



**COUNTY COMMISSIONERS**  
Association of Pennsylvania

# REAL ESTATE EXEMPTIONS

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# PA Tax Exemption Law Overview

## Two Basic Principles:

- ❖ In Pennsylvania, our law provides for the “principle that a taxpayer should pay no more or no less than his proportionate share of the cost of government.”
- ❖ Certain organizations in Pennsylvania may be exempt from real estate tax based upon the traditional premise that they are given a “quid pro quo” for providing services which the government would otherwise have to provide.

# PA Tax Exemption Law Overview

## Third Principle:

Taxation is the rule; therefore, statutory provisions exempting property from taxation must be strictly construed against the claimant.

If there is any doubt about the right conferred, the doubt must be construed in favor of the municipality.



# PA Tax Exemption Law Overview

Your Job:

Weigh the ***FACTS***

Apply to the ***LAW***

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# PA Tax Exemption Law Overview

- Constitutional provisions enable the General Assembly to exempt certain properties
- The General County Assessment Law and the Consolidated County Assessment Law were enacted by the General Assembly to grant exemption to certain types of property as authorized by the Constitution.
- Institutions of Purely Public Charity Act (Act 55 of 1997)

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# PA Tax Exemption Law Overview

## PA Constitution

Article VIII, § 2 permits the General Assembly to exempt properties that fall into one of the enumerated categories:

- Actual places of regularly stated religious worship;
- Actual places of burial when used or held by a person/org deriving no private or corporate profit therefrom and no substantial part of whose activity consists of selling personal property in connection therewith;
- Public property actually and regularly used for public purposes;
- Property owned and occupied by veterans' organizations that is regularly used for benevolent, charitable or patriotic purposes; and
- "Institutions of purely public charity."

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# PURELY PUBLIC CHARITIES

## PA Constitutional Analysis: Institutions of Purely Public Charity

- In **Hospital Utilization Project v. Commonwealth**, 487 A2d 1306 (Pa. 1985) the Pennsylvania Supreme Court reviewed 100 years of case law to find a common understanding of what defines a purely public charity.
- The HUP court developed a list of **five criteria** to determine whether an organization is an institution of purely public charity.
- Must **satisfy all** five criteria to receive the benefit of tax exemption

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# PURELY PUBLIC CHARITIES

## HUP Test:

- Advances a charitable purpose;
- Donates or renders gratuitously a substantial portion of its services;
- Benefits a substantial and indefinite class of persons who are legitimate subjects of charity;
- Relieves the government of some burden; **and**
- Operates entirely free from private profit motive.

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# PURELY PUBLIC CHARITIES

## HUP: Advances a Charitable Purpose

An institution advances a charitable purpose if it benefits the public from an **educational, religious, moral, physical or social** standpoint.

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## HUP: Advances a Charitable Purpose

Query:

*Does a Non-profit company (501(c)(3) exempt from IRS income tax) satisfy the charitable purpose prong if it provides management and administrative services to a small group of affiliated corporations for a fee, all of the affiliated corporations are non-profit companies and do charitable work to the public?*

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# PURELY PUBLIC CHARITIES

## **HUP: Donates or Renders Gratuitously a Substantial Portion of its Services**

- “Substantial” does not imply a magical percentage and it must appear from the facts that the organization makes a bona fide effort to service primarily those who cannot afford the usual fee.
- Can be satisfied if the organization demonstrates that payments that the entity receives for a substantial number of those that it services are *less than the cost of the services it provides*.
- In contrast, an entity does not donate or render services gratuitously where the government provides funding that fully subsidizes all of the entity’s expenses.
- Must provide some evidence demonstrating cost to provide services.

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# PURELY PUBLIC CHARITIES

## **HUP: Donates or Renders Gratuitously a Substantial Portion of its Services**

Query:

- *Does an organization demonstrate that it donates or renders gratuitously a substantial portion of its services if it provides all of its services for actual cost?*
- *Does an entity meet this criteria if the entity, owner of a low-income building for elderly individuals, was reimbursed all expenses of the facility, including debt service, administrative, maintenance, repair costs and utility costs?*

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# PURELY PUBLIC CHARITIES

## **HUP: Benefits a Substantial and Indefinite Class of Persons Who are Legitimate Subjects of Charity**

Legitimate subjects of charity are those who are unable to provide for themselves with what the institution provides for them.

