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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
APPROPRIATIONS COMMITTEE
FISCAL POLICY SUBCOMMITTEE

MAIN CAPITOL
ROOM 140
HARRISBURG, PENNSYLVANIA

TUESDAY, JUNE 5, 2012
9:35 A.M.

PUBLIC HEARING
SENATE BILL 405
BUSINESS PRIVILEGE TAX COLLECTION

BEFORE:

HONORABLE WILLIAM F. ADOLPH, JR.,
Majority Chairman
HONORABLE JOHN BEAR
HONORABLE KAREN BOBACK
HONORABLE MARTIN CAUSER
HONORABLE JIM CHRISTIANA
HONORABLE GORDON DENLINGER,
Subcommittee Majority Chairman
HONORABLE TOM KILLION
HONORABLE DAVID MILLARD
HONORABLE MICHAEL PEIFER
HONORABLE SCOTT PETRI
HONORABLE MARIO M. SCAVELLO
HONORABLE CURT SONNEY
HONORABLE JOSEPH MARKOSEK,
Minority Chairman
HONORABLE H. SCOTT CONKLIN
HONORABLE TIM MAHONEY
HONORABLE STEVE SAMUELSON
HONORABLE MATTHEW SMITH
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ALSO PRESENT:

HONORABLE GENE DIGIROLAMO
HONORABLE NICK KOTIK

LINDA THOMPSON, HARRISBURG MAYOR

ED NOLAN, MAJORITY EXECUTIVE DIRECTOR
MIRIAM FOX, MINORITY EXECUTIVE DIRECTOR

BRENDA J. PARDUN, RPR
REPORTER - NOTARY PUBLIC

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P R O C E E D I N G S

CHAIRMAN ADOLPH: Good morning, everyone. I'd like to call to order the House Appropriations Fiscal Policy Subcommittee hearing on Senate Bill 405, the Business Privilege Tax Collection.

My name is Bill Adolph. I'm the Republican chair of the House Appropriations Committee. And I have some opening remarks. I'll be very brief. The subcommittee chair, Gordon Denlinger, will be chairing the committee.

I want to thank, first of all, Representative Gordon Denlinger for his interest in having this hearing. As the House was asked to consider Senate Bill 405, members of the house started to hear from local officials about the impact this legislation may have on local tax collections. I, along with Representative Denlinger, the Appropriations Committee Fiscal Policy subcommittee chair, thought it would be best to bring all the stakeholders together for a hearing and get all the information out on the table.

I hope this hearing will be helpful and answer some of our questions that members have had

1 on this legislation and give us the information we
2 need to make and determine on how this legislation
3 would impact our legislative districts.

4 With that, I will turn it over to the
5 subcommittee chairman and thank him for his
6 leadership on this issue. And, Representative, if
7 you'd like other members to identify themselves,
8 it's your pleasure.

9 SUBCOMMITTEE CHAIRMAN DENLINGER: Thank
10 you. Thank you, Chairman Adolph.

11 Good morning, everyone. Appreciate
12 your interest in this very important tax issue.

13 We do want to ask the members if they
14 would go around and identify themselves and their
15 home district. We'll begin over to the table on my
16 left.

17 REP. SONNEY: Rep. Curt Sonney, 4th
18 District, Erie County.

19 REP. PEIFER: Good morning. Mike
20 Peifer, 139th District, Wayne, Pike, and Monroe
21 Counties.

22 REP. CHRISTIANA: Jim Christiana,
23 Beaver County.

24 REP. PETRI: Scott Petri, Bucks County.

25 REP. BOBACK: Karen Boback, 117th,

1 Wyoming, Luzerne, and Columbia Counties.

2 REP. MILLARD: David Millard, Columbia
3 County.

4 REP. VITALI: Greg Vitali, Delaware
5 County.

6 REP. CONKLIN: Scott Conklin, Centre
7 County.

8 REP. MARKOSEK: Joe Markosek, Allegheny
9 County and Westmoreland County.

10 REP. MAHONEY: Tim Mahoney, Fayette
11 County.

12 SUBCOMMITTEE CHAIRMAN DENLINGER: Very
13 good. Thank you, members.

14 We're approaching an issue that I think
15 is very, very important and timely. Appreciate
16 Senator Browne's bringing forward SB 405 to deal
17 with an issue that is, I guess you could say,
18 creating somewhat of a stir in the realm of
19 Business Privilege Tax. This is the result of some
20 court decisions that do not match with the Local
21 Tax Enabling Act, Act 511, I believe, of 1965.

22 First, we will ask the senator if he
23 would give us a bit of background what brought us
24 to this issue and then an explanation about this
25 bill. And if you care to advocate for it, we'll

1 welcome that, certainly.

2 Senator, welcome.

3 SENATOR BROWNE: Thank you,
4 Mr. Chairman.

5 I thought I stopped creating a stir
6 when I left this room here. It is good to be
7 back. I appreciate the opportunity and the
8 interest of House members and Chairman Adolph in
9 considering the provisions of Senate Bill 205
10 (sic).

11 With the committee's indulgence, I
12 would like to make a statement and then open it up
13 for any questions or comments, if that's okay.
14 Thank you.

15 Mr. Chairman, members of the committee,
16 Senate Bill 405 -- the purpose of Senate Bill 405
17 is to clarify the definition and imposition of the
18 Business Privilege Tax to what I and sponsors and
19 supporters of this measure believe conforms with
20 the original intent of Act 511 of 1965, the Local
21 Tax Enabling Act.

22 Although I was not here for that, even
23 though I might look like I was, Act 511 was adopted
24 in a time when increasing mobility of PA's
25 population and business activity were ever

1 increasing, as population and businesses and their
2 activities were moving out of urban cores and
3 cities into suburbs because there was -- was, at
4 that time, no state-wide standard of imposition of
5 local non real estate taxation, individuals and
6 businesses were often asked to pay tax on the same
7 income in multiple places.

8 Act 511 sought to provide a certainty
9 in this matter by combining the nexus of taxation
10 to the residence of the individuals and,
11 essentially, residences of businesses. That
12 residence of business being the place where the
13 enterprise has their permanent place of operations,
14 the fixed location where they direct their
15 operations from.

16 This remained the understood standard
17 for many years. But as this activity continued to
18 be more mobile and not restricted to municipal
19 boundaries, local governments began expanding their
20 definition of what was the privileges of doing
21 business to include business activity within their
22 borders, even though base of operations might be
23 elsewhere.

24 The position of the supreme court on
25 this matter was consistent with its original

1 interpretation until 2007, when, in *Rendina v.*
2 *Harrisburg*, it reversed, or some might say
3 clarified, its prior 1986 decision in *Gilberti v.*
4 *City of Pittsburgh* and stated that the locality
5 could tax business activity within its borders as a
6 privilege of doing business even though their base
7 of operation was elsewhere.

8 Although this decision may provide more
9 certainty to local government as to the connection
10 of the cost of municipal services to activity
11 within their borders, in my sincere opinion, more
12 compelling with this is what challenges it presents
13 to those paying the bills. In this regard, I
14 believe that it raises a basic issue of fairness to
15 taxpayers, and that is a problem for a taxpayer to
16 pay the same tax on the same receipts in two
17 separation locations. Double taxation being a
18 matter that many believe is a core violation of
19 proper tax policy.

20 In this case, the balance of local
21 government receipts and expenditures is done at
22 significant expense to those asked by this
23 government to provide for it.

24 The supreme court, in its conflicting
25 decision in *Gilberti* and *Rendina*, provided for the

1 possibility of double taxation. In Rendina, it
2 argued, the nexus for taxing those activities
3 established by Rendina, and, in this respect, it
4 does not depend on the presence of a base of
5 operations to which other commercial activities may
6 be attributed. Put differently, although Gilberti
7 found that taxpayers maintenance of an in-city base
8 of operations from which it directed
9 extraterrestrial activities was a sufficient
10 condition to permit taxation on such activities, it
11 did not follow that the existence of such an office
12 is a necessary condition for the taxation of
13 business activities that occur only inside the
14 taxing municipal boundaries, thus presenting the
15 conflict.

16 Under the current conflicting standards
17 established by the supreme court under Rendina, a
18 business could, hypothetically, do business in
19 fifty municipalities and have to file forms and pay
20 tax in fifty municipalities. This presents a
21 significant burden on that business and presents a
22 circumstance that specifically violates what Act
23 511 was written to address.

24 Just imagine if the same standard was
25 applied to workers. The hypothetical traveling

1 construction worker or salesman, having to file
2 fifty returns in fifty municipalities with credit
3 going back and forth. This assembly wrote Act 511
4 to specifically prevent this from occurring. Keep
5 in mind, those standards are based on nexus of
6 residence, base of operation, residency. So it
7 would -- it would also be consistent to apply the
8 same standard of residence, too, that it would
9 apply to businesses if you were to extend 511 to
10 where the court has taken it.

11 It is my understanding that, of the
12 three hundred and twelve municipalities that impose
13 the Business Privilege Tax, it's not three hundred
14 twelve. It is also my understanding that it is
15 common practice for localities where the base of
16 operation of business is located to allow for a
17 credit against tax for Business Privilege Tax
18 imposed elsewhere, which is a -- in terms of double
19 taxation, a reasonable practice.

