

The School on the Hill

v.

Town of Rochester

Docket No.: 17024-97EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the "Town's" May 1, 1997 denial of an RSA 72:23 IV educational exemption application on the Taxpayer's "Property" known as The School on the Hill, consisting of a .18-acre lot with a school assessed at \$83,000 (land \$19,200; buildings \$63,800). For the reasons stated below, the appeal for exemption is granted.

The Taxpayer has the burden of showing it was entitled to the statutory exemption for the year under appeal. See RSA 72:23-m; TAX 204.06. The Taxpayer carried this burden.

The Taxpayer argued it was entitled to the exemption because:

- (1) the school is a New Hampshire RSA chapter 292 nonprofit corporation and is an Internal Revenue Code 501 § (c) (3) tax-exempt entity;
- (2) the school is licensed through New Hampshire Health and Human Services (NHHHS);
- (3) the school is an educational organization used entirely for kindergarten

and pre-school education for children two to seven years of age; and

(4) it is a school not a day-care facility.

The City argued its denial of the exemption was proper because:

(1) the Taxpayer uses the Property for three purposes: play group, nursery and kindergarten;

Page 2

The School on the Hill v. City of Rochester

Docket No.: 17024-97EX

(2) the City's denial of the kindergarten component is based on the fact that it is not a traditional educational component as the court would describe;

(3) the day-care, play group and nursery are no different than any other formal day-care operation throughout the State; and

(4) the entity is not required to be licensed through the State board of education and its only licensing is through NHHHS child day-care program.

Board's Rulings

Based on the following facts and analysis, the board finds the Taxpayer qualifies for an RSA 72:23 IV educational exemption.

Facts

The Taxpayer is a New Hampshire nonprofit corporation with federal Internal Revenue Code 501 § (c) (3) exemption status. The stated purpose for the corporation in the articles of agreement filed at the New Hampshire Secretary of State's office is "to provide preschool and kindergarten education to children two to seven years of age." The Taxpayer provides services for three general age groups: 1) play group for two-year old children; 2) nursery for three and four-year old children; and 3) kindergarten for five-year old children.

The building is a former residence converted for the purposes of the

Taxpayer. The first floor of the building has a kindergarten room, two play group/nursery rooms, an art center, a bathroom and a place where snacks are prepared. The second floor contains a kindergarten area, a computer room and a bathroom. Taxpayer's Exhibit #2.

The Taxpayer is licensed as a child day-care agency with NHHHS with a total capacity of 38 children. Due to the scheduling of several partial day sessions, however, the total number of students approximates 53 with the following breakdown.

kindergarten	22
three and four-year old nursery	24
two-year old play group	7

Page 3
The School on the Hill v. City of Rochester
Docket No.: 17024-97EX

Analysis

Educational exemptions are provided by RSA 72:23 IV (Supp. 1997).
72:23 Real Estate and Personal Property Tax Exemption. The following real estate and personal property shall, unless otherwise provided by statute, be exempt from taxation: ...

IV. The buildings and structures of schools, seminaries of learning, colleges, academies and universities organized, incorporated or legally doing business in this state and owned, used and occupied by them directly for the purposes for which they are established, including but not limited to the dormitories, dining rooms, kitchens, auditoriums, classrooms, infirmaries, administrative and utility rooms and buildings connected therewith, athletic fields and facilities and gymnasiums, boat houses and wharves belonging to them and used in connection therewith, and the land thereto appertaining but not including lands and buildings not used and occupied directly for the purposes for which they are organized or incorporated, and the personal property used by them directly for the purposes for which they are established, provided none of the income or profits are divided among the members or stockholders or used or appropriated for any other purpose than the purpose for which they are organized or established ***.

Further, the New Hampshire Supreme Court has stated that each case must hinge on its own particular facts and that there is no bright-line test for qualifying as an educational entity; Wolfeboro Camp School v. Town of Wolfeboro, 138 N.H. 496, 499 (1994). The court has, however, established four general guidelines for educational exemptions. "[E]ach case will necessarily depend on its own peculiar facts,' aided by reference to four general guidelines: (1) whether the institution's purposes are 'educational - i.e., intended to develop the faculties and powers and the expansion of knowledge through a systematic course of instruction or schooling as distinguished from the mere communication of facts or ideas'; (2) whether for the land and buildings in question are 'used and occupied directly' for these educational purposes; (3) whether none of its income or profits may be divided among its members or owners or used or appropriated for any purposes other than its educational purpose, RSA 72:23, IV; and (4) how closely the instruction provided compares to 'traditional educational methods and objectives.'" Id. at 499-500.

