New England Baptist Church of Boston, Inc.

v.

Town of Pelham

Docket No.: 27131-13EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the "Town's" 2013 denial of the Taxpayer's request for an RSA 72:23, III religious exemption on Map 16/Lot 12-105, 15 Webster Avenue (the "Property"). For the reasons stated below, the appeal is denied.

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

The Taxpayer argued it was entitled to the religious exemption for tax year 2013 because:

(1) the Property (an 11-room farmhouse on three acres of land) was purchased by the Taxpayer in May, 2012 for use as a church;

(2) after being informed by the Town the use of the Property as a church was not permitted by the local zoning ordinance, the Taxpayer opted to change the intended use of the Property to a "parsonage" for an assistant pastor it hired (John Barnes);

(3) the Town erred in denying the exemption because "church parsonages" qualify for a religious exemption under RSA 72:23 III; and

(4) the appeal should be granted.

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

(1) the Taxpayer's prior (2012) application for a tax exemption was denied because the Taxpayer did not own the Property as of the assessment date, April 1, 2012, and therefore did not meet the ownership, use and occupancy requirements of the exemption statute;

(2) after the 2012 purchase of the Property, the Town discovered the Taxpayer was using it for church-related activities and informed the Taxpayer that such activities did not comply with local zoning requirements and could not continue without a "Special Exception" and a "Variance" from the Town (see Municipality Exhibit A, Tabs F, G & H), causing the Taxpayer to change the proposed use from a church to a "parsonage";

(3) although the ownership requirement of the exemption statute is satisfied, the 2013 exemption application was denied because the Property still does not meet all of the other required elements; and

(4) the appeal should be denied.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayer failed to meet its burden of proving the Town erred when it denied the Taxpayer an RSA 72:23, III religious exemption on the Property in tax year 2013. The appeal is therefore denied for the following reasons.

The framework for deciding entitlement to a tax exemption is well-established.

RSA 72:23, III provides a tax exemption for:

> 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 and the personal property used by them for the purposes for which they are established.

In deciding tax exemption appeals, the following established legal principles apply:

> 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:
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> > 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.);
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> 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).

Chinese Bible Church of Greater Nashua v. City of Nashua, BTLA Docket No. 25544-11EX

(December 2, 2011) at p. 4. In addition,

> [T]he 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.)

Chinese Bible Church at p. 4.

Actual occupancy for a religious purpose is an important requirement necessary to qualify for a religious exemption. See Chinese Bible Church, pp. 5-6:

> 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. 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]

While this appeal raises other questions regarding how RSA 72:23, III should be interpreted and applied, the board finds, based on the evidence presented, the Taxpayer did not satisfy the occupancy requirement for the Property as of April 1, 2013.

The testimony of the Taxpayer's own witnesses (Assistant Pastor Barnes and Pastor Thomas Wayne Michael) supports a finding that, because of necessary repairs to the Property, Assistant Pastor Barnes did not occupy it until after the April 1 assessment date. Assistant Pastor Barnes testified he started to move some personal belongings into the Property in April, 2013 but did not move in fully with his family until September. Consistent with this evidence, he did not change the residency on his driver's license to the Property address until "September or October." During this period, Pastor Barnes transitioned from another pastoral assignment with a different church (a position he held until June 1, 2013) and was supervising the repair and renovation work at the Property. Based on the totality of the facts presented, the board finds 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). [Fn. in Chinese Bible Church, p. 6]

Property was not occupied as a parsonage (or any other religious use) as of the April 1, 2013 assessment date and therefore did not qualify for an exemption for tax year 2013.

Consequently, the board finds the Taxpayer failed to meet its burden of proving the Town erred in denying a religious exemption on the Property for tax year 2013. The appeal is therefore denied.[2]

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, <u>not the date this decision is received</u>. 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 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).

[2] This finding obviates the need to address any of the other arguments presented by the Town to support its denial of the Taxpayer's exemption application.

SO ORDERED.

BOARD OF TAX AND LAND APPEAL

_____
Michele E. LeBrun, Member

_____
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: Russell L. Ellis, 5700 Gateway Blvd., Suite 400, Mason, OH 45040, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Pelham, 6 Village Green, Pelham, NH 03076-3172; and Corcoran Consulting Associates, Inc., Bayside Village, PO Box 1175, Wolfeboro Falls, NH 03896, Contracted Assessing Firm.

Date: 2/14/14

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Anne M. Stelmach, Clerk