

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>CHILDREN’S HOSPITAL COLORADO,</p> <p>v.</p> <p>Respondent:</p> <p>PROPERTY TAX ADMINISTRATOR.</p>	<p>Docket No.: 68840</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on November 15, 2016, Diane M. DeVries and Gregg Near presiding. Petitioner was represented by Ellen Elizabeth Stewart, Esq. Respondent was represented by Robert H. Dodd, Esq. Petitioner is protesting Respondent’s denial of a property tax exemption for the subject property effective January 1, 2012.

I. Factual Background

Subject property is described as follows:

**2255 North Wheeling Street
Aurora, CO 80045
Adams County Parcel No. 18233611102**

The parties agreed at the hearing to stipulate to Respondent’s Exhibits A through G and to Petitioner’s Exhibits 1 through 10 with the exception of Exhibit 7. Mr. Dodd objected to Exhibit 7 on the basis of hearsay. The Board ultimately allowed admission of all of the exhibits.

The subject property is described as the Early Childhood Center at Children’s Hospital Colorado within the Anschutz Medical Campus (“Center”). The Center was developed by The Children’s Hospital (“TCH”) with assistance from the University of Colorado (“University”).

In 2011, TCH and the University entered into an agreement for the construction and operation of the Center. Under the terms of the agreement, TCH agreed to construct and operate the Center for the primary purpose of providing child care services to constituents of TCH and the University.

TCH and the University agreed that TCH would own the Center and TCH would assume sole administrative authority and operational responsibility for the Center. The University agreed to pay a portion of the construction costs for the Center in return for receiving an allocation of 80 of the 248 available child care spaces at the Center. The parties also agreed the rates for all enrollees at the Center would be equal, irrespective of whether they were enrollees from TCH or the University, but that nothing would prohibit either TCH or the University from subsidizing the cost for its enrollees. Finally, the parties agreed that the rates would be competitive with the local market for quality child care. (*See* Petitioner's Exhibit 2).

TCH contracted with Bright Horizons Child Care Centers, LLC ("Bright Horizons"), a private for profit entity, for development and management of the Center. Bright Horizons was retained to assist in the development of the Center and was granted management of the operation for five years from the opening date. Under the terms of the agreement between TCH and Bright Horizons, all parent fees (tuition, enrollment and registration fees, meal fees and student activity fees) are transferred to TCH, and TCH is responsible for paying all operating expenses (including salaries and benefits for Center employees and a charge for center support services). all facility related expenses (including all repair, maintenance, utilities, janitorial, lawn maintenance and snow removal) and a management fee (to begin at \$182,000 per year with annual increases.). (*See* Petitioner's Exhibit 5).

In September of 2013, Petitioner filed an Application for Exemption of Property Owned and Used for Strictly Charitable or School Purposes. (*See* Respondent's Exhibit C). On October 10, 2014, Respondent issued a Tentative Determination denying exemption for the subject stating that the property was not used for strictly charitable purposes. (*See* Respondent's Exhibit B). Subsequently, on April 27, 2016, Respondent issued its Final Determination denying exemption status for the subject property reasoning that the "property [was] not owned and used for strictly charitable purposes." (*See* Respondent's Exhibit A). The comments section of the Final Determination stated that the owner's financial figures from the use of the property did not qualify it for exemption under Subsection (1)(e) of C.R.S 39-3-110 and the property did not meet the requirements under Rule IV.B.1 and C.R.S. 39-3-108(1)(a). Petitioner then appealed Respondent's denial to the Board of Assessment Appeals.

