

## Pennsylvania Supreme Court Confirms Supremacy of HUP Test for Determining Real Estate Tax Exemptions

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Authors: [Dusty Elias Kirk](#), [Jeffrey G. Wilhelm](#)

On April 25, 2012, the Pennsylvania Supreme Court issued a potentially explosive decision to 501(c) corporations in *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals*; No. 16 MAP 2011. At issue was whether a 501(c)(3) corporation, owning and operating an Orthodox Jewish summer camp in Pike County, could qualify for tax exempt status as “purely public charity” under the more relaxed standard set forth in the Institutions of Purely Public Charity Act, 10 P.S. §§ 371-385 (“Act 55”), even if the camp could not meet the five-part definition of “purely public charity” under Article VIII, § 2 of the Pennsylvania Constitution as announced in *Hospital Utilization Project v. Commonwealth*, 487 A.2d 1306, 1317 (Pa. 1985) (the “HUP Test”). Specifically, the camp failed to meet the HUP Test because it could not show that it relieved “the government of some of its burden.”

In a 4-3 decision affirming the denial of the real estate tax exemption to the camp, the Pennsylvania Supreme Court found that “to receive an exemption without violating the Constitution, the party must meet the definition of ‘purely public charity’ as measured by the [HUP Test].” In so doing, the Pennsylvania Supreme Court reasoned that Article VIII, § 2 “was designed not to grant, but limit, legislative authority to create tax exemptions.” The court concluded that it was the arbitrator of the constitutional boundaries of tax exempt status, and that the HUP Test set forth the minimum boundaries that must be met to qualify for such status. The General Assembly could not expand those boundaries through Act 55. This decision has ramifications for every 501(c)(3) corporation currently possessing or seeking real estate tax exempt status, and will likely result in challenges to existing tax exempt status by taxing jurisdictions.

More importantly, in *Mesivtah Eitz Chaim*, the Pennsylvania Supreme Court clearly reserved to itself the right to determine constitutional issues, including uniformity in real estate tax



assessment law. Given the General Assembly's contemporaneous efforts to pass a moratorium on court-ordered reassessments proceeding under the Uniformity Clause, Mesivtah Eitz Chaim may have broader implications as the court asserts its superior right to interpret the Pennsylvania Constitution.

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