
State of Minnesota In Supreme Court

Under the Rainbow Child Care Center, Inc., Petitioner,

Respondent,

v.

County of Goodhue, Respondent,

Relator.

RESPONDENT'S BRIEF

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STATEMENT OF FACTS

Except as supplemented herein, Respondent accepts the Statement of Facts presented by Relator.

1. Relator Fact No. 6 should also state that Duane Walbridge (“Walbridge”), former appraiser in the Goodhue County Assessor’s Office, testified on behalf of Relator that he had seen the IRS Determination Letter granting 501(c)(3) status.¹

2. Relator Fact No. 10 should also state that Respondent’s rates are average with everyone else in the area.²

3. Relator Fact No. 14 should also state that Form 990 income tax returns for 2003, 2004, and 2005 were received as evidence by the tax court (A44, A68, A92).³

4. Relator Fact 21 should also state that James Welsch testified for the Respondent that the Respondent had not made a profit for the assessment years in questions, and that this was reflected on the Center’s tax returns that he personally reviewed.⁴

¹ Trial Transcript, page 111, line 17 to 23

² TT, page 13, line 5 to 8

³ TT, page 143, line 17 to 23

⁴ TT, page 38, line 12 to 15; page 39, line 5 to 8; page 40, line 22 to 24

Facts Supporting Factor 1

5. Respondent has been a nonprofit childcare center since being established in 1995 under Section 501(c)(3) of the Internal Revenue Code.⁵

6. The purpose of Respondent is to be helpful to families by providing childcare services.⁶

7. Article 2 of Respondent's Articles of Incorporation states that the Respondent is organized for providing charitable, educational and other related purposes.⁷

8. In conducting its day-to-day operations, Respondent fulfills the purposes as outlined in its Articles of Incorporation.⁸

9. As a nonprofit corporation Respondent only seeks sufficient revenues to cover the expenses associated with providing its services.⁹

10. Walbridge did review the IRS determination letter establishing the section 501(c)(3) classification for Respondent.¹⁰

11. The members of Respondent's board of directors are volunteers who receive no compensation for the duties that they perform.¹¹

12. Michelle Finholdt ("Finholdt"), the Executive Director for Respondent, receives a salary of \$29,000 which is at the median for salaries of

⁵ TT, page 6, line 3 to 15

⁶ TT, page 6, line 18 to 20

⁷ TT, page 8, line 2 to 9; Trial Exhibit 1 (App. page A.25)

⁸ TT, page 9, line 6 to 9

⁹ TT, page 9, line 6 to 9

¹⁰ TT, page 111, page 17 to 23

¹¹ TT, page 10, page 11 to 16

childcare directors as reported by the Department of Economic Development for the state of Minnesota.¹²

13. Other employees with Respondent are paid at a competitive rate.¹³

Facts Supporting Factor 2

14. In addition to fees received from parents with children attending Respondent's childcare center ("Center"), Respondent also receives funds from Goodhue County Social Services, Pierce County Social Services, Prairie Island Tribal Community, Minnesota Department of Education, grants, fundraiser proceeds, and individual donations to provide the complete source of revenues to pay for the expenses incurred in operating a childcare center. Additionally, Respondent is the beneficiary of contributions of time from volunteers.¹⁴

15. The information provided in Exhibit 2 correlates with the tax returns for 2003, 2004, and 2005.¹⁵

16. Respondent conducts two fundraisers per year. Fundraisers are limited to this number so that the participants are not burned out from fund-raising requests. Additionally, spending additional staff time for more fundraisers would detract from Respondent's mission of providing child care services.¹⁶

¹² TT, page 68, line 17 to 21

¹³ TT, page 24, line 6 to 9

¹⁴ TT, page 15, line 5 to 14; page 17, line 15 to 24; TE 2 (App. page A-29)

¹⁵ TT, page 37, line 17 to page 38, line 1

¹⁶ TT, page 15, line 18 to page 16, line 2; page 31, line 13 to 19

17. Respondent received grants from Wal-Mart and Child Care Resource and Referral. The Wal-Mart Grant, for example, was used to enhance the literacy program offered to the children at the Center.¹⁷

Facts Supporting Factor 3

18. The rates which Respondent charges are based upon a survey conducted by Goodhue County. Respondent's rates are average for the area.¹⁸

