



TO: The Honorable Members of the Senate Appropriations Committee

FROM: Sam Denisco, Director of Government Affairs

DATE: September 19, 2011

RE: SB 405 – Business Privilege Tax

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On behalf of its thousands of statewide member businesses of all sizes and crossing all industry sectors, the Pennsylvania Chamber of Business and Industry is writing you to express our **support** of SB 405 which is scheduled to be considered today by the Senate Appropriations Committee. This legislation addresses a 2007 state court decision that 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 a business has a presence there. We believe that SB 405 provides the assessment of the business privilege tax with clarity and predictability, two important factors that are in question because of two recent state Supreme Court decision *V.L. Rendina v. Harrisburg*<sup>1</sup> and *A & L Inc. v Rostraver Twp*<sup>2</sup>.

In *Rendina*, the state Supreme Court reversed a Commonwealth Court finding that a contractor was not subject to a city's business privilege tax (BPT) because he did not maintain a permanent office within the city limits. The court held that Act 511 clearly allowed municipalities to impose a tax on any business exercising the privilege of "doing business within their jurisdiction."

*Rendina* eviscerated 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. Moreover, the inconsistent interpretation and often aggressive approach taken by local municipalities is compounded by often conflicting county court rulings on BPT issues.

More recently, in June 2009, the Commonwealth Court compounded the problem with its decision in *A & L Inc.* 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.

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<sup>1</sup> *V.L. Rendina Inc. v. Harrisburg and the Harrisburg School District*, 938 A.2d 988 (Pa.2007) (*Rendina*)

<sup>2</sup> *A&L inc. v. Rostraver twp. And Belle Vernon Area School District*, 1650 C.D. 2008, 2009 Pa. Commw. LEXIS 554, 937 A2d 1115, (Pa Commw. Ct. June 4, 2009) (*A & L*)

In essence the issue that SB 405 seeks to resolve is how can local municipalities impose a business privilege tax on a business exercising the privilege of “doing business” within their borders if the business in question does not maintain a permanent office there?

Senate Bill 405 attempts to solve this matter by ensuring all taxpayers are on a level playing field. The legislation provides for the following:

- A BPT may be imposed only if the “privilege” of doing business is exercised through a “base of operations” in the local taxing jurisdiction.
- Engaging in transactions within a taxing jurisdiction does not constitute the “privilege of doing business.”

We believe that Senate Bill 405 reestablishes the predictability of the business privilege tax and removes the current court created ambiguities of where and how the tax is assessed. If you have any questions or concerns please contact Sam Denisco, Director of Government Relations for the Pennsylvania Chamber, at 717-720-5580 or email [sdenisco@pachamber.org](mailto:sdenisco@pachamber.org).