20 However, there is several challenges
21 with this treatment. This practice is not provided
22 in Act 511, and, therefore, can vary per location,
23 and, of course, adds additional complexity than one
24 return in the base of operations, and it deprives
25 the municipality of the base of operations of tax

1 receipts, counter to the original intent of Act
2 511.

3 In addition, the decisions of this
4 assembly regarding Business Privilege Tax after 511
5 also are important to consider. In Act 145 of
6 1988, this assembly restricted the ability of
7 localities to impose Business Privilege Tax or
8 expand its applicability after 1988. Prior to the
9 act, the interpretation of the Business Privilege
10 Tax by the supreme court was still clearly based on
11 base of operations. Therefore, local ordinances,
12 prior to 1998, which allowed taxation of
13 transactions regardless of the base of operations
14 location was contrary to supreme court positions at
15 the time.

16 Those that broadened their ordinance or
17 its applicability subsequent to Act 145 did it even
18 though Act 145 did not allow it. This matter
19 raises the question of how this current treatment
20 is possible in the first place.

21 Because I wanted to bring the matter
22 for your possible consideration in terms of
23 concerns over this bill, just for the committee to
24 consider. Since the issue I and supporters of
25 Senate Bill 405 are trying to address is the issue

1 of fairness presented by the possibility of double
2 taxation, the question arises as to what is the
3 proper treatment for an enterprise that has its
4 base of operations in a jurisdiction which does not
5 impose the Business Privilege Tax. In this case,
6 to be consistent with this policy, I believe it's
7 reasonable at least to consider whether to allow a
8 jurisdiction where a transaction is performed to
9 impose tax on those receipts if they're not paying
10 them in the place of the base of operations.

11 Although the compliance complexity
12 remains. You still will have a significant amount
13 of compliance complexities as businesses are
14 required to file forms on a transaction basis, and,
15 at least in this case, the business will not be
16 paying tax twice on the same receipts.

17 I welcome the committee's discussion
18 and consideration of this possibility.

19 Mr. Chairman, members of the committee,
20 in supporting this decision in Rendina, the supreme
21 court stated: In this respect, we note that it
22 authorizes the local taxes on such things as
23 transactions, privileges, and occupations, the
24 general assembly used terms that are broad,
25 overlapping, and imprecise.

1 I sincerely believe, to the most basic
2 degree, that in regards to the Business Privilege
3 Tax, Senate Bill 405 specifically answers the
4 court's charge in a way that protects this
5 assembly's prerogative over the original intent in
6 the work we perform.

7 I want to thank the committee for
8 consideration and for allowing me. Be happy to
9 take any questions or comments.

10 Thank you.

11 SUBCOMMITTEE CHAIRMAN DENLINGER: Thank
12 you, Senator Browne. We appreciate that detailed
13 testimony.

14 I'm wondering, as it relates to your
15 home area of service, did your interest or
16 connections to this issue, was it driven by
17 taxation?

18 SENATOR BROWNE: No. It was -- was
19 mostly a policy issue. There's -- currently, the
20 PA association of local governances is trying to
21 continue to quantify what the potential impact of
22 this is on local communities, and there's, at this
23 point in time -- I'm not sure the committee has it
24 there -- I think it's about fifteen or twenty who
25 have reported what this may do to their current

1 fiscal impact. But as far as my local district,
2 that wasn't my -- that wasn't my motivation.

3 SUBCOMMITTEE CHAIRMAN DENLINGER: Your
4 legislation drafts a narrow definition of -- it
5 seemed like you went after, specifically in the
6 Rendina case, trying to define "base of operations"
7 in and around the construction trailer. You did
8 not broaden beyond that to address broader concerns
9 about nexus extension.

10 Was it your intention that at some
11 future point the legislature go after potential
12 other expansions of nexus?

13 SENATOR BROWNE: I think the issue is
14 as broad as the -- the base -- base matter. And
15 that is, what entails the base of operation, how
16 you define a base of operations, and whether
17 that -- that transaction, that activity in the
18 municipality which is not the base of operation is
19 permitted to tax the receipts on that -- that
20 activity.

21 That is the overall intent and goal of
22 this bill and any further actions we take.

23 SUBCOMMITTEE CHAIRMAN DENLINGER: And
24 then one last question, if I may. Are you aware of
25 any pending court cases that would further define

1 the definitions that are outstanding?

2 SENATOR BROWNE: Not that I'm aware of.
3 I would hope there isn't, because it seems that as
4 long as this continues to go through the court
5 process, it just gets more confusing, so --

6 SUBCOMMITTEE CHAIRMAN DENLINGER:
7 Muddier and muddier.

8 SENATOR BROWNE: That's right.

9 SUBCOMMITTEE CHAIRMAN DENLINGER: Very
10 good.

11 Chairman Adolph, questions.

12 CHAIRMAN ADOLPH: Good morning,
13 Senator.

14 SENATOR BROWNE: Mr. Chairman.

15 CHAIRMAN ADOLPH: Thanks for being here
16 today.

17 And I certainly understand why the
18 legislation was introduced. I happen to agree that
19 no business should be paying double taxation. That
20 being said, there is a lot of clarification that
21 needs to be done before the house takes this up,
22 this piece of legislation.

23 And the one is, if you would be able to
24 explain to the committee, if you could define
25 "gross receipts" for the purposes of the Business

1 Privilege Tax, because many local municipalities
2 receive from their state-wide association a letter,
3 you know, when the bill passed the Senate, that
4 this also included mercantile tax receipts. And
5 many municipalities in PA has a gross receipts
6 tax -- a Business Privilege Tax and a mercantile
7 tax. And I just want you to, if you could, explain
8 the differences to the committee between a
9 mercantile tax and a Business Privilege Tax, and
10 what the gross receipts are for both those taxes.

11 SENATOR BROWNE: Well, the mercantile
12 tax is a transaction tax. It's different than the
13 Business Privilege Tax. It's based on 511 of 1965,
14 on base of operations. So if you have a specific
15 transaction within a community, and you quantify
16 what the gross receipts on the transaction are and
17 that would apply to the mercantile tax. Offers a
18 different platform, because the mercantile tax is
19 not based on a base of operations. And this -- the
20 bill that I have drafted provides for, if you have
21 a base of operations that imposes a mercantile tax
22 and you have operations in another community that
23 has receipts linked to that as well, that the
24 community where the base of operation is can allow
25 those receipts to be excluded from their mercantile

1 tax.

2 Business Privilege Tax is gross
3 receipts, but it's supposed to be a tax on the
4 privilege of doing business that's based -- that's
5 defined as related to the base of operations. So
6 as long as the receipts were linked or directed
7 from a fixed area or a fixed operation, then they
8 were linked back to the base of operation. So it's
9 just imposed differently.

10 CHAIRMAN ADOLPH: Yes. A lot of times
11 the mercantile tax is like retail sales. If you
12 have a mall in your community or any type of car
13 dealerships or this type of stuff, they impose a
14 mercantile tax. I always thought that Business
15 Privilege Tax was for services rendered. A lot of
16 the professional services and construction trades
17 come under that Business Privilege Tax rather than
18 a product being sold.

19 SENATOR BROWNE: Well, Mr. Chairman, if
20 I may, they do overlap, though, because I have
21 communities in my district, I think the second,
22 probably, state of this is that statewide is that
23 you have different components of receipts within a
24 Business Privilege Tax. You have retail. You have
25 service. You have manufacturing. So there is some

1 overlap there. Depends on the tax that's -- that
2 each community had imposed in the past.

3 CHAIRMAN ADOLPH: So am I correct,
4 then, that this bill does impact a mercantile tax
5 as well?

6 SENATOR BROWNE: Well, it better
7 defines what the mercantile tax -- the site is of
8 the mercantile tax. It clarifies that that's a
9 transaction tax. It's not determined based on the
10 base of operations. And because of that, to avoid
11 double taxation, it allows for a community that has
12 that business base of operation to exclude those
13 receipts from that -- from the computation of
14 mercantile tax in that base-of-operations
15 community. So it clarifies it.

16 CHAIRMAN ADOLPH: Thank you.

17 You know, the other question, you know,
18 that I'm trying to get to, you kind of addressed,
19 saying that you would be willing to try to come up
20 with some way where the home base -- the home base
21 community where a law firm or an engineering firm
22 or an architect firm would not lose -- lose their
23 tax base on a specific company because -- you know,
24 it's almost -- it's an accounting nightmare
25 sometimes, for -- if you're based in a suburb and

1 you're doing business as an architect all over the
2 commonwealth of PA, to try to prorate what work was
3 done. It's an accounting nightmare. So I
4 certainly can appreciate the PICPA's interest in
5 trying to get a -- a better piece of legislation.

