

John and Anna Newton Porter Foundation

v.

Town of Alton

Docket No.: 19139-02EX

DECISION

I. Introduction/Arguments Presented

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2002 denial of the Taxpayer’s request for charitable exemption as provided under RSA 72:23 on a large parcel of land (containing 82 or more acres) operated as a camp with a number of seasonal camp buildings (the “Property”). For the reasons stated below, the appeal is denied.¹

At the hearing held on July 30 and 31, 2003,² the parties confirmed the application for exemption was for the 2002 tax year. Although dated February 25, 2002, the application request was filed with the Town on April 15, 2002 and denied on May 20, 2002. Consequently, and with the agreement of the parties, the board has re-designated this appeal to reflect tax year 2002 (from the earlier “01EX” appellation assigned to this docket number).

¹ The Taxpayer filed a companion appeal (Docket No.: 19138-01PT) pursuant to RSA 76:16-a contesting the Town’s 2001 ad valorem assessment. A separate decision in that appeal is being concurrently issued.

² The board held a limited hearing on October 14, 2003 pertaining to a discrete issue in the separate abatement appeal (Docket No. 19138-01PT).

The Taxpayer has the burden of showing, by a preponderance of the evidence, it was entitled to the statutory exemption for the year under appeal. See RSA 72:23-m; and TAX 204.06. The Taxpayer failed to satisfy this burden.

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

- (1) the Property is owned, occupied and used for a charitable purpose as required by the statute;
- (2) New Hampshire case law recognizes that a trust established for the purpose of training boys or girls in ‘character, leadership’ and other traits is charitable in nature;
- (3) the Taxpayer is a trust, organized as a nonprofit foundation exempt from taxation under federal law, and is devoted to the “standards and ideals” of a noted educator and his wife, John and Anna Newton Porter, who established Camp Kabeyun as a boys summer camp in the 1920’s;
- (4) the “Purposes of Camp Kabeyun” are set forth in recorded documents and include “teaching and training . . . to build character, leadership, resourcefulness and dependability in accordance with the standards and ideals” of these founders;
- (5) these objectives qualify as charitable purposes and they are enforceable;
- (6) the obligations of a charitable organization need not be stated only in the “charter” but can be established in other ways such as through a 1994 agreement and the camp’s operations over the past decades;
- (7) the public benefit and service provided includes residents of the State, in part because 35% percent of the scholarship aid in 2002 was given to New Hampshire residents; and
- (8) the camp is distinguishable from taxable summer camps because of its educational and environmental missions and is more like another camp in the Town (Christian Camps) which operates with a tax exemption.

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

- (1) New Hampshire requires the charitable obligation to be stated in the charter which, in this case, is the Taxpayer's Articles of Agreement ("Articles") and nothing in the Articles creates a binding and enforceable obligation to fulfill a specific purpose;
- (2) the Articles are overly general and vague, provide a number of alternative purposes and can be amended by the trustees at any time;
- (3) the trustees have considerable discretion regarding what purposes the Taxpayer will fulfill and also whether to award scholarships at all or in any particular amount;
- (4) the charitable obligations allegedly imposed on the Property, as asserted by the Taxpayer, cannot be enforced by the Attorney General, a requirement of New Hampshire law;
- (5) the public benefit is insignificant because less than 10% of the boys receive some sort of scholarship aid to attend the summer camp, very few boys are New Hampshire residents and nothing obligates the Taxpayer to provide benefits to residents of the State;
- (6) the summer camp is only operated for two months of the year and the rest of the more incidental uses, such as family camping, have no discernible charitable purpose; and
- (7) the Taxpayer failed to satisfy its burden of proof and does not meet all of the requirements necessary for a tax exemption.

II. Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to sustain its burden of proof and its appeal for a charitable exemption is therefore denied. The board's findings and rulings are detailed below.

