



**COUNTY COMMISSIONERS**  
Association of Pennsylvania

# REAL ESTATE EXEMPTIONS

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# CONSTITUTIONAL AUTHORITY

- (a) The General Assembly may by law exempt from taxation:
  - (i) Actual places of regularly stated religious worship - EG: churches, synagogues, mosques, shrines or temples where religious acts are occurring. May include property annexed thereto which is necessary for such use (parking lots, Wesley United Methodist Church v. Dauphin County Bd. of Assessment Appeals, 889 A.2d 1180 (Pa. 2005); not church parishes, St. Aloysius R.C. Church v. Fayette County Bd. of Assessment Appeals, 849 A.2d 293 (Pa. Cmwlt. 2004); not visitors center and museum of shrine, In re Order of St. Paul the First Hermit, 873 A.2d 31 (Pa. Cmwlt. Ct. 2005).
  - (ii) Actual places of burial, when used or held by a person or organization deriving no private or corporate profit therefrom and no substantial part of whose activity consists of selling personal property in connection therewith;

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# CONSTITUTIONAL AUTHORITY

- (iii) That portion of public property which is actually and regularly used for public purposes;
- (iv) That portion of the property owned and occupied by any branch, post or camp of honorably discharged servicemen or servicewomen which is actually and regularly used for benevolent, charitable or patriotic purposes; and
- (v) Institutions of *purely public charity*, but in the case of any real property tax exemptions only that portion of real property of such institution which is actually and regularly used for the purposes of the institution.
- **Taxation of property is the rule; therefore, statutory exceptions must be strictly construed.**

**Pa. Const. art. VIII, § 2**

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# “Purely Public Charity” Not Defined by Constitution

## Representative Case Law

- Episcopal Academy v. Philadelphia, **150 Pa. 565, 25 A. 55, 30 W.N.C. 528(1892)**. Const. art. 9, § 1 (renumbered in 1968) - among other things, all hospitals, universities, colleges, seminaries, academies, and associations and institutions of learning, benevolence, or charity, with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same, found, *[founded,] provided, endowed, and maintained by public or private charity*, should be exempted from all and every city, borough, county, road, school, and poor tax: provided, that all property, other than that which was in actual use and occupation for the foregoing purposes, and from which any income or revenue was derived, should be subject to taxation, except where exempted by law for state purposes

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# “Purely Public Charity” Not Defined by Constitution

- **YMCA of Germantown v. Philadelphia, 323 Pa. 401, 187 A.2d 204 (1936)**. Rooms at YMCA for rent were not exempt. “[W]hatever [a charitable institution] does for others is done free of charge, or at least so nearly free of charge as to make the charges nominal or negligible ...” Disapproved in West Allegheny Hosp. v. Bd of Prop. Assessment, 500 Pa. 236, 455 A2d 1170 (“charity” does not contemplate requirement that there be only a nominal charge).
- **Ogontz School Tax Exemption, 361 Pa. 284, 65 A.2d 150 (1949)**. Advancement of education deemed a charitable purpose.
- **Hill School Tax Exemption Case, 370 Pa. 21, 87 A.2d 259 (1952)**. Any institution engaged in education of youth is a ‘*public charity*’ if its doors are open to the public generally or a well defined class thereof, subject to reasonable entrance requirements

# Enumerated Exemptions of the Legislature

## 53 Pa.C.S. Section 8812

- Churches or actual places of regularly stated religious worship;
- Burial grounds not used or held for private or corporate profit;
- Hospitals, institutions of learning or charity, including *fire and rescue stations* maintained by public charity, provided any revenue obtained goes to support the entity;
- All schoolhouses belonging to any borough, county, or school district;
- All courthouses, jails, and poorhouses;
- All public parks;
- All other public property *used* for a public purpose;

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# Enumerated Exemptions of the Legislature

## 53 Pa.C.S. Section 8812

- All property owned, occupied, and used by any branch or post, or camp of honorably discharged servicemen or women *actually and regularly used* for benevolent, charitable, or patriotic purposes;
- **Real estate owned by institutions of purely public charity;**
- All playgrounds maintained by public or private charity;
- All property maintained by public or private charity and used for libraries, museums, art galleries, or concert music halls;
- Silos used for processing or storing animal feed on a farm;
- *All fire and rescue stations* maintained by public or private charity along with their social halls.

# Burden of Proof Rests with the Taxpayer

- Any organization seeking exemption has the affirmative burden to prove it is entitled to exemption. Remember, there is a presumption of taxation and against exemption.
- “Substantial evidence” is the quantum.
- Same burden if the taxing authority is attempting to strip the parcel of its tax exempt status. Still on the taxpayer. Erie v. Hamot Medical Cntr. 602 A.2d 407 (Pa. Cmwlth. 1992).
- Entitlement to an exemption is a mixed question of law and fact. Standard on appeal of a tax exemption case is an abuse of discretion.



# Burden of Proof Rests with the Taxpayer

- *Shall be seized of the legal or equitable title in the realty and possessor of the personal property absolutely. In re Collegium Foundation, 991 A.2d 990, 993 (Pa. Cmwlth. Ct. 2010).*

In order to claim an exemption, the taxpayer must show:

- It is one of purely public charity;
- Was founded by a public or private charity;
- Is maintained by public or private charity.
- Caveat - Institutions of Purely Public Charity Act, 10 Pa.C.S. Section 371 et seq., changes the burden of proof in some tax assessment cases where statutory prerequisites are met by the taxpayer.

# Exemption vs. Immunity

- The Supreme Court stated that the distinction between immunity and exemption is simply that in the case of immunity, the ordinary presumption against exemption does not apply. Southeastern Pennsylvania Transp. Authority v. Board of Revision of Taxes, 574 Pa. 707, 833 A.2d 710 (2003). Immunity is assumed unless the agency acts outside of its authorized governmental purposes. Lehigh-Northampton Airport Auth. v. Lehigh Cty. Bd. of Assessment Appeals, 585 Pa. 657, 675, 889 A.2d 1168, 1179 (2005). Applies to:

## **Commonwealth - Immune**

- *Girard Trust* - held that property owned by city as trustee for city trust was immune from local real estate taxation. City of Philadelphia v. Cumberland Cty. Bd. of Assessment Appeals, 622 Pa. 581, 81 A.3d 24 (2013).

# Exemption vs. Immunity

- **Authorities** - Under the Municipality Authorities Act, 53 Pa.C.S.A. §5607, et seq., an authority created by the state statute is part of the Commonwealth and presumed immune. Delaware County Solid Waste Authority v. Berks County Bd. of Assessment Appeals, 534 Pa. 81, 626 A.2d 528 (1993).
- Airport Authority - Lehigh Northampton Airport Authority and Lehigh Co. Bd. Of Assess. Appeals. Lehigh Northampton Airport Authority v. Lehigh County Bd. of Assessment Appeals, 843 A.2d 443 (Pa. Cmwlth. Ct. 2004), appeal granted, 860 A.2d 125 (Pa. 2004), reversed, 585 Pa. 657 (Pa. 2005) (hangar space used by airlines transporting individuals between destinations outside of the market area was within authority's authorized governmental purpose, and thus space was immune from property taxation).

