

Rasa Yoga Corporation

v.

Town of Sugar Hill

Docket No.: 19408-02EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2002 denial of the Taxpayer’s request for a charitable exemption as provided under RSA 72:23, V on Map 207.4, a 40-acre vacant lot; Map 207.5, a 154-acre vacant lot; Map 207.9, a 53-acre vacant lot; and Map 207.10, a 380-acre lot with a farmhouse and three barns (the “Properties”). For the reasons stated below, the appeal is denied.

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

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

- (1) the Rasa Yoga Corporation (“Corporation”) has met the Internal Revenue Service criteria of a 501(c)(3) organization;
- (2) the Articles of Agreement were recorded in the State of New Hampshire, Office of Secretary of State on August 11, 2000;

(3) in the event of dissolution of the Corporation, all of the Corporation's assets will be distributed to "one or more exempt purposes within the meaning of section 501(c)(3) of the Code;"

(4) the Corporation fees are substantially less than the fees for-profit yoga schools charge with subsidies available for people with chronic diseases and the elderly; and

(5) the Corporation meets the two-prong test of a charitable entity as it uses and occupies the Properties directly for the charitable purposes for which it was founded.

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

(1) the Taxpayer has not shown that it is obligated by its charter to "perform some service of public good or welfare" or that the Properties are used and occupied directly for the claimed charitable purpose;

(2) the Taxpayer has not provided sufficient documentation that there is subsidization of its participants;

(3) the Taxpayer has not provided sufficient documentation that its "charitable" purpose benefits the public at large;

(4) the promotion of yoga is not a charitable activity as it is not a "service of public good or welfare" because its benefits are essentially private and discretionary in nature; and

(5) if the board does find the purpose is charitable, the only part of the Properties that could be exempt is the portion of the farmhouse used for the yoga retreat center.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Properties were entitled to a charitable exemption.

The Corporation acquired the Property consisting of 627 acres with a farmhouse and three barns in March of 2002 from the previous owner who had placed a conservation easement (protected by the Society for the Protection of New Hampshire Forests) on all but three acres around the house and barns. The Corporation began to use the Property seasonally in 2002 for yoga retreats of 6 to 14 days while renovations were on-going in the “farmhouse” to facilitate more year-round retreats in the future. The Corporation also conducts its programs at a leased facility at 246 West 80th Street in New York City.

RSA 72:23-m establishes the burden of demonstrating the applicability of any exemption rests with the taxpayer. Further, the standard of application is “a tax exemption statute is construed not with rigorous strictness but ‘to give full effect to the legislative intent of the statute,’” Citing Wolfeboro Camp School v. Town of Wolfeboro, 138 N.H. 496, 499 (1994).

In 2002, the Taxpayer applied for a charitable exemption pursuant to RSA 72:23, V which exempts: “[t]he 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.”

RSA 72:23, V must be read together with RSA 72:23-1 which contains the statutory definition of charitable relative to Chapter 72.

72:23-1 Definition of “Charitable”. The term “charitable” as used to describe a corporation, society or other organization within the scope of this chapter, including RSA 72:23 and 72:23-k, 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.

The board has thoroughly reviewed the documents submitted by the Taxpayer, including the Taxpayer's Articles of Agreement. Article II of the Articles of Agreement contains the purposes for which the corporation is formed and reads as follows.

The Corporation is formed for the following purposes:

(A) to promote the study and practice of yoga, tai chi chuan, meditation, the Sanskrit language, cooking, organic farming, forestry, land preservation and related disciplines, and to establish, operate and maintain facilities (including without limitation, studios and retreat centers) suitable for use with respect thereto;

(B) to provide instruction in yoga, meditation, the Sanskrit language, cooking, organic farming, forestry, land preservation and related disciplines, and to establish, operate and maintain facilities (including without limitation, studios and retreat centers) suitable for use with respect thereto;

(C) to do any other lawful act or thing incidental to or connected with the foregoing purposes or in advancement thereof.

The Corporation is also formed for any other purpose for which an organization may be exempt from federal taxation under Section 501 of the Internal Revenue Code of 1986 as amended or the corresponding section of any future federal tax code.

The Taxpayer stated, in carrying out the purposes of the Corporation, it provides financial assistance through subsidies to those who cannot pay the total fee for the services provided. The Taxpayer testified this is evidence of the charitable nature of the

Corporation. During the board's review of the Taxpayer's submissions, the board found the Corporation's income and expense statement for the twelve months ending December 31, 2002 (Taxpayer Exhibit 9), does not contain any line item to account for the subsidization claimed by the Taxpayer. Further, on page 2, line 3, part III Statements About Activities of Schedule A of the Corporation's 2001 Form 990 income tax return (Municipality Exhibit B), the Taxpayer responds "no" to the question, "Does the organization make grants for scholarships, fellowships, student loans, etc?" The board finds for the Taxpayer to support its claim for a charitable exemption through its subsidization of some fees, specific evidence is necessary to show the frequency and extent or amount of the subsidies. The Taxpayer, however, provided no probative documentation outlining the extent to which any subsidization occurs. In its RSA 72:23, VI financial statement, the Corporation co-mingled the income and expenses for both its New Hampshire and New York operations but which in total showed only \$250 as "donations."