6 However, if you employ a hundred
7 architects in one municipality, some of that work
8 is being done in that home base municipality, even
9 though they may be out on the premises all
10 throughout the commonwealth. And we're just trying
11 to -- you know, folks are coming into their town on
12 a daily basis and so forth. And we're just trying
13 to figure out a way where that home base
14 municipality would not lose their entire tax base,
15 because I certainly don't believe in double
16 taxation, but that home base municipality would be
17 without a tax base, it would affect the locals.

18 And you see this even in the
19 withholding. If you prepare tax returns and you're
20 a construction worker, and you'd be working for one
21 employer. During the course of a year, you could
22 be working in ten different municipalities. Well,
23 believe it or not, in PA, they withhold ten
24 different local taxes on you. And you get W-2s at
25 the end of the year with ten different local taxes

1 withheld in your pay.

2 If your local municipality where you
3 reside has a local income tax, up until a couple
4 months ago, there was never a problem. And you
5 would get credit for what you already paid the
6 other ones. And somewhere in the past three
7 months, someone took that to court as well.

8 So the local tax situation, you know,
9 may be decided by court as well. But we certainly
10 will be looking forward to working with you in
11 trying to just -- I think you understand what we're
12 concerned about here. And we've heard from our
13 local officials. None of the local officials want
14 double taxation either. They just don't want to
15 lose their tax base based upon the business that's
16 being done in their home base.

17 SENATOR BROWNE: It's a difficult
18 balance sometimes, because you're trying to solve
19 and comply with certain basic components of good
20 tax policy, whether it be a fairness, simplicity,
21 certainty. And if you provide for one by allowing
22 for a community to impose a tax on the base of
23 operations, it doesn't -- you solve the issue of
24 double taxation, but you perpetuate the problem of
25 the lack of simplicity. So it makes it difficult

1 either way.

2 CHAIRMAN ADOLPH: The court certainly
3 didn't simplify it.

4 SENATOR BROWNE: No, it didn't.

5 CHAIRMAN ADOLPH: Mr. Chairman.

6 SUBCOMMITTEE CHAIRMAN DENLINGER: Thank
7 you, Chairman Adolph.

8 Our next questioner is the minority
9 subcommittee chairman on Fiscal Policy, Rep.
10 Vitali.

11 REP. VITALI: Thank you. Thank you.

12 Despite the title, I don't know this
13 stuff, so I'm going to struggle with the
14 questions.

15 Perhaps by a little fact scenario, you
16 can give us an idea of how the taxing is divided up
17 between municipalities. And I think the example we
18 used in the caucus was probably the Harrisburg
19 example because that probably drove the court case.

20 So let's say you have a scenario where
21 you have a construction company based outside of
22 Harrisburg.

23 SENATOR BROWNE: Yes.

24 REP. VITALI: Puts up a major
25 construction project in Harrisburg. And let's say

1 you have a couple scenarios. One, every day they
2 just drive their trucks in and out, and, really,
3 that's how they build the building. And the second
4 scenario might be that they have some temporary
5 trailers that -- and then they build the building
6 that way. And the third scenario might be that
7 they actually rent office space and have something
8 more permanent.

9 Now, in those scenarios, how is the
10 local tax divided between the city of Harrisburg
11 and the outside municipality?

12 SENATOR BROWNE: Some of this is going
13 to be fact or circumstance based. It really is
14 based on what operations they're directing from
15 that location in Harrisburg. Now, if they're just
16 directing operations at that site, and it's for
17 a -- not a permanent situation, just only one
18 building, and they're not directing other projects
19 from there, those other projects are being directed
20 from another place, then under Act 511,
21 interpretation of a Business Privilege Tax on base
22 of operations, it's the intent of this statute and
23 the sponsors of this statute to say that Harrisburg
24 does not have the ability to tax that under their
25 Business Privilege Tax.

1 Now, the concern is, does the place
2 where the base of operations also have a tax?
3 That's a question for the committee to consider, if
4 that -- if that additional consideration is
5 something that's worth addressing.

6 REP. VITALI: Okay. Let me ask a
7 follow-up question, too. So you have a scenario
8 where you have an outfit, company -- construction
9 company, based outside of Harrisburg. They put up
10 a year-long project. The only thing -- and they
11 have -- you know, it's going to take a year. They
12 rent office space. They -- and so forth. But from
13 outside of Harrisburg -- the only thing they're
14 directing in Harrisburg is this one -- one
15 skyscraper. So under that scenario, Harrisburg
16 gets no local tax?

17 SENATOR BROWNE: That's right. Because
18 they're directing it from another location and that
19 other location is also directing other things.

20 REP. VITALI: Right. Okay.

21 One final variation on that. In that
22 same scenario, what if the outside -- the outside
23 municipality does not impose any local income tax.
24 So the construction company in an outside
25 municipality that is not -- does not impose a local

1 tax building a -- building a skyscraper for a year
2 in Harrisburg, permanent -- you know, a year lease
3 of office facilities in Harrisburg. So, again, I'm
4 going to ask, under that scenario, Harrisburg gets
5 no tax under that?

6 SENATOR BROWNE: Yeah. I would --
7 you're using a year as a definition of permanent.
8 Since it's something that is essentially temporary
9 in nature, I would not consider that a permanent
10 situation in Harrisburg.

11 But your point regarding what happens
12 if the other community doesn't impose a tax, under
13 511, as it's been interpreted prior to Rendina,
14 then that business would not pay Business Privilege
15 Tax.

16 Now, the question, since we're talking
17 about the double taxation, is that appropriate? I
18 think that's a legitimate question. Because, in
19 that regard, in regards to trying to work out the,
20 you know, the inconsistencies of this law, what I
21 believe is good tax policy, is it reasonable to say
22 that since that base community doesn't have a tax,
23 should Harrisburg be able to tax it? That's
24 something for this committee to have a discussion
25 on. I'm -- I believe that.

1 REP. VITALI: Thank you.

2 SUBCOMMITTEE CHAIRMAN DENLINGER: Rep.
3 Dave Millard.

4 REP. MILLARD: Thank you, Chairman
5 Denlinger.

6 Good morning, Senator. Welcome.

7 SENATOR BROWNE: Good morning.

8 REP. MILLARD: Rep. and Chairman Adolph
9 had you tell us about the differences in a Business
10 Privilege Tax, mercantile tax, gross receipts tax.
11 But I guess I have two questions here. They're
12 talking about businesses with a permanent base of
13 operation. Does your legislation differentiate
14 between a mom-and-pop business, a business with
15 twenty-five employees, fifty, a hundred, no --

16 SENATOR BROWNE: No, it doesn't. The
17 general definition of a permanent place of
18 business.

19 REP. MILLARD: Now, the only other
20 question that I have is, what would be the effect
21 of a business with a permanent base of operation
22 that is located in a KOZ with your legislation?
23 Any positive or negative effect with regards to
24 that?

25 SENATOR BROWNE: Well, if the KOZ is --

1 the Business Privilege Tax for a KOZ would be,
2 under KOZ law, would be exempt, would be an
3 exemption for that business there.

4 If the base of operation is in that
5 KOZ, then, under that alternative treatment, then
6 the business would not have to pay Business
7 Privilege Tax, and that would be -- this bill would
8 not affect that.

9 If it's a temporary location within a
10 KOZ, under the way this is written, the community
11 would not be able to impose a tax anyway. So,
12 essentially, the KOZ does not conflict with this.

13 REP. MILLARD: So, just to clarify
14 that, Chairman Adolph talked about a scenario with
15 an architectural firm. You could have an
16 architectural firm with a permanent place in a KOZ,
17 and you could have one a couple blocks away outside
18 of the KOZ, so what would your bill do as far as
19 treatment?

20 SENATOR BROWNE: It wasn't -- the KOZ
21 is, I guess, premised on a different policy, and
22 that is to offer an incentive for development of a
23 underdeveloped and performing site. In order to
24 provide for that, it provides the exemption of
25 local taxes. So this -- as long as -- if you're

1 talking about a base-of-operations treatment --
2 base of operations not KOZ, base of operations
3 KOZ -- that treatment won't change, based on this.

4 REP. MILLARD: Thank you for clarifying
5 that.

6 Thank you, Mr. Chairman.

7 SUBCOMMITTEE CHAIRMAN DENLINGER: Thank
8 you.

9 Thank you, Senator Browne. I believe
10 at this point there are no further questions from
11 the committee. We appreciate your testimony, and
12 we look forward to a continuing dialogue with you
13 as we move forward with SB 405.

14 SENATOR BROWNE: I appreciate it.
15 Thanks a lot.

16 SUBCOMMITTEE CHAIRMAN DENLINGER: Next
17 testifiers are from the township of Bensalem and
18 Middletown Townships. The township solicitor,
19 Joseph Pizzo -- being advised that some of our
20 testifiers are running a little bit behind.

21 I'm going to ask that Amy Sturgis, if
22 she could go ahead with PA League of Cities and
23 Municipalities and the PA State Association of
24 Township Commissioners.

25 And, Amy, when you're ready, you may

1 begin.

2 MS. STURGIS: Thank you. I was hoping
3 to have the benefit of the practitioner and the
4 solicitor with me, but I will do the best I can
5 without.