**All Federally-owned parcels - Immune**

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# Exemption vs. Immunity - Burden of Proof

- Burden is shifted to taxing bodies to show the real estate is not being used for tax immune purpose. Immunity is assumed unless an authority acts outside its purpose.
- Burden is also shifted to taxing bodies to show that parcel is not exempt when it is owned by a governmental entity, such as a borough or township. EG: BOAA challenges exempt status of property owned by a township. The burden is on the BOAA to show it is not exempt. Granville Township v. Board of Assessment Appeals of Mifflin County, 900 A.2d 1012 (Pa. Cmwlth. 2006).
- Same burden if the taxing authority is attempting to strip the parcel of its tax exempt status. Still on the taxpayer. Erie v. Hamot Medical Cntr., 602 A.2d 407 (Pa. Cmwlth. 1992).

# The Constitutional Test for “Purely Public Charity”

## HUP AND ITS PROGENY

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# Hospital Utilization Project v. Commonwealth, 507 Pa. 1, 487 A.2d 1306 (1985)

**“HUP” Test** - Use before applying the PPCA aff’d by Mesivtah Eitz Chaim of Bobov, Inc. v. Pike Cty. Bd. of Assessment Appeals, 615 Pa. 463, 44 A.3d 3 (2012) (held that satisfaction of statutory charity criteria did not excuse failure to satisfy judicially created test). The Purely Public Charity Act's provisions are not identical to the HUP test, and an entity's status as a “purely public charity” under the Charity Act cannot make it eligible for tax exemption if it does not satisfy all of the constitutional requirements of the HUP test. Fayette Res., Inc. v. Fayette Cty. Bd. of Assessment Appeals, 107 A.3d 839, 845 (Pa. Cmwlth. Ct. 2014) appeal denied, 125 A.3d 778 (Pa. 2015).

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# Hospital Utilization Project v. Commonwealth, 507 Pa. 1, 487 A.2d 1306 (1985)

## **MUST MEET ALL FIVE PRONGS**

- Advance a charitable purpose;
- Donate or render gratuitously a substantial portion of its services;
- Benefits a substantial and indefinite class of people who are legitimate subjects of charity;
- Relieves government of some of its burden; and
- Operates entirely free from a private profit motive

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# #1 Advance a Charitable Purpose

- Do the Articles of Incorporation describe a specific charitable purpose? If so, where is that language?
- Does the organization's mission and programs advance any of the following purposes:
  - Relieve poverty?
  - Assist the aged, infirm, or distressed?
  - Combat juvenile delinquency?
  - Advance the spiritual, mental, social, and physical improvement of young men and women?
  - Advance education or science?
  - Provide health care- prevention or treatment?
  - Advance a governmental or municipal purpose
  - Advance purposes beneficial to the general public?

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# #1 Advance a Charitable Purpose

- See language used in HUP under 45 Pa.C.S. Section 506 for definition of “charitable organization” as delineated at 61 Pa.Code Section 32.1 in 1985. HUP, 487 A.2d at 1311. However, even if an entity meets this definition, it must still qualify under the Constitutional test.
- Must meet *every* element.

# Cases that Explain “Advance a Charitable Purpose”

City of Washington v. Bd. of Assessment Appeals of Washington Cnty., 550 Pa. 175, 181, 704 A.2d 120, 122-23 (1997) An institution that benefits the public from an educational, religious, moral, physical or social standpoint.

West Allegheny Hospital v. Board, 500 Pa. 236, 455 A.2d 1170 (1982). A hospital was a purely public charity within the meaning of the constitutional provision where it had an open admissions policy which provided comprehensive health care without regard to the patient's ability to pay.

St. Margaret Seneca Place v. Bd. of Prop. Assessment Appeals & Review, Cnty. of Allegheny, 536 Pa. 478, 483, 640 A.2d 380, 382 (1994). “The absence of indigent residents who receive no government support is not surprising, and is certainly not, standing alone, enough to disqualify a nursing home from an exemption as a purely public charity. In modern America it is hard to find any person in need of nursing home care who is uninsured, unable to pay, and wholly ineligible for government support in the form of Medicare or Medicaid coverage.”

# Cases that Explain “Advance a Charitable Purpose”

*But cf.* In re Appeal of Dunwoody Village, 52 A.3d 408 (Pa. Cmwlth. Ct. 2012). 239 residential units, 65 country houses and 174 apartments. One-time entrance fee that is either refundable or 50% refundable ranging from \$82,000 (100% non-refundable for single) or \$237,000 (couple). Occupants sign “life care contracts” and fees range from \$2,200 for a studio apartment to \$6,691 for a couple in a bedroom country home. No one will be evicted for lack of ability to pay, but only for a refusal to pay. Supreme Court says “hefty entry fee, monthly charges are high, and Dunwoody determines an applicant’s annual income and ability to pay.” Not a charitable purpose or any of the other four requirements met.

# #2 Donate or Render Gratuitously a Substantial Portion of Its Services”

- Not a “bright line” test or specific percentage. It must appear that the entity is making a *bona fide* effort to service those who primarily could not afford your usual fee.
- Does the organization donate or give away its services wholly to benefit the public?
  - Are any of the services free? To whom?
  - Do you have a sliding scale for fees? To whom?
  - Do you offer discounted fees? To whom?
  - How many take advantage of the discounted fees? Are they monthly or annually made?
- Is there a “charitable care component?”
  - If so, what is the nature and amount of the free care?
  - Does the care component include the variance between actual and reimbursed costs?

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# Cases - Donate or Render Gratuitously

Fayette Res., Inc. v. Fayette Cty. Bd. of Assessment Appeals, 107 A.3d 839, 847-48 (Pa. Cmwlth. Ct. 2014) appeal denied, 125 A.3d 778 (Pa. 2015).

- Appellant provided no evidence that its services were lower than the full cost of services or that it provides services “at cost.”
- Appellant introduced no evidence that it receives any charitable contributions or donations of property or services of any kind.
- Nor did it make any showing that the Medicaid payments that it receives are less than the full costs of its services, including the acquisition and fixing up of its group homes, or introduce any evidence as to how those payments compare to the total cost of its services.

# Cases - Donate or Render Gratuitously

Allentown Hosp.-Lehigh Valley Hosp. Ctr. v. Bd. of Assessment Appeals, Lehigh Cty., 148 Pa. Commw. Ct. 422, 429, 611 A.2d 793, 797 (1992).

- The word 'substantial' does not imply a magical percentage. It must appear from the facts that the organization makes a bona fide effort to service primarily those who cannot afford the usual fee.

