

Fraternal Order of Eagles, Aerie #1934

v.

Town of Newmarket

Docket No.: 22319-05EX

DECISION

The Fraternal Order of Eagles, Aerie #1934 (“Taxpayer” or “Order”) appeals, pursuant to RSA 72:34-a, the “Town’s” 2005 denial of the Taxpayer’s request for charitable exemption as provided under RSA 72:23, V on a 0.07-acre lot with a club house (the “Property”). For the reasons stated below, the appeal is denied.

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 argued the Property was entitled to the charitable exemption because:

- (1) the Taxpayer has been in existence for approximately 100 years as a local chapter (an “Aerie”) of a large organization, the Fraternal Order of Eagles, that has over 1,700 Aeries in the U.S. and 50 Aeries in Canada;
- (2) the constitutional preamble of the national organization includes a commitment to “promote and raise funds” for duly authorized charities and to “contribute to worthwhile causes”;
- (3) the Town granted the Property a charitable exemption from 1997 through 2004; and

(4) the Taxpayer makes charitable contributions and meets all of the statutory requirements for a charitable exemption.

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

- (1) the Town reviewed its exemptions in tax year 2005 as part of an assessment review and received input from the department of revenue administration that allowed it to determine a charitable exemption was not warranted;
- (2) the Taxpayer's RSA 72:23-a form indicates it operates as a "social club";
- (3) the charitable donations are not substantial (less than 3% of annual revenues);
- (4) there is no enforceable obligation requiring the Taxpayer to fulfill a charitable purpose; and
- (5) the Taxpayer failed to satisfy its burden of proof.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to carry its burden to show it qualified for an RSA 72:23, V charitable exemption. In reaching this decision, the board notes that RSA 72:23-m establishes the burden of demonstrating the applicability of an exemption rests with the Taxpayer and further, in applying the applicable laws to the facts at hand, the "tax exemption statute is construed not with rigorous strictness but 'to give full effect to the legislative intent of the statute'" Wolfeboro Camp School, Inc. v. Town of Wolfeboro, 138 N.H. 496, 499 (1994).

In 2005 the Taxpayer applied for a charitable exemption pursuant to RSA 72:23, V which exempts: "[t]he buildings, lands and personal property of charitable organizations and societies organized, incorporated, or legally doing business in this state, owned, used and occupied by them directly for the purpose for which they are established, provided that none of the income or profits thereof is used for any other purpose than the purpose for which they are established."

RSA 72:23, V must be read in concert with RSA 72:23-1 as it contains the statutory definition of charitable used in RSA 72:23.

RSA 72:23-1 Definition of “Charitable”.

The term “charitable” as used to describe a corporation, society or other organization within the scope of this chapter, including RSA 72:23 and 72:23-k, shall mean a corporation, society or organization established and administered for the purpose of performing, and obligated, by its charter or otherwise, to perform some service of public good or welfare advancing the spiritual, physical, intellectual, social or economic well-being of the general public or a substantial and indefinite segment of the general public that includes residents of the state of New Hampshire, with no pecuniary profit or benefit to its officers or members, or any restrictions which confine its benefits or services to such officers or members, or those of any related organization. The fact that an organization’s activities are not conducted for profit shall not in itself be sufficient to render the organization “charitable” for purposes of this chapter, nor shall the organization’s treatment under the United States Internal Revenue Code of 1986, as amended. This section is not intended to abrogate the meaning of “charitable” under the common law of New Hampshire.

The supreme court has recently summarized the requirements of these statutes in terms of a “four-factor test” that a taxpayer must meet in order to qualify for a charitable tax exemption.

See Eldertrust of Florida, Inc. v. Town of Epsom, ___ N.H. ___, No. 2005-706, slip. op. (January 18, 2007). As the supreme court stated:

We hold that the plain language of RSA 72:23, V and RSA 72:23-1 requires the institution to satisfy each of the following four factors; namely, whether: (1) the institution or organization was established and is administered for a charitable purpose; (2) an obligation exists to perform the organization's stated purpose to the public rather than simply to members of the organization; (3) the land, in addition to being owned by the organization, is occupied by it and used directly for the stated charitable purposes; and (4) any of the organization's income or profits are used for any purpose other than the purpose for which the organization was established. ... Although these four factors are anchored in the plain language of the statutes, they also have firm moorings in our case law. (Citations omitted.)

Id. at pp. 4-5.

Several previous cases also addressed the necessity of an enforceable charitable obligation to receive an exemption. In Society of Cincinnati v. Town of Exeter, 92 N.H. 348, 352-353 (1943), the court found the option to perform patriotic services was solely at the uncontrolled discretion of the society and was not enforceable by any public entity. In Nature Conservancy v. Town of Nelson, 107 N.H. 316, 319 (1966), the court stated, “the public service which plaintiff is to render must be obligatory so as to enable the Attorney General or other public officer to enforce this right against it if the service is not performed. ... It follows that if the public benefit is limited to that which the plaintiff sees fit to provide at its option or in its uncontrolled discretion the requirements of RSA 72:23, V are not satisfied.” Further, in Appeal of the City of Franklin, 137 N.H. 622, 625 (1993), the court stated “in order to qualify as a charitable institution, an obligation must exist to perform the organization’s stated purpose to the public, rather than simply to members of the organization.” In short, both the statute and case law require that for an organization to be granted a charitable exemption it must be organized and obligated in some fashion to perform certain “service of public good or welfare...”