6 Thank you for holding the hearing
7 today, Chairman Adolph and Rep. Denlinger. I think
8 it's very important that we have a conversation
9 about this piece of legislation and try to figure
10 out exactly what it is going to do, how it will
11 impact our municipalities, and exactly what it
12 means for the business community.

13 I didn't have an opportunity to prepare
14 written remarks, but I did provide to the committee
15 my latest letter to the House opposing the bill,
16 and I'll just expand upon some of the items from
17 that letter.

18 In terms of the tax itself and our
19 local taxing structure, I don't think anyone can
20 argue that our local taxing structure is
21 complicated and is a hardship, at times, for
22 businesses and residents of PA. So, I would like
23 to say that we need to work on amending our whole
24 local taxing structure before we start to pick
25 apart arduous -- arduous taxes on individuals

1 within PA. Because when we start to erode our
2 local tax base without looking at it as a whole,
3 we're going to have an impact on municipalities
4 that have no other options on how to replace a tax
5 that is, in some way, impeded. And I think that
6 Senate Bill 405 is going to impede the collection
7 of a certain amount of revenue for municipalities
8 that are our oldest built-out communities. Those
9 are the ones that are charging this tax.

10 And if we start to erode that tax base
11 without having some replacement tax, we are going
12 to hurt those communities. And, oftentimes, those
13 communities are the ones that are struggling the
14 most to keep up with public services, municipal
15 services that they need to provide to the
16 businesses and residents both of the municipality.

17 So I'd really like to see that we look
18 at this as a whole picture when talking about
19 starting to change our local taxing structure.

20 From the -- and I can share with the
21 committee, afterward, the list of municipalities
22 that I have learned will be affected by this. Some
23 of them were able to give me a number, revenue
24 number, some were not. And I think that there's
25 still more work to do in terms of learning who's

1 actually impacted.

2 The tax, Business Privilege Tax,
3 mercantile tax, is levied on a number of different
4 types of businesses. And all of these businesses
5 receive a benefit from paying their tax. They're
6 receiving municipal services while they're in the
7 community, whether it be public safety, emergency
8 services, code enforcement services.

9 When you talk about landlords who are
10 absentee landlords but they do have rental
11 properties within the municipality, street
12 cleaning, garbage pick up, all of these services
13 are provided to the businesses whether they're
14 there for a day or three years or on a permanent
15 basis. And so, we're really talking about
16 affecting a lot of -- a lot of business that come
17 into and out of our communities on a daily basis.
18 And we're talking about a lot of services that are
19 provided. And if we're -- and in eroding this
20 particular tax, we're talking about losing a tax
21 base that provides services and no replacement.

22 We also want to point out that, in
23 distinguishing between a permanent -- permanently
24 based business and a temporary business, we're
25 hurting our permanently based businesses, those who

1 have chosen to have their business in our core
2 communities, and we are thankful that they are
3 there. And when they are paying the Business
4 Privilege Tax for their permanent -- when they're
5 permanently based, the business that's not
6 permanently based and is coming in for three years
7 or a day, is -- does not have to pay anything
8 towards those services, and that is putting -- that
9 is putting a detrimental differentiation between
10 types of businesses that I think will have an
11 impact on our permanent -- permanently placed
12 businesses.

13 And a business owner will say, Well,
14 why should I have my business located in this city
15 when I can go outside the city and just come in on
16 a regular basis and do my business and I won't have
17 to pay the Business Privilege Tax? So that's
18 something to consider.

19 And that will, I think -- is something
20 that we're not -- that's sort of an unintended
21 consequence, maybe, of this legislation that we
22 really should take into account now.

23 And in terms of the double taxation
24 issue, as an -- as two associations, League of
25 Cities and the state Association of Township

1 Commissioners, we do not condone double taxation.
2 We cannot sit here and advocate that that should be
3 a practice. And I'm sure that all of our members
4 feel the same way, and the practitioners that I
5 have spoken with about this legislation tell me
6 that that is not their practice.

7 So if there's a way to clarify that
8 particular area of the legislation and fix that,
9 we're certainly supportive of that and would be
10 happy to work to make sure that that practice is
11 not happening in PA.

12 And my final -- my final point I'd like
13 that make is that, in the research that I've done
14 recently, it would seem to me that -- and I
15 actually talked to a practitioner about this this
16 morning and he agreed with me -- the Rendina case
17 and the decision by the supreme court really did
18 not change what was going on in PA before 2007 in
19 terms of collection of this tax. It validated what
20 local municipalities were doing, how they were
21 administering the tax.

22 And so when -- when we say that Rendina
23 changed things, that perhaps there was a windfall,
24 that municipalities started to expand how they
25 taxed, I really am not finding that. I'm finding

1 that Rendina only supported what was currently
2 happening.

3 And looking at current ordinances that
4 levy the tax and current regulation and how the tax
5 is impose, they weren't -- they weren't amended
6 after 2007. So that tells me that what they were
7 doing before Rendina was just validated by Rendina
8 and that we haven't changed something. We haven't
9 expanded our use of the tax.

10 That's -- those are the points that I
11 had to make today. I'm happy to answer your
12 questions, and I'm happy to work as part of the
13 stakeholder group to try to figure out how to
14 lessen the impact of this legislation and make sure
15 that it's something that municipalities can live
16 with.

17 SUBCOMMITTEE CHAIRMAN DENLINGER: Very
18 good. Thank you for your testimony. I very much
19 appreciate it.

20 I believe some of your additional
21 panelists have now arrived, and we're going to
22 welcome them to the table to provide further
23 testimony before we get to questions that we would
24 direct to you.

25 So I believe is Mr. Joseph Pizzo and

1 Mr. Patrick Scott will be joining us.

2 Welcome, gentlemen.

3 If you could share with us your
4 respective roles with regard to Bensalem and
5 Middletown Townships.

6 MR. PIZZO: Good morning and thank you
7 for this opportunity.

8 I'm solicitor for the township of
9 Bensalem. I've had the opportunity to represent
10 that municipality now for the -- since 1994.

11 Mr. Scott is our business tax
12 collector. He collects the Act 511 taxes for both
13 the township and for our school district. Our
14 school district shares the same common borders with
15 our township.

16 For those of you who may not be
17 entirely familiar with Rep. DiGirolamo's district,
18 Bensalem is a community of about sixty thousand
19 residents. We are a second-class township located
20 just outside of Philadelphia, north -- I guess to
21 the northeast border, along the Delaware River.

22 SUBCOMMITTEE CHAIRMAN DENLINGER:
23 Welcome.

24 And welcome, Mr. Scott, as well.

25 And I recognize that you don't have the

1 benefit of having heard some of the prior comments
2 of our testifiers, but, obviously, SB 405 is of
3 great importance to your considerations there in
4 Bensalem and Middletown.

5 I'm wondering if you can share with us
6 your experience around companies who do not have a
7 base of operation but are sending construction
8 crews in to do construction work, potentially using
9 construction trailers and so forth. And I'm
10 presuming you're concerned about the negative
11 impact SB 405 would bring to Bensalem.

12 Can you just share with us your story,
13 if you will, in terms of how the current law is
14 operating as you see it, how you're applying it,
15 and potential impacts.

16 MR. PIZZO: This is the point in the
17 proceeding where I turn it over to Mr. Scott, who
18 is intimately involved on a daily basis and has
19 forgotten more on the topic than I know.

20 MR. SCOTT: Good morning,
21 Representative, Chairman Adolph.

22 In hearing the testimony this morning
23 by Senator Browne and the questions, several things
24 were highlighted. And to support Amy's comments,
25 the two things that we look at is, one, when we're

1 looking at tax legislation, is it fair? And, can
2 it be equally enforced across the board? And those
3 are the two primary factors that we look at when
4 we're collecting and enforcing the tax.

5 The things that we see in SB 405 that
6 concerns us as to what our current practices are
7 and how they would change, is, number one, to Amy's
8 point, we already allow -- most municipalities that
9 I know that collect this tax and all of my fellow
10 practitioners allow for there to be exemptions of
11 any businesses that are paying the tax or the
12 apportionment of the tax in other localities.

13 So the question of double taxation is
14 really mitigated, you know, at our level because no
15 one wants to unfairly or double tax businesses.
16 And as a practice, we don't do it in Bensalem. And
17 most of my colleagues and other tax practitioners
18 that I know of and speak to and congregate with
19 don't do it as well. So we don't think that that
20 is a major issue that needed to be solved.

21 Secondly, we believe that SB 405
22 creates a major inequity, which Amy spoke to
23 slightly, where you have home-based businesses that
24 are now in a unfair competitive situation with
25 foreign-based businesses that can come in and bid

1 on the same work and do the same job and can bid
2 lower and enjoy the same benefits are not taxed or
3 have no revenue base that they would have to pay to
4 the township, but they enjoy the same services that
5 the township has to provide to all.

