

**Home Care Association of New Hampshire**

**v.**

**City of Concord**

**Docket No.: 22995-06EX**

**DECISION**

Home Care Association of New Hampshire (the “Taxpayer”) appeals, pursuant to RSA 72:34-a, the City of Concord’s (the “City”) denial of the Taxpayer’s 2006 request for a charitable exemption as provided under RSA 72:23 for a portion of an office building located at 8 Green Street (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 204.05. For the reasons that follow, we find the Taxpayer carried its burden.

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

- (1) it is a charitable organization as outlined and defined in RSA 72:23, V and RSA 72:23-I;
- (2) it has been granted 501(c)(3) tax-exempt status by the internal revenue service (the “IRS”);
- (3) after it purchased the Property, it received a charitable exemption every year for that portion of the Property it occupies; and
- (4) it meets all the requirements for a charitable exemption outlined by the supreme court in ElderTrust of FLA., Inc. v. Town of Epsom, 154 N.H. 693 (2007).

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

- (1) the Taxpayer is a trade organization organized to exclusively benefit its members;
- (2) the Taxpayer does not directly provide any home health care to the general public;
- (3) some of the Taxpayer's members are for-profit health care providers;
- (4) the non charitable work of the Granite State Home Health Association (the "GSHHA"), the Taxpayer's wholly-owned subsidiary with the same board of directors as the Taxpayer, precludes the Taxpayer from qualifying for a charitable exemption; and
- (5) the Taxpayer does not pass the four part test outlined in ElderTrust to qualify for a charitable exemption.

#### Historical Overview

The Taxpayer was initially formed in 1974 as a voluntary corporation pursuant to RSA 292 under its original name, Community Healthcare Association of New Hampshire. The IRS granted the Taxpayer 501(c)(3) tax exempt status in 1975. In 1984, the Taxpayer changed its name to Home Care Association of New Hampshire. In 1993, the Taxpayer purchased the Property and in 1994 applied for and was granted a charitable exemption by the City. The Taxpayer continued to receive the charitable exemption each year until 2006 when the City reviewed the Taxpayer's tax exempt status and eventually denied the Taxpayer's exemption in November of that year. The Taxpayer filed a timely abatement request with the City, which was denied by the City's Board of Assessors in June, 2007. In August, 2007, the Taxpayer filed this timely appeal with the board.

The Taxpayer leases the upper level of the Property to an unrelated entity and there is no dispute between the parties the leased area is not exempt from taxation. Therefore, this appeal focuses solely on the City's denial of the exemption for the portion of the Property the Taxpayer occupies.

### **Board's Rulings**

RSA 72:23-m establishes the burden of demonstrating the applicability of an exemption and reads as follows:

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.

See also Nature Conservancy v. Nelson, 107 N.H. 316, 319 (1966). The board further notes “[t]he legislative purpose to encourage charitable institutions is not to be thwarted by a strained, over-technical and unnecessary construction.” Town of Peterborough v. MacDowell Colony, 157 N.H. 1, 5 (2008), Young Women’s Christian Ass’n v. Portsmouth, 89 N.H. 40, 42 (1937) (quotation omitted). The board finds the Taxpayer met its burden to prove it satisfies the requirements for and is entitled to receive a charitable tax exemption for that portion of the Property it occupies pursuant to RSA 72:23, V and RSA 72:23-1.

RSA 72:23, V 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 summarized the requirements of these statutes in terms of a "four-factor test" a taxpayer must meet in order to qualify for a charitable tax exemption. ElderTrust of FLA., Inc. v. Town of Epsom, 154 N.H. 693, 697-698 (2007). As the supreme court stated:

We hold that the plain language of RSA 72:23, V and RSA 72:23-I 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.)

We will address each of the factors separately.

#### ElderTrust Factor No. 1

A review of the Taxpayer's Articles of Agreement (the "Articles") is informative. The Articles were first recorded in 1974 with amendments recorded in 1984 and 1997 (Taxpayer Exhibit No. 2 at "G"). Article II (amended in 1984) states "[t]he objectives for which this corporation is established are:

- (1) To promote not-for-profit home health care and related services.
- (2) To promote programs and services directed toward the prevention of illness, the encouragement of good health practices and the overall protection of the public's health.

