

Chinese Bible Church of Greater Nashua

v.

City of Nashua

Docket No.: 25544-11EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “City’s” denial of the Taxpayer’s application for an RSA 72:23, III religious exemption for tax year 2011 on 45 Pine Hill Road, Map 0000E/Lot 44, (the “Property”). For the reasons stated below, the appeal is denied.

The Taxpayer has the burden of demonstrating the Property meets the requirements of the statute under which the exemption is claimed for the year under appeal. See RSA 72:23-m; Tax 204.05. We find the Taxpayer did not carry this burden.

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

- (1) the Taxpayer is a church established as a “501(c) (3) tax exempt nonprofit organization” under federal tax law;
- (2) until 2006, the Property had been owned and used by the Catholic Church as a “multi-function hall,” but was then sold to a developer who intended to convert it to a commercial (“for profit”) use but failed to do so;

(3) the Property was purchased on July 13, 2010 as a result of a public auction held in June, 2010 and the Taxpayer then hired a general contractor to do extensive renovations in order to use the Property as a church;

(4) after the purchase in 2010, the Taxpayer paid the City the back taxes owed by the prior owner and submitted a September 12, 2010 “tax abatement letter” to the City, but was advised it could not obtain tax relief for tax year 2010 because the Property was not owned by the Taxpayer as of the assessment date (April 1, 2010);

(5) the Taxpayer did own the Property on April 1, 2011 and made a timely application for an RSA 72:23, III religious exemption for tax year 2011 on March 21, 2011 (with the filing of a completed A-9 form); and

(6) the City’s denial of the tax year 2011 exemption is improper and should be set aside.

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

(1) as stated in the Motion to Dismiss (“Motion”) and as demonstrated by the evidence presented at the hearing, the Taxpayer did not use and occupy the Property until after April 1, 2011, the tax year 2011 assessment date;

(2) such use and occupancy did not occur until April 20, 2011 at the earliest, when a Temporary Certificate of Occupancy was issued;

(3) the City’s appraiser (Douglas Dame) met with the Taxpayer’s treasurer (Ken Wang) and inspected the Property on March 30, 2011, documenting the incomplete renovations in a memorandum and taking photographs of the Property (see Municipality Exhibit A) which demonstrate the Property was not yet ready for use and occupancy because of ongoing construction activity associated with its renovation for use and occupancy as a church; and

(4) the Taxpayer failed to meet its burden of proving the City erred in denying the religious exemption for tax year 2011.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to meet its burden of proving the City erred in its denial of the RSA 72:23, III religious exemption for tax year 2011. The appeal is therefore denied.

The City filed the Motion seeking dismissal of this tax year 2011 appeal on October 12, 2011, just three weeks before the already scheduled November 3, 2011 hearing. The board declined to rule on the Motion without the presentation of additional facts and arguments at the hearing.

At the hearing, the Taxpayer presented testimony regarding its attempt to seek an “abatement” from the City for tax year 2010, but the Taxpayer did not file an appeal and the board therefore has no jurisdiction regarding the taxes paid for that year. The board did consider, however, whether the City erred in denying the Taxpayer’s tax year 2011 application for a religious exemption under RSA 72:23, III.

This statute provides:

Houses of public worship, parish houses, church parsonages occupied by their pastors, convents, monasteries, buildings and the lands appertaining to them owned, used and occupied directly for religious training or for other religious purposes by any regularly recognized and constituted denomination, creed or sect, organized, incorporated or legally doing business in this state

The Taxpayer was aware of the provisions of this statute and quoted “the owned, used and occupied” language accurately in a September 12, 2010 letter to the City (where the Taxpayer asked about a tax year 2010 abatement).

The board's authority and powers are "entirely statutory" in nature. See Appeal of Land Acquisition, 145 N.H. 492, 494 (2000). It therefore has no equitable power or discretion to adopt either a broader or narrower reading of each exemption than expressed by the legislature in the statutes. See RSA 72:23-m:

"The exemptions afforded by RSA 72:23 . . . shall be construed to confer exemption only upon property which meets [the] requirements of the statute under which the exemption is claimed. The burden of demonstrating the applicability of any exemption shall be upon the claimant." (Emphasis added.);

quoted in Appeal of Town of Wolfeboro, 152 N.H. 455, 459 (2005) (reversing tax exemption when taxpayer did not meet burden of proving it was entitled to an exemption). See also Appeal of Emissaries of Divine Light, 140 N.H. 552, 555-57 (1995) ("expansive reading" of the religious exemption statute not supported by either the legislative history or the case law and "[t]he taxpayer bears the burden of proving its entitlement to a tax exemption.").

