

PT 19-02

TAX TYPE: PROPERTY TAX

TAX ISSUE: EXEMPTION FROM TAX (CHARITABLE OR OTHER EXEMPT TYPES)

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

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

v.

**MILESTONES EARLY LEARNING CENTER
AND PRESCHOOL, LLC
Applicant**

Docket # 18-PT-012

Tax Year 2017

Dept. Docket # 17-57-33

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Patrick R. Cox of Cox & Associates, LLC for Milestones Early Learning Center and Preschool, LLC

Synopsis:

Milestones Early Learning Center and Preschool, LLC (“applicant” or “Milestones”) filed an application for a property tax exemption for the year 2017 for a parcel of property located in McLean County. The McLean County Board of Review recommended that the exemption be denied, and the Department of Revenue (“Department”) agreed with the Board’s determination. The applicant timely protested the Department’s decision to deny the exemption, and an evidentiary hearing was held. The applicant alleges that it is entitled to a charitable purposes property tax exemption

pursuant to section 15-65 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) on the basis that the property is owned by a charitable organization, used exclusively for charitable purposes, and not used with a view to profit. The applicant uses the property to operate a children's daycare facility. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant is an Illinois not-for-profit corporation that was organized on July 27, 1912. The organization was initially founded in 1908. (Dept. Ex. #1, pp. 15, 74; App. Ex. D, p. 1)
2. The property at issue is located at 1207 Six Points Road in Bloomington, Illinois. The building has approximately 13,790 square feet and is used by the applicant for a children's daycare facility. (Dept. Ex. #1, p. 8)
3. The applicant's mission is to provide high quality, accessible and affordable child care and early education for children 6 weeks through 12 years in a safe and enriching environment that helps children and families grow and develop. (App. Ex. H¹)
4. According to the applicant's constitution, which was revised in December of 2017, the applicant's Mission/objective is as follows:

The mission of Milestones is to provide quality, accessible and affordable child care for children six weeks through five years old² in a safe and enriching learning environment that helps children and families develop and grow. Milestones shall dispense this service to all who need and apply for it and shall place no obstacles in the way of those who are seeking its benefit.

¹ Pursuant to the agreement of the parties, the applicant's brochure, and a supporting affidavit, were submitted after the hearing. They have been marked as Applicant's Exhibit H. (Tr. p. 58)

² The testimony, brochure, and Parent Resource Guide indicate that the age range is 6 weeks to 12 years old. (Tr. p. 31; App. Ex. B, D, H)

In furtherance of its stated goal, Milestones shall enact charitable policies including, but not limited to, the following:

- Milestones shall review, on a yearly basis, the average fair market rate for all services it offers. Based on said review, Milestones shall adjust pricing so that all rates charged by Milestones are no less than 15% below their fair market value.
- Milestones shall provide childcare and education to children who are receiving assistance through the Child Care Assistance Program of the State of Illinois or through DCFS [Department of Children and Family Services]. Milestones shall not seek reimbursement from these families for the difference between Milestones' rate and the aid received from government programs. Milestones shall use any fees it receives from government programs to further its charitable cause and provide assistance to future families in need.
- Regardless of outcome, Milestones shall provide childcare and education throughout the period of time a family spends applying for aid from DHS [Department of Human Services].
- Milestones will waive its annual fee for any family that is in need. Milestones' collection of annual fees is performed solely to advance its charitable purpose outlined herein and shall never present a barrier to any member of the community.
- Milestones shall work with each client, or potential client, to tailor their fee structure based on each client's economic need. It is Milestones' intention to maximize the number of children it can provide for and educate. (App. Ex. C, p. 1)

5. The applicant's by-laws include a purpose statement similar to the mission/objective statement in the constitution. The purpose statement in the bylaws also includes the following: "Milestones will connect families to other

resources in the community at no additional cost in order to ensure that those families basic needs are met.” (Dept. Ex. #1, p. 22; App. Ex. C, p. 3)

6. The applicant primarily serves low-income families and at-risk children. The applicant also serves special needs children who have been turned away from other programs. The applicant’s goal is to accept all children regardless of their circumstances. (Tr. pp. 27-28)
7. The Parent Resource Guide, which was revised in February 2018, includes the following under “Financial Support”:

Department of Human Services (DHS)/Child Care Resource and Referral Network (CCR RN) Subsidy

.....Before a child is enrolled, the Center requires that families must submit a complete application for Child Care Assistance to the CCR RN. The child(ren) will be able to start once the application is submitted. Milestones will allow the child to attend for 2 weeks while the application is being processed. Parents applying for assistance will not be required to pay the full tuition during this waiting period. One child will be charged \$XX per week and two or more children \$XX per week. After receiving benefits, parents will be required to make a \$XX co-payment per week. Parents will not be required to reimburse the Center for the difference between DHS benefits and the Center’s weekly rate.

Department of Children and Family Services (DCFS)

The DCFS funds child care for children who are under their supervision or in foster care. (Dept. Ex. #1, p. 86; App. Ex. D, p. 13)

8. The applicant assists each family with the DHS application. Depending on the family’s income and how many hours a week that the parents work, DHS will pay for either a full five days of daycare or three days of daycare. (Tr. pp. 27-28, 30)
9. The applicant’s current full pay rates are as follows: Infants (6 weeks to 15 months) \$XXX/weekly; Toddlers (15 months to 30 months) \$XXX/weekly;

Junior Preschool (2½ to 3½ years) \$XXX/weekly; Preschool (3½ to 5 years) \$XXX/weekly; School Age (6 to 12 years) \$XX/weekly for before and after school program and \$XXX/weekly for Summer Camp. (App. Ex. B)

10. The subsidized reimbursement rates from the State (including parent co-pay) are as follows: Infants \$XXX/weekly; Toddlers \$XXX/weekly (if under 2 year) and \$XXX/weekly (if over 2 years); Junior Preschool \$XXX/weekly (if under 3 years) and \$XXX/weekly (if over 3 years); Preschool \$XXX/weekly; School Age \$XX/weekly (before and after school program) and \$XXX/weekly (Summer Camp). (App. Ex. B)

11. Approximately 27% of the currently enrolled children at the applicant's daycare pay the full fee, and 73% have their fees subsidized by the State. (App. Ex. B)

12. If a parent needs to stay home with a sick child, their eligibility for daycare may be reduced the following month. This may result in a situation where the parent needs to work full-time but only has three days of approved child care. Under these circumstances, the applicant will cover the two extra days because the parent needs a full pay check in order to be re-eligible for five days of daycare. (Tr. pp. 30-31)

13. According to the 2018 Parent Resource Guide, during the enrollment process the parent must complete a packet of information that includes family information, a consent form, and a contract. (App. Ex. D, p. 11)

14. According to the 2018 Parent Resource Guide, a nonrefundable \$XX enrollment fee, per child, is required when enrollment forms are submitted. It is an annual fee that is due every October 1st. Late payments are subject to late fees. The

applicant “will review this fee on a yearly and case by case basis to determine if the enrollment fee should be waived or reduced on the basis of individual and family need.” (Dept. Ex. #1, p. 84; App. Ex. D, p. 11)

15. According to the 2018 Parent Resource Guide, the applicant charges a late fee of \$X per minute per child if the child is left at the applicant’s Center after closing time at 5:30 p.m. Chronic lateness may result in termination of care. (Dept. Ex. #1, pp. 85-86; App. Ex. D, pp. 12-13)

16. The 2018 Parent Resource Guide includes the following under “Weekly Fees”:

Families who are receiving child care benefits through DHS/CCRRN and DCFS will be assigned a weekly co-payment by the State of Illinois which will be paid to the Center each week. The Center reserves the right to charge an additional fee on top of the state assigned co-payment. All fees shall be adjustable or waivable upon showing of hardship or need.

Parent Payment Policy

-Weekly fees are due in full on Mondays by 5:30 p.m.

-If payment is not made by **Tuesday at 9:30 a.m., a \$XX late fee** will be charged.

