Dublin Christian Academy
v.
Town of Dublin

Docket No. 7676-89

DECISION

The "Taxpayer" appeals the "Town's" denial of an RSA 72:23 IV educational exemption on some of the Taxpayer's properties (collectively "the Properties"). For the reasons stated below, we find the Town correctly denied the exemption for all the Properties, except for the president's house which should have been exempted.

Facts[1]

The Taxpayer was established for educational purposes and runs a school (grades K-12) with 150 students. In 1989, there were 50 boarding students (grades 7-12) and 100 day students. The day students and boarders took the same classes and participated in the same extracurricular activities. The boarders ate dinner in the dining hall, and they were required to study, in supervised study halls or in their rooms, from 6:40-9:15 p.m. Monday-Thursday. The boarders lived in dormitories during the week but most went home on weekends.

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[1] The board has answered the parties' requests for findings of facts at the end of this decision. To the extent the facts stated herein could be interpreted to conflict with the findings, the facts stated in the decision have priority over the findings.

There were 31 faculty and staff who worked both in the day school and with the boarding school. The Taxpayer's president testified the faculty and staff were required to live in school housing if school housing was available. The board is somewhat unsure about whether this was an iron-clad requirement. First, some of the faculty lived off school grounds, and no evidence was presented about how the Taxpayer decided who could live off the grounds. Second, one apartment on the grounds (over the president's garage) was occupied by the president's father-in-law, who had nothing to do with the school. If the school truly required faculty and staff to live on campus, this apartment would have been occupied by a faculty member or staff member. Of the 31 faculty and staff, all but six lived in school housing. There was no difference in pay or school duties between those who lived at the school and those who lived off school grounds.

The school consists of two distinct parcels (see Town exhibit B): 1) "Lots 27 and 28"; and 2) "Lots 59 and 60." These parcels are approximately 1 mile from each other. The campus, with school buildings, dormitories and some free-standing staff housing, is on Lots 27 and 28. Most faculty and staff housing is on Lots 59 and 60. The road between the two parcels is winding and does not have lights or sidewalks. The students were not allowed to walk the road at night. There was no regular transportation between the two parcels, and students generally had to get a ride from a faculty or staff member to travel between the two parcels.

The Town acknowledged the Taxpayer, as an entity and in its use of some of its other property, was entitled to the exemption. Therefore, the Town exempted the school buildings, the dormitories and the faculty housing

inside the dorms. The Town did not exempt the Properties, which consist of the following buildings and appurtenant land.

Lot 27 and 28

Building	Occupant
business manager's house	Mr. Bastian, business manager

Lot 59 and 60

Building	Occupant
president's house	Mr. & Mrs. Melvin Moody, president and wife
faculty dwelling #1	Mr. & Mrs. Leon Moody, principal and teacher/secretary
faculty dwelling #2	Mr. & Mrs. Kevin Moody, teachers (2)
faculty dwelling #3	Mr. & Mrs. Stratton, cook and librarian/part-time nurse
apartment #1	Miss Roberts, teacher
apartment #2	Mr. & Mrs. Sajko, teacher
apartment #3	Mr. Van Maasdem, teacher
apartment #4	Mr. & Mrs. Veysey, maintenance person and wife

The Taxpayer described what it thought were the qualifying uses for each building. This description should have been restricted to the school's

boarding-school operation because no justification existed for asserting the Properties were "used and occupied" for the day school. Unfortunately, the Taxpayer did not segregate the day-school duties from the boarding-school duties. If the Taxpayer did segregate these duties, it was not made clear to the board.

The Taxpayer tried to show the Properties were an integral part of the boarding-school program, with an emphasis on the in loco parentis duties required of the Properties' occupants. The Taxpayer described two basic types of uses:

1) as faculty and staff residences near the school so the occupants could fulfill duties at the school, including study hall and dorm supervision; and

2) as meeting and gathering places for students, faculty and staff.

Some of the Properties were also, at limited times, used for housing visitors, lecturers and the like.

