

**PURELY PUBLIC CHARITY STATUS**  
**EXEMPTION FROM PENNSYLVANIA SALES TAX AND REAL ESTATE TAX**

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**I. Constitutional Authority for Sales Tax Exemption and Real Estate Tax Exemption.**

- A. **General.** Under the Pennsylvania Constitution, the General Assembly is empowered to confer tax-exempt status on “institutions of purely public charity.” Pa. Const. Art. VIII, §2(a)(v). The Constitution does not require the General Assembly to exercise this power.
- B. **Real Estate Tax.** With respect to real estate tax exemption, the Constitution limits the power of the General Assembly to exempt from real estate tax “only that portion of real property of such institution [purely public charity] which is actually and regularly used for the purposes of the institution.”
- C. **Definition of Purely Public Charity.** The Constitution does not define the term “purely public charity”. However, the Pennsylvania Supreme Court set forth standards for purely public charities in *Hospital Utilization Project v. Commonwealth of Pennsylvania*, 507 Pa. 1; 487 A.2d 1306 (1985) (“HUP”). The standards became known as the five-part HUP test. Under HUP, the Court concluded that an entity qualifies as a purely public charity if it:
  - 1. Advances a charitable purpose;
  - 2. Donates or renders gratuitously a substantial portion of its services;
  - 3. Benefits a substantial and indefinite class of persons who are legitimate subjects of charity;
  - 4. Relieves the government of some of its burden; and
  - 5. Operates entirely free from private profit motive.
- D. An organization seeking a statutory tax exemption must first establish that it is a “purely public charity” under Article VIII, Section 2 of the Pennsylvania

Constitution before the question of whether that organization meets the requirements for statutory tax exemption can be reached, and the question of whether an organization is a “purely public charity” is a mixed question of law and fact. *Community Options, Inc. v. Board of Property Assessment, Appeals and Review*, 571 Pa. 672; 813 A.2d 680 (2002).

E. *Mesivtah Eitz Chaim of Bobov Inc. v. Pike County Board of Assessment Appeals*, PA Supreme Court, No. 16 MAP 2011, April 25, 2012.

1. The Supreme Court granted allocatur to determine: “Whether the Pennsylvania Legislature’s enactment of criteria in Act 55 for determining if an organization qualifies as a ‘purely public charity’ under Pennsylvania’s Constitution is deserving of deference in deciding whether an organization qualifies as a ‘purely public charity’ under Pennsylvania’s Constitution, or has the test provided in *Hospital Utilization Project v. Commonwealth*, 507 Pa. 1, 487 A.2d 1306 (Pa. 1985), occupied the constitutional field, leaving no room for legislative influence and input?”
2. The Court held that its 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.
3. The result is that a charity seeking state or local tax exemption must satisfy both the HUP test and Act 55 standards for exemption.
4. The General Assembly is seeking to start the process for a constitutional amendment to overturn the result in *Mesivtah Eitz Chaim of Bobov Inc. v. Pike County Board of Assessment Appeals*.

## II. Statutory Definition for Purely Public Charity.

- A. **Institutions of Purely Public Charity Act.** HUP generated a great deal of confusion for charities and lots of litigation by taxing bodies regarding eligibility for sales tax exemption and real estate tax exemption. Often the cases appeared to be inconsistent with each other. As a result, the Pennsylvania legislature enacted the *Institutions of Purely Public Charity Act, Act 55 of November 26, 1997, P.L. 508, 10 P.S. § 371 et seq.* (“Act 55”), which essentially codified the HUP test and provided standards for charities to show they met the test.
- B. **Legislative Intent.** The legislative intent and underlying findings were recited in Section 2 of Act 55, 10 P.S. § 372, which provided:
- (a) FINDINGS.-- The General Assembly finds and declares as follows:

(1) It is in the best interest of this Commonwealth and its citizens that the recognition of tax-exempt status be accomplished in an orderly, uniform and economical manner.

(2) For more than 100 years, it has been the policy of this Commonwealth to foster the organization and operation of institutions of purely public charity by exempting them from taxation.

(3) Because institutions of purely public charity contribute to the common good or lessen the burden of government, the historic policy of exempting these institutions from taxation should be continued.

(4) Lack of specific legislative standards defining the term “institutions of purely public charity” has led to increasing confusion and confrontation among traditionally tax-exempt institutions and political subdivisions to the detriment of the public.

(5) There is increasing concern that the eligibility standards for charitable tax exemptions are being applied inconsistently, which may violate the uniformity provision of the Constitution of Pennsylvania.

(6) Recognizing the interest of the taxpayers in a fair and equitable system of property tax assessment and the attendant statutory requirements for the political subdivision responsible for maintaining real property assessment rolls to administer the system of property assessment, this act shall not in any way limit the responsibilities, prerogatives or abilities of political subdivisions with respect to the determination of or challenges to the taxable status of a parcel of property based on the use of the parcel or part of the parcel of property.

(7) Institutions of purely public charity benefit substantially from local government services. These institutions have significant value to the Commonwealth and its citizens, and the need exists for revenues to maintain local government services provided for the benefit of all citizens, including institutions of purely public charity. It is the intent of this act to encourage financially secure institutions of purely public charity to enter into voluntary agreements or maintain existing or continuing agreements for the purpose of defraying some of the cost of various local government services. Payments made under such agreements shall be deemed to be in compliance with any fiduciary obligation pertaining to such institutions of purely public charity, its officers or directors.

(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.”

- C. **Act 55 Standards.** The Act 55 standards consist of the same five factors recited in HUP. However, Act 55 goes further and describes criteria on which charities may rely to show they meet the Act 55 standards.
- D. **Act 55 - First Standard - Advances a Charitable Purpose.** Section 5(b) of Act 55, 10 P.S. § 375(b), provides that 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.
  7. *Appeal of the City of Washington v. Board of Assessment Appeals of Washington County, Pennsylvania and Washington and Jefferson College*, 550 Pa. 175; 704 A.2d 120 (1997). Institutions that provide education have long been regarded by this court as serving to advance the public good and as being charitable in nature.
  8. *West Allegheny Hospital v. Board of Property Assessments*, 500 Pa. 236, 455 A.2d 1170 (1982); *Allentown Hospital - Lehigh Valley Hospital Center v. Board of Assessment Appeals*, 148 Pa. Commw. 422, 611 A.2d 793, appeal denied, 532 Pa. 666, 616 A.2d 986 (1992). A provider of patient health care services may advance a charitable purpose.