-If payments are two weeks behind, the child(ren) may not attend until financial/payment arrangements have been made. The Center will work with families late on payment to adjust fees, waive fees based on need, set up payment plans, or any other solution available in order to keep the child(ren) enrolled at the Center. . . . (Dept. Ex. #1, p. 86; App. Ex. D, p. 13; emphasis in original)

17. The 2018 Parent Resource Guide includes the following under “Termination of Child Care”:

You may cancel your child’s enrollment by notifying the Director. You must provide notice at least 2 weeks in advance; you will be billed for 2 weeks of child care after notification whether or not your child is in attendance. If the child is absent for five consecutive days without notifying the Center of the absence, Milestones will accept that as withdrawal from the program. The

parent/guardian will be responsible for payment for the week the child missed plus the following 2 weeks for the notice period.

Milestones reserves the right to terminate care of any child due to failure to pay or extreme discipline problems. (Dept. Ex. #1, p. 87; App. Ex. D, p. 14)

18. The members of the applicant's Board of Directors are volunteers. (Dept. Ex. #1, p. 74; App. Ex. D, p. 1)

19. The applicant currently has approximately 127 children enrolled in the daycare and has a waiting list. (Tr. pp. 47-48)

20. According to the applicant's audited financial statement for the fiscal year ending June 30, 2017, the Statement of Activities shows the following:

The table content is completely redacted with black boxes. Only the structure of the table is visible, showing a header row and several data rows with varying column widths.

³ Temporarily restricted revenues are subject to donor-imposed restrictions. When the restriction expires, they are reclassified and reported as net assets released from restrictions. (App. Ex. G, p. 7)

[REDACTED]
(App. Ex. G, p. 4; Dept. Ex. #1, p. 45)

21. The income of \$XXXXXX from the United Way is restricted for use to cover the expenses of running the daycare. This was approximately 11% of the total revenue of \$XXXXXX for the fiscal year ending June 30, 2017. (Tr. pp. 22-23; App. Ex. G, p. 4)
22. The income of \$XXXXXX from State programs is from DHS and DCFS and is restricted for use to cover the expenses of running the daycare. This was approximately 27% of the total revenue for the fiscal year ending June 30, 2017. (Tr. pp. 23-24; App. Ex. G, p. 4)
23. The income of \$XXXXXX from the food bank program is from the State Board of Education and is restricted for use to cover food expenses for those children receiving benefits. This was approximately 4% of the total revenue for the fiscal year ending June 30, 2017. (Tr. pp. 24, 49-50; App. Ex. G, p. 4)
24. The income of \$XXXXXX from private pay was approximately 47% of the total revenue for the fiscal year ending June 30, 2017. (App. Ex. G, p. 4)
25. The income of XXXXXX from grants and \$XXXXXX from donations, which totals \$XXXXXX, was approximately 8% of the total revenue for the fiscal year ending June 30, 2017. (App. Ex. G, p. 4)
26. According to the audited financial statement for the fiscal year ending June 30, 2017, the expense of \$XXXXXX for Program Services includes a bad debt expense of \$XXXXXX. (App. Ex. G, p. 5; Dept. Ex. #1, p. 46)
27. The applicant does not have any capital, capital stock, or shareholders. (Dept. Ex. #1, p. 15)

28. The applicant is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code. (App. Ex. G, p. 8)

29. The applicant is exempt from the retailers' occupation tax and use tax pursuant to a determination made by the Department issued on August 7, 2017. (Dept. Ex. #1, p. 18; App. Ex. E)

CONCLUSIONS OF LAW:

It is well-established under Illinois law that taxation is the rule, and tax exemption is the exception. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285 (2004). “[A]ll property is subject to taxation, unless exempt by statute, in conformity with the constitutional provisions relating thereto.” *Id.* Statutes granting tax exemptions must be strictly construed in favor of taxation. *Id.* at 288; Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). All facts are to be construed and all debatable questions resolved in favor of taxation. Eden Retirement Center, Inc., at 289. Every presumption is against the intention of the State to exempt the property from taxation. Oasis, Midwest Center for Human Potential v. Rosewell, 55 Ill. App. 3d 851, 856 (1st Dist. 1977). Whenever doubt arises, it must be resolved in favor of requiring the tax to be paid. Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498, 508 (2004).

