STATE OF MICHIGAN

COURT OF APPEALS

NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED
June 6, 1997

No. 193907
MTT
LC No. 121132

Before: Holbrook, Jr., P.J., and MacKenzie and Murphy, JJ.

PER CURIAM.

Petitioner appeals as of right from the order of the Michigan Tax Tribunal dismissing petitioner's claim to an exemption from sales and use taxes for the years 1988 through 1993 as a charitable or benevolent institution pursuant to MCL 205.54a; MSA 7.525(a) and MCL 205.94(i); MSA 7.555(4)(i). We affirm.

Petitioner is a non-profit corporation that provides a voluntary certification program for teachers. Petitioner applied to respondent for an exemption from sales and use taxes as a charitable or benevolent institution and respondent denied that request. Petitioner appealed that ruling to the Michigan Tax Tribunal. The tribunal also found that petitioner did not qualify under the exemption statutes. Petitioner now appeals from that ruling.

Petitioner's sole assertion on appeal is that the tax tribunal erred in holding that petitioner did not qualify for an exemption from sales and use taxes. We disagree. As in the present case where fraud is not alleged, a decision of the tax tribunal is reviewed by this Court to determine whether the tribunal erred in applying the law or adopted a wrong legal principle. *Comcast v Sterling Heights*, 218 Mich App 8, 11; 553 NW2d 627 (1996); *Maxitrol Co v Treasury Dep't*, 217 Mich App 366, 370; 551 NW2d 471 (1996). Factual findings of the tribunal are final, so long as they are supported by competent, material, and substantial evidence on the whole record. *Comcast*, *supra*, 11.

Prior to a 1993 amendment, § 4a of Michigan's General Sales Tax Act, MCL 205.51 *et seq.*; MSA 7.521 *et seq.*, provided an exemption for the sale of tangible personal property:

> (a) Not for resale, and when not operated for profit, to a school, hospital, home for the care and maintenance of children or aged persons, or other health, welfare, educational, cultural arts, charitable, or benevolent institution or agency, operated by an entity of government, a regularly organized church, religious, or fraternal organization, a veteran's organization, or a corporation incorporated under the laws of the state, if the income or benefit from the operation does not inure, in whole or in part, to an individual or private shareholder, directly or indirectly, and if the activities of the entity or agency are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, and benefits of its members or any restricted group. [MCL 205.54a; MSA 7.525(a).]

In addition, prior to a 1993 amendment, § 4 of Michigan's Use Tax Act, MCL 205.91 *et seq.*; MSA 7.555(1) *et seq.*, provided a comparable exemption provision.

Therefore, the state provided an exemption from sales and use taxes for entities qualifying under these provisions. It is undisputed that the 1993 amendments to these statutes provide petitioner an exemption from sales and use tax from 1994 forward. The only issue on appeal is whether petitioner qualified for exemption under the pre-amendment language for the years 1988 through 1993.

Petitioner asserts that it is entitled to an exemption from sales and use taxes under these provisions as a charitable or benevolent institution. The statutory provisions provide for such exemption if an entity is (1) a non-profit institution; (2) a charitable or benevolent institution; (3) incorporated under the laws of this state; (4) one whose income or benefit of its operation does not inure, in whole or in part, to an individual or private shareholder either directly or indirectly; and (5) one whose activities are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, and benefits of its members or a restricted group. There is no dispute that petitioner is a non-profit institution whose income or benefit does not inure to an individual or private shareholder. In addition, the parties do not dispute that the requirement of incorporation in Michigan has been found unconstitutional. *American Youth Foundation v Benona Twp*, 37 Mich App 722, 724; 195 NW2d 304 (1972) (citing *WHYY* v *Glassboro*, 393 US 117; 89 S Ct 286; 21 L Ed 2d 242 (1968)). Accordingly, the only issue to resolve is whether petitioner is a benevolent or charitable institution whose activities are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, and benefits of its members or a restricted group.

Generally, tax exemption provisions must be strictly construed in favor of the taxing authority. *Holland Home* v *Grand Rapids*, 219 Mich App 384, 396; 557 NW2d 118 (1996). But, this general rule does not permit a strained construction of an exemption statute adverse to the intent of the Legislature. *Id*. Contrary to respondent's assertions, the burden of proof for showing that a party is within a tax exempt class is by the preponderance of the evidence. *Id*., 394-396. Although, it is true that a petitioner bears the burden of establishing beyond a reasonable doubt that a class of exemption was intended by the Legislature. *Id*., 393. However, in this case there is no dispute that the Legislature intended an exemption for entities which qualify under MCL 205.54a(a); MSA 7.525(a) and MCL 205.94(i); MSA 7.555(4)(i).

We have held that a charity is defined as follows:

> [A] gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or 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. [*Holland Home, supra*, 219 Mich App 399 (citations omitted).]

While recognizing the applicability of this definition, petitioner does not specifically state what its "gift" is. Petitioner states that its purpose is to advance student learning by improving the quality of teaching and that its objective is to improve the educational system. Petitioner seeks to achieve these goals through a voluntary training and certification program for teachers. This program is open to any teacher who pays the enrollment fee.

We conclude that petitioner's activities are not a charity because there is no gift for the benefit of an indefinite number of persons. The most immediate and identifiable benefit of the certification program is to the individual teacher who has paid the enrollment fee and received the training and certification petitioner offers. Petitioner admits as much in its literature directed at teachers wherein it states that certification is akin to "a badge of merit, declaring that a teacher is highly accomplished." Petitioner further states in its literature that the certification is the "highest honor" the teaching profession bestows and that teachers so certified may expect rewards in the form of "financial benefits, recognition and new roles in the classroom." While it is true that petitioner's activities are undertaken and intended to ultimately benefit the educational system, the most immediate and quantifiable benefit is to the individual teacher. The benefit to the educational system is, at best, indirect. Hence, while petitioner's activities are laudable, they are not consistent with the definition of a charity.

For the same reasons, we find that petitioner's activities do not satisfy the statutory requirement that they be carried on exclusively for the benefit of the public at large and not limited to the advantage, interests, and benefits of its members or a restricted group. As stated above, the primary and immediate benefit of petitioner's operations is to the teachers who enroll and receive certification. Petitioner markets its product, at least in part, with the suggestion to the teachers that the program will benefit them in their career and financially. This benefit is restricted to the group of teachers who participate in petitioner's program. Thus, petitioner's activities cannot be deemed to exclusively benefit the public at large. Accordingly, we conclude that the tax tribunal did not err in finding that petitioner does not qualify for an exemption under the plain language of the exemption statute.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie
/s/ William B. Murphy