

PT 18-06
Tax Type: Property Tax
Tax Issue: Educational Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**UNIVERSITY OF CHICAGO and
BRIGHT HORIZONS
CHILDREN'S CENTER, LLC,**

APPLICANT

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

**No: 16-PT-019
(15-16-526 & 15-16-617)**

Real Estate Exemption

**For 2015 Tax Year
P.I.N. 20-14-108-020 through
-24 and 20-14-223-030**

Cook County Parcels

**Administrative Law Judge
Kelly K. Yi**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Thomas J. McNulty and Ms. Valerie Ready, both of Neal, Gerber & Eisenberg, on behalf of the University of Chicago and Bright Horizons Children's Center, LLC; Ms. Paula Hunter, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether real estate, identified by Cook County Parcel Index Numbers (hereinafter "PIN") 20-14-108-020 through -24 and 20-14-223-030 (hereinafter the "subject property") qualify for exemption from 2015 real estate taxes under 35 ILCS 200/15-35, wherein all property used for educational purposes, and not used with a view to profit, is exempted from real estate taxation.

The controversy arises as follows: On February 19, 2016, Applicants, the University of Chicago (hereinafter “University”) and Bright Horizons Children’s Center, LLC (hereinafter “Bright Horizons”) (hereinafter collectively “Applicants” or “co-Applicants”) filed two Applications for Property Tax Exemption with the Cook County Board of Review (hereinafter the “Board”). The Board reviewed the applications and made recommendations to the Illinois Department of Revenue (hereinafter the “Department”).¹ After reviewing the Board’s recommendations, the Department issued a determination on August 9, 2016 on PIN 20-14-223-030, and on October 17, 2016 on the remaining PINs, denying the requested exemptions on the grounds that the subject property was not in exempt ownership and exempt use and that Bright Horizons had no ownership interest in the property. Dept. Ex. 1. Subsequently, Applicants timely filed a request for a consolidated hearing as to the two denials and presented evidence at a formal evidentiary hearing held before Administrative Law Judge Kenneth Galvin² on May 11, 2017, with testimony from Ms. Ingrid Gould (hereinafter “Gould”), Associate Provost for Faculty Affairs, Ms. Shirley Neiman (hereinafter “Neiman”), Director of Bright Horizons at the Drexel Location at the University, and Joyce Lynn Miller (hereinafter “Miller”), Regional Director of the Drexel and Stoney Island locations of Bright Horizons at the University. Following submission of all evidence and a careful review of the record, it is recommended that the Department’s denials be affirmed.

FINDINGS OF FACT:

¹ The record does not include the Board’s recommendations to the Department. Dept. Ex. 1.

² Following Judge Galvin’s retirement, this case was reassigned to the undersigned Administrative Law Judge Kelly K. Yi. This Recommendation is based on the review of the hearing transcript and the exhibits admitted at hearing. Credibility of the witnesses is at issue only to the extent that the testimony is unsupported by the documentary evidence in the record.

1. Dept. Ex. 1 establishes the Department's jurisdiction over this matter and its position, as established by the determination issued by the Department on August 9, 2016 on PIN 20-14-223-030 and on October 17, 2016 on the remaining PINs, that the subject property was not in exempt ownership and exempt use and that Bright Horizons had no ownership interest in the property during the year at issue, 2015. Tr. pp. 16-17; Dept. Ex. 1.
2. The University has Internal Revenue Code Section 501(c)(3) tax exempt status, is recognized as a school under Sections 509(a)(1) and 170(b)(1)(A)(ii), and is exempt from sales/use tax in the State of Illinois. App. Ex. 14, 16.
3. The University owns two properties located at 5610 South Drexel and 5824 South Stony Island, both on its Hyde Park campus in Chicago. Each location houses one of two onsite daycare centers operated by Bright Horizons pursuant to an operating agreement between the Applicants. Tr. p. 22; App. Ex. 2, 6.
4. Bright Horizons is a for-profit limited liability company. App. Ex. 9.
5. Around 2004, the University recognized a need for child care solution for its employees but was not ready to install onsite daycare at the time. Tr. 24.
6. As an alternative solution, the University offered grants and forged partnerships with area daycare providers, which agreed to set aside some spaces for the University employees. Tr. p. 24; App. Ex. 19.
7. As time went by, the University considered the lack of onsite child care as a competitive issue in faculty recruitment as its peers were starting onsite child care. Tr. p. 24.
8. In 2010, the University began exploring the possibility of providing onsite daycare for its employees and students. Its internal survey, with 25% response rate, showed that

95% of staff and post-doctorate students desired onsite child care. There is no breakdown of the faculty's response in the survey. Tr. pp. 25, 28; App. Ex. 24.

