

A07-0003

STATE OF MINNESOTA
SUPREME COURT

CASE TITLE:

Afton Historical Society Press

Relator,

vs.

County of Washington,

Respondent.

RELATOR'S BRIEF & APPENDIX

TAX COURT NUMBERS:

C5-04-2979, C4-05-3521 &

C8-06-1961

SUPREME COURT NUMBER:

A07-0003

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF CONTENTS

Cases:	<u>Page(S):</u>
<u>Allina Medical Clinics v. County of Meeker</u> , File No. CO-02-256 et al. (Minn. Tax Ct. Feb 18, 2005).	10
<u>Croixdale, Inc. v. County of Washington</u> , #A06-153 (January 25,2007)	1,2, 11, 12, 13
<u>American Ass'n of Cereal Chemists v. County of Dakota</u> , 454 N.W.2d 912 (Minn. 1990)	2
<u>In re Petition of Junior Achievement of Greater Minneapolis, Inc. v. State</u> , 135 NW.2d 881, 885 (Minn. 1965)	8
<u>North Star Research Ins. v. County of Hennepin</u> , 306 Minn. 1,6, 236 N.W.2d 754, 757 (1975)	1,2,6,8,17,18,20
Statutes:	
Minn. Stat. § 138.01	16
Minn. Stat. § 138.054, subd. I	16-17
Minn. Stat. § 138.67 & .69	19
Minn. Stat. § 272.02, subd. 7	xx
Minnesota Constitution Art. X, § 1	1,2

LEGAL ISSUES

- I) Whether relator's publishing house property in Afton qualifies for tax exemption as an institution of purely public charity pursuant to Minn. Stat. § 272.02, subd. 7 and Minnesota Constitution Art. X, § 1, for property taxes payable in 2004, 2005, and 2006. The Minnesota Tax Court held that the subject property does not qualify on the grounds that relator does not satisfy the second, third, and fifth factors identified in North Star Research

Ins. v. Connty of Hennepin, 306 Minn. I, 6, 236 N.W.2d 754, 757 (1975), and recently applied by this Court in Croixdale, Inc. v. Connty of Washington, #A06-153 (January 25, 2007).

Most apposite cases: North Star Research, Croixdale, Inc. and In re Petition of Junior Achievement of Greater Minneapolis, Inc. v. State, 135 N.W.2d 881, 885 (Minn. 1965).

Most apposite statute and constitutional provision: Minn. Stat. §§ 138.054, subd. I and 272.02, subd. 7 and Minnesota Constitution Art. X, § I

- 2) Whether the Tax Court imposed an unduly strict burden of proof of material facts on relator, requiring not just a preponderance of the evidence but proof beyond a reasonable doubt.

The most apposite cases: Croixdale, Inc., American Ass'n of Cereal Chemists v. Connty of Dakota, 454 N.W.2d 912 (Minn. 1990) & Skyline Preservation Foundation v. Connty of Polk, 621 N.W. 2d 727 (Minn. 2001).

STATEMENT OF THE CASE

The trial court was the Minnesota Tax Court, the Honorable Sheryl A. Ramstad presiding. The nature of the case is that a Minnesota Chapter 317A non-profit corporation, qualified as tax exempt under L.R.C. Section 501(c)(3), seeks exemption from property taxes on its publishing house premises pursuant to Minnesota Statutes Chapter 278 petitions with respect to taxes payable in 2004, 2005 & 2006. Appendix pp. I, 4, 7 & 10. After a trial with several days of testimony, the Minnesota Tax Court denied exemption in a decision filed July 19, 2006, holding that the corporation did not satisfy the second, third and fifth factors under North Star Research. Appendix p. 13. Relator timely served and filed a motion for amended and additional findings, amended judgment, and a new trial (or "rehearing" per Minn. Stat. § 271.10, subd. 2)(Appendix p. 40). That

motion was scheduled for hearing on August 18, 2006. At that time the Tax Court granted relator's motion to extend the time for the hearing to September 15, 2006. The motion was heard on September 15, 2006 (Supplemental Record pp. 148-170). On November 2, 2006 the Tax Court issued its Order granting in part and denying in part relator's motion, as explained in a Memorandum (Appendix at 58), and Amended Findings of Fact, Conclusions of Law, Order for Judgment, and Memorandum (Appendix p. 70). On November 3 the Tax Court issued its Order granting in part and denying in part respondent's application for costs. Relator filed its Petition for Writ of Certiorari (Appendix 98) and other requisite papers and served the same along with the Writ of Certiorari (Appendix 99) pursuant to Civil Appellate Procedure Rule 116 on January 2, 2007.

