

BEFORE THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU

GERALD P. O'BRIEN,

Appellant,

v.

CBJ ASSESSOR,

Appellee.

Appeal of:
Letter of Determination re Senior Citizen
Real Property Hardship Exemption
Assessor File No. 2013-1B0201000070

DECISION ON APPEAL

I. Introduction

Appellant Gerald P. O'Brien, by and through his attorney-in-fact, Mark O'Brien, timely appealed the CBJ Assessor's June 24, 2013 Letter of Determination denying his application for a 2013 Senior Citizen Real Property Hardship Exemption under CBJ 69.10.021(a). The Assessor denied the application on the basis of her determination that the applicant's household income exceeded the 2013 income cap for a one-person household. CBJ Finance Director Bob Bartholomew represented the Assessor in this appeal.

The issue on appeal is whether the Assessor erred by including the entire amount of an annuity, rather than only the taxable interest portion of the annuity, in calculating Appellant's gross household income. The parties do not dispute that Appellant's gross household income would have fallen below the income cap, qualifying him for the hardship exemption, had the calculation been made in the manner proposed by Appellant.

On August 27, 2013, the Presiding Officer held a prehearing conference with the parties and issued a Prehearing Order setting the hearing date and briefing deadlines. The record was prepared and briefs were filed. At the appeal hearing on October 30, 2013, the parties presented oral argument and responded to Assembly questions. After the hearing, the Assembly deliberated in closed session and

directed counsel to prepare a draft decision for its review. As required by CBJ Administrative Appeal Procedures, the parties have been given an opportunity to file written objections to the proposed decision. The Appellant responded by filing “Comments on the Proposed Draft Decision,” which document has been taken into consideration by the Assembly.

Having fully considered the record, the parties’ briefs and oral argument, and all written objections to the draft decision,¹ the Assembly hereby denies the appeal for the reasons set out herein.

II. Legal Standard of Review and Burden of Proof

As the appeal agency, the Assembly’s review of the CBJ Assessor’s decision is subject to the requirements of CBJ 01.50.070, which provides in relevant part that:

- (a) The appeal agency . . . may set aside the decision being appealed only if:
 - (1) The appellant establishes that the decision is not supported by substantial evidence in light of the whole record, as supplemented at the hearing;
 - (2) The decision is not supported by adequate written findings or the findings fail to inform the appeal agency or the hearing officer of the basis;
 - (3) The appeal agency or the hearing officer failed to follow its own procedures or otherwise denied procedural due process to one or more of the parties.
- (b) The burden of proof is on the appellant.

Under Alaska law, “[s]ubstantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.” *Williams v. Ketchikan Gateway Borough*, 295 P.3d 374, 375 (Alaska 2013) (quoting *May v. State, Commercial Fisheries Entry Comm’n*, 175 P.3d 1211,1216 (Alaska 2007) (internal citations omitted)). The appeal agency does not “reweigh the evidence nor choose between competing factual inferences’ . . . and must uphold [the decision being reviewed] if it is

¹ After considering Appellant’s objections, the Assembly clarified its decision to remove any implication that Appellant equated counting income twice to *taxing* income twice.

supported by substantial evidence ‘[e]ven though there are competing facts that might support a different conclusion.’” *Id.* at 375-376.

III. The Senior Citizen Real Property Hardship Exemption Law

The senior citizen/disabled veteran hardship exemption is an optional real property exemption under Alaska law,² available to hardship-eligible applicants who qualify for the mandatory statewide senior citizen/disabled veteran real property exemption. Once an applicant is determined hardship-eligible, the applicant is exempt from paying that portion of his or her tax bill that exceeds 2% of the applicant’s gross household income. “Gross household income” is defined in this state law provision as “total annual compensation, earned and unearned, from all sources, of all members of the household.”³ AAC 135.040. While the amount of the tax exemption is established by state law, the criteria for determining hardship-eligibility is left largely up to each local taxing authority that adopts the exemption.

