

Harbinger Bible Conference, Inc.

v.

Town of Dalton

Docket No.: 20479-03EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” partial denial of the Taxpayer’s request for religious exemption under RSA 72:23 for tax year 2003. The “Property” to which this exemption appeal pertains is: Map 408, Lot 010, a 5.1-acre lot with a building; Map 408, Lot 011, a 1.8-acre lot with buildings; and Map 408, Lot 012, a 1.115-acre lot with a storage shed. The Taxpayer also owns, but did not appeal, Map 408, Lot 009, a 5.7-acre lot with a church building; the Town granted a full exemption on Lot 009. For the reasons stated below, the appeal is denied.

The Taxpayer has the burden of proving, by a preponderance of the evidence, it was entitled to the statutory exemption for the year under appeal. See RSA 72:23-m; TAX 204.06. The burden applies to procedural as well as substantive issues and the board finds the Taxpayer failed to meet its burden.

The Taxpayer argued the Property is entitled to a religious exemption because:

- (1) the Taxpayer was first established in 1976 and, until tax year 2003, the Property received a full religious exemption for 23 consecutive years from the Town;
- (2) the Taxpayer filed annual “A-9” forms with the Town on a timely basis, but one of the caretakers, who was close to retirement, “forgot” to do so by April 15, 2003, but did complete and file an A-9 dated May 19, 2003 with the Town;
- (3) the Town did not raise the issue of timely filing of the A-9 with the Taxpayer until the hearing on this appeal, but instead denied the exemption application on the merits;
- (4) the Taxpayer operates a unique Christian conference and retreat center devoted to religious purposes and its ownership, use and occupancy of the Property meets the requirements of RSA 72:23, III; and
- (5) the Taxpayer no longer disputes taxation of the private trailers and the Greisner cabin located on one of the lots, but believes it is entitled to a full exemption on the remainder of the Property.

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

- (1) the Town physically inspected all four lots and relied upon advice from its attorney and its contract assessor before making its decision to deny a full exemption;
- (2) the Town did not grant any exemption on Lot 10 because the “Gray lodge” was used for housing of those attending the conferences and the five trailers on that lot are privately owned and are subject to taxation; and
- (3) the Town was aware of the late filing of the A-9 form and believes “the exemption could be denied for that reason alone,” as stated both in the Town’s April 11, 2005 letter to the board and as argued at the hearing.

At the hearing on March 22, 2005, the board reviewed the issue of jurisdiction (based upon the late filing of the A-9 form under RSA 72:23-c), took the issue under submission and also left the record open to give the Town additional time to confer with its contract assessor to ascertain and report to the board on the extent of exemptions actually granted on the Property for tax year 2003, with a copy to the Taxpayer. In its April 11, 2005 letter, the Town indicated Lot 011 was given a partial (50%) “religious exemption” (designated on the assessment-record card as: (i) a “-50” adjustment to the “primary site [land] base value”; and (ii) an “Econ Obs. 50.00” on the “building value”); and further confirmed Lot 009 “is totally exempt.”

Board’s Rulings

Based upon a review of the statutory requirements and the applicable case law, the board finds it has no jurisdiction to rule on the substance of the Taxpayer’s appeal for tax year 2003 and its request for a larger religious exemption is therefore denied. As discussed further below, the denial results from the Taxpayer’s failure to satisfy the timely filing requirements set forth in RSA 72:23-c with respect to the A-9 form.

This statute provides:

RSA 72:23-c Annual List.

I. Every religious, educational and charitable organization . . . shall annually, on or before April 15, file a list of all real estate and personal property owned by them on which exemption from taxation is claimed, upon a form prescribed and provided by the board of tax and land appeals, with the selectmen or assessors of the place where such real estate and personal property are taxable. If any such organization or corporation shall willfully neglect or refuse to file such list upon request therefor, the selectmen may deny the exemption. If any organization, otherwise qualified to receive an exemption, shall satisfy the selectmen or assessors that they were prevented by accident, mistake or misfortune from filing an application on or before April 15, the officials may receive the application at a later date and grant an exemption thereunder for that year;

but no such application shall be received or exemption granted after the local tax rate has been approved for that year.

See also TAX 401.01.

The Taxpayer acknowledged that, for tax year 2003, the A-9 form required by this statute was not completed and filed by April 15th. In its appeal document filed with the board, the Taxpayer stated: “[t]he RSA 72:23c was filed with the Town of Dalton on May 19, 2003 by Gillian C. Willey,”¹ one of the caretakers on the Property.

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).² Only “accident, mistake or misfortune” can excuse a filing after April 15th under RSA 72:23-c. This statute further provides it is the obligation of the applicant to “satisfy” the selectmen that it was “prevented” from timely filing because of such circumstances.

The case law of New Hampshire is clear that “accident, mistake or misfortune” does not apply when the omission is caused by a party’s own neglect, however unintentional it may have

¹ On November 9, 2004, the board received from the Town a copy of the A-9 form dated May 19, 2003. This document, however, has a received stamp, apparently imprinted by the Town, which appears to be May 26, 2003.