6 The other major area that we have
7 concern with is that we believe, in reading SB 405,
8 it actually creates a huge gray area where
9 businesses would be allowed to operate and no one
10 would get to tax them. And several members of the
11 committee touched on it this morning with the
12 examples of the architect firm or the construction
13 firm, but there are scenarios where businesses can
14 come into a particular municipality, under SB 405,
15 the municipality -- let's take the example of
16 Harrisburg. So if they're not based in Harrisburg,
17 Harrisburg wouldn't get the opportunity to tax
18 them, and since their -- under SB 405, their home
19 jurisdiction wouldn't be able to tax activities
20 outside of that jurisdiction, the home jurisdiction
21 wouldn't get to tax them as well.

22 So we've now created sort of a safe
23 haven where you have activity that no one gets to
24 tax, we believe, under SB 405. So where SB 405 may
25 look to eliminate double taxation, which we don't

1 really think exists in a large proportion and look
2 to clarify, we actually believe that it creates a
3 larger gray area for tax practitioners and
4 businesses to operate in.

5 And, then, my last point is, this bill
6 is being introduced at a time when businesses --
7 most businesses have reconfigured themselves to be
8 mobile, to be portable. And so most businesses
9 today are reconfiguring themselves to be able to do
10 business in multiple municipalities and multiple
11 areas. And this bill seems to want to go backwards
12 and look at a single of focus of base and residency
13 when most businesses are operating transient.

14 So we think just even the timing of the
15 bill and the construction of the bill doesn't hold
16 true how businesses are configured today or
17 reconfiguring themselves to be able to do business
18 across the board.

19 And, lastly, the jurisdictions today
20 are hit with enormous economic strain. And we see
21 across the board that there would be significant
22 losses in the tax base and revenue to most local
23 municipalities that levy a Business Privilege Tax
24 if SB 405 stands as it is, without any
25 modification.

1 Thank you.

2 SUBCOMMITTEE CHAIRMAN DENLINGER: Thank
3 you. Appreciate the testimony.

4 And just a few questions, if I may
5 begin, for the panel.

6 You used the term -- during your
7 testimony, you used the word "exemptions." Do you
8 really mean to say "credits" to other
9 municipalities that are levying a Business
10 Privilege Tax?

11 MR. SCOTT: Yes. That we use the
12 term -- we interchange the term, but, basically, if
13 a business is paying a Business Privilege Tax to
14 any other jurisdiction for a portion of the
15 receipts for the activities that happen outside of
16 Bensalem, we exclude those receipts from their
17 calculations for the Bensalem portion of the tax.

18 SUBCOMMITTEE CHAIRMAN DENLINGER: And
19 then, one thing that we're a little bit challenged
20 on in this whole matter is trying to get some
21 actual numbers of impact. Can you bring us, today,
22 a dollar impact to Bensalem and to Middletown?

23 MR. SCOTT: I can't bring you direct
24 dollar value, but we're looking at just easily in
25 the neighborhood of at least a half a million

1 dollars in Bensalem. And the reason why there's
2 difficulty in that across the board is the way the
3 BPT tax is -- I'll say both BPT and mercantile tax
4 are structured today. It doesn't require for a
5 business to follow with any level of detail where
6 the receipts or the transactions are actually
7 happening, except in the case where we're allowing
8 the exemption and we have those receipts that are
9 actually culled out. So since there is no detail
10 in the reporting of the receipts on a large part
11 for the BPT or the mercantile, that lack of detail
12 also makes it very difficult to pinpoint how much
13 of the gross receipts will be in or out of the
14 calculation as it relates to SB 405.

15 MR. PIZZO: And just if I might, to
16 dovetail on Patrick's comments, we are
17 estimating -- and it's just that, an estimate --
18 that under SB 405, as currently proposed, about a
19 half a million dollars in receipts out of a total
20 collection that is somewhere, over the last five
21 years, been trending between two and two and a half
22 million dollars. So it is a significant portion of
23 the Business Privilege Taxes that are collected in
24 our township.

25 That, 2 to 2.5 million represents

1 anywhere from 8 to 10 percent of our overall
2 general fund budget. If that revenue were to go,
3 that would have to be made up, obviously, right
4 now, in Bensalem, through increased property
5 taxes. That's just on the township fund.

6 The school district also collects, and
7 so the additional lost revenue on the school
8 district side, which will be roughly three million
9 dollars, is what they're doing on an average year.
10 Their percentage would also have to be made up.
11 Our finance director estimated that to make up --
12 if it was lost in its entirety, so you would
13 adjust, would be additional ninety dollars a year
14 of taxes for the average taxpayer in Bensalem
15 Township in township taxes and an extra two hundred
16 dollars a year in real estate taxes on the school
17 district side.

18 SUBCOMMITTEE CHAIRMAN DENLINGER: The
19 specifics that drove us to this involve a lawsuit,
20 Rendina versus Harrisburg and Harrisburg School
21 District. And Senator Browne addressed the
22 construction industry issue, but I'm going to stop
23 going there every time here and ask you, in
24 relation to your application of law, have you
25 expanded this whole area beyond just construction

1 trades industry into other areas? We've mentioned
2 architectural services, other areas.

3 And I'm going to even play devil's
4 advocate for a minute here and throw out a scenario
5 to you and ask you to comment on it. If a
6 traveling salesperson shows up at a Starbucks in
7 Bensalem, opens up their laptop and enjoys a latte
8 and, you know, types a few e-mails, under your
9 understanding, have they created a taxable
10 situation, just by parking for a couple hours,
11 drinking coffee, and doing a little work in a
12 coffee shop?

13 MR. SCOTT: Just as a practice in
14 Bensalem, we take those on a case-by-case basis and
15 we look at it as de minimus activity. So in the
16 case of Bensalem School District and Township, we
17 look at significant activity over a period of time
18 where revenues and receipts are significantly
19 generated or impacted by that activity. So that's
20 the standard that we use as far as --

21 SUBCOMMITTEE CHAIRMAN DENLINGER: And
22 could I ask you to put a finer point on de
23 minimus. What do you define as de minimus?

24 MR. SCOTT: Well, your scenario, if you
25 just have a traveling salesman that comes in and

1 he's either checking e-mail or just had a meeting
2 in the township, we look at that as de minimus. If
3 we have that same salesman that comes in the
4 township and he just happens to use the Starbucks
5 as his base, you get free WIFI there and great
6 coffee, but he's generating hundreds of thousands
7 of receipts and it represents a significant portion
8 of the overall revenue that that particular company
9 actually generates, then we look at that as more
10 major activity, and it would be subject to
11 taxation.

12 SUBCOMMITTEE CHAIRMAN DENLINGER:
13 Mr. Solicitor, do you care to comment on that
14 interpretation?

15 MR. PIZZO: No. It's entirely
16 consistent with the way that the township has
17 interpreted the tax for years. We have
18 consistently found that -- and our mayor prides
19 himself on our community being business friendly.
20 He has done all that he can to make business thrive
21 and flourish in our community because it -- for
22 purposes, certainly, just like this Business
23 Privilege Tax and others, it creates jobs. It
24 lessens the tax burdens on our residents. It
25 creates opportunities for our community that has

1 allowed our community to thrive in the way that it
2 has.

3 We have not -- we do not seek to punish
4 the business that have chosen to locate in our
5 community. We do all that we can to help foster
6 their growth and their success. And certainly one
7 of the ways is we don't overreach and we don't
8 double tax.

9 MR. SCOTT: And just to add on, I think
10 another thing that needs to be considered when we
11 look at it, it's not just businesses that operate
12 within PA moving from jurisdiction to
13 jurisdiction. A significant impact of SB 405 as
14 well is if you have a business that's located in
15 New Jersey or in New York or in Maryland and do
16 business in PA. Under SB 405, none of that
17 activity is taxable.

18 So, you know, you risk not only flight
19 to other jurisdictions where they may not levy the
20 tax at all within PA, but you look at reconfiguring
21 and flight of businesses across PA borders, because
22 all of their activity, at least under our reading
23 of SB 405, wouldn't be taxable to any jurisdiction
24 in PA.

25 SUBCOMMITTEE CHAIRMAN DENLINGER:

1 Okay. Very good. Thank you.

2 For the next question, Rep. Chairman
3 Bill Adolph.

4 CHAIRMAN ADOLPH: Thank you.

5 Good morning, gentlemen. Amy, good
6 morning.

7 Just for the record, what is the
8 percentage of your tax for the Business Privilege
9 Tax in Bensalem?

10 MR. SCOTT: It varies according to
11 category. The highest rate is .00225, or two
12 dollars and twenty-five cents per thousand dollars
13 of gross receipts.

14 CHAIRMAN ADOLPH: That's the highest.

15 MR. SCOTT: That's the highest.

16 CHAIRMAN ADOLPH: And what is the
17 lowest?

18 MR. SCOTT: Is .0010, or .10.

19 CHAIRMAN ADOLPH: And how do you
20 determine what business pays that rate?

21 MR. SCOTT: It's based on the category
22 whether they're in wholesale, retail, service, or
23 rental. So the service and rental are the two
24 highest categories at two dollars and twenty-five
25 cents per thousand.

1 CHAIRMAN ADOLPH: And that -- the
2 various rates all come under the heading Business
3 Privilege Tax?

4 MR. SCOTT: Yes.

5 CHAIRMAN ADOLPH: Mr. Scott, you know,
6 the way you explain the exclusion, the exemption,
7 as Rep. Denlinger said the "credits" for other
8 places, that's the way it worked for many, many,
9 many, many years. And that's the way it should
10 work.