- (3) To work with other groups, associations, agencies and individuals toward coordination, increased effectiveness and availability of human services for all residents of the State of New Hampshire.

Further, the Taxpayer's "Mission Statement" states: "[t]he Home Care Association of New Hampshire is a membership organization which enhances the ability of agencies providing home health care to deliver quality services to New Hampshire residents. The Association carries out this mission through education, networking, research, leadership, and public policy advocacy." (Taxpayer Exhibit No. 2 at "O").

The board disagrees with the City's assertion that the Taxpayer's Articles do not describe a charitable purpose but rather are focused "on assisting other organizations rather than providing services directly to the general public." (City's Memorandum of Law at p. 7) As the court wrote in Town of Peterborough v. MacDowell Colony, 157 N.H. 1, 7 (2008), "[t]he relevant inquiry is not whether the public, or a substantial and indefinite segment of it, benefits from the organization's *property*, but whether the public, or a substantial and indefinite segment thereof, benefits from the organization's *performance of its stated purpose*. See ElderTrust, 154 N.H. at 697-698." While there is no question the Taxpayer assists the member organizations which subscribe to its services, the more relevant finding is this assistance is directed toward accomplishing the objectives outlined in Article II and generally promotes not-for-profit home health care, promotes the overall protection of the public's health, and works to coordinate increased effectiveness and availability of human services for all residents of New Hampshire. Just as the MacDowell Colony's purpose was not to create art but rather to "promote" it, so is Home Care Association's purpose to "promote not-for-profit home health care..." through its educational services to its member organizations and "through... networking, research, leadership and public policy advocacy" (Taxpayer's mission statement, Municipality Exhibit A

at Tab A) (see also e.g., Municipality Exhibit A at Tabs M and N). This activity does not only benefit the Taxpayer's members directly, but all residents of the state by educating and improving the home health care providers to provide better home health care to the "general public" as envisioned in RSA 72:23-1. The Taxpayer's charitable purpose is not to actually provide direct home health care but rather to accomplish the objectives outlined in Article II and its Mission Statement. Contrary to the City's position, the board finds the Taxpayer's interaction with its members is necessary to accomplish the third objective of Article II ("[t]o work with other groups, associations, agencies and individuals...") and is but one example of how it is administered for its charitable purpose. The fact that some (a minority) of the Taxpayer's members are for-profit health care providers is also not a "disqualifier." The important finding is the Taxpayer promotes home health care in general just as the MacDowell Colony promoted art in general regardless of whether the individual artists created art for profit or otherwise.

MacDowell at 9.

The board finds the Taxpayer demonstrated it was established and administered for a charitable purpose and satisfies the requirements of the first factor.

ElderTrust Factor No. 2

In determining whether the Taxpayer satisfies the requirements of the second factor we have followed the methodology consistently utilized by the court in ElderTrust and other charitable tax exemption cases. See, e.g., Nature Conservancy v. Nelson, 107 N.H. 316, 319-20 (1966). The board finds both the Taxpayer's Articles cited above and its array of services, educational programs and referral services to carry out the Taxpayer's incorporated purpose create an enforceable obligation to perform its charitable purpose. See E. Coast Conf. of the Evangelical Covenant Church of America, Inc. v. Town of Swansey, 146 N.H. 658, 662 (2001).

In addition, the dissolution clause of Article VI reinforces this enforceable obligation. Article VI

reads in pertinent part: “[u]pon dissolution... the Board of Directors shall... dispose of all the assets of the corporation *exclusively* for the purposes of the corporation... or to such organization or organizations organized and operated *exclusively* for charitable, educational, religious, or scientific purposes...” (emphasis added). The board finds the express usage of the word “exclusively” in Article VI places a “significant and enforceable limitation” on the Taxpayer’s operation similar to the court’s finding in the articles of incorporation of ElderTrust of FLA., Inc. v. Town of Epsom, 154 N.H. 693, 700 (2007).