The burden of proof is on the party who seeks to qualify its property for an exemption. Eden Retirement Center, Inc., *supra*; Chicago Patrolmen’s Association, *supra*. “The burden is a very heavy one.” Provena Covenant Medical Center v. Department of Revenue, (“Provena I”) 236 Ill. 2d 368, 388 (2010); Oasis, Midwest

Center for Human Potential, *supra*. The party claiming the exemption bears the burden of proving by clear and convincing evidence that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. Eden Retirement Center, Inc., *supra*; Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547 (1986) (citing Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 390 (1957)).

Authority to grant property tax exemptions emanates from article IX, section 6 of the Illinois Constitution of 1970. Section 6 authorizes the General Assembly to exempt certain property from taxes and provides, in part, 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. Ill. Const. 1970, art. IX, §6.

Pursuant to this constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which allows exemptions for charitable purposes and provides, in relevant part, as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity.... 35 ILCS 200/15-65(a).

Property may be exempt under this subsection if it is (1) owned by an entity that is an institution of public charity; (2) actually and exclusively used for charitable purposes; and (3) not used with a view to profit. *Id.*; Chicago Patrolmen's Association, *supra*. Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156-57

(1968). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc. v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987).

The Illinois Supreme Court set forth the constitutional standards for a charitable purposes exemption in Methodist Old Peoples Home, *supra*, and reiterated them in Eden Retirement Center, Inc., *supra*, and Provena I, *supra*. The following guidelines are characteristics of a charitable institution: (1) the organization has no capital, capital stock or shareholders; (2) the organization earns no profits or dividends but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) the organization dispenses charity to all who need and apply for it; (4) the organization does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place any obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (6) the primary purpose for which the property is used, and not any secondary or incidental purpose, must be charitable. Methodist Old Peoples Home, at 156-57. For purposes of applying these criteria, the court defined charity as “a gift to be applied ... for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare--or in some way reducing the burdens of government.” *Id.*

The applicant argues that it meets all the guidelines in Methodist Old Peoples Home, *supra*. First, the applicant claims it offers its educational benefits to an indefinite number of people; accessibility to the members of the community is one of its core objectives. The applicant also claims that it reduces the burdens on government because

it provides care and education to impoverished children and families. Second, the applicant has no capital, capital stock or shareholders, and the applicant earns no profits. The applicant also contends that its operating funds are derived from public and private charity. The applicant states that it uses the fees collected from families that can afford to pay the fees to subsidize the care and education of children whose families cannot afford to pay the fees.

The applicant argues that it dispenses charity to all who need and apply for it because it does not refuse or deny charity to anyone. The applicant states that 73% of all the children enrolled at its center are being subsidized by the applicant. The applicant claims that it regularly waives fees for students based on need. In addition, the applicant claims that it does not place obstacles in the way of those seeking its benefits. According to the applicant, in order to disqualify an institution from charitable consideration, the obstacles must be substantial barriers to entry. See Decatur Sports Foundation v. Department of Revenue, 177 Ill. App. 3d 696 (4th Dist. 1988) (\$25 fee for outside users of the field is *de minimis*). The applicant argues that because it charges only minimal fees, regularly waives the fees, and informs the public that the fees can be waived, it does not place obstacles in the way of those seeking its benefits. Finally, the applicant claims that all business on its property is within its charitable purposes, and therefore it primarily uses the property for charitable purposes.

The Department concedes that the applicant has no capital, capital stock or shareholders and that the applicant does not provide gain or profit in a private sense to any person connected with it. Nevertheless, the Department argues that the applicant's facility is a commercial, not a charitable, enterprise, and the primary purpose is to

provide childcare for payment. The Department states that approximately 74% of the applicant's income for the fiscal year ending June 30, 2017 was derived from tuition and fees. Of this amount, 47% was from parents while 27% was from reimbursements from either DHS or DCFS. The Department argues that the reimbursements from the State cannot be characterized as "public charity" because they are payments by the State for childcare services rendered by the applicant. The State is paying the applicant a fee for its services like other fee for service contracts. The Department contends that the applicant is not reducing a burden of government because the State is paying the applicant for the childcare services that it provides. As the applicant stated, 73% of the children who attend the facility are subsidized by the State.