9. *In Re: St. Margaret Seneca Place v. Board of Property Assessment, Appeals and Review, County of Allegheny*, 536 Pa. 478; 640 A.2d 380 (1994). A nursing home provided a 156-bed facility offering skilled care, long-term care, and personal care services for elderly residents, of which 48% were Medicaid recipients. The court stated the “care of elderly residents who cannot pay their full costs serves a charitable purpose.”

E. **Act 55 – Second Standard – Operates Entirely Free from Private Profit**

**Motive.** Section 5(c) of Act 55, 10 P.S. § 375(c), provides that 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. 10 P.S. § 375(c)(1). (References in this outline to the “Code” are to the Internal Revenue Code of 1986, as amended.)
  - a. The prohibition against private inurement contained in Act 55 is “interpreted under Section 501(c)(3) of the Internal Revenue Code of 1986.” If the Internal Revenue Service has recognized an organization as a qualified 501(c)(3) organization, the organization has shown the IRS that it meets this criterion. However, section 501(c)(3) status alone is not sufficient to show that an organization is a purely public charity under Act 55 or the Pennsylvania Constitution.
  - b. → *Practice Pointer:* The organizing document (e.g., articles of incorporation) of a 501(c)(3) organization should recite: “No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its directors, officers, members, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its exempt purposes.”
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 that advance a charitable purpose and operate free from private profit motive. 10 P.S. § 375(c)(2).
  - a. → *Practice Pointer:* The organization should recite in its tax exemption application that it pays only reasonable compensation for services rendered on its behalf, and that it does not pay dividends or distribute its earnings to private persons.

- b. A purely public charity is permitted to earn a surplus. Organizations that charge fees for their services should show that their fees are designed to self-support the organization, not to generate profits. In *Alliance Home of Carlisle, Pa T/A Chapel Pointe v. Board of Assessment Appeals, Carlisle Area School District, Borough of Carlisle, and Cumberland County*, 591 Pa. 436; 919 A.2d 206 (2007), the Court noted as follows: “An institution that is in its nature and purposes a purely public charity does not lose its character as such under the tax laws, if it receives a revenue from the recipients of its bounty sufficient to keep it in operation. It must not go beyond self-support.”
    - c. → *Practice Pointer*: The organization should recite in its tax exemption application that to the extent that the organization generates surplus funds, the organization will reinvest its surplus in its charitable activities or apply the surplus to maintain and operate its facilities or to retire outstanding debt.
3. Compensation, including benefits, of any director, officer or employee, is not based primarily upon the financial performance of the institution. 10 P.S. § 375(c)(3).
  - a. Where the taxpayer’s clinic was found to be ineligible for a charitable property tax exemption, substantial evidence supported the finding under 10 P.S. § 375(c)(3) that the compensation of the taxpayer’s physicians was based primarily on the taxpayer’s financial performance; the taxpayer’s officers testified that physician compensation was based on revenue and productivity. *Guthrie Clinic, Ltd. v. Sullivan County Bd. of Assessment Appeals*, 898 A.2d 1194 (Pa. Commw. 2006).
  - b. Trial court properly analyzed only one of the four criteria under 10 P.S. § 375(c) in determining whether the taxpayer operated entirely free from profit motive, as analysis of the remaining criteria was unnecessary since all of the criteria had to be met. *Guthrie Clinic, Ltd. v. Sullivan County Bd. of Assessment Appeals*, *supra*.
  - c. → *Practice Pointer*: The organization should avoid contingent compensation tied to the organization’s revenues or net income as a whole, which is also a concern under section 501(c)(3) law. The organization should describe any incentive-based compensation practices in its tax exemption application and explain the purposes served and the methodology.
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 P.S. § 375(c)(4).

- a. *In Re: RHA Pennsylvania Nursing Homes Health & Rehabilitation Residence*, 747 A.2d 1257 (Pa. Commw. 2000), involved a real estate tax exemption challenge by a taxing authority with respect to a nursing home. The taxing authority argued that the nursing home did not operate free from private profit motive because the nursing home's articles of incorporation did not recite verbatim the Act 55 dissolution text. The court concluded that the Legislature did not intend to require an institution to use the exact language in Act 55. "Rather, it is sufficient if the institution's articles of incorporation contain provisions that have the effect of the prohibition described in section 5(c)(4) of Act 55." In fact, the nursing home's articles contained language prohibiting private inurement and providing for dissolution distributions that were sufficient for 501(c)(3) qualification and the court found the combination of the two clauses sufficient for Act 55 purposes.
- b. → *Practice Pointer*: Older organizations may need to rely on the case cited in subparagraph (a) above. But newer organizations should avoid having to rely on that case by including Act 55 qualifying text in the articles of incorporation. Sample text (that should also satisfy 501(c)(3) requirements): "Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the corporation, dispose of all the assets of the corporation exclusively for the exempt purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for religious, charitable, scientific, or educational purposes which at the time qualify as an exempt organization or organizations under section 501(c)(3) of the Internal Revenue Code of 1986, or the corresponding provisions of any future United States Internal Revenue Law, as the Board of Directors shall determine. Any assets not so distributed by the Board of Directors shall be distributed by the Court of Common Pleas of the county in which the corporation's principal office is then located exclusively for the corporation's exempt purposes. The use of any surplus funds for private inurement to any person in the event of a sale of the assets or dissolution of the corporation is expressly prohibited."
- c. Note: The dissolution clause of a section 509(a)(3) supporting organization should name the supported organization as the recipient of dissolution distributions, provided the supported organization qualifies under 501(c)(3) at the time of the

distribution. There are other requirements for supporting organizations that are beyond the scope of this outline.

