

Milford Masonic Temple Association

v.

Town of Milford

Docket No.: 17916-98EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the "Town's" June 28, 1999 denial of the Taxpayer's request for charitable exemption as provided in RSA 72:23 V on Map 25/Lot 31, a 1-acre lot with a 2-story lodge building assessed at \$289,400, and Map 21/Lot 22, a 41,035 square-foot vacant lot assessed at \$16,000 (the "Property"). For the reasons stated below, the appeal for charitable exemption is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, it was entitled to the statutory exemption or credit for the year under appeal. See RSA 72:23-m; TAX 204.06. The Taxpayer failed to carry this burden.

The Taxpayer argued it was entitled to a charitable exemption because:

1) it is recognized as being exempt under section 501 (c)(10) of the Internal Revenue Code and its articles of agreement are on record (January 8, 1941) at the Secretary of State;

2) it is obligated by its charter to be a charitable and benevolent organization, is comprised of

Masons and is governed by the rules of the Grand Lodge;

3) no profit is made by the use of the Property;

4) no salaries are paid to any of the members except a stipend to the janitor;

5) the building and parking lot are made available to various organizations and town residents

(all income generated by dues is used to maintain the building); and

6) the control of all the funds and properties, if sold, belongs to the Grand Lodge for such use as it may direct.

The Town argued its denial of the charitable exemption was proper because:

1) the Taxpayer is a fraternal organization whose articles of agreement define the purpose for which it has been formed to “own and maintain the Masonic Temple which the various Masonic Bodies occupy”

2) the Taxpayer responded to question #6 of BTLA A-9 that the general purpose for which the Taxpayer has been organized and incorporated is for “the operation and Maintenance of the Masonic Temple building & Property For Charitable Purposes” . . . which is inconsistent with the documents on file at the Secretary of State’s office; and

3) the corporation was not organized for charitable purposes and cannot be compelled to perform charitable acts;

Board’s Rulings

RSA 72:23-m establishes the burden of demonstrating the applicability of any exemption rests with the Taxpayer. Further the standard of application is the “tax exemption statute is construed not with rigorous strictness but to give full effect to legislative intent of the statute . . .” Wolfeboro Camp School v. Town of Wolfeboro, 138 N.H. 496, 499 (1994).

Based on the evidence, the board finds the Taxpayer failed to prove the Property was entitled to a charitable exemption. We also find the Town supported the denial of the charitable exemption.

In 1998, the Taxpayer applied for a charitable exemption pursuant to RSA 72:23 V which exempts: “[t]he buildings, lands and personal property of charitable organizations and societies organized, incorporated, or legally doing business in this state, owned, used and occupied by them directly for the purposes for which they are established, provided that none of the income or profits thereof is used for any other purpose than the purpose for which they are established.”

RSA 72:23 V must be read in concert with RSA 72:23-1 as it contains the statutory definition of charitable relative to chapter 72.

72:23-1 Definition of “Charitable”. The term “charitable” as used to describe a corporation, society or other organization within the scope of this chapter, including RSA 72:23 and 72:23-k, shall mean a corporation, society or organization established and administered for the purpose of performing, and obligated, by its charter or otherwise, to perform some service of public good or welfare advancing the spiritual, physical, intellectual, social or economic well-being of the general public or a substantial and indefinite segment of the general public that includes residents of the state of New Hampshire, with no pecuniary profit or benefit to its officers or members, or any restrictions which confine its benefits or services to such officers or members, or those of any related organization. The fact that an organization’s activities are not conducted for profit shall not in itself be sufficient to render the organization “charitable” for purposes of this chapter, nor shall the organization’s treatment under the United States Internal Revenue Code of 1986, as amended. This section is not intended to abrogate the meaning of “charitable” under the common law of New Hampshire.

In addition to the provisions of RSA 72:23-1, several cases address the necessity of an enforceable charitable obligation to receive an exemption. In Society of Cincinnati v. Exeter, 92 N.H. 348, 352-353 (1943), the court found the option to perform patriotic services was solely at

the uncontrolled discretion of the society and was not enforceable by any public entity. In Nature Conservancy v. Nelson, 107 N.H. 316, 317 (1966), the court stated, “The public service which plaintiff is to render must be obligatory so as to enable the Attorney General or other public officer to enforce this right against it if the service is not performed. It follows that if the public benefit is limited to that which the plaintiff sees fit to provide at its option or in its uncontrolled discretion, the requirements of RSA 72:23 V are not satisfied.” Further, in Appeal of the City of Franklin, 137 N.H. 622, 625 (1993), the court stated . . . “in order to qualify as a charitable institution, an obligation must exist to perform the organization’s stated purpose to the public, rather than simply to members of the organization.”

In short, both the statute and case law require that for an organization to be granted a charitable exemption it must be organized and obligated in some fashion to perform certain “service of public good or welfare . . .”. We find the Taxpayer is neither so organized or obligated.

The Taxpayer was unable to establish in any of the documents submitted relative to either the Milford Masonic Temple Lodge or the Grand Lodge that a charitable trust has been created in the favor of the public that would establish an enforceable obligation to perform some charitable service. The Taxpayer’s Articles of Agreement simply define the corporate purpose of the Taxpayer as “. . . to own and maintain the Masonic Temple which the various Masonic Bodies occupy in Milford, New Hampshire . . .” This narrow purpose is not broadened to create an enforceable charitable obligation based on any of the documents submitted by the Taxpayer including the “Declaration of Masonic Principles” and/or “The Constitution of the Most Worshipful Grand Lodge of the Ancient and Honorable Fraternity of Free and Accepted

Masons of the State of New Hampshire.”

The board finds the Taxpayer’s granting use of its Property by non-masonic related entities is not required by any of its organizational documents. While certainly community minded, the Taxpayer’s allowance of the use of its Property is voluntary.

A review of the Taxpayer’s documents indicates that the focus of the Taxpayer is more fraternal as opposed to charitable. The majority of the use of the buildings is for the members or affiliated organizations for their meetings. While the Taxpayer’s principles are laudable and some of their activities do provide charity to the general public, the primary focus is maintaining the facility for the fraternal functions of the masonic organization. As a result, the board finds the Taxpayer does not qualify based on either the statutory requirements or case law.

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 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

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Michele E. LeBrun, Member

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to John J. Macredie, President of the Milford Masonic Temple Association, Taxpayer; William R. Drescher, Esq., Counsel for the Town of Milford; and Chairman, Board of Selectmen of Milford.

Date: September 22, 2000

Lynn M. Wheeler, Clerk