COUNCIL OF THE CITY OF PHILADELPHIA

PUBLIC HEARING

COMMITTEE OF THE WHOLE

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Room 696, City Hall
Philadelphia, Pennsylvania
Wednesday, November 13, 2002
2:25 p.m.

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BILL 020115 - An Ordinance amending Chapter 19-2600 of The Philadelphia Code, entitled "Business Privilege Taxes," by eliminating the prepaid structure of the tax...

BILL 020436 - An Ordinance amending Chapter 19-2600 of The Philadelphia Code, entitled "Business Privilege Taxes," by amending the definition of "Net Income"...

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PRESENT:

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COUNCILWOMAN JANNIE BLACKWELL
COUNCILWOMAN BLONDELL REYNOLDS BROWN
COUNCILMAN DARRELL L. CLARKE
COUNCILMAN DAVID COHEN
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COUNCILMAN JAMES F. KENNEY
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I N D E X

COUNCIL PRESIDENT VERNA: Good afternoon. This is the public hearing of the Committee of the Whole. I would ask Mr. McPherson to please read the title of Bill No. 020155.

MR. MCPHERSON: Bill No. 020115, an ordinance amending Chapter 19-2600 of the Philadelphia Code, entitled "Business Privilege Taxes," by eliminating the prepaid structure of the tax, by clarifying the period to be used in computation of the tax, by requiring the payment of an estimated payment, by ensuring that gains form the termination of the business are subject to tax, by clarifying the treatment of calendar and fiscal taxpayers and by amending definitions of the tax, under certain terms and conditions.

COUNCIL PRESIDENT VERNA: Thank you.

At this time, the Chair Councilwoman Brown who would like to make opening remarks.

COUNCILWOMAN BROWN: Thank you, Madam President.

This bill originated after I had a meting with various members of the Philadelphia community whom I respect for their tax expertise. These individuals set on the City Council Select

Committee on Business Taxes in the early '90s and produced a report that outlined a number of initiatives that could be implemented to improve the business tax structure in our City. I needed first to get a feel from them if there was any unfinished incomplete business. In particular, I was seeking a way to better assist emerging and start-up businesses in our City. One item that the all recommended was a change in the New Start Provision of the Business Privilege Tax. In short, this allows businesses to estimate taxes as opposed to getting whacked with double tax in their second year of operation.

As I researched, did homework and reached out to others on this issue, I found overwhelming support for the change. City Controller, Jonathan Saidel, and his tax structure analysis report strongly advocated for these changes. And just last night, Tuesday, November 12th, the State House legislation authored by representative George Kenney passed unanimously, thus allowing Philadelphia to implement this important change. The possibility of getting this piece of legislation passed as a meaningful change in our tax code that will not produce any negative impact on the General Fund is long overdue. In other words, this is a revolutionary.

As we work with the Commission to develop a long-term plan for Philadelphia, I am pleased that we have the opportunity to take this positive step to improve the way we as a City treat new and emerging businesses.

In closing, I would like to thank City Controller Jonathan Saidel, the representatives from the Administration, the Philadelphia Chamber of Commerce, and all of our you testifiers that are forthcoming for taking the time out of your demanding schedules to help us make the case for this positive and needed change in Philadelphia's business tax structure.

Thank you very much, Madam President.

COUNCIL PRESIDENT VERNA: You're welcome. Thank you.

Our first witness is Jonathan Saidel, the City Controller. Good afternoon.

MR. SAIDEL: Good afternoon, Madam President.

Jonathan Saidel, City Controller of

Philadelphia, S-A-I-D-E-L.

I come before you today to offer testimony on two bills: Bill 020115, which would take the local action necessary to eliminate the need for businesses to double pay their business tax privilege in the second year of operations; and Bill 020436, which would change the formal use to determine the net income portion of the business privilege tax to reduce the burden on firms that export goods and services beyond the City limits. I applaud Councilwoman Reynolds-Brown, Councilman Frank DiCicco and all of City Council for focussing attention on these issues.

I support 020115. As you know, the Business Privilege Tax, the BPT, is essentially paid in advance. Unlike most taxes where taxpayers pay their liability based on last year's activities, taxpayers pay their BPT liability for the current year's activity. Because businesses pay the BPT a year in advance, that is 2001 return based on 2000 calendar year activity instead of 2000 return based 2000 calendar year, business must pay two years of BPT taxes in their second year of operation.

