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## Municipal Taxation - Charitable Exemption - Tax Enabling Act

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MUNICIPAL TAXATION—CHARITABLE EXEMPTION—TAX ENABLING ACT—  
The Supreme Court of Pennsylvania has held a municipality cannot tax the gross receipts of hospitals and other institutions under the Local Tax Enabling Act.<sup>1</sup>

*Appeal of Hospital Council of Western Pennsylvania v. City of Pittsburgh*, 439 Pa. 295, 266 A.2d 619 (1970).

The City of Pittsburgh, pursuant to the Local Tax Enabling Act,<sup>2</sup> passed the Institution and Service Privilege Tax Ordinance,<sup>3</sup> levying a 6 mill tax on the gross receipts of institutions performing services in the city. The institutions were defined as: "any organization, corporation, unincorporated association or any other entity, including but not limited to, hospitals, nursing homes, colleges, universities, schools other than elementary and secondary schools, cemeteries, veterans' posts and recreational centers and all other organizations, which provide service to the general public."<sup>4</sup> Twenty-eight institutions, performing health related services, challenged the ordinance<sup>5</sup> as not delegated by the Local Tax Enabling Act.<sup>6</sup>

Accepting the appellant's contention, the lower court<sup>7</sup> found the ordinance<sup>8</sup> invalid. The court held "that the policy of our court has been to require that a statute which deprives a charitable institution of a previous exemption from taxation must do so in specific and unmistakable terms."<sup>9</sup> Affirming the lower court's decision, the supreme court<sup>10</sup> found that legislation would have to be explicit to overrule the tax exempt status of charitable institutions.<sup>11</sup>

On appeal, the city claimed sections two and three of the Local Tax Enabling Act<sup>12</sup> granted it the power to levy the Institution and Service

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1. Act 511 of 1965, P.L. 1257, PURDON'S PA. STAT. ANN. tit. 53, § 6901 (1970).

2. *Id.*

3. Pittsburgh, Pa., Ordinance 676, Dec. 22, 1968.

4. *Id.*

5. *Id.*

6. Act 511 of 1965, P.L. 1257, PURDON'S PA. STAT. ANN. tit. 53, § 6901 (1970).

7. Appeal of Hospital Council of Western Pennsylvania, Court of Common Pleas-Civil Division, Allegheny County, No. 8 (1969).

8. Pittsburgh, Pa., Ordinance 676, Dec. 22, 1968.

9. See note 7.

10. Appeal of Hospital Council of Western Pennsylvania v. City of Pittsburgh, 439 Pa. 295, 266 A.2d 619 (1970).

11. *Id.* at 622.

12. Act 511 of 1965, P.L. 1257, PURDON'S PA. STAT. ANN. tit. 53, § 6901 (1970). "Cities of the second class may in their discretion levy, assess and collect such taxes as they shall determine on persons' transaction, occupation, privileges, subjects, and personal property within the limits of such political subdivisions . . ."

"It is the intention of this action to confer upon such political subdivision the power

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Privilege Tax.<sup>13</sup> Interpreting these sections, the city contended it had the power to tax anything the Commonwealth could tax.<sup>14</sup> This construction circumvented any inconsistency with the General County Assessment Law,<sup>15</sup> which grants exemption from "all county, city, borough, township, road, poor, and school tax to wit: all hospitals, universities, and colleges . . ."<sup>16</sup> It argued that the legislative history of the Local Tax Enabling Act<sup>17</sup> demonstrated that the act was in response to the declining tax base within the subdivisions of the Commonwealth.

As the original sources of income, almost entirely from real estate, proved insufficient to meet the increasing costs of local government pressure was brought upon the legislature to authorize the taxation of previously forbidden fields.<sup>18</sup>

The city claimed the General County Assessment Law<sup>19</sup> only exempted charities from real property taxes.<sup>20</sup>

The supreme court, rejecting the city's interpretation of sections two and three,<sup>21</sup> found the charitable exemption of the General County Assessment Law<sup>22</sup> applicable to all taxes.

Neither the constitution, nor the statute says the exemption will be only for property taxes; the statute, in fact, expressly says 'all tax.' The word 'property' is used merely to describe the locus of what the Legislature was exempting it from. There is no reason to assume that the Legislature did not fully exercise its constitutional power to exempt this property, not only from property taxes, but also from taxes on activities conducted on the property.<sup>23</sup>

The court concluded: "thus it is clear that the instant case like the

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to levy assess and collect taxes upon any and all subjects of taxation which the commonwealth has power to tax but which it does not tax or license . . ."

13. Pittsburgh, Pa., Ordinance 676, Dec. 22, 1968.

14. See note 10.

15. Act of May 22, 1933, P.L. 862, PURDON'S PA. STAT. ANN. tit. 72, § 5020-204 (1968).

16. *Id.*

17. Act 511 of 1965, P. L. 1257, PURDON'S PA. STAT. ANN. tit. 53, § 6901 (1970).

18. In *Rose Township v. Hollobourgh*, 179 Pa. Super 284, 116 A.2d 323 (1955); This case refers to Act 481, P.L. 1145, PURDON'S PA. STAT. ANN. tit. 53, § 2015.1 (1947), which was the original "Tax Anything Act."