The City argues the Taxpayer and its affiliate GSHHA “are inextricably intertwined and indistinguishable in membership, governance and control, and they promote only the common interests of their members.” (City’s Memorandum of Law at p. 11). The testimony at the hearing indicated GSHHA was created as a precautionary measure to insure the Taxpayer maintained its federal tax exempt status. While the political activity of GSHHA is certainly a factor to be considered in determining whether the Home Care Association’s overall functions and purposes are charitable, we find this activity is but one of several ways the Taxpayer strives to accomplish its mission. The board looked to New Hampshire case law for guidance on this issue and did not find support for the City’s premise that GSHHA’s lobbying efforts overshadowed or negatively impacted the Taxpayer’s primary goal or mission to provide its services and, therefore, precluded the Taxpayer from qualifying for an exemption.

The City further contends the Taxpayer is a trade organization whose members pay dues and no one other than the members benefit directly from its services. The City’s contention has two parts and the board will address them individually.

First, in the Director of Real Estate Assessments’, Ms. Kathryn Temchack, November 3, 2006 letter to the Taxpayer explaining why it did not qualify for a charitable exemption she wrote: “Home Care Association is a membership organization whose members have to meet

certain criteria and are required to pay dues.” Additionally, Ms. Temchack writes: “I believe that Home Care Association is a trade organization that exists to serve its members, and the benefits and services of the Association are restricted to its members.” (Taxpayer Exhibit No. 2 at “D”). The City reiterated its position and the reasoning supporting it in Ms. Temchack’s June 22, 2007 letter to the Taxpayer denying its charitable exemption application. (Taxpayer Exhibit No. 2 at “F”). The board does not agree with the City’s premise that because the Taxpayer has members and they pay dues the Taxpayer is not entitled to a charitable exemption. RSA 292 pertains to voluntary corporations and associations.

**292:8 Capital Structure.** The corporation may generate funds through its members, including, but not limited to:

- I. Issuance of membership certificates or stock certificates, or both, in the corporation.
- II. Receipt of contributions to capital.
- III. Assessment of dues and fees on members.

The fact the Taxpayer charges its members a fee does not necessarily prohibit it from qualifying for a charitable exemption. As the court has held: “charging fees... does not alone preclude an organization from obtaining a charitable tax exemption, as long as the fees ‘directly fulfill the organization’s charitable purpose, or are necessary for the organization to accomplish its purpose.’” Senior Citizens Housing Dev. Corp. v. City of Claremont, 122 N.H. 1104, 1108 (1982). The membership fees provide the “main money engine” to carry out the Taxpayer’s charitable goals just as the rental income did for Kiwanis in Appeal of Kiwanis Club of Hudson, 140 N.H. 92, 94-95 (1995) and just as the income from the independent living units did for Taylor Home in Appeal of City of Laconia, 146 N.H. 725, 728-729 (2001). The monies raised through the fee structure are used to pay the expenses incurred to provide the charitable work the Taxpayer performs. The board cannot find support for the City’s reasoning that because the

Taxpayer has members who pay dues the Taxpayer is precluded from qualifying for a charitable exemption.

Second, and as previously discussed under the first factor, the board finds the general public is the beneficiary of the Taxpayer's activities. The fact the Taxpayer provides this benefit to the public primarily through its members is not a disqualifying feature of the Taxpayer's practice but rather a pragmatic approach to accomplishing its mission. The board sees the Taxpayer's situation as analogous to the questions raised by the Town of Peterborough and answered by the court in MacDowell where the town, in that case, argued the resident artists benefited from their stay at the colony rather than the general public. As the court found in MacDowell, the board finds the ultimate beneficiary of the Taxpayer's activities is the general public. Working with and through its members, the Taxpayer is able, in an efficient manner, to provide home health care services to the general public.

Thus, the board finds the Taxpayer satisfies the requirements of the second factor.

### ElderTrust Factor No. 3

This factor explores the ownership, use and occupancy of any property an organization is claiming a charitable exemption for. The court has held that in order "[t]o qualify for an exemption, the land, in addition to being owned by the association, would have to be occupied by the association and used directly by the association for its charitable purpose." ElderTrust of FLA., Inc. v. Town of Epsom, 154 N.H. 693, 700 (2007) citing The Housing Partnership v. Town of Rollinsford, 141 N.H. 239, 242 (1996). Further, "[o]nly that part of the property which is used *directly* for charitable purposes is exempt from property tax." Id. at 242. See also Appeal of C.H.R.I.S.T., Inc., 122 N.H. 982, 984 (1982). There was no dispute between the parties the Taxpayer owns the Property and it is the Taxpayer's "head office of operations." (Taxpayer Exhibit No. 1 at p. 25). While the Property is owned by the Taxpayer, it does not

occupy the entire building and has leased a portion of it to a separate, unrelated entity. The Taxpayer is seeking an exemption only for the portion of the Property it actually occupies and uses for its charitable functions. Further, there was no evidence or testimony from the parties at the hearing disputing the amount of space actually used by the Taxpayer.