*e.g. poor, incapacitated, distressed or needy*

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## **HUP: Benefits a Substantial and Indefinite Class of Persons Who are Legitimate Subjects of Charity**

Query:

*A non-profit hospital, related to a Roman Catholic Diocese, reorganized into 4 corp entities: (a) hospital (perform medical care); (b) a health system known as SHHS (parent corp & administrative services); (c) a foundation (charitable arm) and (d) ancillary services company (own and operate buildings and facilities). The purpose of SHHS is to support and improve the quality of health care delivered to the public in the Lehigh Valley area. SHHS collects management fees from its affiliated corps for services it provides to them. Is SHHS entitled to tax exemption?*

## **HUP: Relieves the Government of Some of its Burden**

Relevant factors provided by PA Supreme Court include:

1. Whether an institution compensates its employees at rates lower than those for similar government positions;
2. Whether the organization charges less for its services than other similar institutions;
3. Whether an organization charges far less than the costs that would be incurred if state institutions were called upon to provide the same services; and
4. The amount of contributions received as compared to the total income received from government funding.

## **HUP: Relieves the Government of Some of its Burden**

Query:

- *Does an organization meet this prong if it demonstrates that half of its patients are Medicaid patients, and it pays a substantial portion of the cost of services for those patients?*
- *Does an organization meet this prong even when it receives government funding if it demonstrates that the funding it receives to provide the services are far less than the costs that would be incurred if state institutions were called upon to provide the same services?*



## HUP: Relieves the Government of Some of its Burden

Query:

*Does a continuing care retirement community owner who provides housing, personal living assistance and nursing care to elderly citizens and promises that they will never be discharged for inability to pay meet the government burden standard when the CEO testified that the Medicare payments it receives for patients in its skilled nursing unit are less than the costs of providing the care?*

## HUP: Relieves the Government of Some of its Burden

Query:

*Does a non-profit summer camp who provides social, recreational or educational activities for special needs children at a summer camp meet this prong?*

*What if the summer camp facility also provided its property to local volunteer fire department?*

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## HUP: Operates Entirely Free From Private Profit Motive

- Focus should be on the following:
  1. Whether the utilization of the revenue is made with the expectation of a reasonable return or some non-monetary benefit;
  2. Whether the utilization of the revenue ultimately supports or furthers the philanthropic nature of the charitable entity; **and**
  3. Whether the utilization of the revenue inures, directly or indirectly, to any private individual related to the charitable entity or related organization(s).
- Surplus revenue is not always synonymous with private profit motive

## HUP: Operates Entirely Free From Private Profit Motive

Query:

- *Does an entity meet this prong if it has recognized a profit over the past 3 years but has taken that surplus revenue and invested it in its facilities (grounds and buildings) to increase efficiency in the heating and air conditioning?*

## HUP: Operates Entirely Free From Private Profit Motive

Query:

- *Does a non-profit hospital meet this prong if its CEO testifies that the focus of the hospital was to make sure that it covered its expenses?*
- *What if the CEO testified that its officers were provided bonus and incentive compensation based upon the hospital's financial performance?*

## HUP: Operates Entirely Free From Private Profit Motive

Query:

- *What if the hospital paid a parent/sister corporation yearly management or administration fees of \$5 million/year? \$10 million/year?*

# PA Tax Exemption Law Overview

## **Institutions of Purely Public Charity Act (Act 55)**

### Act 55's Requirements:

1. Advance a charitable purpose;
2. Operate entirely free from private profit motive;
3. Donate or render gratuitously a substantial portion of its services;
4. Must benefit a substantial and indefinite class of persons who are legitimate subjects of charity; and
5. Must relieve the government of some of its burden.