19. Act of May 22, 1933, P.L. 862, PURDON'S PA. STAT. ANN. tit. 72, § 5020-204 (1968).

20. *Y.M.C.A. of Germantown v. Philadelphia*, 323 Pa. 401 (1936), 187 A. 204 (1936); This case held that property which was not used for charitable purposes could not be exempted.

21. Act 511 of 1965, P.L. 1257, PURDON'S PA. STAT. ANN. tit. 53, § 6901 (1970).

22. Act of May 22, 1933, P.L. 862, PURDON'S PA. STAT. ANN. tit. 72, § 5020-204 (1968).

23. 436 Pa. 54, 258 A.2d 630 (1969): This case involved the tax assessment by the township on the parking adjacent to the county airport. The case clearly explained the county assessment law to include all taxes within the exemption.

public property used for public purposes in the *Moon Township Case* are exempt from the tax sought to be imposed."<sup>24</sup>

The court refused to accept the city's contention that the legislature had implicitly given it the power to tax charitable institutions. Citing *Trustee of the General Assembly of the Presbyterian Church v. Gratz*<sup>25</sup> as controlling, the court held charitable exemption will be assumed unless explicitly revoked by legislation. In that case a tax on personal property had been passed by the General Assembly. A trustee, holding property for the church claimed exemption through an act of the General Assembly. Although the proviso was held unconstitutional, the majority of the court held:

It is not incumbent upon the plaintiff to show any exemption until it is clearly demonstrated that they are subject to the tax, and they are clearly in the word and meaning of the act imposed. The question is not whether they are in the exemption of the Act of 1874, but if they are within the Act of 1889.<sup>26</sup>

Until the municipality shows it has the power to tax, the charity does not have to prove it is exempt. The question was again before the supreme court in *Mattern v. Canevin*.<sup>27</sup> There the majority found a mortgage held by a defendant for religious and charitable purposes tax exempt. The court stated:

The court would not feel called upon to adopt a different rule of construction in the absence of legislative enactment which in clear and express terms should provide for the taxation of property held.<sup>28</sup>

Following these precedents, *Commonwealth v. First National Bank of Scranton*<sup>29</sup> held charities exempt from a tax upon shareholders to be collected by banks pursuant to a taxing act. Interpreting the statute, the court cited *Church of the Holy Trinity*:<sup>30</sup> "a thing may be within the letter of the statute, and yet not within the statute because it is not

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24. 436 Pa. 54, 56, 258 A.2d 630, 632 (1969) as quoted by the court, 439 Pa. at 298, 266 A.2d at 622.

25. *The General Assembly v. Gratz*, 139 Pa. 497, 20 A. 1041 (1891). See also *Buhl's Estate*, 300 Pa. 29, 150 A. 86 (1939); *Commonwealth v. Keystone State Building and Loan Ass'n*, 44 Dauph. 191 (1937); *Union Trust Company of Pittsburgh Account*, 326 Pa. 251 (1937).

26. *Id.* at 1042.

27. 213 Pa. 588, 63 A. 131 (1906).

28. *Id.* at 132.

29. 48 D. & C. 399 (Dauphin, 1942).

30. 133 U.S. 457 (1889).

within the intention of its makers."<sup>31</sup> If the commonwealth had intended to give the city the power to tax charities, it would have done so explicitly, the majority of our court held.

In order to reconcile this decision with the declining tax base in Pittsburgh, one must look to the specific language of the Local Tax Enabling Act.<sup>32</sup> The Pennsylvania courts interpret legislation to avoid absurd results.<sup>33</sup> If the legislature intended to give the city the power to tax charities, "we would have to recognize its right to ignore the County Assessment Law, which exempts charitable institutions from taxation, this would in turn give the city the right to repeal any law of taxation contrary to its policies."<sup>34</sup>

The majority in the principal case did not preclude the city from taxing some charitable activities. "Indeed it may be said to be the use of the property in question rather than the charitable character of the owner that ordinarily determines the right to claim the exemption."<sup>35</sup> Relying on *Appeal of County of Allegheny v. Moontownship*,<sup>36</sup> the majority held that the charitable institution's activity must be incidental to its main purpose to be tax exempt. If the city finds an activity which is not charitable in nature, they can tax it. The burden of proving activity within the exemption lies with the charity. "The Claimant asserting a tax exemption has the burden of bringing himself within the exemption statute."<sup>37</sup>

Since the ordinance<sup>38</sup> has been declared invalid the city treasury must refund the money collected. However, must the city return all the money? Being able to tax those activities which are not charitable, it does not. The charities have the burden to show that their activities are exempt. Although the city has the power to tax those activities which are not charitable, this power is constrained by the court's decision. Unless the activity is commercial, the charity will retain its exemp-

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31. *Id.* at 459.

32. Act 511 of 1965, P.L. 1257 PURDON'S PA. STAT. ANN. tit. 53, § 6901 (1970).

33. Act of May 28, 1937, P.L. 1019, PURDON'S PA. STAT. ANN. tit. 46, § 551 (1937): Construction of Law; "legislative intent controls; the object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed if possible, to give effect to all of its provisions when the words of the law are not explicit their intention of the legislature may be ascertained by considering among other things: the consequences of a particular interpretation . . . ."

