

The Marist Brothers of New Hampshire, Inc.
v.
Town of Effingham

Docket No. 5711-88

DECISION

A hearing in this appeal was held, as scheduled, on May 10, 1990. The Taxpayers were represented by Bradford E. Cook, Esq., and Vasilike M. Canotas, Esq., of Sheehan, Phinney, Bass & Green, P.A. The Town was represented by Barton L. Mayer, Esq., of Upton, Sanders & Smith.

The Taxpayer appeals, pursuant to RSA 76:16-a, the assessment of \$3,799,850 (land \$2,691,750; buildings, \$1,108,100) that results from the Town's denial of a charitable exemption under RSA 72:23,V, for the 1988 tax year.

The Marist Brothers of New Hampshire, Inc. (hereafter Marist Bros.) owns two separately assessed parcels in Effingham. Map 18, Lot 6, consists of 87.78 acres of unimproved land on the south side of Route 25, with an assessed value of \$45,400. Both parties agreed that this parcel is taxable and not an issue of the appeal. Map 32, Lot 1, consists of 159.16 acres on Lake Ossipee, with many summer-camp-type improvements, including a chapel and rectory. The assessment on this parcel of \$3,799,850 includes a deduction for the value of the chapel and rectory and associated land and utilities.

The Taxpayer's argument is best summarized by the following excerpts.
. . . It is our position that the land and buildings comprising Camp Marist are exempt from taxation pursuant to RSA 72:23, V.

Subsection five (5) exempts "the real and personal property owned by charitable organizations and societies organized or incorporated in this state or having a principal place of business in this state, and occupied and used by them for the purposes for which they are established, provided that none of the income or profits thereof is used for any other purpose than the purpose for which they are established." Id.

In satisfaction of the statutory requirements, The Marist Brothers is a non-profit, charitable organization incorporated in New Hampshire. It has been granted exemption from taxation since approximately 1950. A religious organization recognized by the Roman Catholic Church, The Marist Brothers own and operate Camp Marist, a non-profit summer camp serving Catholic families and offering religious instruction and activities. This is precisely the purpose for which the corporation was established. Further, the surplus of the organization is used to continue its charitable activities; for example, the Camp provides 25 full tuition scholarships to underprivileged youths annually. Therefore, no disqualifying gain can be said to inure to the benefit of any private individual or organization.

The purposes for which the real and personal property of Camp Marist is used consist primarily of staff administration and housing, an infirmary, maintenance buildings, and various camp buildings and recreational facilities for the campers. (Letter of February 14, 1989, from Bradford E. Cook to Effingham Board of Selectmen)

According to its Articles of Agreement, The Marist Brothers is established ". . . to teach children whose parents are unable to provide for their education; to assist in the support and maintenance of such children; to assist in and about the education and maintenance of such children." . . . While education includes schooling and formal instruction in the three Rs, it also means the mental, moral or aesthetic development of a person and the persuasion or conditioning to feel, believe, or act in a desired way. . . . Camp Marist provides for the education of approximately 260 boys for each of the two sessions during the summer months at a discount thanks to those Marist Brothers who donate their time free of charge. The actual provision of an education, support and maintenance at a reduced rate, to children otherwise unable to experience a summer camp and its attendant activities, constitutes a direct use of property by the charitable corporation in the performance of its charitable purposes so as to qualify for a tax exemption under RSA 72:23,V. See Senior Citizens Housing Dev. Corp. of Claremont v. City of Claremont (1982), 122 NH 1104, 1107 (cites omitted). Further, as the unrefuted evidence showed, many such children are from homes "unable to provide" the guidance and the moral and educational experience for reasons other than

financial. . . . The Marist Brothers offer many campers either full or partial scholarships and all other campers benefit from reduced tuition rates. Whether the reduction in camp charges is full, partial or discounted, the degree of charitableness exercised by a charitable organization does not alter its tax exempt status or vitiate its qualifications for exemption provided the foregoing statutory requirements are met. (Taxpayer's Memorandum of Law in support of petition for determination of property tax exemption)

Mr. Cook argued that while the A-9 form filed by the Marist Bros. was admittedly not clear as to the basis for requesting the exemption, the Town should have surmised that the Marist Bros. was not requesting a religious exemption as "the Camp (had) filed the form which is not required of religious or education organizations." Id.

