**St. Paul's Fellowship Canterbury**

**v.**

**Town of Canterbury**

**Docket No.: 19464-03EX**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the "Town's" denial of a tax year 2003 application for religious exemption pursuant to RSA 72:23, III on a 6.34-acre lot with improvements located at 65 Baptist Road and designated as Lot 3, Block 59 of Map 8 (the "Property"). For the reasons stated below, the appeal for exemption is denied.

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 argued it was entitled to the religious exemption because:
(1) the Taxpayer is affiliated with the World Bible Way Fellowship, Inc., a regularly recognized and constituted denomination (Taxpayer Exhibit 1) which has been recognized as such at least since 1976 by the Internal Revenue Service;

(2) the Taxpayer performs its mission through the work of the Reverend Harold J. Matthews who is an ordained minister and conducts religious activities, including delivering the sacraments, performing baptisms and marriages and bible study;

(3) the Property was transferred to "St. Paul's Fellowship" by Quitclaim Deed (Municipality Exhibit A) from Reverend Matthews prior to April 1, 2003 and this satisfies the ownership requirement in the statute;

(4) the Town recognized this change in ownership when it removed the veteran's tax credit claimed by Reverend Matthews;

(5) the Property is more devoted to the religious purposes of the Taxpayer than any private uses by Reverend Matthews and his family and substantial improvements have been made (see Municipality Exhibit B) to facilitate the use and occupancy of the Property for religious purposes;

(6) only funds from the Matthews have been used to acquire and improve the Property; and

(7) any financial benefit received from the property tax exemption will be used to expand the Taxpayer's religious functions and mission.

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

(1) RSA 72:23, III specifies the requirements for a religious exemption and, as of April 1, 2003, the Taxpayer did not own, use and occupy the Property as required by the statute;

(2) the ownership requirement has not been met because quitclaim deeds transferring the Property to and from the Taxpayer and two mortgages on the Property make it evident that "Harold J. Matthews" is the acknowledged and recognized owner rather than the Taxpayer;

(3) the Taxpayer did not legally exist as an entity until May 6, 2003, when the Articles of Agreement were filed with the Secretary of State;

(4) the Taxpayer's claim of use and occupancy of the Property "directly" for religious purposes and whether it is part of "any regularly recognized and constituted denomination, creed or sect," as required by the exemption statute, are also subject to question; and

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

**Board's Rulings**

Based on the evidence, the board finds the Taxpayer did not sustain its burden of proving the Property was entitled to a religious exemption pursuant to RSA 72:23, III.

As the board observed in a recent exemption case,[1] property tax exemptions, including those granted for religious purposes, are a privilege conferred by the New Hampshire Legislature and must be based on compliance with the requirements enacted in the statute. See RSA 72:23-m (Applicability of Exemptions; confirming they are available "only upon property which meets [the] requirements of the statute under which the exemption is claimed"); and Christian Camps & Conferences v. Town of Alton, 118 N.H. 351, 353 (1978) ("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." [Citation omitted]).

As a result, the board, like the Town, is obligated to decide whether an exemption should be granted or denied based entirely upon the explicit requirements set forth in the statute, without exception or discretion and without regard to the particular religious belief involved or the manner in which those beliefs are carried out. See Appeal of Emissaries of Divine Light, 140 N.H. 552, 556 (1995) (neither "liberal . . . nor a hostile attitude" is appropriate in construing and applying an exemption statute, but rather adherence "to give full effect to the legislative intent").

[1] D'Cruz v. Town of Warren, BTLA Docket No. 19455-02EX (September 10, 2003), 2003 WL 22351502 (ordained Catholic priest denied religious exemption on house owned by him, but used for religious purposes of "St. Anne's Chapel Association").

RSA 72:23, III provides:

> "Houses of public worship, parish houses, church parsonages occupied by their pastors, convents, monasteries, buildings and the lands appertaining to them owned, used and occupied directly for religious training or for other religious purposes by any regularly recognized and constituted denomination, creed or sect, organized, incorporated or legally doing business in this state and the personal property used by them for the purposes for which they are established." (Emphasis added.)

