

Painters & Allied Trades District Council #35 Joint Training Program Trust

v.

Town of Brentwood

Docket No.: 21255-05EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2005 denial of the Taxpayer’s request for the educational exemption set forth in RSA 72:23, IV on Lot G in Commerce Park of Brentwood with a partially constructed 20,000 square-foot training facility and associated office space (the “Property”). For the reasons stated below, the appeal for an 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; TAX 204.06.

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

(1) as demonstrated in the “Agreed Upon Statement of Facts” (the “Agreed Statement”), there is no dispute the Taxpayer owned the Property, is a tax exempt entity under federal law and has registered as a charitable trust under New Hampshire law;

(2) while the building was only partially completed as of April 1, 2005, the construction was an “institutional necessity” and “integrated activity” in fulfilling the Taxpayer’s educational mission;

(3) construction of an educational building is a sufficiently “direct” use of a property to meet the exemption requirement of RSA 72:23, IV that the property be “owned, used and occupied... directly for the purposes for which they are established”; and

(4) in the alternative, the construction of the training facility is adequate manifestation of the charitable purpose of the Taxpayer’s mission to qualify it for an RSA 72:23, V charitable exemption for 2005.

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

(1) the training facility was under construction as of April 1, 2005 and thus while owned by the Taxpayer, could not be occupied or used directly for the Taxpayer’s educational mission;

(2) actual completion of the building occurred in August, 2005 and educational training did not begin until September 10, 2005, which then qualified the Taxpayer for an exemption for tax year 2006 but not 2005; and

(3) the Taxpayer’s alternative request for a charitable exemption is without merit.

Board’s Rulings

Based on the evidence, the board finds the Property was not eligible for an RSA 72:23, IV educational exemption for tax year 2005. The board has reviewed the arguments presented by the Taxpayer at hearing and the Taxpayer’s requested findings of fact and rulings of law and concludes the plain and clear reading of the statute does not support the Taxpayer’s claim for exemption.

Prior to the hearing the parties submitted the Agreed Statement which outlined the chronology of the Taxpayer's acquisition and construction of the Property as follows. In April, 2004 the Taxpayer entered into a Purchase and Sale Agreement to acquire Lot G, contingent upon receiving certain land-use approvals from the Town to build a 20,000 square-foot building to be used for the Taxpayer's educational purpose. After receiving site plan approval from the Town, the Taxpayer purchased the Property on October 13, 2004 and started construction of the building on November 10, 2004. As of April 1, 2005, the training building was approximately two-thirds complete; and it did not receive a certificate of occupancy until August 4, 2005. On September 10, 2005 the Taxpayer conducted its first educational program in the building. The parties agreed the Taxpayer is an educational entity qualifying for an exemption of any buildings "owned, used and occupied" by them. Consequently, in the Agreed Statement at paragraph 15 "[t]he parties acknowledge and agree that the only question raised in this appeal is the following: [w]hether the Trust is entitled to a real estate tax exemption pursuant to N.H. RSA 72:23, IV on property constructed for its Exempt Use and Purpose, but under the foregoing facts not yet completed, used and occupied 'directly' as contemplated by said statute as of the Assessment Date."

RSA 72:23-m allows exemptions under RSA 72:23 if the requirements of the statute have been met and it places the burden on the entity seeking the exemption to demonstrate compliance with those statutory requirements. RSA 72:23-m:

The exemptions afforded by RSA 72:23 or 72:23-a through 72:23-k, as well as exemptions granted by other provisions of law, shall be construed to confer exemption only upon property which meets requirements of the statute under which the exemption is claimed. The burden of demonstrating the applicability of any exemption shall be upon the claimant.

This statutory provision reinforces the general taxing scheme in New Hampshire as laid out in RSA 72:6 that “[a]ll real estate,... shall be taxed except as otherwise provided.” Within this legislative framework, it has long been established that taxation is the rule and exemptions are the exception. See, e.g., Boody v. Watson, 63 N.H. 320 (1885) and Portsmouth Shoe Co. v. City of Portsmouth, 74 N.H. 222, 223-24 (1907), cited in St. Paul’s Church v. City of Concord, 75 N.H. at 420, 422-23 (1910).

