

NH Sno-Shakers Snowmobile Club

v.

Town of Canterbury

Docket No.: 17704-99EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the "Town's" October 19, 1999 denial of the Taxpayer's request for charitable exemption as provided under RSA 72:23 V on a 5.44-acre lot with a clubhouse (the "Property"). For the reasons stated below, the appeal is denied.

The Taxpayer has the burden of showing 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) the club runs a trail system that is open to the public;
- (2) the clubhouse is used by the club and is also used by other groups and individuals sometimes for a rental fee;and
- (3) the Property is owned by a nonprofit organization and will be transferred to another nonprofit organization if the club folds.

The Town argued its denial of the charitable exemption was proper

because:

- (1) the club is just that -- a club for the members, and thus, the club is not a charitable organization;
- (2) the club is not under any enforceable obligation to provide services to the general public;
- (3) the trail maintenance also benefits club members;
- (4) any public benefit, both on the trails and in the clubhouse, is incidental to the members' benefits;
- (5) the use of the clubhouse is limited to members; and
- (6) the use does not meet the "charitable" definition in RSA 72:23-1.

Board's Rulings

Based on the evidence, the board finds the Taxpayer does not qualify as a charitable organization pursuant to RSA 72:23 I and 23-1, and thus, the request for charitable exemption is denied.

Applicable Statutes

RSA 72:6 states: "All real estate, whether improved or unimproved, shall be taxed except as otherwise provided."

The Taxpayer argued it was qualified for an exemption under RSA 72:23 V which reads:
The following real estate and personal property shall, unless otherwise provided by statute, be exempt from taxation:

- V. The real estate and personal property owned by charitable organizations and societies organized or incorporated in this state or having a principle place of business in this state, and occupied and used by them 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 72:23-1 (1998 Supp.) must also be considered as the definition of charitable.

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.

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In short, for a property to be deemed charitable, the organization must be organized for a charitable purpose and under an obligation to provide the general public, or some indefinite segment of it, a service of public good or benefit without any special monetary or other benefits to its members (Appeal of City of Franklin, 137 N.H. 622 (1993) and Society of Cincinnati v. Exeter, 92 N.H. 348 (1943)).

Board's Findings

The Property consists of a 5.44-acre parcel with a clubhouse used by its 250 plus members to meet, socialize and organize the activities of maintaining the Property and miles of snowmobile trails. The board is familiar with the Property having viewed it in an earlier tax appeal (Docket No. 16931-96PT). Besides incurring expenses maintaining the Property and the snowmobile trails, the Taxpayer has made contributions to charitable organizations from time to

time.

Despite the Taxpayer's obvious civic mindedness and community involvement, the board finds the stated purpose in its articles of agreement "to promote and foster snowmobiling as a sport and recreation for its members" falls short of a qualifying charitable purpose. Its purpose primarily benefits its members as opposed to providing "some service of public good or welfare." While indeed the Taxpayer's periodic contributions to charitable organizations is laudable, it is under no enforceable obligation by its articles of agreement or bylaws to make such contributions. "[T]he purpose of the 'obligation' requirement is to prevent purely private organizations, albeit with charitable purposes, from benefiting by a tax exemption without, in turn, providing some service of public good." Appeal of the City of Franklin, 137 N.H. 622, 626 (1993).

Having found the Taxpayer is not charitable under RSA 72:23-1, the board need not make specific findings relative to the other qualifications for a charitable exemption such as use and occupancy of the Property and disposition of the funds, etc.

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Findings of Fact and Rulings of Law

The Town filed a request for findings of fact and rulings of law. In these responses, "neither granted nor denied" generally means one of the following:

- a. the request contained multiple requests for which a consistent response could not be given;
- b. the request contained words, especially adjectives or

adverbs, that made the request so broad or specific that the request could not be granted or denied;

c. the request contained matters not in evidence or not sufficiently supported to grant or deny;

d. the request was irrelevant; or

e. the request is specifically addressed in the decision.

1. Granted.

2. Granted.

3. Granted.

4. Granted.

5. Granted.

6. Granted.

7. Granted.

8. Granted.

9. Granted.

10. Granted.

11. Granted. The board inserts the phrase "for charitable purposes" after the phrase "the use of the taxpayer's property ... *for charitable purposes* ... is slight and insignificant ..."

12. Granted.

13. Granted.

14. Granted.

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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

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Lou Cote, Agent for NH Sno-Shakers Snowmobile Club, Taxpayer; Barton L. Mayer, Esq., Counsel for the Town of Canterbury; and Chairman, Selectmen of Canterbury.

Date: February 25, 1999

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Valerie B. Lanigan, Clerk