“An analysis of the third factor may overlap with that of the first because these two factors are interdependent - that is, the third factor primarily asks whether the charitable purpose identified under the first factor is carried out on the particular parcel of property for which the exemption is being sought.” ElderTrust of FLA., Inc. v. Town of Epsom, 154 N.H. 693, 700-701 (2007). The board found the Taxpayer to be established and administered for a charitable purpose under the first factor and further finds the Taxpayer’s use and occupancy of the portion of the Property for which it is requesting an exemption is solely for the administration of its charitable purpose. As previously discussed, the board disagrees with the City’s assertion the Taxpayer and its affiliate GSHHA only provide a benefit to the members and consequently the Property is not “used and occupied for the benefit of the general public.” (City’s Memorandum of Law at p.18). Thus, the board finds the Taxpayer satisfies the requirements of the third factor.

ElderTrust Factor No. 4

The board has reviewed the Taxpayer’s administrative practices to see if any of the Taxpayer’s income or profits are used by the organization for any purpose other than the purpose for which it was established. RSA 72:23, V. See also ElderTrust at 698. We further reviewed whether the Taxpayer offers any “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.” RSA 72:23-1.

The board finds several exhibits support the Taxpayer’s position that none of the income or profits is used for anything other than the Taxpayer’s charitable purpose. Article III, (5)A

states in part: “[n]o part of the net earnings of the corporation shall endure [sic] to the benefit of or be distributed to its members, directors, officers, or other private persons...” (Taxpayer Exhibit No. 2 at “G”). This is supported by Article XV, (2) of the By-Laws of The Home Care Association (the “By-Laws”), amended 06/13/01, which reads: “[u]pon dissolution, distribution of assets of the Corporation shall be in accordance with Article VI of the Articles of Association.” (Taxpayer Exhibit No. 2 at “J”). Article VI clearly states, “[u]pon dissolution... the Board of Directors shall... dispose of all the assets of the corporation exclusively for the purposes of the corporation... or to such organization or organizations organized and operated exclusively for charitable, educational, religious or scientific purposes as shall at the time qualify under section 501(c)(3) of the internal Revenue Code....” Further, in the Taxpayer’s IRS Form 990 income tax return, Part V-A, to be filled out listing the compensation for “Current Officers, Directors, Trustees, and Key Employees.” The preparer of the form refers readers, on page 5, to “See Statement 4.” Statement 4 lists the executive director, Susan Young, and the 11 members of the Board of Directors. Of the 12 people listed, only Ms. Young [the executive director of the Taxpayer and an employee of the board of directors, (Article VIII of the By-Laws)] is shown to have received any compensation or benefits. Each of the members of the board of directors is shown to have received zero (“0”) compensation or benefits. Further, the IRS Form 990 income tax return for GSHHA (Municipality Exhibit A at “F”) lists, at Part V-A and Statement 3, the same “0” compensation for the same members of the board of directors as the Taxpayer. This evidence supports the testimony at hearing that no member of the board of directors receives any compensation (“pecuniary profit”) for their time spent performing their duties as board members. Therefore, the board finds the Taxpayer satisfies the requirements of the fourth factor.

As previously discussed, the board finds the Taxpayer satisfies each of the four factors outlined in ElderTrust and, therefore, has met its burden of proof and is entitled to a charitable

exemption for that portion of the Property it occupies. If the taxes have been paid, they shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

RSA 76:17-c, I and II.

The "Requests" received from the Taxpayer and the City are replicated below, in the form submitted and without any typographical corrections or other changes. The board's responses are in bold face. With respect to the Requests, "nether 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 overly broad or narrow so 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 REQUESTED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

**Requested Findings of Fact**

1. Home Care is a voluntary corporation, organized under RSA 292 in 1974.

**Granted.**

2. Home Care is a federally tax exempt organization under Section 501(c)(3) of Internal Revenue Code, including for the 2006 Tax Year.

