

BF&R Docket No. 2309862
Petition Filed: 10/18/2023
License No. [REDACTED]
IN RE: EDINBORO UNIVERSITY FOUNDATION
PETITION FOR Review for Tax Exempt Status
PERIOD(S) N/A

AND NOW, June 13, 2024, pursuant to the Fiscal Code, the Act of 1929, April 9, P.L. 343, as amended, (72 P.S. § 1 et seq), the Board of Finance and Revenue of the Commonwealth of Pennsylvania, based upon the reasons set forth herein, hereby ORDERS the following:

Jurisdiction

This petition comes before the Board pursuant to Section 2704 the Tax Reform Code of 1971, *as amended*, 72 P.S. § 9704.

Issue

Whether Petitioner has established that it qualifies for an exemption from sales tax as an institution of purely public charity.

Statement of the Case

Petitioner, Edinboro University Foundation (“Foundation”), requests an exemption from sales and use tax, as a purely public charity. Petitioner was previously found to be a purely public charity in both 2007 and 2017; however, upon the filing of a renewal application, the Department concluded that Petitioner did not benefit a substantial and indefinite class of persons who are legitimate subjects of charity.

Petitioner filed an appeal with the Board of Appeals (“BOA”), contesting the Department’s denial of the application. Petitioner stated that to satisfy the charity to persons requirement, an organization must benefit a substantial and indefinite class of persons who are legitimate subjects of charity, but the Institutions of Purely Public Charity Act (“Act”) also states that an organization that is “primarily engaged in fundraising on behalf of or making grants to an institution of public charity...or a government agency” will satisfy the charity to persons requirement.

Mailed: CHARLES SCALISE
EDINBORO UNIVERSITY FOUNDATION
210 MEADVILLE STREET
EDINBORO, PA 16412

on June 28, 2024

Petitioner contended that it meets the charity to persons requirement by benefiting the student body of the Edinboro University of Pennsylvania, presently PennWest Edinboro, (“University”) through the cultivation and management of gifts, grants, and other resources for the benefit of the students and faculty of the University. Petitioner asserts that previous successful applications for sales tax exemption and renewal support that the Foundation was created to assist the University in raising and administering scholarship funds, endowments, and contributions to benefit the students and programs of the University.

In its Decision and Order, the BOA noted that in order to qualify as an institution of purely public charity, an organization must demonstrate that it meets the charity to persons requirement. To accomplish this, it must be established that Petitioner benefits a substantial and indefinite class of persons who are legitimate subjects of charity pursuant to 10 P.S. § 375(e)(1). The BOA determined that Petitioner’s activities do not benefit a substantial and indefinite class of persons, as Petitioner’s activities do not directly benefit those in need. The BOA, therefore, concluded that Petitioner does meet the charity to persons criteria and is not entitled to tax-exempt status. The BOA noted that its decision does not infer that the organization has successfully met the remaining criteria set forth in the Act.

Petitioner appeals the BOA’s decision with this Board. Petitioner states that the Foundation was organized in 1998 to support the University and its students. Petitioner asserts that in accordance with the Act, it (1) advances the charitable purpose of education, (2) fundraises and donates a substantial portion of its services to University students, (3) benefits the students of the University who, due to their financial need and status as “youths seeking education,” constitute legitimate subjects of charity, (4) relieves the state and federal government of the burden to fund the education of admitted students to the extent that scholarships are awarded to students by the Foundation, and (5) operates entirely free from a private profit motive.

Petitioner contends that not only does the Foundation satisfy the charity to persons requirement by fundraising and making grants on behalf of the University, the Foundation also individually satisfies the charity to persons requirement by benefiting the student body of the University, which constitutes “a substantial and indefinite class of persons who are legitimate subjects of charity.” Furthermore, Petitioner makes the following assertions:

Fundraising on Behalf of a Government Agency

Petitioner contends the Foundation was created to assist the University in raising and administering scholarship funds, endowments, and contributions to benefit the students and programs of the University. Through management and development of scholarship funds on behalf of the University, the Foundation acts on behalf of the University (a state university) and serves to develop the educational resources that are available to the University’s educators and student body.

Substantial and Indefinite Class

Petitioner states that the Act describes a substantial and indefinite class of persons as a group that is “not predetermined in number” and specifically states that admissions criteria and enrollment limitations by educational institutions do not constitute “predetermined membership or arbitrary restrictions on membership.” Petitioner contends that the Foundation provides educational support for the entire university by working to attract gifts of educational resources and grants that may benefit the entire student body. Additionally, the Foundation provides financial support to scholarship recipients based on their individual eligibility for scholarship funds. Petitioner asserts that the Foundation does not use an arbitrary process for selecting recipients of support but, rather, the Foundation employs a collaborative process with the University’s Financial Aid Office to ensure that scholarship recipients are selected based on the distinct eligibility guidelines for scholarship funds. Petitioner contends that, therefore, the Foundation’s process for selecting scholarship recipients ensures that beneficiaries are objectively assessed for individual eligibility, and that beneficiaries of the scholarships constitute a substantial and indefinite class of persons.