9. After realizing that the University had no interest in providing onsite daycare by expanding the existing laboratory schools at the University, it decided to contract child care services. Tr. pp. 28-29.
10. The University issued a Request for Proposal (hereinafter "RFP") and selected Bright Horizons due to its excellent early childhood programs and financial stability to grow its operations. Tr. p. 31.
11. The RFP issued that the new daycare centers would "build upon the existing high-quality child care that is currently in the community." App. Ex. 22.
12. The University envisioned that these partnerships would continue after the opening of the new facilities as "our faculty have high regard for these providers." App. Ex. 19.
13. The RFP further stated that the new daycare centers would serve the children of "University/Medical Center employees." App. Ex. 22.
14. The University's marketing materials and RFP indicated that the centers would be open to the general public. App. Ex. 19, 21.
15. In 2011, the University entered into development agreements with Bright Horizons under which latter agreed to develop and cause daycare centers to be constructed with the University paying for the construction on the Drexel and Stony Island properties. Tr. p. 36; App. Ex. 7.
16. Construction of the daycare centers was completed in 2014 and both centers began operation in the same year enrolling children aged six weeks to five years old. Tr. pp. 47, 72; App. Ex. 19.

17. A flyer prepared by Bright Horizons after the centers opened described the centers as serving the children of faculty, other academics, staff, students, and post-doctorate researchers at the University and employees of the University Medical Center. App. Ex. 19, 22.
18. Each center has the maximum enrollment capacity of 124 children. Tr. pp. 31, 59.
19. The operating agreement allows Bright Horizons to independently set the curriculum, programs, and services fees for the daycare centers. Tr. pp. 52-53; App. Ex. 6.
20. Bright Horizons does not pay rent or a management fee to the University and no part of the child care fees collected is passed on to the University. Tr. pp. 36, 52, 69.
21. Bright Horizons pays the University monthly grounds-keeping fees of \$955.25. Tr. 52.
22. Under the operating agreement, Bright Horizons affords the University families admission priority at the centers but the children from the local community is given a secondary enrollment. Tr. p. 34; App. Ex. 21.
23. After the initial priority enrollment given to the University affiliated children and a secondary enrollment allowed to the children from the local community, the centers give enrollment priority to siblings of all children regardless of their University affiliation. Tr. pp. 40, 78; App. Ex. 6, p. 4.
24. In 2015, the enrollment of the University affiliated children at the two daycare centers never went below 80%. Tr. pp. 56, 73; App. Ex. 21.
25. The daycare centers are open 11 hours a day, from 7am to 6pm, Monday through Friday. Tr. pp. 36, 38; App. Ex. 18.

26. Gould opined that the partnership with Bright Horizons promotes the University's educational goals by allowing parents to focus on their work, ensuring ease of mind that their children are well taken care of nearby on campus. Tr. p. 36.
27. Bright Horizons assists with the University's recruitment activities by attending fairs, hosting tours of its facilities, and setting up meetings with potential or new faculty and staff. Tr. pp. 57, 71-72.
28. Undated tables show that Bright Horizons' revenues exceeded its operations costs of the two daycare centers and generated a combined net income of approximately \$940,000 in an unidentified time period. App. Ex. 17.
29. Of the combined net income, Neiman attributed \$495,000 as the 2015 net income from the Drexel location. Tr. 63.
30. Article II of the Development and Sponsorship Agreement between the Applicants states that Bright Horizons "shall be responsible for the payment of all applicable taxes, including but not limited to real and personal property taxes, as set forth more fully in Article 2 of the Terms of Use." App. Ex. 6, p. 2.
31. Article 2 states that Bright Horizons "shall pay any applicable real estate tax, sales tax, or any other applicable tax on the utilities, services herein or otherwise with regard to the Agreement including the Terms of Use." App. Ex. 6, p. 14.

CONCLUSIONS OF LAW:

An examination of the record establishes that Applicants have not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the subject property from property taxes for tax year 2015. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-35 of the Property Tax Code, which exempts "all property of schools, not sold or leased or otherwise used with a view to profit." 35 ILCS 200/15-35.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Moreover, the burden of proving the right to a property tax exemption is on the party seeking exemption, and courts have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption.

