

Kadle Properties Revocable Realty Trust

v.

City of Keene

Docket No.: 27950-15EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “City’s” 2015 denial of the Taxpayer’s request for an RSA 72:23, IV property tax exemption for “schools” and other educational institutions on 668 Main Street (tax map and lot number 78-01-005.0000), a 0.497 acre lot developed with a general office building (the “Property”). For the reasons stated orally at the hearing on the merits and detailed below, the appeal is dismissed.

The Taxpayer has the burden of showing, by a preponderance of the evidence, it was entitled to the statutory exemption for the year under appeal. See RSA 72:23-m; and Tax 204.05. The board finds the Taxpayer did not meet this burden.

The board held a noticed hearing on January 20, 2016. At that hearing, the “City” submitted a “Memorandum of Law” and the Taxpayer, organized as a trust, presented testimony from its two individual trustees and beneficiaries (Daniel D. and Madeline E. Kadle) confirming the trust was the owner of the Property. The Taxpayer does not, in fact, own or operate the “school” for which the exemption was claimed: instead, according to the Taxpayer, the school

engaged in teaching individuals, employees and business owners computer technology and applications was Config Systems, Incorporated, a for profit New Hampshire business corporation. (See also Memorandum of Law, Exhibits A, C and D.) Following the Kadles' testimony, the City made an oral motion to dismiss, supported by its Memorandum of Law.

The board granted the motion and dismissed the appeal because of one clear and fundamental requirement in RSA 72:23, IV that a property must be "owned" (as well as being "used and occupied") by the "school" claiming entitlement to the exemption. The Taxpayer does not satisfy this unambiguous requirement and presented no persuasive argument as to why this explicit ownership requirement in the statute¹ should not be applied.

Instead, the Taxpayer's two witnesses (the Kadles) cited and quoted a portion of two earlier supreme court cases addressing use and occupancy, but not the ownership requirement in the statute: New Canaan Academy v. Town of Canaan, 122 N.H. 134 (1982); and Wolfeboro Camp School, Inc. v. Town of Wolfeboro, 138 N.H. 496 (1994). The Taxpayer's complete emphasis on the four "general guidelines" stated in these decisions is misplaced because it is clear these statements pertain only to "what constitutes an educational institution under the

¹ The RSA 72:23, IV exemption (also quoted on page 2 of the Memorandum of Law), with emphasis added for clarity, provides as follows:

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, including but not limited to the dormitories, dining rooms, kitchens, auditoriums, classrooms, infirmaries, administrative and utility rooms and buildings connected therewith, athletic fields and facilities and gymnasiums, boat houses and wharves belonging to them and used in connection therewith, and the land thereto appertaining but not including lands and buildings not used and occupied directly for the purposes for which they are organized or incorporated, and the personal property used by them directly for the purposes for which they are established, provided none of the income or profits are divided among the members or stockholders or used or appropriated for any other purpose than the purpose for which they are organized or established; provided further that if the value of the dormitories, dining rooms and kitchens shall exceed \$150,000, the value thereof in excess of said sum shall be taxable. A town at an annual town meeting or the governing body of a city may vote to increase the amount of the exemption upon dormitories, dining rooms and kitchens.

statute” and do not eliminate or alleviate the ownership requirement also contained in the statute.

See Wolfeboro Camp School, 138 N.H. at 499; and New Canaan Academy, 122 N.H. at 137.

This key point is noted in the Memorandum of Law (pp. 2-4) and was also argued by the City at the hearing.

The facts presented in these cases (the only authority cited by the Taxpayer) clearly identify each school (not any other entity) as being the owner of the property for which the exemption was claimed. See New Canaan Academy, 122 N.H. at 136 (stating a corporation was seeking a tax exemption “on the corporation’s real estate”); and Wolfeboro Camp School, 138 N.H. at 497 (identifying the “camp school’s property” and deciding whether part of it was entitled to a tax exemption). The Taxpayer has not cited, nor has the board found, any case authority for the proposition the ownership requirement in the exemption statute can or should be ignored or overlooked based on the undisputed facts presented.²

In summary, for the reasons stated herein and in the Memorandum of Law, the board finds the Taxpayer did not meet its burden of satisfying the ownership requirement in RSA 72:23, IV. The appeal is therefore dismissed on this ground (even without considering the additional, independent reasons presented by the City in the Memorandum of Law for denying the exemption).

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

² The Taxpayer’s explanation of its decision to acquire and own the Property as a trust (legally separate from the for profit school renting part of the Property) was influenced by an ‘attorney’s’ advice for asset protection and/or other reasons is not sufficient to negate the ownership requirement in the exemption statute.

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

Michele E. LeBrun, Chair

Albert F. Shamash, Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Kadle Properties Revocable Realty Trust, Daniel and Madeline Kadle, Trustees, 668 Main Street, Keene, NH 03431, Taxpayer; Thomas P. Mullins, Esq., counsel for the City of Keene, 3 Washington Street, Keene, NH 03431; and Chairman, Board of Assessors, City of Keene, 3 Washington Street, Keene, NH 03431.

Date: 1/27/16

Anne M. Stelmach, Clerk