Menno Haven, Inc. v. Franklin Cty. Bd. of Assessment & Revision of Taxes, 919 A.2d 333, 337 (Pa. Commw. Ct. 2007)

- Policy requires an applicant to be able to satisfy the financial admission criteria. Applicants for the independent living level of care must have sufficient resources available to pay: (1) the full cost of the entrance fee which ranged from \$45,000 to \$225,000 in 2004 depending on the unit chosen; (2) the monthly service fees and other personal living expenses for two years; and (3) the per diem rate for a minimum of two years in assisted living. This does not qualify.

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## # 3 Benefits a Substantial and Indefinite Class of People Who are Legitimate Subjects of Charity.

Are the recipients of the charity unable to provide for the services themselves? If so, what is the client base and what essential services do you provide?

- How many of your clients would be otherwise unable to provide those services for themselves?
- Do you accept new clients? On what basis?
- Do you have an open admission policy?

Have you been recognized by the IRS as a Section 501(c)(3) charitable organization?

- Not the sole test. But, as a threshold it must meet this requirement. Note: Organizations that are Section 501(c)(8) (fraternal organizations, such as Zembo Shriners, Lodges or Free Masons are not entitled to qualify).

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# Cases Explaining Benefiting a Substantial and Indefinite Class.

In re Appeal of Dunwoody Vil., 52 A.3d 408, 418 (Pa. Cmwlth. Ct. 2012)

Whether or not the portion donated or rendered gratuitously is 'substantial' is a determination based on the totality of the circumstances surrounding the organization. The word 'substantial' does not imply a magical percentage. It must appear from the facts that the organization makes a bona fide effort to service primarily those who cannot afford the 'usual fee.'

Wealthy senior citizens is not an "indefinite class." Fact that they may become indigent in the future without this placement is of no consequence to the analysis.

Unionville-Chadds Ford Sch. Dist. v. Chester County Bd. of Assessment Appeals, 692 A.2d 1136 (Pa. Cmwlth. Ct. 1997). (legitimate subjects of charity are not just the destitute; for example, Longwood Gardens benefits the indefinite public because it is open to the general public, unrestricted, at a greatly subsidized admission price).



# #4 Relieves the Government of Some of Its Burden.

- If you did not provide your services, would government be obligated to fund or provide those services - either directly or indirectly?
- Are those services a responsibility of the government by statute or ordinance?
- Has a government agency historically provided those services? If so, what agency or municipality?
- Do your services reduce dependency on government programs? If so, how?

# Cases that Support Relieves Government of Its Burden

Community Options, Inc. v. Board of Property Assessment Appeals and Review, 571 Pa 672, 678-79, 813 A.2d 680, 684 (2000).

- The [*Hospital Utilization Project*] test of whether an institution has relieved the government of some of its burden does not require a finding that the institution has fully funded the care of some people who would otherwise be fully funded by the government. The test is whether the institution bears a substantial burden that would otherwise fall to the government.

## **Factors:**

- Whether the institution compensates its employees at rates lower than those for similar government positions?
- Whether the institution charges less for its services than other similar institutions?

# Cases that Support Relieves Government of Its Burden

In re Appeal of Dunwoody Vill., 52 A.3d 408, 421 (Pa. Cmwlth. Ct. 2012) *The test is whether the institution bears a substantial burden that would otherwise fall to the government.* Dunwoody doesn't accept Medicaid payments.

Camp Hachshara of NY v. Wayne County Bd. of Asst., 47 A.2d 1271 (Pa. Cmwlth. Ct. 2012). - Government was not obligated to provide social, recreational, or educational activities for special needs children at a summer camp, and there was no evidence that services camp provided relieved any specific burden imposed on government under the Mental Health and Mental Retardation Act. Collateral relief provided to local volunteer fire department was not primary purpose, therefore, fails the HUP test. Not actually and regularly used *for the purposes of the institution.*



# Cases that Support Relieves Government of Its Burden

Religious camps have now resorted to attempting to characterize their entire parcel (multiple acres) as used for a “religious purpose.” Typically, only the chapel, sanctuary or place of actual worship will be exempt. Places of mere incidental use are not exempt. Mount Zion New Life Center v. Board of Assessment and Revision of Taxes and Appeals, 503 A.2d 1065 (Pa Cmwlth. Ct. 1986). Portions of structures may be exempt.

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# Relieves Government of Some of Its Burden

Pocono Community Theater v. Monroe Board of Assessment, 142 A.3d 110 (Pa. Cmwlth Ct. 2016).

- Local theater hosts community programs including: art receptions, lectures, programs for members, communication organizations, and students. Hosts roughly 100 events per year.
- Theater also shows first-run studio, independent, and art house films everyday.
- Court found it was exempt because a government burden is to provide for “cultural assets.” Analogized Unionville-Chadds Ford School Dist. V. Chester County BOAA, 714 A.2d 397 (Pa. 1988). Longwood Gardens provides architectural displays, water gardens, fountains, open air theater, wetlands, etc. The government has routinely assumed responsibility for conservation of natural landscapes and resources, *as well as providing cultural assets.*

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# #5 Operates Entirely Free From a Private Profit Motive

- This prong does *not* prohibit a charitable org from making a profit; rather it focuses on how the profit is used or applied.
- Do your governing docs prohibit private inurement (giving a benefit to an individual person)? If so, where is that language?
- Do your governing docs contain a dissolution clause? Where do assets go when no longer functioning? Do they go to another charity and not to a person(s)? To the state? Where is that language?
- Is all profit (revenues in excess of expenses) dedicated to the public purpose?
- Is your profit placed in a reserve for future use? Describe that use.
- Do you have a reasonable compensation policy? Does it specify a process for determining reasonable compensation for services rendered? If so, where is it?
- Is there a conflict of interest policy? If so, where is it?

# Cases that Explain “Operates Free from Private Profit Motive”

In re Appeal of Dunwoody Vill., 52 A.3d 408, 422 (Pa. Cmwlth. Ct. 2012).

DVI contends the trial court erred in determining the compensation of its managerial employees, including its CEO, CFO, Administrator of Health Services and Marketing Director, *was primarily* based on the financial performance of the institution. The maximum incentive compensation available to management employees ranged from 18%–24%

DVI contends the trial court erred in determining the compensation of its managerial employees, including its CEO, CFO, Administrator of Health Services and Marketing Director, *was primarily* based on the financial performance of the institution. The maximum incentive compensation available to management employees ranged from 18%–24%. DVI asserts the use of the term *primarily* in Act 55 dictates that 50% of the employee's compensation be based on the financial performance of the institution. But...the HUP test cases, however, do not support DVI's position.



# Cases that Explain “Operates Free from Private Profit Motive”

Guthrie Clinic, Ltd. v. Sullivan Cty. Bd. of Assessment Appeals, 898 A.2d 1194, 1196 (Pa. Cmwlth. Ct. 2006)

Physician compensation by first determining the “*productivity*” of each physician and providing percentage increases is a bonus program and is not free of a private profit motive.

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# Enter the Purely Public Charity Act, 10 P.S. Section 371, et seq. (Nov. 26, 1997).