The Taxpayer operates Camp Kabeyun on the Property, a summer camp for boys between the ages of 7 and 16. Camp Kabeyun is located on a large, mostly undeveloped waterfront tract of land on Lake Winnepesaukee. The camp dates back to the 1920s when it was

founded by John and Anna Newton Porter. The Taxpayer operates two, month-long camp programs in July and August and can accommodate approximately 100 – 120 campers in each session.³ The Taxpayer also holds a “family camp” after the August session, as well as conducting some training and other programs at the Property, but the primary and predominant use of the Property is the operation of the two, month-long boys summer camp programs.

The Taxpayer is organized as a nonprofit foundation, has qualified for a federal tax exemption and is registered with the New Hampshire Division of Charitable Trusts. It acquired the Property on March 5, 2002 as a result of the dissolution of Kabeyun, Inc., the prior owner and a related party. For several decades, the Taxpayer was the majority shareholder in Kabeyun, Inc., a for-profit corporation.

In an Agreement dated August 27, 1994 (the “1994 Agreement”), the Taxpayer covenanted with several minority shareholders (including The Audubon Society of New Hampshire) to acquire (redeem) all outstanding shares of stock, dissolve Kabeyun, Inc. and receive its assets to operate a summer camp (Camp Kabeyun) for the purposes stated in Exhibit B to the 1994 Agreement.⁴ These steps were accomplished over an extended period of time, culminating with the dissolution of Kabeyun, Inc. by the end of 2001.

For a number of years prior to the dissolution, however, the Taxpayer leased the assets of Kabeyun, Inc. for the purpose of operating the summer camp. The Taxpayer filed its application for a tax exemption with the Town for the first time in 2002, presumably because it did not

³ The Taxpayer’s appeal document indicates it had “full occupancy” of 240 campers in the summer of 2000 and 198 campers in 2001.

⁴ The 1994 Agreement, including Exhibit B thereto (“PURPOSES OF CAMP KABEYUN”), is part of Taxpayer Exhibit 2 at Tab 2 in the companion property tax appeal, Docket No. 19138-01PT.

formally own (hold legal title to) the Property before that time and ownership is one of the required elements for a property tax exemption.

The Taxpayer applied for an exemption under RSA 72:23, V. The Town's assessing officials, in a terse decision dated May 20, 2002, concluded the Taxpayer "Does Not Qualify" for an exemption, but gave no further explanation for the denial of the exemption.

RSA 72:23, V exempts from taxation property "owned, used and occupied by [charitable organizations in New Hampshire] directly for the purposes for which they are established"

In addition, RSA 72:23-1 defines a charitable organization as one:

" . . . 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, 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 [federal tax law] This section is not intended to abrogate the meaning of 'charitable' under the common law of New Hampshire."

The Taxpayer recognizes a tax exemption is a privilege in New Hampshire which requires meeting each of a number of elements prescribed by statute and interpreted by the case law. At the hearing, the Taxpayer's attorney described these elements as "rungs" on a metaphorical ladder which must be climbed in order to qualify for an exemption.

At the hearing, the Town did not dispute the Taxpayer satisfies most of the specific requirements of the exemption statute, including ownership, occupancy and use. What is disputed is whether the Taxpayer's purpose is "charitable" in nature and whether it is "obligated, by its charter or otherwise" to fulfill this purpose. These issues are closely related and deserve further discussion.

A. Charitable Purpose

The Taxpayer asserts its purposes are charitable since the boys summer camp it operates is devoted “to build character, leadership, resourcefulness and dependability in accordance with the standards and ideals of John and Anna Newton Porter.” This purpose is stated among the “Objects” set forth in Article II of the Articles of Agreement of the Taxpayer filed with the Secretary of State in 1973. A similar theme (“character, leadership, resourcefulness and dependability”) is expressed in Exhibit B to the 1994 Agreement, which expresses the “PURPOSES OF CAMP KABEYUN.” The Warranty Deed dated March 5, 2002 transfers title of the Property to the Taxpayer, but is subject to the provisions of the 1994 Agreement.

The Taxpayer cites two New Hampshire cases for the proposition that such stated purposes are sufficient to qualify for a charitable exemption. The board disagrees and finds these cases to be distinguishable.