- d. → *Practice Pointer*: In its tax exemption application, the organization should state where the relevant text appears in its governing document.
- e. It may be possible to meet this requirement even if the organizing document is not produced in evidence. For example, a senior home's failure to submit a copy of its bylaws containing a dissolution provision as stated under P.S. § 375(c)(4) was not dispositive of its qualification, because the testimony of witnesses established that while such document existed, it could not be located. *Grace Center Community Living Corp. v. County of Indiana*, 796 A.2d 1008 (Pa. Commw. 2002).

F. **Act 55 – Third Standard – Community Service (Donate a Substantial Portion of Services).** Section 5(d) of Act 55, 10 P.S. § 375(d), relating to “community service” provides that 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:

- 1. 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.” 10 P.S. § 375(d)(1)(i).
  - d. See F.9 below and Appendix A to this outline for Act 55 defined terms.
- 2. 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. 10 P.S. § 375(d)(1)(ii)(A).

- 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.  
10 P.S. § 375(d)(1)(ii)(B).
  - 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.  
10 P.S. § 375(d)(1)(ii)(C).
  - 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) above 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. 10 P.S. § 375(d)(1)(ii)(D).
- 3. Wholly gratuitous goods or services to at least 5% of those receiving similar goods or services from the institution. 10 P.S. §375(d)(1)(iii).
- 4. 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. 10 P.S. § 375(d)(1)(iv).
- 5. “Uncompensated goods or services” which in the aggregate are equal to at least 5% of the institution’s costs of providing goods or services.  
10 P.S. § 375(d)(1)(v).
- 6. 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 (10 P.S. § 375(d)(1)(vi)):
  - 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.  
10 P.S. § 375(d)(1)(vi)(A).
  - 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:  
(10 P.S. § 375(d)(1)(vi)(B)).

- i. Sections 1905(d) and 1915(c) of the Social Security Act (49 Stat. 620, 42 U.S.C. §§ 1396d(d) and 1396n(c));
  - 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), 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), 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);
  - 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).
7. Fundraising on behalf of, or grants to, an institution of purely public charity, and 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. 10 P.S. § 375(d)(1)(vii).

8. 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 Section 375(d)(1) above.  
10 P.S. § 375(d)(2).
9. For purposes of section 375(d), the term “Uncompensated Goods or Services” shall be limited to any of the following (10 P.S. § 375(d)(4)):
  - a. 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. 10 P.S. § 375(d)(4)(i).
  - b. 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 P.S. § 375(d)(4)(ii).
  - c. 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. 10 P.S. § 375(d)(4)(iii).
  - d. 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.  
10 P.S. § 375(d)(4)(iv).
  - e. 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:
    - i. “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.

- ii. “Primary Donor.” An institution which makes a donation of any money, property, goods or services to an institution of purely public charity.
    - iii. “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. 10 P.S. § 375(d)(4)(v).
  - f. 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), known as the Workers’ Compensation Act divided by 40. 10 P.S. § 375(d)(4)(vi). The statewide average weekly wage is posted on the website of the Pennsylvania Department of Labor.  
<http://www.portal.state.pa.us/portal/server.pt?open=514&objID=552650&mode=2>
  - g. The cost of goods or services provided by an institution licensed by the Department of Health or the Department of Public Welfare to individuals who are unable to pay provided that reasonable and customary collection efforts have been made by the institution. 10 P.S. § 375(d)(4)(vii).
  - h. The value of any voluntary agreement under Section 7(c) of Act 55 (referring to a payment in lieu of taxes known as a PILOT). 10 P.S. § 375(d)(4)(viii). This factor encourages the use of PILOTs. Under section 7(c) of Act 55, \$1 paid under a voluntary agreement can be valued at as much as \$3.50 for purposes of the subsidy requirement. Therefore, if an institution needs to provide a \$1 million subsidy to meet the “render gratuitously” requirement, it can do so by paying \$285,715 to a political subdivision under a voluntary agreement (assuming that the \$285,715 payment is greater than .25% of its program service revenue).
10. *In Re: RHA Pennsylvania Nursing Homes Health & Rehabilitation Residence, supra*, involved a real estate tax exemption challenge by a taxing authority with respect to a nursing home. The taxing authority argued that the nursing home did not donate or gratuitously render a substantial portion of its services. The lower court had determined that 77.2% of the Home’s patients were on Medicaid and that Medicaid paid less than 90% of the full cost of the services provided by RHA. The Court upheld the lower court’s determination that RHA donated a substantial

portion of its services noting: “Because 77.2 percent of RHA’s patients are on medical assistance and medical assistance pays less than the full cost of the goods and services provided by RHA, it follows that 77.2 percent of RHA’s patients are receiving uncompensated goods or services. See 10 P.S. § 375(d)(4) (defining uncompensated goods or services). Because medical assistance pays less than 90 percent of the full cost of goods and services, it follows that the entire 77.2 percent of the patients on medical assistance are paying less than 90 percent of the cost of goods or services provided to them.”

11. In *Grace Center Community Living Corp., supra*, the Commonwealth court held that “providing senior living in a community atmosphere at cost or less satisfies the requirement that a charity donate or render gratuitously a substantial portion of its services.”

G. **Act 55 – Fourth Standard - Benefits a Substantial and Indefinite Class of Persons who are Legitimate Subjects of Charity.** Section 5(e) of Act 55, 10 P.S. § 375(e)(1), provides that the institution must benefit a substantial and indefinite class of persons who are legitimate subjects of charity.

1. “Legitimate subjects of charity” include those individuals who are unable to provide themselves with what the institution provides for them. 10 P.S. § 375 (e)(2).
2. “Substantial and indefinite class of persons” includes persons who are not predetermined in number, provided that, where 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 provision 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 requirement and recognizes that an institution may reasonably deny membership based on the types of services it provides so long as denial is not in violation of federal or state anti-discrimination laws. 10 P.S. § 375 (e)(2).
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. 10 P.S. § 375(e)(3).

