

## **A Charity Wins: A Favorable Result Under Pennsylvania's HUP Test.**

Given recent developments under the HUP test, a win by a non-profit in a real estate tax exemption case qualifies as news; in *Alliance for Building Communities v. County of Lehigh Board of Assessment Appeals*, No. 1150 CD 2012, (Pa. Commw. July 22, 2013), the Commonwealth Court reversed a trial court determination that a non-profit was not a "purely public charity."

The non-profit, Alliance for Building Communities, is a Pennsylvania non-profit corporation that is tax exempt under Section 501(c)(3) of the Internal Revenue Code and also enjoys an exemption from Pennsylvania's sales and use tax. *Alliance for Building Communities v. County of Lehigh Board of Assessment Appeals*, slip op. at 2. Alliance provided affordable housing and counseling services to low income individuals; the exemption case was focused on thirty-six rental units located in the City of Allentown. *Id.* Twenty-five of the units were leased through HUD's Section 8 rent subsidy program, while the balance were leased to low or moderate income tenants at below market rates. *Id.* at 3. The revenue from the properties was less than their operating expenses. *Id.* at 4.

Although Alliance had received real estate tax exemptions in other municipalities, the trial court refused to admit that evidence after the school district's lawyer objected. *Id.* Ultimately, the trial court concluded that Alliance did not satisfy the requirements established by the Supreme Court in *Hospital Utilization Project v. Commonwealth*, 487 A.2d 1306 (Pa. 1985) for two reasons: *first*, the trial court found that Alliance did not donate or render gratuitously a substantial portion of its services, since it collected fees; *second*, the trial court concluded that Alliance did not relieve the government of any burden because it essentially operated as a pass-through for government funding. *Alliance for Building Communities*, slip op. at 5-6.

On appeal, the Commonwealth Court focused on the second prong of the HUP test, which requires that a "purely public charity" donate or render gratuitously a substantial portion of its services. It reversed the trial court because it had excluded evidence relevant to Alliance's operations as a whole, which is required under *Alliance Home of Carlisle v. Board of Assessment Appeals*, 919 A.2d 206 (PA 2007). Since the trial court excluded vital evidence, the Commonwealth Court remanded the case for further proceedings. *Alliance for Building Communities*, slip op. at 8-10. In a nutshell, the trial court was reversed because the school board's lawyer was too aggressive and overreached by objecting to the presentation of evidence that the court was required to consider under controlling authority.

The case offers a couple of lessons. *First*, it shows just how aggressive local tax authorities have become in challenging tax exemptions. *Second*, it shows that charities that prepare their cases carefully still have a reasonable prospect of prevailing in the face of a challenge to their tax-exempt status. This latter point is good news, as many of the recent reported decisions have had bad outcomes for non-profits.

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