

The Schools for Children, Inc.

v.

Town of Orange

Docket No.: 7585-89

DECISION

The Taxpayer appeals, pursuant to RSA 71-B:11, the assessment of \$28,350 (land, \$10,650; building, \$17,700) on Map 3, Lot 45 and the assessment of \$10,056 (land only) on Map 3, Lot 48 for the 1989 tax year. Map 3, Lot 45 consists of a log cabin on 5.1 acres of land. Map 3, Lot 48 consists of 311 acres of which 296 acres are in current use (the Property).

The Taxpayer seeks a tax exemption of both parcels under RSA 72:23 IV arguing it qualifies as an educational exemption within the meaning of RSA 72:23 IV and the Property was used for the purposes for which it was established.

Most of the evidence presented was identical to that presented in the 1988 appeal (The Schools for Children, Inc. v. Town of Orange, Docket No. 4215-88). Additionally, the Taxpayer presented evidence that it was registered to do business in New Hampshire.

As stated in the 1988 decision:

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.

Board Rulings

There are two general questions before the board.

- 1) Was the Taxpayer organized as a school within the meaning of RSA 72:23 IV; and
- 2) Was the Taxpayer using and occupying all its real estate for the purposes for which it was established.

As to the first question, the board rules that the Taxpayer is a school within the meaning of RSA 72:23 IV and that it was organized in this State by its registration with the New Hampshire Department of State on February 10, 1989.

As to the second question, the board rules that Map 3, Lot 45 (5.1 acres and log cabin) is sufficiently used and occupied by the Taxpayer for its organized purpose so as to qualify for exemption. The Taxpayer stated the Property was used at least 151 days a year. The log cabin was used for housing and feeding the students on their camping trips from the main campuses in Massachusetts.

Map 3, Lot 48 is not so easily decided. This parcel of 311 acres is used to some extent for hiking and nature study. However, the evidence was inconclusive as to the exact amount of use of this parcel and as to its integral need by the Taxpayer for fulfilling its incorporated purpose. The tract abuts Cardigan State Park. The Taxpayer's representative stated that while a trail through the Taxpayer's parcel allowed access to the State Park, the students were sometimes bused around to other portions of the Park to do their hiking and other activities.

Determining the exempt status of a property is always a balancing act between the well-founded principle of exempting property that generally benefits society and the responsibility of each person to pay their respective share of the taxes.

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 types 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).

New Hampshire caselaw further narrows the issue by generally stating that while the distinction may at times be a narrow one, the occupancy and use of the property must be significant both in its intensity of use and its relative need to the organization for it to be exempt.

Previous cases have noted that the distinction between taxable and nontaxable land "may be a narrow one, but the authority for it is sufficiently well established." . . . A use which is slight and insignificant is not "an occupancy sufficient to warrant a conclusion of use for the Society's purposes, such as the statute requires." . . . Possession, ownership and use of land . . . must be more than negligible to give reasonable

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effect to the demand of the statute that it be occupied. Franciscan Fathers v. Pittsfield, 97 N.H. 396, 401 (1952) (citations omitted).

Based upon the above facts and caselaw, the board rules the use and occupancy of this parcel is "slight and insignificant" and thus the parcel is not exempt from taxation.

The board only has jurisdiction over the appealed 1989 tax year. The board would hope the Town would use this 1989 order in assessing the subsequent tax years. The legislature has recently closed this loophole to ensure that municipalities use ordered assessments until a revaluation or until a good faith reason to change the assessment exists. SB 180 (1991); HB 1405 (1992).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

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

Date: June 24, 1992

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayer's" December 8, 1992 letter. The letter requested action on two issues: 1) an order requiring the "Town" to issue the 1989 abatement in accordance with the board's decision; and 2) an order requiring the Town to follow the board's decision for subsequent tax years. In a postscript, the Taxpayer stated the Town had issued the 1989 abatement check. Therefore, only issue number two remains.

As stated in the board's June 24, 1992 decision, the board only has jurisdiction over the 1989 tax year since the Taxpayer did not appeal for subsequent years. Therefore, if the Town does not follow the board's decision, the Taxpayer would have to appeal again under RSA 72:34-a (copy attached) for future years. (Note: the "Notice of Tax" date for Orange was November 27, 1992.) At the hearing on that appeal, if the board determines the Town has acted in bad faith by not following the board's 1989 decision, the board may either: 1) assert jurisdiction for the tax years after 1989

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under RSA 71-B:16 II and consider ordering the Town to abate taxes for those years; and/or 2) order the
Town to pay the Taxpayer's cost incurred in prosecuting the unnecessary subsequent appeal.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I certify that copies of the within Order have been mailed this date, postage prepaid, to Thomas M.
Britt, Treasurer, Representative for the Taxpayer; and Chairman, Selectmen of Orange.

Date: January 27, 1993

Valerie B. Lanigan, Clerk

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