

Camp Merrimac, LLC

v.

Town of Hopkinton

Docket No.: 18289-99EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” denial of the Taxpayer’s application for a RSA 72:23, III religious exemption for the tax year 1999 on three parcels: Map 202, Lot 8, a 145-acre lot improved with various camp facilities; Map 202, Lot 23, a 7.1-acre lot improved with a ballfield; and Map 203, Lot 1, a vacant 6.4-acre parcel (collectively, the “Property”). For the reasons stated below, a partial religious exemption is granted.

The Taxpayer has the burden of demonstrating the Property meets the requirements of the statute under which the exemption is claimed for the year under appeal. RSA 72:23-m; TAX 204.06. The Taxpayer carried this burden.

The Taxpayer argued it was entitled to the exemption because:

- (1) it is organized as a limited liability company (“LLC”) in the Commonwealth of Massachusetts, but also registered and authorized to operate in New Hampshire;
- (2) the LLC form of organization was chosen primarily because of liability considerations;
- (3) the LLC acquired the Property in August 1998 and filed an application with the Town for a

religious exemption for the tax year 1999, which was denied;

(4) the LLC holds title to the Property and consists of two members: the Greek Orthodox Diocese of Boston (the “Diocese”) (99% ownership interest) and the religious leader of the church, Metropolitan Methodios (1% ownership interest);

(5) the LLC Agreement (Taxpayer Exhibit 3) states the purpose of the Taxpayer is “to engage in the operation of a facility for the physical and spiritual development of the parishioners [of the] Greek Orthodox Diocese of Boston” and the Taxpayer fulfills this purpose by owning, occupying and using the Property directly for religious purposes, as prescribed in RSA 72:23, III; and

(6) all of the activities on the Property are undertaken by the Taxpayer with and for religious purposes.

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

(1) the Taxpayer, as an LLC, is legally distinct from its members and is not “a regularly recognized and constituted denomination, creed or sect” as required by the exemption statute, RSA 72:23, III;

(2) even if one of the LLC’s two members, the Diocese, satisfies this test, the other, an individual, does not;

(3) even if the Taxpayer could meet these requirements, at most only the chapel, and not the remainder of the Property, is used “directly for religious training or for other religious purposes,” and therefore, no other part of the Property is entitled to the statutory tax exemption; and

(4) the Taxpayer failed to sustain its burden of proof.

Subsequent to the hearing, the board took a view of the Property and was provided access to the camp improvements by the Taxpayer's representatives.

Board's Rulings

This appeal raises two issues relative to the Taxpayer's eligibility for a religious exemption: 1) whether the nature of the ownership of the Property as a LLC disqualifies it as an entity entitled to religious exemption pursuant to RSA 72:23, III; and 2) whether any or all of the Property is "used and occupied directly for religious training or for other religious purposes . . ." qualifying it for a religious exemption.

Nature of Ownership

RSA 72:23, III requires that qualifying properties be "owned . . . by any regularly recognized and constituted denomination, creed or sect, organized, incorporated or legally doing business in this state . . . for the purposes for which they are established." We find the Taxpayer meets this qualification.

The LLC is comprised of two entities, 99% ownership interest by the Diocese and 1% ownership interest by the Diocese bishop, Metropolitan Methodios. The mere fact the ownership of the Property is structured as an LLC to limit Diocese liability does not disqualify the Property for a religious exemption. The ownership structure is a difference without a distinction. Because the Diocese and its religious leader jointly comprise the LLC, the Property is, in essence, "owned" by the Greek Orthodox Church (the "Church"), a "regularly recognized and constituted denomination . . ." in the language of the statute. The decision-making individuals and procedures of the LLC relative to the Property are the same as if it were owned by the

Diocese. The wording of RSA 72:23, III relative to the nature of ownership is broad and allows the ownership of eligible property to be in various forms (“ . . . organized, incorporated or legally doing business in this state . . .”).

We find the Town’s position on this issue, noted above, is too narrow and not in keeping with the overall intent of the statute to provide appropriate religious exemptions. “A tax exemption statute is construed not with rigorous strictness but ‘to give full effect to the legislative intent of the statute,’ . . .” Wolfeboro Camp School v. Town of Wolfeboro, 138 N.H. 496, 499 (1994).

Further, the Taxpayer’s purpose stated in its limited liability company agreement (Taxpayer Exhibit 3, Section 1.4) confirms the LLC’s use of the Property is solely religious. “The purposes of the Company is to engage in the operation of the facility for the physical and spiritual development of the parishioners of the Greek Orthodox Archdiocese of Boston.” The board notes further safeguards in the agreement, such as restrictions on membership transfer rights (Id., Article 7), to insure the Diocese remains in control of the LLC. Consequently, we conclude the reasonable application of the wording of the statute allows for the LLC structure of ownership to qualify.

