

# MAINE STATE LEGISLATURE

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STATE OF MAINE

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Inter-Departmental Memorandum Date March 9, 1965

To Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation

From Richard S. Cohen, Asst. Atty. General Dept. " " "

Subject Exemption of Turtle Island, Winter Harbor, Owned by the Nature Conservancy

In your memorandum relating to the above you ask the question of whether or not Turtle Island, located in Winter Harbor, which was acquired by "The Nature Conservancy" in May of 1963 should be exempt from taxation this year and hereafter.

ANSWER

Yes, Turtle Island should be exempt from taxation under the terms of Title 36 M.R.S.A. §652.

LAW

The applicable statute in this matter is Title 36 M.R.S.A. §652 which reads as follows:

The following property of institutions and organizations is exempt from taxation:

"II. Property of Institutions and Organizations.

A. The real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this state, and none of these shall be deprived of the right of exemption by reason of the source from which its funds are derived or by reason of limitation in the classes of persons for whose benefit such funds are applied.

1. No such institution shall be entitled to tax exemption if it is in fact conducted or operated principally for the benefit of persons who are not residents of Maine and if stipends or charges for its services, benefits or advantages in excess of an equivalent of \$15 per week are made or taken. . . . "

Ernest H. Johnson, State Tax Assessor

March 9, 1965

- B. The real estate and personal property owned and occupied or used solely for their own purposes by literary and scientific institutions.
- C. Further conditions to this right of exemption under paragraphs A and B of this subsection are that:
  - 1. Any corporation claiming exemption under paragraph A of this subsection shall be organized and conducted exclusively for benevolent and charitable purposes;
  - 2. No director, trustee, officer or employee of any organization claiming exemption shall receive directly or indirectly any pecuniary profit from the operation thereof, excepting reasonable compensation for services in effecting its purposes or as a proper beneficiary of its strictly benevolent or charitable purposes; and that
  - 3. All profits derived from the operation thereof and the proceeds from the sale of its property are devoted exclusively to the purposes for which it is organized; and that
  - 4. The institution, organization or corporation claiming exemption under provisions of this subsection shall file with the tax assessors upon their request a report for its preceding physical year in such detail as the tax assessors may reasonably require.

REASONS

There first must be determined whether "The Nature Conservancy" would be considered to be a "charitable or benevolent" organization; a "literary and scientific" organization or neither. Since the land here upon which exemption is in question, is owned by a foreign corporation, entitlement to an exemption under the

Ernest H. Johnson, State Tax Assessor

March 9, 1965

"benevolent and charitable" institutions provision would be a moot point since in order to be entitled to an exemption under that provision the institution must be incorporated under the laws of the State of Maine.

The next step to be considered is as to whether The Nature Conservancy can be deemed to come under the classification of a literary and scientific institution. The purposes or objectives of this institution as set forth in its by-laws are as follows:

- (a) Preserve or aid in the preservation of all types of wild nature, including natural areas, features, objects, flora and fauna, and biotic communities;
- (b) to establish nature reserves or other protected areas to be used for scientific, educational and aesthetic purposes;
- (c) to promote the conservation and proper use of our natural resources;
- (d) to engage in or promote the study of plant and animal communities and of other phases of ecology, natural history, and conservation;
- (e) to promote education in the fields of nature preservation and conservation.

The history of this corporation found from the various published writings submitted, including a Federal tax exemption for being a scientific institution, and from the above by-laws, indicates that its activities have been in substantial accord with the purposes for which it was given a charter. The Nature Conservancy clearly falls within the class of institutions which the above statute contemplates as being literary or scientific.

The crucial question to be determined is whether the real estate in question, i. e., Turtle Island, is owned and occupied or used solely for the scientific purposes set out in the charter and by-laws of The Nature Conservancy.

It is a fundamental rule of the law of taxation that "taxation is the rule and exemptions the exception."

