

Lakes Region Conservation Trust

v.

Town of Tamworth

Docket No.: 18229-99EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the denial of its application for a charitable exemption under RSA 72:23, V. The "Town" denied the exemption in 1999 on over 1,800 acres of unimproved land owned and referred to by the Taxpayer as the "Mill Brook" (Map 412, Parcels 14, 15 and 18, containing approximately 100 acres) and the "Ossipee Mountain Preserve" (Map 422, Parcel 12, Map 423, Parcel 2, and Map 424, Parcels 1 and 3, 4, 5, 6, 7 and 8, containing approximately 1,707 acres) parcels [collectively, the "Property"]. For the reasons stated below, the appeal is granted.

The Taxpayer has the burden of showing it was entitled to the statutory charitable exemption for the year under appeal. See RSA 72:23-m; and TAX 204.06.¹ The board finds the Taxpayer carried this burden.

¹See also New Canaan Academy v. Town of Canaan, 122 N.H. 134, 138 (1982): "At the outset, the burden of proving an institution's entitlement to a tax exemption rests on the applicant. (Citations omitted)"

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

- (1) it is a charitable organization and acquired the Mill Brook and Ossipee Mountain Preserve parcels in 1981 and 1998, respectively;
- (2) it owns the Property directly for the purpose for which it was established: namely, “the protection and conservation of the natural resources of the Lakes Region,” to “maintain a balance between the natural environment and its public and private use for the enrichment and enjoyment of present and future generations” and to “engage in and otherwise promote the study of, to educate the public regarding, and to advocate the conservation of, the natural resources of the Lakes Region,” all as explicitly stated in the Taxpayer’s “charter” (“Articles of Agreement,” Taxpayer Exhibit 5);
- (3) it was consistently granted property tax exemptions by the Town for 18 years on the Mill Brook parcels, but was denied exemptions on all of the Property for the first time in 1999 after it acquired the larger Ossipee Mountain Preserve parcels;
- (4) it owns land held for the same charitable purpose in 13 other “Lakes Region” towns and receives property tax exemptions in each jurisdiction; and
- (5) the Town’s restrictive interpretation and application of RSA 72:23, V is incorrect and there is no basis for concluding the Taxpayer has not met each of the requirements of this charitable tax exemption statute.

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

- (1) the prefatory language in RSA 72:23 (“unless otherwise provided by statute”) must be interpreted to mean that charitable organizations acquiring land to protect the environment cannot qualify for an exemption because there are other statutes applicable to the protection of

open space that provide for reduced levels of taxation of such land: namely, RSA 79-A (Current Use Taxation) and RSA 79-B (Conservation Restriction Assessment); and
(2) the Taxpayer cannot meet the ‘occupancy’ requirement of RSA 72:23,V with respect to the Property.

Board's Rulings

At the hearing on April 26, 2001, the Town did not dispute the Taxpayer is a legitimate charitable organization and acquired the Property outright for the purposes stated in its “charter.” See Taxpayer Exhibit 5 (the “Articles of Agreement”); cf. RSA 72:23-1 (Definition of “Charitable”). What is disputed by the Town is the reach and application of the exemption statute, RSA 72:23, V, to a charitable organization devoted to holding property for preservation and conservation purposes. The board disagrees with the Town’s reading and application of this statute and finds the Taxpayer is entitled to an exemption.

Statutory Interpretation

Analysis of this dispute must begin with the language of the statute itself:

“72:23 Real Estate and Property Tax Exemption. The following real estate and personal property shall, unless otherwise provided by statute, be exempt from taxation:

...

V. The 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.”

The Town reads “unless otherwise provided by statute” to mean tax exemptions are simply unavailable if an alternative provision for reduced taxation can be utilized by a property

owner. This reading is overly restrictive and is incorrect. The plain meaning of this language is to make note of other blanket tax exemptions granted to specific organizations, such as designated veterans organizations (RSA 72:23-a) and the American National Red Cross (RSA 72:23-b), among others (see also RSA 72:23-d, e, f, g, h, i, j, k, and m). These organizations are exempted by specific legislation and therefore need not qualify under the general standards prescribed in RSA 72-23. The quoted language cannot fairly be read to preclude other charitable organizations from qualifying under the broad tax exemption statute and the board is unwilling to impose any such restriction. As the supreme court has noted, in interpreting RSA 72:23, V, “The legislative purpose to encourage charitable institutions is not to be thwarted by a strained, over-technical and unnecessary construction.” Appeal of City of Franklin, 137 N.H. 622, 626 (1993), quoting from Young Women’s Christian Ass’n v. Portsmouth, 89 N.H. 40, 42 (1937).