Issue

The Town acknowledged the Taxpayer was an entity entitled to the exemption. Therefore, the only issue to be decided is whether the Properties were "used and occupied" for educational purposes as required by RSA 72:23 IV. To resolve the issue, the board must first review the appropriate legal standards against which the Properties' uses will be examined. Then the board will apply these standards to the Properties.

As stated earlier, the analysis in this decision is restricted to the Properties' boarding-school uses. The duties performed for the nonboarding students were not qualifying uses because such duties are performed by traditional school teachers who teach, counsel, coach, tutor, etc., during the day, and then go to their taxable homes at night where they often continue to work, grading papers and preparing for class.

Standards

RSA 72:6, the starting point for property taxation, states: "All real estate, whether improved or unimproved, shall be taxed except as otherwise provided." The applicable exemption statute, RSA 72:23 IV, exempts property "used and occupied by [certain educational institutions] for the purposes for which they are established ***." The statute then lists some examples and states, "but not including lands and buildings not used and occupied directly for the purposes for which [the educational institutions] are organized ***."

The only case to address the meaning and breadth of the present RSA 72:23 IV is St. Paul's School v. City of Concord, 117 N.H. 243 (1977) (hereinafter "St. Paul's"). We glean two criteria from St. Paul's:

1) use--the property's use must be reasonably necessary for the taxpayer to carry out its purpose; and

2) extent of use--the qualified use must be the property's dominant use.

In other words, a property may qualify based on the type of use, but it may not qualify because of the limited extent of that use.

Who decides what uses are reasonably necessary for the Taxpayer to further its educational purpose? The Taxpayer would have us surrender almost complete control to the Taxpayer's judgment. The Town would have us scrutinize the uses. Fortunately, caselaw answers this question. The burden rests with the Taxpayer to show a specific use qualifies. Id. at 254. However, meeting this burden is eased because once it is determined, here conceded, that a taxpayer is a qualifying entity, there is a presumption in

the taxpayer's favor concerning what uses are necessary to promote the school's educational goals. Id. at 250; New Canaan Academy v. Town of Canaan, 122 N.H.134, 138 (1982). The Properties' educational uses are described below.

The presumption in a taxpayer's favor, however, does not extend to whether the qualified uses were a property's dominant use. Thus, a taxpayer must, unaided by the presumption, show a property's dominant use was the qualified use. For example, a qualifying school has a program of visiting speakers to promote the school's goals. The speakers come once a month (9 times a school year), and they stay in a bedroom in a school-owned and faculty-occupied, three-bedroom house. The use certainly appears educational. Nonetheless, the use is not the dominant use. Therefore, the property cannot be exempted.

How much use must there be for the use to be considered the dominant use? Clearly, it is somewhere between exclusive use and minimal use. Moreover, it cannot be determined strictly by counting hours of each use. If this were the case, the free-standing, faculty homes in St. Paul's would not have qualified since the faculty and their families certainly spent more time living, eating, bathing, playing and sleeping in their homes than they spent performing boarding-school duties.

In St. Paul's, 117 N.H. at 252, the court listed the faculties' extensive duties at the boarding school, and this list provides guidance in the instant appeal. Most importantly, however, the court concluded with an instructive standard: "As a consequence of their duties, faculty members must limit somewhat their personal lives ***." Therefore, to show the use was

dominant, the Taxpayer must show the uses relating to the school were so extensive that the faculties' personal, home lives were limited, thereby shifting the Properties' principal use from a place to live to a place to further the Taxpayer's goals. Except for the president's house, the Taxpayer failed to meet this burden.

Application of Standards

Applying these standards to the Properties results in certain findings. First, the number and frequency of boarding-student visits to the Properties was not shown to be significant and would not, on its own, have qualified the Properties for the exemption. Moreover, this use was so limited, at least as presented to the board, it was not even considered in conjunction with the qualified uses discussed below. The Taxpayer's evidence only showed the visits occurred on a very limited basis, not on any regular basis. Frankly, there was a dearth of evidence concerning the frequency of the boarding-student visits, and the board did not rely on the Taxpayer's proffered conclusory statements such as the visits occurred "periodically." Because of the lack of specificity, the Taxpayer failed to carry its burden. Finally, such visits were impractical and improbable because of the distance and the condition of the road between the dormitories and Lots 59 and 60.

