

The Pittsfield Players

v.

Town of Pittsfield

Docket No.: 23038-07EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2007 denial of the Taxpayer’s request for charitable exemption under RSA 72:23,V on a 0.09-acre lot with a building used as a theatre (the “Property”). For the reasons stated below, the appeal for exemption is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the Property was entitled to the statutory exemption for the year under appeal. See RSA 72:23-m; and Tax 204.05. The board finds the Taxpayer has met this burden.

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

- (1) the Taxpayer has been in existence for approximately 40 years and has owned the “Scenic Theater” for approximately 12 years;
- (2) the Taxpayer is a nonprofit, ‘501(c)(3)’ organization and meets all the requirements for a statutory exemption;

(3) for a number of years the Town granted a '50% abatement' of the tax on the Property, but in 2007 the Taxpayer learned (from a new member from Wolfeboro) it is qualified for a full exemption; and

(4) the Taxpayer applied for the exemption in January, 2007 and, when requested by the Town, submitted additional financial and other information (see Taxpayer Exhibit No. 1), but the selectmen nonetheless voted to deny the exemption in August, 2007.

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

(1) the Town's selectmen have "struggled" with the issue of whether to grant it, after receiving a great deal of information from the Taxpayer;

(2) on August 28, 2007, the board of selectmen finally decided not to grant the exemption, but were willing to continue with a 50% abatement on the Property; and

(3) the selectmen are concerned the Taxpayer's activities benefit people outside of the community (the Town) and the dissolution provision of the articles of agreement do not provide for the Town to receive title to the Property if no longer used by the Taxpayer.

Board's Rulings

Based on the evidence, the board finds the Property qualifies for a RSA 72:23, V charitable exemption. The appeal is therefore granted.

Prior to the hearing, the board gave the parties an opportunity to read copies of the recent supreme court decision in Town of Peterborough v. The MacDowell Colony, Inc., ___ N.H. ___, No. 2007-230, slip. op. (March 14, 2008). The Town's representative, administrator Leon Kenison, agreed this decision is "pertinent" to this appeal, but indicated, however, it was questionable whether a majority of the Town selectmen would be "persuaded" to grant an

exemption because of it. The board therefore proceeded to hear the respective arguments of the parties summarized above.

The board finds the Property meets all the requirements of the exemption statute. It is owned, used and occupied for a charitable purpose within the meaning of RSA 72:23, V and RSA 72:23-1. In addition, the Taxpayer's charter has provisions that confirm the Taxpayer has a charitable purpose it is obligated to fulfill and that its assets will be devoted to that purpose if the Taxpayer is ever dissolved. See Taxpayer Exhibit No. 1, which includes both the original 1970 "Articles of Association" (specifically Article II) and the articles as amended in 1991 (specifically Article II, III, and V) and the "By-Laws" adopted in 1991.

The requirements for a charitable exemption were reviewed and summarized in another recent supreme court case, ElderTrust of Florida, Inc. v. Town of Epsom, 154 N.H. 693 (2007), in terms of four factors also discussed in the MacDowell case.¹ The Town's representative at the hearing, Mr. Kenison, did not question whether the Taxpayer's ownership, use and occupancy of the Property satisfies these requirements, but did note a concern of the selectmen that the theater activities of the Taxpayer also benefited people outside the "community" (the Town). This, however, is not a proper reason to deny the exemption.

RSA 72:23-1, as noted in MacDowell, is clear that the definition of "charitable," which is quite general, simply requires "some service of public good or welfare advancing the spiritual,

¹ MacDowell quoted the four factors stated in ElderTrust, 154 N.H. at 697-98, as follows:

(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. Under the fourth factor, the organization's officers or members may not derive any pecuniary profit or benefit.

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.” Even if some people outside the Town are benefited by the Taxpayer’s activities, this is not a proper ground for denying the exemption. This point and the recognition that artistic organizations can qualify for a charitable exemption in New Hampshire are explained in both the majority and (specially) concurring opinions in MacDowell.

RSA 72:23-1 also specifies “no pecuniary profit or benefit to [the charitable organization’s] officers or members,” but there is no statutory requirement that an exempt property become town property when it no longer qualifies for an exemption. In fact, the Taxpayer’s charter, in amended Article V, does provide “Upon dissolution of the corporation, the assets shall be distributed for one or more exempt purposes . . . which may include the aforesaid charitable, educational, literary, arts-promoting and cultural purposes to such agencies, organizations or corporations in the state of New Hampshire, or shall be distributed to the federal government, or to a state or local government, for a public purpose.” This dissolution clause ensures that none of the assets upon dissolution will benefit the Taxpayer’s members or officers and certainly provides latitude for transfer of title for the public good to another charitable organization or governmental entity, including the Town.

For all of these reasons, the board finds the Property qualifies for a charitable exemption and the appeal is therefore granted. If the taxes have been paid, the amount paid for tax year 2007 shall be refunded with interest at six percent per annum from date paid to refund date. See RSA 76:17-a.

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

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: Meggin Dail, 243 Black Hall Road, Epsom, NH 03234, representative for the Taxpayer; and Chairman, Board of Selectmen, Town of Pittsfield, P.O. Box 98, Pittsfield, NH 03263.

Date: April 28, 2008

Anne M. Stelmach, Clerk