

**Northeast Family YMCA, Inc.**

**v.**

**Town of East Kingston**

**Docket No.: 19758-03EX**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2003 denial of the Taxpayer’s request for charitable exemption as provided under RSA 72:23,V on Lot 10-02-01, a 13.2-acre lot with summer camp structures (including several buildings and a bath house) and also a mobile home designated as Lot 10-02-01MH (collectively, the “Property”). For the reasons stated below, the appeal is granted.

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 carried this burden.

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

- (1) it is a Massachusetts corporation in good standing registered as a foreign nonprofit corporation in New Hampshire and is recognized as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code;
- (2) its articles of incorporation and by-laws reflect and document its charitable purposes;

- (3) it provides a wide range of programming for approximately 25 communities in southern New Hampshire and northeast Massachusetts, including operating a youth summer camp on the Property;
- (4) the deed conveying the Property to the Taxpayer in 2001 (Taxpayer Exhibit 1) contains a provision expressly restricting use of the Property to operation of a nonprofit, youth camp and related activities for a period of 15 years; and
- (5) the ownership, use and occupancy of the Property is entirely to fulfill its charitable purpose.

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

- (1) the language of the Taxpayer's charter states it provides benefits to "members," not the general public;
- (2) the Taxpayer's executive director is listed as a member of the board of directors on the Taxpayer's federal Form 990 return and he receives compensation for his services;
- (3) a relatively small number of New Hampshire residents attended the summer camp in 2003 (24 out of 421 campers);
- (4) only \$14,100 in scholarship aid was provided in 2003; and
- (5) the Taxpayer failed to sustain its burden of proof.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer is entitled to a charitable exemption for tax year 2003.

The board finds none of the arguments advanced by the Town to deny the exemption have merit. The only justification given for recommending the denial of the exemption by the Town's assessing contractor in its letter to the Town dated June 16, 2003 was "[t]here is, however, a program fee charged, and scholarships are offered to those who cannot afford this

fee.” The Town’s June 17, 2003 letter to the Taxpayer states it relied on this recommendation to deny the exemption.

In support of its position, the Town noted the name of the Taxpayer’s executive director, Mr. Gregg Thompson, was included on the Taxpayer’s board of directors’ list attached to the Taxpayer’s 2002 federal income tax Form 990 (Taxpayer Exhibit 7). The Town asserted that because the Taxpayer’s executive director was a member of the board of directors and an officer of the institution, and was paid a salary, this violated the section of RSA 72:23-1 mandating that no officer or member could receive a “pecuniary profit or benefit.” The board finds this assertion by the Town to be misplaced. At the hearing, Mr. Thompson testified his name was placed on the list merely as a contact person and did not mean he was a member of the board of directors. Further, the Taxpayer noted that in Taxpayer Exhibit 7 (the Form 990 at Schedule A, Part I), Mr. Thompson is identified as one of the five highest paid employees “Other Than Officers, Directors and Trustees” of the organization. As additional evidence that Mr. Thompson’s inclusion on the list does not necessarily make him a member of the board of directors is the fact the list was submitted as a response to Part V of the tax return. Part V requests a “List of Officers, Directors, Trustees, and Key Employees.” (Emphasis added.) Mr. Thompson, as executive director, is certainly a “key employee.” Based on the testimony and evidence, the board finds Mr. Thompson is just that, solely an important employee and not a member of the board of directors.

Further, the Town questioned the Taxpayer’s exemption eligibility given the fact it serves a relatively small area of New Hampshire and a small percentage (24 out of 421) of the camp attendees are from the state. As a consequence, the Town argued the Taxpayer did not meet one of the requirements outlined in RSA 72:23-1 as it did not “perform some service of public good

or welfare advancing the . . . well-being of the general public or a substantial and indefinite segment of the general public . . . .” The Town argued the small number of New Hampshire camp attendees did not meet the “substantial segment” requirement contained in the statute.

In further support of its position, the Town stated the Taxpayer spent a very small portion of its budget on advertising, limiting, therefore, the number of people who were aware of the Taxpayer’s summer camp opportunities. The board finds the Town’s reasoning is not supported by the facts.

The Taxpayer noted, the term “charitable,” as described in RSA 72:23-1, does not necessarily impose any obligation to donate large sums of money in carrying out its mission in order to qualify for an exemption. Nor does the statute state that the majority of the recipients of the organization’s charitable acts must be New Hampshire residents.

As shown in Taxpayer Exhibit 7 at Statement 3, the Taxpayer is affiliated with the YMCA of the USA with its headquarters in Chicago, Illinois. This governing body assigns the various YMCAs to distinct regions within the state and across the country. Mr. Thompson testified it is not allowed to advertise outside the specific region it is assigned. Other YMCAs throughout the state adhere to the same practice, but, the Taxpayer stated there are no restrictions prohibiting a person who lived outside the Taxpayer’s region from attending the Taxpayer’s summer camp facility.

Mr. Thompson explained the bulk of its advertising was done through brochures distributed through the school systems within its assigned region. The students in these school systems comprise the majority of the summer camp attendees. Mr. Thompson also testified that 15% of program participants and members are from New Hampshire. He stated the summer

camp provided \$14,100 in financial aid last year and New Hampshire residents received part of this aid.

The Town also questioned the use of the mobile home located on the Property as it was rented and generated income to the Taxpayer. In response, Mr. Thompson stated the mobile home was rented to the Taxpayer's youth director and that person lived year round on the Property, either directing the summer program when it is in season or as a caretaker for the Property during the remainder of the year. Further, in subsequent years, the youth director's salary was adjusted to include the housing and no rent was charged to eliminate confusion over whether the rent from the mobile home was indeed a profit generated for the Taxpayer.

Mr. Thompson testified that all net revenues from fees, rentals or charges are invested in the Taxpayer's facilities and programs. The board finds the rental arrangement of the mobile home does not disqualify the Taxpayer from receiving a charitable exemption. See, e.g., Franciscan Fathers v. Pittsfield, 97 N.H. 396, 402 (1952) (exemption of caretaker's house).

The board finds the Town's reading of the charitable exemption statutory guidelines to be over technical in this case. "The legislative purpose to encourage charitable institutions is not to be thwarted by a strained, over-technical, and unnecessary construction." Young Women's Christian Ass'n v. Portsmouth, 89 N.H. 40, 42 (1937) quoting Carter v. Whitcomb, 74 N.H. 482, 487 (1908).

For all these reasons, the board finds the Taxpayer is entitled to a full charitable exemption on the Property and the appeal is granted.

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

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: John G. Cleary, Esq., 476 Main Street, Post Office Box 708, Haverhill, Massachusetts 01830, counsel for the Taxpayer; Andrea Lewy, Avitar Associates of New England, Inc., Post Office Box 981, Epsom, New Hampshire 03234, representative for the Town of East Kingston; and Chairman, Board of Selectmen, Town of East Kingston, 24 Depot Road, East Kingston, New Hampshire 03827.

Date: May 12, 2004

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Anne M. Stelmach, Deputy Clerk