Second, the Properties' only qualifying use was to enable the faculty to be available to perform their night and weekend duties with the boarding students. There were two such duties (not including the president's duties): 1) duty supervision and 2) study-hall supervision. Faculty and staff with duty supervision were, in essence, back-up supervisors to the faculty in the dorms. When on duty supervision, the person was generally on call in his or

her home so he/she was available to respond to any dorm problems and to cover the dorm if the dorm faculty was not available. If the person was required to cover the dorm, that person would go to the dorm and stay in the faculty quarters, overnight if required.

Duty supervision and study hall supervision were qualifying uses, but they were not performed frequently enough to be the properties' dominant uses. The duty supervisors were also in the dorms on Sundays from 2-9 p.m. to check in the returning students. There were 2 dorms and 2 people (usually a married couple) were on duty supervision. Study hall occurred for 2 hours and 35 minutes four nights a week, and there were two study halls. There were at least eight couples, in the Properties, who performed duty supervision.[2] Thus, each couple was on duty, but not necessarily in the dorms, approximately 5 nights a month. Additionally each couple was in the dorm for Sunday check-in about once a month. Study hall supervision was performed by at least seven couples and one individual, all of whom lived in the Properties.[3] Thus, everyone covered approximately one two-hour and thirty-five-minute study hall a week.

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[2] The following had duty supervision: K. and R. Moody, L. and B. Moody, the Sajkos, the Van Massdams, the Veyseys, the Bastonis, the Hamiltons and the Diffenderfers.

[3] Study hall supervision was performed by at least the following: K. and R. Moody, L. and B. Moody, the Sajkos, the Van Massdams, the Bastonis, the Hamiltons, the Diffenderfers, and Janice Roberts. Other faculty and staff may have also supervised the study hall, but this was not made clear at the hearing. For purposes of this decision, we have assumed only these listed people supervised study hall. Obviously, if others shared the duty, the listed people were even less frequently required to supervise study hall.

These infrequent duties cannot be said to be so dominant as to limit the personal and home lives of those living in the Properties.[4] Moreover, these infrequent duties were performed by the faculty members who did not live in school housing (Hamilton lived 12 miles from school, and Dissendorf abutted the school. There were other faculty and staff who did not live at the school, but no one testified about where they lived.)

An interesting, but only cumulative, factor against the Taxpayer's position was the Taxpayer's school-meals policy. The Taxpayer testified emphatically and unequivocally that the faculty and staff who lived in the Properties did not attend and were not given meals at the dining hall unless they had specific duties at the school for that day or night. Moreover, these faculty and staff were not required to attend evening meals. This testimony, which may appear minor, supports the conclusion that having these people live in the Properties was not an essential part of the boarding-school education. The Taxpayer's testimony concerning the no-meals policy contrasted sharply with the testimony about how important these people were to the boarding school. This contrast made the board wonder whether the Taxpayer's presentation about the Properties' uses was founded in the actuality or just in advocacy.

We note that in St. Paul's, the faculty were required to attend four evening meals a week. 117 N.H. at 251. The board is not saying that

[4] The board notes these faculty and staff also worked with the nonboarders. This means that while these faculty and staff lived in the Properties full-time, their duties extended beyond the boarding school, and such nonboarding school duties were not qualified uses. Basically, the occupants were full-time staff and faculty with, at a maximum, part-time responsibilities in the boarding-school aspects.

attending meals is somehow a criteria, but the no-meals policy means these faculty and staff had fewer boarding-school duties at the school that impinged on their use of the Properties as residences.

While the faculty and staff housing was not entitled to the exemption, the president's house should have been exempted, excluding the in-law apartment. Just like the rector's dwelling in St. Paul's this house was essential to the boarding school's operation to allow the president to be available to provide overall supervision and guidance. Additionally, the use of this property for visiting speakers and for meetings showed the school's demands interfered with the property's use as a home.