Winona School of Professional Photography v. Department of Revenue, 211 Ill. App. 3d 565 (1st Dist. 1991). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934).

In opening arguments, Department's counsel outlined the three points at issue in this proceeding: 1) as only the owner or one who holds the incidents of ownership in the subject property can apply for an exemption of property taxes under 15-35 of the Property Tax Code, Bright Horizons has no standing to seek an exemption from property taxes; 2) the University is not entitled to seek an exemption because the duty of paying taxes on the subject property shifted to Bright Horizons pursuant to an operating agreement between co-Applicants; and 3) even if the University were to be eligible to apply for an exemption, it has failed to show a reasonable necessity for educational purposes or that the property is used without a view to profit. Tr. pp. 10-13; Dept.'s Brief p. 3. Applicants claim that the University is entitled to an exemption on the grounds of a reasonable necessity in furtherance of the educational goals even if a third party, Bright Horizons, operates daycare centers on the former's property free of rent, providing an "ancillary service" for the benefit of the faculty and students. Tr. pp. 8-9.

STANDING: In raising the standing issue, the Department asserts that both co-Applicants lack standing to seek exemption from 2015 property taxes of the subject property because 1) the University is the sole owner of the property with Bright Horizons holding no incidents of ownership in the property; 2) there is no lease agreement between co-Applicants; and 3) the University has waived a claim to seek an exemption of property taxes by contractually shifting to Bright Horizons the duty to pay property taxes. Dept.'s Brief pp. 1, 11-12. Applicants did not address the issue of Bright Horizons' standing but

respond that contractually shifting the duty of paying taxes to Bright Horizons does not relieve the University of its legal obligation to pay real estate taxes on the subject property, nor to the University's claim to a property tax exemption. App.'s Brief p. 12. An examination of the record establishes that both co-Applicants have standing to bring a complaint seeking to exempt the subject property from 2015 real estate taxes under the Property Tax Code. 35 ILCS 200/15-35; 35 ILCS 200/9-175. In support thereof, I make the following conclusions.

The issue of standing rarely comes up in exemption cases because the property owner, who is liable for real estate taxes under Section 9-175 of the Property Tax Code, is also the applicant in most cases. Section 9-175 states that the owner of the property on January 1 in any year shall be liable for the taxes of that year. 35 ILCS 200/9-175. Because Section 9-175 imposes this liability, the owner/applicant's standing is not questioned, as the owner/applicant is presumed to have a "direct and substantial" financial interest in the outcome of the exemption proceeding. Highland Park Women's Club v. Department of Revenue, 206 Ill. App. 3d 447 (2d Dist. 1991). In the instant matter, as there is no factual dispute that the University is the sole owner of the subject property, it is presumed to have a "direct and substantial" financial interest in the outcome of the exemption proceeding. This fact alone, at the exclusion of the waiver issue, establishes the University's standing to be a party to this matter.

The next inquiry is whether Bright Horizons has standing to seek an exemption from 2015 real estate taxes under the Property Tax Code. As a threshold matter, because Bright Horizons did not own the subject property in 2015, it cannot benefit from the statutory grant of standing contained in Section 9-175. Bright Horizons, however, can gain

standing if it holds sufficient incidents of ownership in the subject property. *See* Wheaton College v. Department of Revenue, 155 Ill.App.3d 945 (1987); The Board Of Education of Glen Ellyn Community Consolidated School District No. 89, v. The Department of Revenue, 356 Ill.App.3d 165 (2005). Here, while Bright Horizons enjoys the right to possession pursuant to the operating agreement with the University, it lacks the right to unilaterally change or improve the property and has no right at all to alienate the property. Tr. p. 22; App. Ex. 6-8. These facts establish that Bright Horizons lacks sufficient incidents of ownership in the subject property.

Notwithstanding the lack of ownership or incidents of ownership, Bright Horizons can still obtain the requisite financial stake in the outcome and benefit from the statutory grant of standing contained in Section 9-175 if and only if, 1) it is contractually obligated to pay real estate taxes on the subject property; or 2) it, in fact, paid such taxes for the 2015 assessment year; or 3) it is legally required to pay such taxes because its interest in the property at issue is subject to a leasehold assessment. *Id.* The evidence clearly demonstrates that pursuant to an operating agreement between co-Applicants, Bright Horizons is obligated to pay real estate taxes on the subject property. App. Ex. 6. Having satisfied one of three conditions noted above to establish requisite financial stake in the outcome here, Bright Horizons has standing to be a party to this matter.

