

**Voices United in Truth Inc.**

**v.**

**City of Portsmouth**

**Docket No.: 18395-00EX**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the denial by the "City" of the Taxpayer's request for a charitable exemption under RSA 72:23,V for the 2000 tax year on a 0.413-acre lot with a single-family dwelling assessed at \$107,200 (the "Property"). For the reasons stated below, the appeal is denied.

The Taxpayer has the burden of demonstrating it met the statutory requirements for an exemption for the year under appeal. See RSA 72:23-m; and 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 Taxpayer is organized as a New Hampshire nonprofit corporation with a charitable purpose and meets all the requirements for a charitable property tax exemption;
- (2) although "faith based," the Taxpayer provides its services without regard to religious affiliation; and
- (3) while the founder of the corporation, together with her four children, is a beneficiary of the

Taxpayer's charitable programs and is its "first client," this fact should not disqualify the Taxpayer from a tax exemption and the Taxpayer should not be faulted or penalized for devising a structure that is creative and unusual in nature (admittedly "out of the box" in its design).

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

(1) the Taxpayer does not meet all of the requirements of the charitable exemption statutes:

specifically, RSA 72:23, V and RSA 72:23-l; and

(2) the Taxpayer failed to meet its burden of proof under RSA 72:23-m.

### **Board's Rulings**

The board held a full evidentiary hearing on October 11, 2001 and the Taxpayer's founder, Cheryl A. Bushman, presented testimony regarding both her own background and needs and the organizational purpose and operations of the Taxpayer, a "nonprofit" corporate entity she formed with the help of her father and others in 1995.<sup>1</sup> Ms. Bushman stated she was a victim of "drug and violence abuse" and, inspired by her Christian faith, has devoted the past seven years of her life to the commendable goals of recovery and assistance to other victims and their families. The board, however, must distinguish Ms. Bushman's own efforts and beliefs, however well-intentioned and sincere, from the narrow issue of whether the Taxpayer, as a distinct legal entity, qualifies for a property tax exemption for the year under appeal.

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<sup>1</sup> The certification from the New Hampshire Department of State dated December 29, 1995 and the filed Articles of Agreement (included in Taxpayer Exhibit 1) indicates the legal name of the Taxpayer is "Voices United in Truth" (with no "Inc." added).

Based on the evidence presented, the applicable statutes and the case law, the board finds the Taxpayer does not qualify for the tax year 2000. The Taxpayer applied for a “charitable” property tax exemption under RSA 72:23,V. This statute exempts:

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.

Of direct relevance to the appeal is the statutory definition of “charitable” provided in RSA 72:23-1:

The term "charitable" as used to describe a corporation, society or other organization within the scope of this chapter. . . 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.

Among its distinct elements, the statute manifestly requires “no pecuniary profit or benefit to [the Taxpayer’s] officers or members” and the board finds the Taxpayer has failed to meet its “burden of demonstrating” this requirement of the statute has been met. See RSA 72:23-m; and Young Women's Christian Association v. Portsmouth, 89 N.H. 40, 43, (1937) (tax exemption statute only applies to a charity “organized and conducted to perform some service of public good or welfare, with no pecuniary profit to its officers or members . . .”).

The primary organizational purpose stated in the Taxpayer’s Articles of Agreement (submitted as part of Taxpayer Exhibit 1) is “To establish, maintain, support and operate a center providing transitional housing and other services to abuse survivors and their families.” The Taxpayer operated out of rented facilities until June, 1999, when it purchased the Property with a substantial down payment, funded by a \$60,000 contribution from one individual and a \$5,000 grant from a foundation, and a bank mortgage. From the time of purchase, Ms. Bushman and her children, now aged 16 years, 10 years, 5 years and 10 months, have occupied the Property pursuant to a written lease with the Taxpayer. The lease does not restrict their occupancy to any portion of the house and the rental terms call for Ms. Bushman to pay to the Taxpayer the “Section 8” housing subsidy she and her family are eligible to receive from the Portsmouth Housing Authority. This agency issues a monthly check (in the amount of \$1,030) directly to the Taxpayer on behalf of Ms. Bushman and her family. See Taxpayer Exhibit 2.