If you find this confusing, take heart.

Most business owners and tax preparers find this terribly confounding and routinely make mistakes when complying with this aspect of our taxation system. Even if one understands how to comply, the notion that we are double taxing fledgling businesses is far from business-friendly in a city that has lost so many jobs in recent decades.

As I recommended in my November 2001 tax structure analysis report, I advocated for City Council and the Pennsylvania General Assembly to make the necessary technical amendments to the enabling legislation for this City's Business Privilege Tax to make it retrospective tax instead of prospective tax and eliminate the need for businesses to double pay their Business Privilege Tax in the second year of operations. By eliminating the need for businesses to double pay their BPT in the second year, you will reduce the tax burden on new businesses by 50 percent for that crucial second year of operations.

The City's Revenue Department believes that this change would be budget neutral so that we are making our City much more business friendly without sacrificing City revenue. In the long-term, however, this change can benefit the City.

Under the current system, when a firm goes out of business, there is no BPT due for that year which is their last year of operations. If the firm goes out of business before the calendar year is completed, it may be even entitled to a refund on part of the advanced payment. Thus, double taxing a business in its early years and foregoing tax revenues from its final year in the City when the business is either leaving the City as a profitable entity or generating significant income from disposal of its assets as it folds, causes the City to lose revenue over the long-term. By reversing the situation and taxing businesses in their final year of operations but foregoing the second-year double payment, revenues should actually increase over the long run.

I continue to work with state legislators and am confident -- as was mentioned by Councilwoman Brown when I had asked Representative George Kenney who is a legislator for Northeast Philadelphia and is my legislator to put a bill in to Harrisburg which was passed 195 to 0 last night in Harrisburg, this enables this local Council to make the substantive changes to the double taxation and therefore not have a conflict with State enabling legislation.

I also support Bill 020436. As you know, the City currently uses multiple weighing factors to determine tax liability for the Net Income portion of the business Business Privilege Tax: Property, payroll, and double-counting of receipts. Under this multi-factor apportionment formula, a business located wholly in Philadelphia with 50 percent of its receipts in the City would pay three times the amount as a suburban competitor with 50 percent of its receipts in the City. Similarly, because our tax structure punishes firms that are located in Philadelphia but have little or no sales in Philadelphia, our City continues to lose firms which are founded in Philadelphia but move out of the City when they become profitable.

Because these businesses bring outside money into the economy and do not capitalize on local demand, they are important to the City's economic health. But, while some of these businesses find a competitive advantage in the City's work force or physical location, most could find those same advantages in locations just outside the City or in other regions.

Many industry sector representatives confess that the majority of manufacturing firms no longer have a business reason to remain in Philadelphia. Technology firm representatives report that many technology-related businesses may incubate or grow in the City, attracted by proximity to world-class universities or entrepreneurial centers, but when they become profitable, executives and investors find little reason to remain in Philadelphia. By adopting a single-factor apportionment, these firms will see their taxes dramatically reduce and will choose to remain in Philadelphia, keeping their jobs and economic impact in Philadelphia.

My office should have also distributed to Members of Council examples of what the tax burden is under our current legislation and what the tax burden would be on the two bills 020436 and 020115 if Council so chooses and the Mayor signs the changes that we're talking about today, which are significant. I think that when you look at the businesses that exist in Philadelphia today, once a company that has high professionals using computer systems becomes profitable, they have the ability and portability, which means that they can just get on our expressway and move beyond City Line Avenue.

When I began as a CPA so many years ago, companies had a high capital investment, such as Cross Brothers that was a slaughterhouse. You couldn't just pick up and move. But many of the companies that we're trying to attract and keep here are companies that can move from city to city, from city to region, from city to the suburbs. So I think that these two bills, and I applaud Councilman DiCicco and Councilwoman Blackwell and all the Members of Council that signed off, is a step in the right direction for us to begin to change the economic fabric here, keep those businesses here once they become profitable, and begin a process of bringing technology-based companies into Philadelphia that sell all over the world.

Thank you, Madam Chair.

COUNCIL PRESIDENT VERNA: You're welcome. Mr. Saidel, you mentioned a chart. I don't know that that was distributed -- oh, here it is. Thank you.

Are there any questions of Mr. Saidel?

The Chair recognizes Councilman DiCicco.

