

A07-0003

STATE OF MINNESOTA

SUPREME COURT

Afton Historical Society Press,

Relator,

vs.

County of Washington,

Respondent.

RESPONDENT'S BRIEF

RICHARD M. GAALSWYK

License No. #32839

7160 Lamar Avenue South

Cottage Grove, MN 55016

651-459-5264

ATTORNEY FOR RELATOR

DOUG JOHNSON

Washington County Attorney

KARI A. LINDSTROM

License No. #239586

RICHARD D. HODSDON

License No. #45664

Assistant County Attorneys

14949 62nd Street North

P.O. Box 6

Stillwater MN 55082-0006

651-430-6115

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii
Legal Issues	1
Statement of the Case	2
Statement of the Facts	3
Argument	
I. The Tax Court properly denied Relator’s property tax exemption because Relator failed to establish that “Afton Historical Society Press” is an institution of purely public charity.	8
A. Standard of Review.	8
B. The Tax Court correctly applied the <u>North Star</u> factors and properly concluded that the subject property did not meet factors two, three, and five.	9
1. Whether the subject property is supported by donations and gifts in whole or in part.	10
2. Whether the recipients of the charitable benefits are required to pay for the assistance received in whole or in part.	15
3. 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.	16
II. The Tax Court properly applied the “preponderance of the evidence” standard of proof to its findings and did not hold Relator to a greater burden of proof.	18
Conclusion	20

TABLE OF AUTHORITIES

	<u>Page</u>
<u>American Ass'n of Cereal Chemists v. County of Dakota,</u> 454 N.W.2d 912 (Minn. 1990)	8
<u>Care Institute of Roseville, Inc. v. County of Ramsey,</u> 612 N.W.2d 443 (Minn. 2000)	19
<u>Community Memorial Home at Osakis v. County of Douglas,</u> 573 N.W.2d 83 (Minn. 1997)	8, 16
<u>Croixdale v. County of Washington,</u> -- N.W.2d --, 2007 WL 177818 (Minn.)	1, 19
<u>ILHC of Eagan, LLC v. County of Dakota,</u> 693 N.W.2d 412 (Minn. 2005)	1, 19
<u>Junior Achievement of Greater Minneapolis, Inc. v. State,</u> 271 Minn. 385, 135 N.W.2d 881 (1965)	16, 19
<u>North Star Research Institute v. County of Hennepin,</u> 306 Minn. 1, 236 N.W.2d 754 (1975)	1, 2, 8, 9, 10, 15, 16, 19
<u>Questar Data Sys., Inc. v. Commissioner of Revenue,</u> 549 N.W.2d 925 (Minn. 1996)	8
<u>SHARE v. Commissioner of Revenue,</u> 363 N.W.2d 47 (Minn. 1985)	9
<u>Skyline Preservation Foundation v. County of Polk,</u> 621 N.W.2d 727 (Minn. 2001)	10, 15
<u>World Plan Executive Council – US v. County of Ramsey,</u> 560 N.W.2d 87 (Minn. 1997)	1, 18-19

Other Authorities

Minn. Stat. 271.10, subd. 1 8

Minn.Stat. §272.02, subd. 7 1, 2

LEGAL ISSUES

1. Whether the Tax Court properly denied Relator's property tax exemption as an institution of purely public charity for property taxes payable in 2004, 2005, and 2006?

The Tax Court denied Relator's property tax exemption.

Minn. Stat. §272.02, subd. 7

Croixdale v. County of Washington, -- N.W.2d --, 2007 WL 177818 (Minn.)

North Star Research Institute v. County of Hennepin,

306 Minn. 1, 236 N.W.2d 754 (1975)

2. Whether the Tax Court properly applied the "preponderance of the evidence" standard to Relator's evidence?

The Tax Court implicitly ruled in the affirmative.