The Corporation argued that its subsidization occurs not by overt donations but by reducing the fees thus creating partial or full scholarships. However, the only estimate of such "scholarship" as it relates to the Properties is an estimate of \$9,025 as outlined in its September 13, 2002 letter to the Town selectmen. This September 13, 2002 letter, however, uses the future verb tense in estimating the number of attendees (50) as of December 31, 2002 and that 19 of the 50 ". . . will be offered partial or full scholarships." (Emphasis added.) The board finds the Corporation's prospective estimate of scholarships and lack of long term "consistent and unblemished" record of providing

such subsidization does not create the obligation “. . . by its charter or otherwise, RSA 72:23-1, . . .” as was found in Appeal of City of Franklin, 137 N.H. 622, 626 (1993).

Further, the Taxpayer does not advertise or promote the fact the public may avail itself of the Corporation’s programs, even if they cannot pay the suggested fees and that subsidization is available. The Town provided photocopies of pages of the Corporation’s brochure which outlined the services and experiences available at the Properties (Municipality Exhibit C). There is no information in the brochure outlining or describing the availability of financial aide for prospective clients. The board finds for there to be a benefit to the general public, the general public should be aware that the opportunity to receive the benefit exists. In the instant case, the board finds there is no evidence to establish the general public is aware of the potential for subsidization of the fees or charges of the Taxpayer or, in fact, that any occurred in any documented fashion since the Properties were purchased on March 8, 2002. Cf. Franklin.

Another key criteria for establishing any organization’s charitable status is that there must be an enforceable obligation to perform some charitable service. In addition to the provisions of RSA 72:23-1 previously discussed, several cases address the necessity of an enforceable, charitable obligation to receive an exemption. In Society of Cincinnati v. Exeter, 92 N.H. 348, 352-53 (1943), the court found the option to perform patriotic services was solely at the uncontrolled discretion of the society and was not enforceable by any public entity. In Nature Conservancy v. Nelson, 107 N.H. 316, 319 (1966), the court stated “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.” Further, in Franklin, the court stated “. . . in order to qualify as a charitable institution, an obligation must exist to perform the organization’s stated purpose to the public, rather than simply to the members of the organization.”

In short, both the statute and case law require that for an organization to be granted a charitable exemption it must be organized and obligated in some fashion to perform certain “service of public good or welfare” RSA 72:23-1. We find the Taxpayer is neither so organized nor obligated.

First, the services of the Corporation may provide a personal benefit to those who attend, but the promotion and availability of yoga is not a charitable service to the general public. As the Town’s Memorandum of Law at page 3 aptly states:

“The study and practice of yoga may well create personal physical and/or spiritual benefits for those who participate directly in that activity. But unlike nature conservation (or, for example, museums which conserve fields of knowledge or great art for the sake of the general public) the mere fact that yoga is being practiced and studied by certain individuals does not, by its very nature, create any inherent direct benefit to the general public. It benefits only those who participate in that activity.”

Second, the Corporation’s Articles of Agreement contain no enforceable obligation that it provide subsidized yoga services nor, as noted earlier, has it established a documented history of such subsidization as was the case in Franklin. Any subsidization of fees by the Taxpayer is not obligatory and is at the sole discretion of the Taxpayer, both in the frequency and extent it occurs.

Third, the board does not find the Articles of Agreement's purposes of ". . . organic farming, forestry, [or] land preservation . . ." create an alternate basis for granting a charitable exemption. These purposes neither separately nor as a component of the Corporation's yoga training, establish a charitable benefit to the general public beyond that already recognized in the lower assessment of farm and forest land in current use (Chapter RSA 79-A).

Because the board has determined the Taxpayer does not meet the definition of a "charitable" corporation as defined in RSA 72:23-1, it is unnecessary for the board to decide whether the Corporation uses and occupies the Properties for the purposes for which it was established.

For all these reasons, the board finds the Taxpayer is not entitled to a charitable exemption and the appeal is denied.

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.

Findings of Fact and Rulings of Law

With respect to the Requests for Findings of Fact (“Requests”), 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.

The Requests are replicated in the form submitted without any changes, typographical or otherwise, made by the board.