Conclusion

Only the president's house was entitled to the exemption. The other Properties were primarily homes, and the duties associated with the boarding school were not shown to be sufficiently demanding and frequent to make the Properties' dominant use for the boarding school. This decision, in many ways, is based on the Taxpayer's failure to prove. The board was not given enough specific information to conclude the uses were frequent enough to be dominant. The board was only given conclusory anecdotal information, and when specifity came out, it was obvious the use was infrequent. The Taxpayer had the burden and failed to produce enough evidence to carry this burden.

To the extent taxes have been paid on the exempted president's house, the Town shall refund those taxes, plus six percent interest from the date paid to the refund date.

Petitioner's requests for findings of fact and rulings of law

Findings of fact

1. Granted, but only 50 were boarders.
2. Granted.
3. Denied.
4. Granted.
5. Granted.
6. Granted.
7. Granted.
8. Granted.
9. Granted.
10. Granted
11. Denied--not one campus. (For remainder of rulings will treat term "campus" to mean Lots 22/28 and Lots 59/60.)
12. Granted.
13. Granted.
14. Granted.
15. Denied. (The board is denying all requests that use the terms "periodic" or "frequent" and that use the phrase "providing a home setting.")
16. Granted.
17. Granted.
18. Granted.
19. Denied.
20. Granted.
21. Granted.
22. Denied.
23. Denied.
24. Denied.
25. Granted.
26. Granted.
27. Denied.
28. Denied.
29. Denied.
30. Denied.
31. Granted.
32. Granted.
33. Denied.
34. Denied.
35. Denied.
36. Denied.
37. Granted.
38. Granted.
39. Granted.
40. Denied.
41. Denied.
42. Denied.
43. Denied.
44. Granted.
45. Denied.
46. Granted.
47. Denied.
48. Denied.
49. Denied.
50. Denied.
51. Granted.
52. Denied.
53. Denied.
54. Denied.
55. Denied.
56. Granted.
57. Denied.
58. Denied.
59. Denied.
60. Denied.
61. Granted.
62. Granted.
63. Denied.
64. Denied.
65. Denied.
66. Denied.
67. Denied.
68. Denied.
69. Denied.
70. Granted.
71. Granted.
72. Denied.
73. Neither granted nor denied.
74. Denied.
75. Denied.
76. Denied.

Rulings of Law

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Denied in part, granted in part (see decision).
7. Granted.
8. Granted.
9. Denied.
10. Denied.
11. Denied.
12. Denied.
13. Denied.
14. Denied.
15. Denied.
16. Denied.
17. Denied.
18. Denied.
19. Denied.
20. Denied.
21. Denied.
22. Denied.
23. Denied.
24. Denied.
25. Granted.
26. Granted.

Town of Dublin's Request for Findings of Fact and Rulings of Law

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. Denied.
13. Denied.
14. Granted.
15. Neither granted nor denied.
16. Granted.
17. Neither granted nor denied.
18. Neither granted nor denied.
19. Denied. (The board is denying all requests that use the term "only" since we find there are some educational uses.)
20. Denied.
21. Granted.
22. Denied.
23. Granted.
24. Denied.
25. Granted.
26. Neither granted nor denied.
27. Neither granted nor denied.
28. Granted.
29. Granted.

Rulings of Law

1. Granted.
2. Granted.
3. Granted in part, denied in part.
4. Neither granted nor denied.
5. Granted, except denied as to president's house.
6. Neither granted nor denied.
7. Granted.
8. Granted.
9. Granted.
10. Neither granted nor denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg III, Chairman

Ignatius MacLellan, Esq.

Michele E. LeBrun

I certify that copies of the within decision have been mailed this date, postage prepaid, to Joseph DiBrigida, Jr., Esq., representing the Taxpayer, and to Richard J. de Seve, Esq. representing the Town.

March 9, 1992

Melanie J. Ekstrom, Deputy Clerk

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