World Plan Executive Council – US v. County of Ramsey,

560 N.W.2d 87 (Minn. 1997)

ILHC of Eagan, LLC v. County of Dakota, 693 N.W.2d 412 (Minn. 2005)

STATEMENT OF THE CASE

The sole issue before this Court is whether sufficient evidence exists to support the Tax Court's ruling which denies the property tax exemption to Relator as an institution of purely public charity. Relator brought an action in Tax Court to challenge Washington County's assessment of property taxes payable in the years 2004, 2005 and 2006, claiming that Relator should qualify for an exemption as an institution of purely public charity pursuant to Minn.Stat. §272.02, subd. 7. Following trial, the Tax Court denied the exemption finding specifically that Relator failed to carry its burden to establish its claimed status under the North Star factors two, three and five.

Relator sought an Order amending the Tax Court's factual findings and Order to find in Relator's favor. Relator also sought *de novo* review of the entire trial transcript and exhibits by a different Tax Court judge, alleging "bias" by Judge Ramstad in the application of the burden of proof based upon Relator's disagreement with the Findings and Order. *Petitioner's (Relator's) Reply Memorandum in Support of Motion for Amended Additional Findings, Amended Judgment and a New Trial, Relator Supplemental Record, p. 109.* After a motion hearing, the Tax Court issued an Order which amended two factual findings, to remove superfluous but not substantive language, and removed the term "sham" donations in its supporting memorandum, as the term "sham", was particularly offensive to Relator. The Tax Court denied Relator's additional motions ruling their proposed findings of fact and order were without evidentiary basis. Relator seeks review of that decision.

STATEMENT OF THE FACTS

The trial evidence established that the Afton Historical Society Press, hereinafter “Relator”, is a publishing house that over approximately the twelve years of its existence has published numerous books with the emphasis on nonfiction works involving matters of state and regional interest. It was founded in 1993 by its current publisher, Patricia McDonald, nee Johnston. (T. 24) From a financial standpoint, since its inception Relator has been what could be best described as a special interest project of the Duncan McMillan family. (T. 77, 222) That family is a wealthy family and heirs to the Cargill grain fortune. (T. 52, 86, 264, 712, 720, Ex. 55) Patricia McDonald, previously a free lance writer and publisher of Relator, first became professionally involved and acquainted with Mr. McMillan when she assisted in the writing and publication of a book that was his personal family history. (T. 24, 52, 85) This involvement continued as Mr. McMillan, his spouse and his adult children continued to support Relator over a several year period, often with yearly gifts or donations of several hundred thousand dollars. (T. 68, 223, 228, 542, 543, 547, 549, 555, 595, 634, 644, Ex. 49) In 2003 and 2004 that source provided over one-third of the total claimed donations. (Ex. 50). Indeed, there was such a close and nearly exclusive sponsorship between the McMillan family and Relator that on occasion there has been concern about Relator’s ability to maintain its status under Internal Revenue Service guidelines as a 501(C)(3) nonprofit corporation. (T. 581, 582, 587, 704, Exhibit 55) Because the McMillan family is such a main and primary contributor to Relator, even the Internal Revenue Service has expressed concern

about whether Relator could meet its guidelines as a nonprofit corporation. (T. 582, 591, 705, 719, 720, Ex. 56) Over the ensuing years, an effort has been made to reduce the McMillan family fortune as a primary funding source and the revenue stream for Relator has changed to an increase in sales and payments for publications, as well as monies provided by other third parties, including individuals and various foundations. (T. 108, 446, 450, 543, 571, 581, 593, 705)

From an operational standpoint, Relator has largely been the ongoing project of Patricia McDonald and her family. (T. 24, 36) Ms. McDonald has an extensive history of writing and publishing and has self-published a number of books over a twenty to thirty year period. (T. 24) Relator was established and operated with heavy reliance in its initial years in the early 1990's on the McMillan family and a variety of Cargill businesses. (T. 25) Even as of the date of trial, finances, mortgages, and compensation packages for employees remained heavily influenced by McMillan and Cargill operations. (T. 27, 28, 223, 239, 438, 439, 458, 550, 558, 574, 712, Ex. 2, 50)

In addition to Ms. McDonald acting as publisher, several of the primary staff and employees of the organization are members of her family. Her son, Charles, is the chief operating officer and is employed and compensated full time in that capacity. (T. 156, 224) Ms. McDonald's daughter is also employed and compensated by the organization for the production of publications. (T.46, 224) The organization has one full time staff member who is not biologically related to Ms. McDonald, as well as a part time bookkeeper.