The Department lastly asserts that even if the University is presumed to have a direct and substantial financial interest in the outcome by virtue of its ownership of the subject property, it has waived a claim to seek an exemption of taxes by contractually shifting the duty to pay property taxes to Bright Horizons. Dept.'s Brief p. 12. Specifically, the Department refers to a contractual term that states Bright Horizons "shall pay any

applicable real estate tax, sales tax, or any other applicable tax on the utilities, services herein or otherwise with regard to the Agreement including the Terms of Use.” App. Ex. 6.

The primary goal in construing a contract is to give effect to the intent of the parties. Omnitrus Merging Corp. v. Illinois Tool Works, Inc., 256 Ill.App.3d 31, 34 (1993). When the language of a contract is clear, a court must determine the intent of the parties solely from the plain language of the contract. Owens v. McDermott, Will & Emery, 316 Ill.App.3d 340, 344 (2000). The language of a contract must be given its plain and ordinary meaning. Owens at 344. A waiver is an intentional relinquishment of a known right. Bolingbrook Equity I Ltd. Partnership v. Zayre of Illinois, Inc., 252 Ill.App.3d 753 (1993). In the instant matter, while an agreement exists between co-Applicants to shift a duty of paying property taxes on the subject property to Bright Horizons, giving plain and ordinary meaning to the contractual language at issue, there is no evidence that co-Applicants intended to, in no uncertain terms, waive the University’s claim to a tax exemption through the agreement as was the case in Clark v. Marian Park, Inc., 80 Ill.App.3d 1010 (1980). App. Ex. 6, pp. 2, 14. In Clark, the owner of the property, a tax-exempt organization, explicitly agreed in a lease agreement that it was “the intention of the owner that all of the subject realty...shall become as fully taxable as private owned real estate within the State of Illinois.” Northwest Suburban Fellow, Inc., v. Department of Revenue, 298 Ill.App.3d 880, 887 (1998), quoting Clark at 1012. The quoted contractual language in the instant matter does not explicitly show that the University has waived its claim to seek a property tax exemption on the subject property. Should Bright Horizons violate the contractual term and fail to pay property taxes on the subject property, the University would still be legally

obligated to pay taxes on the property or risk losing them in a tax sale. The evidence simply does not support a conclusion that Bright Horizons' contractual duty to pay the taxes is effectively equivalent to the University intentionally waiving its claim right to a property tax exemption. Absent evidence that the University intentionally relinquished a claim to seek a property tax exemption as the sole owner of the subject property, it has standing to be a party to this matter.

In summation, both co-Applicants, the University and Bright Horizons, have standing to bring a complaint seeking to exempt the subject property from 2015 real estate taxes under the Property Tax Code.

REASONABLE NECESSITY: Applicants concede that Bright Horizons' onsite daycare centers do not provide education to the children enrolled and they are not seeking an exemption based on a claim that the daycare centers in and of themselves are used as an educational purpose. App.'s Reply Brief p. 2. Applicants' core argument, instead, is that onsite daycare is reasonably necessary to meet the University's educational goals as a top tier university to recruit and retain top faculty talent. App.'s Brief p. 1.

Exemption will be sustained if it is established that the property is primarily used for purposes which are reasonably necessary for the accomplishment and fulfillment of the educational objectives, or efficient administration of the particular institution. MacMurray College v. Wright, 38 Ill.2d 272, 278 (1967). The parties cite Memorial Child Care v. Department of Revenue, 238 Ill.App.3d 985 (1992) ("Memorial") as the case law authority factually most analogous to the instant matter on the issue of a reasonable necessity. In that case, the court held that the applicant, Memorial Child Care, Inc. ("Memorial Child Care"), was entitled to a charitable exemption from property tax for land used to provide

an onsite daycare center for employees of Memorial Medical Center. The court determined that the applicant's property was used for a purpose reasonably necessary to accomplish the efficient administration of Memorial Medical Center as a tax-exempt charitable hospital. *Id.*

Applicants assert that Memorial is materially indistinguishable from the case at hand. App.'s Brief p. 8. They claim that as was the case in Memorial, high quality daycare options near the University were inadequate to meet demand, hampering its recruitment and retention of talented faculty and staff. App.'s Brief pp. 1, 7. Applicants have since shifted their central argument. According to their Reply Brief, the purported lack of quality off-site daycare is not the basis for claiming a reasonable necessity for onsite daycare. Rather, Applicants' argument is that the lack of onsite daycare hampers the University's recruitment efforts, and therefore, onsite daycare is reasonably necessary to remain competitive with other top tier national universities in the recruitment and retention of the talented faculty in furtherance of an educational goal. App's Reply Brief, p. 3.

