

Peaceful Assembly Church

v.

Town of Grafton

Docket No.: 26926-12EX

DECISION

The board has reviewed the “Town’s” October 2, 2013 Motion to Dismiss (“Motion”) this tax year 2012 exemption appeal and the “Taxpayer’s” untimely October 22, 2013 response described further below (the “Response”). [The Response is untimely because, under the board’s rules [Tax 201.18(d)], any objection to the Motion should have been filed within ten (10) days of the October 2, 2013 filing date.] The Motion is granted and the appeal is dismissed for the reasons stated below.

In this appeal, the Taxpayer has the burden of demonstrating the “Property” (860 Main Street) meets all of the requirements for the religious exemption for the year under appeal. (See RSA 72:23-m; and Tax 204.05.) It is well established that a church cannot qualify for an exemption without satisfying the statutory requirement of ownership (as well as occupancy and use) as of April 1 of the tax year for which it is seeking an exemption. [See RSA 72:23, III; RSA 72:23-c; RSA 74:1; RSA 74:2; Tax 204.02(b); and, e.g., Chinese Bible Church of Greater Nashua v. City of Nashua, BTLA Docket No. 25544-11EX (December 2, 2011) and the case authorities cited therein, including Appeal of City of Nashua, 155 N.H. 443 (2007).]

Based on the evidence presented, the board finds the Taxpayer, as of April 1, 2012, did not own the Property for which it seeks a tax year 2012 religious exemption. The legal owner of the Property, according to the Warranty Deed submitted with the Motion, was John Connell, who acquired the Property in 2010. While the Response to the Motion purports to be an “assignment of rights” to the Taxpayer from Mr. Connell, this is an undated and unrecorded document and is not sufficient, even if accepted at face value, to establish the Taxpayer was the legal owner of the Property as of April 1, 2012.

Consequently, the board grants the Motion and dismisses the appeal.

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 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, Chair

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Albert F. Shamash, Member

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Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Peaceful Assembly Church, c/o Thomas Ploszaj, 860 Main Street, Grafton, NH 03240, Taxpayer; Town of Grafton, Chairman, Board of Selectmen, P.O. Box 299, Grafton, NH 03240; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: October 30, 2013

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Anne M. Stelmach, Clerk