

# SENATE APPROPRIATIONS COMMITTEE

## FISCAL NOTE

**BILL NO.** Senate Bill 405

**PRINTER'S NO.** 1534

**AMOUNT**

No Fiscal Impact

**FUND**

General Fund

**DATE INTRODUCED**

February 4, 2011

**PRIME SPONSOR**

Senator Browne

**HISTORY OF BILL**

Referred to FINANCE, Feb. 4, 2011  
Reported as amended, April 13, 2011  
First consideration, April 13, 2011  
Re-referred to APPROPRIATIONS, May 11, 2011  
Re-reported as amended, Sept. 19, 2011

**DESCRIPTION AND PURPOSE OF BILL**

Senate Bill 405 amends § 301.1 of The Local Tax Enabling Act (Act 511 of 1965) to clarify when a political subdivision may levy a business privilege tax ("BPT").

This legislation would overturn the December 2007 Pennsylvania Supreme Court decision in *V.L. Rendina, Inc. v. Harrisburg and the Harrisburg School District*, in which the court reversed its previous position that a municipality or school district cannot tax an entity that lacks a permanent base of operations within its borders.

Senate Bill 405 amends The Local Tax Enabling Act with regard to the delegation of taxing powers and restrictions thereon. Specifically, the legislation amends §301.1(f)(12) by adding language which provides that a mercantile or business privilege tax may be imposed by a local taxing jurisdiction only if the privilege of doing business is exercised through a base of operations in the local taxing jurisdiction. "Base of operations" is defined as an actual, physical and permanent place of business from which a taxpayer manages, directs and controls its business activities at that location. The term does not include a structure that is utilized in a municipality for the purpose of overseeing construction for the duration of the construction project.

Prior to the Supreme Court's decision in *Rendina*, in order for a municipality to tax an entity, the entity was required to maintain a permanent base of operations within the municipality's borders. According to the provisions of Senate Bill 405, merely engaging in transactions within the taxing jurisdiction does not constitute "the privilege of doing business." In addition, Senate Bill 405 contains language that would disallow the taxation of the same gross receipts by more than one local jurisdiction (i.e. prevents double-taxation).

# SENATE APPROPRIATIONS COMMITTEE

## FISCAL NOTE

The amendment of § 301.1(f)(12) of the Local Tax Enabling Act shall apply to taxable years beginning after December 31, 2011.

The act shall take effect immediately.

### **FISCAL IMPACT:**

Senate Bill 405 has no impact on Commonwealth funds. However, the legislation may have some effect on local revenues collected by certain municipalities and school districts that impose a mercantile or business privilege tax. According to information obtained from the Governor's Center for Local Government Services, 312 local government units impose such a tax. Act 145 of 1988 prohibits any political subdivision from imposing a business privilege tax that was not in place on or before November 30, 1988. Consequently, the number of local jurisdictions potentially affected by Senate Bill 405 cannot be more than 312.

In addition to prohibiting the imposition of new taxes, Act 145 of 1988 provides that local governments may continue to levy the tax on such subjects upon which the tax was imposed by the political subdivision as of November 30, 1988. As a result, local government units cannot alter their business privilege tax ordinance in response to the *Rendina* decision. This is important because Harrisburg and the Harrisburg School District were known to have a broad ordinance, which allowed these jurisdictions to impose the tax on a business that did not have a base of operations within the city. To the extent that other municipalities' tax ordinances were written in such a way as to require that a base of operations be located within the jurisdiction, the *Rendina* decision should have had no effect on their business privilege tax.

Presently, The Local Tax Enabling Act does not require that a taxpayer must receive a credit for gross receipts taxes paid to another locality; however, it is believed that many, if not most, localities grant such a credit in order to avoid double-taxation. As such, the *Rendina* decision may have changed where the tax is owed more than it changed the actual amount of tax owed. In this respect, Senate Bill 405 may have a fiscal impact on particular localities and taxpayers, while the overall statewide impact may be much more limited.

The Local Government Commission has indicated that it would be very difficult to determine the fiscal impact on localities. Every local jurisdiction that imposes a BPT would need to be identified. Subsequently, a legal determination would be required for each individual taxing ordinance to determine whether the ordinance, as adopted in 1988, is broad enough to impose the tax on a business that did not have a base of operations within the municipality or school district. In addition, the Local Government Commission suggests that local government units do not have the capability to determine whether the taxes collected were from businesses having a permanent base of operations within the local jurisdiction or from businesses engaging in transactions that rise to the level of being taxable in accordance with *Rendina*. Essentially, every business paying a BPT would need to be surveyed to determine what effect the *Rendina* decision had on its BPT payments.

# **SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE**

The Philadelphia business privilege tax is not controlled by The Local Tax Enabling Act, and so Senate Bill 405 will have no impact on the city.