

Home Care Association of New Hampshire

v.

City of Concord

Docket No.: 24892-09EX

DECISION

On August 25, 2010 the “Taxpayer” filed an appeal with the board challenging the “City’s” denial of its application for a 2009 RSA 72:23, V charitable exemption. In accordance with Tax 204.04, the board acknowledged the appeal and sent the City a checklist on August 30, 2010 to determine whether the Taxpayer had timely and properly applied for a charitable exemption with the City.

The City responded noting the Taxpayer had not timely filed the A-12 Charitable Organization Financial Statement for 2009. On October 13, 2010, the Taxpayer filed its response indicating that it had not filed the Internal Revenue Service Form 990 with the City until June 17, 2009 because the Taxpayer had sought and received an extension from the IRS “due to the increased complexity and time required to complete” a new version of Form 990, The Taxpayer also indicated it had contacted the City’s assessor’s office on May 6, 2009 and was told that while there was no formal process to seek an extension with the municipality, the Taxpayer should file the Form 990 when complete even if it

was past the RSA 72:23, VI June 1 deadline. Consequently, the Taxpayer believes it had received an extension from the City and thus the Form 990 attached to the A-12 form when filed with the City on June 17, 2009 was timely. In response, the City indicated the assessing office staff routinely advises taxpayers to file the A-12 form consistent with the statutory deadline of “before June 1”.

Board’s Rulings

RSA 72:23, VI states:

Every charitable organization or society, except those religious and educational organizations and societies whose real estate is exempt under the provisions of paragraphs III and IV, shall annually before June 1 file with the municipality in which the property is located upon a form prescribed and provided by the board of tax and land appeals a statement of its financial condition for the preceding fiscal year and such other information as may be necessary to establish its status and eligibility for tax exemption.

Further, Tax 204.02 reads:

(a) Filing a timely application for exemption or credit shall be a jurisdictional prerequisite for the board to hear an exemption appeal.

(b) To qualify for an exemption or credit, the taxpayer shall, as of April 1 for the appealed tax year, own the property and be in compliance with all statutory requirements in accordance with RSA 72, RSA 74:1 and RSA 74:2.

The statute is clear that for a charitable organization to receive an exemption it must annually file the application for exemption (A-9 form) on or before April 15 (RSA 72:23-c) and file a “statement of its financial condition for the preceding fiscal year” before June 1 (RSA 72:23, VI). While RSA 72:23-c provides for an extension for filing the A-9 form past the April 15th deadline up to the time the local tax rate has been approved (if accident, mistake or misfortune can be established), no extension is provided in RSA 72:23, VI for filing the A-12 form. The board finds no authority exists for the

Taxpayer to file later than May 31 (“before June 1”) its statement of financial condition notwithstanding the IRS granting an extension for the Taxpayer to file the Form 990 with the IRS. Further, while there are conflicting statements in the parties’ submissions as to what was discussed as to filing the Form 990, municipalities do not have the authority to extend statutory deadlines, in this case, the May 31 deadline for filing the A-12 form and accompanying statement of financial condition. See Daniels v. B&J Realty, 134 N.H. 174, 176 (1991).

Moreover, RSA 72:23, VI does not prescribe the Form 990 be the document to establish a charitable organization’s financial condition. Rather, the statute is general in nature requiring charitable organizations to provide some description of its financial condition for the preceding fiscal year. While the A-12 form does, at paragraph 7, mention the IRS Form 990, such reference does not obviate the responsibility of the charitable organization to timely file some financial information reflecting its financial condition such as an income and expense statement, balance sheet, etc.

Tax 204.02(a) clearly states for the board to have jurisdiction in a charitable exemption appeal, the application and financial statement must have been timely filed. Since the A-12 form was filed untimely on June 17, 2010, the board is without jurisdiction to proceed with the appeal and the appeal is therefore dismissed.

Any party seeking a rehearing, reconsideration or clarification of this decision must file a motion (collectively “rehearing motion”) within thirty (30) days of the clerk’s date below, not the date this decision is received. RSA 541:3; Tax 201.37(a). 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 541:3 and 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

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 been mailed this date, postage prepaid, to: Christopher J. Sullivan, Esq., Rath, Young & Pignatelli, P.C., P.O. Box 1500, Concord, NH 03301, Counsel for the Taxpayer; James W. Kennedy, Esq., City Solicitor's Office, City of Concord, 41 Green Street, Concord, NH 03301; and Chairman, Board of Assessors, 41 Green Street, Concord, NH 03301.

Dated:

Anne M. Stelmach, Clerk