

Emissaries of Divine Light, Inc.

v.

Town of Epping

Docket No. 4424-88

DECISION

The "Taxpayer" appeals, pursuant to RSA 71-B:5 I, the "Town's" 1988 denial of a real estate property tax exemption as provided for in RSA 72:23 III. The Taxpayer's real estate consists of seven parcels totalling approximately 160 acres, of which four are improved with buildings. Four of the improvements have been granted partial exemptions ranging from 1/10th to 1/7th of their assessment.

Two questions are before the board. One, whether the Taxpayer qualifies as a religious organization exempt from property tax pursuant to RSA 72:23 III, and, two, if the Taxpayer qualifies as a religious organization, what portion of the Taxpayer's property can properly be determined exempt from taxation.

The Taxpayer argued it is a religious organization and that New Hampshire statutes were not intended to dictate the form of the religion but rather to insure that religions seeking tax exemptions be genuine religious societies, the members of which have come together because of their "mutual desire for worship and religious education." American Guidance Foundation v. United States, 490 F. supp. 304 (D.C. 1980) The Taxpayer also

argued the Town had acknowledged its religious status by prior action of granting exemptions since 1981.

The Taxpayer further argued the clear intent of the law is to allow the free expression of religion, not to refuse acknowledgment of the religion on the basis that the religion is not understood or approved of by the municipality judging it. Holy Spirit Association v. Tax Commissioners, 435 N.E. 2d 662 (N.Y. 1982) The Taxpayer acknowledged the previous denial of religious exemption by the board's predecessor, Board of Taxation, in a 1974 opinion but made note that the Taxpayer's religion was relatively young and that as a religion matures it becomes less difficult for society to recognize it as a religion. The Taxpayer argued that all the property under appeal should be exempt as it was all integral to its use principally for religious purposes by the Taxpayer. The Taxpayer acknowledged that approximately one third of its cash income was derived from the outside work activities of 15 of its members in their employment outside and away from the Taxpayer's property. The Taxpayer argued that the example of a minister's wife or husband, as the case may be, working outside the church does not jeopardize the tax-exempt status of a parsonage. The Taxpayer also recognized the attendance in the public-school system by children of families who are members of its religion.

The Town argued that most state property-tax exemptions were originally designed to aid what might be called "traditional" religions and further stated the Taxpayer, by its own admission, stated it, the Taxpayer, is neither denominational, creedal, nor sectarian. The Town argued the intention of the legislature was clear in the choice of words in the statute, which must be given their usual and ordinary meaning.

The Town argued that even if the Taxpayer is found to be entitled to a religious exemption that the majority of the lands and buildings are not used principally for the Taxpayer's religious purposes but are used for purely secular activities. The Town stated that the agricultural activities of the Taxpayer are secular.

The Taxpayer argued the spiritual regeneration of its members was derived from its agricultural activity and further stated that the religious objectives were closely intertwined with cultivating the earth pursuant to Genesis 1:25 which directs people to replenish the earth.

The board finds the New Hampshire Constitution, in its Bill of Rights, Article 5, clearly provides for religious freedom. Article 5 states, "Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reasons; and no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession, sentiments, or persuasion; provided he doth not disturb the public peace or disturb others in their religious worship." It is clear that the Constitution offers great latitude for religious practice for New Hampshire citizens and taxpayers. The Board finds the statute should not be narrowly limiting for recognition of religion and its exemption from taxation on its property. The board therefore rules the Emissaries of Divine Light is entitled to a religious exemption from property taxation pursuant to RSA 72:23 III.

The board finds evidence and testimony clearly indicate that not all or 100 percent of the property of the Taxpayer meets the test of being

principally for the Taxpayer's religious purposes. The board notes that the determining proportion of the Taxpayer's property which should be exempt from taxation does not lend itself to any specific formula. The board, however, must make a choice, having found that not all of the property of the Taxpayer shall be exempt. The board therefore rules that 85 percent of the assessed value of the Taxpayer shall be exempt from taxation and the remaining 15 percent of the assessed value shall be taxed.

The board therefore orders that the property of the Emissaries of Divine Light, Inc., is to be declared exempt from taxation as of April 1, 1988.