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## Institutions of Purely Public Charity Act (Act 55)

- Act 55's five requirements track those of the HUP test and provide statutory quantitative elements for determining whether an entity qualifies as an institution of public charity.
- Act 55 provides some objective and measurable standards to use when interpreting its criteria.



# PURELY PUBLIC CHARITIES

## Act 55's Rebuttable Presumption:

An institution is presumed to meet the standards of purely public charity if it applies for and receives a sales tax exemption from Pennsylvania Department of Revenue.

Presumption is NOT available to organizations with annual program service revenues exceeding \$10 million (increasing 1% per year commencing July 1, 1999) unless they have entered into a voluntary agreement (PILOT) with a political subdivision wherein the organization conducts substantial business operations and only with regard to a challenge made by a political subdivision with which that institution has a PILOT agreement in effect.

# PURELY PUBLIC CHARITIES

## ACT 55: Advances a Charitable Purpose

Advances a charitable purpose if the entity is organized and operated primarily to fulfill any one of the following:

1. Relief of poverty;
2. Advancement and provision of education including postsecondary education;
3. Advancement of religion;
4. Prevention and treatment of disease or injury including mental retardation and mental disorders;
5. Government or municipal purposes; or
6. Accomplishment of a purpose which is recognized as important and beneficial to the public and which advances social, moral or physical objectives.

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## Act 55: Operate Free From Private Profit Motive

Notwithstanding whether the entity's revenues exceeds its expenses, the entity must:

- Neither the institution's net earnings nor donations inures to the benefit of private shareholders or other individuals, as the private inurement standard is interpreted under the Internal Revenue Code of 1986; **and**
- Institution applies or reserve all revenue, including contributions, in excess of expenses in furtherance of its charitable purpose or to funding of other institutions which meet the provisions of this subsection (operate free from private profit motive) and Act 55's charitable purpose subsection.

# PURELY PUBLIC CHARITIES

## Act 55: Community Service

Must benefit the community by actually providing any **one** of the 7 delineated permutations of goods, services, and/or financial assistance.

Quantitative analysis

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# PURELY PUBLIC CHARITIES

## Act 55: Charity to Persons

An institution must benefit a substantial and indefinite class of persons who are legitimate subjects of charity.

Definitions:

*Legitimate subjects of charity:* individuals who are unable to provide themselves with what the institution provides for them.

*Substantial and indefinite class of persons:* persons not predetermined in number

# PURELY PUBLIC CHARITIES

## ACT 55: Government Service

Must meet any one of the following:

1. Provides a service that the gov't would otherwise be obliged to fund or to provide directly or indirectly or to assure that a similar institution exists to provide the service;
2. Provides services which are either the responsibility of the gov't by law of which historically have been assumed/offered/funded by the gov't;
3. Regularly receives payments for services under a gov't program if the payments are less than the full costs incurred by institution;
4. Provides service which reduces dependence on gov't programs or relieves or lessens the burden borne by gov't for the advancement of social, moral, educational or physical objectives;
5. Advances/promotes religion and is owned and operated by a religious ministry;
6. Has a voluntary agreement under Section 377 (PILOT Agreement)

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## Impact of Corporate Affiliations on Analysis

### HUP:

- A property owner cannot insist that a court ignore the separate corporate legal entities that it chose to divide itself into, so as to find something that it is not. **Sacred Heart**, 673 A.2d at 1025.
- Refusal to view corporate entities as a single organization for tax purposes is based on the fundamental premise that each corporation is a separate and distinct legal entity and each must be considered in a separate and distinct manner for tax purposes. **Lewiston Hosp. v. Mifflin Cnty. BOA**, 706 A.2d 1269, 1274 (Pa.Cmwlt. 1998).

### Act 55:

Unlike a constitutional analysis, a non-profit parent corporation, together with all of its subsidiary non-profit corporations, can elect to be considered as a single institution in meeting its criteria under Act 55, as long as it meets the requirements set forth in Act 55

# PURELY PUBLIC CHARITIES

## HUP v Act 55

If a property owner satisfies the requirements of Act 55, are they entitled to tax exemption?