11 However, as a result of that court
12 case -- and maybe some municipalities haven't
13 caught up with the court case, okay -- as a result
14 of that court case, that double taxation can take
15 place. It may not be taking place statewide or on
16 any everyday basis, but it allows for double
17 taxation. And that's what we're faced with.
18 Okay?

19 What Senator Browne is trying to solve
20 may cause other problems, as your testimony brought
21 out. But that court case has caused a problem of
22 possible double taxation. So that's where we are.

23 But the way all three of you explained
24 the scenario, that's why we're having these
25 hearings. And appreciate you coming to Harrisburg

1 and presenting your testimony.

2 Thank you.

3 MR. SCOTT: Thank you.

4 SUBCOMMITTEE CHAIRMAN DENLINGER: Rep.
5 Petri.

6 REP. PETRI: Thank you all for
7 testifying today. It's always good to see my Bucks
8 County fellow folks here and testifying before the
9 committee, and thank you for your interest in
10 this. This bill has created some intrigue.

11 What I wanted to ask is just really
12 directly whether this would work for you if the
13 solution was that you paid in the local community
14 where you were, except where you were physically
15 outside and in another locality. Would that solve
16 your problem? If that's what the nexus was, that
17 you have to be physically within, say, Bensalem,
18 and for that time period that you're in there, if
19 it's an hourly, say -- like a lawyer, it would be
20 an hourly basis. Or if it's a contractor, it would
21 be percentage of profits, might, in fact, be the
22 whole job. Would that work for you? Or would that
23 still leave you less than where you currently are?

24 MR. SCOTT: I think to Amy's point, I
25 think that if we're going to look at it, we should

1 be looking at the whole and not pieces. But with
2 that said, that would help.

3 I think anything that brings clarity on
4 activity that happens within a locality that is
5 from a non-based business would be good. So if we
6 can define it as, if you're in there, in the
7 locality, and you're in there, as you said, you
8 have some base, it may not be a permanent base, and
9 we look at maybe taxing those situations, that
10 would help.

11 To also speak to Chairman Adolph's
12 point, we agree and we support any efforts to
13 clearly define or prevent double taxation.

14 So, you know, the other thing that I
15 would recommend or mention is if we're not going to
16 completely change it, add language that clearly
17 prevents the double taxation, rather than possibly
18 creating all of the new opportunities for there to
19 be gray areas or pockets where there are no
20 taxation.

21 REP. PETRI: Because it -- one of the
22 concerns I have about just paying simply where your
23 base of operation is, it may create competitive
24 advantages and disadvantages. Now, you know,
25 people choose the communities they want to be in

1 for a lot of reasons, one of them might be whether
2 there is a local Business Privilege Tax or not, and
3 that's a -- you know, an appropriate business
4 decision.

5 But if we tax -- if we created a
6 circumstance where the rule was at least you pay
7 primarily where you're located, it does alleviate
8 some of the paperwork. It probably does not
9 alleviate all of it. I know, as an attorney who
10 still practices, it would drive me crazy to go to
11 different communities, and isn't it shocking that
12 every county seat, practically, has a BPT? Do you
13 think they were trying to capture lawyers
14 specifically, maybe, kind of, sort of?

15 And, you know, from an accounting point
16 of view, it's not the tax. It's the time spent
17 logging it and documenting it and processing it.
18 So I think -- I think I applaud, in some ways,
19 where Senator Browne's trying to go, at least in
20 eliminating nuisance paperwork, is what most
21 businessmen would call this. Nuisance. I'm -- you
22 pay eighty bucks to Philadelphia. Well, you know,
23 it takes more time to account for the records and
24 documents on a quarterly basis than it does in
25 revenue and to process the check.

1 So we'll just to have keep working.

2 Thank you, Mr. Chairman.

3 SUBCOMMITTEE CHAIRMAN DENLINGER: Thank
4 you.

5 And we want to thank our panel for
6 testifying. We appreciate your input here in this
7 important discussion, and at least a few points
8 will be considered.

9 Rep. Conklin, with one question?

10 REP. CONKLIN: Sorry, Mr. Chairman. I
11 was deeply listening to the testimony.

12 Just about, real fast, from coming from
13 local government, would I be on the right track
14 saying that what scares you the most is the fact
15 that if you lose this form of raising revenue, it's
16 going to put not just your municipality in small
17 cities in dire need, but it's going to go across
18 the state? I mean, would that be close? With the
19 limited -- everything will fall back strictly on
20 property taxes, which we are talking about
21 eliminating, but, in reality, we could actually
22 cause huge increases in a local property tax.

23 MR. PIZZO: Yes. That would certainly
24 be our contention. As Mr. Scott was saying, we --
25 we wholeheartedly agree, as hopefully has come

1 through in this hearing. We believe that there
2 should not be double taxation of our businesses,
3 and, in fact, again, we work to avoid that, not
4 only so that they will continue to locate in our
5 community and continue, hopefully, to thrive,
6 particularly in this economy, but also so that we
7 don't end up in tons of fights over tax -- in tax
8 appeals and the like, and end up where we're in a
9 constantly contentious situation to support
10 attempts to overreach.

11 That being said, we do rely on this
12 revenue stream. And the only way that we can make
13 it up as a community at this point would be to turn
14 around and increase real property taxes. And --
15 and what seems to be, at the moment, a reaction to
16 the cases and to -- a reaction to the ability by
17 virtue of those cases to allow communities that do
18 want to overreach to double tax businesses, it
19 seems that the easier and clearer course may be to
20 adopt legislation that says you can't do that,
21 rather than rewrite the legislation so as to close
22 certain loopholes that, as Mr. Scott, I believe,
23 hopefully put a fine point on, create loopholes
24 that we see right now, and I'm sure once the actual
25 collection and administration of this new bill,

1 were it to become law and put into place,
2 potentially other loopholes and other problems and
3 unforeseen results which we believe clearly, right
4 now, on the face, that will result in greater cost
5 for us to collect and a loss in revenue that we
6 currently enjoy, without double dipping and without
7 overreaching.

8 REP. CONKLIN: Would it be fair to say
9 that in -- and I agree with the Senator trying to
10 stop and I believe you're trying to stop the double
11 taxable.

12 Would you agree that this could be even
13 larger than the Delaware loophole type of aspect?
14 That it could actually happen just by, as you
15 pointed out earlier, municipalities or businesses
16 would pick home bases that don't have taxes at the
17 same time they're operating within the
18 municipality.

19 MR. PIZZO: Certainly. And, again, as
20 Mr. Scott said -- and I'll let him put a finer
21 point on it again -- in the transient nature of
22 business in the 21st century, the home base, the
23 home-base criteria seems to be going backward
24 rather than moving forward in response to the way
25 business is conducted overall at this point in time

1 in this commonwealth.

2 MR. SCOTT: I think it would at least
3 be equal to and probably have the potential of
4 exceeding the impact of that loophole.

5 REP. CONKLIN: Thank you.

6 Thank you, Mr. Chairman. Sorry about
7 that.

8 SUBCOMMITTEE CHAIRMAN DENLINGER: Thank
9 you, Representative.

10 Thank you all, again, for your
11 testimony. We appreciate it.

12 And we'll move to our next panel, which
13 is a panel of one. Mr. Dan Schulder, Esquire, CPA,
14 testifying on behalf of the PA Institute of CPAs.

15 As he makes his way to the table, I
16 want to acknowledge the presence of some
17 representatives who have or had joined us: Rep.
18 Tom Killion, Rep. Gene DiGirolamo, Rep. Nick Kotik,
19 Rep. Steve Samuelson.

20 And we're also joined by Harrisburg
21 mayor, Linda Thompson. And, mayor, we welcome you
22 here as well.

23 Mr. Schulder, as soon as you're
24 prepared, you may begin.

25 MR. SCHULDER: Good morning, Chairman

1 Denlinger and members of the Fiscal Policy
2 Subcommittee of the House Appropriations
3 Committee.

4 Thank you for the opportunity to
5 present testimony on behalf of the nearly twenty-
6 one thousand members of PA's Institute of Certified
7 Public Accountants regarding Senate Bill 405, the
8 legislation clarifying the application of Business
9 Privilege Tax.

10 My name is Dan Schulder. And I'm a
11 partner in Cozen O'Connor, resident in the
12 Harrisburg office. I am a member of CPAs as well
13 as an attorney. I'm a member of the tax section of
14 the PICPA as well as the tax section of the Chamber
15 of Business and Industry and the tax section, tax
16 counsel of the PA Bar Association, and the former
17 chairman of the tax section of the bar
18 association.

19 I have provided detailed written
20 testimony along with several articles that were
21 drafted regarding the Rendina decision and the
22 subsequent A and L Rostover, and I'm not going to
23 read that into the record. I've given it to you.
24 It's very detailed. It goes through what we had
25 prior to 2007, and I will just go through and

1 explain that briefly and then talk about the
2 legislation and what it's proposed to do.

