

TO: Members, Senate Finance Committee
FROM: Douglas E. Hill, Executive Director
DATE: February 3, 2015
RE: **CCAP Comments on Senate Bill 4**

On behalf of the County Commissioners Association of Pennsylvania (CCAP), representing all 67 counties in the commonwealth, I write to share our comments on Senate Bill 4 with members of the Senate Finance Committee.

In brief, the Association reinforces its view that the provisions of the Constitution granting tax exemption to institutions of purely public charity should be available to, and only available to, those institutions that truly meet appropriate tests of granting services to the public on a charitable basis. At the same time, CCAP opposes, as a matter of equity to our taxpayers, any further judicial or legislative expansion of the property tax charitable exemption.

In that context, Senate Bill 4 of itself neither expands nor collapses the qualifications for charitable exemption and so we remain neutral on the bill. The proof will be in the legislation developed in furtherance of the amendment, should it be adopted. While we recognize the potential for statutory grant of exemption to other less deserving entities, we also know that many legislators recognize that expansion of the exempt rolls has been one of the chief drivers of municipal financial distress, and so the converse potential also applies. Similarly, we can point to both positive and negative judicial decisions on the question.

We appreciate the Committee scheduling a hearing on the matter, so that the General Assembly and the public can gain better insight to the nature of the charitable exemption. The following notes relate to counties' unique perspective, having responsibility for the assessment rolls generally and the initial responsibility for determination of applications for charitable exemption.

Senate Bill 4 is a constitutional amendment which would provide the General Assembly with the authority to determine the qualifications for institutions of purely public charity pursuant to Article VIII, section 2 of the Pennsylvania Constitution. Article VIII provides for governmental finance, and section 2 delineates allowable exceptions from taxation. Among these is an exemption for "institutions of purely public charity", a phrase that was part of the Constitution since about 1874.

The phrase was never adequately defined, and thus for more than 100 years it was the subject of litigation, in each circumstance driven by the determination by a county board of assessment on

the application of an entity for exemption based on its claim to be an institution of purely public charity.

This growing body of disparate case law created administrative and litigation problems for counties, appellants and the courts and so in 1985 the Pennsylvania Supreme Court in *Hospital Utilization Project v. Commonwealth* combined standards judicially established over the prior century into a five-prong test for determining whether an entity is qualified as a purely public charity within the meaning of the Constitution.

Under HUP, the entity must meet all of the following: 1) it advances a charitable purpose; 2) it donates or renders gratuitously a substantial portion of its services; 3) it benefits a substantial and indefinite class of persons who are legitimate subjects of charity; 4) it relieves the government of some of its burden; and 5) it operates entirely free from profit motive.

The Constitution also provides that the exemption is extended only to parcels that are “actually and regularly used for the purposes of the institution.”

While the HUP tests established standards for application of the Constitutional provision, even that was the subject of continuing uncertainty and continuing litigation as parties on both sides sought better definition and uniformity of each of the tests, for example better clarity of “a substantial portion of its services”, “a substantial and indefinite class of persons”, or “governmental burden”.

As a consequence of this ongoing cycle of litigation, the General Assembly convened relevant stakeholders in the mid-1990s to develop legislation that would bring some definition and clarity to the matter, an exercise that resulted in Act 55 of 1997, the Institutions of Purely Public Charities Act.

The working premise of the negotiations that led to the Act was formed around a basic consensus among the groups on the appropriateness of the tests enumerated by the Court in HUP, and on conceptual agreement on the need to develop statutory criteria around those tests. Our Association was an active participant in those negotiations, representing counties’ dual role as a taxing body and as the entity responsible in the first instance for determination of the taxability, and assessed value, of real property. In general, CCAP ultimately signed off on the final work product, based primarily on a notion that the statute constituted better defined standards, giving better direction to our assessment offices and resulting in greater certainty and less litigation. In particular, a number of concessions and protections added to the bill late in the negotiations gave it some measure of the balance we were seeking.

