

September 22, 2009

Honorable Jake Corman
Chairman, Appropriations Committee
Senate of Pennsylvania
P.O. Box 203035
Harrisburg, PA 17120

RE: Support Senate Bill 601

Dear Senator Corman:

On behalf of the Pennsylvania Chamber of Business and Industry and its more than 24,000 members and customers we respectfully request that Senate Bill 601 (Senator Pat Browne) be scheduled for consideration by the Senate Appropriations Committee at your earliest convenience. 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 601 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*¹ and *A & L Inc. v Rostraver Twp*².

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 assesment 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. Enclosed, for additional information, is an article from The Bureau of National Affairs'

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

² 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)

“Tax Management Weekly State Tax Report”. This article explains the impact of both court decisions and their negative affect on businesses in this commonwealth. The article lays out the case for why SB601 is necessary to prevent two municipalities from taxing the same stream of revenue.

In essence the issue that SB 601 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 601 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 601 reestablishes the predictability of the business 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 John Callahan, Director of Government Relations for the Pennsylvania Chamber, at 717-720-5431 or email jcallahan@pachamber.org.

Sincerely,

Floyd Warner
President

Cc: Senator Jay Costa, Democratic Chair, Appropriations Committee
Senator Patrick Browne, Republican Chair, Finance Committee