The senior citizen/disabled veteran real property hardship exemption, adopted by the CBJ, is codified at CBJ 69.10.021.³ Eligibility for the exemption requires the applicant to meet the following income requirement:

“The applicant’s gross household income, from all sources in the prior year, may not exceed 120 percent of the most current Median Family Income for Juneau as set by the U.S. Department of Housing and Urban Development for a similar sized household . . .”

CBJ 69.10.021(b)

“Gross household income,” is defined in the CBJ Title 69.10 as the:

² See AS 29.45.030(e) (“ . . . A municipality may in case of hardship, provide for exemption beyond the first \$150,000 of assessed value in accordance with regulations of the department. . .”)

³ While the same income-based criteria is used to determine hardship eligibility for senior citizens and disabled veterans, references to “hardship exemption” herein refers to the senior citizen hardship exemption, as that is the only exemption at issue in this appeal.

“total annual compensation, earned and unearned, taxable and nontaxable, from all sources of all members of the household for the calendar year prior to the exemption year, including but not limited to, wages, interest, dividends, rents, royalties, alimony, pensions, annuities, gains derived from dealings in property, etc. Losses are not considered income for purposes of this exemption.”

IV. Statement of Facts

Appellant, a senior citizen with a single member household, applied for the 2013 hardship exemption. Under “Income” on his Form 1040 for the 2012 tax year, Appellant reported income in four categories: “Taxable interest,” “IRA distributions,” “Social security benefits,” and “Pensions and annuities.” R. 000003.

The pensions and annuities category included an annuity with New York Life Insurance Company (the “annuity”) that had been purchased in a prior year with after-tax money. The IRS tax return classifies the entire annuity (principal + interest earnings) as income, but only the interest portion of the total annuity is treated as taxable income. Thus, of the total \$36,428 in annuity income received by Appellant in 2012, only \$3,096 of it was considered taxable income by the IRS. R. 000005.

The Assessor included the entire \$36,428 in the calculating of “gross household income” (“GHI”) to determine Appellant’s hardship exemption eligibility. As a result, Appellant’s GHI was determined to be \$89,668, or \$12,988 over the applicable GHI cap of \$76,680. Appellant asserts that the Assessor erred and that only the \$3,096 taxable portion of the annuity should have been included in his GHI, which would have resulted in his GHI being \$56,336.

V. Analysis

Appellant does not dispute that GHI is defined in CBJ Code to mean “total annual compensation . . . taxable and nontaxable, from all sources,” and that “annuities” is a specifically listed component of GHI, in CBJ 69.10.005. Appellant’s position, in effect, is that only the taxable portion of an annuity should be included in the GHI calculation.

Appellant asserts that it is unfair to count the after-tax/savings/returned-principal portion of an annuity as income when that same money, if left in a regular savings account, would be considered an asset and not counted as income for hardship eligibility purposes. Appellant noted how two seniors with the identical amount of after-tax savings could be treated differently in the above scenario.

Appellant's position is that under existing Code, the Assessor has the discretion and authority to avoid this alleged disparity by considering the type of annuity an applicant for a hardship exemption has received. If it is a "pension" annuity that is 100% taxable income, then it should be included in GHI; and if it is a "savings" annuity, then the returned principal portion of it should be excluded and only the taxable (earned/interest) income should be counted as part of GHI. The Appellant asks the Assembly to clarify this difference between annuities and refer the matter back to the Assessor's office for correction.