For the following reasons the board finds the Taxpayer submitted insufficient evidence to show that it was organized as a charitable organization and obligated to perform charitable services. The record contains only partial references to any type of incorporating documents relative to the structure of the Fraternal Order of Eagles, neither of which provide sufficient basis for finding it is a charitable organization obligated to perform an enforceable charitable purpose.

Municipality Exhibit No. A, second tab, is an undated three page letter responding to the June 2, 1998 letter from Andrew Blais, the assessor of the Town of Newmarket, which contains a quote at the bottom of page 1 from the preamble of the constitution and statute of the Grand Aerie of the Fraternal Order of Eagles. The last sentence of that paragraph reads “[t]o promote and raise funds for duly authorized Fraternal Order of Eagles charities and contribute to

worthwhile charitable causes.” The board finds this cite is insufficient to establish how the Taxpayer, a local Aerie within the Fraternal Order of Eagles, is subject to this provision in the preamble of the national Grand Aerie of the Fraternal Order of Eagles. The whole constitution was not submitted; nor was there any showing as to whether the preamble has any applicability or creates an enforceable obligation on the Taxpayer. The majority of the preamble relates to the Fraternal Order of Eagles fraternal functions: “[t]o unite fraternally for mutual benefit, protection, improvement, social enjoyment and association, all persons of good moral character who believe in a Supreme Being to inculcate the principles of liberty, truth, justice and equality, to perpetuate itself as a fraternal organization and to provide for its government as its Constitution, Laws, Rituals, By-Laws or other rules and regulations may from time to time provide, and to promote the general welfare.”

The Taxpayer also submitted a partial portion of the Articles of Incorporation of the Fraternal Order of Eagles which was formed in 1898 in the State of Washington. Again, nothing in the Articles of Incorporation indicate how they are applicable to the Taxpayer or whether they are still in effect as of 2005. Further, nothing in the portion of the Articles of Incorporation submitted discusses any charitable mandate, but rather relates to the social and fraternal aspects of the Order of Eagles.

The Taxpayer, represented by the vice president, Christopher Burns, Esq., and treasurer, Mr. Donald Micucci, described the activities that occur at the Taxpayer’s building in Newmarket. The members hold meetings twice a month at which times they also discuss any requests for donations from individuals or other charities or fraternal organizations. The building is open at varying times every day of the week for members to socialize at its bar, watch television or play pool and these activities, rather than charity, appear to be the Taxpayer’s primary activities. The Taxpayer also holds various celebratory social functions, such as dances

and dinners for its members. The facility is available to the public for rent for a nominal fee for events such as wedding receptions and the Newmarket boy scouts routinely use the building for its meetings and functions. Contained in Municipality Exhibit No. A are the taxpayer's 2003 and 2004 990 Internal Revenue Service filings ("IRS Forms") which indicate the revenues are largely derived from the sale of liquor, the sale of Lucky Seven tickets, membership dues and hall rentals. In 2003 and 2004, the total incomes were \$114,765 and \$87,585, respectively. The amounts of charitable contributions listed on the 2003 and 2004 IRS Forms were \$2,850 and \$3,468, respectively. The balance of the expenditures was related to the purchase of supplies and personnel payroll for the bartender and custodian, building maintenance and state and federal Eagle Fraternal Order dues.

Based on the cumulative evidence noted above, the board finds the focus of the Taxpayer is more of a fraternal and social organization rather than a charitable one. While the Taxpayer does make some charitable contributions as noted above, depending upon requests received and its limited funds available, the board finds the Taxpayer did not supply adequate evidence to show that there was an enforceable obligation for such donations to be made. The board finds the Taxpayer's granting use of the building to non-Order related entities such as the boy scouts is not required by any of its organizational documents. While certainly some of its functions are community minded, there does not appear to be a mandatory or enforceable obligation that charitable donations be made or that its property be available to other charitable organizations for use.

In conclusion, the board finds the Taxpayer failed to present adequate evidence that it was organized in such a fashion to perform a charitable function as described in RSA 72:23-1 and there was no evidence that its actual charitable contributions and its monetary or in kind contributions were enforceable. While the Order has some history of providing such charitable

contributions and in kind use of the property (see Appeal of City of Franklin, 137 N.H. 622, 625 (1993)), the board finds the Taxpayer's direct use (RSA 72:23, V) is social and fraternal and the Taxpayer's charitable actions in the past are relatively slight and insignificant. (Nature Conservancy v. Town of Nelson, 107 N.H. 316, 320 (1996) and Franciscan Fathers v. Town of Pittsfield, 97 N.H. 396, 401 (1952) (to be eligible for an exemption, the use of a property cannot be "slight, negligible or insignificant.") While some aspects of the Order are community minded, "the purpose of the 'obligation' requirement is to prevent purely private organizations, albeit with charitable purposes, from benefiting by a tax exemption without, in turn, providing some service of public good." Franklin, 137 N.H. at 626; see also Nature Conservancy, 107 N.H. at 319. "It cannot be considered a charitable organization if its purposes are confined mostly to benefiting its own members."

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

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Donald Micucci, Attn: Christopher Burns, Esq., 22 Central Street, Newmarket, NH 03857, representative for the Taxpayer; and Chairman, Town Council, Town of Newmarket, 186 Main Street, Newmarket, NH 03857.

Date: March 19, 2007

Anne M. Stelmach, Clerk