

HARFORD COUNTY, MARYLAND

PETITIONER

vs.

Case No.: 24-MI-OO-0580

STATE DEPARTMENT OF ASSESSMENTS
and TAXATION and DENISE PERRY

RESPONDENTS

MEMORANDUM AND ORDER

The Petitioner has come to this Court appealing the grant of a disabled veteran's property tax exemption under Md. Code Ann., Tax - Property ("TP") § 7-208 and the granting of a refund for six years of property taxes to the Respondent, property owner, Denise Perry, by the State Department of Assessments and Taxation ("SDAT"). The Petitioner argues that the SDAT exceeded its statutory authority in both instances.

The facts of this matter are not in dispute.¹ The taxpayer, Denise Perry, is the owner of real property known as 2902 Ancon Court, Edgewood, Harford County, Maryland. Ms. Perry is a veteran and on February 15, 2024, the Department of Veterans Affairs ("VA") implemented a February 9, 2024, decision of the Board of Veterans Appeals determining, *inter alia*, that Ms. Perry 1.) had one or more service-connected disabilities; 2.) had a combined service-connected rating of 90%; 3.) was being paid at the 100% rating rate because she is unemployable due to her service-connected disabilities; and 4.) is considered to be totally and permanently disabled due to her service-connected disabilities. Ms. Perry filed an application with the SDAT seeking a tax exemption under TP § 7-208 and a refund of taxes from the date she initially became eligible for an exemption. On June 18, 2024, the SDAT approved Ms. Perry's application for a 100%

¹ Testimony was taken, however, by Ms. Perry and Ms. Porter—the SDAT witness—at the hearing.

exemption from State, County, and any Municipal real property taxes and authorized a refund of all real property taxes paid by Ms. Perry since July 1, 2018.

The Petitioner argues that the SDAT exceeded statutory authority in granting the exemption to Ms. Perry and in finding her entitled to a refund from July 1, 2018.

The property tax exemption Ms. Perry applied for is found in TP § 7-208 (b) which states that a dwelling house is exempt from property tax if it is owned by a disabled veteran. Section (a)(3) of the same statute defines a disabled veteran as an individual who:

1. is honorably discharged or released under honorable circumstances from active military, naval, or air service as defined in 38 U.S.C. § 101; and
2. has been declared by the Veterans' Administration to have a permanent 100% service connected disability that results from blindness or other disabling cause that:
 - A. is reasonably certain to continue for the life of the veteran; and
 - B. was not caused or incurred by misconduct of the veteran.

The Petitioner argues that Ms. Perry does not meet the statutory definition of a disabled veteran because the VA rated her as 90% service-connected disabled and, thus, not 100% as required by statute.

The SDAT argues that it appropriately awarded the exemption. Although Ms. Perry was rated by the VA as 90% service-connected disabled, she was also found to have a totally disabling service-connected disability or disabilities, permanent in nature, which rendered her unemployable and thus she was to be paid by the VA at the 100% rate. The SDAT acknowledges that TP§ 7-208 (a)(3)(2) defines a disabled veteran as an individual who has been declared by the Veterans' Administration to have a permanent 100% service-connected disability that results from blindness or other disabling cause. It relies upon an opinion of the Attorney General of the State of Maryland dated July 13, 1976, however, that SDAT should accept ratings of total or

100% disability by the VA made in accordance with VA regulations which permit the granting of a total disability rating because of unemployability. Further, veterans so rated by the VA should be accepted by the SDAT as qualified for the exemption if otherwise qualified. 61 Op.Atty.Gen. 836 (1976). Furthermore, the SDAT points to the Maryland Assessment Procedure Manual ("MAPM") – Exemptions 009.070.15, which cites the legislative objective of the exemption as affording relief to those veterans whose service-connected disabilities are so disabling that they are prevented from engaging in gainful employment.

In the present matter, the SDAT acted appropriately in granting the exemption. Ms. Perry was rated by the VA as 90% service-connected disabled, but she was also found to have a totally disabling service-connected disability or disabilities, permanent in nature, which rendered her unemployable. Although the statute defines a disabled veteran as an individual who has been declared by the VA to have a permanent 100% service-connected disability, the SDAT's practice for nearly fifty years in conformity with the above-referenced opinion of the Attorney General is to grant the exemption to a veteran that is rated as totally and permanently disabled due solely to service-related disabilities. This longstanding practice of the SDAT is in keeping with the legislative objective described in MAPM and if it was not, the legislature has had ample time to amend the statute to override the above-referenced opinion of the Attorney General and the practice of the SDAT, which it has not.

The second portion of the Petitioner's appeal concerns the finding by the SDAT that Ms. Perry was entitled to a refund of property taxes paid for six years. The Petitioner argues that granting a refund of more than three years of taxes paid exceeds the SDAT's authority under TP § 14-905 which requires a claim for a refund to be filed within three years from the date the property tax is paid. The Petitioner's reliance on TP § 14-905 is mistaken. If Ms. Perry filed a

claim for a refund under TP §§ 14-904, 14-905(a), (b), or (d), or 14-906(c), then the 3-year limitation would apply. Ms. Perry, however, did not claim such a refund under those statutes. Ms. Perry filed an application for an exemption from State, County, and Municipal real property taxes. That application was made under TP § 7-208(g) on June 17, 2024 based on a February 15, 2024 decision by the VA determining that as of August 24, 2015, Ms. Perry 1.) had one or more service-connected disabilities; 2.) had a combined service-connected rating of 90%; 3.) was being paid at the 100% rating rate because she is unemployable due to her service-connected disabilities; and 4.) is considered to be totally and permanently disabled due to her service-connected disabilities. TP § 7-208(g)(2) requires that the application for such an exemption be filed within three years of the date when the veteran becomes initially eligible. Ms. Perry became initially eligible by way of the VA decision of February 15, 2024, and by filing for the exemption approximately four months thereafter, she was within the statute of limitations.

Ms. Perry's disability began on August 24, 2015, and, therefore, the property tax exemption was authorized under TP § 7-208 as of that date. Due to the prolonged processing time of her VA application for benefits, the determination that she was disabled as of August 24, 2015, was not made until February 15, 2024, and the exemption could not be granted until sometime thereafter. Ms. Perry filed an application with the SDAT on June 17, 2024, which was approved the following day and authorized the refund of all real property taxes paid by Ms. Perry since July 1, 2018. The SDAT's authorization of the refund was appropriate under TP § 7-208(g) and correctly limited the refund to those taxes paid since July 1, 2018, rather than expanding the refund to her initial disability date (August 24, 2015) per Section 2 of the 2021 Maryland Session Laws, Ch. 727.

While *de novo* (Md. Code Ann., Tax-General § 13-523), appeals to the Maryland Tax Court require the Petitioner to present affirmative evidence to support the relief being sought. The burden of proof is on the Petitioner and absent said affirmative evidence, the order from which the appeal is taken shall be affirmed. Md. Code Ann., Tax-General § 13-528(b). In the present matter, the Petitioner failed to meet the burden of proof because it did not present affirmative evidence that the SDAT exceeded its statutory authority.

Accordingly, it is this 11 day of DECEMBER, 2024, by the Maryland Tax Court **ORDERED** that the grant of exemption appealed in the above-captioned case be and hereby is **AFFIRMED**.

CERTIFIED TRUE COPY

TEST: Andrew Berg, Clerk

NOTICE: You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.

CC: Sean Carven, Esq.

Alexander Greenspan, Esq.

Denise Perry