

Woman's Club of Concord

v.

City of Concord

Docket No.: 18264-99EX

DECISION

The "Taxpayer" appeals the "City's" 1999 denial of the Taxpayer's request for charitable exemption on a 11,180 square-foot lot with a 2-story building assessed, for county and state tax purposes, at \$302,900 (the "Property"). The board's authority is based on RSA 76:16-a. Cf. RSA 72:34-a. For the reasons stated below, the appeal is denied.

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. We find the Taxpayer failed to meet this burden.

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

(1) the state-wide property tax imposes a "tremendous hardship" on the Woman's Club of Concord (the "Club"), one of the oldest women's clubs in the country and the Club continues to provide charitable services to the residents of the City and the state;

(2) the Club's Chamberlin House, a building on the National Historical Register, requires a

significant amount of expensive maintenance due to its age and condition; and

(3) the Taxpayer should be exempt from state as well as local taxes.

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

(1) the exclusive basis for the Club's exemption is special legislation enacted in 1919 as Chapter 273, and this special statute gives the Taxpayer an exemption "only to local taxation";

(2) the City did not assess any local taxes on the Taxpayer, but only its share of county and state taxes;

(3) county taxes have been assessed and paid by the Taxpayer for a number of years prior to and including 1999;

(4) while the state-wide education property tax was a new tax in 1999, there is evidence that state taxes were in existence in earlier times, including 1919 when the special legislation pertaining exclusively to "local taxation" was enacted; and

(5) the Taxpayer has failed to meet its burden of proof.

Board's Rulings

Based on the evidence, the board finds the Taxpayer is not entitled to an exemption for the state-wide education property tax portion of the tax bill.

At the hearing, members of the Club testified the imposition of the state-wide education property tax on the Club was a tremendous burden to its membership and would limit or reduce the amount of charitable works the Club would be able to perform. The Club owns the Chamberlin House, a large Victorian home, which was donated to the Club in the early part of the twentieth century. The Club members testified that given its age and condition, the Chamberlin House needs a significant amount of ongoing maintenance and the imposition of

additional taxation would reduce the amount of money available for the Club's charitable activities. The Club members expressed their concern that a reduction in the amount of income available for programs such as conservation, school scholarships and support for the arts would be limited if the state-wide education property tax was imposed.

The Club members testified that, in their opinion, the original statute (Chapter 273 of the Acts of 1919), although mentioning only "local" taxation, was intended to exempt them from taxation of any sort. The board finds this reading of the statute is not persuasive and that the specific wording of Chapter 273 of the Acts of 1919 is indicative of the intent of the legislature to exempt the Club from local taxation only. In construing a statute, the board must "first examine the language found . . .' and where possible, we ascribe the plain and ordinary meanings to words used.' (Citation omitted) . . . Courts 'can neither ignore the plain language of the legislation nor add words which the lawmakers did not see fit to include.' (Citation omitted)." Appeal of Astro Spectacular, Inc., 138 N.H. 298, 300 (1994). The board agrees with the City that this specific language does not entitle the Club an exemption of all taxes, but only to those imposed at the local level.

Finally, Municipality Exhibit C reflects a current amendment to the language of the original statutory exemption granted to the Club. This amendment was recently enacted and signed into law by the Governor as part of Chapter 199 of the 2001 session. Significantly, the amendment deletes the wording, noted above, that the Club exemption applies "only to local taxation." The legislation, however, did not make this amendment retroactive but, to the contrary, specified it "shall take effect upon its passage." Since the date of passage is July 5, 2001, the amendment cannot be used to support an exemption from state and county taxes

assessed in 1999 by the City.

Therefore, for the reasons stated above, the board must deny the Taxpayer's exemption appeal for the tax year in question.

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. Request does not relate to the issues on appeal for tax year 1999.
 2. Request does not relate to the issues on appeal for tax year 1999.
 3. Denied.
 4. Granted.
 5. Granted.
 6. Neither granted nor denied.
 7. Granted.

Rehearing

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: Eileen LaPierre, President of the Woman's Club of Concord, Taxpayer; and Chairman, Board of Assessors of Concord.

Date: July 18, 2001

Lisa M. Moquin, Clerk