Alternatively, the Appellant requests that if the Assessor does not have the discretion to consider the type of annuity under existing Code, the Assembly consider amending the CBJ Code to address the alleged unfairness created by the GHI definition.⁴

First, the Assembly finds that the language of CBJ 69.10.005 is unambiguous. It expressly includes taxable and nontaxable compensation in the definition of GHI. The definition also includes "annuities" and does not make a distinction between (wholly) taxable annuities and those where only the interest income on them is taxable. Because GHI is defined in Code to encompass taxable and nontaxable compensation from any source, the Assembly declines to recognize or carve out an exception to this rule for taxable annuities for purposes of this appeal. For the same reasons we also conclude that the Assessor did not have the authority or discretion to treat types of annuities differently, under CBJ

⁴ As with any other provision of CBJ Code, the Assembly may in the future review and consider proposed amendments to the real property hardship tax exemption provisions, however, such review, if undertaken does not affect the merits of this decision or the outcome of this appeal.

69.10.005. Nor did the Assessor commit error or misapply the law by including the taxable and non-taxable portions of Appellant's 2012 annuity in the calculation of his GHI.

At oral argument, the CBJ Assessor pointed out that the CBJ's broad definition of GHI is consistent with the broad definition of GHI in state law, and is a standard definition used by other Alaska municipalities.⁵ We also note, the general pre-tax and after-tax connotations of the terms "gross" income and "net" or "adjustable" income. Using an applicant's federal income tax return to establish that "gross" income number is also a reasonable and efficient manner to administer the hardship exemption program. Federal tax returns are a widely-accepted form of income verification.

We understand Appellant to argue that counting the (after-tax) principal portion of his annuity in his GHI is counting the same money as income twice; however, because the IRS and CBJ count the income for entirely different purposes, we are unpersuaded that this results in unfairness. The IRS counted the income when it was earned so it could tax it. The CBJ is counting the annuity income to determine whether a financial hardship exists to justify granting a tax exemption, as provided by CBJ Code.

This appeal is about a real property hardship tax exemption, eligibility for which is based on an applicant's income flow from all sources for the prior tax year. While it is true that how an applicant manages his or her money may affect his or her eligibility for the hardship exemption, the same criteria is applied equally to all applicants.⁶

Finally, we acknowledge that an income-based versus an asset-based eligibility standard for a hardship exemption is not completely perfect. But it is the most administratively workable and least

⁵ While the Assessor stated that CBJ's definition is a standard definition used by other Alaska municipalities, neither party presented evidence on the issue. Thus, it is mentioned in passing and not significantly relied on as a basis for this decision.

⁶ While in passing the Appellant mentioned the possibility of a constitutional issue, we don't believe there to be a valid constitutional basis for challenging the hardship exemption program or CBJ 69.10.021, and decline to address it further since Appellant did not brief or develop the issue at the hearing.

governmentally intrusive method to determine hardship exemption eligibility. Requiring applicants to disclose, and the Assessor to consider, more detailed or additional financial information in various forms would be administratively burdensome and would intrude into the financial affairs of applicants beyond what is reasonably necessary to further the purposes of the hardship exemption.

VI. Conclusion.

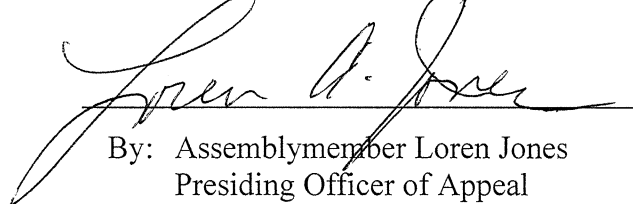
The appeal is denied and the CBJ Assessor's June 24, 2013 Letter of Determination is affirmed. We find that the Appellant did not meet his burden of proof. The Assessor properly applied the law in calculating Appellant's GHI, and there is substantial evidence to support her June 24, 2013 Letter of Determination. We also find that the decision is supported by adequate written findings and that the Appellant has been afforded appropriate due process.

This is a final administrative decision of the Assembly of the City and Borough of Juneau, Alaska. It may be appealed to the Juneau Superior Court, pursuant to the Alaska Rules of Court, if such appeal is filed within 30 days of the date the decision is sent to the Appellant.

IT IS SO ORDERED.

DATED this 17th day of December, 2013.

ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA



By: Assemblymember Loren Jones
Presiding Officer of Appeal