
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2206 Session of
1993

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TANGRETTI, TIGUE, TRICH, TRUE, TULLI, VAN HORNE, WOZNIAK AND
M. N. WRIGHT, NOVEMBER 24, 1993

REFERRED TO COMMITTEE ON FINANCE, NOVEMBER 24, 1993

AN ACT

1 Providing for the tax exemption of institutions of purely public
2 charity; and making repeals.

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6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Institutions
10 of Purely Public Charity Act.

11 Section 2. Legislative intent.

12 (a) Findings.--The General Assembly finds and declares as
13 follows:

14 (1) It is in the best interest of this Commonwealth and
15 its citizens that the recognition of tax-exempt status be
16 accomplished in an orderly, uniform and economical manner.

17 (2) For more than 100 years, it has been the policy of
18 this Commonwealth to foster the organization and operation of
19 charitable organizations by exempting charitable
20 organizations from taxation.

21 (3) Because charitable organizations contribute to the
22 common good or lessen the burdens of government, the historic
23 policy of exempting charitable institutions from taxation
24 should be continued.

25 (4) The General Assembly recognizes that it is
26 unrealistic today to expect charitable organizations to rely
27 completely upon private philanthropy and that there is an
28 appropriate role and responsibility for government support
29 with respect to activities historically recognized as
30 charitable.

1 (5) The General Assembly recognizes that the lack of
2 specific legislative standards defining the term
3 "institutions of purely public charity" has led to increasing
4 confusion and confrontation among traditionally tax-exempt
5 organizations and local governments to the detriment of the
6 public.

7 (6) There is increasing concern that the eligibility
8 standards for charitable tax exemptions are being applied
9 inconsistently, which may violate the uniformity provision of
10 the Constitution of Pennsylvania.

11 (b) Intent.--It is the intent of the General Assembly to
12 eliminate inconsistent application of eligibility standards for
13 charitable tax exemptions, reduce confusion and confrontation
14 among traditionally tax-exempt organizations and local
15 governments and insure that charitable and public funds are not
16 unnecessarily diverted from the public good to litigate
17 eligibility for tax-exempt status by:

18 (1) Providing standards to be applied uniformly in all
19 proceedings throughout this Commonwealth for determining
20 eligibility for exemption from State and local taxation which
21 are consistent with traditional legislative and judicial
22 applications of the constitutional term "institutions of
23 purely public charity."

24 (2) Creating a single unified procedure and process
25 throughout this Commonwealth to certify the status of an
26 organization as an institution of purely public charity to
27 establish conclusively entitlement to exemption whenever the
28 General Assembly provides an exemption from taxation.

29 Section 3. Definitions.

30 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Application." An application for certification by the
4 Secretary of Revenue filed by an organization seeking to be
5 certified as an institution of purely public charity, which
6 shall be in the form the Secretary of Revenue shall prescribe
7 consistent with this act.

8 "Government agency." Any Commonwealth agency or any
9 political subdivision or municipal or other local authority or
10 any officer or agency of any political subdivision or local
11 authority.

12 "Institution of purely public charity." A domestic or
13 foreign nonprofit corporation, association, trust or other
14 organization which meets the criteria under section 4.

15 "Secretary." The Secretary of Revenue of the Commonwealth or
16 his designee.

17 Section 4. Criteria.

18 (a) General rule.--An institution of purely public charity
19 is a nonprofit corporation, association, trust or other
20 organization which meets the criteria set forth in this section
21 or which is principally engaged in fundraising on behalf of or
22 making grants to corporations, associations, trusts or other
23 organizations which meet the criteria set forth in this section.
24 An institution of purely public charity shall meet all of the
25 criteria contained in subsections (b), (c), (d), (e) and (f).
26 The factors specified as sufficient to satisfy each criterion
27 set forth in this section are not the exclusive means by which
28 the criterion can be met.

29 (b) Charitable purpose.--The institution shall advance a
30 charitable purpose. This criterion is satisfied if the

1 institution is organized and operated primarily to fulfill any
2 one or combination of the following purposes:

3 (1) Relief of poverty.

4 (2) Advancement of education.

5 (3) Advancement of religion.

6 (4) Promotion of health.

7 (5) Government or municipal purposes.

8 (6) Accomplishment of any purpose which is beneficial to
9 the community, including, but not limited to, advancement of
10 the arts and sciences, advancement of the cultural,
11 spiritual, mental, physical, social or emotional welfare or
12 improvement of others.