Mr. Cook argued that since a charitable exemption is proper for the camp and since the Town incorrectly assumed (and did not seek clarification) that the Marist Bros. was requesting a religious exemption, "the Town's actions were improper and arbitrary and entitle the Petitioner to its costs and attorneys' fee." Id.

The Town's position is summarized in its memorandum of law to the Board of Tax and Land Appeals (hereafter Board).

In 1987 the Town of Effingham underwent a reappraisal of taxable real estate, which was performed by the New Hampshire Department of Revenue Administration. The revaluation resulted in a closer look at tax exempt property. For the first time, the Board of Selectmen assessed a tax on property owned by the petitioner. The tax was levied on that portion of the property across New Hampshire Route 25, not used and occupied by the camp. The petitioner questioned the imposition of the tax and the Board of Selectmen explained that it did not qualify for an exemption. No appeal was taken and the parties are in agreement that this portion of the property is taxable.

In 1988 the Board of Selectmen examined the request for a tax exemption on property owned by the Marist Brothers and known as Camp Marist. Up until this time the Town had routinely granted a religious tax exemption to the petitioner for all property owned by it. The Town's assessor was sent to the property to identify

the value of all buildings and land. For the first time, the selectmen were able to separate the religious component from the taxable uses. The petitioner was granted an exemption on the church and parsonage; all other property was treated as taxable.

The petitioner is incorporated in the State of New Hampshire and the stated object of the corporation is:

The object for which this corporation is established is the teaching and more particularly to teach children whose parents are unable to provide for their education; to assist in the support and maintenance of such children; to assist in and about the education and maintenance of such children.

See, Exhibit C, Petition of Camp Marist. The A-9 form submitted by the petitioner (Exhibit B, Petition of Camp Marist) states that the organization is religious, educational and charitable. Through an exchange of letters (Exhibits D, E, F and G, Petition of Camp Marist), it became clear that in addition to the religious exemption already granted by the Board of Selectmen, Camp Marist was also seeking a charitable exemption. Upon a review of all of the materials submitted by the petitioner to the Board of Selectmen, including a financial statement, it was determined that there was no basis for granting a charitable exemption. Town of Effingham's Memorandum of Law.

Mr. Mayer argued that in keeping with the Appeal of C.H.R.I.S.T., Inc., 122 N.H. 982, 983 (1982) the Petitioner was "precluded from seeking additional exemptions as a charitable organization", Id., as they had received a religious exemption.

Mr. Mayer then argued that even if the Marist Bros.'s request for a charitable exemption was proper, the camp does not qualify.

In order to qualify for an exemption under RSA 72:23, V, the real estate and personal property owned by such an organization must be occupied and used by it for the purposes for which it is established. . . . Although owned by the Marist Brothers, Camp Marist is essentially used in the same manner and for the same purposes as any other camp in the region and not for the purposes enumerated in its Articles of Incorporation nor for the statutorily exempted purposes as provided in RSA 72:23, V. . . .

The financial statement submitted to the Board of Selectmen and

commented upon in a letter from the Town's attorney, identified as Exhibit E in the Petition of Camp Marist, indicates that no money was provided for assistance to campers or scholarships. Even assuming, as subsequently represented by the petitioner in its Petition for Determination of Property Tax Exemption at page 4 that 25 full scholarships are provided to under privileged youths amounting to "approximately \$20,000 in scholarships in each summer," *Id* at p.5, the circumstances are unchanged. This compares to a total income and expenditure of \$508,494. This means that 3.9% of the total income and expenditures of Camp Marist are dedicated to "disadvantaged children. Put another way, of the 300 campers attending Camp Marist, only 25 receive scholarships (8.3%); the very class of individuals the petitioner purports to serve. This can hardly be classified as a significant expenditure for charitable purposes. Id.

Mr. Mayer further argues that Camp Marist's claim of a lower tuition due to the volunteering of the Brothers' time is not borne out in a comparison of Camp Marist's fees, which he argues are similar to other "for profit" camps in the area.