In practice, the statute has had a reasonably positive effect on the manner and process of determination of exemption. Although an argument may be made that the bar for exemptions was set too low in some criteria, the standards were a public policy determination by the General Assembly. Regardless, the application of the statute has given county assessment offices a relatively clear standard to apply in determining an entity’s qualification as an institution of purely public charity. That is not to say that there has been universal agreement on the standards

or their application. Indeed, we continue to litigate matters of qualification, and the case law continues to evolve.

Interestingly, while the Courts still applied the HUP tests as their primary measure, they were informed by the standards contained in Act 55. The difference is that the cases that went to litigation tended to be either ones that disputed whether the institution met one or more of the tests, or ones that were for a class of institutions not previously tested as charitable. Ultimately, this led to the 2012 ruling of the Pennsylvania Supreme Court in *Mesivtah Eitz Chaim of Bobov, Inc. v Pike County Board of Assessment Appeals*, which determined that the power and authority to interpret the state Constitution rests with the judiciary and is not bound to legislative judgment on the interpretation of constitutional terms. The constitutional amendment in SB 4 would redirect this power to interpret and define a purely public charity to the General Assembly.

To reiterate, our Association remains neutral on SB 4 and has not taken a position on the matter of whether the authority to define a purely public charity should rest with the courts or with the legislature. However, in the larger context of local revenue generation and local tax equity, the Association, on behalf of the general class of property tax payers, would resist any efforts, judicial or legislative, to make charitable exemption more broadly available or easier to attain. We must note that property taxes are the only form of local tax revenue available to counties, and are a predominant revenue source for municipalities and school districts. Each exemption that is granted becomes a burden that must be borne by other taxpayers. Our tax base continues to erode by degrees, either by legislative action (Public Utility Realty Tax Act restructuring, Keystone zones, wind farms, billboards) or by judicial fiat (oil and gas). Governmental entities clearly recognize the value in charitable institutions that reduce the need for taxpayer-funded services, but the trade-off in value for the taxes foregone needs to be appropriate and defensible.

Thank you for the opportunity to present our remarks. Please feel free to call or email us with any questions.

February 3, 2015

The Honorable John Eichelberger
Majority Chairman
Senate of Pennsylvania
Finance Committee
Senate Box 203030
Harrisburg PA 17120-3030

Re: Support Senate Bill 4

Dear Senator Eichelberger,

On behalf of the Pennsylvania Institute of Certified Public Accountants (PICPA), I am writing to you regarding the constitutional amendment contained in Senate Bill 4, sponsored by Senator Aument. There has been much debate and discussion over the implications of this legislation, which we hope to clarify for you as you prepare to vote on the bill in the near future.

Founded in 1897, the PICPA is the second oldest and fourth largest CPA organization in the nation. Our nearly 22,000 members include practitioners in public accounting, industry, government, and education. PICPA members advise clients on federal, state, and international tax matters and prepare income and other tax returns for thousands of Pennsylvanians. They also provide services to individuals, not-for-profit organizations, and small and medium-sized businesses, as well as the Commonwealth's largest businesses. It is in this context that we offer input and rationale for our support for SB 4.

Senate Bill 4 was drafted as a response to the 2012 Supreme Court decision in *Mesivtah v. Pike County Board of Assessment Appeals*, where the Court held that a camp was not an institute of purely public charity, even though it qualified as such under the Pennsylvania Institutions of Purely Public Charities Act (Act 55 of 1997). Using its 1985 *Hospital Utilization Project*, or *HUP*, test, the Court circumvented the criteria established by the legislature in Act 55, effectively requiring that a charitable organization meet 10 criteria, as opposed to the five proscribed under Act 55, before it could be considered a purely public charity for the purpose of property and sales tax exemption.

Much of the debate surrounding this bill derives from concerns about municipalities' abilities to recoup revenue from some organizations that are believed should be paying property taxes to fund services such as fire and police, among others. Senate Bill 4 simply addresses the issue regarding separation of powers between the courts and the legislature by returning the power to determine property and sales tax exemption criteria for purely public charities back to the General Assembly.

While it might be true that Act 55, which is amendable, may not be perfect in establishing who is privy to the property and sales tax exemptions, leaving that decision to the courts on a case-by-case basis, removes all tax certainty. Certainty, which yields quantifiable tax liability for charities resulting in quantifiable revenue for our municipalities, can only be obtained if the legislature is allowed to do its job and legislate the proper parameters. Senate Bill 4 is the critical, first step in getting all stakeholders to the point of assessing the effectiveness of the criteria of Act 55.