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. 10 P.S. § 375(e)(4).
5. Section 5(e)(5)(i) and (ii) of Act 55 provide that an institution shall not be considered to benefit a substantial and indefinite class of persons who are legitimate subjects of charity if the institution: (a) is not qualified under Section 501(c)(3) of the Code; and (b) is qualified under Section 501(c)(4), (5), (6), (7), (8) or (9) of the Code 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.  
10 P.S. § 375(e)(5)(ii)(A).
  - b. A labor organization. 10 P.S. § 375(e)(5)(ii)(B).
  - c. An agricultural or horticultural organization.  
10 P.S. § 375(e)(5)(ii)(C).
  - d. A business league, chamber of commerce, real estate board, board of trade or professional sports league.  
10 P.S. § 375(e)(5)(ii)(D).
  - e. A club organized for pleasure or recreation.  
10 P.S. § 375(e)(5)(ii)(E).
  - f. A fraternal beneficiary society, order or association.  
10 P.S. § 375(e)(5)(ii)(F).
6. 61 Pa. Code § 32.1(i)(C) provides that legitimate subjects of charity are those that are unable to provide for themselves what the organization provides. Examples include the handicapped, the aged, the sick, children, and the poor.
7. *City of Washington v. Board of Assessment Appeals of Washington County, Pennsylvania and Washington & Jefferson College, supra.* The Court held that youths seeking education can qualify as legitimate subjects of charity.
8. *Unionville-Chadds Ford School District v. Chester County Board of Assessment Appeals and Longwood Gardens, Inc., 552 Pa. 212; 714 A.2d 397 (1998).* The Court held that a privately-owned garden open to the general public benefitted a charitable class. The Court stated that “it is fully consistent with the fundamental character of a purely public charity to benefit the general public.”

9. *American Law Institute v. Commonwealth of Pennsylvania*, 882 A.2d 1088, (Pa. Commw. 2005, affirmed, 587 Pa. 589; 901 A.2d 1030 (2006). Although the organization's educational services were directed to attorneys, the broader benefit of its activities flowed to the general public. The organization's primary purposes were legal reform, clarification and simplification of the law and its adaptation to social needs, and improving the administration of justice.
10. *American Society of Testing and Materials v. Board of Revision of Taxes*, 423 Pa. 530; 225 A.2d 557 (1967). An organization setting performance standards to benefit the general public qualified as a purely public charity. Where the public is the beneficiary, the charity is a public charity.
11. *Community Accountants v. Commonwealth*, 655 A.2d 652 (Pa. Commw. 1995), affirmed, 544 Pa. 259; 676 A.2d 194 (1996). The court stated that Community Accountants did not qualify as a purely public charity because, among other failings, Community Accountants directed its services to a large, but definite, class of beneficiaries -- only small businesses, sole proprietors, and small nonprofit organizations with limited profits and resources, as opposed to the general public.
12. *PICPA Foundation for Education and Research v. Commonwealth*, 535 Pa. 67; 634 A.2d 187 (1993). The Court upheld the denial of a sales and use tax exemption after concluding that the facts demonstrated that the benefit bestowed on the general public was at most indirect. PICPA's purpose was the encouragement of education and research in accounting, and its services consisted of disseminating accounting information and offering related conferences whose attendees were primarily accountants.
13. In *In Re Appeal of American Institute of Chartered Property and Casualty Underwriters*, 928 A.2d 433 (Pa. Commw. 2007), the court cited *PICPA, supra*, for the proposition that "institutions established for the benefit of a profession or occupation do not benefit an indefinite number of people."

H. **Act 55 – Fifth Standard - Relieves the Government of Some of its Burden.** Section 5(f) of Act 55, 10 P.S. § 375(f), provides that 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.
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 PILOT.
7. In *Longwood Gardens, supra*, the Pennsylvania Supreme Court described the relief of a government burden as follows: “The fact that there is no constitutional or statutory duty to provide public gardens and educational and research facilities exactly like the ones at Longwood is not determinative. Whenever the government provides services and facilities to its citizens, it bears certain burdens. Such burdens exist regardless of whether the governmental endeavor is obligatory or discretionary in origin. If services and facilities provided by government experience reduced demands due to the existence of independent institutions that meet the same needs, then it can fairly be said that the government’s burden has been eased.”
8. Moreover, there is no requirement that an institution carry the full cost of programs which would otherwise be the government’s responsibility. Nor is there any requirement that an institution of purely public charity forego governmental support. “The fact that W&J receives some payments from the Commonwealth does not negate W&J’s role in relieving the government of its burden, since the payments to W&J are far less than the costs that would be incurred if state institutions were called upon to provide the same educational services. Further, purely public charities need not forgo available government payments that cover portions of their costs.” *City of Washington v. Board of Assessment Appeals of Washington County, Pennsylvania and Washington & Jefferson College, supra*.
9. There are other relevant factors “which include, but are not limited to, whether the institution compensates its employees at rates lower than those for similar government positions and whether the institution charges less for its services than other similar institutions.” *Community Options, Inc., supra*.

10. The existence of the Medicare and Medicaid programs is evidence that the government views the provision of health care services as one of its burdens. Reimbursement under the Medicare and Medicaid programs does not always fully cover the cost of care provided to Medicare and Medicaid patients. The reimbursement deficit relieves the government of some of its burden. *In Re: St. Margaret Seneca Place, supra.*
11. Whether an organization fully funded by government payments relieves the government of a burden has not been clearly addressed by the Pennsylvania Supreme Court.

