

**Huggins Hospital**

**v.**

**Town of Alton**

**Docket No.: 20248-03EX**

**DECISION**

The board held a noticed hearing on May 17, 2005 on the issue of jurisdiction for the “Taxpayer’s” tax year 2003 charitable exemption appeal. The issue pertains to the “statement of financial condition” (“Form A-12”) filing requirement set forth in RSA 72:23, VI. The board finds the Taxpayer’s acknowledged failure to file a Form A-12 with the “Town” by June 1, 2003 results in the loss of jurisdiction (the procedural right to seek an exemption for tax year 2003) and therefore the appeal is denied.

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

The Taxpayer argued it was entitled to the exemption because:

- (1) both its charter and charitable status were established by special acts of the New Hampshire Legislature, first in 1907 and then by amendment in 1951;
- (2) RSA 72:23, VI is part of RSA Ch. 72, enacted in 1913, and this chronology is significant because the case law [Appeal of City of Laconia, 146 N.H. 725 (2001) and Christian Science

Pleasant View Home v. City of Concord, 117 N.H. 239 (1977)] indicates the statutory requirements do not apply to a charitable organization having a tax exemption recognized by the Legislature after 1913;

(3) even if the statutory requirements should apply to the Taxpayer, RSA 72:23, VI can be construed to allow the filing of the Form A-12 by the end of the “following” fiscal year (2004), not the year for which the exemption is sought (2003);

(4) the Town was not prejudiced by the Taxpayer’s failure to file the Form A-12; and

(5) in contrast to the “Form A-9” requirement contained in RSA 72:23-c, no penalty (denial of exemption) is prescribed in RSA 72:23, VI for failure to file the Form A-12.

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

(1) RSA 72:23, VI uses mandatory (“shall”) language with respect to the filing of a Form A-12 and this requirement applies to every charitable organization wishing to obtain an exemption in the Town;

(2) the Taxpayer “merely forgot” to file the Form A-12 by June 1 and this does not excuse noncompliance;

(3) the Taxpayer misreads RSA 72:23, VI because the filing is required by June 1 of the year in which the exemption is applied for (2003), not the “following” year;

(4) the Taxpayer did file a Form A-9 by the prescribed deadline (April 15) in both tax years 2003 and 2004, reflecting its awareness that, notwithstanding the legal argument concerning the special acts, the Taxpayer is subject to the statutory filing requirements;

(5) the 1951 amendment relied upon by the Taxpayer should relate back to 1907, the time of the original enactment, and therefore the cases cited by the Taxpayer distinguishing special legislation enacted after 1913 [i.e., Appeal of City of Laconia, 146 N.H. 725 (2001) and Christian Science Pleasant View Home v. City of Concord, 117 N.H. 239 (1977)] are not applicable; and

(6) unlike the key fact distinguishing Appeal of C.H.R.I.S.T., Inc., 122 N.H. 982, 984 (1982), the Taxpayer was not misled by the Town or anyone else regarding the requirement to file the Form A-12 on a timely basis.

### **Board's Rulings**

Based on the facts (now largely agreed upon by the parties), the exemption statutes and case law, the board finds the Taxpayer's failure to file the Form A-12 required by RSA 72:23, VI with the Town by June 1, 2003 results in loss of jurisdiction and denial of this exemption appeal.

This filing issue affects the board's jurisdiction and was discovered during the processing of this appeal. Timely filing is a jurisdictional prerequisite for maintaining an appeal and cannot be waived or overlooked, whether raised initially or at any subsequent point in the proceedings. See, generally, Appeal of Taylor Home, 149 N.H. 96, 101 (2002)<sup>1</sup>; and, e.g., Connecticut River Watershed Council, Inc. v. Town of Cornish, BTLA Docket No. 12738-92 (August 17, 1993)

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<sup>1</sup> "Filing an appeal in a timely manner 'is a necessary prerequisite to establishing jurisdiction in the appellate body.' Id. at 625 (quotation omitted, emphasis added). The failure to file a timely appeal 'is fatal . . . .' Appeal of Estate of Van Lunen, 145 N.H. 82, 86 (2000); see Appeal of Roketenetz, 122 N.H. 869, 870 (1982) (affirming BTLA's dismissal of appeal of selectmen's refusal to act on abatement request, even though appeal was only five days late)."