The Department argues that the shortfall between the full pay rate for the applicant's services and the actual amount collected from the State subsidies and parents' co-payments is not "charity." The Department contends that similar arguments have been made by hospitals with respect to shortfalls from Medicare and Medicaid reimbursements. Illinois courts have rejected the argument that unreimbursed costs of Medicare and Medicaid constitute charity. See Riverside Medical Center v. Department of Revenue, 342 Ill. App. 3d 603 (3rd Dist. 2003).

With respect to whether the applicant dispenses charity to all who need and apply for it, the Department argues that although the applicant provided documents that contain provisions concerning the waiver of the various fees, the record is either unclear or lacks specific evidence substantiating the waiver of the fees. The Department notes that the record lacks specific examples of the waiver of the fees during 2017. According to the Department, the fact that 73% of the children are receiving state subsidies does not

establish a pattern of waiving fees and is not an example of the execution of a waiver policy. In addition, the Department claims that although there was testimony during the hearing about the waiving of tuition and fees, the record is unclear about specific instances of waivers, and there is no way to quantify this from the record.

With respect to whether obstacles are placed in the way of those seeking benefits, the Department argues that the applicant charges a non-refundable registration fee, late fees for tuition payments, and has a termination or suspension policy for non-compliance with its financial policies. In addition, there are other requirements for parents to qualify for the DHS subsidies. The Department concludes that the applicant has failed to meet the constitutional requirements to receive a property tax exemption.

In response, the applicant claims that the Department objects to the applicant's status as a charity solely on the applicant's collection of fees. The applicant contends that an organization does not lose its charitable character by charging fees as long as it provides its services to those who are unable to pay. See Small v. Pangle, 60 Ill. 2d 510, 518 (1975). According to the applicant, subsidizing the full education and care for children who receive partial payments from the State is a charitable act. The applicant claims that as part of its charitable mission, it uses donations and fees received from those who can afford to pay them in order to voluntarily subsidize the difference between DHS aid and what the applicant's standard fee would be. The applicant also states that the Department has previously granted property tax exemptions to daycares. See Bloomington Day Care, Inc. v. Department of Revenue, PT 99-5; Evanston Day Nursery Association, Docket #10-16-164.

In the applicant's view, the Department disregards the evidence that the applicant routinely offers its services to families free of any charges or fees. The applicant claims that it waives fees up front as a matter of policy and never seeks to collect for services that it has already provided charitably. The applicant also notes that its charitable policies are in the parent handbook, the constitution, and the bylaws. The applicant contends that its \$50 enrollment fee is *de minimis* and is not an obstacle to those seeking its charitable benefits. In addition, because the fees can be waived, they are not obstacles to those seeking the charitable benefits.

The applicant also states that the source of its funds is not the sole determinant factor. See Lutheran General Health Care System v. Department of Revenue, 231 Ill. App. 3d 652, 664 (1st Dist. 1992). In addition, the applicant contends that the Riverside case is distinguishable, and the Riverside hospital's relationship with Medicare and Medicaid is not analogous to the applicant's relationship with DHS because no contractual relationship exists between the applicant and DHS. The applicant states that it is under no obligation to offer its services to anyone for a discount.

It is important to remember that the year at issue in this case is 2017. The activities that took place during 2017 are the ones that must be considered in determining whether the property is entitled to an exemption for that year. See Jackson Park Yacht Club v. Illinois Department of Local Government Affairs, 93 Ill. App. 3d 542, 546 (1st Dist. 1981) (even where ownership and use of the property remain the same, a party may be required to relitigate the issue of its exemption annually). The applicant provided a Parent Resource Guide that was revised in February 2018 (App. Ex. D), so it was not effective during the year in question. The applicant did not provide a Guide that was

effective during 2017. The constitution provided by the applicant was revised in December 2017 (App. Ex. C); the constitution that was effective during the first 11 months of 2017 was not provided. The record does not include dates for when the bylaws became effective or what year the applicant's brochure was first used.