Petitioner's first witness, Ms. Lynndi Falotico, Center Director at Fitzsimons Early Learning Center, testified regarding the operations of the Center and the physical facility. Ms. Falotico testified concerning the eligibility for the child care services at the Center. As outlined in the Child Care Center Development and Management Agreement, (*See* Petitioner's Exhibit 5), the Center has a five-tiered priority of enrollment list. First priority of enrollment is given to children of Children's Hospital employees, students and employees of the University of Colorado Denver (allocated spaces), and children of employees of Fitzsimons Redevelopment Authority (allocated spaces). Second priority is given to siblings of children of Children's Hospital employees enrolled at the Center. Third priority is given to children of Bright Horizons' staff employed at the Center. The definition of the fourth priority is left to the agreement of Bright Horizons and Children's Hospital. The fifth and final priority is given to children from the community.

Provided as Petitioner's Exhibit 4, is a "snapshot" of enrollment at the Center from October 2014, containing a breakdown of actual enrollment as of that month. According to the breakdown,

out of 254 children enrolled, 87 spaces were occupied by the children of Children's Hospital employees (Tier 1); 148 spaces were taken by children of the faculty, staff and students of University of Colorado Denver (Tier 2); 4 spaces were filled by the children of Bright Horizons' employees, 1 space filled by a child of an employee at Fitzsimons Redevelopment Authority (Tier 3); 12 spaces were taken by children of the University of Colorado Hospital employees, and 2 spaces taken by children of University Physicians (Tier 4). The remainder of Tier 4, allocated for children of "VA, Police, Retailers, etc." – reflected zero children enrolled.

Petitioner's Exhibit 4 also reflected 305 children on the waitlist as of November 13, 2014, of which 49 children were children of employees of Children's Hospital, 232 children of the University of Colorado Denver employees/students; 18 children of employees of the University of Colorado Hospital; 5 University Physicians' children and 1 child associated with Veteran Affairs.

Ms. Falotico stated there are currently about 325 children on the Center's wait list of which approximately 60 are from the local community. According to Ms. Falotico's testimony, children from "community" included children of employees of Fitzsimons' Redevelopment Authority employees (Tier 3); as well as children of University of Colorado Hospital employees and University Physicians, VA, Police, Retailers (Tier 4). Currently, there are 11 children from the "community" enrolled in the Center. The Board was not presented with a per-tier break down of the 11 children from the community.

Ms. Falotico also testified as to the Center's tuition assistance program. She stated that a 10% tuition discount was available for families who have an annual household income of 150% or less of the federal poverty guideline. In addition, a 5% tuition fee discount is offered to each family with more than one child already enrolled at the Center. Ms. Falotico also testified that four of the eleven children from the "community" are receiving discounts of 50% on tuition based on financial need. Unlike the 10% poverty guideline discount or the 5% sibling discount, the 50% discount was not reflected in any of the Center's written policies. The witness also testified that except the 10% discount, there are no other discounts in place based on income that a family could qualify for without discretion from the management of Bright Horizons. The witness was also unable to testify as to how many parents of the children at the Center qualify to receive the 10% discount based on federal poverty guideline. The witness also discussed the rates being charged for child care, the salaries of staff members, teacher to student ratios and the quality of the learning environment at the center.

Petitioner's next witness, Ms. Susan Jordan, Director of Human Resource Operations for Children's Hospital Colorado, testified regarding her experience with the child care center as a member of the steering committee and as the representative of Children's in the operation of the facility. A Request for Proposals (RFP) for management and construction was extended and Bright Horizons, as the chosen party, was added to the steering committee. Ms. Jordan indicated her responsibilities included input on tuition for attendees, review of charges by similar child care operations and assistance with staffing. Based on her review of tuition charged by other child care centers, Ms. Jordan believes that the tuition charged by the Center is 10-12% below market rates, but on cross examination, she acknowledged that TCH and the University agreed that the tuition rates at the Center would be competitive with the local market for quality child care. The witness expressed concern about the large wait list and noted her efforts to expand the facility. Ms. Jordan testified that

as of October 2014, there were 235 children of Children's Hospital Employees and University of Colorado Denver faculty, staff and students enrolled at the Center (Tiers 1 and 2). The remaining 19 spots at the Center were filled by the children of Bright Horizons' employees, employees of Fitzsimons' Redevelopment Authority, employees of University of Colorado Hospital and University Physicians (Tiers 3-4).

