Schools for Children, Inc.

v.

Town of Orange

Docket No. 12945-92EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 71-B:11, the "Town's" 1992 assessment of $62,100 (land, $22,300; building, $39,800) on Map 3, Lot 45, consisting of a log cabin on 5.1 acres of land (the Property). This appeal was heard on February 11, 1994, in Concord, N.H., under provisions of RSA 72:23 IV (Educational Exemption).

The Taxpayer was represented by Thomas M. Britt, Treasurer, who testified the subject property qualified under RSA 72:23 IV, as an educational organization with property used for the purposes for which it was established.

The Taxpayer submitted a cabin calendar for 1991, 1992 and 1993 to support their claim that the Property was used and occupied by 120 - 150 persons per year.

While most of the evidence was presented in the 1988 and 1989 tax years (Docket Nos. 4215-88 and 7585-89), the following self description of the school still applies:

As stated in the 1988 and the 1989 decision:

> The Taxpayer is a cluster of schools with campuses in Arlington and Cambridge, Massachusetts, that serves special-need 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.

The Town submitted letters from two Orange taxpayers (Lyell C. Smith and Anita Watson) commenting on the use and occupancy of the subject property.

The Town once again challenged the sufficiency of the School's February 10, 1989 registration with the Secretary of State of the State of New Hampshire to transact business in the State and to qualify for an educational tax exemption.

Board Rulings

As in the 1989 appeal, 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 property identified as Map 3, Lot 45 for the purposes for which the school 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.

The Town's argument that the word "organized" in RSA 72:23 IV means where a school has its main campus results in a duplicative and illogical reading of the statute. RSA 21:2 requires words used in the statutes be construed by their "common and approved usage" in the language. Further, In re Russel C., N.H. 120, 260, 264 (1980) the court stated the plain and ordinary meeting of the word will be used unless such an interpretation would lead to either an absurd, unjust or illogical conclusion. The structure of the sentence in section IV connects the words "organized" and "incorporated" by the conjunction "or" rather than separating them by a comma. The conjunction "or" indicates the legislature envisioned schools could qualify by being legally created other than being in a different fashion "incorporated" and different than "carrying on their principal activities in this state." Thus, the distinction of simply being organized as different from being incorporated infers a broader and more general criteria for existing as an entity in this state to qualify for an exemption. Webster's Ninth New Collegiate Dictionary (1983) defines "organize" as: . . . "to set up an administrative structure for . . . and to form an organization." Thus, the board finds the Taxpayer has fulfilled this general organizational requirement by registering itself with the New Hampshire Department of State and carrying on its educational functions at the Property.

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 between 120-150 days a year. The log cabin was used for housing and feeding the students on their camping trips from the main campuses in Massachusetts. The board found the Town's exhibits inconclusive.

The Taxpayer raised the issue of res judicata and clearly suggested that issue in this case was clearly settled in an earlier appeal heard on May 28, 1992 (Docket No. 7575-89), and decided by the board in favor of the taxpayer.

An appeal of an RSA 72:23 exemption denial is made pursuant to RSA 72:34-a (1992 supp.) - not RSA 76:16-a and 76:17-c. Thus, each tax year is appealable, separate and distinct from all others unlike RSA 76:16-a appeals where subsequent years are controlled by the original year of appeal.

However, the board further notes that if the relevant facts and law are the same from year to year, no changes are made to the Property and a revaluation of all properties in the jurisdiction does not occur, then the board will be receptive to a motion for costs incurred by the Taxpayer for prosecuting the otherwise unnecessary subsequent appeal (against a frivolously maintained assessment by the Town). If the Town does not agree with this decision, then it should file a motion for rehearing and, if denied, be prepared to appeal to the Supreme Court rather than make the Taxpayer jump through the same set of hoops for no good reason.

The board orders that the Town grant an educational exemption for the Property under appeal and if taxes have been paid, abate 100% of the tax, with interest at 6% from date of payment to date of refund. RSA 76:16-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas M. Britt, Treasurer, for the Taxpayer; and the Chairman, Selectmen of Orange.

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Valerie B. Lanigan, Clerk

Date: March 16, 1994
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