As the City correctly points out, the operative date for determining eligibility for the exemption is April 1 of the year for which the exemption is sought. See, e.g., Tax 204.02 (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. . . ." (Emphasis added.) While there is no dispute regarding ownership, the City denied the religious exemption because the Taxpayer did not use and occupy the Property as of April 1, 2011 for religious purposes, as explicitly required in RSA 72:23, III, the religious exemption statute quoted above.

Based on the evidence presented, the board cannot conclude the Taxpayer used and occupied the Property for religious purposes on or before April 1, 2011 or that the City erred in its decision to deny the exemption application for this reason. The extensive renovations undertaken by the Taxpayer after it purchased the Property were still incomplete on March 30,

2011, the date the City inspected the Property and took the photographs in Municipality Exhibit

A. During this period, and because of the still incomplete state of renovations, the Taxpayer continued to rent facilities elsewhere to hold its religious activities.

The Taxpayer had no legal right to occupy the Property until such time as it could obtain an occupancy certificate. That step did not occur until April 20, 2011, almost three weeks beyond the April 1 deadline, when the City issued a temporary one. There is no evidence to indicate the City hindered the Taxpayer or delayed in the issuance of the occupancy certificate in any way.

In fact, the Taxpayer's representatives stated at the hearing its objective was to finish the renovations so that it could hold "Easter services" on the Property. In 2011, Easter occurred on Sunday, April 24, 2011, four days after the Taxpayer obtained the Temporary Certificate of Occupancy. For health and safety reasons, use and occupancy of the building could not legally occur until a certificate of occupancy (either temporary or permanent) was issued.

The case law is clear that use and occupancy requires more than mere ownership of property and/or a plan and purpose to use it in the future, without actual use and occupancy. See the cases cited by the City in the Motion, including Appeal of City of Nashua, 155 N.H. 443, 445 (2007) ("ownership is only one part of the tax exemption inquiry. We must also determine whether the premises were being used and occupied directly for religious purposes. We conclude that they were not.") and Wolfeboro Camp School v. Town of Wolfeboro, 138 N.H.

496, 501-02 (1994) (even “definite plans” for construction not sufficient to satisfy use and occupancy requirements).¹

The ownership, use and occupancy requirements in the statute have been applied in other appeals. See, e.g., Grace Fellowship of Nashua v. City of Nashua, BTLA Docket No. 23523-08EX (February 19, 2009) (affirming City’s denial of a religious exemption). In that appeal, a church had purchased land for development and obtained site plan approval for construction of a church, but had not yet used or occupied it because of unanticipated delays in raising sufficient funds to do so because of a “failing economy.”

For all of these reasons, the appeal for a tax year 2011 religious exemption is denied. (The Taxpayer may, of course, be eligible for a tax year 2012 religious exemption if it complies with the ownership, use and occupancy requirements and makes a timely application to the City.)

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(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

¹ See also Society of Cincinnati v. Exeter, 92 N.H. 348, 350-51 (1943) (noting that a building owned by a charity is not exempt from taxation “while it remains indefinitely idle” even if future occupancy is “probable”); and Franciscan Fathers v. Pittsfield, 97 N.H. 396, 401 (1952) (where certain land owned by members of a Catholic order was found not to meet the occupancy test for a religious exemption, even though the property as a whole was arguably devoted to the religious mission of the order).

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

Michele E. LeBrun, Chair

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Kang Wang, Director, Chinese Bible Church Of Greater Nashua, 45 Pine Hill Road, Nashua, NH 03063, Taxpayer; and Stephen M. Bennett, Esq., Office Of Corporation Counsel, City of Nashua, 229 Main Street, Nashua, NH 03061, counsel for the City.

Date: 12/2/11

Anne M. Stelmach, Clerk