RSA 72:23, IV provides that “buildings and structures of schools,... owned, used and occupied by them directly for the purposes for which they are established,... and the land thereto appertaining but not including lands and buildings not used and occupied directly for the purposes for which they are organized” are exempt from taxation. Paragraph IV [similar to the companion religious (paragraph III) and charitable (paragraph V) exemptions] contains several clear criteria that have to be met for an exemption to be granted: 1) the entity seeking the exemption is performing an educational function; 2) the property in question is directly owned by the education entity; 3) the property in question is directly used by the educational entity; and 4) the property in question is directly occupied by the educational entity.

All four criteria must be met for a taxpayer to receive the exemption. While the Taxpayer was organized to provide an educational function and owned the Property as of April 1, 2005, it neither directly used nor occupied the Property for its educational function as of that date and thus is not eligible for an exemption for tax year 2005. The facts are undisputed that on April 1, 2005, the training building was under construction and thus was not occupied by the Taxpayer; nor were any educational activities taking place there at that time.

The wording and qualifications to receive an RSA 72:23, IV educational exemption are clear and straight forward. Consequently, the board finds the plain meaning of the statutory

wording and its application to the facts in this case disqualifies the Taxpayer from exemption.

There is no need to review the legislative history, as suggested by the Taxpayer, because of the unambiguous nature of the wording. The New Hampshire Supreme Court has consistently held that the legislative history, such as that presented by the Taxpayer on appeal in this case, will only be considered if the statutory language is determined to be ambiguous. See, e.g., WMUR Channel Nine v. New Hampshire Department of Fish and Game, ___ N.H. ___, No. 2005-787, slip op. (August 3, 2006). As the board has found above, the statute is very clear as to the criteria that must be met for an RSA 72:23, IV exemption to be obtained. Given the clear criteria of the statute and the agreed upon fact the Property was not used and occupied until after construction was completed and the training programs initiated in the early fall of 2005, the Taxpayer is not entitled to the exemption.

While the supreme court cases cited in Wolfeboro Camp School v. Town of Wolfeboro, 138 N.H. 496, 501-02 (1994) do not relate to a building either actively under construction or renovation at the time the exemption was sought, those cases clearly support the board's findings the Property must be directly used and occupied as of the assessment date to receive the exemption. Thus, while the board considered the Taxpayer's arguments and case law citations, we did not find them convincing or in concert with the plain reading and application of the statute.

The Taxpayer argued for the first time at hearing that, in the alternative, the construction of the building fulfilled the Taxpayer's charitable role of providing such an institution for educating and training its members. For several reasons, the board finds the Taxpayer is precluded, at this late date, from raising such a claim for charitable exemption.

First, the Taxpayer on its RSA 72:23-c form (the “A-9” form prepared by the board for organizations seeking exemptions to apply to municipalities) checked off “educational” as the type of exemption being requested. The A-9 form cautions applicants that an organization may not claim multiple exemptions under separate provisions of RSA 72:23. This caution is derived from the court’s ruling in Appeal of C.H.R.I.S.T., Inc., 122 N.H. 982 (1982) that “the legislature did not intend, however, to allow organizations to claim multiple exemptions under separate provisions of the tax exemption statute.... [Citations omitted].”

Second, the parties in the Agreed Statement specifically narrowed the questions raised in the appeal (see paragraph 15) to an educational exemption by citing RSA 72:23, IV (Educational Exemptions). Further, paragraph 17 of the Agreed Statement allows the parties to submit additional evidence, “not in contradiction of the foregoing, at any hearing in this case.” Thus the Taxpayer by its signature to the Agreed Statement limited its claim for an exemption to an educational one.

Last, the board understands the Taxpayer’s practical argument that if it had started construction subsequent to April 1, 2005 and had completed construction and occupied and used the facility prior to April 1, 2006 it would have been subject to only taxation on the land portion for tax year 2005. While this may be the practical result of the Taxpayer’s construction cycle and New Hampshire’s tax statutes, it is one the legislature has chosen to keep simple and consistent. April 1 of each tax year is the date at which municipalities are required to take an inventory of taxable property (RSA 74:1) and at the same time determine which property is exempt from taxation (RSA 74:2). Thus, any property that, as of the April 1 assessment date, is not owned, used or occupied by an exempt entity is taxable. While the construction schedule

vis-à-vis the tax year ended up being unfortuitous to the Taxpayer, it is consistent with the general assessing and taxing scheme the legislature has had in place for many years.

