

## **Overview of New Hampshire Property Tax Exemption For Educational and Charitable Organizations**

(By William L. Chapman, Orr & Reno, P.A.)

### I. The Statutes, RSA 72:23,IV,V and V-a

#### A. Statutory preconditions:

1. RSA 72:23-c, Annual List **by April 15** (Form BTLA A-9).
2. RSA 72:23, VI, Statement of Financial Condition for the preceding fiscal year and such other information as may be necessary to establish status and eligibility for tax exemption **by June 1** (BTLA A-12).

#### B. Exemption under RSA 72:23,IV (educational organizations):

“IV. 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.”

1. There is no bright-line test for determining what constitutes an educational institution under the statute. The factors a court will consider are:

“(1) whether the institution's purposes are “educational-i.e., intended to develop the faculties and powers and the expansion of knowledge through a systematic course of instruction or schooling as distinguished from the mere communication of facts or ideas”; (2) whether the land and buildings in question are “used and occupied directly” for these educational purposes; (3) whether none of its income or profits may be divided among

its members or owners or used or appropriated for any purposes other than its educational purpose, RSA 72:23, IV; and **(4)** how closely the instruction provided compares to “traditional educational methods and objectives.”

*Wolfeboro Camp School, Inc. v. Town of Wolfeboro*, 138 N.H. 496, 499-500 (1994).

C. Exemption under RSA 72:23,V and V-a (charitable organizations):

“V. The buildings, lands and personal property of charitable organizations and societies organized, incorporated, or legally doing business in this state, **owned, used and occupied by them directly for the purposes for which they are established, provided that none of the income or profits thereof is used for any other purpose than the purpose for which they are established.**

V-a. The real estate and personal property **owned by any organization described in paragraphs I, II, III, IV or V of this section and occupied and used by another organization described in said paragraphs**, but only to the extent that such real estate and personal property would be exempt from taxation under said paragraphs if such property were owned by the organization occupying and using the property, **as long as any rental fee and repairs, charged by the owner, are not in clear excess of fair rental value.”**

1. A charitable organization is defined under RSA 72:23-l:

“The term "charitable" as used to describe a corporation, society or other organization within the scope of this chapter, including RSA 72:23 and 72:23-k, shall mean a corporation, society or **organization established and administered for the purpose of performing, and obligated, by its charter or otherwise, to perform some service of public good or welfare advancing the spiritual, physical, intellectual, social or economic well-being of the general public or a substantial and indefinite segment of the general public that includes residents of the state of New Hampshire**, with no pecuniary profit or benefit to its officers or members, or any restrictions which confine its benefits or services to such officers or members, or those of any related organization. The fact that an organization's activities are not conducted for profit shall not in itself be sufficient to render the organization "charitable" for purposes of this chapter, nor shall the organization's treatment under the United States Internal Revenue Code of 1986, as amended. This section is not intended to abrogate the meaning of "charitable" under the common law of New Hampshire.”

2. In *ElderTrust of Florida, Inc. v. Town of Epsom*, 154 N.H. 693, 697-698 (2007)(skilled nursing home and assisted living facility), the Supreme Court

synthesized its cases applying the charitable exemption and established a four-factor test:

“namely, whether, **(1)** the institution or organization was established and is administered for a charitable purpose; **(2)** an obligation exists to perform the organization's stated purpose to the public rather than simply to members of the organization; **(3)** the land, in addition to being owned by the organization, is occupied by it and used directly for the stated charitable purposes; and **(4)** any of the organization's income or profits are used for any purpose other than the purpose for which the organization was established. Under the fourth factor, the organization's officers or members may not derive any pecuniary profit or benefit. See RSA 72:23, V; RSA 72:23-l.”

3. *Town of Peterborough v. MacDowell Colony*, 157 N.H. 1 (2008)(artist colony) stands for the following propositions:

- a charitable service directly and indirectly advances the well-being of the general public meets the definition of “charitable.”
- A charitable service provided to the *general public* automatically includes residents of New Hampshire.
- The organization, itself, does not have to perform the charitable service, but it must *promote* it.
- The obligation requirement focuses on performance of the organization’s mission, not on who receives its charitable services, so long as those services are not restricted to the organization’s members.
- The test is whether the general public benefits from performance of the organization’s mission, not simply whether it benefits from its property.
- The prohibition against private inurement applies to the organization, not those who receive its charitable service.

4. In *Appeal of City of Concord*, decided January 13, 2011 (organization promoted home health care, programs to prevent illness and good health), the Supreme Court made clear for the first time that an organization’s charitable mission must be “its dominant or primary purpose,” and the “public benefit” it confers must be more than “slight, negligible or insignificant when compared to the benefit derived by ...[its] members,” and its occupation and use of its property also must be more than slight, negligible or insignificant.

D. RSA 72:23-m places the burden of proof on the organization seeking the exemption to establish its right to the exemption.

- E. PILOTS are available *only* to those organizations whose property is either fully or partially tax exempt. RSA 72:34-n reads:

“The governing body of any municipality may enter into negotiations for a voluntary payment in lieu of taxes from **otherwise fully or partially tax exempt** properties, and may accept from such properties a voluntary payment in lieu of taxes.”

- F. RSA 72:34-a requires an appeal to superior court or the Board of Tax and Land Appeals **by September 1**.

II. Superior Court or Board of Tax and Land Appeals – Does it make a difference?

Consider:

- Discovery
- Summary Judgment
- Trial
- Appeal

730791\_1.DOC