In addition, the policies in the 2018 Parent Resource Guide conflict with the testimony of the applicant's Executive Director, Ms. David. According to her testimony, no late fees are assessed (Tr. p. 54), but the Guide indicates that late fees are assessed. (App. Ex. D, pp. 12-13) According to the Guide, during the enrollment process the parent must complete a packet of information that includes family information, a consent form, and a contract (App. Ex. D, p. 11), but Ms. David testified that the applicant does not have a contract with the people it serves. (Tr. pp. 52-53)

Ms. David also testified that the applicant has waived the enrollment fee, but when asked if that is documented anywhere, she said it was in the child's file. (Tr. p. 54) The applicant did not provide any documents to substantiate when the applicant waived the enrollment fee. When Ms. David was asked again about a formal policy regarding late or nonpayment of tuition, she said, "I don't think there is a formal statement on it...If there is, it is not in practice." (Tr. pp. 54-55) Ms. David testified that approximately 8 to 10 children have their tuition fully waived (Tr. pp. 43-44), but documentation was not provided to substantiate this. Whether an organization qualifies for a charitable purposes exemption must be determined not only from the organizational documents, but also from the actual facts relating to its method of operation. See Du Page County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App.

3d 461, 466 (2nd Dist. 1995). The record presented lacks documentation concerning when the fees were waived during 2017.

The only document that the applicant provided concerning what it considers to be “charity” is a document that compares the applicant’s full pay rate with the subsidized reimbursement rate (including the parent co-payment) that the applicant receives from the State. (App. Ex. B) For the year 2018, the difference between the full rate and the subsidized amount that the applicant received was \$203,406. Ms. David testified that the amount during 2017 may have been a little bit more because more families were able to pay the full tuition in 2018. (Tr. pp. 41-42) The applicant considers the \$203,406 to be its “Charitable Contributions.” (App. Ex. B)

In Riverside Medical Center, *supra*, the court rejected the medical center’s argument that providing discounted care to patients through Medicare, Medicaid and private insurance was charity. The court stated as follows:

Although Riverside does give discounts, these discounts are given pursuant to contract. The large insurers have negotiated preferential rates with Riverside, but there is no indication that Riverside agreed to the arrangement in pursuit of its charitable mission. It may be that Riverside agreed to the rate discounts as a way of attracting a reliable stream of business from patients insured by the large insurers. At any rate, we are confident that these discounts are not charitable and do not warrant a finding in favor of Riverside. *Id.* at 610.

The applicant in the present case argues that unlike Riverside, there is no contractual relationship between the applicant and DHS, and the applicant is under no obligation to offer its services at a discount. In addition, the applicant is free to collect as much as it is able from any family receiving aid from DHS. The applicant claims that as part of its charitable mission, it voluntarily elects to subsidize the difference between DHS aid and

the applicant's standard fee by using donations and fees received from those who can pay them.

The applicant's arguments are not persuasive. Although there is no contractual relationship between the applicant and DHS, there is a contractual relationship between the parents and DHS, and according to the 2018 Parent Resource Guide, the applicant requires the parents to apply for DHS reimbursement before a child is enrolled. (App. Ex. D, p. 13) In addition to the DHS benefits, the parents are required to make a \$XX co-payment per week. It must be noted at this point that even though the applicant indicated that it does not require the parents to pay the difference between the DHS benefits and the applicant's weekly rate (with the exception of the co-pay), the 2018 Parent Resource Guide includes the following: "The Center reserves the right to charge an additional fee on top of the state assigned co-payment." (App. Ex. D, p. 13) Nevertheless, even though the testimony indicated that the applicant does not require the parents to pay the difference between the DHS benefits and the applicant's weekly rate (with the exception of the co-pay), it is not clear that it is not a business decision to do so. Ms. David testified that "we are not in a business that we can offer completely free services." (Tr. p. 45) She further testified as follows: "[A]s a business, every business has to have a way to pay for the services that they provide. So we are very thankful to have the partnerships with DHS and United Way to help these families who can't afford to pay for it." *Id.*

The applicant's audited financial statement for the fiscal year ending June 30, 2017 also supports the finding that the difference between the full rate and subsidized amount (plus the co-pay) is not charity. The financial statement does not include an expense for "charitable contributions," but it includes \$XXXXXX as a "bad debt expense."

