

The Taylor Home

v.

Town of Wolfeboro

Docket No.: 19683-02EX

DECISION

The Taylor Home (“Taylor Home”) appeals, pursuant to RSA 72:34-a, the “Town’s” 2002 denial of Taylor Home’s request for a charitable exemption as provided under RSA 72:23, V on a 30.81-acre lot with 16 residential units (the “Property”).

Taylor Home 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. For the reasons stated below, the board determines the Property qualifies for an RSA 72:23, V charitable exemption.

Taylor Home argued it was entitled to the charitable exemption because:

- (1) Taylor Home is a recognized charitable organization which meets the statutory definition in RSA 72:23-l, and the Town does not dispute this status;
- (2) Taylor Home’s “Back Bay” community in the Town operates in exactly the same way as “The Ledges” in Laconia, with the only exception being that preferences are given in each for local residents making application;

- (3) the Property is used and occupied, as well as owned, for a charitable purpose;
- (4) the purpose includes allowing elderly people to continue to live independently without moving from their communities even after their ability or desire to maintain their own homes has ended;
- (5) the Back Bay facility, like the rest of Taylor Home's facilities, is heavily regulated by the New Hampshire Insurance Commission as a continuing care facility, and Taylor Home is also registered with the Division of Charitable Trusts of the New Hampshire Department of Justice;
- (6) Taylor Home receives no Medicare or Medicaid funding in providing its assisted living and nursing home services; and
- (7) the Back Bay project extends the charitable mission of Taylor Home.

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

- (1) while the Town does not question that Taylor Home meets the statutory definition of a charitable organization or the ownership requirement in RSA 72:23-V, the use and occupancy requirements of this statute have not been met;
- (2) only independent living units are available at Back Bay, not assisted living or nursing care facilities, making the use and occupancy very different, and the independent living units are the "money engine" for Taylor Home;
- (3) no subsidies to the required entrance and monthly fees have been received by any Back Bay residents from Taylor Home;
- (4) a physically, but unrelated, identical project standing alone (without the contractual connections to Taylor Home's other operations in providing assisted living and nursing care) would be taxable and would not qualify for an exemption; and
- (5) Taylor Home failed to meet its burden of proof.

Board's Rulings

In summary, the board finds the Property is an integral and inseparable component of the Taylor Home community based in the City of Laconia and, thus, qualifies for an RSA 72:23, V charitable exemption.

The board is guided in this appeal not only by RSA 72:23, V, the charitable exemption statute, and RSA 72:23-1, the definition of a charitable organization, but also by a prior decision of the supreme court, Appeal of City of Laconia, 146 N.H. 725 (2001), affirming a board decision, The Taylor Home v. City of Laconia, BTLA Docket Nos.: 17303-96PT, 17458-97PT and 17457-97PT (1999).

Detailed Findings

After acquiring title to the land in January 2000 from The Land Bank of Wolfeboro-Tuftonboro, Inc., Taylor Home began construction of the independent elderly housing units at Back Bay; as of April 1, 2001, 16 of the planned 39 units had been constructed. The units are in either detached, single unit structures or duplex structures, with each individual living unit having two bedrooms and two baths, with square footages ranging from 1,450 to 2,296 square feet.

Based on the evidence submitted in Taxpayer's Exhibit 1 and the testimony of Taylor Home's executive director, Mr. Howard Chandler, residents who enter the units at Back Bay sign a life care agreement identical to that signed by residents who occupy The Ledges units at Taylor Home in Laconia. Consequently, the residents at Back Bay have the same entry payments and access to Taylor Home's assisted living and nursing care facilities in Laconia. The monthly fees at Back Bay are generally greater than at The Ledges' units, largely a function of the Back Bay units being larger and more expensive to construct. Mr. Chandler testified that Taylor Home provides various support ("care management") services for residents of the independent living units at each

location, including regular visits to each resident from two care managers and their supervisor, scheduled social activities including a mini-fitness center, a computer center, trips (to Boston, for example), distribution of food, coordination of transportation, an emergency call system, as well as maintenance of the buildings, common areas and infrastructure.

