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Tax Policy

The Pennsylvania Constitution permits tax exemptions for a “purely public charity,” and the Pennsylvania Supreme Court established a five part “HUP” test for determining purely public charities in 1985. Then in 1997, the legislature enacted its own five part “Act 55” test for determining a purely public charity. In this article, Cozen O’Connor’s Joseph Bright and Heidi Schwartz discuss the *Huston Properties* case and the rules it applied in making this determination.

Unpublished Commonwealth Court Panel Opinion Exemplifies Complexity of Applying Pennsylvania’s Purely Public Charity Exception



By JOSEPH C. BRIGHT AND HEIDI R. SCHWARTZ

Huston Properties, Inc. (Huston) was a wholly-owned subsidiary of a charitable trust (trust). The trust was a charitable trust under Section 501(c)(3) of the Internal Revenue Code.

Huston’s sole purpose was to own, operate and maintain a property located in Coatesville, Pa. The property was the headquarters for Lukens Steel Com-

pany, the first producer of boiler plate in the United States. It is on the National Register of Historic Places. The deed to the property restricted its use to preservation and conservation as a historic structure, and Huston maintained it consistent with that purpose. Huston and the trust maintained small offices on the property, and Huston leased some of the space in the building to for-profit and nonprofit entities to use as office space. Because Huston’s expenses in maintaining the property exceeded its rental income, Huston’s expenses were substantially subsidized by the trust.

In 2013, Huston applied for an exemption from real estate tax on the grounds that the property was regularly used as an institution of purely public charity. The Chester County Board of Assessment granted an exemption on 72% of the property because 72% of the leasable space was let to nonprofits.

Huston appealed on the grounds that the property was entirely exempt. The City of Coatesville and the Coatesville Area School District cross-appealed on the grounds that the property was entirely taxable because maintaining a building leased to commercial tenants does not relieve a government burden. The trial court upheld the exemption on 72% of the assessed value of the property and an assessment on the remaining 28%. The opinion does not state whether the leases to the nonprofits were at fair market or some other value. The trial court set out the tests to determine whether an entity is an institution of purely public charity, but did not analyze how Huston satisfied each prong. On appeal,

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the Commonwealth Court vacated the trial court order and remanded the case to the trial court to make additional findings of fact and conclusions of law for each of the five prongs of the constitutional test. *In re City of Coatesville v. Huston Props.*, No. 115 C.D. 2016, 2017 Pa. Commw. Unpub. LEXIS 113, at *4 (Pa. Commw. Ct. Feb. 16, 2017).

Judicial Hurdles for Institutions of Purely Public Charity

An institution of purely public charity is exempt from Pennsylvania tax. 10 P.S. §371. To qualify as an institution of purely public charity an entity must meet the requisites of Article VIII, Section 2(a)(v) of the Pennsylvania Constitution. Pa. Const. art. VII, §2(a)(v). In 1985, the Pennsylvania Supreme Court established a five-prong test, called the “HUP” test, to determine whether an entity satisfies Article VIII. *Hospital Utilization Project v. Commonwealth*, 487 A.2d 1306 (Pa. 1985). In 1997, the General Assembly enacted Act 1997-55, 10 P.S. §371, et seq., commonly referred to as Act 55 or the Public Charity Act. The Act states that an institution that meets the five criteria in Act 55 will be considered to be founded, endowed and maintained by public or private charity. 10 P.S. §375(a).

Notwithstanding the stated intent of the Legislature, Pennsylvania courts have treated the HUP test and Act 55 as two separate hurdles. In *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals*, the Pennsylvania Supreme Court held that an institution must first prove that it meets the HUP test before determining whether it meets the requirements of

Act 55. *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals*, 44 A.3d 3 (Pa. 2012). This decision has been criticized. In his dissent in *Mesivtah*, Justice Saylor suggested that the five prongs of Act 55 elaborate on the five prongs of the HUP test, and that they are not separate tests to be applied differently. Rather, Act 55 “reflects the General Assembly’s determination - as a matter of policy - that more refinement was necessary for efficient, uniform application of [the HUP test] and enacted legislation to serve that goal.” *Mesivtah Eitz Chaim of Bobov, Inc.*, 44 A.3d at 11.

In 2013, the General Assembly enacted Senate Bill 4, which was intended to amend the Constitution of the Commonwealth to give the General Assembly the authority to define how an institution can qualify to be an institution of purely public charity. The amendment was intended to clarify that it is the General Assembly’s role to write laws providing for the qualifications of institutions of purely public charity. The bill ultimately did not become law because it did not pass both chambers of the General Assembly twice.

Huston Props. exemplifies the complexity of applying the HUP test and Act 55 separately. The result is that institutions with charitable purposes, such as *Huston*, face inconsistent application and confusion over the requirements of purely public charity status, confrontations with political subdivisions to establish entitlement to exemptions, and the expenditure of charitable resources to litigate these issues that otherwise could be put to charitable uses.