**I. More About PILOTs under Act 55.**

1. Section 7(a) of Act 55, 10 P.S. § 377(a), provides that a political subdivision may execute a voluntary agreement with an institution that owns real property within the political subdivision. All contributions received from such voluntary agreements are to be used to help ensure that essential governmental services will continue to be provided in a manner that will permit the institution to continue to fulfill its charitable mission. A political subdivision may share with another political subdivision a portion of the proceeds from a voluntary agreement on the mutual agreement of all affected parties.
2. Section 7(b) of Act 55, 10 P.S. § 377(b), provides that institutions of purely public charity may establish a public service foundation, on mutual agreement with a political subdivision, for the purpose of receiving, and distributing to a participating political subdivision, contributions from institutions of purely public charity.
3. Section 7(c) of Act 55, 10 P.S. § 377(c), provides that an institution that has entered into a voluntary agreement may credit the following percentage of the reasonable value of its contribution for purposes of meeting the subsidy requirement of section 5(d) of Act 55 (10 P.S. § 377(c)):
  - a. If the reasonable value of the institution's contribution is equal to or less than 0.15% of its program service revenue, the institution may credit the entire contribution at 150% of its value;
  - b. If the reasonable value of the institution's contribution is greater than 0.15% but less than 0.25% of its program service revenue, the institution may credit the entire contribution at 250% of its value;
  - c. If the reasonable value of the institution's contribution is greater than 0.25% of its program service revenue, the institution may credit the entire contribution at 350% of its value.

- d. Example: Assume program service revenue is \$20 million: .15% of \$20 million is \$30,000 and .25% is \$50,000. Therefore, any payment under a PILOT of more than \$50,000 would be valued at 350% of the amount paid for purposes of determining the amount of uncompensated goods or services provided by the institution in determining whether it meets the requirements of section 5(d) of Act 55.

**J. Limitation on Lobbying and Campaign Activities.**

1. Section 5(i) of Act 55, 10 P.S. § 375(i), provides that an institution of purely public charity may conduct activities intended to influence legislation provided that no substantial part of the activities of an institution of purely public charity shall consist of carrying on propaganda, except as otherwise provided in section 501(h) of the Code.
2. Section 5(i) of Act 55, 10 P.S. § 375(i), also provides that that no substantial part of the activities of an institution of purely public charity shall consist of participating in or intervening in, including the publishing or distributing of statements, any political campaign on behalf of or in opposition to any candidate for public office as such limitations are interpreted under section 501 of the Code.

**K. Unfair Competition with Small Businesses.** Section 8 of Act 55, 10 P.S. § 378, provides that institutions of purely public charity shall not use their tax-exempt status to compete unfairly with small business.

1. An institution of purely public charity may not fund, capitalize, guarantee the indebtedness of, lease obligations of or subsidize a commercial business that is unrelated to the institution's charitable purpose as stated in the institution's charter or governing legal documents. 10 P.S. § 378(b).
2. Institutions of purely public charity are not in violation of section 8 of Act 55 if any of the following apply:
  - a. The commercial business is intended only for the use of the charity's employees, staff, alumni, faculty, members, students, clients, volunteers, patients, or residents. For purposes of this paragraph, a person shall not be considered an employee, staff, member, alumnus, faculty, student, client, volunteer, patient, or resident if the person's only relationship with the institution of purely public charity is to receive products or services resulting from the commercial business. 10 P.S. § 378(c)(1).
  - b. The commercial business results in sales to the general public that are incidental or periodic rather than permanent and ongoing. 10 P.S. § 378(c)(2).

3. Section 8 shall not be construed as prohibiting or limiting the ability of an institution of purely public charity to fund, capitalize, guarantee the indebtedness of or otherwise subsidize another institution of purely public charity. 10 P.S. § 378(d).
4. The investment in publicly traded stocks and bonds; real estate, whether directly or indirectly; or other investments by an institution of purely public charity does not violate section 8. 10 P.S. § 378(e).
5. Use of facilities to host groups for educational purposes by an institution of purely public charity does not violate section 8. 10 P.S. § 378(f).
6. An institution of purely public charity may engage in a new commercial business that may otherwise be in violation of section 8 if the institution is formally requested to do so by the Commonwealth or a political subdivision. 10 P.S. § 378(g).
7. An institution of purely public charity that prior to the effective date of section 8 funded, capitalized, guaranteed the indebtedness of, leased obligations of or subsidized a commercial business may continue to own and operate such businesses without violating section 8 as long as the institution does not substantially expand the scope of the commercial business. 10 P.S. § 378(h).
8. Section 8(i) of Act 55, 10 P.S. § 378(i), requires the Department of State to establish a system of mandatory arbitration for the purpose of receiving all complaints from aggrieved small businesses relating to an institution of purely public charity's alleged violation of section 8. Only the aggrieved small business can enforce section 8, and the arbitration procedure is the exclusive remedy for the aggrieved small business. Either party may initiate a de novo appeal from the arbitrator's decision in the court of common pleas of the judicial district in which the arbitration took place within 30 days of the arbitrator's decision.
9. Under Act 55, a small health club could bring a cause of action against a county YMCA alleging that its expansion by building a health-club facility to provide service for paying customers in competition with similar small businesses such as the small health club was unfair competition and was beyond its charitable purpose under Section 5(b) of Act 55; a trial court had subject matter jurisdiction over such a claim, and a dismissal on that ground was error. *Selfspot, Inc. v. Butler County Family YMCA*, 818 A.2d 58, (Pa. Commw. 2003), appeal denied by 574 Pa. 756; 830 A.2d 977 (2003).
10. Action brought under Act 55 was properly dismissed where complaint failed to allege that a commercial health-club's business was unrelated to its charitable purposes. *Dynamic Sports Fitness Corp. of Am. v.*

*Community YMCA*, 768 A.2d 375 (Pa. Commw. 2001), appeal denied by 568 Pa. 707; 796 A.2d 986 (2002), overruled in part by *Selfspot, Inc. v. Butler County Family YMCA*, 818 A.2d 587 (Pa. Commw. 2003).

11. A hospital-related nonprofit that owned a for-profit subsidiary that operated a pharmacy did not unfairly compete with a small business in violation of Act 55. The pharmacy was not located in the same community as the allegedly competing pharmacy. Therefore, it did not meet the statutory definition of a commercial business. *Medical Shoppe, Ltd. v. Wayne Memorial Hospital*, 866 A.2d 455 (Pa. Commw. 2005).
12. There is no time limit to the government request stated in 10 P.S. § 378(g); therefore, a trial court did not err by finding that the exemption applied, even though a local government did not invite a pharmacy until after it was opened. *Medical Shoppe, Ltd. v. Wayne Memorial Hospital*, *supra*.