² As noted by the supreme court in this case:

“[R]egardless of the [taxpayer’s] intent, the record shows that it did not appeal the exemption decisions by September 1, 2001, as required by RSA 72:34-a, thus depriving the BTLA of jurisdiction over these appeals. See Phetteplace v. Town of Lyme, 144 N.H. 621, 624 (2000). 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 Rokenetz, 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).”

In Taylor Home, the taxpayer’s attorney failed to file exemption appeals (pertaining to two municipalities) by the statutory deadline (September 1st), but instead only filed tax abatement appeals on August 31st and, two months later, “moved to reform” the incorrect filing to maintain charitable exemption appeals; the supreme court affirmed the board’s decisions that the exemption appeals were time-barred because of the failure to file them by the statutory deadline. Id. at 97-98.

been. The classic formulation of the meaning of this phrase is given in Pelham Plaza v. Town of Pelham, 117 N.H. 178, 182 (1977):

The words ‘accident, mistake or misfortune’ ordinarily import something outside of the petitioner’s own control, or at least something which a reasonably prudent man would not be expected to guard against or provide for. (Internal quotations and citations omitted.)

We think inexcusable neglect accounts for the plaintiff’s noncompliance. ‘If judgment goes against a litigant by reason of his neglect . . . , he has not thereby suffered an injustice, but rather the natural consequences of his own neglect.’ (Internal quotation and citation omitted.) The plaintiff filed his inventory too late. The board [of taxation] implicitly found as a matter of fact that the taxpayer did not come within the [‘accident, mistake or misfortune’] exception in RSA 74:8. If we overruled the board we would in effect repeal RSA 74:7. The board properly denied the appeal. (Citations omitted.)

The plaintiff in Pelham Plaza appears to have missed the statutory deadline by just one day, filing on “April 16” rather than April 15, and was still unable to satisfy the “accident, mistake or misfortune” exception. Id. at 180. A more recent judicial formulation of what constitutes “accident, mistake or misfortune” is:

something outside of one’s control, or something which a reasonably prudent [person] would not be expected to guard against or provide for The words import something that is outside the expectation or control of [a party] or [its] attorney. . . . The question whether accident, mistake or misfortune occurred is for the trier of fact, and its finding will be conclusive unless it is unsupported by the evidence. (Internal quotations and citations omitted.)

Lakeview Homeowners Assoc. v. Moulton Constr., 141 N.H. 789, 791 (1997).

In this case, it appears the Taxpayer in prior years consistently filed the A-9 form with the Town on a timely basis (by April 15th) and probably intended to do so for tax year 2003. Unfortunately, the task of filing was delegated to a caretaker close to retirement (Gillian Willey) and she did not complete the A-9 form until May 19th, more than one month late.

In the Lakeview case, the defendant’s failure to comply was held to be “due to neglect, rather than accident, mistake or misfortune” because the defendant’s president had entrusted the

task of receiving mail from a post office box to his mother, who was nearly 80 years old and had failing memory; neglect was found because he was aware of her condition and the court found “[e]nsuring prompt mail delivery was well within [his] sphere of control as president.” Id. at 791. Similarly here, the Taxpayer had the responsibility for insuring that the task of timely filing the A-9 was delegated to someone capable of doing so and this was within the Taxpayer’s “sphere of control.” The board finds the caretaker’s acknowledged failure to file the A-9 on time does not constitute “accident, mistake or misfortune” for the Taxpayer within the meaning of the statute and case law construing this phrase in other contexts (including RSA 74-8 in the Pelham Plaza case and the former Preface to the Superior Court Rules referenced in the Lakeview case, both discussed above).

The Town stated at the hearing and in its follow-up April 11, 2005 letter that the “[f]orm A-9 was clearly filed after the April 15 due date and the exemption could be denied for that reason alone.” The board agrees.

Since the lack of timely filing results in loss of jurisdiction over this appeal, the board need not consider the substance of the Taxpayer’s appeal for a full tax exemption. The board also declines to rule on the Taxpayer’s “Proposed Findings of Fact, Conclusions of Law, And Order” because they are mooted by the board’s decision on the jurisdictional issue.

As noted above, the Town did grant the Taxpayer a partial religious exemption for tax year 2003 and that determination is unaffected by this appeal. In future tax years, the Taxpayer may seek a fuller religious exemption, provided it meets the statutory timely filing and other requirements, but the resolution of such questions cannot be addressed by the board in this appeal.

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

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: Janet E. Michael, Esq., Law Office of Janet E. Michael, Post Office Box 10631, Portland, Maine 04104, counsel for the Taxpayer; and Chairman, Board of Selectmen, Town of Dalton, 741 Dalton Road, Dalton, New Hampshire 03598.

Date: May 23, 2005

Anne M. Stelmach, Clerk