

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 29, 2012

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2011AP1706

Cir. Ct. No. 2010CV11998

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

EDUCATIONAL CREDENTIAL EVALUATORS, INC.,

PLAINTIFF-APPELLANT,

V.

CITY OF MILWAUKEE,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
CHARLES F. KAHN, JR., Judge. *Affirmed.*

Before Vergeront, Sherman and Blanchard, JJ.

¶1 BLANCHARD, J. Educational Credential Evaluators, Inc., (Evaluators) appeals a circuit court order granting summary judgment in favor of the City of Milwaukee, rejecting Evaluators' claim for a personal property tax exemption. Evaluators argues that it is entitled to an exemption as an "educational

association” under WIS. STAT. § 70.11(4)(a) (2009-10).¹ We affirm the order because we conclude that the facts stipulated by the parties do not demonstrate that Evaluators is “substantially and primarily devoted to educational purposes.”

BACKGROUND

¶2 Evaluators is a non-stock, not-for-profit corporation organized under Wisconsin law, with its principal place of business in Milwaukee. According to a stipulation between the parties, Evaluators pursues five sets of “purposes.” As we discuss further below, while the parties describe these as five “purposes,” they are better described as five sets of goals and activities: evaluating educational credentials of persons educated in other countries or in non-traditional domestic programs; studying domestic and foreign educational systems; making available funds to persons and entities for use in studying educational systems; conducting seminars and workshops regarding educational systems; and assisting persons educated in other countries seeking to apply to domestic educational institutions for jobs or more education.²

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

² Stated fully, the stipulated “purposes” read as follows:

a. To evaluate the educational credentials of persons who have completed part or all of their education in other countries, or in non-traditional educational programs in the United States, in order to assist them in obtaining employment, professional licensure, further education, or other benefits for which educational achievement is a prerequisite.

b. To study, research, investigate, compile and distribute information and materials on the educational systems of other countries and of the United States, both in support of the evaluation service of [Evaluators] and for the benefit of others who provide the same or a similar service.

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¶3 Evaluators filed suit against the City seeking a judgment declaring that it is entitled to a property tax exemption as an “educational association” under WIS. STAT. § 70.11(4)(a). It also sought judgment against the City for property taxes that Evaluators paid under protest to the City that it asserts it should not have had to pay because the exemption applies. Both parties moved for summary judgment, relying on the facts in the stipulation. The circuit court granted summary judgment in favor of the City.

DISCUSSION

¶4 “We review summary judgment *de novo*, applying the same methodology as the circuit court.” *Donaldson v. Town of Spring Valley*, 2008 WI App 61, ¶5, 311 Wis.2d 223, 750 N.W.2d 506. We need not detail that methodology here. It is sufficient to state “that summary judgment is appropriate when undisputed facts show that a party is entitled to judgment as a matter of

c. To make available grants and endowments to enable individuals and organizations to study and research the educational systems of other countries and of the United States.

d. To conduct seminars and workshops on the educational systems of other countries and of the United States throughout the [United States] for college and university students and for employees of academic institutions, government agencies, professional associations, and other organizations which admit or employ persons who have completed part or all of their education in other countries or in non-traditional educational programs in the United States.

e. To assist persons who have completed part or all of their education in other countries and who are seeking further education in the United States or employment as a teacher, professor, or researcher at an academic institution in the United States.

law.” *Id.* The only issue in this case is whether the undisputed facts demonstrate that the requirements for a tax exemption under WIS. STAT. § 70.11(4)(a) are met.³

¶5 “[T]he burden of proving an entitlement to a tax exemption is on the party seeking the exemption.” *Kickers of Wisconsin, Inc. v. City of Milwaukee*, 197 Wis. 2d 675, 680, 541 N.W.2d 193 (Ct. App. 1995). The taxpayer must show that the property falls “clearly within” an exemption, and we “strictly construe[]” exemptions against the taxpayer. *Trustees of Indiana Univ. v. Town of Rhine*, 170 Wis. 2d 293, 299, 488 N.W.2d 128 (Ct. App. 1992). “[A]ny doubts are resolved in favor of taxability.” *Id.*

¶6 WISCONSIN STAT. § 70.11(4)(a) provides that property is exempt from taxation under certain conditions.⁴ As relevant to this appeal, the property

³ Because this is an issue of statutory interpretation presenting a question of law that we review de novo, our review is not hindered by the absence in the record of a transcript of the court’s bench decision upon which the court based its summary judgment order, although we would have benefitted from the circuit court’s reasoning.