Petitioner introduced a third witness, Mr. Jeffrey Harrington, Senior Vice President and Chief Financial Officer for Children's Hospital Colorado. Mr. Harrington testified regarding the tax exempt status of Children's Hospital; his experience as a member of the steering committee and the University's involvement in the hospital. The witness cited the Schools of Medicine, Dentistry and Public Health located at the hospital and highlighted an emphasis on high-end specialties and training of residents in pediatric care. Mr. Harrington provided further information regarding the RFP noting there were four applicants with one, the Jewish Community Center, a non-profit organization. The witness testified to the subject child center's losses in cash flow for the years 2014 through 2016 and these deficits were ultimately the responsibility of Children's Hospital.

Petitioner also introduced a fourth witness, Mr. Neil Krauss, Director of Initiatives and Outreach, Office of the Chancellor, University of Colorado, Anschutz Medical Campus. Mr. Krauss noted the agreement between the University and the hospital and stated that the child care center was an employee benefit. The University has child care at all campuses. Mr. Krauss also testified that the child care facilities on other University campuses are auxiliary services so they run on their own ability to fund themselves through tuition. Due to insufficient high quality child care in the area it was necessary to develop the Center for recruitment purposes to attract and keep quality staff. Mr. Krauss testified that presently 148 slots at the Center are filled by the children of University of Colorado's faculty, staff and students. According to Mr. Krauss, even though children from the University's faculty, staff and students occupy well beyond the 80 spots originally reserved for the University's purposes, the demand is great and the needs of the University are not being met. Mr. Krauss added that at this time, there were no capabilities to expand the Center.

Respondent called Mr. Stan Gueldenzopf, Director of Property Tax Exemptions for the Property Tax Administrator, as a witness. Mr. Gueldenzopf testified to his experience in reviewing tax exemption applications and the steps required to obtain tax exempt status. Mr. Gueldenzopf also testified to the process he followed when reviewing Petitioner's application for exemption. The witness pointed out that Petitioner's original application (*See Respondent's Exhibit C*) for exemption stated that the subject child care center was being used as a "Licensed Health Care Facility." After a Tentative Determination was issued on October 10, 2014 denying Petitioner's request for exemption, Petitioner was provided with an opportunity to provide additional evidence to the Division of Property Taxation in support of its exemption status. Respondent's Exhibits D through F detail communications between Mr. Gueldenzopf's staff and Petitioner, wherein Petitioner provided additional information, including financial data, in support of the application. Exhibit G is the summary of the tuition discounts at the Center that Mr. Gueldenzopf generated based on the information provided by Petitioner. Having reviewed the additional information provided by Petitioner, Mr. Gueldenzopf determined that Petitioner was not eligible for an exemption status. A Final Determination denying charitable exemption to Petitioner was issued on April 27, 2016.

II. General Analysis

The Colorado Constitution provides, “Property, real and personal, that is used solely and exclusively for...strictly charitable purposes...shall be exempt from taxation.” Colorado Constitution, Article X, Section 5. *See* also Section 39-3-108(1), C.R.S. (“Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if such property is nonresidential.”).

The general assembly has recognized that only the judiciary may make a final decision as to whether or not any given property is used for charitable purposes within the meaning of the Colorado Constitution. Nevertheless, the general assembly has determined that certain uses of property which are set forth in statute are uses for charitable purposes that benefit the people of Colorado and lessen the burdens of government by performing services which government would otherwise be required to perform. Therefore, property used for such purposes is presumed to be owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit. *See* Section 39-3-101, C.R.S.

One such use identified by the general assembly is in the area of child care centers. Accordingly, a child care center meeting the requirements of Section 39-3-110, C.R.S. is presumed to be owned and used solely for strictly charitable purposes and not for private gain or corporate profit and shall be exempt from the levy and collection of property tax. A child care center that does not meet the requirements of Section 39-3-110, C.R.S. may, nevertheless, be exempt from property taxation pursuant to the Colorado Constitution and the general provisions of Section 39-3-108(1), C.R.S.