The property that is the subject of this proceeding is located in the City of Afton in Washington County and is owned by Relator. (T. 26, Ex. 2) Relator previously rented a portion of the facility from its prior owner. (T. 28) In December, 1999 it obtained a mortgage and purchased the entire parcel. (T. 28) Other tenants who had occupied the space were evicted and the property is now fully owned and occupied by Relator. (T. 29, 31) The property is a converted bank. (T. 29) It has office, conference facilities and layout rooms for the press. (T. 33, 201, Ex. 3) The actual printing of the books and publications does not occur on the premises. (T. 46) Most of that activity occurs overseas, such as in China. (T. 46, 202, 267, 466) The facility also has an area that is used for receptions and book promotions, as well as a limited amount of storage area for books published by Relator. (T. 33, 34)

Although Relator is named the Afton Historical Society Press, it has no affiliation with the Afton Historical Society. (T.232) It is not affiliated with any other government agency or entity and is completely separate and independent from any such organization of a charitable or educational nature. (T. 233)

In terms of revenue Relator has two primary funding streams. A major funding stream is wholesale and retail sales of its publications and books. (T. 95, Ex. 62) Such sales include direct sales through its annual catalog, the internet and a small amount of direct retail sales from its offices. (T. 38, 96, 240, Ex. 5; A) Relator also engages in extensive sales of books to resellers, including giant retailers like Barnes & Noble and Amazon.com. (T. 95, 197, 242, 706, 739, Ex. 62, 64) Such books are sold to those entities at a reduced price, just like any other wholesale business. (T. 282, 300) Relator

has a formal and commercial publishing industry standardized system for distribution to book retailers and other sellers. (T. 95, 197, 298, 299, 344, Ex. 62) It engages in standard publishing industry promotional practices such as book signings, author events and providing book reviewers and others free copies of its publications. (T. 97, 98, 100, 197, 260, 262, 297, 302, 334, 723, Ex. 28, 62, 70, 89, B, C, D, E) Books are sold to some entities, such as teachers and libraries at a discount, which is consistent with commercial publishing practices. (T. 331, Ex. 5) Books are also sold in large volume purchases and on a pre-publication basis, such as to the Fond du Lac Band and Grand Portage Ojibwe Bands and the University of Minnesota. (T. 448, 449, 697, 698, 700, 705, 706, Ex. MM) It also issues press and public relations materials, has authors promote and sometimes purchase their own books and has submitted work to other promotional outlets, such as the Oprah Book Club. (T. 56, 99, 197, 260, 318, 319, Ex. 7, 61, H, I) The Press has a marketing plan for each of its publications. (T. 259, 317, Ex. A, G)

The other primary revenue stream claimed by Relator is what it describes as donations or contributions from third parties, particularly foundations and other non-profit organizations. (T. 89) Relator asserts these “donations” are of two primary types. The first of those types are donations for general operating activities. Although claimed as general operating donations, as discussed in factor four below, many of these “donations” are in fact fees paid for service, such as the publication of a specific book. (T. 710, Ex. 52)