- The experiences over the past 100 years in dealing with cases before the courts have shown that there is an ever evolving standard of what a “purely public charity” may be. Therefore, the Legislature passed a less restrictive act in 1997 to clarify those areas of the HUP test and provide more of a guide for practitioners and taxpayers as to what would or would not qualify.
- Specifically, the cases of Alliance Home of Carlisle v. Bd. Of Assess. Appeals, 919 A.2d 206 (Pa. 2007) and Community Options, cited *supra*. (Pa. 2002); set forth that the HUP test shall be passed prior to passing the PPCA.

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# Enter the Purely Public Charity Act, 10 P.S. Section 371, et seq. (Nov. 26, 1997).

- (b) **Intent.**-- It is the intent of the General Assembly to eliminate inconsistent application of eligibility standards for charitable tax exemptions, reduce confusion and confrontation among traditionally tax-exempt institutions and political subdivisions and ensure that charitable and public funds are not unnecessarily diverted from the public good to litigate eligibility for tax-exempt status by providing standards to be applied uniformly in all proceedings throughout this Commonwealth for determining eligibility for exemption from State and local taxation which are consistent with traditional legislative and judicial applications of the constitutional term "institutions of purely public charity."

**10 Pa. Stat. Ann. § 372 (West)**

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# PPCA Models the “HUP” Test with Several Key Areas

- Charitable Purpose
- Free from Private Profit Motive
- Provides a Community Service
- Charity to Persons
- Government Service

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# REMEMBER THE “HUP” TEST?

- (a) Advances a charitable purpose;
- (b) Donates or renders gratuitously a substantial portion of its services;
- (c) Benefits a substantial and indefinite class of persons who are legitimate subjects of charity;
- (d) Relieves the government of some of its burden; and
- (e) Operates entirely free from private profit motive.

“Institution of purely public charity.” An institution which meets the criteria under section 5

10 Pa. Stat. Ann. § 373 (West)

(a) **General Rule.**-- An institution of purely public charity is an institution which meets the criteria set forth in subsections (b), (c), (d), (e) and (f). An institution which meets the criteria specified in this section shall be considered to be founded, endowed and maintained by public or private charity.

(b) **Charitable Purpose.**-- The institution must advance a charitable purpose. This criterion is satisfied if the institution is organized and operated primarily to fulfill any one or combination of the following purposes:

- (1) Relief of poverty.
- (2) Advancement and provision of education. This paragraph includes postsecondary education.
- (3) Advancement of religion.
- (4) Prevention and treatment of disease or injury, including mental retardation and mental disorders.
- (5) Government or municipal purposes.
- (6) Accomplishment of a purpose which is recognized as important and beneficial to the public and which advances social, moral or physical objectives.

# Additional Criteria

- (c) **Private Profit Motive.**--The institution must operate entirely free from private profit motive. Notwithstanding whether the institution's revenues exceed its expenses, this criterion is satisfied if the institution meets all of the following:
- (1) Neither the institution's net earnings nor donations which it receives inures to the benefit of private shareholders or other individuals, as the private inurement standard is interpreted under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)).
  - (2) The institution applies or reserves all revenue, including contributions, in excess of expenses in furtherance of its charitable purpose or to funding of other institutions which meet the provisions of this subsection and subsection (b).

10 Pa. Stat. Ann. § 375 (West)

# Additional Criteria

(3) Compensation, including benefits, of any director, officer or employee is not based primarily upon the financial performance of the institution.

(4) The governing body of the institution of purely public charity has adopted as part of its articles of incorporation or, if unincorporated, other governing legal documents a provision that expressly prohibits the use of any surplus funds for private inurement to any person in the event of a sale or dissolution of the institution of purely public charity.

**10 Pa. Stat. Ann. § 375 (West)**

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# Additional Criteria

## (d) **Community Service.--**

(1) The institution must donate or render gratuitously a substantial portion of its services. This criterion is satisfied if the institution benefits the community by actually providing any one of the following:

(i) Goods or services to all who seek them without regard to their ability to pay for what they receive if all of the following apply:

(A) The institution has a written policy to this effect.

(B) The institution has published this policy in a reasonable manner.

(C) The institution provides uncompensated goods or services at least equal to 75% of the institution's net operating income but not less than 3% of the institution's total operating expenses.

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# Additional Criteria

(ii) Goods or services for fees that are based upon the recipient's ability to pay for them if all of the following apply:

(A) The institution can demonstrate that it has implemented a written policy and a written schedule of fees based on individual or family income. An institution will meet the requirement of this clause if the institution consistently applies a formula to all individuals requesting consideration of reduced fees which is in part based on individual or family income.

(B) At least 20% of the individuals receiving goods or services from the institution pay no fee or a fee which is lower than the cost of the goods or services provided by the institution.

(C) At least 10% of the individuals receiving goods or services from the institution receive a reduction in fees of at least 10% of the cost of the goods or services provided to them.

(D) No individuals receiving goods or services from the institution pay a fee which is equal to or greater than the cost of the goods or services provided to them, or the goods or services provided to the individuals described in clause (B) are comparable in quality and quantity to the goods or services provided to those individuals who pay a fee which is equal to or greater than the cost of the goods or services provided to them.

# Additional Criteria

- (iii) Wholly gratuitous goods or services to at least 5% of those receiving similar goods or services from the institution.
- (iv) Financial assistance or uncompensated goods or services to at least 20% of those receiving similar goods or services from the institution if at least 10% of the individuals receiving goods or services from the institution either paid no fees or fees which were 90% or less of the cost of the goods or services provided to them, after consideration of any financial assistance provided to them by the institution.
- (v) Uncompensated goods or services which in the aggregate are equal to at least 5% of the institution's costs of providing goods or services.
- (vi) Goods or services at no fee or reduced fees to government agencies or goods or services to individuals eligible for government programs if any one of the following applies:

# Additional Criteria

(A) The institution receives 75% or more of its gross operating revenue from grants or fee-for-service payments by government agencies and if the aggregate amount of fee-for-service payments from government agencies does not exceed 95% of the institution's costs of providing goods or services to the individuals for whom the fee-for-services payments are made.

(B) The institution provides goods or services to individuals with mental retardation, to individuals who need mental health services, to members of an individual's family or guardian in support of such goods or services or to individuals who are dependent, neglected or delinquent children, as long as the institution performs duties that would otherwise be the responsibility of government and the institution is restricted in its ability to retain revenue over expenses or voluntary contributions by any one of the following statutes or regulations or by contractual limitations with county children and youth offices in this Commonwealth:

(I) Sections 1905(d) and 1915(c) of the Social Security Act (49 Stat. 620, 42 U.S.C. §§ 1396d(d) and 1396n(c)).

# Additional Criteria

(II) 42 CFR 440.150 (relating to intermediate care facility (ICF/MR) services).

(III) 42 CFR Pt. 483 Subpt. I (relating to conditions of participation for intermediate care facilities for the mentally retarded).

(IV) The act of October 20, 1966 (3rd Sp.Sess., P.L. 96, No. 6),<sup>1</sup> known as the Mental Health and Mental Retardation Act of 1966.