In closing, the Town argued that the property is used so slightly for the charitable purpose for which the Marist Bros. was incorporated, namely educating disadvantaged children, that the property does not qualify for a tax exemption.

The Board finds that there are three main issues before it:

- 1) Did Camp Marist properly file for a religious exemption or a charitable exemption?
- 2) If the Petitioner properly filed for a charitable exemption, is the property "occupied and used by them for the purposes for which they (were) established"?
- 3) Were the Town's actions improper and arbitrary to an extent that this Board award the Petitioner's costs and attorneys' fees?

As to the first issue, the Board finds as follows. The record is clear that neither party was very knowledgeable about the tax-exemption statute and process until 1988 when attorneys for both parties started to focus and define the issues. Prior to 1988 the Town claims it granted the property a religious exemption but had never questioned whether that was the proper form of exemption until the Town was revaluated in 1987 and there was a new board of selectmen. Even in 1988 the Town's attorney, at that time Robert H. Schroeder, was unsure as to the property's taxability and suggested the selectmen exempt such property that was clearly exempt and "see what they do."

The Petitioners were equally as unknowledgeable. Camp Marist's 1987, 1988, and 1989 A-9 forms are all filled out stating it is a "religious, educational and charitable" (emphasis added) organization in direct contradiction to the Court's decision in Appeal of C.H.R.I.S.T., Inc., 122 N.H. 982, (1982) 455 A2d 1006. Further, its application, if to be considered one for a charitable exemption, is further clouded by its answer to question 8 in which it states the owner is a religious organization; i.e., the Roman Catholic Church. The Petitioner's attorney would have the Board believe that the filing of a financial statement with the Camp's A-9 form supports its claim that it was requesting a charitable exemption as the statutes require this information only for charitable organizations. However, there is no evidence that Camp Marist filed the A-12 form with the Town or with this Board for 1988 as required by RSA 72:23, VI. The financial information referred to by the Petitioner's attorney was a one-page "billing summary report" which is not the A-12 form or even an adequate financial statement showing detailed income and expenditures as is asked for with the A-12 form.

While a good case could be made that Marist Bros. had applied for a religious exemption and not a charitable one, the Board rules it is reasonable to decide whether the camp is entitled to an exemption as a charitable organization, inasmuch as both parties were unknowledgeable or vague as to the proper category, the Petitioner notified the Town during the appropriate appeal period that it was seeking a charitable exemption, both parties extensively argued the merits of a charitable exemption, and the Petitioner's stated purpose in its Articles of Incorporation is more akin to a charitable organization than a religious organization.

As to the second issue, the Board rules that while the corporation may have been formed for charitable purposes, the Marist Bros.'s use of the property for charitable purposes is slight and insignificant and is therefore not entitled to an exemption under RSA 72:23, V. See Franciscan Fathers v. Pittsfield, 97 N.H. 369, 401 (1952), quoting Society of Cincinnati v. Exeter, 92 N.H. 348, 357 (1943).

Black's Law Dictionary, 5th edition, defines charity as "a gift for, or institution engaged in, public benevolent purposes. A gift for benefit of indefinite number of persons under influence of religion or education

A 'charity', in absence of legislative definition, is attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources and without hope or expectation . . . of gain or profit by donor or by instrumentality of charity."

The Board finds a paucity of public benevolence or gifting in the activities and operations of the camp other than the traditional healthful recreational benefits that any summer camp bestows.

The Board rules that there is no one item that tips the scales in its determination, but rather it is the cumulative effect of various aspects of the camp.

* It is difficult to distinguish, either through physical viewing of the camp or through its descriptions of programs and facilities as described in its brochure and newsletters (Exhibits Town A and B), any significant differences between the operations and purpose of Camp Marist and other "for profit" summer camps.

* While the Marist brothers who are present at the camp donate their time, there is no evidence that this provides a significant discount in the fees for those attending the camp, thereby making it more available to "disadvantaged children". Further, the Board finds that in 1988 nearly 14 percent of the camp's expenditures was for "province assessment", a charge for the administrative services provided by the Catholic Church.