III. Statutory Analysis -- Section 39-3-110, C.R.S.

Section 39-3-110(1), C.R.S. lists eight requirements (subsections a through h) that must be satisfied in order for a child care center to qualify for exemption from property tax under the statute. Petitioner and Respondent agree that seven of the eight requirements have been met in this appeal. At issue is whether subsection (e) has been met.

Subsection (e) of Section 39-3-110(1), C.R.S. is satisfied if a property is used as an integral part of a child care center “which provides its services to an indefinite number of persons free of charge or at reduced rates equal to five percent of the gross revenues of such child care center or equal to ten percent of the amount of tuition charged by such child care center to the financially needy or charges on the basis of ability to pay.”

Petitioner concedes that the Center does not provide services to an indefinite number of persons free of charge or at reduced rates equal to 5% of the gross revenues or 10% of the amount of tuition charged by the Center to the financially needy. Petitioner argues, however, that the Center charges on the basis of ability to pay. Respondent argues that the Center does not charge on the basis of ability to pay.

In support of the argument that it charges on the basis of ability to pay, Petitioner presented documentary evidence concerning the Center's policy for providing a 10% tuition discount for families who have an annual household income of 150% or less of the federal poverty guideline. The policy also provides a 5% tuition fee discount to each family with more than one child enrolled at the Center. *See* Petitioner's Exhibit 10.

Petitioner also presented the testimony of Ms. Falotico, who testified that four children who are currently enrolled at the Center receive a discount of 50% based on financial need. Unlike the 10% poverty guideline discount or the 5% sibling discount, the 50% discount was not reflected in any of the Center's written policies.

In support of the argument that the Center does not charge on the basis of ability to pay, Respondent presented the testimony of Mr. Gueldenzopf, Director of Property Tax Exemptions for the Property Tax Administrator. Mr. Gueldenzopf testified that Respondent has granted exemptions for child care centers who charge on the basis of ability to pay, but based on the information provided, he didn't think Petitioner qualified for exemption on that basis. He testified that generally the information he receives from applicants claiming exemption pursuant to the "charges on the basis of ability to pay" standard tends to be some kind of a scale that takes into account both the income of a particular family and the family size. He didn't believe the 10% discount provided by Petitioner based on the federal poverty guideline was adequate because it didn't take into account different income levels of different families – each family would get the same discount regardless of how difficult it was for them to pay.

After careful consideration of the testimony and exhibits, the Board finds that Subsection (e) of Section 39-3-110(1), C.R.S. has not been met under the facts presented.

The Board finds that the Center does not provide its services to an indefinite number of persons free of charge or at reduced rates equal to five percent of the gross revenues of the Center or equal to ten percent of the amount of tuition charged by the Center to the financially needy. This finding is based on the agreement of both parties that the Center does not meet these standards, the testimony of Mr. Gueldenzopf and the summary of discounts shown on Respondent's Exhibit G.

The Board also finds that the Center does not charge on the basis of ability to pay. In this regard, Mr. Gueldenzopf's testimony was credible. The Board also considered the Rules and Regulations for Exempt Properties that were promulgated under the authority of Section 39-2-117(7), C.R.S., which include the following definition:

"Charges on the basis of ability to pay" means that the total cost for each child is determined by a scale based on the recipient's financial status. *See* Rules and Regulations for Exempt Properties, 8 Code Colo. Regs. 1304-2(IV)(E)(5).

The Board believes that this definition requires the use of a graduated series of total cost for each child based on the financial status of the recipient. Under this definition, the total cost for each child would be greater for those with a stronger financial status. The total cost for each child would be less for those with a weaker financial status.