(V) Articles II, VII, IX and X of the act of June 13, 1967 (P.L. 31, No. 21),<sup>2</sup> known as the Public Welfare Code.

(VI) 23 Pa.C.S. Ch. 63 (relating to child protective services).

(VII) 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

# Additional Criteria

(VIII) 55 Pa. Code Chs. 3170 (relating to allowable costs and procedures for county children and youth), 3680 (relating to administration and operation of a children and youth social service agency), 4300 (relating to county mental health and mental retardation fiscal manual), 6400 (relating to community homes for individuals with mental retardation), 6500 (relating to family living homes), 6210 (relating to participation requirements for the intermediate care facilities for the mentally retarded program), 6211 (relating to allowable cost reimbursement for non-State operated intermediate care facilities for the mentally retarded) and 6600 (relating to intermediate care facilities for the mentally retarded).

(vii) Fundraising on behalf of or grants to an institution of purely public charity, an entity similarly recognized by another state or foreign jurisdiction, a qualifying religious organization or a government agency and actual contribution of a substantial portion of the funds raised or contributions received to an institution of purely public charity, an entity similarly recognized by another state or foreign jurisdiction, a qualifying religious organization or a government agency.

# Additional Criteria

- (2) The institution may elect to average the applicable data for its five most recently completed fiscal years for the purposes of calculating any formula or meeting any quantitative standard in paragraph (1).
- (3) For the purposes of calculating the number of individuals for use in the percentage calculations in this subsection, educational institutions may use full-time equivalent students as defined by the Department of Education.
- (4) For purposes of this subsection, the term “uncompensated goods or services” shall be limited to any of the following:
  - (i) The full cost of all goods or services provided by the institution for which the institution has not received monetary compensation or the difference between the full cost and any lesser fee received for the goods or services, including the cost of the goods or services provided to individuals unable to pay.
  - (ii) The difference between the full cost of education and research programs provided by or participated in by the institution and the payment made to the institution to support the education and research programs.

**10 Pa. Stat. Ann. § 375 (West)**

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# Additional Criteria

- (iii) The difference between the full cost of providing the goods or services and the payment made to the institution under any government program, including individuals covered by Medicare or Medicaid.
- (iv) The difference between the full cost of the community services which the institution provides or participates in and the payment made to the institution to support such community services.
- (v) The reasonable value of any moneys, property, goods or services donated by a primary donor to an institution of purely public charity or to a government agency or the reasonable value of the net donation made by a secondary donor to a primary donor. As used in this subparagraph, the following words and phrases shall have the following meanings:

**10 Pa. Stat. Ann. § 375 (West)**

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# Additional Criteria

“Net donation.” In the case of a donation of money, property or identical goods and services made by a secondary donor, the difference between the value of the donation made by the secondary donor and the value of the donation made by the primary donor, provided such value is positive.

“Primary donor.” An institution which makes a donation of any money, property, goods or services to an institution of purely public charity.

“Secondary donor.” An institution which receives a donation of any money, property, goods or services from a primary donor and then makes a donation back to that primary donor within three years of having received such donation.

(vi) The reasonable value of volunteer assistance donated by individuals who are involved or assist in the provision of goods or services by the institution. The reasonable value of volunteer assistance, computed on an hourly basis, shall not exceed the Statewide average weekly wage as defined in section 105.1 of the act of June 2, 1915 (P.L. 736, No. 338),<sup>3</sup> known as the Workers' Compensation Act, divided by 40.

# Additional Criteria

(vii) The cost of goods or services provided by an institution licensed by the Department of Health or the Department of Public Welfare<sup>4</sup> to individuals who are unable to pay provided that reasonable and customary collection efforts have been made by the institution.

(viii) The value of any voluntary agreement as set forth in section 7(c).

(e) **Charity to Persons.--**

(1) The institution must benefit a substantial and indefinite class of persons who are legitimate subjects of charity.

(2) As used in this subsection, the following words and phrases shall have the meanings given to them in this paragraph:

“Legitimate subjects of charity.” Those individuals who are unable to provide themselves with what the institution provides for them.

# Additional Criteria

“Substantial and indefinite class of persons.” Persons not predetermined in number, provided that, where the goods or services are received primarily by members of the institution, membership cannot be predetermined in number and cannot be arbitrarily denied by a vote of the existing members. This subsection specifically recognizes that the use of admissions criteria and enrollment limitations by educational institutions does not constitute predetermined membership or arbitrary restrictions on membership so as to violate this section and recognizes that an institution may reasonably deny membership based on the types of services it provides, as long as denial is not in violation of Federal or State antidiscrimination laws, such as the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241) and the act of October 27, 1955 (P.L. 744, No. 222),<sup>5</sup> known as the Pennsylvania Human Relations Act.

**10 Pa. Stat. Ann. § 375 (West)**

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# Additional Criteria

(3) An institution shall be considered to benefit a substantial and indefinite class of persons who are legitimate subjects of charity if the institution is primarily engaged in fundraising on behalf of or making grants to an institution of purely public charity, an **entity similarly recognized by another state or foreign jurisdiction**, a qualifying religious organization or a government agency and there is actual contribution of a substantial portion of the funds raised or contributions received to an institution of purely public charity, an entity similarly recognized by another state or foreign jurisdiction, a qualifying religious organization or a government agency.

(4) An institution which operates exclusively on a voluntary basis to provide emergency health and safety services to the community or an institution which provides funds and support exclusively to volunteer institutions which provide emergency health and safety services to the community shall be considered to benefit a substantial and indefinite class of persons who are legitimate subjects of charity.

# Additional Criteria

(5) An institution *shall not be considered* to benefit a substantial and indefinite class of persons who are legitimate subjects of charity if:

(i) the institution is not qualified under section 501 (c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501 (c)(3)) and

(ii) the institution is qualified under section 501(c)(4), (5), (6), (7), (8) or (9) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(4), (5), (6), (7), (8) or (9)) as any of the following:

(A) An association of employees, the membership of which is limited to the employees of a designated person or persons.

(B) A labor organization.

(C) An agricultural or horticultural organization.

(D) A business league, chamber of commerce, real estate board, board of trade or professional sports league.

(E) A club organized for pleasure or recreation.

(F) A fraternal beneficiary society, order or association.

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# Additional Criteria

(f) **Government Service.**-- The institution must relieve the government of some of its burden. This criterion is satisfied if the institution meets any one of the following:

- (1) Provides a service to the public that the government would otherwise be obliged to fund or to provide directly or indirectly or to assure that a similar institution exists to provide the service.
- (2) Provides services in furtherance of its charitable purpose which are either the responsibility of the government by law or which historically have been assumed or offered or funded by the government.
- (3) Receives on a regular basis payments for services rendered under a government program if the payments are less than the full costs incurred by the institution, as determined by generally accepted accounting principles.