When the property of an institution is by legislative grant exempted from taxation, the exemption applies only to such property as is owned and occupied or used solely for the institution's own purposes.

Ernest H. Johnson, State Tax Assessor

March 9, 1965

It is the actual appropriation of its property for the purposes for which the institution is incorporated, not the physical use at the date of assessment which is controlling as to this particular tax exemption.

I am of the opinion that The Nature Conservancy has sufficiently shown an actual appropriation of Turtle Island to the purposes as set forth in their charter and by-laws and further shown, by the material submitted, a definite intention to broaden the scope of its use thereof in the future. These facts would seem to negate any implication of evasion of taxation.

The rule that the use of property at the time a tax is assessed determines whether the property is or is not exempt from taxation is not arbitrarily decisive. It is the actual appropriation of its property . . . for the use which the institution is organized and not the physical use on the exact day of the assessment which controls.

That the purposes of which the property was appropriated have not all attained fruition and certainty as to the exact time of fulfillment of a definite scheme of development to which the corporation has distinctly committed itself does not preclude exemption. *Osteopathic Hospital of Maine v. City of Portland*, 139 Me. 24.

In the type of institution we are dealing with here the primary way to institute its main purposes, particularly on real estate such as Turtle Island, is to initiate preservation of the real estate so that scientific research may be instituted at a later time which The Nature Conservancy indicates specifically in their "Proposed Uses for Turtle Island" and generally by all of the procedures contained in other material submitted.

In dealing with this particular institution, "use for its own purposes" takes on a very different connotation than it would for any other type of institution. From the standpoint of interpreting the policies of The Nature Conservancy it seems that "degree of management" is the expression that best defines the concept of "use." In employing the word "management" to this type of institution it can be seen that purposely doing nothing to influence conservation is just as much management in an institution with purposes such as this than as taking positive action in some other type of institution. Allowing regrowth and reforestation of Turtle Island now is carrying out some of the major purposes of The Nature Conservancy. This along with the expressed intention of ultimately carrying out specified scientific policies brings Turtle Island within the above statute exemption.

RSC:epd

# STATE OF MAINE

Inter-Departmental Memorandum Date October 7, 1964

To Richard S. Cohen, Asst. Atty. General Dept. Bureau of Taxation

From Ernest H. Johnson, State Tax Assessor Dept. " " "

Subject Exemption of Turtle Island, Winter Harbor, Owned by The Nature Conservancy

Attached is the file relating to the above, including correspondence with the chairman of the Board of Assessors of Winter Harbor and with William S. Silsby, Jr. covering the period August 15, 1964 through October 5, 1964; and numerous pamphlets and descriptive literature, including the certificate of organization of "Pine Tree State Chapter of Nature Conservancy, Inc."

Will you please review this material and let me know whether Turtle Island in Winter Harbor, which was acquired by "The Nature Conservancy" in May of 1963 should be exempt from taxation this year and hereafter. The applicable statute is subsection II of section 10 of Chapter 91-A.

You will note that "The Nature Conservancy" is a nonprofit corporation organized under the laws of the District of Columbia. The by-laws of which are included in the printed material submitted herewith. While we have been given the certificate of organization of "Pine Tree State Chapter of Nature Conservancy, Inc.", this does not appear to be pertinent since the Maine corporation does not appear to be the owner of the property in question.

While no specific answer has been given to my question as to what use the organization plans to make of Turtle Island, I would think the answer might be considered implicit in view of the purposes of the corporation. You will note that Turtle Island is mentioned in the printed leaflet entitled "Highlights of 1963."

Finally, you will note that by paragraph A of subsection II of section 10 of Chapter 91-A, if property is to be exempt because of ownership by a benevolent and charitable institution, the institution must be incorporated by this State; but by the provisions of paragraph B of the same subsection, there is no similar restriction so far as literary and scientific institutions are concerned.

*E.H.J.*

E.H.J:epd