34. See note 7, at 23.

35. 51 AM. JUR. § 605, 606 (1939).

36. 436 Pa. 56, 258 A.2d 632 (1967).

37. University of Pittsburgh Tax Exemption Case, 208 Pa. Super 718, 219 A.2d 364 (1966).

38. Pittsburgh, Pa., Ordinance 676, Dec. 22, 1968.

tion pursuant to the General County Assessment Law.<sup>39</sup> Since the General County Assessment Law<sup>40</sup> has been redefined to include all taxes, a court deciding a municipality's power to tax charities exempt under the Local Tax Enabling Act<sup>41</sup> would have to find these charities exempt from all taxes.

The question of whether charitable tax exemption is a valid concept in Pittsburgh is answered by the services which these charities perform. The only support the city gives its hospitals is their tax exempt status. For Pittsburgh to perform the services rendered by these institutions would require an initial capital investment in excess of twenty-six million dollars.<sup>42</sup> Since the exemption amounts to one and a half million dollars annually, the city would lose more if they were to tax charities. If the exemption were removed, it is possible the hospitals might be forced to close their doors.

Unlike other areas of the country, Pittsburgh's nonsupport of its hospitals is the exception rather than the rule. An analysis of medical care programs provided in a hundred and thirty cities in the United States shows all but thirty-one have government operated hospitals.<sup>43</sup> The beneficial services rendered by Pittsburgh's charitable institutions outweigh the financial benefits which Pittsburgh would receive by taxing these institutions.

While an analogy may be drawn between tort immunity and tax exemption for charities, it cannot sustain charitable taxation. The decline of charitable tort immunity is based on the assumption institutions should be held to the same degree of care as an individual.<sup>44</sup> To reject charitable tax exemption might lead to a lower degree of care by these institutions.

Though these institutions charge for their services, the recent *Presbyterian Homes Tax Exemption Case*<sup>45</sup> held that to deny charitable status because a charge is made:

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39. Act of May 22, 1933, P.L. 862, PURDON'S PA. STAT. ANN. tit. 72, § 5020-204 (1968).

40. *Id.*

41. Act 511 of 1965, P.L. 1257, PURDON'S PA. STAT. ANN. tit. 53, § 6901 (1970).

42. Address by Seymour J. Schafer, Oct. 5, 1969, special house committee established pursuant to H.R. resolution 126, 153 session of Pa. General Assembly (1969); This resolution is known as the Pittinger Committee to study the tax inequities in the commonwealth.

43. *Id.*

44. *Flagiello v. Pennsylvania Hospital*, 417 Pa. 486, 208 A.2d 193 (1965). In this case the hospital did not deny negligence on its part but sought to be immune from liability through the exemption granted to charitable institutions by our courts. This case became the leading precedent by overruling all previous cases granting tort immunity in Pennsylvania.

45. 428 Pa. 141, 236 A.2d 763 (1968).

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... would require us to hold that whenever a non-profit institution made a charge for its care or services to any resident or patient, the institution would be precluded from obtaining tax exemption. Consequently, hospitals which charge large sums for care of and services to paying patients, and colleges and universities which charge tuition to countless students, would not be entitled to real estate tax exemption. This interpretation and result is not required by the language or spirit of the Constitution of Pennsylvania . . .<sup>46</sup>

Although the cost of operating these institutions has caused increased rates for those who can afford to pay, they are by their very nature charitable and deserve the tax immunity.

When exempting an institution from a tax the exemption includes certain activities which are conducted as incidental to its main charitable purpose, and on which it receives an immediate profit over and above their cost which are used to reduce the deficit incurred by its general charitable work, this is still a charity in the truest sense.<sup>47</sup>

The community has the burden to care for charitable patients. To increase the expenditures of these charitable institutions by levying taxes on their gross receipts will result in higher charges or less efficient service to the community.

*Ronald M. Stein*

**CRIMINAL LAW—HOMICIDE—SELF-DEFENSE—THE DUTY TO RETREAT—**  
The Pennsylvania Supreme Court extended the no-retreat dwelling house exception to the self-defense rule by holding that a person in his place of business may lawfully resist an intruder with the use of deadly force even though a way of escape is available.

*Commonwealth v. Johnston*, 438 Pa. 485, 263 A.2d 376 (1970).

*Commonwealth v. Johnston*<sup>1</sup> is an innovative decision which limits the duty to retreat in cases of self-defense. The facts of the case are

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46. *Id.* at 154.

47. *Y.M.C.A. of Philadelphia v. Philadelphia*, 139 Pa. Super 332, 25 A.2d 406 (1939). In this case a distinction was made between the property of an institution and the activities of such. The court held that the institution was exempt from a service tax as being a semipublic institution. This case also held that the 1933 General County Assessment Law referred to real property. Our case implicitly overrules this interpretation given by that court as to the boundaries of the General County Assessment Law.

1. *Commonwealth v. Johnson*, 438 Pa. 485, 263 A.2d 376 (1970).