3 Prior to the Rendina decision, we had a
4 bright-line rule in PA. You had to have a base of
5 operations to be subject to Business Privilege Tax.

6 The ability for a municipality to tax
7 in PA is not granted by the constitution in PA.
8 It's granted by the general assembly. So we're in
9 a different plane than the state's ability to tax.

10 So prior to 2007, we had a bright-line
11 rule. And that rule has been in place for over
12 thirty years, dating back to the Gilberti versus
13 Pittsburgh case. You had to have a base of
14 operations to tax in a jurisdiction. That was the
15 base rule for the Local Tax Enabling Act of
16 legislation, and it's a very good rule.

17 And the rule being that you shouldn't
18 be able to tax just coming into a municipality and
19 having a base of operation to control your
20 operations there. And over the years we've had a
21 number of cases where municipalities have tried to
22 tax, primarily in the construction industry,
23 dealing with job site trailers and whether those
24 are considered base of operations. And we've also
25 had taxpayers trying to limit the revenues in their

1 home municipality where the base of operation were
2 for job site trailers and activity in other parts
3 of the state.

4 And, consistently, for the last thirty
5 years, the case law has held that the municipality,
6 to tax, had to have a base of operation in that
7 jurisdiction. A job site trailer, prior to
8 Rendina, was not considered a base of operation,
9 and so you had to have a physical presence. It was
10 a bright-line rule. Everyone knew what the rule
11 was. And you abided by the rule.

12 The Senate Bill 405 is not changing the
13 deck. We're putting us back to a bright-line rule
14 we had prior to December 27, 2007, when the Rendina
15 decision was issued. We're not making wholesale
16 changes here. We're just putting us back to we
17 have a bright-line rule where that was the state of
18 law prior to Rendina.

19 When the supreme court issued the
20 Rendina decision, it not only eviscerated the
21 bright-line rule, it also muddied the water
22 considerably with regard to the Business Privilege
23 Tax or a transaction tax, a mercantile tax. It
24 kind of muddied the water on everything.

25 And so all this legislation is trying

1 to put us back to where we were prior to December
2 27, 2007, so that you had to have a base of
3 operations to be subject to tax.

4 What has happened since that
5 legislation is that municipalities are going out
6 and trying to tax, now, contractors because the job
7 site trailer is considered a -- from an operational
8 standpoint, the ability to tax, and so they're
9 going after those types of businesses.

10 In addition, because there's no bright-
11 line rule we have to have a base of operations,
12 municipalities, if they're finding service
13 industries companies or any company coming into
14 their jurisdiction to perform any type of work,
15 they're trying to tax them as well.

16 And so -- and that's where we are in
17 the state of affairs today. It is a mess, getting
18 worse. And Senate Bill 405 is to put us back in
19 the position where we were prior to the Rendina
20 decision.

21 In addition to Rendina, a year and a
22 half later, the commonwealth court issued its
23 decision in A and L Rostover. In that case, the
24 taxpayer tried to take a credit for the revenues
25 generated by its job site trailers across the

1 state, and the court said: Well, no. Based on
2 Rendina, you don't have to give a credit in your
3 home jurisdiction.

4 As a result now, we have the ability
5 for a municipality -- or a taxpayer to be taxed
6 twice on the same streams of income. That's not
7 theoretical. That's happening.

8 In my testimony, I point out one
9 example. Haven't named the entity's name, but it
10 happened in the city of Reading, and where it moved
11 out of the city of Reading into a municipality that
12 had the BPT. And it went into the city of Reading
13 to do work and it was hit by Business Privilege Tax
14 on that stream of revenue, and it was -- no credit
15 was given in its home municipality. So it's
16 happened across state.

17 What I have here for you is, all these
18 dots represents all of the municipalities
19 throughout the commonwealth that have enacted a
20 BPT. You can see, wherever there's a population
21 base, essentially -- in the eastern part of the
22 state, Scranton, Wilkes-Barre, Reading, Allentown;
23 in the western part, in Allegheny County -- you
24 know, wherever there's a big population base,
25 they've enacted the BPT.

1 good. We appreciate your testimony and the clarity
2 that you brought to this issue.

3 And it is interesting to note we are
4 kept, going back to 1988, to three hundred and
5 twelve municipalities, so this is not expanding at
6 this point. It's the nexus of those that have the
7 law in place currently that is expanding.

8 We're receiving this, as a committee,
9 significant sums of dollar impact, and I'm
10 wondering if you could comment on the perception of
11 impact versus the reality. I sense there's some
12 questioning of the dollar amounts that are being
13 submitted to this panel, and what's your take on
14 that?

15 MR. SCHULDER: Well, I heard one
16 example that was hundred of thousands is dollars,
17 and when they actually did the numbers, it was five
18 thousand dollars.

19 I have yet to see detailed analysis
20 that we could all look at and analyze to see what
21 is the actual impact. My guess is that it's a lot
22 less than what people are actually saying, because
23 if they have a business in their home municipality
24 now, what this legislation does is put us back
25 prior to the Rendina case, which was a law in PA

1 testimony raised the issue of a gray area, if you
2 will, of non taxation. Businesses coming in from
3 out of state and, you know, doing a pass-through
4 where they engage in activity, utilize the services
5 of a given community, without any tax effect on
6 that, or, I guess, municipalities that have a tax
7 versus those that don't in neighboring proximity,
8 and the effects on bidding and so forth.

9 Would you care to comment on those
10 thoughts?

11 MR. SCHULDER: Well, prior to Rendina,
12 that was the nature of the beast, that you can
13 always arrange your tax affairs to reduce taxes.
14 So if a taxpayer wanted to, it could move out of
15 one municipality and into another municipality that
16 didn't have the tax. That was always the case,
17 that still is the case.

18 The question is, are they going to move
19 and why are they in the municipality. So that has
20 not changed and has never changed, has always been
21 the rule. I don't have to go into a municipality
22 that has the tax. I can arrange my affairs so I
23 can reduce tax.

24 In terms of people from out of state
25 coming in and other municipalities coming in to do

1 work in the municipality that has the tax, well,
2 number one, the -- prior to Rendina, the job site
3 trailer was not a base of operation and you
4 couldn't tax it. So prior to that time, we
5 couldn't tax those receipts. Those receipts went
6 back to your home municipality. That was what the
7 commonwealth court had said, what the supreme court
8 had said prior to Rendina and all the case law
9 subsequent to that time.

10 In terms of -- I have heard it said
11 that, you know, a contractor coming in and building
12 a big development in the municipality doesn't pay
13 tax on that revenue that they generate building
14 that development. Well, that is true. But once he
15 leaves, that development is there and there's going
16 to be years and years and years and years of
17 property tax, local tax, withholding tax, local
18 garbage, sewer, all these fees associated with a
19 large development. So, in essence, the
20 municipality is being benefited in a substantial,
21 long-term way on such a development.

22 If someone comes in, just because
23 the -- they don't get BPT. When the construction
24 is done, they're getting all those benefits year in
25 and year out into the future as long as that

1 development's there.

2 So I don't see that that's a long-
3 term -- it's a long-term benefit for the
4 municipality. It may be a short-term loss in one
5 year, but it's a long-term benefit, so I don't see
6 that as a problem.

7 You know, what's happening now is that,
8 without having a base -- a clear definition of a
9 base of operations, what you see is that if a
10 municipality finds a service company coming into
11 their municipality, they're going to try to tax
12 them. It's been done. It's being done now.

13 I speak at the tax assessors and
14 collectors conference every year, and they tell me,
15 if they find one, they're going to collect it.
16 They're going to try to get them. And, you know,
17 it's very easy to do data lining from the entities
18 in your jurisdiction and say: Who's your lawyer?
19 Who's your accountant? Who's your salesman? Where
20 are they located? Give me an address and telephone
21 number. And then send out a notice, you know. And
22 that, to me, is a problem, because that's not what
23 the Local Tax Enabling Act was set up to do.

24 SUBCOMMITTEE CHAIRMAN DENLINGER: Very
25 good. Appreciate those answers.

1 And recognizing that we are coming up
2 against the start of session at 11:00, we'll need
3 to keep moving along.

4 I want to defer to Chairman Adolph for
5 any questions.

6 CHAIRMAN ADOLPH: Thank you, Chairman
7 Denlinger.

8 And thank you, again, for your
9 testimony.

10 And, obviously, I applaud the PICPA's
11 effort to stop the double taxation. I think that
12 everybody here feels that this is not the way to
13 go. And this case has caused this as a problem.
14 But you heard from the local officials and so forth
15 and they don't want the double taxation.

16 I do -- I do feel that it is going to
17 be this subcommittee's charge to find out, when we
18 go back prior to Rendina, okay, that many
19 municipalities, defining the principle place of
20 business, you know, is the problem.

21 And I'll give you an example. If
22 you're a CPA firm located in Delaware County --
23 Haverford, Springfield, Marple -- they all have
24 Business Privilege Tax. You send a team of
25 auditors up to Bensalem to do an audit, and they

1 spend thirty days in Bensalem. Your
2 interpretation, prior to the Rendina case, should
3 Bensalem be taxing that team of auditors that spend
4 thirty days in Bensalem doing an audit?