The board rules on the petitioner's request for findings of facts and rulings of law as follows:

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Granted.
7. Granted.
8. Granted.
9. Neither granted nor denied.
10. Granted.
11. Granted.
12. Granted.
13. Granted.
14. Granted.
15. Granted.
16. Granted.
17. Granted.
18. Granted.
19. Granted.
20. Granted.
21. Granted.
22. Granted.
23. Granted.
24. Granted.
25. Granted.
26. Granted.
27. Granted.
28. Omitted

- 29. Granted.
- 30. Granted.
- 31. Granted.
- 32. Granted.
- 33. Granted.
- 34. Granted.
- 35. Granted.
- 36. Granted.
- 37. Granted.
- 38. Granted.
- 39. Granted.
- 40. Denied.
- 41. Denied.
- 42. Granted.
- 43. Granted.
- 44. Granted.
- 45. Granted.
- 46. Granted.
- 47. Granted.
- 48. Granted.
- 49. Granted.
- 50. Granted.
- 51. Granted.
- 52. Granted.
- 53. Granted.
- 54. Granted.
- 55. Granted.
- 56. Granted.
- 57. Granted.
- 58. Granted.
- 59. Granted.
- 60. Granted.
- 61. Granted.
- 62. Granted.
- 63. Granted.
- 64. Denied.
- 65. Granted.
- 66. Denied.
- 67. Granted.
- 68. Granted.
- 69. Granted.
- 70. Granted.
- 71. Granted.
- 72. Denied.
- 73. Neither granted nor denied.
- 74. Neither granted nor denied.
- 75. Granted.
- 66. Granted.
- 77. Granted.
- 78. Granted.
- 79. Granted.

80. Granted.
81. Granted.
82. Granted.
83. Granted.
84. Granted.
85. Granted.
86. Granted.
87. Granted.
88. Granted.
89. Granted.
90. Granted.
91. Granted.
92. Granted.
93. Granted.
94. Granted.
95. Granted.
96. Neither granted nor denied.
97. Granted.
98. Granted.
99. Granted.
100. Granted.
101. Granted.
102. Granted.
103. Granted.
104. Granted.
105. Denied.
106. Neither granted nor denied.
107. Granted.
108. Granted.
109. Neither granted nor denied.
110. Granted.
111. Neither granted nor denied.
112. Granted.
113. Granted.
114. Granted.
115. Granted.
116. Granted.

The Board rules on the Town's requests for findings of fact and rulings of law as follows:

Findings of fact

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Granted.
7. Granted.

8. Granted.
9. Granted.
10. Granted.
11. Granted.
12. Granted.
13. Granted.
14. Granted.
15. Granted.
16. Denied.
17. Granted.
18. Granted.
19. Granted.
20. Granted.
21. Granted.
22. Granted.
23. Granted.
24. Granted.
25. Granted.
26. Granted.
27. Granted.
28. Granted.
29. Granted.

Rulings of Law

1. Granted.
2. Granted.
3. Granted.
4. Denied.
5. Granted.
6. Granted.
7. Granted.
8. Granted.
9. Denied.
10. Denied.
11. Denied.
12. Denied.
13. Denied.
14. Denied.
15. Granted.
16. Granted.
17. Denied.
18. Denied.
19. Granted.
20. Granted.

21. Granted.
22. Denied.
23. Denied.

SO ORDERED.

May 2, 1991

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within decision have been mailed this date, postage prepaid, to Kathryn S. Williams, Esq., counsel for the Petitioners, and to Alice K. Page, Esq., counsel for the Town.

May 3, 1991

Michele E. LeBrun, Clerk

Emissaries of Divine Light, Inc.
v.
Town of Epping

Docket No. 4424-88

ORDER RE TOWN'S MOTION FOR RECONSIDERATION

Introduction

On May 21, 1991, the Board of Tax and Land Appeals (Board) received from the Town of Epping (Town) a motion for reconsideration of the Board's earlier decision of May 2, 1991 (the Decision). Subsequently the Board viewed the property on July 15, 1991, and held a prehearing conference on July 23, 1991, on the motion for reconsideration.

The Board grants the Town's Motion for Reconsideration. A review of the evidence of the initial hearing, a view of the property and the parties' memoranda convince the Board that the earlier order should be rescinded and replaced with this final order.

Issues

The motion for reconsideration requests the Board to revisit two general aspects of its initial decision:

- 1) does Emissaries of Divine Light, Inc. (Taxpayer) qualify as a religious organization pursuant to RSA 72:23, III; and
- 2) is the Board's finding that 85 percent of the Taxpayer's property is exempt from taxation and 15 percent taxable supported by the evidence and correct as a matter of law, and if so, what components of the property comprise the various taxable and exempt portions.

