

**Fracestown Village Water Company**

**v.**

**Town of Fracestown**

**Docket No.: 26925-13EX**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2013 denial of the Taxpayer’s request for charitable exemption as provided under RSA 72:23, V on Map 5/Lot 82-1 (the “Property”). For the reasons stated below, the appeal is granted.

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; and Tax 204.05.

The Taxpayer argued the Town erred in denying the charitable exemption in tax year 2013 because:

- (1) the Taxpayer is a voluntary (nonprofit) New Hampshire corporation and is tax exempt under federal law;
- (2) its charitable purpose includes providing potable water to the Town and was organized and is operating to fulfill this purpose for a long time (dating back to the 1890’s);

(3) the water system is “gravity fed” and anyone wishing to do so can become a member to obtain water if their property is located reasonably close to the water pipe and they connect to the system;

(4) the Town granted the Taxpayer a charitable tax exemption for approximately ten years before denying a charitable exemption in tax year 2013;

(5) the Taxpayer has provided other charitable services including providing free water to the fire department, municipal athletic fields and additional water to the public in times of emergency (such as after the 2008 ice storm); and

(6) the appeal should be granted.

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

(1) the Town performed a review of all exemptions and credits in 2013 and requested additional information at that time;

(2) upon review of this information, the Town concluded the Taxpayer did not qualify because the Taxpayer is not obligated by its charter to perform charitable services; and

(3) the appeal should be denied.

### **Board’s Rulings**

Based on the evidence, the board finds the Taxpayer met its burden of proving the Town erred in denying the RSA 72:23, V charitable exemption in tax year 2013. The appeal is therefore granted for the reasons stated below.

The board began by reviewing the statutory and case law governing charitable exemptions in light of all of the evidence presented in this appeal. This evidence includes the August 19, 2013 letter to the Taxpayer prepared by the Town’s assessor and signed by the

selectmen denying a charitable exemption for the first time in tax year 2013 (after having granted an exemption for prior years). The board also reviewed the Taxpayer's organizational documents, including its Articles of Agreement ("Articles") filed with the Secretary of State's Office on April 21, 1978. These Articles prescribe what the Taxpayer is authorized and obligated to do and specifically states in Article II that it will provide a "water system in the Town . . . for the purpose of furnishing water to the inhabitants of the Town." The testimony of the Taxpayer's president, Dennis R. Orsi, was to the same effect that the Taxpayer had an "ongoing obligation" to provide water to the Town and has done so since its formation in the 1890's. On the facts presented, the board finds this purpose, as fulfilled by the Taxpayer over many decades, is charitable.

Insofar as the Town argues an obligation to perform a charitable purpose must be stated in the "charter" in order to qualify for a tax exemption, there is clear authority otherwise. In Appeal of City of Franklin, 137 N.H. 622, 624 (1993), the supreme court affirmed the grant of a charitable exemption (by the board) despite an argument by the municipality that the organization had no "enforceable obligation to provide the charitable service." The supreme court examined the exemption provided by RSA 72:23, V to "charitable organizations" and the definition of "charitable" in RSA 72:23-1, noting the specific wording in this statute that the obligation can arise from the organization's "charter or otherwise." Relying also on its own review of prior case law, the supreme court found:

[T]he purpose of the "obligation" requirement is to prevent purely private organizations, albeit with charitable purposes, from benefitting by a tax exemption without, in turn, providing some service of public good. We think, therefore, that the city's construction of the term "obligation" is too narrow. "An exemption of charitable institutions from taxation being granted, a prescribed condition that only such as meet a hard and fast definition does not accompany it. 'The legislative purpose to encourage charitable

institutions is not to be thwarted by a strained, over-technical, and unnecessary construction.’ ” Young Women's Christian Ass'n v. Portsmouth, 89 N.H. 40, 42, 192 A. 617, 618 (1937) (quoting Carter v. Whitcomb, 74 N.H. 482, 487, 69 A. 779, 783 (1908)). . . . [W]e hold that the home has adequately established that it is a charitable entity.

Since its incorporation, the home has undertaken, consistent with the language of its charter, the sole purpose “of assisting and aiding worthy aged people.” The home has thereby sufficiently evidenced that it is “obligated, by its charter *or otherwise*,” RSA 72:23-1 (emphasis added), to provide low cost care for the elderly. . . . Accordingly, we affirm the board's ruling that the home is entitled to an exemption pursuant to RSA 72:23.

Id. at 626. The board finds the Taxpayer, similar to the organization in the Franklin case, is providing a service of public good and has demonstrated a sufficient charitable purpose which it is obligated to perform.

In Town of Peterborough v. MacDowell Colony, 157 N.H. 1, 12 (2008), the supreme court noted, citing additional authorities, that providing “facilities or services” that a government or municipality would otherwise have to provide is one of six general categories of recognized “charitable purposes.” Without the potable water provided by the Taxpayer, the Town would have to obtain a new water supply or provide one itself; according to the evidence presented, without such a water supply at least some of the properties in the Town would lose their certificates of occupancy because they are on lots which are too small to accommodate a well. (The Taxpayer’s function of providing potable water to the Town and the residents who need it arguably also meets two other of the six general categories of recognized charitable purposes mentioned in MacDowell: “promoting health”; and “other purposes that are beneficial to the community.” Id.)

The evidence further demonstrates the Taxpayer is not an exclusionary organization by any means and does not restrict who can become a member. Membership is available to all who

request it and are in need of the water the Taxpayer pumps and provides. The mere fact the Taxpayer is organized to provide water to members, rather than the public at large, is not a sufficient ground for denying the charitable exemption. See Appeal of City of Concord, 161 N.H. 344, 350 (2011) (“direct service to the public is not required for a charitable tax exemption” and organization seeking exemption need not “provide services directly to the general public,” citing MacDowell and other cases).

For all of these reasons, the appeal is granted. If taxes have been paid on the Property, the amount paid shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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, 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: Fracestown Village Water Company, Attn: Dennis R. Orsi, Pres., PO Box 154, Fracestown, NH 03043, Taxpayer; Chairman, Board of Selectmen, Town of Fracestown, PO Box 5, Fracestown, NH 03043; and Marazoff Assessing Services, 354 Glebe Road, Westmoreland, NH 03467, Contracted Assessing Firm.

Date: April 1, 2014

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Anne M. Stelmach, Clerk