Supreme Court Affirms Constitutional Test Must be Met by Those Seeking Charitable Exemptions

by Randy L. Varner

In a 4-3 decision, the Pennsylvania Supreme Court, in *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals,* No. 16 MAP 2011 (April 25, 2012) ("*Mesivtah*"), held that a property owner seeking an exemption from real property taxation as a "purely public charity," must first meet the five-prong test set forth in *Hospital Utilization Project v. Common-wealth,* 487 A.2d 1306 (Pa. 1985) (the "*HUP* Test"). As explained below, this decision does not alter substantive exemption law, although it may encourage some taxing jurisdictions to take harder looks at exemptions. Those entities with exemptions should be aware of the *Mesivtah* decision and its limited holding.

In *Mesivtah*, the Commonwealth Court had held that the Appellant (a not-for-profit religious summer camp), did not relieve the government of some of its burden and, therefore, failed one of the prongs of the *HUP* Test, the test used to determine whether an institution qualifies as a purely public charity under the Pennsylvania Constitution.

Appellant appealed to the Supreme Court and argued that courts should defer to the five-prong test in the Institutions of Purely Public Charity Act, 10 P.S. §§ 371-385 ("Act 55"), when analyzing whether an institution is a purely public charity. Act 55 was passed by the General Assembly after the *HUP* Test was announced by the Supreme Court, and sought to provide some objective criteria for the five prongs of the *HUP* Test based upon case law that the *HUP* court had relied on. In *Mesivtah,* the Supreme Court only looked at whether it must defer to Act 55 when analyzing whether an institution is one of purely public charity, not to facts of the case or how those facts fit into the five-prong tests.

The Court held that before even getting to Act 55's test, an institution must pass constitutional muster by clearing the five-prong *HUP* Test. While the General Assembly is free to place more restrictive requirements on an institution seeking an exemption, it may not legislate away constitutional minimums, as established by the *HUP* Test. Therefore, the Court affirmed the Commonwealth Court's denial of the exemption.

Importantly, the Supreme Court did not review the Commonwealth Court's application of the *Mesivtah* facts to the law. Nothing in the Supreme Court's decision in *Mesivtah* changes prior case law interpretation or application of the prongs of either test. The Commonwealth Court's decision in *Mesivtah*, like all exemption cases, turned on the facts of that case. The Supreme Court, by making clear that the *HUP* Test must be met before undertaking analysis under Act 55, did not alter what "relieving the government of some of its burden" has meant under case law.

As a practical matter, if an appellant can pass the *HUP* Test, then it should also be able to pass the Act 55 test, and *vice versa*. The Appellant in *Mesivtah* argued that it met the Act 55 "governmental burden" prong, as part of its overarching argument that Act 55 should guide the Court's analysis of the *HUP* Test. However, it does not appear as if the trial court or the Commonwealth Court ever conducted an Act 55

analysis. In reality, if the courts did not believe that the Appellant met the "governmental burden" prong of the *HUP* Test, it is doubtful they would have found that it met the Act 55 prong.

Some commentators have argued that *Mesivtah* will make it harder for an institution to prove that it is a purely public charity. That is not a fair reading of the *Mesivtah's* holding.

We have always advised clients that the *HUP* Test must be met first, followed by the Act 55 test and have presented appeals based upon that premise. Again, nothing in *Mesivtah* alters what is meant by "relieving the government of some of its burden" under the *HUP* Test. We have found through representing clients in exemption appeals that it is usually far more difficult dealing with Act 55's objective standards in an appeal than those developed in the *HUP* Test.

Still, the holding in *Mesivtah* may invite taxing jurisdictions or boards of assessment appeals to be more aggressive with institutions who are seeking or have exemptions. The most important thing institutions should remember—and this was not altered by *Mesivtah*—is to fully set forth how each prong of each of the tests is met when seeking an exemption or defending one.