Qualifying Religious Uses

The board notes that its findings that the Taxpayer is entitled to a partial religious exemption may initially raise questions in light of several decisions by the supreme court where a religious exemption was denied for certain property. See East Coast Conference of the Evangelical Convent Church of America, Inc. v. Town of Swanzey, __ N.H. __, 786 A.2d 88

(2001); discussing Alton Bay Camp Meeting Association v. Town of Alton, 109 N.H. 44 (1968).
Cf. Appeal of Emissaries of Divine Light, 140 N.H. 552 (1995)[affirming board’s determination of partial exemption to religious organization].

We believe, however, the facts presented in this case relative to the Taxpayer’s use of the improvements are quite distinguishable, lending themselves to the approach followed by the board in the Emissaries case, and that each exemption case must stand on its own facts. Cf. New Canaan Academy, Inc. v. Town of Canaan, 122 N.H. 134, 137 (1982) (“bright-line test is impossible” in exemption case involving educational institution: “each case will necessarily depend on its own peculiar facts”); accord, Wolfeboro Camp School, Inc. v. Town of Wolfeboro, 138 N.H. 496, 499 (1994).

As discussed further below, we find the religious training that takes place at Camp Merrimac to be so extensive and pervasive in all aspects of the camp and retreat activities as to justify granting an exemption to all the improvements and the associated land. In doing so, we acknowledge that close questions of fact may be involved, especially relative to the “support facilities” on the Property (i.e., the dining hall, dormitories and recreational facilities; Cf. East Coast Conference, supra, 786 A.2d at 92.). However, we are convinced by the entire body of evidence that all the improvements are utilized in an integrated manner to provide a secluded and intense training facility for the practice of the Greek Orthodox faith and, thus, are eligible for exemption.

The following findings support this conclusion. The Property was purchased by the Taxpayer in August 1998 after several years of renting camp facilities throughout New England

for its camping and retreat activities. The youth camp program, established in 1990, has grown to include 400 to 500 campers over a five-week period at the Property. Additionally, many parishes within the Diocese use the Property for retreat purposes with their respective religious leaders organizing the sessions. The Property is also used several weekends during the winter for reunions of the summer camp programs and has been used by the Orthodox Church of America, the Russian Orthodox Church affiliated with the Church, for a one-week camp program. The ages of the students attending the camp sessions range from 8 to 18 with the vast majority of the students drawn from Diocese parishes. The attendees are from Church families or families where at least one of the parents is of the Greek Orthodox faith. The purpose of the camp sessions is to teach, in a secluded and intense setting, the Greek Orthodox faith, reinforcing the attendees' training received at the local parishes.

As seen on the view and testified to, the Property contains improvements typical of a summer camp including a chapel, bunkhouses, dormitories, dining hall facilities, staff and director's cabins and various recreational facilities including a waterfront area, a ballfield, tennis and basketball courts, etc. We find the Taxpayer's use of all the improvements are "an integral and essential part of the activities conducted by the [Taxpayer]." Alton Bay, *supra*, 109 N.H. at 52. These improvements include what the Court has denoted as "support facilities" which were affirmed in Alton Bay and East Coast Conference as not being used and occupied directly for religious purposes. Here, however, we find extensive evidence that there is genuine, deliberate and planned use of all facilities by the Taxpayer for religious training.

The following is a non-exhaustive list of the religious uses of the Property that causes the board to reach this conclusion.

- The weekly camp programs are structured around the religious theme of the Church and are so noted in the notices of summer camp provided to the parishioners of the Diocese (see Taxpayer's Exhibit 1, pages 8 through 13).
- The campers' instructions, sent out when individuals are applying, emphasize the religious focus of the camp and detail the dress code and personal items to be brought or left at home to ensure and preserve the religious focus at the camp (Taxpayer Exhibit 1, pages 16 and 17).
- The counselors instill the Church's six pillars of faith (love, honesty, trust, openness, respect and forgiveness) in all aspects of the camp activities. Father Michael Sentros, Camp Director, testified that counselors use situations that occur during normal daily activities at all of the facilities as opportunities to teach the six pillars of faith. See also, Taxpayer Exhibit 1, page 23. ("Each staff member shall strive to internalize these pillars, live by them and use them as a teaching tool for the campers.")
- The daily schedule of activities is interspersed with numerous moments of religious worship, reflection and religious training. The schedule has a morning meditation period, grace at meals, a small group religious teaching session, evening prayer, interactive religious seminars, and prayers before bed. (Taxpayer Exhibit 1, pages 27 - 29).
- The Diocese parish retreats contain similar daily religious activities as the summer camp program.