The Board was not convinced that the Center's written tuition discount policy meets this definition. The following example using information provided in Petitioner's Exhibits 7-1 and 10-3 illustrates how the Center's tuition discount policy fails to meet the standard of "charges on the basis of ability to pay" as that term is defined by the rule:

Under the Center's tuition discount policy, a single parent with one infant child who has income of \$23,000 per year (or \$442 per week) would qualify for a 10% tuition discount equal to \$31.90 per week and would pay \$287.10 per week for child care at the Center. This amounts to 65% of the recipient's income.

Another single parent with one infant child who has income of \$15,000 per year (or \$288 per week) would qualify for the same 10% tuition discount equal to \$31.90 per week and be required to pay the same \$287.10 per week for child care at the Center. However, this amounts to nearly 100% of the recipient's income.

The Center's written tuition discount policy clearly fails to meet the standard of charging on the basis of ability to pay as defined by the rule. The parent in the second scenario above, who has a much weaker financial status, pays the same amount per child as the parent in the first scenario above, who has a stronger financial status. The second parent has less ability to pay than the first parent, but the total cost for child care is the same for both parents. The Center's written tuition discount policy is not designed to charge on the basis of the ability to pay.

The Board was not convinced that federal poverty level table used by Petitioner to determine eligibility for the 10% tuition discount meets the standard of charging on the basis of ability to pay as defined by the rule. The Board does not believe that use of the table results in the total cost for each child being determined by a scale based on the recipient's financial status. The same 10% discount is applied regardless of whether the recipient meets the federal poverty guideline by one penny or by thousands of dollars.

The Board was also not convinced that the Center's written policy of offering an additional 5% tuition fee discount to each family with more than one child at the Center meets the standard of a child care center which charges on the basis of ability to pay. This discount is not based on the ability to pay. Ms. Falotico testified that every family who has more than one child enrolled in the Center qualifies to receive this discount, regardless of their income level or financial status.

Finally, the Board was not convinced that the standard of "charges on the basis of ability to pay" was met by the Center's decision to grant a 50% discount for four children who are currently enrolled at the Center. No detailed information was provided as to the income level or financial status of those who received the 50% discount or when this 50% discount first started to be available. Testimony indicated that there was no written policy for providing the 50% discount, and the decision to grant more than the 10% discount was discretionary based on a decision of the management of Bright Horizons. Moreover, it appears from Exhibit D that at least two of the four who are receiving the 50% discount are employees of Bright Horizons. In addition, according to the testimony of Ms. Falotico, information concerning the discounts is provided upon inquiry, and the discounts are not

currently mentioned on the Center's webpage. Based on the evidence presented, the Board was not convinced that the 50% discount was consistently offered and granted as part of the rate structure used by the Center. Because the 50% discount is totally discretionary, the Board does not believe that it is indicative of a procedure designed to charge on the basis of ability to pay as defined by the rule.

Based on the evidence presented, the Board was not convinced that the criteria for property tax exemption set forth in Section 39-3-110, C.R.S has been met.

IV. Constitutional Analysis

The Colorado Constitution provides, "Property, real and personal, that is used solely and exclusively for...strictly charitable purposes...shall be exempt from taxation." Colorado Constitution, Article X, Section 5.

According to regulations issued by the Department of Local Affairs Division of Property Taxation:

"Charity" means a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life. or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.

8 Code Colo. Regs. 1304-2(IV)(A). This definition is taken verbatim from *Jackson v. Phillips*, 96 Mass. (14 Allen) 539, 556 (1867), which Colorado appellate courts "have consistently harkened back to" in reviewing charitable use exemption issues. *Bd. of Assessment Appeals v. AM/FM Int'l*, 940 P.2d 338, 343-44 (Colo. 1997).

The determination as to whether property is used for 'strictly charitable purposes' must be made on a case-by-case basis to determine whether such use satisfies the statutory and constitutional requirements. *Id.* at 347.

Colorado courts have consistently adhered to the principle that charitable purpose as an end will be strictly construed; but if the end is clearly established as charitable, then the means used to achieve that end will be liberally construed as a use for a charitable purpose. *United Presbyterian Assn. v. Board of County Comm'rs*, 448 P.2d 967 (Colo. 1968).