The pertinent portion of RSA 72:23 reads:

The following real estate and personal property shall, unless otherwise provided by statute, be exempt from taxation: . . . (h)ouses of public worship, parish houses, church parsonages occupied by their pastors, convents, monasteries, buildings used principally for religious training or for other religious purposes, and the lands thereto appertaining owned and occupied by any regularly recognized and constituted denomination, creed or sect, organized or incorporated in this state and the personal property used by them for the purposes for which they are established.

Exemption under RSA 72:23 III

On the first issue, the Board affirms its earlier order that the Taxpayer does qualify as a religious organization pursuant to RSA 72:23 III.

As stated on page 3 of the Board's Decision:

The board finds the New Hampshire Constitution, in its Bill of Rights, Article 5, clearly provides for religious freedom. Article 5 states, "Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reasons; and no subject shall be hurt, molested, or restrained, in his person, liberty, or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession, sentiments, or persuasion; provided he doth not disturb the public peace or disturb others in their religious worship." It is clear that the Constitution offers great latitude for religious practice for the New Hampshire citizens and taxpayers. The Board finds the statute should not be narrowly limiting for recognition of religion and its exemption from taxation on its property.

Further, Article 6 of the state constitution states in part: "every person, denomination or sect shall be equally under the protection of the law; and no subordination of any one sect, denomination or persuasion to another shall be established. . . ."

In light of these constitutional mandates concerning religious organizations, the Board must rule that the wording in RSA 72:23 III--"any

regularly recognized and constituted denomination, creed or sect. . ."--must

be interpreted to include any organization that: (a) is sincere in its religious declaration, (b) is not used for private gain and (c) acts in keeping with its declared purpose. Short of an organization being a bona fide sham, government has no right to judge or distinguish between one religious organization and another. Emerging Criteria for Tax-Exempt Classification for Religious Organizations, by Kenneth E. Peacock in Taxes-The Tax Magazine (Jan. 1982) To do otherwise would not provide equal protection and treatment of religious organizations. The Taxpayer in this case, while described as non-denominational, does have many characteristics indicative of a religious organization, such as a distinct doctrine, its own history and literature, a distinct ecclesiastical government and ordination of ministers, regular religious services in established places of worship and provisions to educate its congregation. (See Id.)

Lastly on this issue, the Town is being contradictory in raising this issue as it has consistently granted some religious exemption on the chapel and parsonage. Once that threshold question of the religious nature of the organization has been answered for any portion of the property, it is a specious argument to raise for disallowing other portions of the property.

Determination of Exempt Property

The second issue is not as easily answered as the first because the property consists of approximately 163 acres and two dozen buildings, which are all used somehow in connection with the Taxpayer's community. Determining which uses are exempt under RSA 72:23 III requires reviewing the statute and the Taxpayer's use of the various buildings and land. Therefore, we will

first look at the categories of the Taxpayer's properties. Then the law will be reviewed, and finally, the law will be applied to the facts.

a. Categories of use

The building uses can be grouped into three general categories:

- 1) religious worship, training and administration (such buildings as the chapel, parsonages and classroom portions of other buildings);
- 2) residential and dining uses (such buildings as the Main House, Dining Room, Family House, Town House, Annex/Sanctuary, Skylight, Gateway, Bungalow, etc.); and
- 3) agricultural and support uses (such buildings as all the agricultural buildings, the wood shop, auto shop, laundry room, etc.).

One could argue, as the Town does, that under RSA 72:23 III the only buildings exempt under the statute and "used principally for religious training or other religious uses," are those buildings, with associated land, listed in the first category. While this would perhaps be true for more conventional religious property, the Board rules the religious use of this entire property is so integrated, communal and fluid it is more appropriate to step back and view the property as a whole, similar to how it is used, rather than dissect the components of the property and view them in isolation from each other.

b. The Law--Is apportionment Permissible?

The New Hampshire Supreme Court has not yet decided whether apportionment between religious and secular uses is permissible under RSA 72:23 III. The court has, however, approved of apportionment under RSA 72:23 IV (educational exemption), St. Paul's School v. City of Concord, 117 N.H. 243, 250 (1977), and under RSA 72:23 V (charitable exemption), Alton

Bay Meeting Association v. Alton, 109 N.H. 44, 51 (1968). Citing Alton Bay

the court in St. Paul's stated, "'integrated activities of the association as a whole' must be considered to determine tax exemption, and that facilities which are 'reasonably necessary for the accomplishment of [the association's] charitable purposes' are exempt from taxation," St. Paul's School, 117 N.H. at 250. The board finds apportionment is permissible here and is consistent with RSA 72:23, the court's decision and the court's review of the legislative history.

To better understand why apportionment of value is appropriate in this case, a review of the basis of taxation is in order.

