

Gospel Messenger Service, Inc.

v.

Town of Lancaster

Docket No.: 10927-91 EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the "Town's" 1991 assessment of \$168,800 (land \$36,050; buildings \$132,750) and the denial of a religious exemption on a dwelling on a parcel at 184 Main St.(the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer met the burden of proof to show a partial abatement is proper.

The Taxpayer argued the Property is eligible for a religious exemption because:

- (1) the primary religious use is printing and distributing religious material and cassettes to prisons, youth organizations, churches, etc.;
- (2) the parsonage portion of the house on the first floor is used both for counseling individuals and the living unit for the pastor who also maintains and provides security for the Property;

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(3) the balance of the first floor is used for the printing, collating and mailing of publications;

(4) the second floor is comprised of a prayer room, several rooms for volunteer workers who visit for short periods of time and a recording room for the cassettes;

(5) for the past two winters, the second floor had not been used due to broken heating pipes; the repairs have been subsequently made and the second floor will be used during the coming winter (1994); and

(6) the Property and its operations are financed entirely by donations.

The Town argued that while a total exemption was denied at the time the Taxpayer applied with the Town, the Taxpayer should be entitled to a 35% partial exemption based on a proportional theory on the use of the Property.

(1) the area occupied by Rev. Stoddard is not a parsonage in the common definition of the word because the parson has no church membership, congregation or religious service.

Board's Findings

The Gospel Messenger Service Inc. (formerly the Street Worker's Ministry) is a N.H. non-profit corporation formed on May 27, 1981.

Rev. Richard C. Stoddard is the President and his wife and son are also officers of the corporation. The purpose of the Gospel Messengers is "to bring the gospel to the people." Producing and distributing literature is their principle activity and they also record and distribute religious messages on cassette.

Rev. Stoddard described the ministry's published inventory which includes seven books, 53 booklets, three religious messages on cassettes and 26 gospel

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songs. All literature is free. This activity is carried on in the house located at 184 Main St. The pastor is financially compensated from donations and receives free housing for he and his wife on the premises.

Various publication functions such as drafting, editing, printing, collating and mailing are performed in spaces throughout the house.

Approximately 590 square feet was used as a living area (referred to during testimony as the parsonage area) for Rev. Stoddard and his wife.

When the Town inspected the second floor, it was not heated because of leaky pipes and a torn out ceiling. The Town's position is that in 1991 and 1992 the upstairs was not being used for religious purposes. The Town's representative, Malcolm Call, testified that the Gospel Messenger Service Inc. is not listed in the phone book and has no sign at or near the house to direct the public to the premises. Mail is received at a post office box in the local post office. No religious services are held at the Property and the public is not offered counseling on any regular basis. The Town recommended at the hearing, "in a spirit of compromise," that a 35% partial exemption be granted on a proportional basis to the entirety for the Gospel's religious print and recording ministry.

This appeal focuses on the provisions of RSA 72:23 III which states:

Houses 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.

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The board focuses specifically on the words "or other religious purposes and the lands thereto appertaining owned and operated by any regularly recognized and constituted denomination, creed or sect..."

Board's Rulings

The board rules that 35% is a reasonable allocation for tax exemption based on the range of religious use and activity carried on at 184 Main St., the subject Property. More specifically, the board makes no exemption for the Rev. Stoddard's living area as that space does not meet the definition of "parsonage" for the lack of any congregation, regularly scheduled religious services or church edifice on the Property, as envisioned by RSA 72:23 III.

If the taxes have been paid, the amount paid on the value in excess of \$109,720 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992 and 1993. Until the Town undergoes a general reassessment, the Town\City shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard C. Stoddard, President of Gospel Messenger Service, Inc., Taxpayer; and Chairman, Selectmen of Lancaster.

Dated: November 24, 1994

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Valerie B. Lanigan, Clerk

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ORDER RE: REQUEST FOR AN EXTENSION OF REHEARING FILING TIMELINE

On March 4, 1994 the board of tax and land appeals (board) received a letter from the Taxpayer requesting the board extend the 20 day filing deadline or requesting a rehearing with the board. The Taxpayer stated that their appeal to the supreme court had been dismissed due to the lack of filing a motion for rehearing with the board. Further, the Taxpayer stated that it had not been told of the appeal timelines when it had asked for instructions by telephone on how to appeal to the supreme court.

The board denies the Taxpayer's request for an extension. The board's authority is strictly statutory. See, Appeal of Sunapee, 126 N.H. 214 (1985). RSA 541:3 requires that parties must file a motion for rehearing with the board within 20 days of the decision. The statute does not give the board the authority to extend the deadline. Therefore, the board is without authority to deviate from the statutory limitation. Appeal of Gillin, 132 N.H. 311, 313 (1989). Further as noted in the supreme court dismissal of February 24, 1994 the board does not have the authority to enlarge time periods described by statute unless authorized by statute to do so.

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TAX 201.03 (b).

Lastly, the Taxpayer requested the board provide advice as to the next step to stop the Town from seizing the Property on April 7, 1994 for delinquent taxes. The board has no jurisdiction or authority to provide such advice to taxpayers; the board can only suggest that the Taxpayer seek out legal counsel.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard C. Stoddard, President of Gospel Messenger Service, Inc., Taxpayer; and Chairman, Selectmen of Lancaster.

Dated: March 25, 1994

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Valerie B. Lanigan, Clerk

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SO ORDERED.

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Dated: 0008

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