13 (c) Private profit motive.--The institution shall operate
14 entirely free from private profit motive. Compensation,
15 including benefits of any director, officer or employee, shall
16 not be based primarily upon the financial performance of the
17 organization. Notwithstanding whether the institution's revenues
18 exceed its expenses, this criterion is satisfied if the
19 institution meets the following:

20 (1) Neither the institution's net earnings nor donations
21 which it receives inures to the benefit of private
22 shareholders or other individuals, as the private inurement
23 standard is interpreted under section 501(c)(3) of the
24 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
25 501(c)(3)).

26 (2) The institution applies or reserves any revenue in
27 excess of expenses in furtherance of its charitable purpose
28 or to funding of other charitable organizations.

29 (d) Community service.--

30 (1) The institution shall donate or render gratuitously

1 a substantial portion of its services. This criterion is
2 satisfied if the institution benefits the community by
3 actually providing any of the following:

4 (i) Goods or services to all who seek them without
5 regard to their ability to pay for what they receive. An
6 organization meets this test if it has a written policy
7 to this effect, it has publicized this policy in a
8 reasonable manner and it provides goods and services
9 according to its policy.

10 (ii) Goods or services for fees that are based upon
11 the recipient's ability to pay for them. An organization
12 meets this test if it can demonstrate that it has
13 implemented a written policy and a written schedule of
14 fees based on individual or family income.

15 (iii) Uncompensated goods or services to at least
16 10% of those receiving similar services.

17 (iv) Goods or services for fees which, in total, are
18 90% or less of the cost of providing such services,
19 including the reasonable value of volunteer labor or
20 services.

21 (v) Goods or services for fees within the financial
22 reach of a substantial part of the community and provides
23 a reasonable level of financial assistance, taking into
24 account the institution's assets, income and projected
25 future needs.

26 (vi) Funds to corporations, associations, trusts or
27 other organizations which meet the criteria of this
28 section.

29 (2) As used in this subsection, the following words and
30 phrases shall have the meanings given to them in this

1 paragraph:

2 "Goods or services." Medically necessary goods or
3 services, but not limited to life-threatening situations if
4 the institution's purpose is to provide health care services.

5 "Uncompensated goods or services." Includes all benefits
6 provided by the institution to the community it serves,
7 including, but not limited to, the following:

8 (i) The full cost of all goods and services provided
9 by the institution for which the institution has not
10 received monetary compensation or the difference between
11 the full cost and any lesser fee received for the goods
12 and services, including the cost of the goods and
13 services which are bad debts, as determined in accordance
14 with the generally accepted accounting principles
15 applicable to the institution.

16 (ii) The difference between the full cost of
17 education and research programs provided by or
18 participated in by the institution and the payment made
19 to the institution to support the education and research
20 programs.

21 (iii) The difference between the full cost of
22 providing the goods and services and the payment made to
23 the institution under any government entitlement program.

24 (iv) The difference between the full cost of the
25 community services which the institution provides or
26 participates in and the payment made to the institution
27 to support such community services.

28 (v) The reasonable value of any moneys, property or
29 services donated by the institution to another
30 institution of purely public charity.

1 (vi) The reasonable value of volunteer assistance
2 donated by individuals to the institution.

3 (e) Charity to persons.--

4 (1) The institution shall benefit a substantial and
5 indefinite class of persons who are legitimate subjects of
6 charity.

7 (2) As used in this subsection, the following words and
8 phrases shall have the meanings given to them in this
9 paragraph:

10 "Legitimate subjects of charity." Those individuals who
11 are unable to provide themselves with what the institution
12 provides for them.

13 "Substantial and indefinite class of persons." Persons
14 not predetermined in number, provided that, where the
15 services are received primarily by members of the
16 institution, membership cannot be predetermined in number and
17 cannot be arbitrarily denied by a vote of the existing
18 members. This section specifically recognizes that the use of
19 admissions criteria and enrollment limitations by educational
20 institutions do not constitute predetermined membership or
21 arbitrary restrictions on membership so as to violate this
22 section.

23 (f) Government service.--The institution shall relieve the
24 government of some of its burden. This criterion is satisfied if
25 the institution meets any of the following:

26 (1) Provides a service to the public that the government
27 would otherwise be obliged to fund or to provide directly or
28 indirectly or assure that a similar organization exists to
29 provide the service.

30 (2) Provides services in furtherance of its charitable

1 purpose which are either the responsibility of the government
2 by law or which traditionally have been assumed or offered or
3 funded by the government.

4 (3) Receives on a regular basis payments for services
5 rendered under a government entitlement program, which
6 payments are less than the full costs incurred by the
7 institution for the rendering of the services.

8 (4) Provides a service which advances important
9 community, public, spiritual, mental, physical, educational,
10 emotional, civic, historical or cultural objectives.