⁴ WISCONSIN STAT. § 70.11(4)(a) provides in part:

Property owned and used exclusively by educational institutions offering regular courses 6 months in the year; or by churches or religious, educational or benevolent associations, or by a nonprofit entity that is operated as a facility that is licensed, certified, or registered under ch. 50, including benevolent nursing homes but not including an organization that is organized under s. 185.981 or ch. 611, 613 or 614 and that offers a health maintenance organization as defined in s. 609.01(2) or a limited service health organization as defined in s. 609.01 (3) or an organization that is issued a certificate of authority under ch. 618 and that offers a health maintenance organization or a limited service health organization and not including property owned by any nonstock, nonprofit corporation which services guaranteed student loans for others or on its own account, and also including property owned and used for housing for pastors and their ordained assistants, members of religious orders and communities, and ordained teachers, whether or not contiguous to and a part of other property owned and used by such

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must be owned and used exclusively by “educational institutions offering regular courses 6 months in the year; or by ... *educational* or benevolent *associations*.” § 70.11(4)(a) (emphasis added). Evaluators does not assert that it is an “educational institution.” Rather, Evaluators argues that the undisputed facts show that it is an “educational association.” We disagree that, based on the stipulated facts, Evaluators has shown that it falls “clearly within” the exemption as an “educational association.”

¶7 “To qualify as an educational association under WIS. STAT. § 70.11(4), [the taxpayer] must pass a two-part test.” *Milwaukee Regional Med. Ctr. v. City of Wauwatosa*, 2007 WI 101, ¶70, 304 Wis. 2d 53, 735 N.W.2d 156. “First, the organization must be a nonprofit organization substantially and primarily devoted to educational purposes.” *Id.* “If the educational function is merely incidental to nonexempt functions ..., the exemption will not be granted.” *Id.*

¶8 Applying the “substantially and primarily devoted to educational purposes” part of the test requires an evaluation of the actual activities of the taxpayer, in addition to considering the taxpayer’s stated goals. “In determining whether an organization’s primary purpose is educational, ‘its declared object cannot be controlling. What it actually does must also be scrutinized.’” *Kickers*

associations or churches, and also including property described under par. (b); or by women’s clubs; or by domestic, incorporated historical societies; or by domestic, incorporated, free public library associations; or by fraternal societies operating under the lodge system (except university, college and high school fraternities and sororities), but not exceeding 10 acres of land necessary for location and convenience of buildings while such property is not used for profit.

of Wisconsin, 197 Wis. 2d at 682 n.3 (quoting *Janesville Cmty. Day Care Ctr. v. Spoden*, 126 Wis. 2d 231, 237, 376 N.W.2d 278 (Ct. App. 1985)).

¶9 Under the second part of the test, “the organization must be devoted to ‘traditional’ educational activities.” *Milwaukee Regional Med. Ctr.*, 304 Wis. 2d 53, ¶70 (quoting *National Found. of Health, Welfare & Pension Plans, Inc. v. City of Brookfield*, 65 Wis. 2d 263, 266, 222 N.W.2d 608 (1974)). “Traditional” educational activities are not restricted to formal academic curricula, but the activities must involve “systematic instruction, either formal or informal, directed to an indefinite class of persons ... which benefits the public directly and must be the type that would ordinarily be provided by the government or that would in some way lessen the burdens of the government.” *Trustees of Indiana Univ.*, 170 Wis. 2d at 302 (citation omitted).