19. Low-income families are receiving charity when they receive childcare services at the Center.¹⁹

20. Families who are eligible for assistance have their fee subsidized by Goodhue County when their children attend the Center. Goodhue County pays 100 percent of the fee to Respondent for eligible families. Based upon the family's income level, the county collects a portion of the fee from the family as a co-pay. Respondent is not involved with charging or collecting fees directly from assistance eligible families.²⁰

21. If a family who is eligible for assistance does not pay the co-pay portion to the County, that family is denied any further childcare assistance from the County.²¹

22. Respondent will terminate child care services to families who don't pay the appropriate fee. Respondent has even pursued some of these people in

¹⁷ TT, page 16, line 9 to 14; page 29, line 15 to 18

¹⁸ TT, page 13, line 5 to 8

¹⁹ TT, page 103, line 12 to 17

²⁰ TT, page 13, line 9 to 23; page 114, line 18 to page 116, line 20

²¹ TT, page 122, line 20 to page 123, line 4

court. Respondent, though, has offered reduced rates to families and each year writes off several thousands of dollars in childcare payments.²²

23. Proceeds from the food program benefit all children who attend the Center. The amount of proceeds received by Respondent is determined by the State based upon income for all the families in the Center.²³

Facts Supporting Factor 4

24. The revenues received by Respondent from user charges, government payments, donations, and grants do not produce a profit.²⁴

25. Respondent has never experienced a year when receipts exceeded expenses.²⁵

26. If revenues for Respondent did ever exceed expenses, Respondent's board of directors would apply those excess revenues to an appropriate expenditure allowed under the Articles of Incorporation to prevent such an excess from being realized.²⁶

27. According to Walbridge, Respondent has met the conditions required for factor 4 of the *North Star* Test.²⁷

²² TT, page 25, line 10 to page 26, line 2; page 159, line 1 to 9

²³ TT, page 14, line 6 to 15; page 27, line 6 to 21

²⁴ TT, page 38, line 12 to line 15

²⁵ TT, page 39, line 5 to line 8

²⁶ TT, page 38, line 17 to page 39, line 4

²⁷ TT, page 104, line 24 to page 105, line 4

Facts Supporting Factor 5

28. Finholdt told the trial court that Article 4 of the Articles of Incorporation prohibits discrimination and that Respondent implements nondiscriminatory policies in its date-to-day operations.²⁸

29. Walbridge testified to the tax court that Respondent did not restrict its services to anyone and therefore complied with that part of the fifth factor of the *North Star* Test.²⁹

30. Walbridge told the trial court that relieving government burden may occur if government spends less resources or government involvement is lessened because of an institution's existence.³⁰

31. According to Connie Minnick ("Minnick"), an employee in Relator's child care assistance program, there is a government policy which seeks to ensure the availability of quality childcare services for families, particularly families of lower income.³¹

32. Minnick told the tax court that she had worked with or been in contact with Respondent many times while performing her duties for Goodhue County and had no reason to believe that Respondent was not a quality childcare provider.³²

²⁸ TT, page 12, line 9 to 23; TE1 (App. page A25)

²⁹ TT, page 105, line 17 to 22

³⁰ TT, page 106, line 12 to 23

³¹ TT, page 125, line 7 to 12

³² TT, page 124, line 3 to 13

33. The existence of legislation authorizing childcare assistance shows that government places a high value on families being able to receive assistance to facilitate work, pay taxes, and generate economic vitality.³³

34. Government is interested in providing families with the ability to access childcare facilities and providing different childcare options.³⁴

35. Respondent is the only childcare center in Red Wing with Spanish speaking staff. This is important because of the increasing population of Hispanics in southeastern Minnesota. This helps fulfill the government need for providing benefits to low-income families.³⁵

36. The availability of infant spaces is a benefit for low-income families, which the government wants to fulfill. Respondent does that by having 16 infant spaces available in its facility. This represents 40 percent of the total infant spaces available in Red Wing today in childcare centers. On the valuation date in question, Respondent's share of infant space was 50 percent.³⁶

37. If Respondent did not exist, the burden on government would increase to find replacement infant care spaces. Thus, Respondent's presence lessens the burden of government in this area.³⁷

38. Respondent's existence provides an additional choice for parents who are considering options for childcare for their children.³⁸

