



Issue brief

Re-establishing clarity and predictability to the Business Privilege Tax

Today, Pennsylvania businesses do not know when they owe a local Business Privilege Tax (BPT) or to whom. A 2007 state court decision upended prior case law and expanded municipalities' ability to impose a Business Privilege Tax on any entity conducting business within its borders, regardless of whether that business has a permanent presence there.

In *Rendina v. Harrisburg*, the state Supreme Court reversed a prior Commonwealth Court finding that a contractor was not subject to a city's Business Privilege Tax because he did not maintain a permanent office within the city limits. The Supreme Court held that state law clearly allows municipalities to impose the BPT on any business exercising the privilege of "doing business within their jurisdiction."

Rendina removed the bright-line distinction the courts had consistently recognized in previous rulings: namely, that a business entity must have a permanent base of operations within the municipality's borders for it to be subject to taxation by that municipality. More recently, in June 2009, the Commonwealth Court compounded the problem with its decision in *A & L Inc. v. Rostraver Twp.* In effect, the court's interpretation of BPT assessment in *A & L*, coupled with the *Rendina* decision, has created two different standards which can be used to double tax the same stream of gross receipts for BPT purposes.

This inconsistent interpretation, combined with an often aggressive tax collection approach, has left businesses with many unanswered questions about their tax liabilities with regard to the assessment of the Business Privilege Tax. Businesses need to know all the costs associated with the project. For that, they require predictability, not unpleasant surprises.

Legislative solution puts things back the way they were—predictable and fair

S.B. 405 would ensure that all taxpayers are on a level playing field by preventing local municipalities from imposing a Business Privilege Tax on a business that is simply "doing business" within their borders if that business does not maintain a permanent office there.

The legislation clearly states that a BPT may be imposed only if the "privilege" of doing business is exercised through a "base of operations" in the local taxing jurisdiction. The bill would remove ambiguity by stating that merely engaging in transactions within a taxing jurisdiction does not constitute the "privilege of doing business."

The measure is supported by the Pennsylvania Chamber of Business and Industry and the Pennsylvania Institute of Certified Public Accountants.

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