The second general type of claimed donations are for a program that Relator instituted a few years ago known as the “Books for School Program.” (T. 112, 494) The

taxpayer claims that these funds are “contributed to it.” As a result of those “contributions,” it in turn “contributes” books to third parties, particularly schools around the State of Minnesota. (T. 495) The individual or foundation that makes those contributions is able to designate specifically which school or entity receives the resulting books. (Ex. 5) The books are claimed in terms of value of the donation to the schools at full retail price, just as would be the retail price for a purchaser. (Ex. 46) Each of the books that are published has the retail price prominently displayed on the back of its dust jacket. It is also listed on the internet and is included in a price catalog. (Ex. 5)

Relator contends that these “donations” to schools are strong evidence of and a primary source of its claim that it acts as an institution of purely public charity. Although not as fully developed, Relator in testimony also claimed that by producing these various books that celebrate Minnesota culture and heritage, without regard to how they are distributed, it should constitute an institution of purely public charity. (T. 638)

Respondent contends that Relator is essentially nothing more than any other for profit business that produces books and then sells them to book resellers or at a retail level. (T. 20) The publisher has admitted under oath that in many ways it operates “like a traditional publisher.” (T. 344) Respondent further contends that while Relator has come up with a very clever marketing system and niche for its publications, it is a fiction to describe the materials provided to the schools as donations from Relator. (T. 20, 384, Ex. X, Z) They are, in fact, nothing more than merchandise purchased by a third party and delivered to a designated recipient. (T. 21)

ARGUMENT

I. THE TAX COURT PROPERLY DENIED RELATOR'S PROPERTY TAX EXEMPTION BECAUSE RELATOR FAILED TO ESTABLISH THAT "AFTON HISTORICAL SOCIETY PRESS" IS AN INSTITUTION OF PURELY PUBLIC CHARITY.

A. Standard of Review.

This Court's review of Tax Court decisions is limited to determining "(1) whether the tax court lack jurisdiction; (2) whether the tax court's decision was supported by the evidence or in conformity with law; or (3) whether the tax court committed an error of law." Questar Data Sys., Inc. v. Commissioner of Revenue, 549 N.W.2d 925, 927-28 (Minn. 1996)(citation omitted). See Minn. Stat. 271.10, subd. 1. "Our examination of the factors considered by the tax court must be in light of the standard of review requiring us to uphold the tax court decision where sufficient evidence exists for the tax court to reasonably reach the conclusion." American Ass'n of Cereal Chemists v. County of Dakota, 454 N.W.2d 912, 914 (Minn. 1990)(citation omitted). See also Community Memorial Home at Osakis v. County of Douglas, 573 N.W.2d 83, 86 (Minn. 1997)(assisted living facility denied property tax exemption as an institution of purely public charity).

Relator's first challenge, to the application of the North Star factors, should be reviewed to determine if the Tax Court's decision was supported by the. While Relator's brief does not address the standard of review, Relator's arguments suggest that this Court should review the factual issues *de novo* to independently determine the propriety of an exemption. Similarly, on its motion for reconsideration, Relator attempted to obtain *de*

novo review by transcript and exhibits by another Tax Court judge. *Petitioner's (Relator's) Reply Memorandum in Support of Motion for Amended Additional Findings, Amended Judgment, and a New Trial, Relator Supplemental Record, p. 109.* On the contrary, this Court's review of the evidence should be limited to determining if the evidence presented to the Tax Court allowed the Tax Court to reasonably reach the conclusion that it did. Relator's second challenge, to the standard of proof applied by the Tax Court, alleges the Tax Court failed to act in conformity with the law. Relator does not challenge the Tax Court's jurisdiction.

B. The Tax Court correctly applied the North Star factors and properly concluded that the subject property did not meet factors two, three, and five.

A review of the entire record illustrates that the Tax Court's Findings of Fact and Order are supported by more than sufficient evidence. Relator's first sentence of its appellate brief appropriately sums up the Relator's argument; "[t]his case 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." *Relator Brief, p. 7.* However, it is the law of the North Star test which must be applied, and not a vaguely argued equity claim that determines a property tax exemption. "A worthwhile objective alone does not justify classification as an institution of purely public charity" for purposes of a property tax exemption. Croixdale v. Washington County, -- N.W.2d -- , 2007 WL 177818 *3 (Minn.)(citing SHARE v. Commissioner of Revenue, 363 N.W.2d 47, 50 (Minn. 1985).