FACTS

Relator Afton Historical Society Press (hereinafter sometimes the "Press") is a Minnesota nonprofit corporation, formed in 1993 under Minnesota Statutes Chapter 317A and qualified as income tax exempt under IRC § 501(c)(3). Its general purposes are stated as follows in its Articles of Incorporation: "This corporation is organized and shall be operated exclusively for charitable and educational purposes within the meaning of Sections 170(c)(2) and 501(c)(3) of the Internal Revenue Code of 1986." Ex. 1, par. 4 & Ex. 4, art. II. Its "Mission Statement" describes that purpose more specifically:

The Afton Historical Society Press publishes regional books that explore and celebrate Minnesota culture and history. All of our books, including our books for young people, adhere to high standards of scholarship, literary value, design, and production.

We seek out the largest possible local, national, and international audiences for our books through wholesale and retail outlets.

We provide books and curriculum packages free-of-charge to schools and public libraries through donor programs, including our *Books for Schools* program.

We also promote and extend the reach of our publications with author programs and events, museum exhibitions, and public television documentaries.

Ex. 5.

The Press books all meet those “high standards of scholarship, literary value, design, and production,” as can be discerned from its books that are trial exhibits. Ex. 6, 8, 9, 10, 12, 15-20, 24, 26, 27, 30-33, 36-40, 48, 76-79. The titles of those books are stated on Petitioner’s Exhibit List, included in the Supplemental Record pp. 171-173. The Press had published approximately fifty books at the time of trial. *See* Ex. 5. These are not just “beautiful books,” as the Tax Court described them. Almost all of the Press books are crafted to instill appreciation of the heritage of Minnesota in the reader, some by recounting history, some by presenting extraordinary art and architecture of the state, and some by reviving the fictional works of extraordinary Minnesota authors. *See*, Ex. 6, 8, 9, 10, 12, 15-20, 24, 26, 27, 30-33, 36-40, 48, 76-79.

Relator pursues that purpose and mission from the subject property for which it seeks exemption (“Subject”). That property is located at 3321 St. Croix Trail South in Afton, Minnesota. Exhibits 2 & 3. Relator purchased the Subject in 1999. It is not a large building, and each room is used for multiple functions. Exhibits 3 & XX (photo). The assessor’s estimated market value as of January 2003 was \$325,000, up from \$196,500 the previous year. Appendix p. 3; Ex. 2. An initial appeal of that value was dropped in an Amended Petition filed for the taxes payable in 2004. Appendix p. 4. The taxes were \$9,106 for that year. *Id.*

Relator has purposefully progressed from reliance on a handful of donors to reliance on a long and growing list of donors. T. 704-705; Exhibits 13, 14 (2004 & 2005), 49, 51, 71-75 (2001-2005), and 80 (summary 2001-9/2005). Those exhibits and others in evidence include donor names, amounts, pertinent book projects, solicitation letters, copies of donors’ checks and transmittal letters, thank you correspondence and (IRS) acknowledgement letters. A list of

donors from 2002-2005 names 43 individuals, 12 foundations, 3 funds and trusts, 2 corporations, and 1 non-profit corporation. Ex. 56, pp. 7-8. In 2003 donations comprised \$471,825 of total revenue of \$715,330 (66 %). In 2004 donations were \$468,261 and total revenue \$691,803 (68 %). In 2005 donations were \$464,576 and total revenue \$773,309 (60 %). Ex. 51. Relator normally recoups only one-third of its costs including overhead of producing a book from sales. Tr. 113-114 and generally; Ex 56 p. 3. The rest comes from donations. *Id.* Those costs, sales dollars, and donations, book by book are tabulated in Ex. 56 p. 3, 57 p. 3, and elsewhere.

Relator's fundraising efforts are systematic, extensive and unceasing, beginning in the formative stages of each book project by seeking funds to cover production of the book at all stages—usually including writing it—and continuing with incessant solicitation of funds to cover free copies of the book for schools. Tr. 113-114 and generally. Such efforts include grant applications to foundations (*e.g.* ex. 21-23, 25, 59-62, 64-70), specific and general requests to individuals (*e.g.* ex. 85) and corporations (*e.g.* ex. 47, 63) and almost daily requests to regular donors for funds. *See* Exhibits 80 & 85.