An ownership requirement in the statute is appropriate because the tax is assessed on real property and liability for its payment ultimately rests with the owner. Cf. RSA 75:4 (enumerating classes of "taxable property" to include improved and unimproved land and buildings; RSA 75:8 (referring to "real estate"); and, e.g., RSA 80:21 (notice of tax sale to owner).

The board has reviewed all of the testimony and documents submitted by the parties, including the additional legal arguments made by the Town in its Memorandum of Law. While there are other disputed factual and legal issues regarding the Taxpayer's qualifications for an exemption, the board need not resolve them here since the board finds, as a threshold matter, the Taxpayer did not "own" the Property, within the meaning of RSA 72:23, III, as of April 1, 2003[2] and therefore is not entitled to a religious exemption for tax year 2003.

The board bases this finding on several facts and the chronology reflected in various recorded and other documents. "St. Paul's Fellowship" filed its exemption application with the Town on February 26, 2003. (See completed "A-9" form dated February 26, 2003.) At that time, title to the Property was held by "Harold J. Matthews," who had obtained a mortgage (Municipality Exhibit D) in September, 2002 for $235,000. (According to his testimony, Reverend Matthews first acquired the Property in 2000.)

[2] See Appeal of Hood, 127 N.H. 824, 825 (1986) (eligibility for exemption depends on taxpayer's status as of April 1 of tax year).

The Taxpayer argues a Quitclaim Deed dated and recorded on March 11, 2003 (Municipality Exhibit A) is sufficient to establish its ownership of the Property. The board disagrees. While this document purports to be a conveyance from Harold J. Matthews to "St. Paul's Fellowship," it also states:

> "St. Paul's Fellowship agrees that the grantor Harold J. Matthews or his estate will have the option to regain title to the above property and all improvements made to the same, at any time, for the sum of zero dollars by means of a quit claim deed from St. Paul's Fellowship to Harold J. Matthews or his estate."

The board finds this language undercuts any argument of an actual vesting of ownership in "St. Paul's Fellowship."

The reference to "St. Paul's Fellowship" in the March 11, 2003 Quitclaim Deed cannot be to the Taxpayer ("St. Paul's Fellowship Canterbury") because, as the Town emphasizes, this entity did not come into existence as a "New Hampshire nonprofit corporation" until the filing of its Articles of Agreement on May 6, 2003 with the Secretary of State. (See Municipality Exhibit L.) The board assumes, without deciding, that the designation of "St. Paul's Fellowship" in this Quitclaim Deed referred to a non-profit association of that name located in Scottsdale, Arizona previously established by Reverend Matthews. (See "Articles of Association" attached to Taxpayer's completed "A-9" form.) Reverend Matthews testified that he was prevented from using the name "St. Paul's Fellowship" by the New Hampshire Secretary of State's office and added the word "Canterbury" for this reason. Consequently, the board will assume, again without deciding, that the Taxpayer is the successor in interest to the Arizona entity for all intents and purposes.[3]

[3] Under RSA 72:23, III, a religious organization can be "legally doing business in this state" and qualify for an exemption even if it is "organized" or "incorporated" elsewhere. No evidence was presented on the issue of whether the Arizona entity, "St. Paul's Fellowship," was "legally doing business in this state" at the time of the application for exemption and the first Quitclaim Deed in February and March, 2003, respectively. Cf. Camp Merrimac, LLC v. Town of Hopkinton, BTLA Docket No. 18289-99EX (April 5, 2002), 2002 WL 598047 (religious organization established as a Massachusetts limited liability company).

In any event, no bona fide transfer of ownership can be deemed to have occurred where the grantor (Reverend Matthews in this case) can reclaim "title" at any time, for any reason and without any consideration. To qualify for an exemption, the exemption statute quoted above requires the Taxpayer to have actual ownership, rather than simply nominal title at any given instant in time.