Applying the case law cited above, the Board believes the facts in this appeal weigh significantly against a finding that the Center is being used for a charitable purpose:

- The agreement between TCH and the University indicates that the purpose of the Center is to provide child care services to constituents of TCH and the University. Testimony indicated that TCH viewed child care as an employee benefit that needs to be provided in order to

attract and retain employees. Based on the evidence presented, the Board believes TCH uses the Center for a business purpose, and not a charitable purpose.

- The evidence did not indicate a primary purpose of the Center was to provide child care services for the benefit of the public at large. In fact, Mr. Harrington's testimony indicated that the decision to allow the Center to be opened to the community was made before the Center opened due to a concern that it might take time for the Center to be fully used by TCH and the University. While the Center is open to the community, the number of community members who are allowed to attend the Center is actually very limited.

Given the allocation structure for child care spaces at the Center, the Board does not believe that the Center is provided for the benefit of an indefinite number of persons. For the most part, the ability to benefit from the Center is limited to those who have a voluntary association with TCH or the University. When the right to benefit depends on a voluntary association with a particular society then that organization does not benefit an indefinite number of persons. *See* the Rules and Regulations for Exempt Properties, 8 Code Colo. Regs. 1304-2(IV)(B)(2). Here, the allocation structure is designed to ensure that virtually all of the beneficiaries of the Center are constituents of TCH and the University, not an indefinite number of persons as the term is defined by rule.

- The agreement between TCH and the University indicates that the rates to be charged for child care "will be competitive with the local market for quality child care". The agreement also contemplates allowing either party to subsidize the costs for their individual enrollees. Although Petitioner presented testimony from Ms. Jordan indicating her belief that the rates charged by the Center were 10-12% below market and a very minimal survey showing the rates of two other child care centers, the Board was not convinced that the Center's rates were intended to be or are in fact below market rates. The Board does not believe that a "gift" is being provided to parents who have children attending the Center in the form of rates that are below market.
- The Board was also not convinced that the tuition assistance described in Petitioner's Exhibit 10 or the 50% discounts provided to four current enrollees support a finding that the Center is being used for a charitable purpose. The Board notes that Petitioner was unable to provide specific numbers of individuals who have qualified for the 10% income assistance. Furthermore, the income assistance appears only to be provided when an applicant affirmatively inquires about the assistance. It is not mentioned on the Center's webpage. In reviewing Exhibits D through G, it appears that tuition assistance for 2012 through 2014 amounts to about 3% of the revenues of the Center. This falls well below the 5% of gross revenue or 10% of tuition tests established by the general assembly in Section 39-3-110(1)(e), C.R.S. As noted earlier, the Board was also not convinced that the Center charges based on the ability to pay. Based on the evidence presented, the Board was not convinced that the subject property is being used for a charitable purpose by virtue of the minimal tuition assistance being provided.

- Based on the evidence presented, the Board believes that the Center does not meet the statutory requirement set forth in Section 39-3-108, C.R.S. of being used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit. The evidence indicated that TCH pays Bright Horizons, the for profit company that operates the Center, a management fee in excess of \$200,000 per year. The evidence also indicated that Bright Horizons makes a profit of 3% to 5% per year. The agreement between TCH and Bright Horizons also appears to compensate Bright Horizons for most of its costs associated with operating the Center. The Board notes the broad coverage for “Center Support Services”, which are included as Operating Expenses in the agreement that must be paid by TCH. The Center Support Services include finance, accounting, legal services and “regional manager oversight”. Under the agreement, these Center Support Services are in addition to the management fee and other operating expenses (such as wages, salaries and benefits for the teachers). The agreement requires TCH to pay Bright Horizons an additional \$197,200 for these Center Support Services in the first year of operation and the amount increases each year by the greater of 4% or the increase in the consumer price index.
- To support its argument that the Center is used for a charitable purpose, Petitioner presented evidence that the University provides child care facilities for its faculty, staff and students at its other campuses, and argued that the University would need to provide a child care facility at the Anschutz Medical Campus if the Center was not provided by TCH. Petitioner argued in this regard that it lessened the burden of government by providing the Center for the University’s use.