In Greater Lowell Girl Scout Council, Inc. v. Pelham, 100 N.H. 24, 26 (1955), decided under a prior exemption statute, the supreme court upheld an exemption granted by the trial court, noting:

“As a general proposition non-profit institutions, societies and organizations promoting Boy Scout and Girl Scout programs and activities are charitable in nature and purpose. *Tillinghast v. Boy Scouts*, 47 R.I. 406; *Tharpe v. Central Georgia Council, B. S. A.*, 185 Ga. 810; . . . They are considered charities since their primary objective is training young people for citizenship. 3 Scott, Trusts, s. 370.3. See *Charter Oak Council, B. S. A. v. New Hartford*, 121 Conn. 466. This conclusion is supported by the Restatement, Trusts, s. 370, comment f: ‘A trust for the purpose of training boys or girls in citizenship, character and leadership is charitable. Thus, a trust to promote the purposes of such organizations as that of the Boy Scouts or Girl Scouts is charitable.’ While the litigated cases are not numerous, they are quite uniform in holding that Boy Scout or Girl Scout organizations are charitable and therefore entitled to exemption from taxation as charities if they meet the other necessary tests prescribed by the local tax statute. Anno. 116 A. L. R. 378.”

The board, however, finds a distinction can and should be drawn between the carefully articulated, well established and universally recognized values, rules of conduct and training inherent in Boy Scout and Girl Scout programs to promote “citizenship, character and leadership” and the somewhat vague and tenuous evidence presented in this appeal regarding the Taxpayer’s programs to achieve seemingly similar objectives. The director of Camp Kabeyun testified that the camp strived to teach the boys attending the camp how to make choices and how to “learn about ourselves” using ‘noncompetitive’ activities, ‘modeling behavior’ and a ‘process-oriented’ approach to problem solving, without punishment. His wife, the camp bookkeeper, testified the camp was able to deal with “self-esteem and anxiety issues,” along with other challenges. Other witnesses testified that diversity was a goal in the education process and that, through outreach and scholarship assistance, Camp Kabeyun included boys who would not otherwise be able to afford to attend. While all of the witnesses cited the influence of the educator and founder affectionately known as “Uncle John” (Porter), none provided an explicit, documented statement detailing his educational philosophy and how a commitment to that philosophy results in an outcome substantially distinguishable from programs operated by other, non-exempt summer camps.

The board is troubled by this lack of evidence because the ideals mentioned in the Taxpayer’s documents (“character, leadership, resourcefulness and dependability”) are very general in nature and can be said to be an inherent part of most, if not all, camping programs. For example, to the extent “choices” help promote these ideals, many other camps can be said to provide participants with recreational activity and other types of choices not materially different from those described by the Taxpayer’s witnesses.

The Taxpayer also cites Christian Camps & Conferences, Inc. v. Town of Alton, 118 N.H. 351, 355 (1978), a case concerning a summer camp property located in the same Town but one decided principally on a res judicata objection. This camp was denied a religious exemption in an earlier year, but granted a charitable exemption based on factual findings made by a master.⁵ The supreme court ruled the doctrine of res judicata did not apply and then accepted the master's findings because they were "supported by the evidence." Id. The board, however, as the fact-finder in this charitable exemption appeal, reaches different findings and conclusions than the master in the Christian Camps case decided 25 years ago.