³³ TT, page 51, line 12 to 18

³⁴ TT, page 51, line 22 to 25; page 62, line 8 to line 12

³⁵ TT, page 58, line 7 to 15

³⁶ TT, page 58, line 7 to page 59, line 6; page 59, line 19 to 22

³⁷ TT, page 68, line 1 to 7

39. The positive impacts of a quality childcare center include: 1) providing a healthy and safe environment for children, and 2) providing children an environment where they can learn to get along together in groups. These attributes apply to Respondent.³⁹

40. An example of a burden of government is the government's efforts to subsidize low-income families with day care.⁴⁰

41. If no one was offering childcare services, Goodhue County would not be able to pay for any day care assistance and there would be no way to provide day care services. In that event, Goodhue County would be out of the business of subsidizing day care.⁴¹

42. Day care services do provide a benefit to the community.⁴²

Facts Supporting Factor 6

43. If Respondent were dissolved, the board of directors would donate the assets of Respondent to another charitable organization with a mission close to that of Respondent. This would be done in accordance with the provisions of the Articles of Incorporation.⁴³

³⁸ TT, page 67, line 1 to 3

³⁹ TT, page 60, line 1 to 18

⁴⁰ TT, page 86, line 1 to 5

⁴¹ TT, page 126, line 13 to page 127, line 7

⁴² TT, page 127, line 15 to 17

⁴³ TT, page 39, line 10 to page 40, line 2

44.No private interest would benefit in the event Respondent is dissolved.⁴⁴

45.Upon dissolution any money possessed by Respondent would not go to any private entity. It would go to a public charity or other non-profit childcare organization.⁴⁵

46.Walbridge told the court that he had no information to dispute what had been presented to the tax court with regards to factor 6 of the *North Star* Test.⁴⁶

ARGUMENT

I. STANDARD OF REVIEW

Under Minn. Stat. § 271.10 (2004), the Supreme Court’s review of tax court decisions is limited to determining whether the tax court lacked jurisdiction, the tax court’s decision was not justified by the evidence or was not in conformity with the law, or whether the tax court committed any other error of law.” *Community Memorial Home at Osakis, Minnesota, Inc. v. County of Douglas*, 573 N.W. 2d 83, 86 (Minn. 1997). Issues of law are reviewed de novo by the Supreme Court without deference to the tax court. See *Green Giant Co. v. Commissioner of Revenue*, 534 N.W. 2d 710, 711 (Minn. 1995). Where findings of fact are

⁴⁴ TT, page 40, line 3 to 5

⁴⁵ TT, page 46, line 7 to 16

⁴⁶ TT, page 108, line 1 to 4

concerned, Minn. R. of Civ. P. 52.01 provides that they are not to be set aside unless they are clearly erroneous.

The Supreme Court has applied this clearly erroneous standard to tax court decisions. The Supreme Court has stated that it will reverse the tax court's factual findings if "upon reviewing the entire evidence, it is left with a firm conviction that a mistake has been made." *Wybierala v. Commr. of Revenue*, 587 N.W.2d 832, 836 (Minn. 1999). Additionally, the Supreme Court has stated "this court does not substitute its judgment for that of the tax court on questions of fact, leaving the factual findings undisturbed where the evidence, as a whole, supports the decision." *Manthey v. Commr. of Revenue*, 468 N.W.2d 548, 550 (Minn. 1991). Regarding credibility determinations of witnesses at trial, "the tax court is in the best position to evaluate the credibility of witnesses." *Dreyling v. Commr. of Revenue*, 711 N.W.2d 491, 494 (Minn. 2006). These decisions are consistent with rulings by the Supreme Court, generally, about the standard of review for findings of facts. See *Minnesota Public Interest Research Group v. White Bear Rod & Gun Club*, 257 N.W.2d 762 (Minn. 1977) and *Klingelhutz v. Grover*, 236 N.W. 2d 610 (Minn. 1975).

In a very recent decision this Court reaffirmed this standard of review for findings of fact from the tax court. "Absent a question of law, we will uphold the tax court's decision where sufficient evidence exists for the tax court to reasonably reach the conclusion that it did." *Croixdale, Inc. v. County of Washington*, 726 N.W. 2d 483, 487 (Minn. 2007). *Croixdale* is especially significant because it, like

the present case, considered the issue of exemption from taxation as a purely public charity.