For all these reasons, the board concludes the Taxpayer did not carry its burden in establishing eligibility for an educational exemption as of April 1, 2005 (or its alternative claim for a charitable exemption) and thus the appeal is denied.

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.

Responses to Requests for Findings of Fact and Rulings of Law

The “Requests” received from the parties are replicated below, in the form submitted and without any typographical corrections or other changes. The board’s responses are in bold face.

In these responses, “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.

Taxpayer's Request for Findings of Fact and Rulings of Law

1. The parties submitted an Agreed Upon Statement of Facts dated October 4, 2006 (the "Statement") which was not controverted at the hearing on this appeal.

Denied.

2. The sole issue raised in this appeal is whether an exempt entity is entitled to real estate exemption under N.H. RSA 72:23 for a partially completed building which is not yet ready for use and occupancy.

Neither granted nor denied.

3. For purposes of this appeal, (a) the amount of the assessment, (b) the Trust's status as an exempt entity, and (c) the property's status as a qualifying school, are not at issue.

Granted.

4. The proper test for determining if the subject property is "used and occupied directly" under N.H. RSA 72:23 is set forth in the principles of Wentworth Home v. Portsmouth, 108 N.H. 514 (1968) (property used "for purposes of institutional necessity" is exempt) and Alton Bay Camp Meeting Assoc. V. Alton, 109 N.H. 44 (1968) (the "integrated activities of the association as a whole" must be considered to determine tax exemption), adopted by the N.H. Supreme Court in St. Paul's School v. Concord, 117 N.H. 243 (1977).

Neither granted nor denied.

5. Buildings "under construction" can and should be distinguished from mere vacant land held for an undefined "future" use. See, St. Mary's School for Girls v. Concord, 80 N.H. 436, 439 (1922)

Denied.

6. In the present case there is no question that the “integrated activity” of the present taxpayer was to acquire the subject property for the building of a training and educational facility.

Denied.

7. The taxpayer’s “integrated activity” was uninterrupted and spanned a total of only 17 months from identification of the property to commencement of the first training class in the newly constructed building.

Denied.

8. Throughout this 17 month period the building (or proposed building) was clearly identified as a “training” facility; including such identification on all Planning Board submissions.

Granted.

9. The requirement of “direct” use under N.H. RSA 72:23 does not preclude exemption for a partially completed building, since construction of the building is an “institutional necessity” and “integrated activity” in delivering the exempt services in question.

Denied.

10. The Town’s reliance on a fortuitous construction schedule to obtain a windfall tax assessment was neither intended by the statute nor is it supportable under applicable case law.

Denied.

11. Had the taxpayer delayed the commencement of construction by five months until April 2, 2005 and took occupancy 267 days later on December 24, 2005, then at no time would the taxpayer’s property be deemed taxable.

Denied. Land would be taxable April 1, 2005. See RSA 21:21 and RSA 72:6; Wolfeboro Camp School, Inc. v. Town of Wolfeboro, 138 N.H. 496, 601-02 (1994).

12. The Town’s suggested result ignores the “institutional necessity” and “integrated activities” tests of St. Paul’s and existing case law, and also goes beyond the intent of the statute.

Denied.

13. The legislative history of HB 1484 makes it clear that use of the word “direct” to modify “use and occupy” was not intended as a departure from existing case law. See, House

Committee on Municipal and County Government, Public Hearing on HB 1484-L, February 16, 1994.

Neither granted nor denied.

14. In the instant case, the “integrated activities” of the taxpayer are not “too peripheral to qualify” for exemption under N.H. RSA 72:23.

Denied.

15. This is not a case of “land banking”.

Neither granted nor denied.

16. Construction of a school is a practical necessity to operating a school.

Neither granted nor denied.

17. The statute isn’t intended to “catch” an otherwise exempt taxpayer in mid-construction.

Neither granted nor denied.

18. The public policy requirement of “direct” use is for the purpose of preventing abusive “indirect” uses identified by statute and case law; none of which abuses are found in or germane to this case.