11 (g) Shared service organization.--

12 (1) A shared service organization shall be treated as an
13 institution of purely public charity without requiring it to
14 qualify under this section if it is a nonprofit corporation,
15 association, trust or other organization comprised of or
16 formed by two or more institutions of purely public charity
17 to provide services to, for or on behalf of two or more
18 institutions of purely public charity or to the beneficiaries
19 of one or more institutions of purely public charity and
20 which meets the following criteria:

21 (i) The organization provides a support service to
22 its member organizations that each member organization
23 could otherwise perform itself.

24 (ii) Each member organization or investor in the
25 shared service organization is itself an institution of
26 purely public charity or a government agency.

27 (iii) If the shared service is made available to a
28 member organization's beneficiaries, the member
29 organization makes the service available regardless of
30 the beneficiaries' ability to pay for the service.

1 (iv) The activity or service performed by the shared
2 service organization is in furtherance of the charitable
3 mission of its member organizations.

4 (v) The member organizations accept or in some
5 fashion underwrite a portion of the financial risk of the
6 shared service organization.

7 (vi) If it provides services to legitimate subjects
8 of charity, the shared service organization shall be
9 compensated solely by the member organizations.

10 (2) The fact that the shared service organization
11 receives all or a portion of its revenue from the sale or
12 provision of services or products to its member
13 organizations, and by so doing does not provide uncompensated
14 or undercompensated services directly to beneficiaries of the
15 member organizations, shall not preclude the shared service
16 organization from designation as an institution of purely
17 public charity if it otherwise meets requirements of
18 paragraph (1).

19 (h) Standards.--Nothing contained in this act shall be
20 deemed to prohibit a charitable organization from conducting
21 activities intended to influence legislation. Nothing in this
22 act shall prohibit a political subdivision from filing
23 challenges to or making determinations as to whether a
24 particular parcel of property is being used to advance the
25 charitable purpose of an institution of purely public charity.
26 No additional criteria shall be imposed on any organization in
27 order to be recognized or certified as an institution of purely
28 public charity.

29 Section 5. Certification process.

30 (a) Application and certification.--The secretary shall

1 certify that organizations which meet the criteria set forth in
2 section 4 and which apply for certification from the secretary
3 are institutions of purely public charity under the application
4 procedure described in subsection (b). Any organization so
5 certified shall be conclusively entitled to any exemption from
6 taxes otherwise available to it by statute. Nothing in this
7 section shall require any organization to seek certification
8 from the secretary.

9 (b) Application procedure.--Any organization seeking
10 certification as an institution of purely public charity shall
11 file an application with the secretary, containing that
12 information as the secretary may require consistent with this
13 act. Notice of the filing of each such application shall be
14 published in the Pennsylvania Bulletin by the secretary within
15 ten days of receipt of the application. The secretary shall also
16 send within ten days of receipt of the application by first
17 class mail written notice of the application to the affected
18 government agencies where the principal offices of the applicant
19 are located. The secretary shall review the information
20 submitted by the applicant with the application and by any
21 person or government agency who chooses to submit information to
22 the secretary regarding the application and shall, within 90
23 days of receipt of the application, certify that the applicant
24 is an institution of purely public charity as established by
25 section 4 or issue a determination that the applicant does not
26 qualify as an institution of purely public charity. Written
27 notice of the secretary's determination, with written evidence
28 of the certification, if granted, shall be mailed to the
29 applicant and the affected government agencies within five days
30 of the determination. The secretary shall not approve an

1 application prior to 45 days following receipt of the
2 application to permit the secretary to consider information
3 submitted by any person or government agency which chooses to
4 submit information regarding such application. The burden of
5 establishing that the organization is an institution of purely
6 public charity as established by section 4 shall rest with the
7 applicant, which shall meet this burden by a preponderance of
8 the evidence.

9 (c) Filing fees.--The secretary may adopt by regulation
10 filing fees not to exceed \$400 per application to applicants
11 seeking certification as institutions of purely public charity.
12 If the applicant certifies to the secretary that its annual
13 gross receipts will be less than \$200,000 for its next two
14 fiscal years, the filing fee shall not exceed \$150 per
15 application. The secretary may adopt lesser fees by regulation.

16 (d) Certification review.--The secretary shall have the
17 primary and exclusive jurisdiction to certify that any
18 organization is an institution of purely public charity under
19 the procedures set forth in this act and to revoke any
20 certification previously granted, subject to review as set forth
21 in sections 6 and 7.

