

Camp Glen Brook

v.

Town of Marlborough

Docket No.: 24761-10EX

DECISION

This is an appeal, pursuant to RSA 72:34-a, of the “Town’s” denial of a claim for an RSA 72:23, V charitable exemption for tax year 2010. The appeal is denied for the reasons stated below.

Each taxpayer has the burden of showing, by a preponderance of the evidence, it was entitled to the statutory exemption or credit it has claimed for the year under appeal. See RSA 72:23-m; and Tax 204.05.

Camp Glen Brook argued it was entitled to the charitable exemption because:

- (1) Camp Glen Brook was founded in 1946 as a co-ed summer camp and has been in continuous operation since that time;
- (2) ownership of Camp Glen Brook was transferred to the Waldorf School of Adelphi University in 1972 and the camp now operates as a part of the Waldorf School of Garden City, New York, which is organized as a voluntary New York corporation and qualifies for federal tax exemption under Section 501(c)(3) of the Internal Revenue Code;

(3) Camp Glen Brook programs take place during 10½ months of the year (from February to mid-November), not just in the summer time;

(4) the many activities of Camp Glen Brook described at the hearing are charitable in nature; and

(5) the Town erred when it denied the requested charitable exemption.

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

(1) although the Town lauds Camp Glen Brook's activities, these activities do not qualify the organization for a charitable exemption; and

(2) Camp Glen Brook did not provide the Town with sufficient information to support a charitable exemption.

Board's Rulings

In this appeal, the board finds the Town did not err in denying a charitable exemption for tax year 2010. The appeal is therefore denied on the narrow grounds discussed below.

The board finds this appeal involves only one lot: Map 01/Lot 028, 35 Glen Brook Road ("Lot 28"). While five other lots are mentioned in Section C of the appeal document, Camp Glen Brook's representative at the hearing (Twain Braden, its director) acknowledged only a claim for a charitable exemption on Lot 28 was filed with the Town for tax year 2010 as identified at paragraph 11 of the annual RSA 72:23-c application (the A-9 Form). The board, as an appellate body, therefore only has jurisdiction to consider the denial of a charitable exemption for Lot 28 in this appeal.

A threshold issue is the identity of the organization seeking the charitable exemption. While there is no dispute Camp Glen Brook many years ago was established and operated as an RSA ch. 292 "voluntary corporation," as further attested to by the Articles of Association and By-Laws submitted, that New Hampshire corporation was apparently dissolved when the camp

was later sold (in 1972) to a Waldorf School located in Garden City, New York (at a time when that school was associated with Adelphi University). This Waldorf School is organized as a “voluntary New York corporation.” The 2008-09 federal tax return (Form 990) of “The Waldorf School of Garden City” submitted to the board shows Camp Glen Brook is not a separate legal entity but is rather operated as part of this Waldorf School. While it generates separately reported revenues and expenses, Camp Glen Brook has no independent legal existence of its own separate from the Waldorf School. One of the brochures submitted by Camp Glen Brook (labeled as “Exhibit M”) states: “Camp Glen Brook is an Educational Facility of The Waldorf School of Garden City.” The board further notes the Town’s tax bills pertaining to Camp Glen Brook were addressed and sent directly to the Waldorf School in New York. (See Taxpayer Exhibit No. 1.) These facts are further confirmed by the May 26, 2010 letter to the board from Mr. Braden, the director of Camp Glen Brook, who acknowledges “[Camp] Glen Brook is not incorporated in the State of New Hampshire and functions as an “unincorporated” organization with the Waldorf School serving as its “fiscal agent for purposes of tax deductions.”

The statutory requirements for a charitable exemption are set forth in RSA 72:23, V. This statute requires the organization seeking the charitable exemption to own, use and occupy the property for which an exemption is sought and, of importance here, the organization must be “organized, incorporated, or legally doing business in this state.” Cf. Young Women’s Christian Ass’n. v. Portsmouth, 89 N.H. 40, 43 (1937) (“The exemption statute does not apply to all charities. They must be local and institutionally organized.”) On the facts presented, the Waldorf School owns Lot 28 (as well as the five other lots comprising Camp Glen Brook) but is not organized, incorporated or legally doing business in this state.