Neither granted nor denied.

19. The issue of “indirect use” as a factor in denying eligibility for exemption is better seen in the case law denying exemption where the subject property is not “directly used” by the taxpayer, but is leased, rented or occupied by a separate party and the “rents” collected are then applied to the underlying taxpayer’s exempt purpose. Alton Bay Camp Meeting Assoc. V. Alton, 109 N.H. 44, 49 (1968). See, Appalachian Mountain Club v. Meredith, 103 N.H. 5 (1960) (rental of property by guests rather than direct use by exempt organization, even with rent proceeds being used to support exempt charitable purpose, resulted in denial of exemption). See,

also, St. Paul's, at 258 (land owned by St. Paul's School but occupied by Audubon Society for Audubon's exempt purpose not entitled to tax exemption).

Neither granted nor denied.

20. In this line of cases, the issue addressed is akin to federal law's denial to charitable organizations of tax exempt status for income characterized as "unrelated trade or business income".

Denied.

21. None of these abusive or "indirect" characteristics or circumstances are applicable in the present case.

Denied.

22. Since the stated purpose of the Trust includes the "acquisition and purchase of real and personal property which may be utilized or required for the promotion of such [training] programs", the Trust's property qualifies for exemption as it is in direct furtherance of this charitable purpose.

Denied.

23. From its acquisition on October 13, 2004, the subject property was "owned, used and occupied by them directly for the purposes for which they are established", and on this basis, the Trust is entitled to exemption under N.H. RSA 72:23, V as well as N.H. RSA 72:23, IV.

Denied.

24. Based upon the foregoing, and the facts and circumstances of this case, the taxpayer is entitled to real estate tax exemption under N.H. RSA 72:23 for the subject property.

Denied.

Town's Requests for Findings of Fact and Rulings of Law

I. Findings of Fact:

1. The purpose of the Painters & Allied Trades District #35 Joint Training Program Trust, ("Trust"), is to improve the skills of apprentice and journeyman painters by providing a more comprehensive training program.

Granted.

2. To conduct this training program, the Trust purchased a parcel of property in the industrial park in Brentwood which is more particular described as: Lot G, Commerce Park Brentwood, New Hampshire.

Granted.

3. The Trust purchased this property on 13 October 2004.

Granted.

4. The Trust started construction of its building on 10 November 2004.

Granted.

5. As of 1 April 2005, the Town's assessment date, the Trust's building was approximately two-thirds completed and the Trust did use or occupy this building.

Granted.

6. On 4 August 2005, The Town issued a certificate of occupancy for the building.

Granted.

7. On 10 September 2005, the Trust conducted its first training programs at this property in Brentwood.

Granted.

II. Rulings of Law:

1. N.H. RSA 72:6 provides in pertinent part that "[a]ll real estate, whether improved or unimproved, shall be taxed except as otherwise provided."

Granted.

2. It is the Trust's legal burden to prove that it is entitled to an educational tax exemption pursuant to N.H. RSA 72:23 IV. (N.H. RSA 72:23-m).

Granted.

3. In order to qualify for a tax exemption under N.H. RSA 72:23 IV, the Trust's property must be occupied and used directly for the purposes for which the Trust was established. (N.H. RSA 72:23 IV).

Granted.

4. A property with no actual present educational use is taxable. Wolfeboro Camp School, Inc. v. Town of Wolfeboro, 138 N.H. 496, 502 (1994).

Granted.

5. The Trust has not proven by a preponderance of the evidence that it is entitled to an educational tax exemption pursuant to N.H. RSA 72:23 IV.

Granted.

6. As of the assessment date of 1 April 2005, the Trust's property was not being used for educational purposes and therefore the Town properly taxed this property.

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: Anthony C. Marts, Esq., 112 Gorham Pond Road, PO Box 59, Goffstown, NH 03045, counsel for the Taxpayer; Robert M. Derosier, Esq., Donahue, Tucker & Ciandella, 225 Water Street, Exeter, NH 03833, counsel for the Town of Brentwood; and Chairman, Board of Selectmen, Town of Brentwood, 1 Dalton Road, Brentwood, NH 03833.

Date: 11/13/06

Anne M. Stelmach, Clerk