The provision of subsidized housing to the needy can no doubt fulfill a legitimate charitable purpose under the tax laws. Compare Appeal of City of Franklin, 137 N.H. 622 (1993) (property tax exemption granted to nonprofit organization providing subsidized housing

and care to the elderly); with The Housing Partnership v. Town of Rollinsford, 141 N.H. 239 (1996) (property tax exemption denied to nonprofit housing organization receiving “close to market rates” from moderate and low income families). It is also true, of course, that taxable individuals and organizations, including ‘for profit’ corporations and partnerships as well as nonprofit corporations who fail to qualify for an exemption, can and do provide housing under “Section 8” and other programs administered by the government.

The legal difficulty faced by the Taxpayer in obtaining a tax exemption, however, is that the recipient of the housing subsidy, Ms. Bushman in this case, is an officer and member of the entity seeking the tax exemption and the statute explicitly prohibits any “pecuniary profit or benefit” to such persons. Article 3 of the Articles of Agreement indicates the Taxpayer’s “Officers shall include a President or Chief Executive Officer. . .” and Ms. Bushman fulfills these roles. Article IX of the By-Laws (also part of Taxpayer Exhibit 1) prescribes the “officers of the Board of Directors” to include the “President.” In her appearances before the board, as well as in her exemption application, Ms. Bushman described herself as the “President” and in written submissions she identified herself as “Founder, President & CEO.” These positions are in addition to her role as “Executive Director” of the Taxpayer, a position described in Article X of the By-Laws as reporting to the board of directors.

The board finds whether Ms. Bushman chooses to designate herself as a ‘voting’ or non-voting member (see signature page to By-Laws, Taxpayer Exhibit 1) is of no consequence, since she is an officer and member for purposes of the statute and the organization’s documents make no such distinctions. A review of the case law indicates that a charitable exemption has been granted only when housing benefits provided are furnished to persons other than officers and

members of the charitable organization. See Appeal of City of Franklin, supra (officers not paid for services rendered); and Hedding Camp Meeting Assn. v. Epping, 88 N.H. 321, 324 (1937) (caretaker's house provided by organization exempt from property taxation because he was an employee "agent," not an officer or member of the association).

The board further finds Ms. Bushman is receiving a "pecuniary profit or benefit" because of the housing provided to her by the Taxpayer. But for the arrangement with the Taxpayer, Ms. Bushman would have to pay considerably more for equivalent housing in the City. Whether she provides other services to the Taxpayer for which she is not compensated is not relevant to this determination. The statute simply does not distinguish between earned and unearned "pecuniary profit or benefit," which leads the board to conclude all such emoluments to officers and members are prohibited if a charitable organization is to qualify for a tax exemption.

This conclusion is supported by policy considerations. A charity must carry out its objectives in an impartial manner, without favoritism or bias towards related parties who may not necessarily be the most deserving of the services offered by the charity. In this case, there is no evidence the board made an active search for the most deserving family it could find for the provision of "transitional housing." To the contrary, it appears the Property was found by Ms. Bushman and then purchased by the Taxpayer, with funds raised by Ms. Bushman herself, for her use for as long as she deems it necessary. Her testimony in this regard is that, at some point when she can afford to, she will move to other housing and some other individual or family in need will occupy the Property. While this set of arrangements may, as Ms. Bushman asserts, represent "out of the box" thinking, it does not succeed in qualifying the Taxpayer for a property

tax exemption.

The City correctly points out the “self-serving” nature of these arrangements and the abuse it is likely to engender if an exemption is permitted. While it is clear that a tax exempt organization can provide services using personnel who are required to reside on the premises,<sup>2</sup> the board knows of no case where the housing provided was occupied by an officer or member of the entity seeking the charitable exemption.

Even if the “pecuniary profit or benefit” prohibition could somehow be overcome, a second substantial issue is whether the Taxpayer is providing a legally sufficient service “for the general public or a substantial and indefinite segment of the general public,” an additional requirement of RSA 72:23-1. Ms. Bushman was quite candid in stating that she is the “first client” of the Taxpayer. The board questions whether this is legally permissible under the tax exemption statutes. She is both the key provider and the key recipient of the principal services

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<sup>2</sup> cf. Wentworth Home v. Portsmouth, 108 N.H. 514, 517 (1968) (exemption proper for housing of employed personnel “essential to the furnishing of care” in charitable health care facility); St. Paul’s School v. City of Concord, 117 N.H. 243, 252-54 (1977) (exemption proper for “faculty quarters” in residential educational institution); and Franciscan Fathers v. Pittsfield, 97 N.H. 396, 402 (1952) (exemption proper for caretaker’s house on land of religious society), citing Hedding Camp Meeting Assn. v. Epping, *supra*.

the Taxpayer was formed to provide. Even if charity is commonly said to ‘begin at home,’<sup>3</sup> the law does not bestow a tax exemption on ‘self-help’ programs expanded to this degree.