**Granted.**

3. Home Care owns the building located at 8 Green Street, Concord, NH, Tax Map/Lot No. 36-1, for which it has claimed a 50% exemption from property taxes as a charitable organization. See "Exhibit A" to Petition for Appeal.

**Granted.**

4. The City of Concord granted a 50% charitable exemption from property taxes to Home Care for every year from 1984 to 2005.

**Granted.**

5. Home Care's Articles of Association establish Home Care's 3 objectives:

1. To promote not-for-profit home health care and related services.
2. To promote programs and services directed toward the prevention of illness, the encouragement of good health practices and the overall protection of the public's health.
3. To work with other groups, associations, agencies and individuals toward coordination, increased effectiveness and availability of human services for all residents of the State of New Hampshire.

**Granted.**

6. The promotion of programs and services directed toward the prevention of illness, the encouragement of good health practices and the overall protection of the public's health performs a service of public good or welfare.

**Granted.**

7. Working with other groups, associations, agencies and individuals toward coordination, increased effectiveness and availability of human services for all residents of the State of New Hampshire performs a service of public good or welfare.

**Granted.**

8. Article III of Home Care's Articles of Association obligates Home Care to be operated exclusively for exempt purposes that satisfy Section 501(c)(3) of the Internal Revenue Code.

**Granted.**

9. Home Care provides home health care related education and training programs, which are open to the general public, that are intended to further Home Care's stated objectives.

**Granted.**

10. Home Care has created a website (located at [homecarenh.org](http://homecarenh.org)) accessible to the general public that contains information about home care and its role in health care delivery, allows users to obtain search for home care providers, and to learn about education programs designed to further Home Care's objectives.

**Granted.**

11. Home Care maintains a toll free telephone number where its office responds to telephone inquiries from the general public regarding home health care.

**Granted.**

12. The general public benefits directly from the services Home Care provides.

**Neither granted nor denied.**

13. The general public benefits through the education and training of home health care providers who are responsible for serving those who use or who may use home care services.

**Granted.**

14. The general public benefits from the promotion of programs and services directed toward the prevention of illness, the encouragement of good health practices and the overall protection of the public's health.

**Granted.**

15. The general public benefits from increased effectiveness and availability of human services.

**Granted.**

16. Home Care utilizes the building it owns at 8 Green Street as its only office of operations and is occupied by it to further its objectives and purposes.

**Granted.**

17. Home Care leases the second floor of the building to a third party not eligible for a charitable organization exemption and Home Care has only claimed exemption for the portion it owns, uses and occupies.

**Granted.**

18. Home Care does not issue dividends or other financial disbursements to members and all income or profits are utilized to further Home Care's objectives.

**Granted.**

19. Home Care's Board members serve as volunteers and receive no compensation for their services or routine expenses.

**Granted.**

20. None of Home Care's income or profits are used for purposes other than the purposes for which Home Care is organized.

**Granted.**

**Requested Conclusions of Law**

21. A relevant inquiry in satisfying RSA 72:23, V and 72:23-1, is "whether the public, or a substantial and indefinite segment thereof, benefits from the organization's *performance of its stated purpose*." MacDowell, \_ N.H. \_ (2008) (emphasis in original).

**Granted.**

22. The taxpayer does not have to demonstrate that it serves the public directly to satisfy the second Eldertrust factor.

**Granted.**

23. The taxpayer satisfies the second Eldertrust factor by demonstrating that it (a) is obligated to perform its stated charitable purpose, and (b) the general public benefits from such performance, either directly or through its members.

**Granted.**

24. RSA 292 allows charitable organizations to have members and to have members pay dues. See RSA 292:1, RSA 292:2, II-a, RSA 292:8.

**Granted.**

25. Voluntary corporations formed under RSA 292 are not *per se* ineligible to qualify for the property tax exemption under RSA 72:23, V, simply because they have members that pay dues.

**Granted.**

**CITY'S REQUESTS FOR FINDINGS OF FACTS AND RULINGS OF LAW**

1. On April 1, 2006, Home Care Association of New Hampshire ("HCA") owned an office building located at 8 Green Street in the City of Concord, approximately half of which was leased to a private law firm on that date.