**10 Pa. Stat. Ann. § 375 (West)**

# Additional Criteria

- (4) Provides a service to the public which directly or indirectly reduces dependence on government programs or relieves or lessens the burden borne by government for the advancement of social, moral, educational or physical objectives.
- (5) Advances or promotes religion and is owned and operated by a corporation or other entity as a religious ministry and otherwise satisfies the criteria set forth in section 5.
- (6) Has a voluntary agreement under section 7.

**10 Pa. Stat. Ann. § 375 (West)**

# Additional Criteria

(g) **Other Nonprofit Entities.**-- A nonprofit parent corporation, together with all of its subsidiary nonprofit corporations, may elect to be considered as a single institution in meeting the criteria set forth in this section as long as all of the following are met:

(1) Each subsidiary:

- (i) is a nonstock corporation of which the nonprofit parent corporation is the only member; and
- (ii) meets the requirements of this section.

(2) The parent:

- (i) is a nonstock corporation;
- (ii) is qualified by the Internal Revenue Service as meeting the requirements of section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3));
- (iii) meets the requirements of subsection (b) and (c); and
- (iv) except for services that meet the requirements of this section, does not render services for a fee to an individual or entity that does not meet the requirements of paragraph (1).

**10 Pa. Stat. Ann. § 375 (West)**



# So...we have this new definition and clarity...easy? Not so fast...

Mesivtah Eitz Chaim of Bobov, Inc. v. Pike Cty. Bd. of Assessment Appeals,  
615 Pa. 463, 466, 44 A.3d 3, 5 (2012)

We allowed appeal to determine if we must defer to the General Assembly's statutory definition of that term. We affirm, holding our prior jurisprudence sets the constitutional minimum for exemption from taxes; the legislation may codify what is intended to be exempted, but it cannot lessen the constitutional minimums by broadening the definition of "purely public charity" in the statute.

So, what's that mean?

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# HUP still applies, then a taxpayer must pass the PPCA.

- How does this make it any easier?
- It doesn't, still back with a more restrictive and often times less predictable determination using HUP.
- Must continue to rely on HUP test and its case law ("common law") progeny.

# OTHER EXEMPTIONS AND MISCELLANEOUS CONCEPTS RELATED TO EXEMPTIONS

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# Timing OF Exemptions - Prospective Only

A property owner may apply for an exemption at any time. However, an exemption may be prospective only.

- “[A] taxing district shall apply the changed assessment in computing taxes imposed in the next fiscal year of the taxing district following the fiscal year in which the board heard the appeal and rendered its decision.” 53 Pa.C.S.A. § 8847, eff. 1/1/2011.
- For example, one church transfers its currently exempt parcel to another church. The purchasing church would receive a notice that the parcel is being placed back onto the taxable rolls. Recall that the burden is always on the property owner to show their right to an exemption under the Consolidated County Assessment Law, Constitution, HUP test and the PPCA. The purchasing church is given 40 days to appeal the interim notice. The purchasing church would have to come before a board of appeals to show proof that they are 501(c)(3). The exemption would begin on January 1 of the following year. This is also known as the “Tax Day Rule.”

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# Timing OF Exemptions - Prospective Only

- “The Tax Day Rule.” Why prospective only? If a property is exempt on January 1 and is later purchased by a taxable entity conducting non-charitable uses on site, the parcel still remains exempt. See Appeal of Title Services Inc., 252 A.2d 585 (Pa. 1969).
- Municipal entities in formulating their budgets must rely upon the tax rolls established as of November 15 of the prior year when determining millage rates.
- “Strike Offs.” The above Rule does not seem fair. As an alternative, the tax exempt entity may request of each municipal entity (county, township or borough, and school district) that the parcel be granted a “strike off” or an waiver of the tax for the year in question. This determination is up to each municipal entity.

# Timing of Exemptions -

## A Question of What's "Actually and Regularly" Being Used

- What if the parcel has been acquired by a tax exempt/charitable entity, but the entity has started to erect, remodel, re-engineer, or otherwise ready the parcel for its charitable purposes, however, it's not technically actually and regularly using the parcel or building?
- "[W]hen a charity is constructing facilities, that charity is 'using' its property for charitable purposes so as to come within the scope of the General County Assessment Law. To hold otherwise would tend to impede the purposes for which the tax exemption was created." Overmont Corp. v. Board of Tax Revision, 388 A.2d 311 at 312; cited by Senior Citizen Health Care Council of Erie County PA v. BOAA of Erie County, 678 A.2d 430, 431 (Pa. Cmwlt. 1996).
- Retention of architect and solicitation of bids for renovation equates to "constructing." *Id.*, Senior Citizen Health Care, at 432.
- Township's good-faith use of future playground area (grant monies not yet available for equipment) rendered parcel exempt. Trees and brush cleared, property maintained, benches to be installed and open to public. Norwegian Tp. V. Schuylkill Co. BOAA, 74 A.3d 1124 (Pa. Cmwlt. Ct. 2013; *en banc*).

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# Exemptions - Who May Represent in Court?

- Generally, we [Dauphin Co.] may allow a corporate entity to be represented by a corporate designee before the BOAA. The designee should have an appropriate, signed resolution by the charitable corporate entity board. However, boards may vary in their operation.
- The Commonwealth Court has held that “non-attorneys may not represent parties before the Pennsylvania Courts and most administrative agencies.” Spirit of the Avenger Ministries v. Commonwealth, 767 A.2d 1130 (Pa. Cmwlth. Ct. 2001); citing Shortz v. Farrell, 193 A.2d 20 (Pa. 1937); Noland v. Department of Public Welfare, 673 A.2d 414 (Pa. Cmwlth. 1995), pet. for allowance of appeal den’d, 683 A.2d 887 (Pa. 1996).
- A non-profit medical corporation must have counsel in order to proceed in a court action as a corporation cannot represent itself. Id.
- A corporation may not appear in court and be represented by a corporate officer and shareholder who is not an attorney. Id.

# Other Exemptions and Related Concepts

- Disabled Veterans' Homes
- Subsidized Housing- Tax Credits
- Public Utility Realty Tax Act ("PURTA")
- Windmills, cell towers, and billboards
- Contractor's Exemption
- Local Economic Revitalization Tax Assistance Act ("LERTA")/Improvement of Deteriorating Real Property of Areas Tax Exemption Act ("IDRPA")
- Charter Schools
- Payment In Lieu of Taxes ("PILOT" agreements)
- Religious Summer Camps



# Disabled Veterans' Homes

Disabled Veterans' Real Estate Tax Act- 51 Pa.C.S. Section 8902

(a) **General Rule.**-- Any resident of this Commonwealth shall be exempt from the payment of all real estate taxes levied upon any building, including the land upon which it stands, occupied by that person as a principal dwelling, if all of the following requirements are met:

- (1) That person has been honorably discharged or released under honorable circumstances from the armed forces of the United States for service in any war or armed conflict in which this nation was engaged.
- (2) As a result of such military service, that person is blind or paraplegic or has sustained the loss of two or more limbs, or has a service-connected disability declared by the United States Veterans' Administration or its successors to be a total or 100% permanent disability.