Other documents confirm the nominal and temporary nature of the Taxpayer's title. A second Quitclaim Deed (Municipality Exhibit B), dated and recorded on June 23, 2003, just three months later, transferred title from "St. Paul's Fellowship" back to Reverend Matthews. (Each Quitclaim Deed is stated to be a "non-contractual transfer.") On October 29, 2003, another Mortgage (Municipality Exhibit E) was recorded on the Property for $292,200, this time listing both Reverend Matthews and his wife, Hope G. Matthews, as the "borrower," with no mention of the Taxpayer having any ownership interest in the Property. Finally, on December 30, 2003, a third Quitclaim Deed (Municipality Exhibit C) was recorded. This document purports to be a conveyance from Harold Matthews to "St. Paul's Fellowship Canterbury," but, in words of similar effect, it states:

> "Harold Matthews or his estate ha[s] an option to repurchase the property for zero dollar [sic] through a quitclaim deed from St. Paul's Fellowship, at any time. All cost [sic] of such transfer will be the responsibility of St. Paul's Fellowship Canterbury."

In summary, the two Quitclaim Deeds to "St Paul's Fellowship" in the first instance, and "St. Paul's Fellowship Canterbury" in the second, both reserve the right of Reverend Matthews to regain title at any time, for any reason and without consideration.

The reasons given by the Reverend Matthews for these exceptional provisions in the Quitclaim Deeds, while understandable, do not justify granting the statutory exemption. He testified all money used to acquire and improve the Property, and to pay all associated

maintenance and other expenses pertaining to its upkeep, were supplied by himself and his family (not any other contributors to the fellowship) and the Property should be passed on to his estate when he dies rather than be retained by the Taxpayer. He also indicated the Taxpayer could not have qualified for a mortgage in its own name, but this may be due as much to legitimate questions regarding whether the Taxpayer was ever a bona fide owner of the Property as to its financial qualifications for a loan. See, generally, 63C Am.Jur.2d "Property" §25 ("Title to property does not necessarily involve ownership of the property, but refers only to a legal relationship to the land, while ownership is comparable to control . . ."). There is no question Reverend Matthews exercises full and complete control over the Property, including the right to mortgage it in his own name and even control who will hold title at any given time.[4]

For these reasons, the appeal is denied. The board has responded to the Town's Requests for Findings of Fact and Rulings of Law in Addendum A to this 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

[4] The board need not decide whether the Town's action in denying Reverend Matthews a veteran's tax credit for tax year 2003 should be overturned because that denial was not appealed. The board notes, however, eligibility for a veteran's tax credit under RSA 72:28 (Supp. 2003) et seq., in future years would appear to exist if Reverend Matthews is deemed to be the owner of the Property, occupies it as "his principal place of abode" and meets all other statutory requirements. See RSA 72:29, 72:30 and 72:35 (Supp. 2003).

to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
Paul B. Franklin, Chairman

_____
Douglas S. Ricard, Member

_____
Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Dr. Harold J. and Hope Matthews, St. Paul's Fellowship Canterbury, 65 Baptist Road, Canterbury, New Hampshire 03224; Taxpayer's representatives; Barton L. Mayer, Esq., Upton and Hatfield, 10 Centre Street, Post Office Box 1090, Concord, New Hampshire 03302-1090, counsel for the Town; and Chairman, Board of Selectmen, Town of Canterbury, Post Office Box 500, Hackleboro Road, Canterbury, New Hampshire 03224.

Date: February 24, 2004

_____
Anne M. Stelmach, Deputy Clerk

**Addendum A**

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

Docket No.: 19464-03EX

The "Requests" received from the Town 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.

1. On June 6, 2000, Harold Matthews purchased a parcel of real property located at 65 Baptist Road in Canterbury (hereinafter referred to as "the property"), identified on the Town of Canterbury Tax Map as Map 8, Lot 3, on June 6, 2000, which is approximately six (6) acres in size and currently contains a residential home and a three-car garage.

**Granted, except the legal description should include reference to Block 59.**

2. In September 2002, Mr. Matthews entered into a mortgage on his property with Nexstar Financial for approximately $235,000.