(charitable exemption denied on jurisdictional grounds due to failure to File Form A-12 and Form A-9).

Upon the board's initiative, the parties confirmed a Form A-9 was timely filed by the Taxpayer before April 15, 2003, but that no Form A-12 was filed until December, 2004.<sup>2</sup> They agree the Taxpayer simply "forgot" to file the Form A-12 prior to that time, a matter of oversight rather than intentional disregard of the statutory requirement.

The legal question, briefed by both parties and argued at the May 17, 2005 hearing, is whether the failure to file the Form A-12 by June 1, 2003 should result in loss of jurisdiction and denial of the appeal. The board acknowledges ruling on the arguments made by the Taxpayer involves somewhat special facts and issues of first impression.

The Taxpayer's main legal argument is that it is "exempt" from the filing requirements of RSA 72:23, VI because it was established by a 1907 special act of the Legislature, amended in 1951 after enactment of RSA Ch. 72 in 1913. In Appeal of City of Laconia, 146 N.H. 725, 726 (2001), the applicant, like the Taxpayer here, was chartered by a special act in 1907. The supreme court agreed with the municipality's position (contrary to the board's earlier conclusion) that the enactment of the 1913 law "governing charitable exemptions" (now codified as RSA Ch. 72) repealed prior special legislation: the 1913 law "establish[ed] a 'uniform scheme for tax exemptions of charitable institutions,' Hedding &c. Association v. Epping, 88 N.H. 321, 322 (1937), . . . 'repealing all special exemptions.' (Citations omitted)." Id. at 727.

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<sup>2</sup> See the board's December 29, 2004 Order and the January 27, 2005 letter from the Taxpayer's attorney (Robert Varney, Esq.). In the letter, Attorney Varney corrects an "error" regarding an earlier statement of when the Taxpayer filed the Form A-9: this form was timely filed before April 15, rather than on "May 14, 2003."

Appeal of City of Laconia draws a distinction between those charitable organizations recognized by special act before and after 1913 and cites Christian Science Pleasant View Home v. City of Concord, 117 N.H. 239, 241 (1977). In that case, the charity was created by special act in 1925 and that act “contained a more liberal test” for the exemption than the general statute. Id. The board has carefully reviewed these decisions cited by the Taxpayer but finds they do not support the argument that it is exempt from the statutory filing requirements for several reasons.

First, a careful reading of the 1907 and 1951 special acts establishing and recognizing the Taxpayer as a “public charity” is necessary. The plain meaning of the 1907 act is that the Taxpayer was “authorized to establish and maintain in the town of Wolfeboro . . . an institution being in the nature of a public charity” and that its property, up to a maximum of \$500,000, “shall be exempted from taxation.” See Laws of 1907, Ch. 243 (Emphasis added). In 1951, the Legislature amended the 1907 special act to delete the \$500,000 limitation, but did not change the wording in any other respect: for example, the location for the Taxpayer’s charitable activities (“authorized to establish and maintain in the town of Wolfeboro”) is unchanged. See Laws of 1951, Ch. 307.

The board reads these enactments to mean the Taxpayer may be specially exempt from the filing requirements applicable to other charitable organizations, but only with respect to the activities prescribed by the Legislature in “the town of Wolfeboro,” and not for any property acquired decades later in any town other than Wolfeboro. (According to the Taxpayer’s attorney, because the “Property” that is the subject of this appeal was only recently acquired, 2003 was the first year an exemption was applied for from the Town.)