- The primary chapel is a large non-winterized building used exclusively for religious services, and during the winter sessions a portion of the dining hall has been separately partitioned and modified to be utilized for religious services.
- Each building is blessed by Church clergy at the beginning of each week of camp, and all buildings, including bunkhouses and dormitories, have areas dedicated to display of religious icons, prayer cloths and altars.
- Father Theodore Barbas testified that everything at the Property is centered on the Church's faith, be it in the chapel or on the ballfield, and that one week's attendance at Camp Merrimac instills more of the Church's faith and principles in the children than the year-round instruction received in the local parishes.
- Ninety percent of the counselors previously attended the Diocese youth program which helps ensure the camp programs are faith centered.
- The annual programs and capital purchases and improvements are heavily funded by donations from members of the Church.

Collectively, these findings support the conclusion that the level of religious training and indoctrination that occurs at the Property is, by far, more extensive, pervasive and focused than that which may have occurred in the previously-cited cases. The intense and secluded nature of the religious training that takes place throughout the camp makes the "support facilities" exempt just as similar facilities in the cloistered setting of a religious society are exempt. Franciscan Fathers v. Town of Pittsfield, 97 N.H. 396, 400 (1952) ("retreats conducted by the plaintiff are primarily devoted to religious instruction and prayer and . . . recreation and diversion are

subordinate to their primary purpose”). Similarly, the board finds the secular activities are so organized and focused for the benefit of religious instruction, prayer and training that they are subordinate and in furtherance of them.

On the other hand, the board finds the area outside the land associated with the improvements and assessed as curtilage (CUB 301.04) is largely undeveloped woodland and is, at present, minimally used by the Taxpayer for religious purposes. The Taxpayer testified that it was in the process of developing walking trails in those unimproved areas to be available for the attendees for walking and quiet meditation. The board finds that such use, however, is still slight and insignificant and “not the type of activity that is related religious activities which the legislature thought to exempt from taxation.” *Id.* at 401.

Findings of Fact and Rulings of Law

The Town submitted requests for findings of fact and rulings of law which the board responds to as follows. 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. Neither granted nor denied.
3. Denied.
4. Granted.
5. Denied.
6. Granted.
7. Denied.
8. Denied.

Refund

If the taxes have been paid, the amount paid on the non-current-use assessment shall be refunded with interest at 6% per annum from the date paid to the refund date. RSA 76:17-a.

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

Concurred, unavailable for signature
Albert F. Shamash, Esq., Member

CERTIFICATION

Is hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Simon C. Leeming, Esq., counsel for the Taxpayer; Russell F. Hilliard, Esq., counsel for the Town; and Chairman, Selectmen of Hopkinton.

Date: April 5, 2002

Anne M. Bourque, Deputy Clerk

Camp Merrimac, LLC

v.

Town of Hopkinton

Docket No.: 18289-99EX

ORDER DENYING MOTION FOR REHEARING

The board has reviewed the “Motion for Rehearing” (“Motion”) filed on April 30, 2002 by the “Town” with respect to the board’s Decision dated April 5, 2002. Consideration of the Motion is governed by RSA 541:3 and 541:4, which require the Town to establish “good reason for the rehearing.” See also TAX 201.37 (b) and (d).

The Motion frames two issues, each of which was specifically discussed and resolved in the Decision. The board finds no “good reason” to reconsider or modify their resolution through a rehearing.

With respect to the first issue, the board notes RSA 72:23, III does not preclude alternate forms of organization, such as a limited liability company. A limited liability company must, of necessity, have at least two members, see RSA 304-C:1, V, and there is no dispute that a foreign limited liability company can be registered to operate within the State. See RSA 304-C:62, et

seq.

As to the second issue, the board explicitly considered East Coast Conference v. Town of Swanzey, 146 N.H. 658 (2001), cited by the Town in the Motion, as well as Alton Bay Camp Meeting Assn. v. Alton, 109 N.H. 44 (1968). To distinguish these cases, the board made extensive factual findings to establish the camp facilities in question were not simply “reserved for people attending the religious services” for “a purely secular purpose.” Cf. Swanzey, supra at 663-664 and Alton Bay, supra at 48-52. Instead, the facilities in this case were reasonably related to, directly used and specially adapted for, the religious purposes of the Greek Orthodox Church.

Consequently, the Motion is denied. Any appeal must be by petition to the supreme court within thirty days. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has this date been mailed, postage prepaid, to: Simon C. Leeming, Esq., counsel for the Taxpayer; Russell F. Hilliard, Esq., counsel for the Town; and Chairman, Selectmen of Hopkinton.

Date: May 9, 2002

Anne M. Bourque, Deputy Clerk