One justification for exempting charitable enterprises from taxation is that they perform functions which tax-supported governmental entities would otherwise be required to perform.

Thus, it is appropriate to determine whether the use of property is of a kind which relieves government of a task it would otherwise have to perform and whether the benefit conferred by that use inures primarily to the people of Colorado upon whom the burden of any additional taxation resulting from exemptions will fall. *See United Presbyterian Asso.* 448 P.2d at 501; *West Brandt Foundation, Inc. v. Carper* 652 P.2d 564 (Colo. 1982).

The rules and regulations for exempt properties promulgated by the Property Tax Administrator state that, “Lessening the burdens of government” will be determined by whether the charitable work, if not being done by a private person, would have to be undertaken at public expense. *See the Rules and Regulations for Exempt Properties*, 8 Code Colo. Regs. 1304-2(IV)(B)(4).

Although having access to child care for University faculty, staff and students is a legitimate policy concern of the University from the perspective of employee retention, the Board was not convinced that providing a child care facility for University faculty, staff and students is a primary responsibility of the University such that it would have to be carried on by the University at taxpayer expense at the Anschutz Medical Campus in the absence of TCH providing a child care center at the campus.

The Board notes the testimony of Neil Krauss, who stated that providing child care at the University’s campuses is an essential benefit. However, when asked if the University would have developed a child care center on its own if TCH had not developed the Center, Mr.

Krauss did not unequivocally answer yes. Instead, he noted that the Anschutz campus is different from other higher educational institutions because three completely separate organizations have come together on the campus – each with a need for child care on the campus. Mr. Krauss also testified the child care facilities on the University’s other campuses are auxiliary enterprises so they run on their own ability to fund themselves through tuition. Based on the testimony and evidence presented, the Board was not convinced that the development and use of the subject property as a child care center relieved the University of a task that it otherwise would have been required to undertake at the public expense.

The Board also notes that TCH did not provide the Center for the University’s exclusive use. TCH also did not provide the Center totally at TCH’s cost. The University paid a portion of the cost to develop the Center based on the guaranteed allocation of 80 spaces at the Center for constituents of the University. Although TCH is responsible for any loss experienced by the operation of the Center, TCH also has sole administrative authority and operational responsibility for the Center, including the right to negotiate the agreement for operating the center. TCH also has the ability to determine the fees that will be charged (as long as they are competitive with the local market). The Board does not believe that operating losses at the Center that result from TCH’s decisions should be deemed a charitable gift that lessens the burden of government. There was no evidence that the University is operating the child care facilities on its other campuses at a loss. In fact, Mr. Krauss testified the child care facilities on the University’s other campuses are auxiliary enterprises that are run on their own ability to fund themselves through tuition.

Based on the evidence presented, the Board finds that Petitioner did not lessen the burden of government through Petitioner’s activities related to the Center.

V. Conclusion

Petitioner did not present sufficient probative evidence and testimony to support an exemption from property tax. Based on the evidence presented, the Board was not convinced that the criteria for property tax exemption set forth in Section 39-3-110, C.R.S has been met. The Board was also not convinced that there was a charitable purpose for the Center or that the Center is used solely and exclusively for strictly charitable purposes.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review thereof according to the Colorado appellate rules and the provisions of

Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it is a matter of statewide concern, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

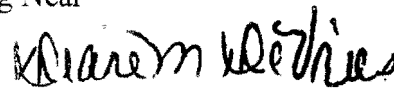
Section 39-2-117(6), C.R.S.

DATED and MAILED this 9th day of January 2017.

BOARD OF ASSESSMENT APPEALS



Gregg Near



Diane M. DeVries

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.



Milla Lishchuk