**Granted.**

2. HCA's Mission Statement describes its primary corporate purpose as follows: "The Home Care Association of New Hampshire is a membership organization which enhances the ability of agencies providing home health care to deliver quality services to New Hampshire residents. The Association carries out this mission through education, networking, research, leadership, and public policy advocacy."

**Granted.**

3. There are three categories of members of HCA, which are either licensed providers of home health, homemaker, hospice or other home care services in New Hampshire ("Provider Members"), or their business is affiliated in some manner with the home health care industry ("Affiliate Members"), or individuals who subscribe to the purpose and objectives of HCA. See City's Exhibit B, HCA By-laws, Article IV.

**Neither granted nor denied.**

4. Approximately one-quarter of the members of HCA are for-profit agencies. Testimony of Ms. Young.

**Granted.**

5. All members of HCA are required to pay dues to support the HCA in order to be, or remain, a member of HCA. See City's Exhibit C, Member Policies.

**Granted.**

6. Only Provider Members are allowed to vote at any meetings of HCA or have representatives on the board of directors for HCA. See City's Exhibit B, HCA By-laws.

**Granted.**

7. The direct benefits and services provided by HCA to its Provider or Affiliate Members include representation by a lobbyist for home care interests at the statehouse, group purchase of workers' compensation insurance, discounts on registration costs for accredited training programs, discounts on telephone and internet services, discounts for exhibitor fees at the annual Northern New England trade show and discounts on industry news and trade publications. See City's Exhibit C, Member and Affiliate Member Advantage program.

**Neither granted nor denied.**

8. None of the benefits and services provided by HCA to its Provider or Affiliate Members are also available to any member of the general public merely because that person is a member of the general public.

**Neither granted nor denied.**

9. HCA does not provide home health care directly to any member of the general public. Testimony of Ms. Young.

**Granted.**

10. HCA has a wholly-owned subsidiary, Granite State Home Health Association (“GSHHA”), that performs legislative lobbying services for the members of HCA at the New Hampshire legislature. See City’s Exhibit D, Articles of Association and By-laws. See also City’s Exhibit G, Consolidated Financial Statements at pg. 6.

**Granted.**

11. Only the Provider Members of HCA can be members of the GSHHA and vote on its corporate affairs. City’s Exhibit D, Articles of Association and By-laws.

**Granted.**

12. The board of directors for HCA is the same board of directors for GSHHA, and these two boards govern all activities of both HCA and GSHHA. Testimony of Ms. Young.

**Granted.**

13. The executive director for HCA is also the executive director of GSHHA and provides management and legislative services for GSHHA under a contract between HCA and GSHHA. Testimony of Ms. Young; see also City’s Exhibit E.

**Granted.**

14. HCA and GSHHA use the same office space at 8 Green Street in Concord. Testimony of Ms. Young; see also City’s Exhibit E.

**Granted.**

15. HCA often describes the legislative and lobbying activities of GSHHA to its Members and uses the existence of GSHHA as a marketing tool to attract new members to HCA. See City’s Exhibits C (Provider Member Advantage program benefits), H (marketing materials), I (website information), J (annual reports).

**Granted.**

16. GSHHA files returns with the IRS as a Section 501(c)(6) organization, which section of the Code applies to chambers of commerce, business leagues and boards of trade. City’s Exhibit F. See also Section 501(c)(6) of the IRC as Attachment 1 to the City’s Memorandum of Law.

**Neither granted nor denied.**

17. GSHHA is not a charitable organization, as defined by RSA 72:23-1 and under New Hampshire common law.

**Neither granted nor denied.**

18. The governance, staffing and activities of HCA and GSHHA, as well as their use of the real estate at 8 Green Street, are interdependent and inextricably intertwined.

**Granted.**

19. According to its Form 990 for 2005, which was filed with the City in May 2006 with its Form BTLA A-12, HCA received no direct or indirect public support for its activities and the vast majority of its income is derived from membership dues and fees charged for seminars and other educational activities. See Exhibit G, Form BTLA A-12 with Form 990 for 2005 attached.

**Neither granted nor denied.**

20. According to HCA's 2005 financial statement and 2005 Form 990, none of its income was spent on providing home health care directly to any member of the general public. See Exhibit G.