The Tax Court found Relator failed to establish its claimed exemption with respect to the following factors:

Factor Two: Whether the entity involved is support by donations and gifts in whole or in part;

Factor Three: Whether the recipients of the “charitable benefits” are required to pay for the assistance received in whole or in part; and

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 objective.

North Star Research Institute v. County of Hennepin, 306 Minn. 1, 6, 236 N.W.2d 754, 757 (1975).

1. Whether the subject property is supported by donations and gifts in whole or in part?

To meet Factor Two, the court must consider “whether a would-be charity receives an adequate percentage of its revenue from altruistic supporters.” Skyline Preservation Foundation v. County of Polk, 621 N.W.2d 727, 733 (Minn. 2001). An altruistic supporter is one who donates without benefit from the donation and without personal interest in the manner of giving nor in the specific outcome of their particular donation. In documenting its factual findings that Relator’s revenue was not based upon “altruistic supporters,” the Tax Court made three specific findings supported by trial evidence to determine that the “donations” which support Relator are not true disinterested donations.

First, the Tax Court found substantial reliance upon the MacMillan family, an interested party, for the majority of contributions, an outstanding line of credit, and the operational functions of management, payroll and health benefits. (T. 27-28, 52, 61, 68, 77, 85, 168, 222-23, 229, 231, 239, 264, 350, 438-39, 446, 458, 550-57, 644, 574, 542-43, 593, Ex. 2, 50). The role of the MacMillan family was comprehensively reviewed during trial and established the dependence of Relator's continued existence on the "philanthropy" of the MacMillan family. While "philanthropy" is a good thing, as argued by Relator, it is not truly "altruistic" as required by law.

Second, the Tax Court found that the Books-for-Schools program was used as a means to benefit or promote the purported "donor" of the books, through designation of the recipient and the use of the books by the "donor" to obtain "goodwill". *Tax Court Amended Order, p. 19 (Relator Appendix, p. 88)*. "Contributors" are normally acknowledged on the copyright page of the book. (T. 108, 109) Also, Relator may send a letter or produce a "book plate" for the recipient school to acknowledge the "donor." (T. 129, 365) At least one "donor" believed that the books were being purchased by their organization and indicated as such in the financial transaction record. (T. 371-373) Even Relator characterizes these "donations" as purchases in their accounting practices. (Ex. 58) For example, for purposes of payments of royalties to authors, no distinction is made between so-called "donated" books and those that are sold through traditional wholesale and retail methods. (T. 341) The failure to distinguish between "donations" and "sales" cannot be dismissed as semantics. The exchange of money for product is the benchmark of a classic sales transaction. While Relator characterizes the money received

for the books as a “donation”, the exhibits and testimony clearly reveal that the purported “donors” are purchasing the books that are being distributed.

Third, the Tax Court found that the “donations” received by Relator to publish books are, in fact, “fees paid to Petitioner by a third party for costs associated with publishing a particular book.” *Id.* at 21 (*Relator Appendix, p. 90*). Relator’s witness admitted that many donations have been given by donors who wished to fund a particular project, which illustrates that the “donors” are not disinterested parties and are advancing a particular project for their own motivations. (T. 107, 315, 328). The examples cited by the Tax Court speak for themselves. Brown University solicited funds to cover the cost of publishing a book by one of their faculty. Relator then sent all copies of the books to Brown and called it a “donation.”¹ (T. 536-57) Relator concedes that the Tax Court characterization of the Brown University book is “probably correct.” *Relator Brief, p. 12*. The Duluth Seaway Port Authority contracted with Relator to publish a book. Relator **refunded** part of the “donation” to the Duluth Seaway Port Authority when the “donation” exceeded the contractual obligation. *Tax Court Amended Order, p. 21*. (T. 320, 360-62, 381, Ex. 52, 75, K, V) The book, Fifty Years of Faithful Service, was completely funded and purchased by Presbyterian Homes. (T. 231, Ex. 58). The author of Ol’ Man River paid Relator \$100,000 to publish his book and the author received all 5,000 copies. Relator then contracted with the author to market the book, resulting in an