The Town hinges its incorrect interpretation on the existence of RSA 79-A and RSA 79-B. These statutes, however, do not provide for any tax exemptions at all, but only for reduced tax assessments for private owners who choose to restrict usage of their land (either currently or permanently) for conservation and preservation of “open space.” To qualify for a reduced assessment under RSA 79-A, the taxpayer must apply for a specific “current use” classification (farm land, forest land or wetlands, for example), based on regulations promulgated by the state’s current use board. See RSA 79-A:5, I and II. To qualify for a reduced assessment under RSA 79-B, the taxpayer must encumber his land “by deed granted in perpetuity” (usually in the form of an easement) to a governmental body or to “a charitable, educational or other nonprofit corporation established for the purpose of natural resource conservation” and then apply for a reduced assessment by the municipality (“at values . . . in no case greater than those determined

. . . for open space land by the [current use] board; see RSA 79-B:4).

These statutes are intended to protect open space by providing tax relief to taxpayers owning and maintaining their land in uses consistent with the promotion of open space, who would otherwise be taxed on the “full and true value” of their land, see RSA 75:1, and might therefore succumb to economic pressures to develop their land more intensively in order to meet higher tax burdens.² Nothing in these or any other statutory provisions precludes direct ownership of land for conservation and preservation by a charitable organization or affects its entitlement to a tax exemption under RSA 72:23, V as an alternative means of protecting open space. Certainly, if the Legislature intended such an outcome, it could have modified this provision to exclude charitable organizations having such purposes, but it did not do so.

Proper statutory interpretation requires consideration of the interrelationship of what property is liable to taxation (RSA Chapter 72) and how taxable property is appraised (RSA Chapter 75). See Barksdale v. Town of Epsom, 136 N.H. 511, 515-16 (1992); (“all statutes under the same subject matter are to be considered in interpreting any one of them.”); and Appeal of Town of Newmarket, 140 N.H. 279, 283(1995) (in interpreting tax statutes, “we ‘look

² See, e.g., Dana Patterson, Inc. v. Town of Merrimack, 130 N.H. 353, 355 (1988) (“The current use taxation statute was enacted to promote the preservation of open land in the State by allowing qualifying land to be taxed at a reduced rate . . . The statute operates as a disincentive to intensify the productive use of land.”)

to the intent of the legislation, which is determined by examining the construction of the statute as a whole, and not simply by examining isolated words and phrases found therein”), both quoting from earlier cases. RSA 72:6 states “[a]ll real estate, whether improved or unimproved, shall be taxed except as otherwise provided.” (Emphasis added.) The balance of RSA Chapter 72 provides numerous partial or full institutional or personal exemptions reducing the property liable to taxation, including those already noted above. RSA 75:1 provides that “all taxable property” shall be valued at either its “full and true value” or at “current use” values in accordance with RSA 79-A:5 (open space property) or RSA 75:11 (residences in industrial or commercial zones). Consequently, the assessment of open space property is not an exemption but rather an alternative basis to value taxable property. The Town’s argument of current use assessment being what was contemplated by the RSA 72:23 phrase “unless otherwise provided by statute,” is misplaced given the general statutory scheme of first defining what property is subject to taxation and then providing two bases for valuing such property. See also Pt. 2, Art. 5-B of the New Hampshire Constitution.

While the Ossipee Mountain Preserve parcels may have been placed in “current use” by their prior owners, there is no evidence the Taxpayer, who acquired the parcels in 1999, would have done so or could grant conservation easements to others in order to gain reduced assessments. See Taxpayer Exhibit 5 and RSA 79-B:2, X, 79-B:4 and 79-A:5, II. Thus, the Town’s reliance on the “current use” and “conservation restriction” statutes is misplaced.