More generally, there is an apparent split of authority regarding whether a summer camp can qualify for a charitable exemption under various state statutes. Cf. Camping and Education Foundation v. State, 164 N.W.2d 369, 373 (Minn. 1969) (exemption denied to nonprofit organization operating summer camp even though "good purposes" of corporation were not in question); In re Aloha Foundation, Inc., 360 A.2d 74 (Vt. 1976) (exemption denied to nonprofit foundation funded with contributions from "friends" that took over and continued to operate summer camp first started in 1905); Circle Pines Center v. Orangeville Township, 302 N.W.2d 917, (Mich. 1980) (exemption denied to organization operating summer camp programs that espoused "philosophy of cooperative education"); but see Matanuska-Sustina Borough v. King's Lake Camp, 439 P.2d 441, 446 (Ala. 1968) (affirming trial court's finding that operation of

⁵ As stated in the decision:

"The master has found that plaintiff is a charitable organization that owns and uses all of the property involved for charitable purposes, and that plaintiff 'is a trust for the purpose of training boys and girls in citizenship, character and leadership.' The master further found that the religious aspects of plaintiff's operations were relevant at self-improvement on the part of individual campers, thus implementing the plaintiff's trust objectives and distinguishing plaintiff's operations from a commercially operated summer camp."

Christian Camps, supra at 355. The board is unable to make comparable findings in this case based upon the evidence presented.

summer camp, even where user fees were charged, fulfilled a charitable purpose and citing Greater Lowell Girl Scout Camps, supra). The board notes these decisions to illustrate how problematic the ultimate issue of determining whether a charitable exemption is appropriate for a summer camp can be and how the question must depend upon the facts of each case and the applicable statutory framework.

B. Obligation

A related obstacle (or “rung on the ladder” to entitlement for an exemption, to continue with the metaphor of Taxpayer’s counsel) is whether the Taxpayer is sufficiently “obligated, by its charter or otherwise” to perform the charitable purpose discussed above. The Town cites Nature Conservancy of New Hampshire v. Nelson, 107 N.H. 316, 319 (1966) as authority for denying the exemption on this ground. In Nature Conservancy, the trial court made certain findings of fact and transferred to the supreme court questions of law pertaining to the ultimate exemption issue. Id. at 317-18. The Town argues (at page 6 of its memorandum of law) that “the Court [in Nature Conservancy] held that the obligation of public service must enable the Attorney General to enforce this right.” This, however, is an overstatement of the law.

Contrary to the Town’s memorandum, the ‘holding’ in Nature Conservancy rested on the separate requirement of use and occupancy (for the charitable purpose) rather than enforceability (of the charitable purpose obligation). Id. at 320-21. What the court did say on the issue of enforceability, however, is instructive:

“[The plaintiff/taxpayer] . . . cannot be considered a charitable organization if its purposes are confined mostly to benefiting its own members. Society of Cincinnati v. Exeter, 92 N.H. 348, 356. Furthermore the public service which plaintiff is to render must be obligatory so as to enable the Attorney General or other public officer to enforce this right against it if the service is not performed. Id., 352; RSA 7:19, 20. It follows that if the public benefit is limited to that which the plaintiff sees fit to provide at its option or in its uncontrolled discretion the requirements of RSA 72:23 V are not satisfied.” (Emphasis added.)

Id. at 319.

Although not the holding, this dictum is an accurate statement of the law and can be applied to the evidence in this case.

The board finds the Taxpayer, in the language of Nature Conservancy, supra, has considerable control over how much “public benefit is provided” in the operation of the summer camp and can offer what it “sees fit to provide at its option or in its uncontrolled discretion.” Section II (“Objects”) of the Articles the Taxpayer filed on November 6, 1973 is quite general in nature, stating the entity “is organized exclusively for charitable, religious, educational, or scientific purposes” (Emphasis added.) In other words, the charter is somewhat indefinite as to the character of the organization: it can be charitable or it can fulfill three other distinct purposes. It is elemental, however, that an entity seeking to qualify for an exemption must choose and operate within a specific category of exemption under RSA 72:23 (religious, educational or charitable, for example) instead of stating multiple, possible, alternative purposes. Cf. Appeal of C.H.R.I.S.T., Inc., 122 N.H. 982, 983 (1982) (“The legislature did not intend, however, to allow organizations to claim multiple exemptions under separate provisions of the tax exemption statute. [Citation omitted]”).

