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STATE OF VERMONT
WASHINGTON COUNTY

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THE ICE CENTER OF, WASHINGTON WEST, INC.,	)	
Petitioner,	)	**Washington Superior Court**
	)	**Docket No. 595-10-06 Wncv**
v.	)	
	)	
TOWN OF WATERBURY, and the STATE OF VERMONT,	)	
Defendants.	)	

SUPERIOR COURT
WASHINGTON COUNTY

DECISION
Cross-Motions for Summary Judgment

Plaintiff-Taxpayer, a Vermont non-profit corporation, owns and operates an ice skating rink that it makes available for public use. The Town of Waterbury treated the rink as exempt from the property tax until 2006, when the State apparently took the position that similar such rinks are not exempt. Taxpayer seeks a declaratory judgment to the effect that the rink is exempt under 32 V.S.A. § 3802(4) (exempting from the property tax "[r]eal and personal estate . . . used for public, pious or charitable uses." The State takes the position that the rink is not exempt because it is "used primarily for . . . recreational purposes." 32 V.S.A. § 3832(7). Taxpayer and the State have filed cross-motions for summary judgment on this issue.

The exemptions from the property tax at 32 V.S.A. § 3802(4) are limited by the provisions of section 3832. "Under this statutory pattern the plaintiff [has] a double burden." *In re Aloha Foundation, Inc.*, 134 Vt. 239, 240 (1976). It first must prove entitlement to the exemption at section 3802(4) and then must prove that the exemption is not limited by section 3832. The exemption is strictly construed against Taxpayer, "and any doubts as to its application will be interpreted against the exemption.'" *American Museum of Fly Fishing, Inc. v. Town of Manchester*, 151 Vt. 103, 108 (1989).

Section 3832 provides:

> The exemption from taxation of real and personal estate granted, sequestered or used for public, pious or charitable uses shall not be construed as exempting:
>
> . . .
>
> (7) Real and personal property of an organization when the property is used primarily for health or recreational purposes, unless the town or municipality in which the property is located so votes at any regular or special meeting duly warned therefor.

Taxpayer argues that the rink is used primarily for an educational purpose, not a recreational purpose, and therefore 32 V.S.A. § 3832(7) does not apply. Access to the rink is rented to area schools, more than to others, for extracurricular activities such as ice hockey. The schools view such activities as educational. Therefore, Taxpayer argues, the rink is used primarily for education, not recreation.

Section 3832(7) does not set up a dichotomy between education and recreation. The issue is whether the skating at the rink is primarily recreational in character or primarily non-recreational in character. Ordinary ice skating and extracurricular activities based on ice skating, such as ice hockey, are traditionally considered to be recreational in nature. Participants may well derive educational value from such activities, but educational value alone is insufficient to convert a primarily recreational activity into a primarily non-recreational activity.

Because the rink is primarily dedicated to a recreational activity, and it has not been designated as tax-exempt by vote, section 3832(7) applies. The rink is not tax-exempt under 32 V.S.A. § 3802(4). The court does not need to address the State's other arguments.

ORDER

For the foregoing reasons, the State's summary judgment motion is *granted*. Taxpayer's summary judgment motion is *denied*. The petition for declaratory judgment is granted, and the declaration is included in the judgment.

Dated at Montpelier, Vermont this 27th day of June 2007.

Mary Miles Teachout

Mary Miles Teachout
Superior Court Judge