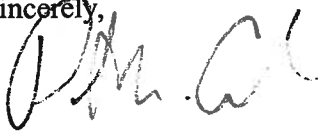
From a tax policy perspective, the current structure is problematic for taxpayers as they assess their status as a purely public charity, and determine their financial ability to continue to provide much needed services to our communities. The PICPA has adopted *Guiding Principles of Good Tax Policy* (enclosed), in which certainty is discussed as a valuable factor in tax policy. Taxpayers should be able to determine their tax liabilities with reasonable certainty based on the nature of their transactions. They should not have to litigate such matters that had previously been defined by the General Assembly. If the transactions subject to tax are easy to identify and value, the principle of certainty is more likely to be attained. On the other hand, if the tax base is dependent on subjective valuations or transactions that are difficult to categorize, the principle of certainty cannot be attained. Furthermore, the cost to litigate these cases is borne by both taxpayers and charities, putting further pressure on local government budgets and diverting funds that otherwise would be used for charitable purposes.

Certainty is important to a tax system because it helps to improve compliance and increases respect for the system. Certainty comes from clear statutes as well as timely and understandable administrative guidance that is readily available to taxpayers. The principle of certainty is closely related to the principle of simplicity. The more complex the tax rules and system, the greater likelihood that the certainty principle will be compromised.

A core mission of the PICPA is to educate state lawmakers about the impact—positive and negative—tax policy and tax law changes have on Pennsylvania's business community and the economy. Certainty is important to a tax system because it helps to improve compliance with the rules and an increase respect for the system. Generally, certainty comes from clear statutes as well as timely and understandable administrative guidance that is readily available to taxpayers. For the reasons discussed above, the PICPA respectfully requests your support for Senate Bill 4.

We look forward to working with you regarding this issue. Thank you and please do not hesitate to contact us with questions.

Sincerely,



Peter N. Calcara, CAE
Vice President—Government Relations



Catherine M. Dotto, Esq.
Manager—Government Relations

Encl.

GPNP Statement

Senate Bill 4

Senate Bill 4 is a proposed *constitutional amendment* that will have deep and significant impact on the nonprofit sector and the delivery of important services to our communities.

While on its surface it seems simple, Senate Bill 4 is a complicated bill that involves two parts that require public scrutiny to discern if unintended consequences exist that could have negative long-term implications to the sector and our communities. The two parts of the bill are: 1) disbanding the HUP test and reinstating Act 55 to determine the definition of a purely public charity and 2) the transfer of oversight power from the courts to the general assembly.

GPNP believes that:

- 1) Act 55 is a good basis for determining purely public charity status. The nonprofit sector relieves the burden of the government, provides charitable services, and advances charitable missions. Nonprofits exist on a compilation of varied revenue sources, one of which includes significant public dollars and as such, many nonprofits are appropriately eligible for property tax exemption as a purely public charity under the Act 55 definitions.
- 2) If the intention of the bill is to reinstate Act 55, there is there no need to transfer the power from the judiciary to the general assembly. This transfer of power raises the question of why? The transfer of power from the courts to the general assembly is concerning and seems to offer:
 - a. Higher degree of uncertainty from one legislative session to the next,
 - b. Increased possibility for government overreach
- 3) Nonprofit organizations as a whole function best when in partnership with the public sector as community problem solvers.

GPNP: The Greater Pittsburgh Nonprofit Partnership is a committed advocate for the nonprofit sector in its entirety. The nonprofit sector represents large scale service providers to small grassroots organizations. The sector provides invaluable services in the community that otherwise would not be available or affordable through the private or public sectors.



Borough of Chambersburg

*A full service municipality in Franklin County
celebrating over 65 years of consumer owned natural gas service
over 120 years of community electric and a
regional wastewater, water, and municipal solid waste utility*

January 26, 2015

To Whom It May Concern:

As early as Monday January 26, the General Assembly will be considering legislation calling for a Constitutional Amendment lessening the criteria to be considered a purely public charity and receive tax-exempt status.

