

## **A Look at Charitable Tax Exemptions in Pennsylvania, Part One.**

The idea that religious institutions are generally exempt from tax is almost ingrained; most non-lawyers would not think twice about it. And most lawyers recognize that churches and synagogues are usually tax-exempt. As a consequence, it is a little startling to see an entity that is related to a religious group lose a case over a tax exemption, but that is what happened recently in *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals*, No 16 MAP 2011, (Pa. Apr. 25, 2012).

The Pennsylvania Constitution provides authority for the legislature to exempt “institutions of purely public charity,” although the exemption from real estate tax is limited to “that portion of the real property of such institution which is actually and regularly used for the purposes of the institution.” Pa. Const. Art. VIII, § 2(a)(v). In 1985, the Supreme Court of Pennsylvania adopted a five part test to determine what was “a purely public charity,” requiring an institution to show 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 from some of its burden; and
- (e) Operates entirely free from private profit motive.

*Hospital Utilization Project v. Commonwealth*, 487 A.2d 1306, 1317 (Pa. 1985). This test is known as the *HUP* test.

Subsequently, the legislature passed the Institutions of Purely Public Charity Act, 10 P.S. §§ 371-385, which is also known as Act 55. This statute outlined specific factors that would determine whether an entity was a “purely public charity.” 10 P.S. § 375. This included a section of the statute that addressed when an entity relieved “the government from some of its burden,” which provided as follows:

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 by generally accepted accounting principles.
- (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 P.S. § 375(f).

Several years later, in *Alliance Home of Carlisle, PA v. Board of Assessment Appeals*, 919 A.2d 206, 222-23 (Pa. 2007), the Supreme Court of Pennsylvania noted that constitutional issues might arise in a situation where the result under Act 55 was to provide an from taxation in circumstances where the *HUP* test would not.

Against this background, Mesivtah Eitz Chaim of Bobov, Inc., an entity affiliated with an Orthodox Jewish community based in Brooklyn, applied for a property tax exemption for a summer camp it operated in Pike County, Pennsylvania. The primary focus of the camp was religious instruction; it provided financial assistance to some of its students and apparently opened its facilities to some extent to the general public. *Mesivtah Eitz Chaim of Bobov, Inc.*, slip op. at 2.

The local board of assessment rejected the exemption request, resulting in appeals to the Pike County Court of Common Pleas and the Commonwealth Court, both of which were unsuccessful. In the Court of Common Pleas, the camp lost on two of the *HUP* criteria: the trial court concluded that the camp had not shown that it met the requirement of benefiting “a substantial and indefinite class” of people who were “legitimate subjects of charity,” and it concluded that the camp did not relieve a governmental burden. *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals*, No. 2343 C.D. 2008, slip op. at 4 (Pa. Commw. Dec. 29, 2009).

The Commonwealth Court concluded that the camp did benefit a substantial class of people who were legitimate subjects of charity, but affirmed the trial court’s determination that the camp failed to relieve government of a burden. *Id.* at 6-7, 8-10. This determination by the Commonwealth Court turned upon that court’s conclusion that the occasional use of the camp’s recreational facilities by local residents was not sufficient to satisfy the requirement that the institution relieved the government of some of its burden.

In the Commonwealth Court, the camp had also argued that it did not need to meet the *HUP* test because of Act 55, but the Commonwealth Court rejected that contention. *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals*, No. 2343 C.D. 2008, slip op. at 10-12.

The camp sought review on several issues, but the Supreme Court of Pennsylvania only granted review to determine whether Act 55 was entitled to deference or whether the *HUP* test was controlling. This issue would split the Court, four to three, with a majority of the justices voting to uphold the denial of tax exempt status.

Having framed the background, I will cover the central arguments at issue in a future post.

Jim Malone is a tax lawyer based in Philadelphia. © 2012, MALONE LLC.