Relator sends acknowledgement letters to its donors as required by the Internal Revenue Service in January of the following year. Ex. 13 & 14. Significant donations for production of a book are normally acknowledged by naming the donors on the copyright page of that book. Tr. 108; *e.g.*, Supplemental Record pp. 174-185.

Relator's "net income," "profits," and "cash flow" usually are small amounts above or below break-even, always with heavy reliance on donations to reach that desired result. Exhibits 42 (2004 & 2002 IRS Form 990), 49 (1997-2005 financial summaries), 50 (2003 & 2004 audit reports & 2003 IRS Form 990), 51 (2001-2005 P&Ls), & 86 (2005 audit report draft).

The Press donates books and related services to schools in substantial numbers and with substantial values annually under its “*Books for Schools*” program. The Press began that program in 2001. Exhibit 82. The program is growing steadily. *See*, Ex. 82 & 83. Relator has concentrated its efforts to implement its (free) *Books for Schools* program in Minneapolis and St. Paul (Exhibit 82), where poverty and special challenges associated with large minority and immigrant populations are as pervasive as anywhere in the state. See Exhibit 91 (Minnesota Department of Education reports). Relator has also made special efforts to implement such program in schools with Native American student populations both in the metropolitan area and statewide. Exhibits 45, 81-84. Many of the Press’s books are intended and designed to interest and benefit minority people of all ages, particularly African-Americans, Hispanics, & Native Americans, through an appreciation of their heritage in Minnesota. E.g., Ex. 8 (*Seth Eastman, A Portfolio of North American Indians*), 10 (*Painting the Dakota*), 12 (*Dahcotah—or Life and Legends of the Sioux*), 20 (*The Good Path*), 36 (*Ojibwe*), 43 (*Overcoming—The Autobiography of W. Harry Davis*) & 24 (*Changemaker—W. Harry Davis*). A book about Minnesota’s Hispanic/Latino population was in process at the time of trial. *See* Ex. 34.

The Press, not donors of funds to the Press, itself initiates and guides those efforts to channel the Press’s *Books for Schools* charitable donations to schools with high minority populations and low test scores. Tr. 220 and generally. The only restriction on which school or library receives those donations is that the Press be able to obtain the donations to cover the cost of the books, not including overhead, though the Press has donated substantial numbers of books without corresponding donations to cover such cost. *See* Ex. 56 & 57.

ARGUMENT

Summary Introduction

This case is about the form of the North Star Research test, as it was applied by the Tax Court, over the substance of the books produced by the Press. As relator argued below, this case is about the books, and the books speak for themselves. This case cannot be decided justly without looking inside their covers. The Tax Court's decision says nothing about the contents of any of the books. Rather, it is intent on the manner in which the books are financed and especially whether any instances, however isolated, suggest a commercial element or personal selfish motive in relator's non-profit business and its donors. The grounds for any reasonable doubts in that regard in the record are too unsubstantial to warrant consideration. The focus should be on relator's normal manner of doing business, as shown by the preponderance of the evidence, which is fully described in the testimony of its publisher Patricia McDonald, formerly Johnston, (Tr. 23 *et seq.*) and its chief financial officer Chuck Johnston (Tr. 432 *et seq.*) and documented in three bankers boxes of relator's exhibits. See, Supplemental Record pp. 171-173 (exhibit list). The primary question should be what do they accomplish with the hundreds of thousands of dollars given to the Press every year by people, foundations and others who have nothing to gain and who gain nothing but, perhaps, their names on the copyright page of the book they finance or a letter to the school benefited by their *Books for Schools* donation to the Press.

In the interest of brevity and economy here, relator's Supplemental Record includes all of the briefs filed by both parties below except as to costs (Supp. R. 1-147), the transcript of the continued hearing on relator's motion for rehearing on September 15, 2006 (Supp. R. 148), and a detailed list of Relator's trial exhibits (Supp. R. 171-73). Those briefs include the pretrial briefs filed by both parties (Supp. R. pp. 1& 15), their post-trial briefs (Supp. R. pp. 23, 38, 58, & 70), the brief filed by relator (Supp. R. 74) in support of its more extensive motion for rehearing

(Appendix p. 40), the reply brief filed by respondent before the initial hearing on August 18, 2006 (Supp. R. p. 76), the annotated Findings of Facts, Conclusions of Law and Order for Judgment with citations to the record filed by respondent after that initial hearing (Supp. R. 79), the reply brief filed by relator contesting many such citations (Supp. p. 108), the supplemental brief filed by relator after that hearing (Supp. R. p. 123), and the transcript of the hearing (Supp. R. p. 148).