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# Disabled Veterans' Homes

Disabled Veterans' Real Estate Tax Act- 51 Pa.C.S. Section 8902

- (3) The dwelling is owned by that person solely, with his or her spouse or as an estate by the entirety.
- (4) The need for the exemption from the payment of real estate taxes has been determined by the State Veterans' Commission in compliance with the requirements of this chapter.

(b) **Extension of Exemption.**-- The exemption provided in subsection (a) shall be extended to the unmarried surviving spouse upon the death of the eligible veteran provided that the State Veterans' Commission determines that such spouse is in need of an exemption.

**Note:** There is no discretion for the Board not to grant the exemption if the State Veterans' Commission has determined the exemption is appropriate.

Vanderhoef v. Susquehanna County Board of Assessment Appeals, 960 A.2d 212 (Pa. Cmwlth. Ct. 2008). The dwelling and land "upon which it stands" is up to the Commission. If it's more than an acre, then so be it.

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53 Pa.C.S. Section 8812 (CCAL) provides:

(4) All property of a charitable organization providing residential housing services in which the charitable nonprofit organization receives subsidies for at least 95% of the residential housing units from a low-income Federal housing program as long as any surplus from the assistance or subsidy is monitored by the appropriate governmental agency and used solely to advance common charitable purposes within the charitable organization.

Includes the Tax Credits as well, 53 Pa.C.S. § 8842:

**(c) Impact of Restrictions and Tax Credits on Valuation.**

(1) In arriving at the actual value of real property, the impact of applicable rent restrictions, affordability requirements or any other related restrictions prescribed by any Federal or State programs shall be considered.

(2) Federal or state income tax credits with respect to property shall not be considered real property or income attributable to real property.



# Public Utility Realty Tax Act ("PURTA")

72 P.S. Section 8101-A, et seq.

**"Public utility."** Any person, partnership, association, corporation or other entity furnishing public **utility** service under the jurisdiction of the **Pennsylvania** Public **Utility** Commission or the corresponding regulatory agency of any other state or of the United States on December 31 of the taxable year; and any electric cooperative corporation furnishing public **utility** service on December 31 of the taxable year, but shall not mean any public **utility** furnishing public **utility** sewage services, or municipality or municipality authority furnishing public utility services.

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# Public Utility Realty Tax Act ("PURTA")

## 72 P.S. Section 8101-A, et seq.

**"Utility realty."** All lands, together with all buildings, towers, smokestacks, dams, dikes, canals, cooling towers, storage tanks, reactor structures, pump houses, supporting foundations, enclosing structures, supporting structures, containment structures, reactor containment outer shells, reactor containment vessels, turbine buildings, recovery tanks, solid waste area enclosures, primary auxiliary buildings, containment auxiliary safeguard structures, fuel buildings, decontamination buildings, and, all other structures and enclosures whatsoever which are physically affixed to the land... located within this Commonwealth [and] owned by a public **utility** ... [which] are used or in the course of development or construction for use, ...in the furnishing, including producing, storing, distributing or transporting, of public **utility** service...

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# Public Utility Realty Tax Act ("PURTA")

## 72 P.S. Section 8101-A, et seq.

Section 1104-A(a) of PURTA, specifically provides that PURTA tax "shall be in lieu of local taxes upon utility realty, as contemplated by Pa. Const. art. VIII, Section 4. Payment of PURTA tax is reflected in the utility's rates to customers situated both inside and outside the municipality. American Telephone & Telegraph Co. v. Board of Property Ass't, Appeals & Review, 337 A.2d 844 (Pa. 1975).

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# Windmills, Cell Towers, and Billboards

**Windmills** - 53 Pa.C.S. § 8842(b)(2) provides:

- The valuation of real property used for the purpose of wind energy generation for assessment purposes shall be developed by... utilizing the income capitalization approach to value. The valuation shall be determined by the capitalized value of the land lease agreements...
- The windmill itself is not subject to real estate taxation. 53 Pa.C.S.A. § 8881(b)(5)
- Could be a PURTA property if supplying electricity under regulation of the PUC?

# Windmills, Cell Towers, and Billboards

**Cell Towers** - Act 319 of 1974 ("Clean and Green"); 72 P.S. § 5490.6  
If forest or agricultural lands enrolled in Clean and Green has a preferential assessment, it does not violate the Act if a tract of land not greater than one-half an acre is used for a cell tower and related facilities (equipment building/fencing). Only permitted to have one such tower. Roll-back taxes (seven years of the preferential assessment) only applies to the half acre or less. Tract must be accessible. May not be sold or subdivided, only leased.



# Billboards

- Signs themselves not subject to real estate taxation. 53 Pa.C.S.A. Section 8811(b)(4).
- “No sign or sign structure primarily used to support or display a sign shall be assessed as real property by a county for purposes of the taxation of real property... regardless of whether the sign or sign structure has become affixed to the real estate.”
- However, the Court has recently determined that the land (dirt) upon which the board is affixed may be subject to assessment and so valued based upon its income produced. “[W]e conclude only that a property's suitability to a **billboard** use and income earned by the property owner from the rental of the property to a **billboard** operator are not excluded from a fair market valuation by §8811(b)(4) and that the property should be valued consistent with the general principles of valuation described above.” In re Consolidated Appeals of Chester-Upland School District, 200 A.3d 1052, 1060-’61 (Pa. Cmwlth. Ct., Dec. 27, 2018).

# Contractor's Exemption

- Temporary Exemption for Residential Construction - 53 Pa.C.S.A. Section 8813
- “New single and multiple dwellings constructed for residential purposes and improvements to existing unoccupied dwellings or improvements to existing structures for purposes of conversion to dwellings shall not be valued or assessed for purposes of real property taxes until occupied, conveyed to a bona fide purchaser or 30 months from the first day of the month after which the building permit was issued or, if no building permit or other notification of improvement was required, then from the date construction commenced. The assessment of any multiple dwelling because of occupancy shall be upon the proportion which the value of the occupied portion bears to the value of the entire multiple dwelling. As used in this section, the term “dwellings” means buildings or portions thereof intended for permanent use as homes or residences.”

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# Local Economic Revitalization Tax Assistance Act ("LERTA"); Improvement of Deteriorating Real Property or Areas of Tax Exemption Act ("IDRPA")

## **LERTA - Commercial**

- 72 P.S. Section 4722, et seq.
- Defined by as a blighted area;
- At least one public hearing;
- Boundaries set;
- Two or more municipal governments may join;
- May not be "countywide;"
- "Phase in" for actual cost of improvement or new construction- not upkeep;
- Exemption on assessment based upon actual cost or maximum amount set; Not longer than 10 years;
- Up to 100% of cost/increased assessment;
- Must apply at time for seeking building permit;
- Transferrable from owner to owner;
- Begins year after improvement.

