

## **Possible State Challenges to University of Pittsburgh Medical Center's Exempt Status**

In many states facing budget problems, policymakers are beginning to ask whether nonprofits that are difficult to distinguish from for-profit competitors, such as hospitals and health care organizations, should receive income tax and property tax exemptions. The issue arises because many nonprofit enterprises seem quite commercial and earn significant revenues, but are largely exempt from corporate taxation. These enterprises have access to extraordinarily high profit margins with relatively few restrictions on spending. As a result, some municipalities are pushing to remove the tax-exempt status of certain nonprofit entities engaged in commercial activities.

As an example, consider the University of Pittsburgh Medical Center (UPMC), a non-profit research and teaching hospital affiliated with the University of Pittsburgh in Pennsylvania. UPMC

- captures 40% of the region's health care market, and 60% of the market in Allegheny County. ("Bond Ratings and Disclosures" 2012);
- is the second largest employer in Pennsylvania, with over 55 thousand employees, and the largest private property owner in Allegheny County;
- is the birthplace of transplant medicine and the polio vaccine; and
- donates about 13% of its net patient revenue to community benefits. ("UPMC Fast Facts: Commitment to the Community").

Pennsylvania courts test for tax-exempt status of charitable organizations using a five-part test known as the HUP Test, from *Hospital Utilization Project v. Commonwealth*, 487 A.2d 1306 (Pa. 1985). Under the HUP test, the organizations must:

- (1) advance a charitable purpose;
- (2) donate or render gratuitously a substantial portion of its services;
- (3) benefit a substantial and indefinite class of persons who are legitimate subjects of charity;
- (4) relieve the government of some of its burden; and
- (5) operate entirely free of a private profit motive. *Id.*

The Pennsylvania Supreme Court has continued to apply its HUP test, most recently on April 25, 2012, in *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment*, where the court held that the Constitution allowed but does not require legislators to grant tax-exempt status to nonprofits. 44 A.3d 3 (Penn. 2012). Each non-profit is subject to the HUP test to determine its eligibility for tax-exempt status. It is a balancing test applied to the totality of the

five factors, and each entity seeking a tax-exemption bears the burden of proving it is a “purely public charity.”

While UPMC’s charitable contributions are significant, so is the fact that UPMC is also engaging in \$10 billion of commercial activity and is the largest private landowner in a struggling county. Estimates suggest that, without its nonprofit exemption from property taxes, UPMC would deliver \$100 million annually for local government and schools. Proponents of UPMC point to the fact that the hospital and university provide about \$20 billion in economic impacts, but there are many local voices challenging UPMC’s legitimacy as a nonprofit and suggest that it is actually a for-profit disguised as a nonprofit. (“By the Numbers: UPMC Facts and Figures”). The Great Recession has sparked renewed interest in UPMC’s status as a nonprofit, and a legal challenge to the hospital’s exempt status appears likely.

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#### References

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