Relator incorporates herein by reference its briefs in that Supplemental Record. Those briefs focus mostly on the facts in relation to the North Star Research factors. Many facts in the Tax Court's findings and amended findings not directly relevant to the three disputed North Star Research factors discussed *infra* are disputed by relator in those briefs. Relator urges the Court to review those briefs and consider the lack or paucity of support for those findings also, because they give a distorted impression of the Press that can color facts relating to North Star Research factors two, three and five . This Court can also perhaps gain a better sense of the improper burden of proof imposed on relator by the Tax Court.

Discussion

“Charity”--A gift for the benefit of an indefinite number of persons by bringing their hearts under the influence of education

The term “charity” as defined by this Court fits the Press and its books perfectly:

[A] gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons “by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.”¹ [Emphasis added].

¹ In re Petition of Junior Achievement of Greater Minneapolis, Inc. v. State, 135 N.W.2d 881, 885 (Minn. 1965) (footnotes omitted).

The phrase “bringing their hearts under the influence of education” bears further examination. The word “education” does not refer to schools charged with education of such persons; that is covered by Section 272.02, subdivisions 3 (public schoolhouses) and 5 (education institutions). The phrase does not say “educate”; it says “bringing ... under the influence of education.” It does not say bringing the “persons” or their minds under such influence; it says “bringing their hearts.” The word “hearts” implies affection (esp. love) and emotion rather than reasoning. The word “bringing” coupled with “under the influence” may imply compelling persuasion, force, or pressure.

Surely joining the first of the “three R’s” with history, geography, fiction (English literature), architecture, art, public figures, civil rights, economics, business, agriculture, horticulture, and government qualify Press books for the “education” part of that phrase. Just as surely, Press books that link those topics with people and places to which those persons can relate (e.g. same ethnicity, same city, and same state), and impressive landmarks such as buildings and rivers that they can see, are capable of generating interest, enthusiasm, inspiration and affection in persons--especially young persons--who otherwise lack sufficient motivation to read and learn. Positive responses from school administrators and teachers attest to just such positive results from Press books for their students. Ex. 81 & 83. The extraordinarily fine quality, wonderful illustrations, and excellent writing and editing in Press books surely help influence such students in the desired manner.

Such books must exist in order to be read and have such positive influences. Hence the first and foremost charity performed by the Press is to bring its books into existence. Much of the money donated to the Press is solicited and spent to accomplish that feat, as recited at the

beginning of most Press books (eg. Supp. R. pp. 174-184) and as shown by Exhibits 80 and 71-75. That “charity” and distribution of those books over time by sales at prices below the costs of production of the books stands independently of the donations of those books by the Press in its *Books for Schools* program. Thus, even if respondent’s attacks on that program as a clever sales scheme were believed, the charity of the Press in creating all of its books and making them available to the public would stand and would suffice for the purposes of this case. The record includes detailed financial breakdowns that could segregate any tainted donations of that sort. *See*, Ex. List in Supp. R. pp. 171-173. In fact, there are none, so there is no tracing problem as in *Croixdale*.

The *Books for Schools* program clearly is not a sales scheme designed to fool either this court or the Internal Revenue Service. The fact that one or two benefactors think they are buying those books or that a document occasionally says so does not refute the fact that those transactions are designed and conducted as donations of funds to the Press by benefactors who enable the Press to donate books to schools.

The phrase “otherwise lessening the burdens of government” in that general definition of “charity” is discussed infra in relation to *North Star* factor 5.

Moving beyond that threshold issue whether the Press’s activities qualify as charity, the evidence at trial demonstrated that the Press satisfies the six factors considered by the Minnesota Supreme Court and the Minnesota Tax Court in determining whether an organization’s activities fall within the ambit of the purely public charity exemption. This brief will discuss only the three factors that the court said relator does not satisfy.

**Factor Two: Whether the entity involved is supported by
donations and gifts in whole or in part.**

No specific amount or percentage of donations is required to satisfy Factor Two; i.e., no bright-line test determines the outcome.²

Petitioner's financial statements and tax returns discussed *supra* and included in evidence easily yield the firm conclusion that without the large fraction of its revenue annually donated by the public, the Press would collapse. Specifically, without donations to defray the costs of publishing its books, which invariably exceed the revenues from sales of those books, no books would be written or published. Likewise, without donations by benefactors to defray the costs of most of the books distributed free in the *Books for Schools* program, the books would not go to those schools nor be read by their students. Testimony of Patricia McDonald and Charles Johnston generally.