**L. Accountability and Disclosure under Act 55.**

1. Section 9 of Act 55, 10 P.S. § 379, requires an institution of purely public charity that does not register under the Solicitation of Funds for Charitable Purposes Act, including institutions exempted from registration under section 6(a) of the Solicitation of Funds for Charitable Purposes Act, to file an annual report with the Bureau of Corporations and Charitable Organizations within 135 days after the close of its fiscal year. The report form is available on the website of the Bureau.
2. The report must include a copy of the institution's annual report filed with the IRS (Form 990 or 990-PF) and information on each affiliate of the institution. Private foundations that file their Forms 990-PF with the Attorney General must also file them with the Bureau of Corporations and Charitable Organizations. 10 P.S. § 379(a).
3. An institution of purely public charity that files an amended annual return with the Internal Revenue Service must file a copy of the amended annual return with the Bureau within ten days of its filing with the Internal Revenue Service. 10 P.S. § 379(c).
4. Section 9(d) of Act 55, 10 P.S. § 379(d), provides that the following are exempt from reporting:
  - a. a bona fide duly constituted religious institution and such separate groups or corporations which form an integral part of a religious institution and are exempt from filing an annual return to the IRS; and
  - b. an institution of purely public charity which receives contributions of less than \$25,000 per year provided that the institution's program service revenue does not equal or exceed \$5 million.

5. Section 9(e) of Act 55, 10 P.S. § 379(e), provides that an institution of purely public charity which is required to file a report under subsection (a) shall pay an annual filing fee of \$ 15. The Bureau may increase this fee.
6. Section 9(h) of Act 55, 10 P.S. § 379(h), provides that the Department of State shall make reports submitted under this section available for public inspection to the extent that the information is available for public inspection under section 6104 of the Code. The inclusion of information with respect to affiliates is one means for a small business to try to determine whether an institution has violated section 8 of Act 55 (relating to unfair competition).
7. Section 9(i) of Act 55, 10 P.S. § 379(i), provides that the Department of State may impose an administrative penalty not to exceed \$ 500 for (a) knowingly failing to file the report required by section 9, or (b) knowingly making a false statement which is material in a report required by section 9.

### **III. Statutory Implementation for Sales Tax Exemptions for Purely Public Charities.**

#### **A. Sales Tax.**

1. 72 P.S. § 7204 (10): Pursuant to constitutional authority, the Pennsylvania Legislature enacted 72 P.S. § 7204 (10) which provides that the sales tax shall not apply to the sale at retail or use by any charitable organization of tangible personal property or services.
2. Regulations promulgated by the Pennsylvania Department of Revenue (DOR) elaborate on the statutory exemption.
3. 61 Pa. Code § 32.1.(i)(A) provides that an organization advances a charitable purpose if it makes gifts of services for general public use which are designed to benefit an indefinite number of persons from a physical standpoint.
4. 61 Pa. Code § 32.1.(i)(E) provides that the generation of surplus funds by a charitable organization may be deemed to constitute evidence of private profit motive, unless the surplus funds are reinvested to aid legitimate subjects of charity.
5. 61 Pa. Code § 32.1.(i)(E) provides that surplus reapplied to the maintenance and operation of a facility or to retire outstanding debt is not evidence of a private profit motive.
6. To apply for sales tax exemption, a purely public charity must file REV-72 with the DOR. 61 Pa. Code § 32.21. If the application is approved, the DOR will issue an exemption determination and certificate and assign an exemption number beginning with the numbers, 75. Exemptions are

generally effective for five years after which the purely public charity must submit a renewal application to the DOR.

7. If the DOR denies the exemption application, the charity has the right to appeal. To appeal, the charity must file a petition (Form REV-65) with the DOR's Board of Appeals within 90 days of the mailing date of the notice of denial. The petition may be filed electronically. For more information, see: <http://www.boardofappeals.state.pa.us/>
8. If the Board of Appeals denies the petition, the charity may appeal to the Board of Finance and Revenue within 90 days of the mailing date of the notice of denial by the Board of Appeals. For more information, see: <https://www.patreasury.gov/board-finance-rev-tax-appeal-process.html> The form of petition for the Board of Finance and Revenue may be found at: <http://www.boardofappeals.state.pa.us/pdf/rev-260.pdf>
9. If the Board of Finance and Revenue denies the appeal, the charity may appeal to the Commonwealth Court within 30 days of the mailing date of the denial by the Board of Finance and Revenue.

#### **IV. Statutory Implementation for Real Estate Tax Exemptions for Purely Public Charities.**

A. **Authority for and Scope of Real Estate Tax Exemption – Allegheny County and Philadelphia County.** Pursuant to constitutional authority, the Pennsylvania Legislature enacted *The General County Assessment Law, 72 P.S. § 5020-101 et seq.*, which provides for imposition of local tax on real estate and for exemptions from local real estate tax applicable to property in Allegheny County and Philadelphia County.

1. 72 P.S. § 5020-201: “The following subjects and property shall, as hereinafter provided, be valued and assessed, and subject to taxation for all county, city, borough, town, township, school and poor purposes at the annual rate: (a) All real estate ....”
2. 72 P.S. § 5020-204 provides generally which properties shall be exempt from all county, city, borough, town, township, road, poor, and school taxes including among others, churches, meeting-houses, or other actual places of regularly stated religious worship and certain purely public charities.
3. 72 P.S. § 5020-204(a)(3) exempts: “All hospitals, universities, colleges, seminaries, academies, associations and institutions of learning, benevolence, or charity, including fire and rescue stations, with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same, founded, endowed, and maintained by public or private charity: Provided, That the entire revenue derived by the same be applied to the support and to increase the efficiency and facilities thereof, the

repair and the necessary increase of grounds and buildings thereof, and for no other purpose: And provided further, That any charitable organization providing residential housing services in which the charitable nonprofit organization receives subsidies for at least ninety-five per centum of the residential housing units from a low-income Federal housing program shall remain a “purely public charity” and tax exempt provided that any surplus from such assistance or subsidy is monitored by the appropriate governmental agency and used solely to advance common charitable purposes within the charitable organization;”