All residents are subject to the same Taylor Home bylaws, whether they live in the Back Bay community located in the Town or The Ledges in Laconia. In addition, Taylor Home is not subject to different regulatory requirements with respect to the Property, but rather is subject to uniform regulation and reporting requirements for all of its facilities and property, irrespective of the municipality in which it is located, to comply with the New Hampshire Insurance Commission's regulations as a continuing care facility under RSA Ch. 420-D and the Division of Charitable Trusts of the New Hampshire Department of Justice under RSA 7:20, et seq.

In summary, there is nothing in the record before the board to suggest a viable legal distinction can be drawn between Taylor Home's operations in the Town and its operations in Laconia, which have already been found to be charitable. There is also no evidence Taylor Home operates the Back Bay independent living units in the Town any differently than it operates The Ledges independent living units in Laconia. In each case, residents have the same access to assisted living and nursing care facilities, if and when such needs should arise, as well as the additional "care management" services noted above.

Taylor Home amended its bylaws in 1998 and expanded them to include a goal "to create satellite communities that allow elders to remain in their own communities." (Taxpayer Exhibit 1, tab 6.) Testimony and evidence indicates the prior charitable goals of providing assistance and priority to those applicants with financial needs continue to exist in documentation and in practice. Mr. Chandler testified that beginning in 2000 an additional \$15,000 of each resident's entry fee is

allocated to a medical reserve fund to provide nursing and medical care financial assistance to residents who later have exhausted their own assets to pay for such care at Taylor Home's assisted living and nursing care facilities. This medical reserve fund is in addition to the ongoing charitable admission fund which continues to be funded with \$10,000 from each new entrance fee. Other than the expansion of Taylor Home's bylaws and the creation of the medical reserve fund, the board finds the general operations and financing of Taylor Home in 2001 to be substantially the same as those found by the board in the Laconia Taylor Home appeals.

Detailed Rulings

The board finds the use and occupancy of the units at Back Bay are identical to the use and occupancy of The Ledges' units in Laconia. Thus, the board is unconvinced by the Town's argument that because the Property is located in a separate taxing jurisdiction (from the Laconia Taylor Home facilities) and because the charitable financial assistance that occurs is largely at the assisted living and nursing facilities in Laconia, the independent living units at Back Bay are taxable. Rather, we find that based on the legal integration of the Property with the Laconia Taylor Home facilities and the financial necessity of the independent units to carry out the charitable goals of Taylor Home, the Property directly fulfills Taylor Home's charitable purposes.

The familiar statutory test for a charitable exemption is whether the Property is owned, used and occupied directly for a charitable purpose, see RSA 72:23, V and 72:23-1, and the board finds Taylor Home meets all three prongs of this test. Because the Taylor Home community fulfills an overall, integrated charitable purpose, the fact that some of its facilities are located in a different municipality does not defeat its entitlement to a statutory exemption. The Town has not challenged the board's findings in the Laconia appeal, upheld by the supreme court, that Taylor Home has a proper charitable purpose and that "the independent living units, assisted living units

and nursing care facility[] ‘work in concert to fulfill [its] charitable mission.’” Appeal of City of Laconia, supra, 146 N.H. at 729.¹ The mere fact that some of the independent living units are located in the Town, while others are in Laconia, cannot be the basis for denying the exemption. To rule otherwise would give undue weight to geography (municipal boundaries) rather than the explicit criteria established by the legislature in creating the charitable exemption.

Taylor Home established, as an important part of its overall charitable purpose, the goal of helping elderly people live independently and in their own communities for as long as possible. A contrary ruling denying an exemption on the Property would probably have the undesirable effect of restricting any future expansion of housing facilities for the elderly by Taylor Home to the physical boundaries of Laconia; it may therefore force elderly people wishing to participate in Taylor Home’s programs to relocate to that jurisdiction before, in some instances many years before, they might need the assisted living and nursing care facilities that are also provided by Taylor Home as part of its integrated program.