The Supreme Court has established six *North Star* factors which must be considered to determine exemption from taxation as a purely public charity. *North Star Research Inst. v. Hennepin County*, 236 N.W.2d 754, 757 (Minn. 1976). A closer examination of the *Croixdale* decision confirms that the Supreme Court reviews the tax court's determination of the *North Star* factors as findings of fact where no separate issue of law is raised. In *Croixdale* three of the *North Star* factors were in dispute, and the Supreme Court made the following statements when analyzing them:

Despite the tax court's failure to examine whether Croixdale's services were considerably below cost, we conclude that sufficient evidence supports the tax court's conclusion that factor three was not met. *Croixdale*, at 489

Based on this evidence, the tax court could reasonably conclude that Croixdale produced a profit [with regards to factor 4]. *Croixdale*, at 490.

Sufficient evidence exists to support the tax court's conclusions that Croixdale failed to meet Factor five. *Croixdale*, at 491.

By contrast, the Supreme Court considers the *North Star* factors de novo only when a matter of law is involved. See *Skyline Preservation Foundation v. County of Polk*, 621 N.W. 2d 727 (Minn. 2001). In *Skyline* there was no dispute about the facts relating to each factor. Skyline was a fledgling organization whose actual operation had not yet established sufficient evidence to qualify for four of the factors. The tax court denied exemption because it limited its consideration to

the existing operation even though Skyline presented evidence how it would meet the *North Star* factors when its operation became established. In *Skyline* the Supreme Court addressed the legal issue of actual versus prospective use and reversed the tax court by stating that prospective use could be considered for a fledgling organization.

As we will establish in the remainder of this brief, all of Relator's issues on appeal involve disagreements with the tax court's evaluation of the evidence for each factor in the *North Star* test. This is the same situation faced by this court in *Croixdale*. Other than challenging the use of government payments as donations,⁴⁷ Relator makes no claim about an error of law like this Court faced in *Skyline*. Consequently, the clearly erroneous standard for findings of facts is the applicable standard of review in this case.

II. SINCE SUFFICIENT EVIDENCE EXISTS ON THE RECORD TO SUPPORT THE TAX COURT'S FINDINGS FOR EACH FACTOR UNDER THE *NORTH STAR* TEST, THE SUPREME COURT SHOULD NOT DISTURB THE TAX COURT'S CONCLUSION THAT RESPONDENT IS EXEMPT FROM TAXATION AS AN INSTITUTION OF PURELY PUBLIC CHARITY.

We will now examine the tax court decision to determine whether it complies with the clearly erroneous standard for findings of fact and the sufficient evidence test as enunciated in *Croixdale*. The tax court concluded that Respondent was exempt from taxation because it met the criteria for five of the six

⁴⁷ Later in this brief we will show that this issue was resolved long ago in Respondent's favor.

factors under the *North Star* test. Since Relator's appeal challenges that conclusion, we will focus our attention on those five factors.

Factor 1

Findings of Fact 4 and 10 in the tax court address requirements imposed under this factor. Additionally, the tax court noted in its Memorandum the following facts which supported its determination for this factor:

Petitioner is organized as a nonprofit corporation and provides no material rewards for its boardmembers;

Respondent had not posted a profit during the taxable years for 2003, 2004, and 2005; and

Respondent's executive director received a salary which was average for the industry and was not tied to any performance goals.

An observation of Respondent's Statement of Facts plus Statement of Fact 21 by Relator demonstrates that the Findings of Fact by the tax court are all supported by evidence on the record. Relator's arguments for this factor center on two points: 1) the tax court should have used evidence of a different type than was presented to the court for making its determination, and 2) the tax court should have relied only on evidence provided by Respondent and not on any evidence introduced as part of Relator's case.

Relator is simply wrong on its first point. The evidence upon which the tax court relied is precisely the evidence that is required under the *North Star* standard to support a determination that Factor 1 has been satisfied. Furthermore, questions

about that evidence are a matter of credibility which the tax court, sitting as the finder of fact to weigh the evidence, is in the best position to evaluate. This is precisely what the clearly erroneous standard is supposed to address. Unless there is no credible evidence to support the factual findings by the tax court, the Supreme Court must support the factual determination it made. From the entire list of facts identified by Respondent in its Statement of Facts for this factor, there is more than sufficient evidence on this record to support the finding by the tax court that the requirements for Factor 1 have been satisfied.

The second point made by Relator has significance only at trial and only if raised at the conclusion of Respondent's case. Once the trial is completed, the entire record is available for the tax court to consider in support of its findings. There is no rule of law, and Relator has not cited one, that, at the conclusion of a trial, the trial court can only consider evidence presented by Respondent to support the claims which Respondent was making.