The paragraph numbered “1” within this section of the Articles further states the Taxpayer’s objectives in the alternative, including “operating a camp or camps or conducting courses . . .” or providing “scholarship assistance to worthy and needy boys and/or girls . . . in order to enable [them] . . . to benefit by the summer camp experience.”⁶ In other words, the charter document permits the trustees, in their “sole discretion,” either to operate a camp or camps or give courses or simply provide money so that children can attend other camps.⁷ While each of these has the possibility of being a legitimate charitable purpose, stating them as alternative objectives makes it difficult, if not impossible, for the “Attorney General or another public officer” to enforce any specific charitable obligation of the Taxpayer.

The test for qualifying for an exemption is whether the charitable “obligation” is sufficiently definite in nature, instead of being something which the Taxpayer “might at its option and in its uncontrolled discretion see fit to furnish.” Society of Cincinnati, supra at 352-53, quoted in Appeal of City of Franklin, 137 N.H. 622, 625 (1993); see also Appeal of City of Laconia, 146 N.H. 725, 728 (2001) (affirming board’s finding that taxpayer “has a charitable purpose and is obligated to act consistent with that purpose”); and East Coast Conference of the Evangelical Covenant Church of America, Inc. v. Town of Swanzey, 146 N.H. 658, 662 (2001)

⁶ The full paragraph states:

“1. For the purpose of promoting, acquiring, and operating a camp or camps or conducting courses for boys and/or girls which shall have as their primary purpose the teaching and training of boys and girls in woodcraft, conservation of natural resources, prevention of air and water pollution, the study of ecology, handcrafts, the operation and handling of boats, swimming, training in physical sports, physical exercises and health, development of skills in art and music, teaching of social adjustment, participation in group discussions, and generally to build character, leadership, resourcefulness and dependability in accordance with the standards and ideals of John and Anna Newton Porter, or in the alternative, to provide, in the sole discretion of the Trustees, scholarship assistance to worthy and needy boys and/or girls in the form of tuition grants or tuition reductions, in order to enable such boys and/or girls to benefit by the summer camp experience whether in a camp owned or operated by this corporation or in other camps selected by the Trustees.”

⁷ As the Town argued, the Taxpayer also has considerable discretion regarding how much scholarship assistance is provided in any year and whether the recipients are residents of New Hampshire.

(taxpayer seeking exemption “bears the burden of proving that it is obligated” to fulfill a charitable purpose).

For these reasons, the board finds the Taxpayer failed to meet its burden of proof that it was entitled to a tax exemption for tax year 2002. The board has responded to the Taxpayer’s and the Town’s Requests for findings of fact and rulings of law in Addendums A and B to the Decision.

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(f). 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

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

Addendum A

Responses to Requests for Findings of Fact and Rulings of Law by the Taxpayer

Docket No. 19139-02EX

The “Requests” received from the Taxpayer are replicated below, in the form submitted and without any typographical corrections or other changes. The board’s responses are in bold face. With respect to the Requests, “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.

I. Requests for Findings of Fact

1. The John and Anna Newton Porter Foundation (hereinafter “Porter Foundation”) was organized under RSA 292 as a non-profit New Hampshire corporation exclusively for charitable, religious, educational, or scientific purposes.

Granted.

2. More specifically, The Porter Foundation was formed for the purpose of promoting, acquiring, and operating a camp or camps or conducting courses for boys and/or girls having as their primary purpose the teaching and training of boys and girls in woodcraft, conservation of natural resources, prevention of air and water pollution, the study of ecology, handcrafts, the operation and handling of boats, swimming, training in physical sports, physical exercise and health, development of skills in art and music, teaching of social adjustment, participation in group discussions, and generally to build character, leadership, resourcefulness and dependability in accordance with the standards and ideals of John and Anna Newton Porter.

Granted.

3. Porter Foundation is a federally exempt organization under Section 501(c)(3) of the Internal Revenue Code.

Granted.

4. Pursuant to Porter Foundation Articles of Agreement, “No part of the net earnings of the corporation shall inure to the benefit of or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article Second hereof.

Granted.