Petitioner is an entity supported by donations.

The Tax Court's analysis of factor two, resulting in a negative conclusion has several elements. First, the significant support of W. Duncan MacMillan—now deceased—and his family is cited as a negative repeatedly. Slip. op. at 6 (Finding 12), 8-9, 12, 18-19, etc.). Yet nothing in the record other than the history of his family published in 1998 (Ex. 31) shows personal benefit or undue influence by Mr. MacMillan or his family. The most casual review of the other books in evidence or described in the Press's catalog (Ex. 5) attests to the contrary. Nothing but suspicion and innuendo underlie that element. The court elevates a concern that the IRS requirement of 33% "public support" to "jeopardized" federal tax exemption (slip. op. at 18), whereas the Press was well over that problem area and working hard to increase outside donations for that and other reasons. Tr. 555, 582, 587, 704 & 705. It was never in jeopardy.

The court's reference to "fulfillment of a philanthropic family value" as being inconsistent with "altruistic supporters" and "true donations," in a clear reference to Duncan

² See Allina Medical Clinics v. County of Meeker, File No. C0-02-256 et al. (Minn. Tax Ct. Feb 18, 2005).

MacMillan's family reveals a troubling bias that goes to relator's request for a new trial. Philanthropy is a good thing, serving to advance the "purpose of exemption" as recently recognized by this Court in *Croixdale*. Slip. op. at 7. Also, as this Court noted there, good intentions—"a worthwhile objective"—alone is not enough. The books produced in large measure by the nurturing generosity of the MacMillan family as the Press and its *Books for Schools* program mature should be examined in that regard. Those are results, not good intentions. Finally, with a relatively new organization and particularly a very new charitable program, the Court should consider "both current and future activities...." *Croixdale*, slip. op. at 12.

Second, the Tax Court denigrates the donations that the Press receives to finance initial production of many of its books. The court cites for "example" four anomalous book projects, two of which are not in evidence, ignoring testimony as to the normal process of obtaining funding for a book project (Tr. at 107, 108, 113, 114, 315). Slip. op. at 17 ("donors ... motivated to 'give' by their desire ... to fund a particular project in which they have a personal interest."), 20-21 ("essentially fees paid to Petitioner by a third party for costs associated with publishing a particular book"). That characterization is probably correct as to the Brown University book, which is not in evidence. It was an unusual and small, \$20,000 project on which Ms. McDonald hoped to make \$9,000 profit for the Press. Tr. 536, 537, 624, 710-11, 713-14, 717. That "donation" can easily be deducted from the other donations received for other books, though it may be noted that Brown University would itself be tax exempt if located in Minnesota under Minnesota Statutes § 272.02. Likewise, the Presbyterian Homes book and the \$34,000 (Tr. at 731) that it paid could be deducted, though Presbyterian Homes is comprised of many non-profit corporations with a substantial presence in Minnesota, doing work that could be

characterized as charitable. *See*, Supp. R. p. 122. It is not an unworthy subject for a Press book. Again, the extensive financial records in evidence would permit that donation to be deducted, if indeed it was treated as a donation. The *Ol Man River* book about Capt. Bill Boles and the history of boats on the Mississippi, including his Paddleford book that mimics historic riverboats may likewise fall into such a “special interest” (slip. op. at) category; if so the revenue from that book could be deducted from donations if it is included. However, consideration should be given to the list of donors who contributed historic “images” for use in the book (Supp. R. p. 184) and the living history that is written in the book. (Ex. 15). It is a book that preserves the public’s appreciation of the heritage of Minnesota associated with the Mississippi, as do Exhibits 30 and 78.

The Tax Court also cites the Press book, *Pride of the Inland Seas*, the illustrated history of the Port of Duluth-Superior (Ex. 40) as an example of “other donors often cover the costs to publish a particular project.” Slip. op. at 6 (Finding 13) & 21. The multiple financial supporters for that project are listed on the copyright page, including the Duluth Seaway Port Authority, which is a governmental subdivision of the state pursuant to Minn. Stat. § 469.049. The fact that there was a contract requiring the Port Authority to arrange donations is simply a “best management practice” as this Court described in Croixdale (slip. op. at 9-10); the foolish practice would be to proceed with a book project with no commitments for financing. True, the Port Authority and the other supporters wanted the book published, but to denigrate their motives as not “disinterested” ignores the historical and public value in the book itself. The Tax Court suspects an untoward commercial motive that the book itself belies. It does a disservice to the Port Authority as a part of Minnesota government.

