

The Schools for Children, Inc.

v.

Town of Orange

Docket No. 4215-88

DECISION

A hearing in this appeal was held, as scheduled, on February 20, 1990. The Taxpayer was represented by Thomas M. Britt, Treasurer, The Schools for Children, Inc. The Town was not represented.

The Taxpayer appeals, pursuant to RSA 71-B:11, the assessment of \$28,350 (land, \$10,650; buildings, \$17,700) on Map 3, Lot 45, and the assessment of \$10,956 on Map 3, Lot 48 for the 1988 tax year. Map 3, Lot 45 consists of a log cabin and shed on 5.1 acres of land. Map 3, Lot 48, consists of 300 acres with an ad valorem assessment of \$42,000. Two hundred ninety-six acres are in current use.

The Taxpayer seeks tax-exempt status under RSA 72:23 IV. The Taxpayer argued its property was entitled to tax-exempt status because it was a qualifying educational organization within the meaning of RSA 72:23 IV and the property was used for the purposes for which it was established.

The Town denied the exemption for the following reasons:

1. Schools for Children, Incorporated does not qualify as a tax exempt educational institution under New Hampshire law because it does not carry on its "principal activities" in this state.

2. The fact that Schools for Children, Incorporated has, as we understand, tax exempt status in Massachusetts has no bearing on

whether or not it qualifies for similar status in New Hampshire, under New Hampshire law.

The Board rules as follows.

RSA 72:23 IV states the following real estate and personal property shall be exempt from taxation:

The buildings and structures of schools, seminaries of learning, colleges, academies and universities organized or incorporated or carrying on their principal activities in this state and owned, used and occupied by them for the purposes for which they are established, including but not limited to the dormitories, dining rooms, kitchens, auditoriums, classrooms, infirmaries, administrative and utility rooms and buildings connected therewith, athletic fields and facilities and gymnasiums, boat houses and wharves belonging to them and used in connection therewith, and the land thereto appertaining but not including lands and buildings not used and occupied directly for the purposes for which they are organized or incorporated, and the personal property used by them for the purposes for which they are established, provided none of the income or profits are divided among the members or stockholders or used or appropriated for any other purpose than the purpose for which they are organized or established; provided further that if the value of the dormitories, dining rooms and kitchens shall exceed one hundred and fifty thousand dollars, the value thereof in excess of said sum shall be taxable. A town at an annual town meeting or the governing body of a city may vote to increase the amount of the exemption upon dormitories, dining rooms and kitchens.

In regard to the question of occupancy, "The statute contemplates occupancy as more than bare possession. Such possession is not an existing use for the owner's purposes, even with a plan and purpose of future use therefor." Society of Cincinnati v. Exeter, 92 N.H. 348, 351 (1943). In regard to use the New Hampshire Supreme Court upheld the denial of an exemption where the land was only used 3 or 4 times during the tax year in question, holding that the use was "negligible and insignificant." See First Congregational Church of Laconia v. Gilmanton, 123 N.H. 343, 344 (1983).

Eligibility for tax exempt status is determined as of April 1 of the tax year. See Appeal of Leo Hood, 127 N.H. 824 (1986).

The Board finds as follows. The Taxpayer is a cluster of schools with campuses in Arlington and Cambridge, Massachusetts, that serve special-needs students from throughout the greater Boston area. Students are referred to the Taxpayer by public schools and other organizations. The Taxpayer's main source of income is from the cities and towns from which the students were referred. The school year is 180 days. Student enrollment is approximately 180 and there is a waiting list to get in. The faculty number approximately 110 and are paid below public-school levels. The Taxpayer serves the psychiatric as well as educational needs of the students. The Taxpayer was registered to do business in the state of New Hampshire on February 10, 1989.

The log cabin on Map 3, Lot 45, was used by the students and faculty of the Taxpayer 151 days during the tax year. Small groups use the cabin as a base for mountain climbing, hiking, nature study, forestry study, and cross-country skiing. These activities take place on the subject property and in Mt. Cardigan State Park which abuts the subject property. The purpose of the group-living experience is to foster a sense of trust in the students themselves, their instructors, and their peers. Science, conservation, and survival are also taught.

Based on the above findings the Board rules that the Taxpayer is a school within the meaning of RSA 72:23 IV but was not organized in New Hampshire as of April 1, 1988. Based on this ruling none of the Taxpayer's property is eligible for tax-exempt status for the 1988 tax year. In the interest of judicial economy the Board notes that the log cabin and The

5.1 acres on which it sits is used for the educational purposes for which the Taxpayer is organized. Since the more far-ranging activities take place in Mt. Cardigan State Park the Board is unable to conclude that the use of the 300-acre parcel, Map 3, Lot 48, was more than negligible.

For the above stated reasons the Board rules the subject property is not entitled to tax-exempt status for the 1988 tax year.

The order is, therefore:

Request for abatement denied.

March 12, 1990

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Chairman

George Twigg, III

(Mr. Donahue did not sit)

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Thomas M. Britt, Treasurer, representing the Taxpayer, and to the Chairman, Board of Selectmen, Town of Orange.

March 12, 1990

Michele E. LeBrun, Clerk