## **IDRPA - Residential**

- 72 P.S. 4711-301, et seq.
- Tax abatement on residential construction;
- Same requirements as LERTA;
- One major difference
- "Phase in"-
- 3 years at 100% or
- 5 years at 100, 80, 60, 40, 20%
- 10 years at 100, 90, 80, 70, 60%...;

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## Enterprise Zone Municipal Tax Exemption Reimbursement Act [Repealed by CCAL and Consolidated Thereunder]

- “Enterprise Zones”
- Commonwealth provided program under the Secretary of Community Affairs to designate an “enterprise zone;”
- Allows municipality that has lost tax revenues through abatements/exemption to recapture loss;
- Municipality must apply and do the following:
  - 1). ID the areas of LERTA/IDRPA;
  - 2). ID areas of LERTA/IDRPA designated as “enterprise zones;”
  - 3). Report FMV, assessed value, millage rate and value of exemptions granted;
  - 4). Seek reimbursement of some or all of portion of such exemptions;
  - 5). Provide plan for the use of reimbursements for community development or services.

# Charter Schools

- Charter school must be seized of legal title to the property to maintain exemption under CCAL, 53 Pa.C.S.A. Section 8812;
- Property leased by private, “for profit” owner to school does not render the property exempt. Use by an exempt entity is irrelevant. In re Appeal of Collegium Foundation & Collegium Charter School, 991 A.2d 990 (Pa. Cmwlth. 2010);
- Question: What if charter school leases property under a long-term lease, which includes a “right of first refusal?” Not obtaining a legal or equitable interest simply by having a “right of first refusal.”
- Question: What if charter school has an installment agreement modeled after a lease, but with a portion of the payments going to pay down the actual purchase price? Same as a mortgage in most regards. Obtaining an equitable title. Likely exempt from local real estate taxation.

# Religious Summer Camps- The “New Frontier”

- Associated YM-YWHA of Greater New York/Camp Poyntelle v. County of Wayne, 613 A.2d 125 (Pa. Cmwlth. 1992). Jewish religious summer camp owned 1,000 acres. Purpose was to educate kids ages 7-17 in Jewish Religion. Court held the camp did not meet all five prongs of the HUP test. The government has no obligation to provide social, recreation, or educational activities for children during summer. “[A]n indirect benefit, nor laudable motive, is a sufficient basis for granting an exemption...”
- Camp Hachshara Moshava of NY v. Wayne County, 47 A.3d 1271 (Pa. Cmwlth. 2012). Summer camp did not relieve government of burden, despite providing religious and recreational activities to kids with special needs.

# Religious Summer Camps - The "New Frontier"

- Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Bd. of Assessment Appeals, 44 A.3d 3 (Pa. 2012). Supreme Court held that the HUP test or the Constitutional test is primary. The Legislature cannot define "charity" through PPCA, Act 55. Camp did not relieve government of burden.
- Summer camps are now attempting to characterize their entire acreage as religious. However, entire parcel must be "actually and regularly used" for charitable purposes. Summer camps generally only open for 4 months out of year. Sports fields do not support "religious activities."

# PILOT's and Their Propriety

- A “Payment in Lieu of Taxes” or PILOT is made by an “arguably exempt entity” to municipalities.
- The Hamot hospital case. School District of the City of Erie v. Hamot Medical Center, 602 A.2d 407 (Pa. Cmwlth. 1992).
  - “Hospitals” are generally exempt. 53 Pa.C.S.A. §8812;
  - However, Legislature may only set forth exemptions pursuant to authority granted by Pa. Const. art. VIII, Section 2;
  - Courts must determine legal and constitutional issues. “HUP test” must be ultimately applied (Constitutional test).



# The Hamot Case

- Hamot Health Systems, Inc. (“HHSI”), maintains the following subsidiaries:
- Hamot Corporate Services, Inc. (providing management and administrative services for HHSI and its affiliated organizations),
- Regional Health Services, Inc. (providing ambulatory and related health care services),
- Senior Living Services, Inc. (providing senior citizen care and services),
- the Center For Personal and Family Growth (offering psychological and support services),
- Bayside Pharmacy Services, Inc. (operating a pharmacy),
- Independent Professional Services, Inc. (owner of a medical diagnostic service and magnetic resonance imaging facility),
- Joint Patient Services, Inc. (offering oncology and cancer treatment),

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# The Hamot Case

- Community Rehabilitation Specialists (providing rehabilitative health services),
- Great Lakes Home Health (providing health care services and selling durable medical equipment),
- Cardiac Fitness (engaged in health care for patients with health disorders),
- College Park Properties (owner of certain real estate in Edinboro, Pennsylvania), and
- Great Lakes Manage Care (holding a license to operate a health maintenance facility), and
- HHSI oversees the Bayfront Regional Development Corporation which owns a condominium unit and several other corporations which in turn own real estate in the Erie area. One of these corporations, Bayside Development Corporation, purchased a marina for approximately \$375,000 and spent \$120,000 on its renovation.

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# Hamot - Additional Facts

- “[E]xecutive compensation at Hamot is “copious” with some executives receiving salary plus retirement benefit packages of \$250,000 to \$300,000. Certain executives are also the beneficiaries of other perks such as payment by Hamot of membership dues to, inter alia, the Erie Yacht Club;”
- “Hamot spent in excess of one million dollars in advertising in the 1987 fiscal year, over \$800,000 in the 1988 fiscal year and almost \$700,000 for the 1989 fiscal year;”
- “Its community relations department is staffed by eleven persons and operates on an annual budget of over half a million dollars;”
- “\$9,000,000 of the assets that were transferred to related companies since 1981 were invested in real estate including the condominium project, the marina and office buildings.”
- “Finally, ‘uncompensated care patients,’ not poor enough to qualify for Medicaid, are aggressively pursued by Hamot through every avenue of the collection process. Hamot has sued the very patients that it would now have this court deem objects of charity.”

## Hamot Not a “Purely Public Charity” Despite Label as “Hospital”

- Huge profits;
- Huge holdings not for the benefit of the public at large - condo’s and a marina?;
- Excessive executive benefits;
- Aggressive collection tactics against public that it portends to serve; and
- Does not “give away” anything without its logo prominently displayed;
- It’s a “for profit” business and nothing more, despite the label of “hospital.”

# Enter Lee Hospital

- Lee Hospital v. Cambria County Board of Commissioners, 638 A.2d 344 (Pa. Cmwlth. 1994);
- What's the propriety of a county government demanding a PILOT payment in light of the Hamot decision?
  - Four separate hospitals approached by county;
  - All supplied with same option - pay a PILOT in light of Hamot or go onto the taxable rolls;
  - Lee challenged - Violates Equal Protection (discriminatory), Due Process of Law, and Uniformity Clause of Pa. Const., art. VIII, Section 1.

# PILOT's are Entirely Acceptable

- No deliberate discrimination - same offer supplied to all four;
- Under Uniformity Clause and Equal Protection Clause - absolute equality and perfect uniformity in taxation are not required;
- Commonwealth Court has upheld the right of a municipal entity to demand money in lieu of taxes from an "exempt entity" upon the pain of being placed upon the taxable rolls.

Contact me with any questions,  
concerns or ideas. I enjoy legal  
challenges and alternative theories.

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