The Minneapolis Grain Exchange book, mentioned in the same vein (slip. op. at 11), will not be entirely about itself—a nonprofit corporation formed in 1881 (Supp. R. at 185)—and is not a self-serving commercial tool for promotion. See, Ex. 58, 14th–22nd pages, where the book is outlined. The MGEX financial commitment in writing is simply a best management practice, as with the Duluth Port Authority book. The contract for \$132,000 does not include the costs of research and writing the book. Mr. McDonald is seeking the donations for those costs. Tr. 745.

The Tax Court cites a payment of \$12,500 from Ralph Rapson for republication of the book about his modern architecture work (Ex. 19). (Slip. op. at 11). Significantly, there were many donors who supported the initial publication, as listed on the copyright page. Supp. R. p. 176. Regardless whether that payment was treated as a donation or a purchase, it is a small amount.

The Tax Court's inclusion of *Banking in the Great Northern Territory* (Ex. 18) in that group of “special interest” books is clearly erroneous. At least two dozen individuals and the two major—and competing—banks in Minnesota contributed to the Press for production of that book. Ex. 56 p. 6 & Ex. 57 p. 5; see Supp. R. 175; Tr. 108. If it had been one bank or the other, such that the donor could use the book to promote itself, that donation would be suspect. The same is not so where both banks have competed and the histories of both are retold in the book. No such basis for suspicion, to say anything of credible evidence, disqualifies the donations of those individuals. Moreover, the roles that two banking giants played in making capital available for the growth and prosperity of this state is part of the important heritage of Minnesota, especially in recovering from the bank failures of the Great Depression.

Of the books cited by the Tax Court in this regard, only *Banking in the Great Northern Territory* is at all probative as to the way the Press “normally” obtains funds to produce its

books. Tr. 108. That is the real question, not whether there are a few exceptions to a rule followed in dozens of other cases. More importantly, it does not disqualify all donations of that character, and the record permits any necessary subtractions.

The third element relied on by the Tax Court, which it also cites as to restrictions under factor five, is designation of recipient schools by donors to the *Books for Schools* program. Slip op. at 3 & 5-6 (findings 8 & 13), 19-20. As below, relator quarrels with how often a donor truly does so (slip. op. at 5-6). Chuck Johnston testified that it has not made any difference in the program and that the seminal idea for where the donations should go usually comes from the Press, not the donors (Tr. 393 & 220). A more important consideration should be how specific the designation is. If the books are go to a classroom where the donor has a child or grandchild, that may be significant; going to the same school is less significant in terms of show a lack of disinterested motives. The record is devoid of any such examples. When Ms. McDonald testified that donors sometimes do designate the recipient schools, she went on and gave examples where donors variously designated all schools in Carlton County, Minneapolis and Western suburbs, St. Paul schools, St. Croix Valley schools, St. Cloud schools, and the like. Tr. 116-220; *accord*, Tr. 315 & 505 (31 schools with Indian students), 365 (all Minnesota public schools), 369 Minneapolis schools, 383 (St. Paul elementary schools classrooms), etc. The most specific designations in the record are where a foundation designated Afton Lakeland elementary school at the suggestion of Patricia McDonald (Tr. 367) and Western Bank designated St. Anthony Park Elementary School. Foundations and banks do not have children or grandchildren. More importantly, all of the schools designated to receive *Books for Schools* donations in the record would qualify for tax deductible donations directly under I.R.C. § 170(b)(1)(A)(ii). There is simply no invidious discrimination in any such designation and no

sign of a lack of disinterested generosity that should disqualify such donations. The fact that donors can designate book recipients is not the same as doing so (Tr. 236-237).

The fourth element relied on by the Tax Court is the reference to book donations as purchases rather than donations, never by the Press itself, twice by a single foundation—Vedeen Foundation—and once on a check stub from AIA-Minnesota. Slip. op. at 18 & 20. *See* Tr. 371, 372, 419. That is not reasonably credible evidence on which to base a finding that donations to the *Books for Schools* program are really purchases. The emphasis placed on those very isolated instances by the Tax Court fails to consider the differences between a typical book purchase and the donations to the Press's program. A typical buyer will approach a seller, buy a book for herself or his family, take it with her or have it delivered, read it or see someone read it. Here, a Press representative approaches a donor with a proposal that it donate funds so that multiple books previously unknown to the donor can be produced and shipped by the Press agent to schools designated by the Press. The donor never sees those books, may never visit the schools, and may have no contact with the teachers and students who will use them except perhaps a thank you letter forwarded by the Press. To understand why a donor would do that, the Court must look at the books that are in evidence.