¶10 Before proceeding, we note a possible ambiguity in this two-part test. It is clear under the test that, if a taxpayer is primarily and substantially devoted to “traditional” education, then the taxpayer satisfies the test. However, it is not necessarily clear what the result should be if a taxpayer is (1) primarily and substantially devoted to education, (2) devoted to traditional education, but (3) not primarily and substantially devoted to traditional education. For purposes of this opinion, however, any potential ambiguity does not matter because, as we explain further below, Evaluators fails the first part of the test, because it has not pointed to evidence showing that its goals and activities, considered as a whole, are substantially and primarily devoted to educational purposes, “traditional” or otherwise, and are not “merely incidental” to non-educational functions.⁵ That is,

⁵ The City takes the position that Evaluators meets the first part of the two-part test. In other words, the City invites us to conclude that Evaluators is substantially and primarily devoted

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even assuming without deciding that all of the stipulated goals and activities that appear to have educational purposes should be deemed “traditional,” the facts stipulated by the parties do not show that Evaluators meets the first part of the test.

¶11 As we suggest above, it is apparent from the language used in the parties’ stipulation and from the parties’ arguments that what the parties have stipulated as being Evaluators’ “purposes” is a description of Evaluators’ goals and activities, that is, both what it aspires to do and also “what it actually does.” We therefore focus on the stipulation of “purposes” recited above and, to avoid confusion in terminology, refer to them in our analysis below as descriptions of goals and activities.⁶

¶12 Evaluators argues *all* of its goals and activities have “educational” purposes and, therefore, that it is substantially and primarily devoted to education, satisfying the first part of the test. However, Evaluators cites no authority supporting this view. In itself, Evaluators’ lack of citation to authority may be understandable because we have located no case law setting forth general standards for us to use in determining what is or is not “educational,” as opposed to determining what is “traditional” education for purposes of WIS. STAT. § 70.11(4)(a), nor have we located case law applying § 70.11(4)(a) to an organization that is similar to Evaluators. *Cf. Kickers of Wisconsin*, 197 Wis. 2d

to educational purposes. However, we are not bound by a party’s position on a question of law, even when that position is adverse to its interests. *See Bergmann v. McCaughtry*, 211 Wis. 2d 1, 7, 564 N.W.2d 712 (1997).

⁶ The parties’ stipulation includes not only the list of “purposes,” but also a description of “programs” that is similar in character to the description of “purposes.” The “programs” description provides some additional details regarding Evaluators’ goals and activities. However, these additional details are consistent with the description of “purposes” and do not change our analysis. We therefore do not elaborate further on the stipulated description of “programs.”

at 681-86 (*youth soccer organization* with recreational and educational components was *not* substantially and primarily devoted to an educational purpose); *Trustees of Indiana Univ.*, 170 Wis. 2d at 303-04 (*alumni association* that shared administrative operations with university and existed exclusively to advance university's interests was substantially and primarily devoted to an educational purpose); *Janesville Cmty. Day Care*, 126 Wis. 2d at 237-39 (*day care center* with a structured instructional curriculum that was used every day and administered by trained teachers was substantially and primarily devoted to an educational purpose). In other words, while the first part of the two-part test in *Milwaukee Regional Medical Center* directs us to consider whether Evaluators has established that it is “substantially and primarily devoted to educational purposes,” neither that opinion nor any other we have identified shines much light on the meaning of “educational” in this context, as opposed to the meaning of “traditional” education.

¶13 However, we are mindful of the legal proposition referenced above that courts construe tax exemptions strictly against taxpayers. *See Kickers of Wisconsin*, 197 Wis. 2d at 679-80; *cf. State v. Quintana*, 2008 WI 33, ¶32, 308 Wis. 2d 615, 748 N.W.2d 447 (stating general rule, outside property tax exemption context, that, “[w]hen the legislature does not use words in a restricted manner, the general terms should be interpreted broadly to give effect to the legislature’s intent”). Therefore, we are obligated to refrain from interpreting the exemption broadly for purposes of WIS. STAT. § 70.11(4)(a) and determine that a definition of “educational” that is broader than its common and ordinary meaning would run counter to a strict construction of the statute.