¹ Relator’s Brief states that the Brown University book is not in evidence. The book, itself, was not introduced at trial, however, the financial transactions surrounding the book were described in testimony. (T. 536-37).

estimated \$25,000 additional net income to Relator. *Tax Court Amended Order, p. 11.* (T. 743-44).

Relator lambastes the Tax Court for its description of the role of the MacMillan family, for its portrayal of the “Book-for-Schools” program and for using specific book project examples to support its ruling. Again, Relator alleges a “bias” by the Tax Court judge. *Relator Brief, p. 12.* However, as the trial record establishes, Relator simply failed to carry its burden of proof.

The Tax Court found that Relator had failed to distinguish between disinterested donations to the Books-for-Schools program, and donations which benefited the contributor.

“The record fails to establish the extent to which Petitioner receives any undesignated Books-for-Schools contributions. That is, documentation produced at trial does not distinguish between the disinterested third-party contributors to the Books-for-Schools program and other contributors benefiting in some way from their contribution.”

Tax Court Amended Order, November 2, 2006, p. 20. (Relator Appendix, p. 89).

Likewise, Relator claims that chosen book project examples are anomalies, describing those book projects as “a few exceptions.” *Relator Brief, p. 15.* However, the Tax Court specifically addressed the failure of the Relator during trial to distinguish the claimed anomalies from true disinterested donations.

“Rather, the record shows that Petitioner blurred the distinction between a disinterested donation and a purchase or satisfaction of a contractual obligation. Petitioner’s records did not distinguish between entities paying for their books by soliciting donations made payable to Petitioner and any truly disinterested donors. Under these circumstances it is not possible to determine what percent of Petitioner’s claimed donations are in fact from disinterested donors.”

Id. at 21. (Relator Appendix, p. 90). Relator failed to carry its burden by failing to present specific examples of its truly “altruistic supporters.”

In addition to the cloak of “donation” given to most financial transactions, the record is replete with evidence of Relator’s commercial sales transactions. The financial record clearly shows that even by its own definition of “sales” and “donations” the taxpayer generates several hundred dollars in sales revenue each year. (Ex. 00) Every book is printed with a retail price on the back cover. (T. 271) Relator engages in commercial business partnerships with other businesses and arranges for a division of the proceeds, much as any other commercial enterprise might do. (T. 276, 277) Along the same line, it has purchased the right to re-print books from large commercial publishing houses such as Doubleday. (T. 345, 347) Relator also sells rights to republish its books, such as its agreement with a Japanese publishing house. (T. 643, 739, 740) Relator intentionally prints differently bound versions of some books for the express purpose of being a “trade publication.” (T. 278) A trade publication is one intended to be commercially sold through retail bookstores. (T. 278) Some books are sold at an increased price by virtue of being an author signed, limited copy. (T. 347, 348) Books are sold nationally and internationally. (T. 313, 338, 738, Ex. 77) Sales exceeded three hundred thousand dollars in 2005 (Ex. 51) and were almost \$230,000 in 2004. (Ex. 42) In 2003 sales exceeded \$243,000 and in 2002 that figure exceeded \$223,000. (Ex. 49, GG, HH, MM) That figure was \$365,000 in 2001. (T. 349, 350) By any calculation,

these are very substantial and demonstrate that Relator is simply not a public charity, but a thriving commercial enterprise.

2. Whether the recipients of the charitable benefits are required to pay for the assistance received in whole or in part?