No. The Pennsylvania Supreme Court ruled:

*“In the end, to receive an exemption without violating the Constitution, the party must meet the definition of “purely public charity” as measured by the test in HUP. If it does so, it may qualify for exemption if it meets the statute's requirements. Act 55, however, cannot excuse the constitutional minimum—if you do not qualify under the HUP test, you never get to the statute.”*

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# PURELY PUBLIC CHARITIES

## HUP v Act 55

Query:

*A non-profit company applying for tax exemption comes to the Board hearing with a copy of its PA sales tax exemption and demonstrates that its revenues are less than \$5 million annually. Do you grant the exemption because the entity is presumed to meet Act 55's purely public charity standards?*

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## What is an Institution of Purely Public Charity?

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# PA Tax Exemption Law Overview

## County Assessment Law

GCAL, 72 P.S. § 5020-204 and CCAL, 53 Pa.C.S.A. § 8812:

1. Exempts institutions founded, endowed and maintained by public or private charity
2. Real property must be necessary to and actually used for the principal purposes of the institution and not used in such a manner as to compete with commercial enterprise.
3. EXCEPTION TO EXEMPTION: Does not allow exemption (even to an institution of charity) unless the organization so using and occupying the property shall be seized of the legal or equitable title in the realty.

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# PA Tax Exemption Law Overview

## County Assessment Law

### Owner/Occupier Requirement

1. A nonprofit entity must own and occupy the property, at least a portion of it, to qualify for an exemption;
2. All real property owned by one IPPC but used or occupied partly by other institutions of purely public charity is entitled to exemption if it meets certain requirements;
3. Leased property may qualify for an exemption if the lessee is carrying out a common mission with the property owner; the rent paid is "nominal" and the lessee is a "recipient of the property owner's bounty"

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# PA Tax Exemption Law Overview

## County Assessment Law

Query:

*Corporation A was created to hold property. Corporation A then leased the homes they own to Corporation B and Corporation B took care of elderly people living on the property. Corporation A does not have any staff nor do they maintain a presence on the property for which they sought exemption. Corporation A is wholly owned by Corporation B. Is Corporation A entitled to tax exemption if Corporation B meets all the criteria?*

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# PROCEDURES



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# PROCEDURES

## Burden

- **Property owner** seeking exemption has affirmative **burden** to **prove** it is entitled to exemption (even when taxing authority is seeking to remove the exemption).
- **Property owner** seeking exemption **bears** a **heavy burden** in bringing itself within the ambit of the claimed exemption.

## Burden – Purely Public Charity

- Property owner must prove it is entitled to exemption under the HUP test; and
- Property owner must prove it is entitled to exemption under Act 55; and
- Property owner must prove it is entitled to exemption under CCAL (or GCAL)



## Proofs – Purely Public Charity

Information Helpful for a Determination:

- Proof of non-profit status granted by the Commonwealth;
- IRS ruling granting exempt status;
- Copies of income tax returns filed for last three years;
- A verified statement listing the salaries of the five highest paid employees along with any salaries or wages paid to all officers and directors;
- A copy of all bylaws and articles of incorporation, and
- A verified statement of the current use of the property
- A copy of any leases

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## Effective Date

### Exempt to Taxable and Taxable to Exempt

Exemptions are prospective and apply in the taxing district's next fiscal year following submission of the application – whether by taxing district's appeal or taxpayer's appeal. 53 Pa.C.S.A. §8847

## Effective Date

### Tax Assessment Day Rule

If property is taxable on the date of assessment, then tax must be paid for the entire year even if the property becomes tax exempt during that year.

Likewise, if property is tax exempt on the day of assessment, it remains exempt for the entire year.