* In 1988 zero dollars were expended for scholarships to campers despite testimony by the Petitioners that approximately \$20,000 is spent annually on scholarships. Even if that were the case and 1988 was an aberration, \$20,000 is only approximately 4 percent of the camp's budget.

* No mention of scholarships or any charitable feature of the camp is made in the camp's brochure.

- * Out of 26 activities offered by the camp only two were for non accredited tutoring sessions, with the other 24 being recreational activities typical of summer camps.
- * Attendance at daily mass or communion services are optional.

As to the third issue, the Board finds the Town did not act improperly or arbitrarily in its denial of Marist Bros.'s request for a charitable exemption, and thus the Petitioners are not awarded their costs and attorney's fees. While it might have been more tactful for the Town to engage in discussion with the camp before sending out the 1988 tax bill, the Town was not obligated to do so. With "exemptions claimed under RSA 72:23, the defendant (the Town) had no obligation to formally notify the plaintiff of its decision." Appeal of C.H.R.I.S.T., Inc., 122 N.H. 982, 984. In fact, the Selectmen, as assessors, have the distinct responsibility, on behalf of all other taxpayers, to review the appropriateness of any request for exemption, as an exemption is tantamount to an appropriation that must be borne by the balance of the taxable property.

The Board therefore rules that the correct assessment for the 1988 tax year for Map 23, Lot 1, is \$3,799,850. This assessment recognizes the partial religious exemption on the chapel and rectory and the associated land and utilities.

The Board therefore rules the Taxpayer has failed to prove that the assessment is unfair, improper, or inequitable or that it represents a tax in

excess of the Taxpayer's just share of the common tax burden. The ruling is, therefore:

Request for abatement denied.

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

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| 1. Granted. | 17. Neither granted nor denied. |
| 2. Granted. | 18. Denied. |
| 3. Granted. | 19. Denied. |
| 4. Granted. | 20. Neither granted nor denied. |
| 5. Neither granted nor denied. | 21. Neither granted nor denied. |
| 6. Granted. | 22. Denied. |
| 7. Granted. | 23. Neither granted nor denied. |
| 8. Granted. | 24. Granted. |
| 9. Granted. | 25. Denied. |
| 10. Granted. | 26. Granted. |
| 11. Denied. | 27. Neither granted nor denied. |
| 12. Denied. | 28. Granted. |
| 13. Granted. | 29. Denied. |
| 14. Neither granted nor denied. | 30. Denied. |
| 15. Neither granted nor denied. | 31. Denied. |
| 16. Neither granted nor denied. | 32. Denied. |

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

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| 1. Granted. | 8. Granted. |
| 2. Granted. | 9. Granted. |
| 3. Granted. | 10. Granted. |
| 4. Granted. | 11. Granted. |
| 5. Granted. | 12. Granted. |
| 6. Granted. | 13. (omitted) |
| 7. Granted. | 14. Granted. |
| | 15. Neither granted nor denied. |

SO ORDERED.

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 Vasilike M. Canotas, Esq., Counsel for the Taxpayer, and to Barton L. Mayer, Esq., Counsel for the Town of Effingham.

Michele E. LeBrun, Clerk

The Marist Brothers of New Hampshire, Inc.

v.

Town of Effingham

Docket No. 5711-88

ORDER RE PETITIONER'S MOTION FOR REHEARING

On September 11, 1990, the Board received the Petitioner's Motion For Rehearing and the Petitioner's Memorandum Of Law In Support Of Motion For Rehearing. On September 14, 1990, the Town filed its Objection To Motion For Rehearing.

After reviewing both documents, the Board finds that there are no new issues raised in the Motion for Rehearing that were not addressed in the Board's August 24, 1990, Decision, nor does the Taxpayer offer to present any substantial new evidence that existed but was unavailable at the time of the original hearing.

Therefore the motion for rehearing is denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

September 26, 1990

George Twigg, III, Chairman

Peter J. Donahue

Paul B. Franklin

Ignatius MacLellan

I certify that copies of the within Order have been mailed this date, postage prepaid, to Vasilike M. Canotas, Esq., Counsel for the Taxpayer, and to Barton L. Mayer, Esq., Counsel for the Town of Effingham.

Michele E. LeBrun, Clerk

September 26, 1990