Memorial is easily distinguishable from the case at hand on a multiple grounds. In Memorial, unlike the instant matter, the onsite childcare center and Memorial Medical Center were affiliated corporations of a not-for-profit parent corporation. Memorial Child Care was a not-for-profit corporation, operated at a loss, and was opened solely to employees of Memorial Medical Center. The locality had a demonstrated shortage of childcare facilities, as confirmed by the hospital's years-long internal investigation and later by the League of Women Voters. Memorial Medical Center's employees had difficulty finding a flexible childcare program in the area which met their needs to fit the hospital scheduling requirements. Memorial Child Care opened seven days a week,

including holidays, offered various services such as a daily rate for part-time employees. Its hours of operation were specifically structured for Memorial Medical Center employees and were more flexible and of longer duration than those of commercial daycare centers. It stayed opened as long as required to meet the needs of the hospital employees. Importantly, Memorial Child Care was created specifically to alleviate the difficulty the hospital experienced in hiring and maintaining employment of professional employees with young children, particularly the nurses. Memorial at 987, 992-993.

Applicants argue that Memorial is parallel to the case at hand, yet argue that “the existence of off-campus day care providers is not the relevant inquiry” nor is such evidence provided in the record. App.’s Reply Brief p. 3. I disagree. Pursuant to Memorial, an inquiry regarding the existence of high quality off-site daycare is directly relevant in determining whether there is a reasonable necessity of onsite daycare at the University. Moreover, the burden of proving the right to a property tax exemption is on the party seeking exemption, and courts have required such party to prove by clear and convincing evidence. Winona School of Professional Photography at 569. Applicants presented no evidence there was an actual shortage of quality daycare in the community prior to Applicants’ building and operating onsite daycare. Tr. p. 24; App. Ex. 19, 22, 24. The evidence, instead, reveals that prior to opening Bright Horizons, the area child care providers agreed to set aside some spaces for the University employees. App. Ex. 19. No testimony or documentary evidence was presented that the shortage of quality care continued after the University formed partnerships with area daycare providers. App. Ex. 19. The University envisioned that these partnerships would continue after the opening of the new facilities as “our faculty have high regard for these providers.” App. Ex. 19. The

RFP issued after the University decided to create onsite childcare stated that the new centers would “build upon the existing high-quality child care that is currently in the community.” App. Ex. 22.

Based on Gould’s testimony that “it was insufficient to have the marginally increased supply [of off-site daycare], because the University was “not meeting the demand of the people who we really wanted most to recruit and retain on campus,³ Applicants contend that partnerships with off-campus daycare providers proved to be “unsatisfactory.” App.’s Reply Brief p. 3. This characterization is not based on a shortage of quality off-site daycare in the community. As noted above, Applicants deem irrelevant the existence of daycare providers in the community. Stated differently, it wasn’t that the partnership with off-site daycare providers was “unsatisfactory” due to a shortage of quality daycare but because no off-site daycare regardless of quantity or quality would have sufficed the demand for onsite daycare. Tr. 25; App.’s Reply Brief, p. 3. This represents a significant contrast from the facts in Memorial in which the onsite care was provided precisely due to a scarcity of quality off-site daycare in the community. Memorial at 987.

Demand or desirability does not often equate with a reasonable necessity. Notwithstanding Gould’s testimony that some recruited professors were “stunned” to find that the University didn’t have onsite daycare, no evidence was presented that potential faculty, staff, or post-doctorate students have rejected employment or enrollment at the University due to lack of onsite daycare, certainly not to the level where the University would be unable to fulfill its fundamental goal of providing education. *See* Tr. pp. 24-25.

³ Gould testified that “it was really a competitiveness issue, and it was insufficient to have the marginally increased supply, because we were not meeting the demand of the people who we really wanted most to recruit and retain on campus.” Tr. 25.