As recognized in the Laconia appeal, charitable institutions must inevitably secure adequate funding to support their programs. Whether viewed as “money engines,”² “cost shifting,” or more elegantly as a means of inter-temporal, cross-subsidization of the Taxpayer’s recognized charitable programs for the elderly until the times of actual need by each participant, the funds generated by the independent living units located in the Town directly contribute to the

¹ At hearing, the Town’s attorney indicated the Town was not challenging the Laconia appeal or its findings, nor Taylor Home’s qualifications as a charitable organization under RSA 72:23-1.

² As the board found in Taylor Home and as the court affirmed in Appeal of City of Laconia, the independent living units “[are] one of main ‘money engines’ generating funds necessary to carry out [the] Home’s legislative purpose. Just as fund raising is the lifeblood of most charitable organizations, cost shifting at [the] Home provides a significant source of funds for providing charitable assistance to older residents requiring intensive assisted or nursing care services.” Id. at 729.

Taxpayer's overall charitable purpose and mission. Appeal of City of Laconia, *supra*, 146 N.H. at 729.

The supreme court has held in a long line of institutional exemption cases that where improvements are used “directly [to] fulfill the organization’s charitable [religious or educational] purpose, or are necessary for the organization to accomplish its purpose, an exemption will be allowed.” Senior Citizen Housing Dev. Corp. v. City of Claremont, 122 N.H. 1104, 1108 (1982); St. Paul’s School v. City of Concord, 117 N.H. 243 (1977) (support buildings and campus infrastructure including garages, parking lots and heating plant, to the extent they support the educational purposes of other buildings, are exempt in proportion to the support of those educational facilities versus the taxable non-educational facilities); Alton Bay Camp Meeting Asso. v. Alton, 109 N.H. 44 (1968) (various buildings including a cafeteria, snack shop, teen center, residence for the camp manager, garage, manager’s office, to the extent that they are integral and central to carrying out the organization’s charitable function, are exempt); Wentworth Home v. Portsmouth, 108 N.H. 514 (1968) (residences of employees and the associated parking facilities that are both “institutional necessities” are directly used in supporting the charitable purpose of a nursing care facility); Appeal of Emissaries of Divine Light, 140 N.H. 552, 557 (1995) (certain agricultural land, residential and support property were found not to be “essential [and] . . . integral to the Taxpayer’s . . . religious purposes”).

In keeping with this case law, the board finds Taylor Home’s charitable mission is directly supported by its independent living units at The Ledges and Back Bay supplying, in conjunction with the Taylor Home’s endowment funds, sufficient resources to fulfill its charitable purposes. It would both be unreasonable and impractical to expect Taylor Home to expand its services, including independent living units, only in Laconia. In fact, as noted earlier, Taylor Home

expanded its bylaws to address the need of providing independent living units closer to the historical dwellings of the residents entering Taylor Home.

In conclusion, the board finds Taylor Home's charitable purpose and mission continues and has been expanded through its new bylaws and creation of its satellite facility at Back Bay. The Property is an integral part of the overall Taylor Home charitable purpose of providing initially independent and later, if necessary, assisted living and nursing care support for moderate income elderly residents. As such, the independent units are inseparable from the overall charitable purposes of Taylor Home and qualify for an RSA 72:23, V charitable exemption.

If the taxes have been paid, the full amount paid shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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.

Findings of Fact and Rulings of Law

The “Requests” received from Taylor Home 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.

Taylor Home’s Requests for Findings of Fact and Rulings of Law

FINDINGS OF FACT

1. The Taylor Home Community (“Taylor Home”) is a continuing care retirement community (“CCRC”) which provides independent, assisted living and nursing care to residents, as their needs require, who have signed a “Residence and Life Care Agreement” for the duration of their lives.

Granted.

2. In 2002 Back Bay residents signed the same “Residence and Life Care Agreement” as did Taylor Home residents residing at “The Ledges” in Laconia.

Granted.

3. Back Bay’s provision of independent living facilities is in furtherance of the Taylor Home’s charter and mission statement to provide quality housing and supportive services to elders for whom such services might not otherwise be available or affordable.

Granted.

4. Back Bay shares the same Charter, Board of Trustees, Board of Directors and By-laws as The Taylor Home.

Granted.

5. Back Bay could not exist on its own as a provider of independent living units without its integration with the Taylor Home.

Neither granted nor denied.