Tax-exempt status means an entity is not required to pay property taxes and therefore it does not contribute to its share of municipal services – police, fire, and EMS. Instead, the balance of property and business owners in our municipality will cover the cost of these services by paying higher taxes.

It goes without saying that there are some entities that deserve the tax-exempt designation more than others. By the very nature of the services they provide – churches, those helping the less fortunate and educational and cultural entities pass the legal test for tax exemption established by the Pennsylvania courts. However, should a profit-making entity also meet the criteria to be tax-exempt?

If the legislation passes, a voter referendum will put the question before the citizenry. If accepted, the Constitution will be changed to allow the PA General Assembly to use politics to determine the test for tax-exempt status. Currently, this test is established by legal precedent. If the General Assembly wins this right, they've said that they plan to lower the standard to one that is less stringent. This will make it easier for entities to pass the test and be free of any requirement to contribute something to the cost of the services it receives from its host municipality.

It is therefore the opinion of the Town Council and the Mayor of the Borough of Chambersburg that we should stop this issue from finding its way to the ballot in 2015. We recommend citizens and businesses **contact your state Senators and House members and asking them to vote no on the legislation that proposes a Constitutional Amendment to Article VIII of the Pennsylvania Constitution regarding the qualifications of "purely public charities"**.

This correspondence is approved by the Town Council and the Mayor of the Borough of Chambersburg in support of our partners at the Pennsylvania Association of Boroughs and the Pennsylvania Municipal League.

Sincerely,

Allen B. Coffman
Council President

Darren Brown
Mayor



February 3, 2015

The Honorable John Eichelberger
Majority Chair
Senate Finance Committee
169 Main Capitol Bldg.
Harrisburg, PA 17120

The Honorable John Blake
Minority Chair
Senate Finance Committee
17 East Wing
Harrisburg, PA 17120

Dear Chairmen Eichelberger and Blake:

On behalf of the Pennsylvania Chamber of Business and Industry and our members throughout the Commonwealth, I write in support of S.B. 4, on which the Committee is scheduled to hold a hearing on Feb. 4, 2015. This legislation would amend the Pennsylvania Constitution to affirm that the legislature has the exclusive authority to define the standards by which institutions of purely public charity are defined.

Since our inception in 1916, the PA Chamber has advocated for tax policies that are fair to Pennsylvania employers and enhance the Commonwealth's economic competitiveness. A critical component to any policy that may impact an employer's tax liability is predictability. Businesses make decisions every day related to personnel, capital investments, potential expansions, etc. that require diligent planning and assessments of numerous long- and near-term factors. Some factors, like the national economy and public opinion, are inherently difficult to predict. However, state tax policy is one factor for which lawmakers ought to strive to create a more predictable environment for Pennsylvania's job creators.

It is for this reason that many employers were deeply concerned by the Pennsylvania Supreme Court's 2012 decision in *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals*¹. This decision denied public charity status to a summer camp that qualified under a framework established by the legislature in Act 55 of 1997, known as the Pennsylvania Institutions of Purely Public Charity Act. In its decision, the Supreme Court effectively replaced the Act 55 standard for determining public charity status with one established by the Court in 1985² commonly referred to as the HUP test.

¹ 44 A.3d 3 (Pa. 2012),

² declared in *Hospital Utilization Project v. Commonwealth*, 487 A.2d 1306 (Pa. 1985).

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In replacing the Legislative standard, the Supreme Court fails to acknowledge the challenging, unpredictable and litigious environment that defined the period in which the Court's HUP Test was the standard for determining public charity status. This vague five-part test established in 1985 led to inconsistent treatment of charitable organizations, conflicting decisions, confusion and excessive litigation.

We appreciate the plight of local governments struggling to balance budgets and have long advocated for legislation to provide municipalities the tools to address cost drivers, including relief from unfunded state mandates, municipal pension reform, among other proposals. However, replacing Act 55 with a less certain judicial test is not the answer to local budget woes.

Thank you for your attention to this important matter and consideration of our views.

Sincerely,



Gene Barr
President and CEO