

Speare Memorial Hospital

v.

Town of Plymouth

Docket No.: 14996-94EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" denial of a 1994 charitable exemption on property owned by Speare Memorial Hospital (Hospital) located at 12 Cummings Street on an assessment of \$86,300 (land \$15,100; buildings \$71,200) on a .165-acre lot with an office building (the Property). The Taxpayer also owns, but did not appeal, four other properties in the Town with a combined, \$3,596,700 assessment. For the reasons stated below, the appeal for exemption is granted.

The Taxpayer has the burden of showing the exemption was proper.

We find the Taxpayer carried this burden.

The Taxpayer argued the exemption was proper because:

- (1) the Property was purchased in April 1993 for use for administrative type functions to support the operation of the Hospital;
- (2) there was an unbroken process beginning in the fall of 1993 to identify the administrative services that would be moved into the building followed by fit-up work (telephone and computer hookup, electrical work, upgrading physical condition, furnace automatic water feed installed);

- (3) the Human Resources Department began to move into the Property on April 1st and by mid-April personnel were in place;
- (4) the first floor of the building is used for Human Resources, conference room/blue print room and office for the Director of Rehabilitative Services; the second floor is used for administrative offices for the Hospital's free clinic and the garage is used for equipment storage;
- (5) taxes were paid for tax year 1993; and
- (6) fit-up activities are use and occupation within the meaning of the statute and should have been granted by the Town.

The Town argued the exemption was not proper because:

- (1) a strict interpretation of the statutes is correct; and
- (2) the Property was not being used for charitable purposes in April 1994; one woman occupied an office in May and there were file cabinets in another room; recently, one room is still unoccupied.

Board's Rulings

The applicable statutes in this case are RSA 72:23 V (Supp. 1994), RSA 72:23-I (Supp. 1994), and RSA 72:23-m (Supp. 1994) (copies attached).

Both parties agreed that the Taxpayer was a qualifying charitable organization. The sole issue contested was whether the Taxpayer used and occupied the Property directly for their charitable purposes on April 1, 1994.

The board finds the Taxpayer's purchase of the Property, its deliberate intent to use the Property for administrative services (as exhibited by the decision making of the Board of Directors and department heads) and the physical make-ready activity as testified to indicates an orderly, continuing process to effectuate the plan to recycle the building and use it for

administrative purposes. Where property is owned by a qualifying organization with an immediate intent to use the property for its purposes and coincident with significant activities to fulfill the intent, such actions qualify as occupancy and direct use under the intent of RSA 72:23 V.

To find otherwise would not be in keeping with the legislative intent of RSA 72:23 V. Further, as Attorney Gross stated in his memorandum, tax exemptions should be construed "not with rigorous strictness, but to give full effect to the legislative intent of the statute...." Wolfeboro Camp School, 138 N.H. 496, 499 (1994).

Therefore, the board finds in favor of the Taxpayer and orders the Town to totally exempt the Property for the 1994 tax year.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

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 Martin L. Gross, Esq., counsel for Speare Memorial Hospital, Taxpayer; and Chairman, Selectmen of Plymouth.

Dated: March 20, 1995

Valerie B. Lanigan, Clerk

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