4. 72 P.S. § 5020-204(a)(9) exempts: “All real property owned by one or more institutions of purely public charity, used and occupied partly by such owner or owners and partly by other institutions of purely public charity, and necessary for the occupancy and enjoyment of such institutions so using it;”
5. 72 P.S. § 5020-204(b) provides that: “Except as otherwise provided in clauses (11) and (13) of this section, all property real or personal, other than that which is actually and regularly used and occupied for the purposes specified in this section, and all such property from which any income or revenue is derived, other than from recipients of the bounty of the institution or charity, shall be subject to taxation, except where exempted by law for State purposes, and nothing herein contained shall exempt same therefrom.”
6. 72 P.S. § 5020-204(c) provides that: “Except as otherwise provided in clause (10) of this section, all property, real and personal, actually and regularly used and occupied for the purposes specified in this section shall be subject to taxation, unless the person or persons, associations or corporation, so using and occupying the same, shall be seized of the legal or equitable title in the realty and possessor of the personal property absolutely.”
7. To apply for real estate tax exemption, a purely public charity must file an application with the board of assessment appeals or other designated body for the county in which the property is located. In Philadelphia County, applications must be filed with the Office of Property Assessment. If the application is denied, the charity may file an appeal with the relevant county Court of Common Pleas.

**B. Authority for and Scope of Real Estate Tax Exemption – Other Counties.**

Pursuant to constitutional authority, the Pennsylvania Legislature enacted *The Consolidated County Assessment Law*, 53 Pa.C.S. § 8801 *et seq.*, which provides for imposition of local tax on real estate and for exemptions from local real estate tax applicable to properties in counties other than Allegheny and Philadelphia.

1. See 53 Pa.C.S. § 8812(a)(3), which provides exemption for: “All hospitals, universities, colleges, seminaries, academies, associations and institutions of learning, benevolence or charity, including fire and rescue stations, with the grounds annexed and necessary for their occupancy and use, founded, endowed and maintained by public or private charity as long as all of the following apply: (i) The entire revenue derived by the entity is applied to support the entity and to increase the efficiency and facilities of the entity, the repair and the necessary increase of grounds and buildings of the entity and for no other purpose. (ii) The property of purely public charities is necessary to and actually used for the principal purposes of the institution and not used in such a manner as to compete with commercial enterprise.
2. *The Consolidated County Assessment Law* contains provisions that are essentially the same as *The General County Assessment Law* with respect to ownership and use of the property for which exemption is sought.

**C. Burden of Proof.**

1. *Church of the Overcomer v. Delaware County Board of Assessment Appeals*, 18 A.3d 386 (Pa. Commw. 2011). The Commonwealth Court held that a church’s community center was not entitled to an exemption from real estate taxation. After first determining that the exempt status of the community center must be considered separate from the status of the church, the court considered whether the community center met all of the requirements of Act 55. The court determined that the center had failed to satisfy the “community service” and “charity to persons” elements of the Act, because the center failed to show that it provided services to individuals unable to provide for themselves, or had made known the availability of free services to the public. A footnote states: “This opinion does not preclude the Church from applying for such exemption from real estate taxation in future years.”
2. Section 5 of Act 55, 10 P.S. § 375(a), provides that an institution that meets the criteria specified in section 5 shall be considered to be founded, endowed and maintained by public or private charity. Apparently, this is intended to apply to real estate tax exemption.
3. Section 6 of Act 55, 10 P.S. § 376, provides that an institution of purely public charity possessing a valid sales tax exemption shall be entitled to assert a rebuttable presumption regarding that institution’s compliance with the criteria set forth in section 5 as follows:
  - a. An institution of purely public charity that has annual program service revenue less than \$ 10,000,000 shall be entitled to assert the presumption if the institution possesses a valid sales tax exemption.

- b. An institution of purely public charity that has annual program service revenue equal to or exceeding \$ 10,000,000 shall be entitled to assert the presumption if all of the following apply:
  - i. the institution possesses a valid sales tax exemption; and
  - ii. the institution has a voluntary PILOT agreement with a political subdivision in which that institution conducts substantial business operations. (The presumption may be asserted by an institution of purely public charity only with regard to a challenge made by a political subdivision with which that institution has a PILOT in effect.)
- c. For the purpose of calculating annual program service revenue under section 6, an institution of purely public charity may elect to average annual program service revenue for its two most recently completed fiscal years.
- d. Commencing July 1, 1999, and every year thereafter, the DOR shall increase the amount set forth in paragraphs (a) and (b) above by 1%. The DOR shall transmit notice of the adjustment to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.
- e. If an institution of purely public charity asserts the presumption, a political subdivision challenging that institution before a government agency or court shall bear the burden, by a preponderance of the evidence, of proving that the institution of purely public charity does not comply with the requirements of section 5.

D. **Vacant Property.** *Appeal of the City of Pittsburgh from the Action of the Board of Property Assessment Appeals and Review of Allegheny County in regard to Property owned by the Pittsburgh Trust for Cultural Resources, 977 A.2d 71 (Pa. Commw. 2009), Appeal granted in part by In re Appeal of Pittsburgh, (Pa., Feb. 8, 2011).*

- 1. Vacant properties are generally not entitled to tax exemption.
- 2. Where public charities had been granted tax-exempt status for vacant properties under construction, the construction was, at the very least, in the beginning stages, and the charity itself intended to occupy and use the property once constructed.
- 3. Under 72 P.S. § 5020-204, the appellate court must determine whether the subject properties are necessary for the occupancy and enjoyment of the institution. Absolute necessity, however, need not be shown. Evidence

establishing a reasonable necessity is sufficient to carry the claimant's burden.

4. In the context of a claim of tax-exempt property, the property sought to be exempted must be devoted to the charitable use, and those that are unused, are used for other than the charitable purposes, or are devoted to essentially commercial uses, are not exempt.

