



TESTIMONY AGAINST EXPANDING THE SALES TAX TO COVER LEGAL AND PROFESSIONAL SERVICES

Good morning, Chairman Benninghoff, Minority Chairwoman Mundy, members of the Committee, and staff. I am Matthew J. Creme, Jr., Immediate Past President of the Pennsylvania Bar Association, representing the 28,000 lawyers of the Association. Thank you for inviting us to testify today. The PBA stands in opposition to expanding the imposition of the sales and use tax to professional services, specifically legal services.

The PBA is aware of the fiscal issues facing some homeowners in Pennsylvania. We understand that there are homeowners that have problems paying their real property taxes, and are sympathetic to their difficulties. Indeed, Pennsylvania lawyers are on the front lines helping financially stressed homeowners maintain their residences. That said, the Commonwealth must not solve this issue by expanding the imposition of the sales tax to professional, including legal, services. Such an expansion policy would counter existing Commonwealth tax policy, exacerbate inequality, and create legal fairness issues.

Professional services, including legal services, are necessities. People hire an attorney because they have to, not because they want to. When people need an attorney, they *really need* an attorney. Individuals hire an attorney, for example, to probate a will, to defend against a tort action, to fight an assessment made by their township, to deal with a hostile landlord or tenant, to avoid foreclosure, or to deal with a civil rights issue. Stated plainly, the very nature of the justice system is unique and should be treated as such. Access to justice is a basic constitutional right,

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and justice is not a commodity for sale like an automobile or furniture, but rather a key basis for a functioning civil society. Effective legal representation routinely requires legal counsel. A sales tax on legal services places an undue and unjust burden on the legal system, a burden particularly felt by those of lesser means, and therefore on the equal access to justice.

The need for legal services is not dependent on income, as lower income people need legal services every bit as much as do upper income people, perhaps even more so. The Commonwealth recognizes this very need by providing limited funding in the budget for civil legal services to the indigent. Imposing an additional sales tax on legal services will make it that much more difficult for lower income people to hire an attorney when they really need to do so. For example, suppose a family suffers a job loss and is unable to pay its mortgage. Taxing legal services would mean that the family would have to pay an additional seven percent per House Bill 1776 to retain an attorney to deal with the mortgage bank, while the bank would not have to pay the seven percent tax because it is a business.

Precisely because the sales tax is highly regressive, it has not been imposed on necessities. Therefore, replacing real property taxes, which are not regressive, with sales taxes turns Pennsylvania tax policy on its head. Were House Bill 1776 to become law, every family living in a \$400,000 home would benefit, as would every family living in a \$1,000,000 home. Yet, were the bill to become law, low income people in need of legal services would effectively pay more in sales taxes. Such a situation can hardly be seen as fair or just.

Furthermore, House Bill 1776, by taxing some legal services and not others, sets up an unequal position in the court room. The plaintiff who hires an attorney on a contingency fee basis pays no sales tax, but the defendant, who is unable to secure a lawyer on a contingency fee basis, is required to pay the sales tax. In other words, the legislation discriminates between

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different parties to a suit without any *legal* rationale for such discrimination. Such discrimination raises constitutional concerns.

In fact, imposing the sales tax on professional services would burden not just the redress of fundamental rights in the courts, but also the redress of rights in front of almost every government body. Virtually *any time* a professional is needed to address *any* issue—tax, legal, engineering, etc.—with local or state government, individual Pennsylvanians would have to pay an additional sales tax to the Commonwealth to use that professional. However, the government in question can obtain the same services without paying that tax. In other words, one would have to pay the government to fight the government.

The Pennsylvania Bar Association understands that there are serious property tax issues facing some homeowners in the Commonwealth, but the proper “fix” or reform should not be to unfairly impose a tax on the access to justice.

Thank you.