

## EXEMPTION DENIED FOR LACK OF FREE SERVICES

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A panel of the Commonwealth Court reversed a trial court and held that a nonprofit corporation that provided student housing was not entitled to a charitable exemption because it did not give free or discounted services to the students. *CHF-Kutztown, LLC v. Berks County Board of Assessment Appeals*, No. 1663 C.D. 2009 (Pa. Cmwlth. Apr. 13, 2010) (unreported). The taxpayer was a nonprofit corporation whose mission was to assist Kutztown University of Pennsylvania with its student housing needs. It was wholly owned by Collegiate Housing Foundation. CHF-Kutztown purchased a parcel of land with housing constructed on it and entered into an affiliation agreement with the University that stated CHF-Kutztown would manage the property and, after the financing debt was retired, would donate the property to the university. CHF-Kutztown maintained the property under restrictions imposed by an agreement with the university. CHF-Kutztown was required to rent to students, and the university effectively prevented CHF-Kutztown from taking steps to collect rent from students who failed to pay or from their parent guarantors. The student rental business was seasonal, and the rental rates were lower than in the market place. CHF-Kutztown agreed that if it made a profit, the surplus revenue would be donated to the university.

The panel concluded that CHF-Kutztown was not entitled to an exemption because it did not give free housing or discounted housing to needy students. The panel stated that such free or discounted services were required by case law, sometimes referred to as the community service requirement. The court rejected the argument that CHF-Kutztown operated at a loss, stating that two of the expenses shown in CHF-Kutztown's financial reports were for one-time fees and that the financial reports calculated profit by taking into account property taxes. It appears from the opinion that CHF-Kutztown did operate at a loss in one year, but if the disallowances were respected, operated at a profit in a succeeding year. The court rejected the argument that CHF-Kutztown met the community benefit requirement in the Institutions of Purely Public Charity Act that it donate 5% or more of its costs in providing goods or services, and therefore met the case law requirement. The requirement in the act was intended to codify and quantify the case law community service requirement. The court added that the requirement to donate the property to the university upon retiring the financing was insufficient to meet the requirement.

## NO CLASS ACTION TO OPPOSE FILING FEES

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A panel of the Commonwealth Court held that a taxpayer may not proceed as a class action before a board of assessment appeals in challenging a filing fee imposed by the board. *Appeal of D'Ignazio*, 1366 C.D. 2009 (Pa. Commw. Mar. 5, 2010). The taxpayers, husband and wife, appealed an assessment before the assessment board. They objected to a \$25 filing fee imposed by the board for taking an assessment appeal and styled their appeal as a class action. The taxpayers challenged both the authority of the board to impose a filing fee and the imposition of a fee of \$25 for a residential property but \$50 for a commercial

property. Chester County permits a class action for assessment appeals. 72 P.S. §5349(c). The Commonwealth Court panel concluded that the trial court correctly ruled that the authority to proceed as a class in an assessment appeal did not extend to a challenge to filing fees. The court stated that the correct procedure to challenge the filing fees would have been to bring an action in assumpsit for refund under the Act May 21, 1943, 72 P.S. §5566(c). However, a claim for refund under this section cannot proceed as a class action. *Israelit v. Montgomery County*, 703 A.2d 722 (Pa Commw. 1997), *appeal denied*, 725 A.2d 184 (1998).

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