5. On March 5, 2002, Porter Foundation took title from Kabeyun, Inc. (hereinafter Kabeyun”) to approximately 82 acres of land in Alton, New Hampshire with approximately 5,000 feet of frontage on Lake Winnepesaukee with 42 buildings.

Neither granted nor denied.

6. Prior to obtaining title of this property, Porter Foundation leased it from Kabeyun.

Granted.

7. Porter Foundation filed an A-9 List of Real Estate and Personal Property on which Exemption is Claimed Pursuant to RSA 72:23-c on April 15, 2002.

Granted.

8. Porter Foundation filed an A-12 Charitable Organization Financial Statement pursuant to RSA 72:23 VI on May 29, 2002.

Granted.

9. The Town of Alton denied the exemption on May 20, 2002.

Granted.

10. In keeping with its charitable purposes, Porter Foundation operated Camp Kabeyun during the 2002 season enrolling 120 boys ranging in age from 7 to 16.

Denied.

11. In keeping with its charitable purpose to serve the general public, Porter Foundation did not discriminate on the basis of race, creed, color, religion or ethnic background.

Neither granted nor denied.

12. In keeping with its charitable purpose to serve the general public, Porter Foundation, granted scholarships to twenty (20) children totaling approximately fifty-two thousand dollars (\$52,000.)

Neither granted nor denied.

13. In keeping with its charitable purpose to serve the general public including New Hampshire Residents, thirty-five percent (35%) of its scholarship students were from New Hampshire.

Neither granted nor denied.

II. Requests for Rulings of Law

14. A charitable exemption in New Hampshire is statutory.

Granted.

15. RSA 72:23 V provides that the buildings, lands and personal property of charitable organizations and societies organized, incorporated, or legally doing business in New Hampshire, 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 shall, unless otherwise provided by statute, be exempt from taxation.

Granted.

16. RSA 72:23-1 defines charitable as 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.

Granted.

17. RSA 72:23-1 also requires that there be 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.

Granted.

18. A trust for the purpose of training boys or girls in citizenship, character and leadership is charitable. Greater Lowell Girl Scout Council, Inc. v. Pelham, 100 NH 24 at 26 (1955); Christian Camps & Conference, Inc., 118 N.H. 351, 355 (1978).

Neither granted nor denied.

19. The Porter Foundation is a trust established for the purpose of training boys in citizenship, leadership, resourcefulness and dependability.

Neither granted nor denied.

20. The Porter Foundation is obligated, by its charter or otherwise, to perform service of public good or welfare in the form of training boys in “character, leadership, resourcefulness and dependability,” all of which teach citizenship.

Neither granted nor denied.

21. Porter Foundation includes citizens of the State of New Hampshire as beneficiaries of its program

Granted.

22. Porter owns, occupies and uses its real estate for the public good.

Neither granted nor denied.

23. None of Porter Foundation’s profits inure to an officer or trustee.

Granted.

24. Porter Foundation is entitled to a charitable tax exemption for its real estate in Alton, New Hampshire.

Denied.

Addendum B

Responses to Requests for Findings of Fact and Rulings of Law
by the Town

Docket No. 19139-01EX

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- 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.

I. [Requests for] Findings of Fact

1. On April 15, 2002 the John and Anna Newton Porter Foundation filed an A-9 BTLA Exemption Request, dated February 25, 2002, with the Town of Alton, New Hampshire.

Granted.

2. The Appellant sought a property tax exemption, based on NH RSA 72:23 V., claiming to be a charitable organization as defined by NH RSA 72:23-1. See N.H. Rev. Stat. Ann. §72:23 V, §72:23-1.

Granted.

3. On May 20, 2002, the Town of Alton, by and through town officials, denied the Appellant’s exemption request.

Granted.

4. Primarily, the John and Anna Newton Porter Foundation serves to own and operate a summer camp for children called, "Camp Kabeyun" in Alton, New Hampshire.

Neither granted nor denied.

5. The document serving as this organization's charter titled, "Articles of Agreement of John and Anna Newton Porter Foundation", establishes the purpose, goals, directives and powers of the Board of Trustees of said organization.