22 (e) Effect of denial of certification.--In the event of a
23 final and unappealed or unappealable adjudication denying
24 certification as an institution of purely public charity, the
25 applicant may not claim the benefit of the status as an
26 institution of purely public charity for the applicant's fiscal
27 year next following the receipt of said adjudication denying
28 certification. Until a final and unappealed or unappealable
29 adjudication is rendered, the applicant may apply for a writ of
30 supersedeas from a court of competent jurisdiction deferring it

1 from the obligation to pay taxes owed to a government agency by
2 virtue of the initial adjudication during the pendency of the
3 appeal.

4 Section 6. Hearing.

5 The applicant and affected government agencies who have
6 participated in the application procedure under section 5 shall
7 have 30 days from the date of mailing of the secretary's
8 determination to request a hearing on the determination by
9 filing written notice of intent to request a hearing. If a
10 hearing is not so requested by the applicant or the affected
11 government agencies, the adjudication of the secretary shall
12 become final and effective. If a hearing is so requested by the
13 applicant or the affected government agencies, it shall be held
14 before an independent hearing officer appointed by the secretary
15 no earlier than 15 days and no later than 60 days following the
16 secretary's receipt of the applicant's request for the hearing
17 unless the applicant consents in writing to a postponement of
18 the hearing. At the request of the applicant or an affected
19 government agency, the secretary shall hold the hearing in the
20 county in which the applicant is located. The procedures at the
21 hearing shall be governed by the provisions of 1 Pa. Code Ch. 35
22 (relating to formal proceedings). As applicable, the applicant
23 and the affected government agencies who have participated in
24 the application procedure under section 5 may intervene and
25 participate in the hearing. The secretary shall render a final
26 adjudication on the application for certification no later than
27 20 days after the receipt of the hearing officer's findings and
28 recommendations following the hearing.

29 Section 7. Appeal to court.

30 The applicant, the Attorney General or an affected government

1 agency who has intervened and participated in the hearing under
2 section 6 may appeal the adjudication of the secretary made
3 under section 6 to court under 2 Pa.C.S. § 702 (relating to
4 appeals).

5 Section 8. Annual reports.

6 Each organization that has been certified as an institution
7 of purely public charity by the secretary shall, no later than
8 five months following the end of the organization's fiscal year,
9 file with the secretary an annual report containing that
10 information as the secretary may require, consistent with this
11 act. In lieu of the report, the organization may elect to file a
12 copy of the Federal tax return of an organization exempt from
13 income tax and related forms required to be filed by the
14 organization with the Internal Revenue Service for the fiscal
15 year in question. The secretary may for good cause shown extend
16 the time for filing of the annual report. Organizations with
17 gross receipts less than \$25,000 in a fiscal year in question
18 shall be exempt from the foregoing filing requirement.

19 Section 9. Periodic reexamination.

20 The secretary shall also reexamine the certification of each
21 organization so certified every seven years after initial
22 certification after publishing notice of the reexamination in
23 the Pennsylvania Bulletin and to the affected government
24 agencies where the principal offices of the applicant are
25 located. The organization whose certification is subject to the
26 reexamination and any interested person or government agency may
27 submit written information to the secretary concerning the
28 reexamination. Within 90 days after publication of intent to
29 reexamine, the secretary shall reaffirm the certification in
30 question unless clear and convincing evidence has been presented

1 to the secretary that the organization no longer is organized
2 and operated as an institution of purely public charity as
3 established by section 4. Revocation shall entitle the
4 organization whose certification is revoked to the same hearing
5 and appeal procedures available to applicants for initial
6 certification under sections 6 and 7. The revocation, if
7 sustained, shall only be effective after all available
8 administrative and judicial appeals have been exhausted or
9 waived by the organization.

10 Section 10. Revocation of certification.

11 If a government agency by clear and convincing evidence
12 demonstrates to the secretary that an organization previously
13 certified has changed its mission or lost its Federal tax
14 exemption, the secretary shall reexamine the certified
15 organization and, if warranted by such reexamination, give
16 notice of his intention to revoke the certification previously
17 granted to the organization. If at any time the secretary has
18 reason to believe that an organization previously certified is
19 no longer organized or operated as an institution of purely
20 public charity as established by section 4, the secretary shall
21 give written notice to the organization of his intention to
22 revoke the certification previously granted to the organization.
23 The secretary's notice shall set forth the grounds upon which
24 his conclusion is based. Failure to file the reports required by
25 section 8 shall constitute sufficient grounds to make this
26 preliminary determination. After expiration of the 30-day period
27 for the organization's response, the secretary shall notify the
28 organization that he is withdrawing his prior notice or that he
29 is revoking the organization's certification. If the secretary's
30 decision is to revoke the certification, revocation shall

1 entitle the affected organization to the hearing and appeal
2 rights described in section 9. The revocation shall not be
3 effective until the organization has exhausted or waived all
4 rights to hearings and judicial appeals with respect to the
5 revocation.

