February 3, 2015

The Honorable Ryan Aument
Senate of Pennsylvania
Finance Committee
Senate Box 203036
Harrisburg PA 17120-3036

Re: Support Senate Bill 4

Dear Senator Aument,

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 a 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,

[Signatures]

Peter N. Calcara, CAE
Vice President—Government Relations

Catherine M. Dotto, Esq.
Manager—Government Relations

Encl.