While the recipients of the Books-for-Schools program do not pay for the books they receive, neither does Relator. Relator is not the source of “the charitable benefits” described in Factor Three of the North Star test, and therefore, should not receive the benefit of being treated as a charitable benefactor. Relator distributes the books only after a third party purchases the books for the schools. (T. 115, Ex. 5) Both the production costs and distribution costs for the distributed books are funded prior to disbursement of the books. (T. 115) “This factor is intended to assess whether people will benefit from the organization’s activities to an extent greater than if the organization were merely providing a service as part of the private market.” Skyline, 621 N.W.2d at 733. In the distribution of the Books-for-Schools program, Relator’s activities are the same as a commercial publisher in the private market, because the books are purchased for distribution to schools.

In addition to determining that Relator was not the source of the “charitable benefits”, the Court found Relator did not meet the requirements of the third factor. The third factor requires a showing that benefits are provided for free or at considerably reduced costs. Id. at 733 (citations omitted). While Relator claims to recover one-third of its costs from its commercial sales, the books are not free and are not sold for

considerably less than market value. The evidence established that members of the public typically pay the retail prices printed on the back cover of the books sold by Relator. (T. 271, 277, 278, 282, 310; Ex. 5). Again, Relator has failed to carry the burden of proof by failing to introduce evidence, if any exists, that the retail prices are below market rate.

3. 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 fifth factor of the North Star test has two prongs; 1) whether the chosen beneficiaries of the charity have a reasonable relationship to the charitable objectives, and 2) whether the charity is lessening the burdens of government. North Star, 306 Minn. at 6, 236 N.W.2d at 757; Community Memorial Home at Osakis, 573 N.W.2d at 87. To determine whether a charity lessens the burden of government, the court must consider “[t]he benefit conferred upon the public and the consequent relief of the burden upon the state to care for and advance the interest of its citizens [as these] are fundamental grounds upon which exemption of charitable institutions is based.” Id. at 88 (quoting Junior Achievement of Greater Minneapolis, Inc. v. State, 271 Minn. 385, 391, 135 N.W.2d 881, 886 (1965)).

It is unclear in Relator’s brief what is meant by “the first group of recipients of Press charity described *supra*, who benefit simply from the production of the books, there is no restriction.” *Relator Brief*, p. 18. Relator may be continuing the previous assertion that the first group consists of “people throughout Minnesota, as well as students in the

Upper Midwest who receive a ‘societal benefit’ because [Relator’s] books focus upon their history.” *Amended Tax Court Order, p. 22, Relator Appendix, p. 91.* As summarily discounted by the Tax Court, there is no precedent to find Relator’s first category of recipients to satisfy factor three. Likewise, this generic “societal benefit” claim does not satisfy factor five.

The beneficiaries of Relator’s business include those who purchase books, those “donors” who purchase books for distribution to school and the schools that receive the books, and those who pay for the publication and/or distribution of books reflecting their interests or projects. As found by the Tax Court, “the class of beneficiaries includes all who are willing to pay for the books.” *Amended Tax Court Order, p. 26, Relator Appendix, p. 95.* Even those books which can be borrowed from the library have been purchased by the libraries through library distributors. (T. 148) Donating books to libraries is done on an “irregular” basis and Relator’s witness was unable to provide any evidence regarding the number of donations. (T. 149, 424) The “donor” of books to the Books-for-School program can and do often designate where the books will be distributed. (T. 237, 387, 393, Ex. CC, JJ) When Relator determines the distribution of books, it is without regard to financial need. (T. 237-38) Relator argues that the beneficiaries are unrestricted because the books can be read by those who purchase the books, or the books can be loaned to or given to others by the purchaser. However, this argument would apply to any commercial retailer or publisher of books. Just as a commercial retailer or publisher, Relator sells books to those who buy them.