Otherwise, families could attempt to establish tax-exempt “charitable” organizations to fund their own children’s education, for example, or provide for other needs of their own, but this is not permitted under the tax laws.

In regard to these types of issues, the supreme court has very recently reviewed the applicable law pertaining to charitable exemptions and has held:

It is elemental that determination of the rights of plaintiff to an exemption from taxation is statutory. The existence and extent of exemptions depends on legislative edict.” [Christian Camps & Conferences v. Town of Alton](#), 118 N.H. 351, 353, 388 A.2d 187 (1978). . . .

The trial court ruled that for the years in question, the Church failed to demonstrate that in its operation of Pilgrim Pines, it contributed to the general public benefit, and thus it was not a charitable organization entitled to tax exemption. We agree.

A taxpayer seeking exemption under RSA 72:23, V bears the burden of proving that it is obligated to be “a public charity, that is, that the general public, or a substantial portion of it, were the beneficiaries of [its] uses.” [Nature Conservancy v. Nelson](#), 107 N.H. 316, 319, 221 A.2d 776 (1966). “It cannot be considered a charitable organization if its purposes are confined mostly to benefitting its own members.” *Id.*; see also [Society of Cincinnati v. Exeter](#), 92 N.H. 348, 352-54, 31 A.2d 52 (1943) (interpreting prior statute). “The test of the public character of a charitable institution is not that all of the public is admitted to its benefits, but that an indefinite number of the public are so admitted, that its benefits are not restricted to its corporate members.” [Sisters of Mercy v. Hooksett](#), 93 N.H. 301, 309, 42 A.2d 222 (1945) (interpreting prior statute).

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<sup>3</sup> See [Bartlett’s Familiar Quotations](#) (10<sup>th</sup> ed. 1919) at No. 8536, <http://www.bartleby.com/100/701.6.html>.

More recently, we noted that “the purpose of the ‘obligation’ requirement is to prevent purely private organizations, albeit with charitable purposes, from benefitting by a tax exemption without, in turn, providing some service of public good.” [Appeal of City of Franklin](#), 137 N.H. 622, 626, 631 A.2d 537 (1993). In determining if an organization satisfies the “obligation” requirement, we look to both its charter or organizational statements and its actions taken pursuant to those statements. See id.

East Coast Conference of the Evangelical Covenant Church of America, Inc. v. Town of

Swanzey, No. 99-421 (July 26, 2001), \_\_ N.H. \_\_, 2001 WL 838886,

<http://webster.state.nh.us/courts/supreme/opinions/0107/eastc131.htm>.

Ms. Bushman testified that, in the future, she hopes to draw a salary from the Taxpayer, not to need “Section 8” housing and to be able to move to another residence. When this occurs, the Taxpayer’s eligibility for a charitable exemption may need to be reviewed, but that question is not presently before the board.

A third perceived barrier to the grant of a tax exemption is the lack of obligation or enforceability to perform the charitable services the Taxpayer hopes to undertake. As noted above, in order to be tax exempt, the organization must not only be organized for a charitable purpose, but must be “obligated” to perform a charitable service. See RSA 72:23-1; and Appeal of City of Franklin, supra, 137 N.H. at 625 (“an obligation must exist to perform the organization’s stated purpose to the public, rather than simply to members of the organization”), citing Society of Cincinnati v. Exeter, 92 N.H. 348, 352 (1943).