In this case Relator argues that the tax court should not have considered the tax returns because they were introduced into evidence by Relator rather than Respondent. The tax court heard testimony, though, from James Welsch, who is a CPA and member of the Board of Directors, that Respondent experienced a loss in all the years of its operation and that he personally reviewed all of the tax returns before they were filed with the government. Consequently, the evidence contained within the tax return documents was also presented to the tax court through the oral testimony of its qualified witness. Since there is no requirement

that documentary evidence is better than oral testimony on the same issue, the tax court did, in fact, receive the evidence contained on the tax returns from testimony provided to the tax court by one of Respondent's own witnesses.

In its brief Relator also includes a portion of the trial transcript which addressed an exchange between Relator's counsel and Finholdt. That exchange discussed a house which was owned by Finholdt and leased to Respondent until Respondent constructed its present facilities. Thereafter, Finholdt sold the house to another board member of Respondent at a gain over the purchase price which Finholdt paid for the house several years earlier. Relator suggests that this gain represents a material advantage to Finholdt that is prohibited under Factor 1 of the *North Star* test.

The tax court ignored this testimony altogether and for good reason. The gain enjoyed by Finholdt was a gain involving her personal property. It was not a gain realized from the assets or the operation of Respondent. Findholt personally purchased the house and ultimately sold the house to another person who simply happened to be a member of Respondent's board of directors. Since title for the house never passed through Respondent the sale cannot be considered as having any relationship to Respondent's operation. Findholt was free to sell her property to whomever she wished. The fact that the buyer was someone who Finholdt knew because of the relationship to Respondent does not taint the sale.

The rental of real property by a private person to a charitable organization could present an issue for defeating requirements of Factor 1 if the rents which the

private person charged to the charity are above the rate that that individual would be able to obtain in an otherwise arm's-length transaction in the marketplace. The record does indicate that Finholdt did charge Respondent rent in the neighborhood of \$1000 per month. There was absolutely no evidence introduced, though, about the market rate rent for that house. Although the market rate for the house could possibly be less than was charged, it could also be possible that the market rate was more than the amount being charged. In any event, without evidence to show Finholdt was overcharging rent to Respondent, there is no basis to suggest that Finholdt was improperly receiving material advantage by leasing the house to Respondent for the conduct of its operation.

Factor 2

Factor 2 evaluates the level of gifts or donations received by the Respondent in furtherance of providing its services to its beneficiaries. Exhibit 2 was introduced at trial to show the breakdown of revenues received by Respondent from sources other than families with children in the Center. As explained by Finholdt, these revenue sources fall into two categories. One category could be defined as classic donations from private sources. These included grants from Wall-Mart and Child Care Resource and Referral, proceeds from fundraisers conducted by friends of Respondent (mostly families using the Center and employees of the Center), and in-kind donations of volunteer time. These will be collectively known as "Private Donations." Finholdt also explained that the other

category of revenues came from governmental sources. These will be collectively known as the "Public Contributions."

The question arises whether the "donations and gifts" referenced in Factor 2 are limited to the Private Donations or should also include the Public Contributions. In considering this issue in a Factor 2 evaluation, the Minnesota Supreme Court stated, "at least one Minnesota case, as well as cases from other jurisdictions, indicates that the donation may be from public as well as private sources." *Rio Vista Non-Profit Housing Corp. v. County of Ramsey*, 277 N.W.2d 187 (Minnesota, 1979), citing *Assembly Homes, Inc. v. Yellow Medicine County*, 140 N.W.2d 336 (Minn. 1966). In *Rio Vista* the Supreme Court noted that "the fact that the donor is the Government and not a private institution does not preclude a determination that Rio Vista is supported in part by donations." In *Rio Vista* rental assistance payments from the Federal Government qualified to satisfy the requirements of Factor 2 under the *North Star* test. In *Assembly Homes* payments for services by welfare boards and the U.S. Veterans Administration also qualified as donations.

