



CULTURE COUNTS: A COMMUNITY THEATER QUALIFIES AS A PURELY PUBLIC CHARITY

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To qualify for a property tax exemption, a non-profit must demonstrate that it is a “purely public charity.” PA. CONST. art. VIII, § 2(a)(v). To meet this standard, a non-profit must satisfy a five factor test that the Supreme Court of Pennsylvania adopted in [Hospital Utilization Project v. Commonwealth](#), 507 Pa. 1, 487 A.2d 1306 (1985). The HUP test requires that a charity establish that it “(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.” *Hospital Utilization Project*, 487 A.2d at 1317.

In addition, a non-profit seeking a property tax exemption must satisfy the requirements of Institutions of Purely Public Charity Act, 10 P.S. §§ 371-385.

In recent years, a variety of seemingly deserving charities that were tax-exempt under federal and state law could not satisfy the requirements for a property tax exemption. See *Mesivtah Eitz Chaim of BoBov, Inc. v. Pike County Bd. of Assessment Appeals*, 615 Pa. 463, 473, 44 A.3d 3, 8-9 (2011) (affirming denial of exemption to religious camp); see also *Fayette Res., Inc. v. Fayette County Bd. of Assessment Appeals*, 107 A.3d 839, 847-49 (Pa. Commw. 2014) (reversing grant of exemption to non-profit providing housing and other services to developmentally disabled individuals).

Last week, the Commonwealth Court overturned a trial court decision that denied a property tax exemption to a community theater, ruling that arts and cultural activities relieve the government of a burden within the meaning of the HUP test. [Pocono Community Theater v. Monroe County Board of](#)

[Assessment](#), 2016 Pa. Commw. LEXIS 177, *13-*14 (Apr. 20, 2016).

The theater had relied upon the Supreme Court's decision in *Unionville-Chadds Ford School District v. Chester County Board of Assessment Appeals*, 552 Pa. 212, 714 A.2d 397 (1988), in which the Supreme Court upheld a property tax exemption for Longwood Gardens. The county had argued that Longwood Gardens had an international reputation and provided services that the local government could not afford to provide, making *Unionville-Chadds Ford* distinguishable. 2016 Pa. Commw. LEXIS 177 at *12. In contrast, the county asserted that the theater provided relatively ordinary services that could be readily replaced.

The Commonwealth Court rejected the county's argument, concluding that the trial court had interpreted the *HUP* test too narrowly. *Id.* at *13. The Commonwealth Court commenced its analysis by acknowledging that the services the theater provided were not functions that the government was required to provide under a constitutional or statutory mandate. In the court's view, it was sufficient that the theater "supports and advances causes that the government has chosen to support." *Id.* The court cited the decision by the General Assembly to create the Pennsylvania Council on the Arts, as well as the decision by the City of Stroudsburg to take steps to increase its cultural appeal. *Id.* Since the Theater was promoting causes that both state and local government elected to support, in the court's view it was relieving the government of some of its burden. *Id.* at *14.

Three judges disagreed with this disposition, but they did not file a dissenting opinion. Divided appellate courts have been a regular feature in cases involving the *HUP* test, a fact that highlights how unpredictable these cases can be.



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