**E. Leased Property.**

1. For property that is owned by a charity but leased to another entity to be exempt, the charity must prove:
  - a. that the charity-lessor does not derive any income or revenue from the property; and
  - b. that any rent paid was merely nominal; and
  - c. that the lessee was itself the recipient of the lessor's charity. *In re Appeal of Archdiocese of Philadelphia*, 617 A.2d 821 (Pa. Commw. 1992).
2. *Borough of Homestead v. St. Mary Magdalen Church, The Diocese of Pittsburgh and Board of Property Assessment and Review*, 798 A.2d 823 (Pa. Commw. 2002). The Court found that an abandoned school converted by a church into a job center, addiction center, and food bank as well as a rehabilitation center that targets addictions and attempts to rehabilitate prisoners to reduce the rate of recidivism qualifies as a purely public charity under Act 55. Nonprofits that used the facility were the recipients of the Diocese's bounty.

**F. Parcel Review - 10 P.S. § 375(h).**

1. Act 55 shall not affect, impair or hinder the responsibilities or prerogatives of the political subdivision responsible for maintaining real property assessment rolls to make a determination whether a parcel of property or a portion of a parcel of property is being used to advance the charitable purpose of an institution of purely public charity, or to assess the parcel or part of the parcel of property as taxable based on the use of the parcel or part of the parcel for purposes other than charitable purpose of that institution.
2. Act 55 shall not prohibit a political subdivision from filing challenges or making determinations as to whether a particular parcel of property is being used to advance the charitable purpose of an institution of purely public charity. 10 P.S. § 375(h).

3. *Veterans of Foreign Wars Post 1989 v. Indiana County Board of Assessment Appeals, Indiana County, White Township and Indiana Area School District*, 954 A.2d 100 (Pa. Commw. 2008).
  - a. Whether a parcel of property qualifies for tax exemption is a question of law. As such, the Commonwealth Court’s standard of review is de novo and its scope of review is plenary.
  - b. When the status of an institution as a purely public charity is not in question, as in the instant case, the focus is on the “actual and regular use that the qualifying institution makes of its property and the relationship of that use to the institution’s purposes.”
  - c. Land used to generate profits for the charity is not entitled to an exemption (relating to a golf course leased to another entity and generating profits for the charity to distribute).

**G. Effective Date of Real Property Tax Exemption.**

1. See *In Re: Appeal of Jubilee Ministries International; Appeal of: Lawrence County Board of Assessment Appeals*, 2 A.3d 706 (Pa. Commw. 2010), appeal denied, *In re Appeal of Jubilee Ministries International*, 14 A.3d 830 (2010). A county board of assessment appeals was required to grant tax-exempt status to an owner’s property from the date of purchase, as that was when it met the requirements for exemption and the owner timely filed its exemption application.
2. But see *The Consolidated County Assessment Law*, 53 Pa.C.S. § 8844(c)(1), which provides that “[a]ny person aggrieved by any assessment, whether or not the value thereof shall have been changed since the preceding annual assessment, or any taxing district having an interest in the assessment, may appeal to the board for relief. Any person or taxing district desiring to make an appeal shall, on or before September 1 or the date designated by the county commissioners if the option under paragraph (3) is exercised [option to change date to August 1], file with the board an appeal in writing, ... (2) The same procedures and deadlines shall apply to a request for real estate tax exemption under section 8812 (relating to exemptions from taxation).”

## APPENDIX A

### ACT 55 DEFINITIONS

#### 10 P.S. § 373 – Definitions under Act 55

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Affiliate.” A domestic or foreign corporation, association, trust or other organization which owns a 10% or greater interest in an institution of purely public charity. A domestic or foreign corporation, association, trust or other organization in which an institution of purely public charity owns a 10% or greater interest.

“Annual return.” The annual information return required to be filed with the Internal Revenue Service by institutions exempt from tax under *section 501(a) of the Internal Revenue Code of 1986* (Public Law 99-514, 26 U.S.C. §501(a), et seq.). The annual information return consists of Internal Revenue Service Form 990 or Form 990EZ and Schedule A or any succeeding form used for the same or similar purpose. For an institution, which is not required to file such returns, the institution’s annual financial statement with reported income shall constitute its annual return.

“Bureau.” The Bureau of Charitable Organizations of the Department of State of the Commonwealth. (The Bureau is now known as the Bureau of Corporations and Charitable Organizations.)

“Commercial business.” The sale of products or services that are principally the same as those offered by an existing small business in the same community.

“Contribution.” The promise, grant, pledge or gift of money, property, goods, services, financial assistance or other similar remittance.

“Goods or services.” Goods or services which promote any of the enumerated purposes under section 5(b) and which are valued in accordance with generally accepted accounting principles applicable to the institution.

“Government agency.” Any Commonwealth agency or any political subdivision or municipal or other local authority or any officer or agency of any political subdivision or local authority.

“Institution.” A domestic or foreign nonprofit corporation, association or trust or other similar entity.

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

“Net operating income.” The amount of funds remaining after all operating expenses related to the provision of goods or services associated with the institution's charitable purpose are deducted from payments received for providing these goods or services, as determined in accordance with generally accepted accounting principles applicable to the institution.

“Political subdivision.” Any county, city, borough, town, township, school district, vocational school district and county institution district.

“Program service revenue.” Income earned from the provision of goods or services, including government fees and contracts associated with the institution's charitable purpose, which is reported on the annual return.

“Small business.” Any self-employed individual, sole proprietorship, firm, corporation, partnership, association or other entity that: (1) has fewer than 101 full-time employees; and (2) is subject to income taxation under the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971.

“Total operating expenses.” The costs related to the provision of goods or services associated with the institution's charitable purpose, as determined in accordance with generally accepted accounting principles applicable to the institution.

“Voluntary agreement.” An agreement, contract or other arrangement for the purpose of receiving contributions pursuant to section 7 between a political subdivision and an institution seeking or possessing an exemption as an institution of purely public charity. These contributions are for the purpose of defraying some of the cost of various local government services. The term includes the establishment of public service foundations by institutions of purely public charity.