**Granted.**

21. HCA's website does not list any home health care agencies that are not members of HCA. Testimony of Ms. Young; see also City's Exhibit C, final two pages bates-stamped pgs. 107-108.

**Granted.**

22. General information about home health care made available on HCA's website is an incidental benefit to the public that also functions as a referral service to HCA's Members.

**Neither granted nor denied.**

23. HCA's corporate purpose is to promote the common interests of its members who are involved in the home health care industry.

**Denied.**

24. HCA was not established, nor is it administered, for a charitable purpose, and it is not a public charity as defined by RSA 72:23-1 or in New Hampshire common law.

**Denied.**

25. HCA's use and occupancy of 8 Green Street in the City of Concord is not a charitable use, as required by RSA 72:23, V for a charitable tax exemption.

**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(g). 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

---

Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Christopher J. Sullivan, Esq., Rath, Young & Pignatelli, P.C., One Capital Plaza - PO Box 1500, Concord, NH 03302, counsel for the Taxpayer; Adele M. Fulton, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766, counsel for the City; and Chairman, Board of Assessors, City of Concord, 41 Green Street, Concord, NH 03301.

Date: April 3, 2009

---

Anne M. Stelmach, Clerk

**Home Care Association of NH**

**v.**

**City of Concord**

**Docket No.: 22995-06EX**

**ORDER**

The board has reviewed the “City’s” May 15, 2009 Motion for Rehearing or Reconsideration (the “Motion”) and the “Taxpayer’s” May 20, 2009 Objection to the City’s Motion for Rehearing or Reconsideration (the “Objection”) filed with respect to the Board’s April 3, 2009 Decision which was recertified to the parties, due to a mailing error, on April 15, 2009. The Decision granted the Taxpayer’s request for a RSA 72:23 Charitable Exemption for that portion of the “Property” owned, used and occupied by the Taxpayer for its charitable mission. The board’s May 22, 2009 suspension order is hereby dissolved and the Motion is denied for the reasons stated below.

As stated in the Objection, the Motion is essentially a reiteration of the City’s position presented during the hearing. The board finds the Motion fails to provide “good reason”, see RSA 541:3 and Tax 201.37(e), for granting it. In the Decision, the board granted the Taxpayer’s appeal for a charitable exemption based on specific findings that the Taxpayer carried its burden of proof on each of the four required elements for a charitable exemption recently articulated by

the supreme court in Elder Trust of Florida, Inc. v. Town of Epsom, 154 N.H. 693 (2007).

Further, and as stated in the Objection, the board

finds the court's ruling in the case of Town of Peterborough v. McDowell Colony, Inc., 157 N.H. 1 (2008) gave additional guidance as to whether the Taxpayer's performance of its stated purpose benefits the public. The board concluded it did and the Taxpayer was entitled to the charitable exemption.

In the Motion, the City again raises the issue of the composition of the panel of board members sitting on cases involving the City and the recusal of the board's lone attorney member, who is a resident of the City. The City continues to contend it is unfairly prejudiced by this action. The board addressed the City's contention extensively in its May 12, 2008 order (copy attached). The board finds it unnecessary to restate its findings contained in that order.

Therefore, for the reasons previously discussed, the board finds the City's Motion raises no new evidence the board erred in its Decision and the Motion is therefore denied.

An appeal to the supreme court must be filed within thirty (30) days of the date of the board's denial. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Chairman

---

Michele E. LeBrun, Member

---

Douglas S. Ricard, Member

**Certification**

Home Care Association of New Hampshire v. City of Concord

Docket No.: 22995-06EX

Page 22 of 22

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid,  
to:

Christopher J. Sullivan, Esq., Rath, Young & Pignatelli, P.C., One Capitol Plaza, PO Box 1500,  
Concord, NH 03302, counsel for the Taxpayer; Chairman, Board of Assessors, City of Concord,  
41 Green Street, Concord, NH 03301; and Adele M. Fulton, Esq., Gardner, Fulton & Waugh,  
PLLC,  
78 Bank Street, Lebanon, NH 03766, counsel for the City.

Date: June 15, 2009

---

Melanie J. Ekstrom, Deputy Clerk