

**The “Lone Pine” Hunters Club, Inc.<sup>1</sup>**

**v.**

**Town of Hollis**

**Docket No.: 25974-11EX**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2011 denial of the Taxpayer’s request for an RSA 72:23, IV educational exemption on the 118 acres of land and clubhouse it owns at 112 Rideout Road (the “Property”). For the reasons stated below, the appeal for exemption is denied.

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. The board finds the Taxpayer failed to meet this burden.

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

(1) the Town’s denial reflected its belief the Taxpayer was established and continues to be run “for the primary benefit of its members” but in fact “98%” of its activities are educational, as demonstrated by the calendars provided for 2008 – 2010 (Taxpayer Exhibit No. 1);

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<sup>1</sup> The board has changed the caption of the appeal to reflect the official name reflected in the Taxpayer’s amended articles of incorporation. No objection to this change was made at the hearing.

(2) its members use the Property to participate in education programs for (gun and bow) hunters and snowmobilers sponsored by the State (see Taxpayer Exhibit No. 2); and

(3) the Town erred in denying the exemption.

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

(1) the Taxpayer does not meet the statutory requirements for an RSA 72:23, IV educational exemption since it is a club, not a school or other prescribed educational institution;

(2) the Taxpayer's "Constitution" does not mention an educational purpose and it is not obligated to provide any educational programs; and

(3) the Taxpayer failed to meet its burden of proving it was entitled to an educational exemption.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to prove the Town erred in denying its request for an RSA 72:23, IV educational exemption. The appeal is therefore denied for the following reasons.

RSA 72:23, IV provides a property tax exemption for:

The buildings and structures of schools, seminaries of learning, colleges, academies and universities organized, incorporated or legally doing business in this state and owned, used and occupied by them directly for the purposes for which they are established, . . . and the land thereto appertaining but not including lands and buildings not used and occupied directly for the purposes for which they were organized or established. . .

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).

The Taxpayer is a club, a fraternal and social organization attracting members who are interested in hunting, fishing and other outdoor activities, not an educational institution. As noted above, the RSA 72:23, IV educational exemption is restricted to “schools, seminaries of learning, colleges, academies and universities.” A tax exemption statute must be construed to give full effect to the intent of the legislature and intent “must be gleaned from the plain language of the statute.” Wolfeboro Camp School, Inc. v. Town of Wolfeboro, 138 N.H. 496, 499 (1994). A club (for hunters and other outdoorsmen) is not one of the types of institutions recognized by the legislature in the educational exemption statute.

As noted at the hearing, many for profit and nonprofit organizations engage in educational activities which benefit the public. There are, for example, organizations promoting wildlife, outdoor life and education of the public that may qualify for a charitable exemption, but not an educational exemption. See, e.g., Appalachian Mountain Club v. Meredith, 103 N.H. 5, 9 (1960) (charitable exemption granted to organization devoted to: “exploration, education, conservation, public safety and furtherance of outdoor life” where the organization demonstrated these activities benefited the public, not just its own members.) The educational component of the Taxpayer’s activities, even if education is assumed to be involved in “98%” of them, does not mean the Town erred in denying the educational exemption.

The Taxpayer presented testimony (through three representatives) that it is New Hampshire’s oldest sporting club (founded in 1913) and now has a membership of about 100 people (down from 200 in 2002) who pay \$175 in annual dues. The Taxpayer disagreed with the

Town's view the organization existed primarily for the benefit of its members, pointing to a number of fundraising and other activities open to the public (such as a winter carnival, a "moose roast" and an archery league) and to its members which provide educational and other public benefits. These activities include (gun) hunter, bow hunter and snowmobile education programs run by club members, five or six of whom are "certified" instructors who use materials from the State Department of Fish and Game (reflected in the materials in Taxpayer Exhibit No. 2). The Taxpayer also allows Boy Scouts to use the Property (consisting of 118 acres) to learn winter survival skills. In addition, the Taxpayer permits the Town's police and fire departments to access the Property (giving each a key to the entrance), noting this is especially helpful to the Town since the Property has the only boat launch facility with river access in the Town. (Prior to 2006, the Taxpayer also allowed the police department to use the shooting range while it was in operation.) The Taxpayer's representatives stated the Town denied its prior request for a charitable exemption (for tax year 2009), causing them to reconsider and apply for an educational exemption in tax year 2011.

The board finds the Taxpayer's activities, however commendable and oriented to "education," in whole or in part, do not qualify the Taxpayer for an educational exemption under RSA 72:23, IV. This statute has specific language that only schools and other defined institutions can qualify and the Taxpayer is a club that does not fit within any of the enumerated categories.

The Town argued the Taxpayer is not obligated to perform educational activities because the Article II "Purpose" stated in its "Constitution" does not mention education. The board further notes the Taxpayer's articles of incorporation describe the following purposes: "to improve the hunting and fishing conditions of this state by the propagation of fish and game, and

to promote in all practicable ways sentiment favoring the protection of fish and game and due respect for our fish and game laws and their enforcement.” While the educational activities described by the Taxpayer’s representatives arguably promote some, if not all, of these purposes, the board finds the Taxpayer is under no legal obligation to perform such activities under its charter or otherwise.

For all of these reasons, the appeal is denied.

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

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Michele E. LeBrun, Member

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Albert F. Shamash, Esq., Member

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**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Lone Pine Hunters Club, c/o Robert L. Keller, 84 Union Street, Milford, NH 03055, Taxpayer; Chairman, Board of Selectmen, Town of Hollis, 7 Monument Square, Hollis, NH 03049; and Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Date: 12/9/11

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Anne M. Stelmach, Clerk