The Taxpayer’s present ability to provide housing or other services to clients other than Ms. Bushman herself, who is a member of the organization, is severely limited by space, health, licensing and other considerations. The services the Taxpayer hopes to provide include providing housing and counseling to troubled teenagers (in two additional basement rooms on

the Property) and providing '24x7' day care to "the lower-income population (usually single welfare Moms) to [allow them] to acquire jobs that require them to work nights and weekends." (Taxpayer Exhibit 1.) Ms. Bushman indicated she provided these day care services in the past and was then assisted by "15 volunteers" who donated "20 hours per week," but these services stopped for an indefinite and continuing period after she suffered debilitating injuries in an automobile accident in December, 2000. Ms. Bushman also testified the basement rooms are no longer being used to house troubled teenagers, but indicated they may be so used again in the future. The board finds no continuity in these programs ostensibly organized and operated by the Taxpayer, except for Ms. Bushman's own commitment and ability to provide them on a voluntary basis. The Taxpayer has no discernible ability to enforce such activity.

Moreover, the Taxpayer is presently incapable of providing at least some of the other services it intends to provide. For example, the goal of providing '24x7' day care cannot be met because the Taxpayer's Certificate of Occupancy limits hours of operation to 12 hours per day ("7 AM to 7 PM") and no more than "6 children . . . 10 years of age or less" (including Ms. Bushman's own three children in this age group) can be accommodated. (See Municipality Exhibit A.) Ms. Bushman's application to be a licensed child care provider was denied by the N.H. Department of Health and Human Services, but she is appealing this decision; until that appeal is resolved, she is only able to "care for up to three children in addition to her own" under an available exemption. (Id.) As noted above, the Taxpayer is not providing any housing in the basement for troubled teenagers at the present time. A serious question also exists as to whether a residential program for teenagers at risk for drug abuse and other problems, however commendable, is compatible with the provision of child care services in the same house.

In summary, after considering the totality of facts pertaining to the Taxpayer's application, the board concludes the Taxpayer failed to meet its burden of demonstrating it meets the requirements for a "charitable" tax exemption. However commendable the personal motivations and goals of Ms. Bushman might be, the board must focus on the requirements of the statute and the fulfillment of those elements by the Taxpayer and, in that regard, finds the Taxpayer failed to qualify for a property tax exemption for the 2000 tax year.

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

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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 decision has this date been mailed, postage prepaid, to Cheryl A. Bushman, Representative for Voices United In Truth, Inc. Taxpayer; and Chairman, Board of Assessors of Portsmouth.

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Voices United in Truth, Inc. v. City of Portsmouth  
Docket No.:18395-00EX

Date: October 29, 2001

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Lisa M. Moquin, Clerk

**Voices United in Truth Inc.**

**v.**

**City of Portsmouth**

**Docket No.: 18395-00EX**

**ORDER DENYING MOTION FOR REHEARING**

The board has reviewed the “formal request for a rehearing” filed by the “Taxpayer” and dated November 28, 2001 (the “Motion”) with respect to the Decision dated October 29, 2001 (the “Decision”) affirming the denial of a charitable tax exemption under RSA 72:23, V, by the “City.” The Motion is denied, both because it fails to cite and meet the requirements of TAX 201.37 and RSA 541:3 and for the additional reasons explained below.

Whether Ms. Bushman is now an “officer or member” of the incorporated Taxpayer is of no operative consequence given the evidence of such involvement submitted at the hearing. See Decision at p. 5. The issue of Ms. Bushman’s status, however, was but one of a number of independent grounds for affirming the denial of the exemption. Id. at pp. 7-10.

As to the other allegations made in the Motion, the Taxpayer had a full opportunity to develop or present sufficient facts, in an effort to meet its evidentiary burden under RSA 72:23-

m and TAX 204.06, before the record was closed at the hearing held on October 11, 2001. In the terminology of RSA 541:3, no “good reason” exists for reopening the record in this case by granting the Motion. See O’Loughlin v. N.H. Personnel Comm., 117 N.H. 999, 1004 (1977); accord, Appeal of Gas Service, Inc., 121 N.H. 797, 801 (1981) (affirming dismissals of appeals).

Under RSA 541:6, any appeal is by petition to the supreme court and must be filed within thirty (30) days after the date of this Order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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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: Cheryl A. Bushman, Patricia A. Csernelabics and J. Scott Riddell, at Voices United In Truth, Inc., the Taxpayer; and Chairman, Board of Assessors of Portsmouth, the City.

Date: January 10, 2002

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Lisa M. Moquin, Clerk