As noted in *Rio Vista* the Supreme Court believed decisions from other jurisdictions were important to consider in evaluating this issues. In *Franciscan Tertiary Province of Missouri, Inc. v. State Tax Commission*, 566 S.W.2d 213 (Missouri, 1978) the Missouri Supreme Court noted that government payments "for interest or grant subsidies [do] constitute a subsidy or contribution comparable to charitable contributions from individuals or corporations. They

have the same effect." This case was cited with approval in *Rio Vista*. Likewise, in *Yorgason v. County Board of Equalization*, 714 P2d 653 (Utah, 1986) the Supreme Court of Utah noted that "[section 8 government subsidy] payments are like a gift or donation of any other kind except they come from the government.... the fact that subsidization of part of the cost of furnishing such housing is by the government rather than private charitable contributions does not dictate the denial of a charitable exemption..." This decision is particularly noteworthy because the determination of exempt status as a charitable institution in *Yorgason* was based on the same six-factor test that is found in *North Star*, including the burdens of government test.

When both the Private Donations and Public Contributions are considered, the level of outside contribution to Petitioner involved anywhere from 25 to 32 percent of the total annual revenues between 2003 and 2005. Our Supreme Court has determined that a very minimal level of private donations is sufficient to justify a charitable exemption. In *Assembly Homes* the level of Private Donations for the two years in question was only \$66 and zero, respectively. The Tax Court has also found this factor satisfied with contribution levels far less than those presented by the Private Donations alone in this case. See *K.I.D.S. House Inc., v. County of Sherburne*, 1944 WL 725440 (Minn. Tax) and *Allina Medical Clinics, v. County of Meeker*, 2002 WL 473908 (Minn. Tax 2005). Clearly, the Private Donations received by Respondent exceed the amount which was found acceptable in the foregoing cases.

There are policy considerations for not establishing any set minimum as a requirement for the level of donations and gifts to support an exempt classification as a purely public charity. These policy considerations were discussed by the Maryland Court of Appeals in *State Department of Assessment and Taxation v. North Baltimore Center, Inc.*, 762 A2d 564, (Maryland, 2000). Under Maryland law the level of donations to a charity is one of four factors considered to ultimately determine exempt status classification. In rejecting a minimum threshold for donations to qualify for exempt status, the Court of Appeals noted that the requirement "to establish significant donations would trump the other three factors and thus make that one factor always decisive. That is a hard-and-fast rule, which, had this Court intended it, could, and would, have been more clearly stated." Thus, as far as the current case is concerned, Petitioner has satisfied Factor 2 of the *North Star* test even if only the Private Donations are considered.

Under the principles enunciated in *Rio Vista* and *Assembly Homes*, though, the Public Contributions to Respondent must also be considered. The tax court acknowledged this analysis and determined that both Private Contributions and Public Contributions are appropriate for determining the level of gifts and donations required to satisfy the requirements for Factor 2. Relator argues that the payments by the governmental units are payments for services. According to Relator's logic, any gift or donation, whether from public or private sources,

would constitute a payment for services because providing service is all that Respondent does. Relator's argument on this point is placing form over substance. The payments from the county and tribal governments are actually subsidies for payment for services to low-income families.

The payment for services characterization might be appropriate if the services were being received by the governmental unit. This is not the case though. The service is being received by the low-income family. This reinforces the characterization of these governmental payments as subsidies rather than payment for services.

In any event Relator's argument does not apply to the subsidy for the food program. Those payments are not tied to any particular family. The subsidy is paid to Respondent based upon a blended analysis of income levels for all the families utilizing the Center. In other words, the food program payment from the State benefits all the children utilizing the Center.

Relator also argues that the quality and type of evidence utilized by the tax court in its determination was the wrong evidence to be considered. As previously discussed under the preceding factor, this argument goes to the sufficiency of the evidence and, according to *Croixdale*, cannot be disturbed by the Supreme Court if there is sufficient evidence on the record to support its determination. As before, the Statement of Facts from both parties establishes that sufficient factual evidence exists on the record to support the tax court conclusion. Consequently, under the

clearly erroneous standard of review, the Supreme Court must affirm the tax court's finding with regards to Factor 2.

Factor 4

The arguments advanced by Relator for Factor 4 are very similar to arguments relating to Factor 1. As noted by Respondent earlier in this brief, at the conclusion of trial there is absolutely no rule limiting the tax court to considering only evidence presented by Respondent. The tax court can consider all evidence on the record whether introduced through Respondent or Relator. A review of Respondent's Statement of Facts shows ample evidence on the record to support the tax court's determination that Respondent satisfied the requirements for Factor 4. Even Walbridge, Relator's own exemption expert testified to the tax court that he believed Respondent had satisfied the conditions required for Factor 4.