6. Back Bay is an integral part of the Taylor Home.

Neither granted nor denied.

7. Back Bay residents have available to them the same charitable funds as residents at The Ledges.

Granted.

8. Back Bay's target population is the same as the Ledges' Community in Laconia.

Neither granted nor denied.

9. Back Bay is obligated by its By-laws and mission statement to give priority admission to those applicants with greater financial need.

Granted.

10. Back Bay targets individuals whose assets are too great to obtain federal aid but whose means are not sufficient to support them in private and non-charitable elderly housing options.

Granted.

11. Back Bay functions similarly to The Ledges at the Taylor Home.

Granted.

12. Back Bay's self-promotion efforts emphasize the availability of financial assistance to applicants.

Neither granted nor denied.

13. Back Bay residents have the resources of The Taylor Home available to them to the same extent as Taylor Home residents.

Granted.

14. Back Bay serves the function of allowing residents in the Wolfeboro area to live in independent housing for the 6 month prerequisite time period before being admitted to nursing care at The Taylor Home in Laconia.

Granted.

15. In 2002 all residents at Back Bay had “Residence and Life Care Agreement” contracts which commit the Taylor Home to provide for their housing, medical and financial needs for life.

Granted.

16. Back Bay is owned and occupied by Taylor Home for its charitable purposes.

Granted.

17. The “Residence and Life Care Agreement”, which Back Bay residents enter into with the Taylor Home are the same contracts already the subject of the Board’s decision in the Taylor Home v. Town of Laconia, (Board Docket No. 17303-96 PT) and Appeal of City of Laconia, 146 NH 725 (2001).

Granted.

18. Because of the “Residence and Life Care Agreements” held by Back Bay residents, Back Bay can not be transferred to any other entity without the New Hampshire Insurance Commissioner’s approval per RSA 420-D:13.

Granted.

19. Back Bays assets are part of the assets of Taylor Home within the meaning of RSA 420-D.

Granted.

20. To the extent Back Bay generates funds, such funds are used solely to carry out the Taylor Home’s charitable purposes.

Granted.

RULINGS OF LAW

A. The Back Bay Community is wholly integrated with the Taylor Home.

Granted.

B. Back Bay's obligation to provide charity is enforceable by the Attorney General and Commissioner of Insurance. See RSA 420-D.

Granted.

C. Back Bay is regulated under the same certificate of authority as the Taylor Home per RSA 420-D.

Granted.

D. The Back Bay assets are considered part of the Taylor Home assets and would be subject to liquidation under RSA 420-D:16 and subject to lien under RSA 420-D:9, in the event Taylor Home became insolvent.

Granted.

E. Any purchaser of the Back Bay facility would have to apply for a certificate of authority from the New Hampshire Insurance Commissioner (RSA 420-D:13).

Granted.

F. All assets of the Taylor Home would be available to all residents of the Taylor Home, including those of Back Bay, if the Taylor Home were subject to liquidation under RSA 420-D.

Granted.

G. RSA 72:23, V exempts the Back Bay property from taxation because the Back Bay property serves a charitable purpose for general portions of the population, does not distribute profits to shareholders or owners, uses all of its property in furtherance of its charitable purpose, and is owned and occupied by the Taylor Home Community.

Granted.

I. The Taylor Home is entitled to an exemption from property taxes on its Back Bay property in Wolfeboro under RSA 72:23, V.

Granted.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Marshall D. Hickok, Esq. and Margaret M. Sullivan, Esq., Martin, Lord & Osman, P.A., One Mill Plaza, Laconia, New Hampshire 03246, counsel for Taylor Home, Taxpayer; Mark H. Puffer, Esq., Barto and Puffer, P.A., 6 Loudon Road – Suite 4, Concord, New Hampshire 03303-5321, counsel for the Town of Wolfeboro; and Chairman, Board of Selectmen, Post Office Box 629, 84 S. Main Street, Wolfeboro, New Hampshire 03894.

Date: 7/19/04

Anne M. Stelmach, Deputy Clerk

The Taylor Home

v.