It is conceivable, of course, that a hospital operating as a charitable organization may choose to expand from one municipality into others, especially after many decades in one location, but this does not necessarily mean the Taxpayer is entitled to a blanket tax exemption (by reason of the special legislation enacted by the Legislature for its operations in Wolfeboro) without first meeting the basic filing and other requirements contained in RSA Ch. 72 that apply to other charitable organizations. A contrary interpretation, while possible in theory, confers a greater benefit than the privilege expressly granted by the Legislature. If the Taxpayer disagrees, its remedy lies with the Legislature, which can, if it wishes, amend the special act further to cover the filing issue. As the Town notes, the Taxpayer did timely file the A-9 (required by RSA 72:23-c) with the Town, which would not have been needed if the Taxpayer truly believed it is entitled to a blanket exemption wherever it operates.

Second, it is not clear whether the special acts relied upon by the Taxpayer, in comparison to the one involved in the Christian Science case, establish “much more liberal” criteria for an exemption than the 1913 statute. On the one hand, like Christian Science, the special act specifies ownership, rather than “ownership, occupancy and use,” the requirement in RSA 72:23, V. On the other hand, however, the Taxpayer is restricted by the special act to a relatively narrow purpose (“nursing, care, support and medical and surgical treatment of sick and disabled people” in the “town of Wolfeboro”) rather than a more broadly described charitable purpose. Compare Christian Science, 117 N.H. at 241 (where the 1925 act gave a tax exemption for all property now or hereafter acquired “for benevolent and charitable purposes” without any restrictions as to specific type of activity or municipality); and RSA 72:23-1 (which contains a

relatively expansive definition of what can be a “charitable” organization under New Hampshire law).

The Taxpayer’s remaining arguments regarding RSA 72:23, VI are also unavailing. In particular, the board finds it would be incorrect to read the statute to mean no Form A-12 (for tax year 2003) must be filed until the “following” year (2004). The board finds this argument contradicts the “plain and ordinary meanings of the words used in the statute,”<sup>3</sup> which requires filing the Form A-12 “annually before June 1” (emphasis added) of the year for which the tax exemption is sought.<sup>4</sup> The board finds the “for the preceding fiscal year” language contained later in the statute, and emphasized by the Taxpayer, relates to the Taxpayer’s fiscal year, not the municipality’s. It would be impractical, to say the least, to interpret the statute to mean a taxpayer can delay filing the Form A-12 until the year after the exemption is applied for.

The municipality would be hampered in making a meaningful decision regarding a tax exemption if it had to wait until the following year to receive information from an applicant.

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<sup>3</sup> See, e.g., Estate of Gordon-Couture v. Brown, \_\_\_ N.H. \_\_\_, No. 2004-566, slip. op. (May 23, 2005) for a concise summary of the accepted rules governing statutory interpretation.

<sup>4</sup> This paragraph of the statute provides:

Every charitable organization or society . . . shall annually before June 1 file with the municipality in which the property is located upon a form prescribed and provided by the board of tax and land appeals a statement of its financial condition for the preceding fiscal year and such other information as may be necessary to establish its status and eligibility for tax exemption.

As the Taxpayer notes, this paragraph has been amended several times to change where the Form A-12 should be filed: from the board to the municipality (in 1991); from the “commissioner of revenue administration” to the board (in 1988); and substituting “commissioner of revenue administration” for “state tax commission” in 1973. Until 1991, the statute contained a second sentence, which provided: “A duplicate copy of said statement shall be filed annually by June 1 with each tax assessor or assessing official of the city or town in which the property for which the tax exemption is sought is located.” See former RSA 72:23, VI (1991 ed.).