Factor 5

Factor 5 has two requirements. First, beneficiaries of the charity must not be restricted, or, if restricted, the restriction must be designed to limit the charity to the intended recipients, and second, the charity must lessen the burdens of government. The tax court found that the restriction requirement was satisfied in its Finding of Fact 14. As noted in Respondent's Statement of Fact 24, Walbridge also testified that, in his opinion, Respondent had satisfied this requirement.

When discussing factor 5 in its memorandum, the tax court solely addressed the burdens of government requirement. The tax court provided detailed reasoning for its determination that Respondent satisfied the requirements

for this factor. A review of the Respondent's Statement of Facts again shows the record contained the very facts which formed the basis for the tax court's determination. Those facts include the recognition that the County and State have given a very high priority to having quality child care services and options available for families, particularly families with low incomes. Even Connie Minnick, who works for Relator in its childcare assistance program, testified that, if childcare facilities were not available, the County would not be able to provide childcare assistance services and would be out of the childcare assistance business. Clearly, sufficient evidence exists on the record to support the conclusion by the tax court that the requirements for Factor 5 have been satisfied.

The balance of Relator's arguments for this factor are the same as those it makes for other factors, i.e. the tax court should have relied on or required different evidence than that which was presented at trial. As stated before, this is a credibility issue. The findings by the tax court cannot be disturbed where evidence exists to support tax court findings. The record shows that significant evidence with regard to this factor does exist to satisfy the factor's criteria.

Factor 6

Once again Relator makes the same credibility arguments which it has made for most of the other factors. For the same reasons noted earlier, challenges to credibility are governed by the clearly erroneous standard for review. By comparing the record as reflected in the Statement of Facts by Respondent with

tax court's reasoning in its memorandum, it is very obvious that significant evidence supports the tax court's determination for this factor.

Factor 3

If the Supreme Court believes that a *de novo* standard is applicable in this case, then it must also review the determination by the tax court with regards to Factor 3. The tax court determined that Respondent did not satisfy the criteria for this factor under the *North Star* test. The tax court determined that Factor 3 was not met for three very specific reasons: 1) Respondent reserved the right to dismiss beneficiaries for nonpayment of fees, 2) a lack of scholarships, and 3) Respondent's reservation of the right to initiate collection efforts if warranted.

Under the rules allowing low-income families to receive childcare assistance, every low-income family is required to pay at least in a nominal co-payment to the County. According to Minnick, if such a family failed to make their co-payment, the County would cease to provide childcare assistance and effectively deny child care benefits to these families. Where the County can justifiably refuse to make further payments on behalf of low-income families who fail to pay their fair share, Respondent should not be criticized for dismissing non-paying families or initiating collection proceedings against them when those families fail to pay the amounts that they owe to Respondent.

This Court has noted that a charitable institution which has limited resources to provide charitable service should not be penalized "for becoming more professional and fiscally responsible. If to be exempt, a charity must be

fiscally irresponsible, not use best management practices, and depend on operating donations to constantly bridge the shortfall in its cash needs, then most exempt charities will not survive because they cannot realistically depend on perpetual operating contributions.” *Croixdale*, at 489. In this case, though, the tax court penalized Respondent for following prudent fiscal policy.

Likewise, the same thought process applies with regards to scholarships. Respondent does make efforts each year to raise funds through fund-raising programs to provide revenue for projects that are beneficial to all the children using the facility. As Finholdt noted in her testimony, if Respondent devoted significantly more effort to fund-raising activities, it would need to reduce its focus on the core mission of providing childcare services to children. If there was no support system in place to assist low-income families, the tax court’s conclusion about scholarships might be justified. However, that is not the case. Every low-income family automatically qualifies for “scholarships” by receiving subsidies from the County. There is no gap of qualified beneficiaries who cannot receive such aid. Thus, searching for funds to provide scholarships truly would divert valuable resources to fundraising and away from child care services. Where the system does not present a need for scholarships, imposing this requirement as a criteria for Factor 3 is illogical and improperly penalizes an otherwise worthy charity.