This is not simply a technical defect that could arguably be overlooked or excused because of the following reason: our courts have established two of the four fundamental elements necessary to obtain a charitable exemption are that: (1) the applicant must be “established and administered for a charitable purpose”; and (2) an enforceable obligation must exist to perform that purpose. See ElderTrust of Florida, Inc. v. Town of Epsom, 154 N.H. 693, 697-700 (2007). There is no evidence the Waldorf School is so established or that any obligation Camp Glen Brook may have for a charitable purpose could be enforced against the Waldorf School, the entity owning and controlling the camp. See also Nature Conservancy v. Nelson, 107 N.H. 316, 317 (1966); and Appeal of City of Franklin, 137 N.H. 622, 625 (1993) [also quoted in ElderTrust]: “[T]he public service which [the applicant] 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.”

This ruling for tax year 2010 does not, of course, preclude the present owner of Camp Glen Brook (the Waldorf School) from taking whatever steps are necessary to comply with these legal requirements in future years. Illustrative of what is required organizationally to be eligible for an exemption are three appeals decided by the board involving another out-of-state corporation, The Schools for Children, Inc. That corporation was the owner and operator of a cluster of schools in Arlington and Cambridge, Massachusetts and received tax exempt status in that state, but also sought an educational exemption on the property tax assessed on two lots owned in Orange, New Hampshire. In the first of these three appeals (for tax year 1988), the board found this entity could not receive a tax exemption because it did not register to do business within the State of New Hampshire until the following year (on February 10, 1989, through a filing with the Secretary of State). See The Schools for Children, Inc. v. Town of

Orange, BTLA Docket No. 4215-88 (March 12, 1990). In the two remaining appeals (for tax years 1989 and 1992, respectively), the board reaffirmed this holding, finding the taxpayer had established its qualification to receive a tax exemption (on one lot used for its educational purpose during these tax years) by reason of this filing. See The Schools for Children, Inc. v. Town of Orange, BTLA Docket Nos. 7585-89 (June 24, 1992) and 12945-92EX (March 16, 1994).

At the hearing, testimony and documents were presented regarding the nature of Camp Glen Brook, summarized on its A-9 Form as “an outdoor center with creative programs, featuring music, art, farming and outdoor exploration.” The Town questioned whether such program activities qualify Camp Glen Brook for a charitable exemption. Because this tax year 2010 appeal is being decided on other grounds, this question is not ripe for the board to resolve through further factual findings. RSA 72:23, VI gives the Town broad authority to obtain from each charitable exemption applicant, on an annual basis and in addition to a “financial condition” statement (prescribed in the A-12 Form), “such other information as may be necessary to establish its status and eligibility for tax exemption.” Camp Glen Brook’s representative (Mr. Braden) stated he is willing to provide additional information and had offered to meet personally with the Town selectmen, but they declined to do so. If an exemption is claimed in a future year, the parties should utilize this statutory procedure to establish a clearer basis for deciding whether a charitable exemption is warranted, either in full or in part.

Finally, the facts presented indicate that, at least since 2002, the Town has deducted the sum of \$150,000 “as exemptions” from the Lot 28 assessment. (See, e.g., Taxpayer Exhibit No. 1, which shows a net assessment of \$1,162,670 for this lot after giving effect to this deduction.) The Town apparently took this action based on one sentence in RSA 72:23, IV

“regarding the value of dormitories, dining rooms and kitchens.” This provision should apply, however, only when an exemption is granted to an educational institution, not a charitable organization governed by RSA 72:23, V. Consequently, the board finds this assessment practice is not consistent with the undisputed fact Camp Glen Brook did not apply for or receive an educational exemption. There is also case law to the effect that a dual claim for an exemption under RSA 72:23, IV and RSA 72:23, V should be “rejected” because it “is inconsistent with the obvious intent of the legislature” in setting up these separate exemption provisions for “schools, seminaries of learning, colleges, academies and universities” and “charitable organizations and societies” and “the legislature manifested its view that these are distinct categories of taxpayers.” St. Paul’s School v. City of Concord, 117 N.H. 243, 248 (1977); accord, Appeal of C.H.R.I.S.T., 122 N.H. 982, 983 (1982). The Town should therefore, moving forward, review the consistency of its assessments on Camp Glen Brook in light of these exemption statutes and the case law.

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. 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 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

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: Twain Braden, Director, Camp Glen Brook, 35 Glen Brook Road, Marlborough, NH 03455, Representative for Camp Glen Brook; Chairman, Board of Selectmen, PO Box 487, Marlborough, NH 03455; and Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm.

Date: 1/31/11

Anne M. Stelmach, Clerk