5 MR. SCHULDER: No. Because prior to
6 Rendina, you had to have a base of operations.
7 Just because you came in to do work in the
8 municipality, without a bright-line rule, you
9 shouldn't be subject to tax. That's what the Local
10 Tax Enabling Act had said, because they said you
11 had -- a base of operations was the ability to tax.

12 CHAIRMAN ADOLPH: That is what I
13 thought your answer was going to be. Okay.

14 However -- however, I believe that
15 these local municipalities have been taxing, okay,
16 have been taxing that example. Okay? And what the
17 home municipality has been allowing -- the
18 Haverfords, the Springfields, the Marples -- in
19 Delaware County, an exemption or exclusion on the
20 rate of tax. Okay? So my point is and I think the
21 bottom line here, Dan, is that they are not
22 considering that they will now be able to tax their
23 home base businesses on a hundred percent of that
24 activity. And I think this is what this committee
25 needs to look at.

1 And when we're talking to the
2 Mr. Scotts of the world, who's very knowledgeable
3 in the Bensalem world, but we have to ask them to
4 go back and see if -- how many home town Bensalem
5 business are taking exclusions on this and compare
6 it to what the businesses coming in that you
7 believe would not be subject to this tax that
8 Bensalem is currently taxing.

9 And I think that lies the problem.
10 That lies the problem. And I think that's where we
11 need to really emphasize our meetings on. Because,
12 over the years, over the thirty years of this tax,
13 local solicitors, local code enforcement folks have
14 been taxing that example that I gave you. Whether
15 it be an attorney, an accountant, an architect,
16 they come in and they do work there. Sometimes
17 it's a day, sometimes it's a week. They grab a
18 little piece of the action. They tax that
19 business, you know, whatever it is, one and a half
20 mills, two mills, whatever it may be. But their
21 controller or their public accounting firms could
22 take an exclusion at the end of the year. Okay?

23 But when we -- when they see these
24 letters come out, they think they're going to be
25 losing that, but they're not calculating what they

1 would be gaining from their home base businesses.
2 And that's where we need to -- need to look at and
3 then compare the two.

4 Because -- because this is kind of, you
5 know, grandfathered. There's only so many
6 municipalities out there that can do this. We have
7 to take a look at it.

8 And a lot of these business, a lot of
9 these communities did this, Dan, because of the
10 fact they're surrounding by -- in Philadelphia, you
11 know, Philadelphia has the 3.35 city wage tax.
12 They couldn't -- you know, the suburban communities
13 could not enact a tax because they wouldn't benefit
14 from it on those wages because they're already
15 paying a Philadelphia city wage tax. So that's why
16 the history of this Business Privilege Tax came
17 about, because 35 -- sometimes as high -- I'm sure
18 Bensalem's got a large percentage of their work --
19 their residents that work in the city of
20 Philadelphia.

21 So it's all tied into one here, and all
22 we're trying to get to is tax fairness, just like
23 the PICPA's trying to get to avoid this double
24 taxation.

25 But I thank you, and if you have a

1 comment on my statement.

2 MR. SCHULDER: Yes. Two points. The
3 first being that because the DCED is not -- is
4 saying that there is no Philadelphia super credit
5 anymore, the local municipalities around
6 Philadelphia are going to be benefiting and
7 taxpayers are going to pay additional tax because
8 they will not be getting a full credit on their
9 home jurisdiction because of the -- the change in
10 the Philadelphia super credit issue. So they are
11 going to be picking up additional money.

12 In addition --

13 CHAIRMAN ADOLPH: I'm not too happy
14 about that, quite frankly.

15 MR. SCHULDER: I'm not either, but
16 that's an issue --

17 CHAIRMAN ADOLPH: Oh, yeah. And I
18 shared that -- I shared that with the chairman.
19 And, I mean, that's what going on. And so, I mean,
20 you know, these wage earners are paying you, know,
21 3.3 percent to the city of Philadelphia, and they
22 come back and do their local income tax and they
23 owe another 1 percent. And so I mean --

24 MR. SCHULDER: And they won't know that
25 until April of 2013.

1 CHAIRMAN ADOLPH: I hope, somehow or
2 another, we're able to change that.

3 MR. SCHULDER: And with regard to your
4 other point, you know, prior to Rendina, those
5 municipalities should really have not been taxing
6 because the law -- was law was the law, and they
7 should not have been taxing. Some may have been.

8 And that brings up a fundamental
9 problem with this tax is that the BPT is generally
10 very small. People look at it as a nuisance, and
11 they don't want to fight it because it costs too
12 much money to fight. Just pay the tax -- it's part
13 of doing business -- and go on.

14 But the problem with that is that it's
15 unfair. It is a difficulty that cuts across the
16 entire commonwealth. And there needs to be a
17 fundamental fairness.

18 What I've always advocated is that we
19 need one rule, one set of rules. Whatever the rule
20 is, you just tell me what it is and I will abide by
21 the rule, but we have to have a level playing
22 field. We can't have one municipality over here
23 doing one thing, one municipality over here doing
24 something else and causing inequity within the
25 system.

1 Let's do one playing field, one set of
2 level rules and then we all abide by them. And
3 that's what our tax -- that's what the whole point
4 of our taxing system is all about. One set of
5 rules and we abide by them.

6 SUBCOMMITTEE CHAIRMAN DENLINGER: Very
7 good.

8 We're up against our time limit. There
9 was a question from Rep. Conklin. I will allocate
10 you thirty seconds, if you would like to have it,
11 and thirty seconds for Rep. Kotik as well.

12 REP. CONKLIN: Thank you.

13 I can tell you're a very well
14 structured type of individual with an
15 understanding.

16 Just very quickly, just to use a quick
17 example. I was in the construction industry for
18 forty years. My father was -- my father -- the
19 municipality which I live has no Business Privilege
20 Tax. My father did about thirty customers a year
21 within that municipality.

22 When I -- before I sold the company, I
23 was up to about two hundred fifty customers a year,
24 but still only doing about twenty-five to thirty
25 within the municipality, within a two-hundred-mile

1 radius. Is there any -- so to make a long story
2 short, I would not be paying any Business Privilege
3 Tax in either of the cities -- in the municipality
4 where I was working or my local municipality.

5 From what I've seen, times have
6 changed. We're no longer a community. We're now,
7 you know -- do you think that there's any way that
8 individuals such as yourself could come up with a
9 way that we could not only go back to a
10 simplification but also be able to come up with a
11 way to encompass the municipalities which have
12 people who do services within -- doing jobs within
13 the municipality but are not getting any revenues
14 back for the services which they're giving?

15 MR. SCHULDER: I think that's a very
16 difficult question to answer. That would entail a
17 major shift in the Local Tax Enabling Act to do it,
18 I would think. And what was trying to get
19 accomplished with Senate Bill 405 was not major
20 overall and not major reform or change. It was
21 just to, as narrowly as possible, put us back and
22 give us a bright-line rule.

23 And if you don't like the bright-line
24 rule and you want to change the whole thing, the
25 whole system, then that, obviously, is the purview

1 of the legislature to go do that.

2 What we tried to do and what Senate
3 Bill 405 tried to do was to just, as narrowly as
4 possible, fix a problem that was caused by the
5 Rendina and A and L cases, to give us a bright-line
6 rule, a rule that we can live with and understand
7 and everyone can understand and play by that same
8 rule.

9 So if you want to completely change the
10 rules altogether, that can certainly be done, but
11 that was not what Senate Bill 405 was trying to do.

12 SUBCOMMITTEE CHAIRMAN DENLINGER: Rep.
13 Kotik.

14 REP. KOTIK: Thank you, Mr. Chairman.

15 Just a thirty-second little
16 commentary. From someone that has their roots in
17 local government, I think this whole issue points
18 out the need how much we have to look at local
19 taxation, all the different revenue streams that
20 local municipalities have to maintain their viable
21 communities.

22 Because what happens is, we have all
23 these controversies. We have the Casey referendum
24 in 1988, which threw everything into chaos. I have
25 communities that need revenue. They can't enact a

1 mercantile tax because they're precluded by the
2 Casey referendum and the initial decision that
3 followed.

4 So we need to look at all of the
5 sources of the revenue, all the taxes we
6 have. We actually need to look at local
7 taxes, how communities are able to stay in
8 service, or else we're just going to
9 continually rely on property tax. And that's
10 not a viable option for me.

11 Thank you, Mr. Chairman.

12 SUBCOMMITTEE CHAIRMAN DENLINGER: Thank
13 you.

14 And thank you, Mr. Schulder. We
15 appreciate your testimony before us.

16 And thank you for all who
17 participated.

18 We are adjourned.

19 (Whereupon, the hearing concluded
20 at 11:03 a.m.)

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REPORTER'S CERTIFICATE

I HEREBY CERTIFY that I was present upon the hearing of the above-entitled matter and there reported stenographically the proceedings had and the testimony produced; and I further certify that the foregoing is a true and correct transcript of my said stenographic notes.

BRENDA J. PARDUN, RPR
Court Reporter
Notary Public