

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

RAYMOND C. RHEAULT

v.

BOARD OF ASSESSORS  
OF THE TOWN OF OXFORD

Docket No. F317246

Promulgated:  
May 8, 2014

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the Town of Oxford ("assessors" or "appellee"), to abate taxes on certain real estate located in the Town of Oxford owned by and assessed to the 94 Fort Hill Road Realty Trust, Martha Rheault, Trustee, under G.L. c. 59, §§ 11 and 38 for fiscal year 2012 ("fiscal year at issue").

Chairman Hammond heard this appeal. Commissioners Scharaffa, Rose, Mulhern and Chmielinski joined him in the decision for the appellee.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

*Raymond C. Rheault, pro se*, for the appellant.

*Chris Pupka*, assessor for the appellee.

## **FINDINGS OF FACT AND REPORT**

On the basis of testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On July 1, 2011, the relevant determination date for qualification for the exemption at issue in this appeal, the appellant, Raymond C. Rheault ("appellant"), resided at 94 Fort Hill Road in Oxford, a parcel of land improved with a single-family residence identified on the appellee's Map 52 as Parcel A07 ("subject property"). Taxes on the subject property were timely paid without the incurring of interest. On January 26, 2012, the appellant filed an Application for Statutory Exemption with the assessors, which the assessors denied on April 5, 2012. The appellant seasonably filed his Petition Under Formal Procedure with the Board on July 2, 2012. On the basis of the preceding facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

The sole issue raised in this appeal is whether the appellant is entitled to a Veteran's Exemption under G.L. c. 59, § 5, Clause Twenty-Second ("Clause Twenty-Second"). The appellant is a veteran who served in the armed forces from August of 1976 until October of 1998, when he was honorably discharged from service. At all

relevant times, the subject property was the appellant's principal residence. However, title to the subject property was held by the 94 Fort Hill Road Realty Trust as of the July 1, 2011 qualification date for the exemption, with Martha Rheault, the appellant's mother, as the Trustee. Therefore, legal title to the subject property was held by the Trustee, and the appellant held only a beneficial interest.

Because the appellant did not hold legal title to the subject property, it did not qualify for the Clause Twenty-Second exemption. Accordingly, the Board issued a decision for the appellee.

#### **OPINION**

The Veteran's Exemption at Clause Twenty-Second applies to the "[r]eal estate of" veterans who have not been dishonorably discharged from service, and who were domiciled in Massachusetts for at least six months prior to entering service or for at least five consecutive years prior to filing for the Veteran's Exemption, provided that the real estate in question is occupied in whole or in part as the veteran's domicile. While the appellant established that he was a veteran who met the Massachusetts domicile requirements and that he occupied the subject property as

his domicile, the appellant did not hold a sufficient ownership interest in the subject property to qualify for the exemption.

The Supreme Judicial Court and the Appeals Court have held that statutes providing property tax exemptions require that the taxpayer seeking the exemption be the legal title holder of the property, not merely a beneficiary who makes the property his domicile. In ***Kirby v. Assessors of Medford***, 350 Mass. 386 (1966), the Court addressed G.L. c. 59, § 5, Clause Forty-First ("Clause Forty-First"), which provides an exemption for real property "of" a person seventy years of age or over and occupied by that person as their domicile. In ***Kirby***, as here, title to the property was held by a trustee, with only a beneficial interest held by the individual seeking the exemption. The Court construed the statute's reference to the real property "of" a taxpayer as requiring legal title, not merely beneficial ownership, and thus refused to extend the exemption to one who "has voluntarily chosen to hold his property in a form which separates the legal title and the beneficial ownership." ***Id.*** at 390-91.

Relying on ***Kirby***, the Appeals Court in ***Moscatiello v. Assessors of Boston***, 36 Mass. App. Ct. 622 (1994) similarly ruled that the Residential Exemption at G.L. c. 59,

§ 5C ("§ 5C") did not apply to property held in a nominee trust. In that case, the beneficial owner and resident had argued that, unlike Clause Forty-First, the Residential Exemption at § 5C hinges eligibility on "taxpayer" status, and since he was the party paying the taxes, the exemption should apply regardless of whether the property was held in trust. *Id.* at 623. However, noting that § 5C is granted at the time that the underlying property is assessed, "well before it can be known who will actually pay the tax," the Appeals Court determined that "taxpayer" as used in § 5C refers to the party to whom the taxes are assessed, that is, "the holder of record title." *Id.* Therefore, "if the holder of the record (i.e., legal) title does not qualify for the exemption, it is unavailable to the beneficial owner." *Id.* at 624-5.

The Board here ruled that, like the Clause Forty-First Elderly Exemption and the § 5C Residential Exemption, the Veteran's Exemption applies strictly to property "of" -- that is, legally owned by -- the veteran. A veteran must hold legal title, and not merely a beneficial interest, in real property to benefit from the statute. Qualification for the exemption does not depend on who may in fact have paid the tax. The Board rules that the requisite inquiry in this appeal is whether an otherwise qualifying veteran

held legal title to the subject property as of July 1, 2011.

Under the facts of this appeal, the trustee of the 94 Fort Hill Road Realty Trust, not the appellant, was the legal title holder and assessed owner of the subject property. Therefore, because the veteran held only a beneficial interest in the subject property, the assessors correctly denied the appellant's Clause Twenty-Second claim.

Accordingly, the Board issued a decision for the appellee in this appeal.

**THE APPELLATE TAX BOARD**

By: \_\_\_\_\_  
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: \_\_\_\_\_  
Clerk of the Board