

**COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD**

SYLVIA J. NYE

v.

**BOARD OF ASSESSORS OF
THE TOWN OF DALTON**

Docket No. F287876

Promulgated:
September 20, 2007

ATB 2007-1037

This is an appeal initially filed under the informal procedure¹ pursuant to G.L. c. 58A, § 7A and G.L. c. 59, §§ 64 and 65, from the refusal of the appellee to abate taxes on real estate assessed under G.L. c. 59, §§ 11 and 38, for fiscal year 2007.

Commissioner Mulhern heard the appeal and was joined in his decision for the appellee by Commissioners Scharaffa, Egan and Rose. These findings of fact and report are promulgated pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

*Sylvia J. Nye, pro se, for the appellant.
Michael J. Britton, assessor, for the appellee.*

FINDINGS OF FACT AND REPORT

On the basis of testimony, exhibits, and uncontested facts introduced at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2006, Sylvia J. Nye ("appellant") was an assessed owner of a parcel of real estate located at 49 Eleanor Road in the Town of Dalton ("subject property"). The appellant and a third party had purchased the subject property, as joint tenants, on December 30, 2002.

For fiscal year 2007, the Board of Assessors of the Town of Dalton ("assessors") mailed the actual tax bills on November 15, 2006. On December 14, 2006, having timely paid the tax due, the appellant timely filed an application for statutory exemption with the assessors seeking an exemption pursuant to G.L. c. 59, § 5, clause Twenty-second E ("Clause 22E"), as the surviving spouse of a deceased veteran. The assessors denied the application on January 11, 2007, and the appellant seasonably appealed to the Board on January 29, 2007. Based on the foregoing, the

¹ Within thirty days of service of the appeal, the Town of Dalton, in accordance with G.L. c. 58A, § 7A, elected to have the appeal heard under the formal procedure under G.L. c. 58A, § 7.

Board found that it had jurisdiction to hear and decide the appeal.

Prior to his death in December of 2003, Floyd W. Nye was married to the appellant, and resided in a long-term care facility, the location of which is not in the record before the Board. Mr. Nye was a veteran who had a one-hundred-percent disability rating, as determined by the Veterans Administration, arising from his military service. Mr. Nye had no ownership interest in the subject property. He did not reside at the subject property at any time. Further, the record in this matter is devoid of any evidence indicating that Mr. Nye ever occupied or intended to reside at the subject property, or was even aware that the appellant had purchased the property.

On the basis of the foregoing, and for the reasons detailed in the following Opinion, the Board found that the appellant failed to demonstrate that she was entitled to an exemption pursuant to Clause 22E. Accordingly, the Board decided this appeal for the appellee.

OPINION

Massachusetts General Laws impose a local tax upon "[a]ll property, real and personal, situated within the commonwealth, . . . unless expressly exempt." G.L. c. 59, § 2. Section 5 of Chapter 59 specifies certain exemptions from this taxation. The clause within Chapter 59 relevant to this appeal, Clause 22E, provides exemption for:

Real estate of soldiers and sailors and their spouses who are legal residents of the commonwealth and who are veterans as defined in clause forty-three of section seven of chapter four, and who, as a result of disabilities contracted while in such service and in the line of duty, have a disability rating of one hundred per cent as determined by the Veterans Administration and are incapable of working, and who were domiciled in the commonwealth for at least six months prior to entering such service, or who have resided in the commonwealth for five consecutive years next prior to date of filing for exemption under this clause . . . **provided, that such real estate is occupied as his domicile by such person** An exemption under this clause shall continue unchanged for the benefit of the surviving spouse after the death of such disabled veteran as long as the surviving spouse of the qualified veteran shall remain an owner

and occupant of a domicile subject to the exemption. (emphasis added)

Generally, "statutes granting exemption from taxation are strictly construed." *Animal Rescue League of Boston v. Assessors of Bourne*, 310 Mass. 330, 332 (1941). Thus, "[a] taxpayer is not entitled to an exemption unless he shows that he comes within either the express words or the necessary implication of some statute conferring this privilege upon him." *Milton Hospital & Convalescent Home v. Board of Assessors of Milton*, 360 Mass. 63, 67 (1971) (quoting *Animal Rescue League of Boston*, 310 Mass. at 332).

There is no dispute that the appellant could qualify for exemption under Clause 22E's surviving spouse provisions after Mr. Nye's death, assuming the exemption's other prerequisites had been satisfied. Neither is there any dispute that Mr. Nye met certain prerequisites for exemption under Clause 22E by virtue of his status as a disabled veteran whose disability arose in the course of his military service. Where the dispute arises is the appellant's failure to establish that all of the exemption's other requirements had been met.

The subject property was purchased by the appellant and a third party as joint tenants. Mr. Nye had neither an ownership interest in the property nor did he reside there. Further, the appellant presented no evidence to indicate that Mr. Nye ever occupied or had any expectation or intention of residing at the subject property. Thus, the appellant failed to demonstrate that the subject property was occupied as Mr. Nye's domicile, as explicitly required by Clause 22E.²

In sum, by failing to establish that a requirement of the Clause 22E exemption had been met, the appellant did not meet her burden of demonstrating that she fell within the purview of Clause 22E, and therefore, cannot avail herself of the exemption. Accordingly, the Board issued a decision for the appellee in this appeal.

APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: _____
Clerk of the Board

² Having reached this conclusion, the Board need not address whether Mr. Nye met Clause 22E's requirements of residency in the commonwealth.