## Effective Date

### PILOT agreements

- General Assembly empowered taxing authorities and taxpayers to voluntarily enter into PILOT agreements through its statutory requirement that each provision in the CCAL be read in *para materia* with Act 55;
- PILOT agreements are enforceable contracts between taxing authorities and taxpayers
- Does not change the status on tax rolls; instead, taxpayer is liable for payment under PILOT agreement

## Equitable Owners

When an agreement of sale is signed, the purchaser becomes the equitable owner through the doctrine of equitable conversion

PA tax exemption law recognizes equitable ownership

Equitable owners have standing to file an appeal for exemption even if the sale has not been completed.

# PROCEDURES

## Uniformity

Evidence that exemption was incorrectly granted in one case, does not necessarily warrant the grant of exempt status to a property owner in another case.

However, constitutional safeguards require uniform treatment of property owners.

# Specific Property Uses



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# Specific Property Uses

## Regularly Stated Religious Worship

All churches, meetinghouses or other actual places of regularly stated religious worship, with the ground annexed necessary for their occupancy and use.

***Primary Purpose Test:** primary purpose is worship and other activities on the property are merely incidental*



# Specific Property Uses

## Regularly Stated Religious Worship

Query:

- *Does a non-profit retreat center for persons desiring to learn Christian living and discipleship qualify for the religious worship exemption when the majority of the worship conducted on the property was by members of church groups accompanied by their own clergy with events scheduled by each individual group?*

# Specific Property Uses

## Regularly Stated Religious Worship

- Parsonages are generally not tax exempt.
- Vacant land next to synagogue is not exempt.
- Occasional use of a vacant lot, adjoining a church structure for open air services does not qualify as “regularly” stated worship.
- Museum providing or gift shop selling articles of worship is not a property of actual worship
- Religious worship to be construed broadly to include spiritual guidance, prayer and religious teaching.

# Specific Property Uses

## Cemeteries

Actual places of burial, when used or held by a person or organization deriving no private or corporate profit therefrom and no substantial part of whose activity consists of selling personal property in connection therewith.

Pa. Const. Art. 8, § 2(a)(ii).

# Specific Property Uses

## Cemeteries

Query:

*Ivy Hill Cemetery—a non profit corporation that uses its land for burial purposes—is exempt from real estate taxes. Does it lose exemption by accepting \$100,000 for the use of a piece of the land (plus an endowment fee) by the for-profit Ivy Hill Mausoleum Company for the erection of a mausoleum and to sell crypts to the public. Ivy Hill Cemetery made no profit from the transaction with Ivy Hill Mausoleum Company.*

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# Specific Property Uses

## Properties Under Construction

Property under construction by a charity (otherwise meeting the requirements for exemption) is entitled to an exemption.

The Pennsylvania Supreme Court held that a charity is “using” a property for its charitable purposes while the property is under construction.

# Specific Property Uses

## Educational Facilities

- Private Schools
- Colleges
- Charter Schools

Is the Entity a Purely Public Charity?

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# Specific Property Uses

## Educational Facilities

Query:

*University has a Foundation that is the fund-raising arm. Corporation was formed to “further the program and purposes of Lock Haven State College” Foundation built an apartment building for the University students. Rents were charged at a rate that paid off the debt service and there was no profit. Are the student apartments entitled to exemption?*

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# Specific Property Uses

## Educational Facilities

Query:

*Non-profit corporation that operated pursuant to the Charter School Law as a public charter school leased its school property in question from a for-profit landlord. Is property entitled to benefit of tax exemption?*

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# Specific Property Uses

## Government: Public Property Used for Public Use

Public property used *only* for *public* purposes.

If the activity would be taxable if conducted on nonpublic property, it is taxable.

# Specific Property Uses

## Government: Public Property Used for Public Use

Query:

*A city owns various properties and leases two parcels to for-profit entities, both operated as private gated marinas for pleasure and recreational craft; both are limited to members and their families and friends except for limited public access areas. City does not use or occupy the parcels, is not involved in the daily operations or membership decisions. Are the parcels entitled to exemption?*

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# Specific Property Uses

## Exemption v. Immunity

Property owners immune from property taxation to not carry the burden of proof. Burden is on the taxing authority to prove the property is put to a taxable use.

Presumption of immunity is owned by the government, state or federal, and a Pennsylvania Authority under the Municipal Authorities Act.