Part 1 Articles 3 and 12 of the New Hampshire Constitution allow for "every member of the community" and all property to be protected by society and in return each person is "bound to contribute his share in the expense of such protection. . . ." Further, Part 2 Article 5 empowers the legislature to "levy proportional and reasonable . . . taxes, upon all inhabitants . . . and . . . estates within [the state]." From this authority, the legislature has required in RSA 72:6 that "all real estate . . . shall be taxed except as otherwise provided." See also Opinion of the Justices, 76 N.H. 609, (1913) (For property to be taxed, it must be declared taxable by the legislature); Opinion of the Justices 95, N.H. 548, (1949) (The legislature may exempt a special class of property if for the general good.).

New Hampshire, as with other states and the federal government, has then specifically exempted those type of organizations that exist and perform such functions that generally benefit society as a whole. See Y.M.C.A. v. Portsmouth, 89 N.H. 40 (1937); (policy of equality of taxation and of serving the general welfare are each to be respected in light of each other);

Founding Church of Scientology v. United States, 412 F. 2d 1197 (Ct. Cl. 1969)

(income of an exempt organization must benefit the general public rather than specific individuals).

In short, the consequence of these principles is all property must share in its support of the common tax burden unless by its ownership and use it is deemed by statute to serve the general public good.

In the case at hand, the Board rules it is proper to apportion the assessment so that the Taxpayer fulfills its obligation to contribute its tax share to the town in proportion to its secular uses of the whole property and be exempt in proportion to its legitimate religious use of the whole property.

c. Apportionment

The Town in its motion for reconsideration has asked the Board to be specific as to its apportionment of value.

With some types of property this allocation can occur on a per-acre or per-square-foot basis or on a building-by-building basis. However, given the integrated, overlapping, communal and varying uses of the Taxpayer's property, as noted earlier, such specific apportionment is not feasible. Rather, it is appropriate (and perhaps practical so that the parties don't relitigate each year based on minor building or land use changes) that the total taxable liability be apportioned based on a general weighing of the religious structures and uses versus the secular structures and uses. Determining the proper apportioned assessment is not a mathematical application of the law; rather a liberal dose of judgement is necessary.

The statute makes the proceeding for the abatement of a tax a summary one, free from technical and formal obstructions. The question is, does justice require an abatement? . . . The justice to be administered is to be sufficiently exact for the practical

purposes of the legislature, who did not intend to invite the parties to a struggle for costs, or a ruinous contention about trifles. The points to be considered are such as the nature of each particular case presents. They cannot be fixed by an invariable rule. Manchester Mills v. Manchester, 58 N.H. 38, 39 (1876).

Given all the inponderables in the valuation process, "[j]udgment is the touchstone" Public Service Co. v. Town of Ashand, 117 N.H. 635, 639.

In reconsideration of its earlier decision, the Board rules that 60 percent of the whole property (and thus 60 percent of its total assessment) is exempt since it is used and is necessary in carrying out the religious purpose of the Taxpayer and 40 percent is taxable since it is used for secular purposes.

In arriving at this allocation, the Board gives weight to the following activities on the property:

Religious activities:

- worship and religious training and education;
- administrative support for the religious activities;
- a portion of the maintenance of the buildings;
- "religious fellowship" during non structured time (e.g. dining, informal group meetings, etc.);
- the agricultural enterprises in proportion to their fulfilling the Taxpayer's religious beliefs.

Secular activities:

- all residential use of the property (e.g. sleeping, eating, legal domicile, personal affairs, non religious social activities, etc.), and in particular the residential use by those residents who are employed "off campus" in unrelated jobs;
- a portion of the maintenance of the buildings;
- the agricultural enterprises in proportion to providing physical sustenance.

In applying the 60 percent exemption, the Town should determine the total potential taxable liability of the Taxpayer (i.e. the value of all land and buildings as properly valued per RSA 75:1 and 79-A:5) and then reduce the value by 60 percent.

Conclusion

The Board is aware that it could be conceived as "plowing new ground" with this decision. This decision is, however, nothing more than an extension and application of the well grounded principles of our constitution and law to a property with unique characteristics.

Therefore, the Town's Motion is granted; the prior Decision is rescinded and this decision is now the final decision.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg III, Chairman

Paul Franklin

Michele E. LeBrun

I certify that copies of the within Order have been mailed this date, postage prepaid, to Kathryn S. Williams, Esq., counsel for the Petitioners, and to Alice K. Page, Esq., counsel for the Town.

Brenda L. Tibbetts, Clerk

November 20, 1991