Even a ‘startup’ nonprofit would be able to supply some basic information on the Form A-12 by June 1 of the year for which the exemption is sought, since it must own, use and occupy the property for which an exemption is sought by April 1. See RSA 72:23, V. RSA 72:23-c, I further provides that no exemption can be granted after the local tax rate has been approved by the municipality for the tax year. This, of course, occurs well before the close of the municipality’s fiscal year and further confirms the Legislature intended to give only a limited statutory window during which a charitable organization could receive an exemption by filing a timely Form A-9 (by April 15) and a timely Form A-12 (by June 1) of the year in which the exemption is sought.

The Taxpayer cites Appeal of C.H.R.I.S.T, Inc., 122 N.H. 982 (1982), in support of a contrary interpretation that no filing should be required until the following year (2004). The board, however, can find no statutory or other support for the dicta contained in that decision, which the board respectfully believes contains a misleading paraphrase of the statute.<sup>5</sup>

The board further notes RSA 72:23, VI obligates the applicant for an exemption to provide, in addition to the Form A-12, “such other information as may be necessary to establish its status and eligibility for a tax exemption.” It would not be reasonable to conclude the Legislature intended to permit a delay of one year until the municipality could obtain the information needed to decide whether to grant or deny an exemption. In any event, the

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<sup>5</sup> This 1982 opinion states: “The statute provides that an applicant for tax exemption must file a financial statement with the department of revenue administration by June 1 following the end of the fiscal year for which the exemption is requested. RSA 72:23, VI (Supp. 1981). The request must be filed ‘on a form supplied by the Commissioner of Revenue Administration.’ Id.” 122 N.H. at 984. This paraphrasing is dicta because the appellant conceded it had made no filing at all (“because it relied upon the department’s assurances that no filing was required.”) Id. at 984.

Taxpayer's argument is unavailing with respect to the tax year 2003 exemption because it did not file the Form A-9 until December of 2004, not June 1.

Because timely filing is a jurisdictional issue, whether or not the Town suffered actual "prejudice" because of the Taxpayer's delay in filing a Form A-12 is not relevant. In addition, the Town is correct in noting the filing requirement is stated in mandatory ("shall") language in RSA 72:23, VI and no excuse for noncompliance is recognized. While it is also true no "consequences" for noncompliance are explicitly stated in RSA 72:23, VI, unlike RSA 72:23-c (which pertains to the Form A-9), this distinction is not persuasive.<sup>6</sup>

As stated in RSA 72:23-m, cited above and enacted by the Legislature in 1994, each exemption shall be construed to confer exemptions only upon property which meets the requirements of the statute under which the exemption is claimed; the burden of demonstrating the applicability of any exemption is on the claimant. As a result, it is incumbent upon each claimant (including the Taxpayer in this appeal) to sustain the burden of proving compliance with each of the procedural as well as substantive requirements for a charitable exemption, including timely filing of the Form A-12. The task of making such a filing is not burdensome. In this appeal, the Taxpayer simply "forgot" to do so.

In summary, none of the arguments advanced by the Taxpayer can excuse its failure to file the Form A-12 required by RSA 72:23, VI by June 1<sup>st</sup> of the year for which an exemption is sought. The appeal is therefore denied.

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<sup>6</sup> In comparison, RSA 72:23-c states the municipality "may" deny an exemption for failure to file the Form A-9, but also contains an 'accident, mistake or misfortune' provision that can excuse non-compliance in appropriate circumstances. No such provision is contained in RSA 72:23, VI regarding the Form A-12.

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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Paul B. Franklin, Chairman

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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 been mailed this date, postage prepaid, to: Robert Varney, Esq., Walker & Varney P.C., Post Office Box 509, Wolfeboro, New Hampshire 03894, counsel for the Taxpayer; Chairman, Board of Selectmen, Town of Alton, 1 Monument Square, Post Office Box 659, Alton, New Hampshire 03809; and Shawn M. Tanguay, Esq., Fitzgerald, Sessler & Nichols, PA, 11 Academy Square, Laconia, New Hampshire 03246, counsel for the Town of Alton.

Date: May 27, 2005

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Anne M. Stelmach, Clerk