6 Section 11. Existing institutions.

7 Nothing in this act shall affect the rights or remedies under
8 existing law or create a presumption regarding any organization
9 that does not seek certification from the secretary as an
10 institution of purely public charity under this act with respect
11 to whether the organization is or should be otherwise recognized
12 as an institution of purely public charity for the purpose of
13 any existing statute.

14 Section 12. Third-party rights.

15 At all administrative and judicial proceedings regarding
16 revocations of certification under this act, the Attorney
17 General shall be the exclusive representative of the interests
18 of the Commonwealth, government agencies, instrumentalities and
19 taxing authorities and citizens and shall possess the same
20 procedural rights as the organization seeking to retain such
21 certification in the proceedings, provided, however, that
22 government agencies shall have the right to participate and be
23 represented by their legal counsel in all judicial and
24 administrative proceedings pertaining thereto.

25 Section 13. Regulations.

26 The secretary may promulgate rules and regulations to
27 administer and enforce this act.

28 Section 14. Payments in lieu of taxes.

29 (a) Levy of payment.--A county and municipality may levy,
30 assess and collect a payment in lieu of tax upon adoption of an

1 ordinance or resolution authorizing such in an amount determined
2 pursuant to subsection (b) on all real property within the
3 county and municipality which has been determined to be exempt
4 from real property taxation based on its use by an institution
5 of purely public charity.

6 (b) Computation of payment in lieu of tax.--The payment in
7 lieu of tax authorized under this section shall be levied
8 annually by a county and a municipality subject to the following
9 limitations:

10 (1) The payment in lieu of tax shall be expressed and
11 determined as a percentage of the property tax liability of
12 the property if it were otherwise taxable by the county or
13 municipality.

14 (2) The percentage rate shall be specified in the annual
15 levy by the county or municipality, and the rate shall not
16 exceed 5% the first year, 10% the second year, 15% the third
17 year, 20% the fourth year and 25% each year thereafter.

18 (3) The rate shall be uniform.

19 (c) Collection.--

20 (1) Before the payment in paragraph (2) is collected, an
21 institution of purely public charity may arrange with any
22 county and municipality for provision of services or in-kind
23 payments in a dollar-for-dollar setoff of the payment
24 authorized under subsection (b) and shall be accepted by the
25 county and municipality as payment in lieu of taxes.

26 (2) The payment in lieu of tax authorized under this
27 section shall be collected by the treasurer or local tax
28 collector of each county or municipality at the same time and
29 in the same manner as are real property taxes. A person who
30 fails to make a payment in lieu of tax to the appropriate

1 county or municipality shall be subject to all of the same
2 statutory interest, penalties, liens and other remedies which
3 are imposed by or available to counties and municipalities
4 for the nonpayment of real property taxes.

5 (d) Assessment and certification.--The county assessor
6 shall, not less frequently than every five years, certify the
7 tax exempt status of each parcel of property for which such
8 status is claimed based on its use by an institution of purely
9 public charity. The burden of proving that the property should
10 remain tax exempt shall be on the property owner. Nothing in
11 this section shall limit the ability of the appropriate board of
12 assessment to review and revise the assessed values assigned to
13 tax exempt property in the same manner as all other taxable real
14 property.

15 (e) Appeal.--A person aggrieved by the county's
16 determination of certification of the tax exempt status of any
17 real property shall have the same right to appeal as any person
18 aggrieved by the determinations of the county as to any taxable
19 property under the applicable assessment law.

20 (f) Effect.--Subsection (b) shall not supersede any existing
21 court orders, contracts, agreements or arrangements which
22 authorize or require a payment in lieu of tax in an amount that
23 is less than 25% of the property tax liability.

24 Section 15. Payment date.

25 Payments required under section 14 shall not be imposed and
26 collected until January 1, 1995.

27 Section 16. Repeals.

28 (a) Absolute.--The following acts and parts of acts are
29 repealed:

30 (1) Section 204(c) of the act of May 22, 1933 (P.L.853,

1 No.155), known as The General County Assessment Law.

2 (2) Section 202(a)(9) of the act of May 21, 1943
3 (P.L.571, No.254), known as The Fourth to Eighth Class County
4 Assessment Law.

5 (b) General.--All other acts and parts of acts are repealed
6 insofar as they are inconsistent with this act.

7 Section 17. Effective date.

8 This act shall take effect in 60 days.