To illustrate demand for onsite care, the University highlighted a high percentage of staff and post-doctorate students wanting onsite daycare. Tr. p. 28; App. Ex. 24. However, the University did not provide a breakdown of the faculty's response to the internal survey for onsite care, the very group the University wants particularly to recruit and retain, serving as the basis for claiming a reasonable necessity. App.'s Brief p. 1; App. Ex. 24. Assuming *arguendo* that the University presented evidence it is unable to recruit top faculty talent precisely due to a lack of onsite daycare, the property tax exemption laws governing educational use are not concerned with the University's ability to recruit top tier faculty, staff, or students. The relevant inquiry is whether an educational institution provides education "which fits into the general scheme of education founded by the State and supported by public taxation; and a course of study which substantially lessens what would otherwise be a governmental function and obligation." Coyne Electrical School v. Paschen, 12 Ill.2d 387 (1957).

Applicants in the instant matter did not present clear and convincing evidence that the lack of onsite daycare hampered this fundamental educational purpose, not necessarily of a higher standard of educational objectives. There is no governmental obligation to provide top tier education or to subsidize through property tax exemption ancillary services thereof based on employee demand.⁴ If the University had a general difficulty in faculty recruitment, as opposed to a faculty recruitment of only the highly qualified, the argument would be more persuasive as was similarly the case in Memorial.⁵ In Memorial, the

⁴ I assume for a sake of an argument there is an overwhelming employee demand for onsite care at the University. Tr. pp. 25, 28; App. Ex. 24

⁵ Memorial Child Care argued that its services allow the hospital to fulfill its charitable objectives of providing "quality" health care to all patients, but the evidence presented only showed that the hospital had a difficulty recruiting nurses in general, not only those highly qualified. Memorial at 987, 990. I interpret the case law to mean that a general shortage of nurses (not necessarily of highly qualified) would be antithetical to quality health care.

hospital's recruitment difficulty was with professional employees in general, not of employees of certain level of excellence. Memorial at 987, 990. If we were to adopt Applicants' logic, we would have to treat universities of less national repute differently to the University in determining what constitutes a reasonable necessity for an educational purpose. There is no case law to support this position.

Unlike Memorial Child Care, enrollment at Bright Horizons centers are open to the local community. For every month of 2015, 10-20% of the available spaces in the daycare centers went to children without the University affiliation. Tr. p. 56. Consistent with practice, the University's marketing materials and RFP advertised that the centers would be open to general public. App. Ex. 19, 22, 24. After the initial priority enrollment given to the University affiliated children and a secondary enrollment allowed to the children from the local community, the centers give an enrollment priority to siblings of all children already enrolled regardless of their University affiliation. Tr. pp. 40, 78; App. Ex. 6, p. 4. While the University planned that the daycare centers would accommodate the University Medical Center employees as well, the hours of operations for the centers do not support it, as they are opened for fixed hours, weekdays only, unstructured for the scheduling needs of faculty teaching night classes or its medical center staff. Unlike Memorial, which stayed opened as long as required to meet the needs of the hospital employees, Applicants did not present evidence that Bright Horizons' hours of operation were different from those offered in the community or specifically structured to meet the needs of all of the University and the Medical Center affiliated families with children.

Citing McMurray, Applicants argue that the primary use of property determines its tax exempt status. App.'s Brief p. 9. In McMurray, in determining that the faculty housing

was not primarily used for an educational purpose, but used as private residential, the court noted that the record did not show that any of the faculty or staff members were required, because of their educational duties, to live in these residences, or that they were required to or did perform any of their professional duties there. MacMurray at 278-279. The subject property is used as daycare operated by a for-profit company, Bright Horizons. Applicants concede that the daycare centers in and of themselves are not used for educational purposes. App.'s Reply Brief p. 2. The evidence shows that the daycare is not a part of the University's laboratory schools where its faculty or other academics provide K-12 education. Tr. pp. 28-29. Similar to MacMurray, the University did not provide evidence that, because of the educational duties, its faculty and staff are required to send their children to onsite daycare or required to or did perform any of their professional duties there. Applicants' argument finds no support in McMurray. For foregoing reasons, Applicants have failed to prove by presentation of clear and convincing evidence that the ancillary service of onsite daycare is used for purposes which are reasonably necessary for the carrying out the University's educational purposes.