Factor Three: Whether recipients of the charity are required to pay for the assistance in whole or in part.

Factor Three is satisfied in two ways. The first group of recipients described supra includes all current and future Minnesotans plus students everywhere of Upper Midwest regional history, because Press books focus on that history, especially Minnesota history. Those recipients benefit as a society simply from publication of those books. That kind of societal benefit is recognized by the charter granted to the Minnesota Historical Society in 1849 and the

ongoing state financial support for that Society. See Minnesota Statutes Section 138.01 and Chapter 138 generally. That kind of societal benefit is likewise recognized in the public policy supporting preservation of historical buildings, artifacts, art and records that is reflected throughout Chapter 138. That public policy is stated in Minn. Stat. Section 138.054, subd. 1:

Public policy. The legislature of the state of Minnesota hereby declares that it is an important purpose and function of state government to preserve the people's appreciation of the heritage of the state and to promote and enrich their knowledge and understanding of the government and political tradition of the state; and that there is an urgent need to further these goals by: supporting research; developing resource materials and workshops for public and nonpublic high school students, university interns, and teachers; and utilizing the unique talents and experience of the members of the legislative, executive and judicial branches of the state government. [Emphasis added.]

The emphasized language pertains directly to the societal benefit provided by the Press. That language embraces the two charitable functions that the Press performs: first, producing its books and, second, making them available to the people, especially students and teachers. The Press supplements and complements such work by the Minnesota Historical Society. Testimony of Patricia McDonald & Chuck Johnston generally. That is also significant with respect to the burdens of government discussed *infra* with respect to North Star Research Factor Five.

The recipients in that first group are not required to pay. Those who buy a Press book pay less than “cost.” As this Court noted with disapproval in *Croixdale* (slip. op. at 8-10), that factor can be satisfied by sales below market value or cost. Relator tried to satisfy both below, following the Tax Court’s words in *Croixdale*, and as to cost it succeeded, unlike the relator in *Croixdale*. The Tax Court states in Finding 11 below, “Petitioner recoups one-third of product costs from sales. The other two-thirds comes from gifts and contributions.” Slip. op. at 4. That is show clearly, book by book, in Exhibit 56, p. 3. As shown there, sales normally do not even

cover variable costs of goods sold, perforce contribute nothing to overhead. Tr. 113-114.

Specifically as to *Books for Schools* books, operations donations go to produce those. *Id.* .

Second, the schools, students, and readers who receive and read the books provided free of charge in the *Books for Schools* program, along with the curricula, training, and promotion of those books, pay nothing.

Factor Five: Whether the beneficiaries of the “charity” are restricted or unrestricted and, if restricted, whether the class of persons to whom the charity is made available is one having a reasonable relationship to the charitable objectives.

The first prong of the fifth *North Star* factor asks if the class of persons to whom the charity is restricted reasonably related to the ultimate objectives of the institution.” As to the first group of recipients of Press charity described *supra*, who benefit simply from the production of the books, there is no restriction. The Tax Court’s finding to the contrary because they must pay for those books (slip.op. at 25-26)—albeit below production cost—is not supported by evidence, because those books are available to borrow from libraries throughout the state and beyond. Tr. 148-149, 330-331, 414, 424). Obviously, a person could borrow a book from someone who bought it also.

As to the second group of recipients under the *Books for Schools* program, the only restrictions are that the recipient be a school and that Petitioner can find a benefactor to cover the cost of the donated Press books or that the Press can find the funds in general donations. Testimony of Patricia McDonald & Chuck Johnston generally. The Tax Court’s emphasis on the ability of donors to designate recipient schools is misplaced as discussed *supra*. If that is a restriction, it is perfectly consistent with the Press’s desire to place its books in schools where they can be read by students. The Tax Court’s emphasis on financial need is also misplaced, given that the state has already tried to allocate funds to equalize the public schools in that

regard. *See* Ex. 90. The Press has identified school districts where students have a need to learn better, particularly in reading , and it has directed most of its *Books for Schools* to those districts, as discussed *supra*. *See* Ex. 91.

The relationship between any such “restrictions” and the charitable and educational purposes stated in Petitioner’s Articles of Incorporation, and informed and amplified in its Mission Statement, is reasonable. Petitioner therefore satisfies the first prong of the fifth North Star factor.