**Granted.**

3. On February 26, 2003, Mr. Matthews sought a complete property tax exemption for tax year 2003, see RSA 72:23, III, on behalf of an entity called Saint Paul's Fellowship Canterbury, which the Town of Canterbury denied on March 30, 2003.

**Granted.**

4. Until this time, Mr. Matthews was receiving a veteran's property tax exemption pursuant to RSA 72:28 for the property.

**Granted.**

5. Mr. Matthews deeded the property to St. Paul's Fellowship Canterbury on March 11, 2003.

**Granted.**

6. It was not until May 6, 2003, that St. Paul's Fellowship Canterbury filed its articles of agreement with the Secretary of State, pursuant to RSA chapter 292.

**Granted.**

7. Shortly after receiving his tax bill in May 2003, Mr. Matthews demanded to know why he was no longer considered eligible to receive a veterans tax exemption for his property, the response to which was that he did not own the property.

**Granted.**

8. St. Paul's Fellowship Canterbury deeded the property back to Mr. Matthews on June 23, 2003.

**Granted.**

9. On October 23, 2003, Mr. Matthews entered into another personal mortgage with Nexstar Financial Corporation for approximately $292,000.

**Granted, except that mortgage states borrowers are both Harold J. Matthews and Hope G. Matthews.**

10. Mr. Matthews then reconveyed his property to St. Paul's Fellowship Canterbury on December 30, 2003.

**Granted.**

11. The taxpayer bears the burden of proving it is entitled to a tax exemption under RSA 72:23, III. Appeal of Emissaries of Divine Light, 140 N.H. 552, 557 (1995).

**Granted.**

12. RSA 76:2 provides that "[t]he property tax year shall be April 1 to March 31 and all property taxes shall be assessed on the inventory taken in April of that year."

**Granted.**

13. It is well-settled that a deed to an immediate estate in land, made to a person not in being, or a corporation not yet having a valid existence in the state is a nullity and passes no title to anyone. Sharp v. Riekhof, 747 P.2d 1044, 1046 (Utah 1987).

**Neither granted nor denied.**

14. RSA 292:4, in pertinent part, provides that "[t]he articles of agreement shall be recorded in the office of the clerk of the town in which the business of the corporation is to be carried on, and in the office of the secretary of state. When so recorded, the signers thereof shall be a corporation . . . ."

**Neither granted nor denied.**

15. The deed conveyance to St. Paul's Fellowship Canterbury in March 2003 was a nullity because St. Paul's did not have a valid existence in the State until it filed its articles of agreement on May 6, 2003.

**Neither granted nor denied.**

16. St. Paul's Fellowship Canterbury is not entitled to a property tax exemption under RSA 72:23, III for tax year 2003 because it did not own the property as of April 1, 2003.

**Granted.**

17. Property owned by a religious organization must be "used and occupied directly" for religious purposes in order to be considered eligible for a tax exemption under RSA 72:23, III. See East Coast Conference v. Town of Swanzey, 146 N.H. 658, 663 (2001).

**Granted.**

18. An organization is not entitled to a religious property tax exemption when the land is used principally by the owners for their own private and secular purposes and not for the purposes of the organization. See Alton Bay Camp Meeting Assoc. v. Alton, 109 N.H. 44, 49 (1968).

**Granted.**

19. Mr. Matthews and his wife, Hope Matthews, use the property for secular purposes associated with ordinary day-to-day living.

**Neither granted nor denied.**

20. To the extent St. Paul's Fellowship Canterbury performs any religious activities, those activities are *de minimis*, and conducted away from the premises. Franciscan Fathers v. Pittsfield, 97 N.H. 396, 401 (1952).

**Neither granted nor denied.**

21. St. Paul's Fellowship Canterbury is not entitled to a tax exemption under RSA 72:23, III for tax year 2003 because the property was not "owned, used **and** occupied directly for religious purposes." RSA 72:23, III (emphasis added).

**Granted.**