Relator's assertions that it lessens the burdens of government are unsubstantiated by the evidence. While books are purchased for schools by third parties, those purchases are solicited by Relator and disbursed following payment by the third party. Relator does not advise schools of the availability of "free" books as purchasers must be found to cover the costs of the production and disbursal. (T. 243-44) While Relator chose to publish books, which were declined by the Minnesota Historical Society, based upon Relator's assessment of the merits of the books, the decision to publish books previously rejected by the State does not alleviate the State's burden, as the State would not have shouldered the burden.

Relator continues with the "equitable" assertions and arguments that Relator has a worthwhile objective and tries to do "good", and therefore, should receive the benefit of a property tax exemption. However, it is the business practices and not the personal motivations of the employees of Relator which determine whether an exemption is appropriate. The trial evidence illustrated that Relator engages in a commercial business of publishing, selling and distributing books to those who pay for the books, and that Relator failed to carry its burden of proof to establish itself as an institution of purely public charity.

II. THE TAX COURT PROPERLY APPLIED THE "PREPONDERANCE OF THE EVIDENCE" STANDARD OF PROOF TO ITS FINDINGS AND DID NOT HOLD RELATOR TO A GREATER BURDEN OF PROOF.

A review of the Tax Court's Findings of Fact, Conclusions of Law, and Order confirms that the appropriate standard of evidence, "preponderance of the evidence", was

applied to Relator's case. "All property is presumed taxable, and the burden is on the party seeking exempt status to prove entitlement to the claimed exemption." World Plan Executive Council – US v. County of Ramsey, 560 N.W.2d 87, 88-89 (Minn. 1997)(citing Junior Achievement, 271 Minn. at 387, 390, 135 N.W.2d at 883, 885. The burden is proof by preponderance of the evidence. Taxation is the presumption and statutes exempting property from taxation are to be strictly construed against exemption and in favor of taxation. ILHC of Eagan, LLC v. County of Dakota, 693 N.W.2d 412, 419 (Minn. 2005); Care Institute of Roseville, Inc. v. County of Ramsey, 612 N.W.2d 443, 447 (Minn. 2000).

Relator argues that the Tax Court must have imposed a greater burden, proof beyond a reasonable doubt, because Relator disagrees with the factual findings and ultimately, the adverse determination. Relator alleges that thorough and effective cross-examination of Relator's witnesses which revealed the flaws of Relator's factual position, with respect to each North Star factor, resulted in the wrong standard of proof being applied. This bold assertion is without supporting evidence. The Tax Court found that Respondent's trial counsel was not abusive of the witness. *Amended Tax Court Order, Nov. 2, 2006, Relator's Appendix, p. 61.* Emphasizing the numerous flaws in an opposing party's case does not raise the burden of proof for that party, but simply demonstrates the weakness of their case. Relator also alleged an improper burden of proof during the motion for Amended Findings and an Amended Order, however, after the Tax Court "carefully reviewed the entire record, including over 140 documents introduced at trial and the transcript from four days of testimony," the Tax Court affirmed

its ruling. *Id.*, Relator's Appendix p. 69. The assertion that the Tax Court applied the wrong burden of proof is lacking evidence and is without merit.

CONCLUSION

Based upon the above-argument, Respondent respectfully requests that this Court affirm the Tax Court's ruling denying Relator's property tax exemption as an institution of purely public charity.

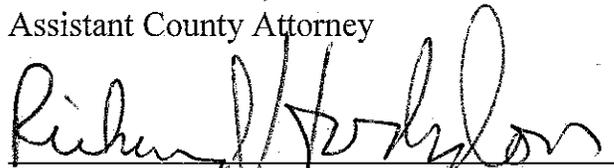
Dated: 3-5-07

Respectfully submitted,

DOUG JOHNSON, COUNTY ATTORNEY
WASHINGTON COUNTY, MINNESOTA



Kari A. Lindstrom, #239586
Assistant County Attorney



Richard D. Hodsdon, #45664
Assistant County Attorney
Washington County Government Center
14949 62nd Street North
P.O. Box 6
Stillwater, Minnesota 55082
651/430-6116