The tax court cited no other deficiencies under Factor 3 other than the three noted. If those are not appropriate deficiencies in this case, then Respondent has

satisfied Factor 3. Under that factor the initial evaluation is whether the benefit being provided amounts to a charity. In the case of Respondent, the benefit is childcare services. In defining "charity" the Supreme Court has stated that "the legal meaning of the word 'charity' has a broader significance than in common speech and has been expanded in numerous decisions" *Rio Vista*, 277 N.W.2d at 190, citing *In Re Junior Achievement of Greater Minneapolis v. State*, 135 N.W.2d 881, 885 (Minnesota, 1965). Using this definition the tax court has previously determined that childcare services are a charitable benefit. *Eyota Kid's Korner, Inc., v. County of Olmstead*, 1992 WL 389787 (Minnesota Tax Court, 1992).

This particular benefit has not been evaluated as a charitable purpose by the Supreme Court of Minnesota. In an exhaustive search of decisions from other jurisdictions around the country, however, the Supreme Court of Iowa has considered a case for property tax exemption with regards to a childcare facility. In ultimately concluding that the childcare facility was entitled to an exemption from property taxes, that Supreme Court noted, "the sole charitable activity of the Center is the operation of its childcare facility." *Carrol Area Child Care Center, Inc. v. Carrol County Board of Review*, 613 N.W.2d 252 (Iowa, 2000). In granting exemption from property taxes, that Supreme Court noted, "[the Center's] main function has been to provide quality day-care services for persons in and about Carrol County."

Under cross-examination at trial, Walbridge also acknowledged that the benefit provided by Petitioner was a charity; however, he felt that it should only be

applied to persons who were qualified for low-income benefits. Ironically, in *Carrol Area Child Care Center*, the question also rose as to whether charitable status should only be extended for that portion of the facility serving low-income families. In issuing its ruling, the Supreme Court rejected the notion of a partial exemption. While acknowledging that special subsidies were provided for low-income families, it noted that public contributions to the Center were utilized for the benefit of all who received the Center's services.

The same situation exists for Respondent. Clearly, substantial subsidies are provided to Respondent for families who qualify for low-income benefits. The evidence established, though, that Respondent also received contributions which benefited everyone utilizing Respondent's services. First, it received funds through fundraisers, a Wall-Mart grant, and grants from Child Care Resource and Referral that were used for programs to benefit all attendees at Respondent's facility. Furthermore, Respondent received reimbursements for its meal program from the State of Minnesota. While Finholdt explained to the tax court that the reimbursements were provided on a sliding scale according to income, they were not solely limited to low-income individuals. They applied to all attendees at the Center. Children from families with higher income simply generate a lower reimbursement. Consequently, this contribution from the State was a benefit to all attendees of Respondent and not just low-income families.

Finholdt also testified that low-income families were fully welcomed at the Center under a system where their charges were subsidized by the County. Those

families would then reimburse the County according to their ability to pay. Finholdt further testified that Respondent's rates are based upon surveys of charges for comparable services at other childcare facilities in Goodhue County. Based on the foregoing, the childcare services are a charitable benefit that are worthy of exemption status, and the payment structure for the services clearly establishes that the requirements of Factor 3 of the *North Star* test have been met when the three reasons noted by the tax court are disregarded.

III. CONCLUSION

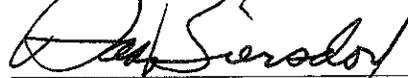
Absent a question of law, the *North Star* Test involves factual determinations that must be upheld if there is sufficient evidence to support them. In this case the only possible question of law involves Factor 2 where Relator challenges the tax court's classification of government subsidies as gifts and donations. This issue was settled by this Court long ago in *Rio Vista* where it held that government payments qualified as gifts in the same manner as private donations. With that issue resolved, the level of gifts and donations exceeded 20% for all the years in question. This is significant evidence to support the tax court's determination on Factor 2.

The tax court found that Respondent satisfied all of the other *North Star* factors, too, except for Factor 3. The record shows there was more than sufficient evidence to support each of those findings. Consequently, this Court must uphold the tax court's findings on these factors. This results in Respondent satisfying five of the six factors.

This Court has previously said that all six factors are not necessary to qualify for exemption, so the tax court's conclusion that Respondent is exempt from taxation is supported by the record and by caselaw.

Respectfully Submitted,

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Supreme Court No. A-07-0468

STATE OF MINNESOTA

IN SUPREME COURT

<p>Under the Rainbow Child Care Center, Inc</p> <p>Respondent,</p> <p>v.</p> <p>County of Goodhue,</p> <p>Relator.</p>	<p>CERTIFICATION OF BRIEF LENGTH</p>
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I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, Subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 6,563 words. This brief was prepared using Microsoft Word 2002.

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