PROFIT: Section 15-35 of the Property Tax Code allows exemption of taxes for educational purposes as long as the subject property is "not sold or leased or otherwise used with a view to profit." 35 ILCS 200/15-35. An examination of the record shows that the subject property is used with a view to profit, a use which is proscribed by 35 ILCS 200/15-35. Without citing to authority, Applicants assert that the statute refers to only of the "owner's use of the property, not the nature of the service provider." App.'s Brief p. 9. Applicants' claim is contrary to the plain reading of the statute as there is no qualifier in the statutory language to merit reading it the way Applicants suggest. When the plain

language of the statute is clear and unambiguous, the legislative intent that is discernable from this language must prevail. Springfield School District No. 86 v. Department of Revenue of State, 384 Ill. App. 3d 715 (2008). The plain reading of the phrase “not...used with a view to profit” is not concerned with who uses the property but rather, whether the property is used for profit by anyone. The phrase “not leased or otherwise used with a view to profit,” “has the ordinary meaning of the words. People v. Withers Home, 312 Ill. 136, 140 (1924).

Bright Horizons is a for-profit limited liability company. It operates daycare on the subject property free of rent, charges fees for daycare, and does not share the fees with the University. Tr. pp. 36, 53; App. Ex. 6. Applicants did not produce Bright Horizons’ 2015 financial records. However, according to two undated tables, Bright Horizons has generated a combined net profit of approximately \$940,000 during an unidentified time period. App. Ex. 17. Of the total, Neiman attributed \$495,000 as the 2015 net income from the Drexel location. Tr. 63. In citing People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) (“Goodman”), Applicants seem to focus on the grounds-keeping fees the University receives from Bright Horizons, characterizing them as an “incidental profit” while omitting Bright Horizons’ weighty profit from operating daycare on the subject property free of rent. App.’s Brief p. 9. Goodman is largely distinguishable to make it almost entirely inapplicable to the case at hand. As the Department notes, unlike Bright Horizons, both Goodman and Memorial involved not-for-profit corporations, and both operated at a loss. By any reasonable measure, Bright Horizons’ profit cannot be considered an incidental profit. In granting exemption, the court in Goodman stressed that no part of income or fees inured to the benefit of any member or officer of the not-for-

profit foundation in dividends or other return on any capital invested or contributed. Goodman at 369. Clearly, that is not the case with Bright Horizons. Citing Big Ten Conference v. Department of Revenue, 312 Ill. App.3d 88 (1st. Dist. 2000), Applicants argue that profit is not a bar to a property tax exemption, provided that the profit is used for an educational purpose. App.'s Reply Brief p. 5. No evidence was presented that any portion of Bright Horizons' large profits went towards an educational goal of the University, a separate legal entity.

Applicants' reliance on Provena Covenant Medical Center v. Department of Revenue, 236 Ill.2d 368 (2010) is misplaced. App.'s Reply Brief p. 5. Contrary to Applicants' claim, the court did not state in Provena that contracting with for-profit vendors for ancillary services does not undermine the hospital's entitlement to a property tax exemption. *Id.* at 392. Instead, the court determined that using for-profit vendors "does not, in itself, preclude the organization from being characterized as an institution of charity," which is a condition precedent to a property tax exemption being granted to an entity. *Id.*; Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 157 (1968). In the instant matter, the University's status as an educational institution is not at issue. Therefore, Provena has been misapplied in the case.

Applicants had the burden to prove by clear and convincing evidence that the subject property qualified for property tax exemption. City of Chicago v. Illinois Department of Revenue, 147 Ill. 2d 484 (1992). "The burden is a heavy one." Provena Covenant Medical Center, 236 Ill. 2d 368 (2010). A basis for exemption may not be inferred when none has been demonstrated. To the contrary, all facts are to be construed and all debatable questions resolved in favor of taxation. Follett's Illinois Book and Supply

Store, Inc. v. Isaacs, 27 Ill. 2d 600 (1963). The record in this case supports a finding that the subject property was used with a view to profit. Neither my research nor any legal authority Applicants provided supports a finding that an educational exemption should be granted for property used rent free by a for-profit company to generate a large profit.

WHEREFORE, for the reasons stated above, it is recommended that the Department's determination which denied the exemption from 2015 real estate taxes should be affirmed and Cook County Parcels, identified by P.I.N.S 20-14-108-020 through -24 and 20-14-223-030, should not be exempt from property taxes in 2015.

ENTER:

September 29, 2017

Kelly K. Yi
Administrative Law Judge