exemptions from taxation are to be narrowly construed against the taxpayer. The Montana Supreme Court found in **Montana Banker’s Association et al. v. Montana Department of Revenue** (1978), 177 Mont. 12, 117, 580 P. 2d 909 that “This rule of statutory construction, however, applies only to ambiguous statutes where legislative intent

is not clear from the language of the statute and has no application where, as here, the meaning of the statute is clear from its language." Customary usage of the English language simply does not include the DOR interpretation of the words "has been" to also mean "maintaining into the present."

BOARD DISCUSSION

The language of Section 15-6-211 (1) (b) (ii) is plain and unambiguous. It does not require the veteran to currently be 100% disabled to get property tax relief, provided that he or she qualifies in all other respects, which McGhie appears to have done. Therefore, there is no need to consult compiler's comments or legislative history or to rely upon judicial findings that statutory exemptions for taxation are to be narrowly construed against the taxpayer. The record indicates that Mr. McGhie has been rated as 100% disabled due to his service in the U.S. military and that is all the statute requires. The statute could not be more plain. "Has been" means just that. Common sense use of the language does not imply those two words to mean "maintaining into the present" or continuing into perpetuity as the DOR suggests.

The appeal of the Department of Revenue is denied and the decision of the Glacier County Tax Appeal Board is affirmed.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **Section 15-2-301, MCA.**

2. Section 15-6-211 (1) (b) (ii), MCA, provides:

> *A residence, including the lot on which it is built that is owned and occupied by a veteran or a veteran's spouse is exempt from property taxation if the veteran: . . (b) if living: . . (ii) has been rated 100% disabled because of a service-connected disability.*

3. Lowell McGhie was rated 100% disabled because of a service-connected disability by the Veterans Administration from March 20, 1946 to February 11, 1948 and from August 12, 1948 to May 21, 1949 and from December 1, 1949 to February 10, 1951. (Stipulation of Facts, page one) and, therefore, fulfills the requirements of Section 15-6-211 (1) (b) (ii) to gain property tax exemption on his primary residence.

4. The appeal of the Department of Revenue is hereby denied and the decision of the Glacier County Tax Appeal Board is affirmed.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be exempt from real property taxation pursuant to §15-6-211, MCA.

Dated this 26th day of October, 2000.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

____
GREGORY A. THORNQUIST, Chairman

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JAN BROWN, Member

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JEREANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 26th day of October, 2000, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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