Legitimate Subjects of Charity

Petitioner asserts that the Foundation is a financial support system for the student body of the University, which is a publicly funded state institution. Petitioner states that 40% of the University’s student body qualified for federal Pell Grants in 2021, and approximately 33.6% of the University students qualified for state financial aid through the PHEAA program. Petitioner further states that in 2020, the average household income for undergraduate students was \$83,729, which falls below the Pennsylvania state system average of \$97,156. Petitioner contends that these statistics demonstrate the financial need of the University’s student body and the role that the Foundation plays in making tuition affordable to low and middle-income students, and in supporting the University’s educational efforts through fundraising, grant writing, and grant management.

Petitioner refers to *City of Washington v. Bd. of Assessment Appeals of Washington Cnty.*, 550 Pa. 175, 704 A.2d 120 (1997), which involved an assessment of Washington & Jefferson College’s qualification as an institution of purely public charity. Petitioner contends that while the Washington & Jefferson case specifically contemplates the college’s ability to qualify for the sales tax exemption, the Foundation provides the same essential services to the University and the students that Washington & Jefferson College provided to its own student body.

Petitioner has provided its applications for tax-exempt status, Articles of Incorporation, Bylaws, Financial Statements, and Federal Form 990 for fiscal year ending June 30, 2022.

Conclusion

Upon review of the arguments and evidence submitted, the Board of Finance and Revenue concludes that Petitioner qualifies as a purely public charity under the criteria established in 10 P.S. § 375.

Act 55 of 1997, known as the Institutions of Purely Public Charity Act, was promulgated to provide more specific legislative standards with regard to criteria first established in *Hospital Utilization Project v. Commonwealth, supra*. An organization must meet all five of the following criteria in order to qualify for the state sales tax exemption:

- 1) advance a charitable purpose;
- 2) operates entirely free from private profit motive;
- 3) donates or renders gratuitously a substantial portion of its services;
- 4) benefits a substantial and indefinite class of persons who are legitimate subjects of charity;
- 5) relieves the government of some of its burden.

10 P.S. § 375.

Charitable Purpose

Petitioner's primary purpose is to raise funds for and to support the University through management and development of scholarship funds, endowments, and contributions to benefit the students and programs of the University. Therefore, this Board concludes that Petitioner was organized and operates primarily to fulfill the advancement and provision of education. 10 P.S. § 375(b).

Private Profit Motive

Petitioner has demonstrated that it operates free from a private profit motive. Petitioner is recognized as a charitable organization under Section 501(c)(3) of the Internal Revenue Code and maintains that any funds or income from those funds is used exclusively for charitable purposes. Additionally, according to its Articles of Incorporation, upon dissolution, its remaining assets shall be distributed to organizations that are organized and operate exclusively for charitable purposes. Therefore, Petitioner has established it operates free from a private profit motive.

Community Service

Petitioner has established that it meets this criterion because it gratuitously provides a substantial portion of its services in the form of scholarship funds, endowments, and contributions for the benefit of students of the University. Petitioner's Articles of Incorporation states that Petitioner is "to receive and maintain a fund or funds...to use and apply the whole or any part of the income from these funds and the principal of these funds exclusively for charitable, religious, scientific, literary, or educational purposes either directly or by contributions to Edinboro University of Pennsylvania." Thus, Petitioner has established that it was created to gratuitously provide a substantial portion of its services to the University.

Charity to Persons

Petitioner has established that it benefits a substantial and indefinite class of persons who are unable to provide for themselves with what the institution provides for them. The use of admissions criteria and enrollment limitations by educational institutions does not constitute predetermined membership or arbitrary restrictions on membership so as to violate this section. 10 P.S. § 375(e). Petitioner satisfies this requirement by providing financial support to University students who could not otherwise finance their tuition without assistance.

Government Service

Petitioner satisfies this requirement by providing a service to the public which directly or indirectly reduces dependence on government programs or relieves or lessens the burden borne by government for the advancement of education. See 10 P.S. § 375(f)(4).

As Petitioner has satisfied the criteria established in 10 P.S. § 375, the Board concludes that Petitioner qualifies as a purely public charity.

Accordingly, the Board enters the following:

ORDER

Petitioner is hereby granted exempt status as a charitable organization, for sales and use tax purposes.

Board member, Paul J. Gitnik, recuses himself from the above Order.

By Order Of The Board Of Finance And Revenue

**Jacqueline A. Cook, Chair
Designee for Stacy Garrity, State Treasurer**

David R. Kraus, Board Member

Paul J. Gitnik, Board Member

