



Fox Rothschild Podcast

Featuring Attorneys John Gotaskie and Rebecca Hagan in Pittsburgh

We're talking today with John Gotaskie and Rebecca Hagan on the Fox Rothschild Podcast about "Fluctuating Standards for Pennsylvania's Charitable Property Tax Exemption." John and Rebecca are attorneys with Fox Rothschild in Pittsburgh and focus on serving nonprofit organizations. They handle an array of gift and estate tax planning and estate and trust administration, with an emphasis on probate and trust litigation. They also are frequent contributors to the firm's myriad blogs. John, Rebecca, good morning.

John Gotaskie: Thank you. Good to be here.

Rebecca Hagan: Good morning. Thank you.

***Question:** John, a recent news story in Pittsburgh reported that small nonprofit groups may be losing property tax exemptions now under review.*

John Gotaskie: That's correct. Particularly, the situation is acute in Allegheny County right now. The owner of every county property that has claimed a charitable property tax exemption is being examined. In 2013, the county asked owners of charitable properties to justify why they should remain tax exempt. And they did that through a mailing. Anyone or any organization that didn't respond automatically had their property placed back onto the tax rolls and is now being assessed taxes.

***Question:** Rebecca, under what standards are these decisions being made?*

Rebecca Hagan: The standards are currently the subject of a tug of war between Pennsylvania's legislative and judicial branches. As the number of Pennsylvania taxing bodies in financial distress continues to rise, nonprofits may see more challenges to their real estate tax exempt status as governments seek to increase their revenues. In Allegheny County alone, for example, properties valued at \$59 million are now subject to assessment for the year 2014. As a result, more than \$1 million in new revenue has been paid to the county, school districts and municipal bodies.

***Question:** John, how would a nonprofit in Pennsylvania prove that its property should be exempt from taxation?*

John Gotaskie: Well that sounds like a simple question, but unfortunately it isn't. And it's not just about being a nonprofit like a 501(c)(3) for IRS purposes. Pennsylvania has its own test, and in order for a Pennsylvania-based nonprofit to receive a real estate tax exemption for its property, that nonprofit must show that it meets the definition of a "purely public charity" – and those are magic words. Those magic words come from Section 2 of the Pennsylvania Constitution. Now

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the constitution provides for real estate tax exemptions for institutions, again, of purely public charity, it doesn't define what institution is a purely public charity, which has led to some confusion, and really the mess that we're now seeing in a lot of places, including Allegheny County.

Question: Rebecca, so what is the HUP test, as it's known, all about?

Rebecca Hagan: Yes, back in 1985, the Pennsylvania Supreme Court synthesized a century's worth of case law to establish a five-part test for identifying qualifying institutions. The case was brought by an organization known as Hospital Utilization Project, or "HUP" for short. Under the "HUP test," a qualifying institution must meet five requirements.

The first requirement is that the institution must advance a charitable purpose. Next, it has to donate or freely render a substantial portion of its services. Third, it must benefit a substantial and indefinite class of persons who are legitimate subjects of charity. Importantly, it must relieve the government of some of its burden. And finally, it must operate entirely free from private profit motive.

Question: John, has the HUP test ever been challenged in court?

John Gotaskie: Oh yes, it has. And the results of those cases have provided pretty much zero consistency. Since the establishment of the test in 1985, courts have continued to reach varying conclusions regarding nonprofits' real estate tax exempt status. Consequently due to all the mess, in 1997, the General Assembly in Harrisburg passed what's called Act 55, otherwise known as the "Institutions of Purely Public Charity Act," or IPPCA for short. The goal of IPPCA was to eliminate inconsistent application of the test by establishing specific legislative standards to determine whether an organization qualifies as an institution of purely public charity. IPPCA was designed to standardize and clarify that HUP test, which of course attempted to standardize and clarify 100 years of other case law, but many critics have argued, since the Institutions Act was put in place, that it's really only served to weaken the test in broadening the parameters of the five factors.

Question: Rebecca, wasn't there a decision by the Pennsylvania Supreme Court?

Rebecca Hagan: Yes, there was. The Supreme Court responded to the legislative criticism in a case known as *Mesivtah v. Pike County Board of Assessment Appeal*. In this case, the court found that the Pennsylvania General Assembly had exceeded its constitutional authority when it passed IPPCA. Without concluding that the act was unconstitutional, the court essentially rendered the act moot by reinstating the stricter HUP test standards as the threshold.

Question: John, has this led to any legislation?



John Gotaskie: Yes, and what it's really led to is an attempt to amend the constitution. You've got to think about what's going on here. You've got a tension between the taxing bodies who want property tax revenue, and you've got institutions that are nonprofits that don't want to pay that revenue. And the steps in Pennsylvania are to attempt to amend the constitution to change that. And the Pennsylvania Senate has introduced a bill that would amend the state constitution to do just that. It would provide that the legislature has the right to determine the criteria for whether a particular institution qualifies as a purely public charity. Now under Pennsylvania constitutional law, that bill has to be passed by the House and the Senate, not just once but in two sessions. And that bill, Senate Bill 4, did pass both the House and the Senate in 2013, and now the question is whether it can be passed a second time before it's submitted to the voters for final approval.

Question: Rebecca, what's the likelihood of that?

Rebecca Hagan: Well at this point, the bill has already been approved by the Pennsylvania Senate. If the bill also passes the Pennsylvania House in the current session, it has to go to the Pennsylvania voters for approval. Only if the Pennsylvania voters approve it will the Pennsylvania constitution be amended to overrule the *Mesivtah* case and reinstate the IPPCA standards for tax exemption. Until then, nonprofits must continue to meet the stricter HUP test standards when applying for exemption or withstanding challenges from local taxing authorities, and those taxing authorities will continue in their attempts to have properties added back onto the tax rolls.

Well thank you, John and Rebecca. Listeners, to discuss your nonprofit organization's potential concerns for charitable property tax exemption, please contact John at 412.394.5528 or jgotaskie – that's J-G-O-T-A-S-K-I-E – at foxrothschild.com, or you may contact Rebecca at 412.394.5541 or rhagan – that's R-H-A-G-A-N – at foxrothschild.com.

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