

Connecticut River Watershed Council, Inc.

v.

Town of Cornish

Docket No.: 12738-92 EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 denial of Connecticut River Watershed Council, Inc.'s (Council) educational, charitable exemption on:

\$313,150 (land \$121,150; buildings \$192,000) on Lot 11, a 35.90-acre lot with a house, garage and cottage; and \$35,400 on Lot 15, a vacant, 6.5-acre lot (the Properties).

The Town failed to appear, but consistent with our Rule, TAX 102.03(g), the Town was not defaulted. This decision is based on the evidence presented to the board. For the reasons stated below, the appeal is denied.

The Taxpayer has the burden of showing the application for exemption was improperly denied by the Town. We find the Taxpayer failed to carry this burden.

The Taxpayer argued the exemption should be granted because:

(1) the Council acquired controlling interest and ownership in the Property in 1991 which has been used exclusively for charitable and educational purposes for which the Council was established 40 years ago;

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(2) in 1991, the Board of Trustees let go of all of its administrative and program staff because of mounting debts and insufficient revenues to pay them, thereafter the Council was operated by volunteers who lacked the necessary knowledge of the filing requirements for tax-exempt organizations;

(3) beginning in June, 1991, the office was staffed three days a week and Form A-9 was filed in October and a subsequent appeal was filed in November which was denied by the Town as untimely;

(4) the Council did not refuse to file or willfully neglect to file the proper forms; and

(5) because of these mitigating factors, the Council requests the exemption be granted.

Board's Rulings

Based on the evidence, we find the Taxpayer failed to prove the Town erred in denying the application for exemption for untimely filing. The Taxpayer argued that the board should grant the exemption based on mitigating factors which led to the filing by a volunteer staff who were uninformed in the procedures required for filing for tax-exempt status. Therefore, the list of real estate and personal property owned on which exemption from taxation is claimed (Board of Tax and Land Appeals Form A-9) was not filed until October and the statement of the organization's financial (Board of Tax and Land

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Appeals form A-12) condition was pending the completion of the 1991 fiscal year audit.

The board lacks jurisdiction over this appeal. See Appeal of Gillin, 132 N.H. 311 (1989) (boards powers limited to those statutorily granted). RSA 72:23 VI (supp.) states:

Every charitable organization or society, except those religious and educational organizations and societies whose real estate is exempt under the provisions of paragraphs III and IV, shall annually before June 1 file with the municipality in which the property is located upon a form prescribed and provided by the board of tax and land appeals a statement of its financial condition for the preceding fiscal year and such other information as may be necessary to establish its status and eligibility for tax exemption.

Further, RSA 72:23-c (supp.) states:

Every religious, educational and charitable organization, Grange, the Veterans of Foreign Wars, the American Legion, the Disabled American Veterans, the American National Red Cross and any other national veterans association shall annually, on or before April 15, file a list of all real estate and personal property owned by them on which exemption is claimed, upon a form prescribed and provided by the board of tax and land appeals, with the selectmen or assessors of the place where such real estate and personal property are taxable. If any such organization or corporation shall willfully neglect or refuse to file such list upon request therefor, the selectmen may deny the application.

By the Taxpayers own admission, the statutory filing requirements necessary to obtain the tax exemption were not met. Although the statutes

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give the selectmen some latitude in RSA 72:23-c ("the selectmen may deny the application"), the statutes do not give the board the same license. The statutes are very specific in that they require the Taxpayer to timely file a list of all real estate and personal property for which exemption is claimed and a statement of its financial condition. There is no provision in the statute for accident, mistake or misfortune. Therefore, the board has no alternative but to deny the request for exemption.

Inasmuch as the board has determined that the Taxpayers did not meet the statutory filing requirements, the board will not rule on the issue of the Property's tax exempt status.

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 Tom Miner, Acting Executive Director of Connecticut River Watershed Council, Inc., Taxpayer; and Chairman, Selectmen of Cornish.

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Dated: August 17, 1993

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Valerie B. Lanigan, Clerk