As for the second prong of *North Star* factor five, relieving the burdens of government, the Tax Court’s analysis reference is made again to the public policy stated in Minnesota Statutes § 138.054, subd. 1, quoted *supra*. That is the burden that the Press helps shoulder. It is a heavy burden. The appropriation for the Minnesota Historical Society’s operations in the biennium beginning in 2005 was \$23,317,000. Minnesota Laws, 1st Special Session, Chapter 1, Art. 3, § 10. An appropriation in 2006 for capital improvements was \$5,672,000. Minnesota Laws Chapter 258, Section 1, Summary.

The Press lessens the burdens of government in multiple ways. By researching and publishing the history of Minnesota, the Press carries part of the burden shouldered at the instance and expense of the State of Minnesota through the Minnesota Historical Society and the University of Minnesota Press. Testimony of Patricia McDonald & Chuck Johnston; see Minnesota Statutes Chapter 138 generally. Petitioner is uniquely qualified to carry part of that burden, because it is not subject to the politics, institutional bias, correctness, institutional myopia, or limited resources often associated with governmental institutions and bureaucracies. Several Press books were rejected for publication by those state institutions. Testimony of Patricia McDonald & Chuck Johnston. Yet those books are manifestly worthy of publication.

Good specific examples of the Press shouldering those burdens are *Minnesota's Capitol* (Ex. 26) and *Cass Gilbert Abroad* (Ex. 27). Minnesota Statutes Sections 138.67 through 138.69 specifically assign responsibility for historic preservation of the Capitol and Cass Gilbert's papers in part to the Minnesota Historical Society. Yet the Press produced the wonderful Cass Gilbert book, and it fell to the Press to produce the Capitol book for the Centennial of that wonderful and extraordinary building.

Perhaps for different reasons, the Minnesota Historical Society declined to publish *Banking In The Great Northern Territories* (Ex. 18)(testimony of Patricia McDonald), despite the extraordinary role that Minnesota banks and bankers played in the history of this state, this region, and much of this country. Perhaps for similar reasons, *MacMillan, The American Grain Family* (Ex. 31) was rejected by MHS and published by the Press. Testimony of Patricia McDonald.

The *Books for Schools* program lessens the government burden of providing books for schools and libraries by providing suitable books for schools and libraries. The burden shouldered by the Press in this respect is significant both in quantity and quality. As to quantity, from 2001 through 2005 Petitioner donated 29,361 books and videos with a value of \$553,000. Testimony of Patricia McDonald & Chuck Johnston; See Exhibit 82. Further, Petitioner itself solicited and elicited the funds to underwrite those donations by it. Testimony of Patricia McDonald & Chuck Johnston.

As for quality, the Press books speak for themselves.

The Press thus satisfies both prongs of North Star Factor Five.

SECOND LEGAL ISSUE: Whether the Tax Court imposed an unduly strict burden of proof of material facts on relator, requiring not just a preponderance of the evidence but proof beyond a reasonable doubt.

Relator recognizes that the property tax exemption are strictly construed and that the petitioner has the burden of proving the facts that entitle it to exemption. That is not the same as saying that it must overcome every accusation, suspicion, or innuendo cast by the county, regardless whether supported by reasonable and credible evidence, and prove its facts beyond any doubt. That is the effect, for example, of citing a handful of book projects as lacking a disinterested donor just because there is or may be a commercial benefit, however slight or obscure. The effect is aggravated by extending the inference to all book projects, especially those following the normal pattern of the Press. Surely just because suspicion is aroused by a few projects, the taxpayer need not take extraordinary measures—affidavits perhaps—to substantiate the “disinterested” character of its donors.

Likewise as to books donated to schools, the fact that donors can designate the schools to receive books, does not destroy the disinterested status of every donor, especially since most designate, if at all, in a disinterested and generous fashion.

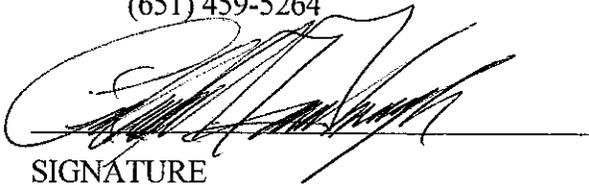
Relator introduced voluminous evidence revealing every aspect of its existence and operations. *See* Supp. R. 171-173. The salient facts are there. Donations can be recalculated if necessary. If this case fails for failure to carry a burden of proof, it is because the degree of the burden itself is suspect.

CONCLUSION

Relator seeks reversal of the Tax Court's determination that relator and its Subject property are not exempt from Minnesota property taxes and an order directing that the same shall be exempt for the years at issue.

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