Town of Wolfeboro

Docket No.: 19683-02EX

ORDER

The board has reviewed the “Town’s” Motion for Reconsideration (“Motion”) filed with respect to the board’s Decision dated July 19, 2004, as well as the “Objection” to the Motion filed by the “Taxpayer.” The Motion is denied.

Motions for rehearing or reconsideration are governed by RSA 541:3 and TAX 201.37. Applying this statute and rule, the board finds no “good reason” exists for granting the Motion.

Mere disagreement by the Town with the board’s detailed findings and conclusions that the Taxpayer’s property in the Town helps fulfill its overall charitable purpose is not a sufficient ground for modifying the Decision. In essence, the Town argues the Taxpayer cannot obtain a tax exemption because it chose to expand its programs and services for the elderly by constructing independent living units in a housing complex known as the “Back Bay” community located in the Town rather than in Laconia, where the bulk of the Taxpayer’s operations (consisting of assisted living and nursing home facilities, along with independent living units known as “The Ledges”)

presently exist. The board disagrees with the Town's implicit assumption that an organization can qualify for a charitable exemption only if a full mix of its programs and services are located within each municipality.

For these reasons, it is immaterial that the Taxpayer's assisted living and nursing care facilities for residents of Back Bay are physically located in Laconia, rather than in the Town. See Motion, ¶12. As noted by the board, it would be an unreasonable burden to require an organization with a recognized charitable purpose to expand entirely within one municipality or, alternatively, to reproduce the full range of its programs and services in another, in order to obtain a tax exemption. See Decision at p. 6.

The Town faults the Taxpayer for not presenting additional detailed facts, such as the "income and expenses" and "the method for setting entry fees and monthly fees" for Back Bay. See Motion ¶¶ 7-8. The Town, however, had full opportunity to develop and present such evidence through discovery and/or cross-examination or its case in chief, to the extent the Town believed such further facts, assuming they were available or obtainable, would have helped its position. TAX 201.37(f) requires parties to "submit all evidence and present all arguments at the hearing," not in a subsequent motion for rehearing or reconsideration. As also noted in the Taxpayer's Objection at paragraph 2, "[a] motion for reconsideration is not a vehicle to be used to raise new arguments or seek to introduce new facts. (Citation omitted.)" In addition, the board found the Taxpayer met its burden of proof in this appeal.

Finally, the board notes the Town selectively quotes one definition of "integral" contained in the 1981 edition of "Webster's New Collegiate Dictionary." Motion, ¶22. A later edition of this same publication gives additional meanings such as "formed as a unit with another part" and "constituent," not just "essential to completeness." See Webster's Ninth New Collegiate

Dictionary (1983) at p. 628. In this regard, the board notes its prior findings, quoted by the supreme court and not challenged by the Town in this appeal, that the independent living units, assisted living units and nursing care facilities “work in concert to fulfill [the Taxpayer’s] charitable mission.” See Appeal of City of Laconia, 146 N.H. 725, 729 (2001), quoted in the Decision at pp. 5-6; and fns. 1 and 2 thereof.

While the Town may be correct in its speculations regarding whether the Taxpayer could continue to exist without constructing and operating additional independent living units in the Town or elsewhere, the relevant test for a tax exemption is whether property is owned, used and occupied directly for a charitable purpose, not whether the property is “essential to complete” that purpose. See RSA 72:23, V and 72:23-1. There was ample evidence to support the board’s findings that the “Back Bay” independent living units were legally, financially and operationally a constituent part of the Taxpayer’s overall activities and charitable mission and were owned, used and occupied in the manner required for a tax exemption.

Any appeal of the Decision must be by petition to the supreme court within thirty days after the date shown below.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Marshall D. Hickok, Esq. and Margaret Sullivan, Esq., Martin, Lord & Osman, P.A., One Mill Plaza, Laconia, New Hampshire 03246, counsel for the Taxpayer; Mark H. Puffer, Esq., Barto and Puffer, P.A., 6 Loudon Road – Suite 4, Concord, New Hampshire 03303-5321, counsel for the Town; and Chairman, Board of Selectmen, Post Office Box 629, 84 South Main Street, Wolfeboro, New Hampshire 03894.

Date: August 30, 2004

Anne M. Stelmach, Deputy Clerk