Granted.

6. The Articles of Agreement, under the provision II. Objects, state, "Said corporation is organized exclusively for charitable, religious, educational, or scientific purposes, and particularly without limiting the generality of the foregoing."

Granted.

7. The Articles of Agreement, under the provision II. Object paragraph 1, state, ". . . in the sole discretion of the Trustees, scholarship assistance to worthy and needy boys and/or girls in the form of tuition grants or tuition reductions, in order to enable such boys and/or girls to benefit by the summer camp experience whether in a camp owned or operated by this corporation or in other camps selected by the Trustees."

Granted.

8. The Articles of Agreement, under the provision XI. Amendments, state, "These Articles of Agreement may be amended, altered, or repealed at any legal meeting of the Trustees, provided notice of the same is given in the call for the meeting."

Granted.

9. Prior to 2001, Camp Kabeyun experienced full occupancy (240 children) for five straight years.

Neither granted nor denied.

10. In 2000, the Trustees of the John and Anna Newton Porter Foundation granted some form of scholarship or tuition reduction to 19 children (8% of the campers).

Granted.

11. In 2001, the Trustees of the John and Anna Newton Porter Foundation granted some form of scholarship or tuition reduction to 18 children (9% of the campers).

Granted.

12. In 2002, the tuition rates for attending Camp Kabeyun were as follows: a four week session costs \$3,050.00 and an eight week session costs \$5,600.00.

Granted.

13. The foundation also receives revenue from the camp for family camping, off season use and regular camper services.

Granted.

II. [Requests for] Rulings of Law

14. NH RSA 72:23 V creates a tax exemption for buildings, land and personal property of charitable organizations owned and occupied for directly the purposes which the charity is established. See N.H. Rev. Stat. Ann. §72:23 V.

Granted.

15. NH RSA 72:23-1 defines a charitable organization, for purposes of tax exemption, when it states, “. . . 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, . . . The fact that a organization’s activities are not conducted for profit shall not in itself be sufficient to render the organization ‘charitable’ for purposes of this chapter, . . .” See N.H. Rev. Stat. Ann. §72:23-1.

Granted.

16. New Hampshire law requires that an organization must be obligated, through its charter or otherwise, to a charitable purpose in order to qualify as a charitable organization for purposes of tax exemption. See Society of Cincinnati v. Exeter, 92 N.H. 348, 352, 31 A.2d 52, 55 (1943).

Granted.

17. The test for determination of obligation is the examination of the organization’s charter and its actions taken pursuant to its charter. See East Coast Conference of the

Evangelical Covenant Church of America, Inc. v. Town of Swanzey, 146 N.H. 658, 662, 786 A.2d 91 (2001).

Granted.

18. The obligation of a public service or benefit, by an organization, must be enforceable, through legal action, by the New Hampshire Attorney General or other state agency. See The Nature Conservancy of New Hampshire v. Town of Nelson, 107 N.H. 316, 319, 221 A.2d 776, 779 (1966).

Neither granted nor denied.

19. The public benefit or service, by a charitable organization, must be significant and provided to the general public or substantial portion of the general public. See The Nature Conservancy of New Hampshire v. Town of Nelson, 107 N.H. 316, 319, 221 A.2d 776, 779 (1966).

Granted.

20. A charitable organization, as defined by the statute for tax exemption in New Hampshire, must provide its public benefit to include residents of the State of New Hampshire. See N.H. Rev. Stat. Ann. §72:23-I.

Granted.

21. The John and Anna Porter Newton Foundation fail to establish a charitable obligation, by its charter or otherwise, in order to qualify as a charitable organization for purposes of tax exemption.

Granted.

22. The Articles of Agreement of John and Anna Newton Porter Foundation do not allow the New Hampshire Attorney General to enforce a charitable purpose.

Granted.

23. The John and Anna Porter Newton Foundation do not provide a significant public benefit or service to the general public or substantial and indefinite portion of the general public in order to qualify as charitable organization for tax exemption.