‘Occupancy’ Issue

Returning to the language of RSA 72:23, V, the Town's attempt to apply the 'occupancy' requirement to deny the exemption is also without merit. The evidence demonstrated the Property, in the language of the statute, is "owned, used and occupied by [the Taxpayer] directly for the purposes for which [it is] established." This phrasing requires ownership, use and occupancy to relate directly to the organization's charitable purpose, which it does in this case. Here, the purpose is conservation and preservation of undeveloped wilderness areas. As stated in the "Interim Report" prepared by the Taxpayer's environmental consultant (Taxpayer Exhibit 11, page 1), the Ossipee Mountain Preserve has unique geology and topography ("the finest example in all of North America" of a "ring dike complex") and is largely unspoiled by roads or other human intrusions because of its remoteness and the steep terrain. The Taxpayer's president testified that it intends to keep the Property in this pristine state for present and future generations, allowing public uses such as hiking, fishing, hunting and "berrying." The Taxpayer is on record as wanting to keep the Property "closed to development, logging and mechanized transportation." (Taxpayer Exhibit 9). The Taxpayer's active efforts to create and maintain trails, inform the public and invite use of the Property (through quarterly newsletters having a circulation of 7,000 copies, including 1,500 to its own members, favorable newspaper coverage and meetings and presentations to local groups) and support of ongoing ecological inventory and research attest to the fact the Property is being used and occupied directly for its charitable purpose.

The board notes that, by its nature, occupancy and use of a wilderness area differs substantially from occupancy and use of other types of property, such as an apartment building,

for example. Consequently, the lack of more active or extensive “development” plans for the Property does not mean the occupancy and use requirements (relating to the organization’s charitable purpose) are not met.³

The board finds the Taxpayer’s evidence of occupancy and use much more substantial and beneficial to the public and the organization’s purpose than the case of Nature Conservancy of New Hampshire v. Nelson, 107 N.H. 316 (1966). That case involved a purchase of a 400-acre peninsula tract (known as “The Island” in Lake Nubanusit) by a charity largely funded by financial contributions from adjoining private land owners around the lake (who had earlier opposed public acquisition of the land for a state park). A large proportion (two-thirds) of these private land owners were members of the charitable organization. There was also evidence that these land owners increased their own usage of “The Island” for recreational purposes after the purchase, relatively little access was available to the public and only negligible efforts were made by the charity to manage the site. Id. at 319-20. On these special and distinct facts, the supreme court denied the exemption, stating “occupation and use cannot be slight, negligible or insignificant (Franciscan Fathers v. Pittsfield, 97 N.H. 396, 401 [1952] but must, on the contrary, be in performance of these public purposes. Appalachian Mountain Club v. Meredith [103 N.H. 5,] 14 (1960).” Id. at 320.

³Cf. The Housing Partnership v. Town of Rollinsford, 141 N.H. 239, 242-44 (1996) (charitable organization failed to demonstrate multi-family dwellings rented at close to market rates were being occupied and used directly for its charitable purposes).

In marked contrast to the facts in Nature Conservancy and these other cited cases, the board has no difficulty in finding the Taxpayer's occupancy and use of the Property for its charitable purpose is anything but "slight, negligible or insignificant." Indeed, it is full, important and substantial, once the charitable purpose of the Taxpayer is taken into account and properly understood. There is no evidence the Property was acquired to benefit any particular group of individuals, adjacent owners or even the many members of the organization, rather than the public as a whole.

Consequently, the appeal is granted and the Town is ordered to grant an exemption for 1999. If property taxes have been paid, they shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. In subsequent years, if the Taxpayer complies with its statutory obligation to apply for the exemption each year and the qualifying facts are unchanged, the Taxpayer should remain eligible for the charitable exemption.

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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to James E. Morris, Esq., Counsel for Lakes Region Conservation Trust, Taxpayer; and Chairman, Board of Selectmen of Tamworth.

Date: May 24, 2001

Lisa M. Moquin, Temporary Clerk