Page 4
The School on the Hill v. City of Rochester
Docket No.: 17024-97EX

The board finds the Taxpayer meets the statutory requirements for an educational exemption and the four guidelines in Wolfeboro.

First, the board finds the Taxpayer's primary purpose is educating kindergarten and preschool children. As stated earlier, in its articles of agreement, the school was established to provide preschool and kindergarten education for children from two to seven years of age. Further, the school's philosophy contained in Taxpayer Exhibit 1 provides in part:
The philosophy of the School on the Hill is that children learn best through their own experiences, that learning should be fun and

involve the development of the whole child. The School on the Hill works to form the development of young children by providing a large range and variety of experiences in a safe, caring environment.

The Town's main argument is the activities at the Property were primarily child care as opposed to educational, and therefore, the Property does not qualify for an educational exemption. While the Town raises concerns that need to be legitimately reviewed, the board finds the Town's conclusions too narrowly construe the intent of the statute. A tax exemption statute is construed not with rigorous strictness but "to give full effect to the legislative intent of the statute," and, absent formal legislative history, intent must be gleaned from the plain language of the statute. Wolfeboro Camp School, 138 N.H. at 499.

In arriving at its conclusion, the board finds there is no one compelling fact. Rather the Taxpayer's purpose, organizational structure, activities and use of the Property support the exemption conclusion. The Taxpayer's curriculum and structure of activity clearly show the educational focus of the Taxpayer and support its stated purpose and philosophy. While one could argue that kindergarten and preschool education are not traditional forms of education, the existing caselaw in New Hampshire has not dealt with preschool level of education; most cases have involved secondary level educational institutions. Nonetheless, the board finds the Taxpayer's activities provide the appropriate curriculum for the age level being serviced by the Taxpayer. The staff's education and work experience generally is of educational nature, including several staff members with college degrees in

education. The hours of the kindergarten, nursery and play group sessions are much more similar to regular school hours than to normal day-care hours (i.e.,

day-care hours tend to coincide with parent employment hours). Also, the Taxpayer is not open year round, but rather its session runs September to the first of June, approximating public school session, and its holidays, vacations and snow days coincide with the Rochester School District.

The fact the Taxpayer provides kindergarten and enrolls a number of "educationally disabled children" from several school districts is additional evidence that the services provided coincide with "traditional educational objectives." Pursuant to RSA 189:25 kindergarten is considered part of elementary school by definition. Rochester School District, however, does not provide public kindergarten. Thus, the Taxpayer's kindergarten, to some extent, fulfills this public need. Further, Chapter 186-C provides that it is the responsibility of the State Board of Education and school districts to provide education for all "educationally disabled children." Such children are defined in RSA 186-C:2 I as any individual between the ages of three and twenty-one who has been identified through individual educational plans (RSA 186-C:7) as needing special education. The Taxpayer has routinely provided that service for a number of students. For instance, in the year 1997-1998, five kindergarten students and seven nursery students, from several school districts, were enrolled due to special needs. The ability for the Taxpayer to provide such services is a reflection on the Taxpayer's educational credentials and goes a long way towards the board's findings that it is an educational institution as opposed to simply a child-care facility.

In short, the board finds that the Taxpayer's stated purpose, its organizational structure, activities and documents all support its strong focus on education. While indeed child-care functions occur during the time that children are at the Property, such activities are incidental to the Taxpayer's primary educational purpose. Is the Taxpayer the type of

organization the statutes envisioned receiving an exemption and thus requiring

Page 6

The School on the Hill v. City of Rochester

Docket No.: 17024-97EX

other taxpayers to bear the tax burden? The board clearly believes that it is. The education provided by the Taxpayer prepares the children at all three levels and delivers them to the Rochester and surrounding school districts first grades better prepared for public education.

The board also discussed whether apportionment was an appropriate remedy. Specifically, the board discussed whether the exemption should be apportioned so the educational uses were exempt but the day-care uses were not exempt. Ultimately, the board concluded apportionment was not appropriate because:

- 1) the substantially predominant use was educational;
- 2) the day-care use was incidental; and
- 3) there was no practical way to apportion given the shared use of many parts of the building, resulting in the lack of any workable apportionment formula.

Refund

Having granted the exemption, if the Taxpayer has paid taxes the City shall refund the taxes plus interest at 6 percent per annum from the date paid to the date of refund. RSA 76:17-a.

Rehearing and Appeal

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 in 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

Page 7
The School on the Hill v. City of Rochester
Docket No.: 17024-97EX

limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Priscilla B. Fanning of The School on the Hill, Taxpayer; Walter L. Mitchell, Esq., counsel for the City; and Chairman, Board of Assessors, City of Rochester.

Date: April 7, 1998

0006

Valerie B. Lanigan, Clerk