¶14 Here, the common and ordinary meaning of “educational” is readily discerned by reference to a dictionary. *See Garcia v. Mazda Motor of America*,

Inc., 2004 WI 93, ¶14, 273 Wis. 2d 612, 682 N.W.2d 365 (when term in a statute is undefined, courts may consult dictionary definitions to discern its common meaning). “Education” is defined to mean “learning.” WEBSTER’S II NEW COLLEGE DICTIONARY 359 (1995). “Educational” is defined to mean “instructive” or “[o]f or pertaining to education.” *Id.*

¶15 Whether or not we apply this dictionary definition of “educational” (and “education”), or the case-law defined standards for “traditional” education, to Evaluators’ five sets of goals and activities, we immediately see that one or more of the five sets does not have educational purposes. That is, not all of the five sets of goals and activities are “instructive” or a process of “learning,” at least not in any common or ordinary sense. Similarly, not all five sets of the described goals and activities involve “systematic instruction.” See *Trustees of Indiana Univ.*, 170 Wis. 2d at 302-03.

¶16 We need look no further than the first of Evaluators’ five sets of goals and activities to illustrate. Evaluators states that it “*evaluate[s]* the educational credentials of persons who *have completed part or all of their education* in other countries, or in non-traditional education programs in the United States, in order to assist them in obtaining employment, professional licensure, further education, or other benefits” (Emphasis added.) The goal and the activity are to evaluate, not to instruct or educate. Any education has been or will be provided by entities other than Evaluators.

¶17 We recognize that at least one of Evaluators’ five sets of goals and activities, the fourth set, may have educational purposes. In particular, “conduct[ing] seminars and workshops on educational systems ... for college and university students and for employees of academic institutions, government

agencies, professional associations, and other organizations” would appear on its face to describe an educational process.

¶18 However, even assuming that one or more of Evaluators’ five sets of goals and activities has an educational purpose, and even assuming that one or more consist of “traditional” education, at least one of the five sets does *not* meet these criteria. This is fatal to Evaluators’ arguments, because it fails to point to evidence showing what proportion of its goals and activities is represented by each of the five sets, and therefore we are not able to determine that Evaluators’ goals and activities, considered as a whole, are substantially and primarily devoted to educational purposes under the definitions for education given above, or whether the goals and activities that appear to consist of education are more than just “incidental.” See *Milwaukee Regional Med. Ctr.*, 304 Wis. 2d 53, ¶70.

¶19 Thus, it may be that Evaluators is not substantially and primarily devoted to education in that, for example, what Evaluators substantially and primarily aims to do and in fact does is to evaluate credentials. Or, in the alternative, while it appears unlikely from the stipulated descriptions, it is theoretically possible that Evaluators is substantially and primarily devoted to education in that, for example, what Evaluators substantially and primarily aims to do and in fact does is conduct seminars that would meet the “traditional” education criteria. We simply cannot tell, because the relative proportions of each set of goals and activities is unclear, and because at least one of the five sets is plainly not educational.⁷ Therefore, Evaluators has not demonstrated that it is

⁷ We note that the evaluation-related set of goals and activities is the first listed in the stipulation and that Evaluators explains in its brief-in-chief that it “came into existence” for the purpose of evaluating educational credentials. While only suggestive and certainly not dispositive in the summary judgment context, these facts in themselves give the appearance that

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“substantially and primarily” devoted to educational purposes and, as a consequence, has failed to show that it falls “clearly within” the exemption. *See Kickers of Wisconsin*, 197 Wis. 2d at 679-80.

¶20 We do not suggest that WIS. STAT. § 70.11(4)(a) requires a property owner to create an all-inclusive list of goals and activities and then assign to each isolated goal or activity a precise percentage of the whole. The phrase “substantially and primarily” in *Milwaukee Regional Medical Center* does not require this level of mathematical proof. However, here the complete absence of undisputed evidence relating to the proportion of goals and activities devoted to education, “traditional” or otherwise, means that Evaluators failed to show that its goals and activities are “substantially and primarily” devoted to educational purposes. To the extent that Evaluators has not submitted evidence regarding proportion—apparently based on its position that every goal and activity it lists has an educational purpose, so that proportion would not matter—we have explained why we are not persuaded by the argument that all of Evaluators’ goals and activities are educational.

CONCLUSION

¶21 For these reasons, we affirm the circuit court’s order granting summary judgment to the City on Evaluators’ claim for a tax exemption.

Evaluators is substantially and primarily devoted to evaluation, not education. However, the important point for our purposes is that Evaluators has not shown the opposite based on the undisputed facts.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