Timing: immunity begins at time of purchase

# Specific Property Uses

## Windmills – Exception from Taxation

- The windmill itself is not subject to real estate taxation. 53 Pa.C.S.A. § 8811(b)(5)
- The land underneath a windmill (wind energy generation) is taxable and the valuation of the land assessment shall be calculated using the capitalized value of the land lease agreements. 53 Pa.C.S. § 8842(b)(2)

# Specific Property Uses

## Billboards

Billboards/signs themselves not subject to real estate taxation.

However, the land upon which the billboard/sign is affixed may be subject to assessment and so valued based upon its income produced. Thus, an increase in the value of land attributable to the billboard's presence may be considered.

# Other Exemptions and Abatements

- Disabled Veterans' Homes
- Subsidized Housing
- Public Utility Realty Tax Act ("PURTA")
- Contractor's Exemption
- Local Economic Revitalization Tax Assistance Act ("LERTA")/Improvement of Deteriorating Real Property of Areas Tax Exemption Act ("IDRPA")

# Disabled Veterans' Homes

Any resident of this Commonwealth shall be exempt from the payment of all real estate taxes levied upon any building, including the land upon which it stands, occupied by that person as a principal dwelling, if all of the following requirements are met:

1. That person has been honorably discharged or released under honorable circumstances from the armed forces of the United States for service in any war or armed conflict in which this nation was engaged.
2. As a result of such military service, that person is blind or paraplegic or has sustained the loss of two or more limbs, or has a service-connected disability declared by the United States Veterans' Administration or its successors to be a total or 100% permanent disability.
3. The dwelling is owned by that person solely, with his or her spouse or as an estate by the entirety.
4. The need for exemption from the payment of property tax has been determined by the State Veterans' Commission

# Federally Subsidized Housing

All property of a *charitable organization* providing residential housing services in which the charitable nonprofit organization receives subsidies for at least 95% of the residential housing units from a low-income Federal housing program as long as any surplus from the assistance or subsidy is monitored by the appropriate governmental agency and used solely to advance common charitable purposes within the charitable organization is exempt.

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# Contractor's Temporary Exemption

General Assembly provided an "exemption" from an increase in assessment value of newly constructed residential dwellings until they are occupied

No increase in assessment value until the dwelling is occupied, conveyed to a bona fide purchaser or 30 months from the first day of the month after which the building permit was issued or, if no building permit or other notification of improvement was required, then from the date construction commenced.

The assessment of any multiple dwelling because of occupancy shall be upon the proportion which the value of the occupied portion bears to the value of the entire multiple dwelling.

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# Public Utility Realty Tax Act ("PURTA")

Local municipalities are prohibited from taxing reality—all lands, together with all buildings, towers, dams, canals, and all other structures and enclosures whatsoever which are physically affixed to the land—owned by a public utility.

Commonwealth levies and collects taxes and, by legislative formula, remits a portion to the local taxing authority.

PURTA tax is a payment in lieu of local taxes upon reality

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# Local Economic Revitalization Tax Assistance Act ("LERTA"); Improvement of Deteriorating Real Property or Areas of Tax Exemption Act ("IDRPA")

## **LERTA - Commercial**

- 72 P.S. Section 4722, et seq.
- Defined by as a blighted area;
- At least one public hearing;
- Boundaries set;
- Two or more municipal governments may join;
- May not be "countywide;"
- "Phase in" for actual cost of improvement or new construction- not upkeep;
- Exemption on assessment based upon actual cost or maximum amount set; Not longer than 10 years;
- Up to 100% of cost/increased assessment;
- Must apply at time for seeking building permit;
- Transferrable from owner to owner;
- Begins year after improvement.

## **IDRPA - Residential**

- 72 P.S. 4711-301, et seq.
- Tax abatement on residential construction;
- Same requirements as LERTA;
- One major difference
- "Phase in"-
- 3 years at 100% or
- 5 years at 100, 80, 60, 40, 20%
- 10 years at 100, 90, 80, 70, 60%...;

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