(App. Ex. G, p. 5) It is not clear how this amount was determined, but it must be emphasized that there is a distinction between bad debt and charity. Charity is a gift (Methodist Old Peoples Home, at 156), and the applicant must establish that its “free services” were gifts rather than debt that could not be collected. See Alivio Medical Center v. Department of Revenue, 299 Ill. App. 3d 647, 652 (1st Dist. 1998) (writing off a bad debt is not tantamount to providing charity). In addition, expecting to be paid for services but operating at a loss is not charity. See Most Worshipful Grand Lodge of Ancient Free and Accepted Masons of the State of Illinois v. Department of Revenue, 378 Ill. App. 3d 1069 (4th Dist. 2007) (independent living units that did not generate a profit did not receive charitable property exemption).

For purposes of applying the guidelines in Methodist Old Peoples Home, *supra*, the court defined charity as “a gift to be applied ... for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare--or in some way reducing the burdens of government.” As already discussed, the applicant has not substantiated the “gift” that it provides, but it is also not clear that it has met the remaining guidelines that are at issue. With respect to whether the applicant derives its funds mainly from public and private charity, approximately 47% of the applicant’s income was from private pay, and 27% was from DHS and DCFS. This means that the majority of the applicant’s income was payment for services. Nevertheless, the fact that the applicant’s primary funding source is not public or private charity is not, by itself, dispositive. See Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 746 (4th Dist. 2008), *aff’d*, 236 Ill. 2d 368 (2010) (“Provena II”) (citing American College of Surgeons v. Korzen, 36 Ill. 2d 340,

348 (1967)). In Provena II, the court stated that the factors of dispensing charity to all who need and apply for it and placing no obstacles in their way “are essential criteria; they go to the heart of what it means to be a charitable institution.” *Id.* at 750. Furthermore, the factor that the property is used exclusively for charitable purposes is the *sine qua non* of the exemption. *Id.* at 743.

As the previous discussion indicates, the facts do not clearly and convincingly show that the applicant meets these other guidelines for the 2017 tax year. The testimony of the applicant’s Executive Director conflicted with the policies in the Parent Resource Guide, which was not effective during the year in question. The applicant failed to present documents to substantiate when the enrollment fee was waived, when the tuition was waived, and when any late fees were waived. The charging of fees does not automatically disqualify an organization as charitable as long as it furnishes its facilities or services to those who are unable to pay. Small, at 515-516. The evidence presented does not clearly and convincingly show when the applicant waived fees during 2017 for those who were unable to pay.

In addition, although it is not clear whether the applicant’s brochure was used during the year in question, the brochure does not include any notice of a fee waiver policy. As already mentioned, the 2018 Parent Resource Guide includes waiver policies but was not effective during 2017. Failing to adequately notify the public of a fee waiver policy or free services is considered to be an obstacle in the way of those seeking charity. See Riverside Medical Center, *supra*; Alivio Medical Center, *supra*. Although public notice of a fee-waiver policy is not an indispensable fact for a charitable tax exemption (see Randolph Street Gallery v. Zehnder, 315 Ill. App. 3d 1060, 1068 (1st Dist. 2000)), it

is still a relevant fact to consider. Furthermore, the fact that the Department has previously granted exemptions to other daycares has no bearing on this case because each case must be decided on its own facts. See Hopedale Medical Foundation, at 462-463. Finally, having a charitable exemption from income taxes or from retailers' occupation and use taxes is not determinative of whether an applicant is entitled to a charitable exemption from property taxes. *Id.* at 464.

The applicant clearly provides an important service for the community. The applicant serves low-income families and at-risk children, and it connects the families to other resources in the community. As Ms. David stated, "We are their support system." (Tr. p. 33) As previously mentioned, however, exemption provisions must be strictly construed, and all doubts must be resolved in favor of taxation. Eden Retirement Center, Inc., *supra*. The party claiming the exemption must prove by clear and convincing evidence that it is entitled to the exemption. Provena I, at 388. Because the evidence presented by the applicant falls short of showing clearly and convincingly that the property qualifies for a charitable exemption, the request for an exemption must be denied.

Recommendation:

For the foregoing reasons, it is recommended that the property is not entitled to an exemption for the year 2017.

Linda Olivero
Administrative Law Judge

Enter: June 8, 2019