Neither granted nor denied.

24. The Articles of Agreement of John and Anna Newton Porter Foundation do not contain obligatory or enforceable provisions in order to ensure that New Hampshire residents

shall be included in any public benefit or public good which disqualifies this organization as charitable organization for tax exemption purposes.

Granted.

25. John and Anna Newton Porter Foundation fails to meet the elements, required under NH RSA 72:23-1, in order to receive tax exemption status under NH RSA 72:23 V. See N.H. Rev. Stat. Ann. §72:23-1, §72:23 V.

Granted.

Certification

I hereby certify that a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Willard G. Martin, Jr., Esq. and Margaret M. Sullivan, Esq., Martin, Lord & Osman, P.A., One Mill Plaza, Laconia, New Hampshire 03246, Taxpayer's counsel; Shawn M. Tanguay, Esq., Fitzgerald, Sessler & Nichols, P.A., 11 Academy Street, Laconia, New Hampshire 03246, counsel for the Town; Chairman, Board of Selectmen, Town of Alton, Post Office Box 659, Alton, New Hampshire 03809; and David Wiley, Earls Neider Perkins, LLC, Post Office Box 7887, Loudon, New Hampshire 03307, Interested Party.

Date: January 16, 2004

Anne M. Stelmach, Deputy Clerk

John and Anna Newton Porter Foundation

v.

Town of Alton

Docket No.: 19139-02EX

ORDER

The board has reviewed the timely “Motion for Rehearing and Reconsideration” (the “Motion”) filed by the “Taxpayer” on February 17, 2004 with respect to the Decision denying its exemption appeal and the “Objection” filed by the “Town” in response. The Motion is denied.⁸

Simply because the Taxpayer has continued to operate a boys summer camp program with the undocumented ideas of the educator-founders, John and Anna Newton Porter, in mind does not mean the “Property” qualifies for a statutory tax exemption. The board disagrees with the Taxpayer’s argument that “some service of public good” language contained in the RSA 72:23-1 definition of “charitable” is broad enough to encompass activity which may only have an incidental rather than a central charitable purpose. While the experience of attending a summer camp could improve a boy’s character and leadership skills, for example, this possibility is true of most, if not all, summer camps, whether they are conducted by a commercial or a nonprofit

⁸ In light of this denial, the Town’s “Request for Additional Time to File an Amended Objection” is moot and therefore is also denied.

entity. In addition, and contrary to paragraph 17 of the Motion, the board recalls no specific evidence tending to establish that boys attend the Taxpayer's month-long camping programs "as an alternative to scouting." The Decision considered in some detail many of the authorities cited in the Motion to conclude the Taxpayer failed to satisfy the charitable purpose and obligation requirements for a property tax exemption and no purpose would be served by repeating its findings and conclusions here.

In brief, no proper basis exists for granting a rehearing under the standards established in RSA 541:3 and TAX 201.37. Any appeal of the Decision must be by petition to the supreme court filed within thirty days after this Order. See RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Concurred; unavailable for signature

Michele E. LeBrun, 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: Marshall D. Hickok, Esq., Willard G. Martin, Jr., Esq. and Margaret M. Sullivan, Esq., Martin, Lord & Osman, P.A., One Mill Plaza, Laconia, New Hampshire 03246, Taxpayer's counsel; Shawn M. Tanguay, Esq., Fitzgerald, Sessler & Nichols, P.A., 11 Academy Square, Laconia, New Hampshire 03246, counsel for the Town; Chairman, Board of Selectmen, Town of Alton, Post Office Box 659, Alton, New Hampshire 03809; and David Wiley, Earls Neider Perkins, LLC, 556 Pembroke Street, Suite 1, Pembroke, New Hampshire 03275, Interested Party.

Date: February 27, 2004

Anne M. Stelmach, Deputy Clerk

Page 26 of 26

John and Anna Newton Porter Foundation v. Town of Alton

Docket No.: 19139-02EX