TOWN OF SUGAR HILL’S
REQUESTS FOR FINDINGS AND RULINGS

1. In its April 8, 2002 request to the IRS for 501(c)(3) status, under the question “How does Rasa Yoga meet the criteria of a 501(c)(3) organization?” Rasa Yoga Corp. listed “Educational Purpose” and “Religious Purpose” but did not list charitable purposes.

Granted.

2. Rasa Yoga’s “retreat” programs, as described in its brochures, are not dissimilar, in their relevant essence, from those of a specialized inn, resort or spa.

Neither granted nor denied.

3. By contrast with a purpose such as the conservation of land – as set forth in the case of *Nature Conservancy v. Nelson*, 107 N.H. 316 – the purpose of promoting yoga, tai chi chuan and

meditation does *not* constitute a *per se* charitable purpose (i.e. a purpose which is charitable by its very nature, regardless of the issue of financial assistance or subsidization).

Granted.

4. Rasa Yoga has failed to document or prove the extent, if any, to which participants in its programs receive financial assistance or other subsidization, and has therefore failed to prove that such assistance or subsidization is other than “slight, negligible or insignificant.”

Granted.

5. Rasa Yoga has failed to prove that its programs are less expensive than comparable programs offered by for-profit groups, because it has failed to demonstrate actual comparability to any for-profit yoga programs.

Granted.

6. Rasa Yoga is *not* obligated by its charter or other organic documents to provide financial assistance or subsidization to participants in its programs.

Granted.

7. Rasa Yoga does *not* have any long-standing history of providing financial assistance or subsidization for participants in its programs, from which an obligation to provide such benefits might be inferred, even in the absence of a charter obligation, under *Appeal of City of Franklin*, 137 N.H. 622 (1993).

Granted.

8. Any financial assistance or subsidization Rasa Yoga may provide to participants in its programs is solely at its own option and in its uncontrolled discretion.

Granted.

9. Because tax exemptions increase tax burdens on others, the principle of Part 2, Article 5 of the N.H. Constitution that any expenditure of public funds must serve a proper public purpose also mandates that a tax exemption, in order to be valid, must reasonably promote some proper object of public welfare or interest. *Opinion of the Justices*, 144 N.H. 374 (1950).

Granted, changing “1950” to 1999

10. As a result, tax exemptions, including the charitable exemption, must be construed and applied in such a way as to achieve such an object of public welfare or interest – as is reflected in the requirement of both the common law and RSA 72:23-1 that a charity must “perform some service of public good or welfare...”

Granted.

11. Just as in the case of the educational exemption (as construed in *New Canaan Academy v. Canaan*, 122 N.H. 134) an organization is less likely to be deemed “charitable” the further its purposes and activities diverge from those which might conceivably be provided by government itself.

Neither granted nor denied.

12. The purposes of Rasa Yoga Corp – while they may well benefit certain individuals – do not “reasonably promote some proper object of *public* welfare or interest,” because they do not supply any basic human need which government might otherwise provide for, and because the benefits are specialized and essentially private in nature. *Society of Cincinnati v. Exeter*, 92 N.H. 348.

Granted.

13. The only portion of Rasa Yoga’s 627-acre property used and occupied directly for the purpose of promoting study and training in yoga, tai chi chuan, and meditation (etc.) is a portion of the farmhouse on the property.

Neither granted nor denied.

14. Even if the promotion of yoga, tai chi chuan and meditation were deemed a charitable activity, any tax exemption must be apportioned, because only a portion of the farmhouse is used and occupied for that activity, other portions being used solely for residential purposes and storage of farm equipment.

Neither granted nor denied.

15. Even if the promotion of yoga were deemed a charitable activity, that would not make Rasa Yoga’s farmland, forest land and conservation land tax exempt, because the use of those lands in conjunction with the yoga programs, or the other purposes of Rasa Yoga Corp., is no more than “slight, negligible or insignificant.”

Neither granted nor denied.

16. There is no necessary connection or integration between the use of Rasa Yoga's farmland and conservation land, and its yoga promotion and training programs.

Granted.

17. Furthermore, the farmland, forest land and conservation land is not used or occupied directly for any alternative charitable purpose.

Neither granted nor denied.

18. Farming and growing of agricultural products for sale does not constitute a charitable activity, even if conducted by a not-for-profit entity.

Granted.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Sheanne R. Tucker, Esq., Lotter & Bailin, P.C., 41 Brook Street, Manchester, New Hampshire 03104, counsel for the Taxpayer; H. Bernard Waugh, Esq., Gardner, Fulton & Waugh, P.L.L.C., 78 Bank Street, Lebanon, New Hampshire 03766-1727, counsel for the Town; and Chairman, Board of Selectmen, Town of Sugar Hill, 1448 Main Street, Sugar Hill, New Hampshire 03585.

Date: January 5, 2004

Anne M. Bourque, Deputy Clerk