COUNCILMAN DICICCO: Thank you, Madam President.

Good afternoon, Mr. Saidel.

MR. SAIDEL: Good afternoon, Councilman.

COUNCILMAN DICICCO: In your testimony you obviously mentioned the fact that -- concerning Bill No. 020436 that it basically acts as a disincentive for businesses to either locate here or stay in the City. Do you have any knowledge of any companies that have either decided not to come in or maybe had been thinking of moving out or have moved out?

MR. SAIDEL: As you remember, Councilman, when we had those hearings on the tax analysis study that we did last year for many of the strategic alliance organizations that exist in the Chamber of Commerce, there was active testimony and we have dealt and certainly can get you a list of companies that once -- they stayed in Philadelphia until they became profitable. Once they became profitable and they had the portability of moving their employees, which in many cases are young, and took their computers and either moved to suburban counties or to South Jersey, in many cases could move to different parts of the country because most of their sales did not necessitate that they be in Philadelphia since most of their sales were world-wide and certainly in the United States and Canada and Mexico.

COUNCILMAN DICICCO: If you could supply a Chair with a copy of those companies and identify the number of jobs that also left along with those companies.

MR. SAIDEL: We certainly will.

COUNCILMAN DICICCO: The tax analysis, what the revenues, what the wage tax losses were.

MR. SAIDEL: It would be my pleasure. You know what's interesting is that when you look at the a technology-based company that has the ability to sell world-wide where the average employee makes about 15 times more than the average employee made on many of the capital intensive factories that existed if Philadelphia while you and I were growing up as young people in Philadelphia.

COUNCILMAN DICICCO: Has your office had any discussion with the Administration or the

Revenue Department since this bill was introduced back in June?

MR. SAIDEL: I believe -- Ms. Kammerdeiner is here. We always attempt to have relations with the Administration in relationship to what the cost would be and how we believe that whatever cost there is in the changing of the tax law is necessitated in the long run for us to keep businesses. There is an assumption on Bill 020436 which changes the multi-apportionment theory that the City is saying that will cost $11 million. We believe it's much less. Our revenues have gone up in the last number of months. But the reality is that that is based upon the fact assuming that no business will ever live the City of Philadelphia from now on. What we have found is over a period of years, which is common knowledge, that businesses continue to leave Philadelphia once they become profitable and do not have to be here. A five-and-ten-cent store has to be in South Philadelphia, has to be in Northeast Philadelphia, has to be in West Philadelphia. But a company that sells its technological product all over the world, once it is established, does not need the burden of our gross receipts tax nor burden multi-factor involved in our net income tax and can move across City Line Avenue, 10 minutes from here, and not be burdened with thousands of dollars of taxes. It then becomes no reason for them to stay here because their support staff can move, their company can move because it's not capital intensive, and their sales are located all over the world.

COUNCILMAN DICICCO: So the potential in reality actually is that if the $11 million was an accurate figure, we actually stand to lose even more money because more people will decide either not to come here or decide to leave going forward.

MR. SAIDEL: I think that's absolutely right.

COUNCILMAN DICICCO: So in the long-term as opposed to the short-term -- you know, we take a hit for 5, 6 or $11 million, which is significant, I understand, but if we look at this thing over time going forward, the potential is even greater.

MR. SAIDEL: That's exactly right. If you remember the argument when Governor-Elect Rendell was the Mayor of Philadelphia, there was opposition from certain segments of Philadelphia that we shouldn't reduce even a small amount of the wage tax. But the reality is that you have to become proactive as a government with a variety of issues to expand the economic base and the economic mix. If you stay stagnant, the world will pass you by. And though there may be an 11 million hit -- though the revenue streams have increased, the City's revenues have actually increased on tax and non-revenue sources -- the reality is that if we stay stagnant there won't be any of these businesses here. And in the long run, we've got to do what's right for the future of this City.

COUNCILMAN DICICCO: Well, you talk about the wage tax debate during Rendell. We had one, as you know, this year, and the same was being said at that time, that if we continue to reduce the wage tax based on the original five-year plan that there was going to be a huge hole in the budget and police and fire and libraries are going to close and all that kind of stuff. But recently I read where there's actually been an increase in collections of wage taxes.

MR. SAIDEL: Yes. Most of the categories of the normal revenues streams have increased in the last number of months, that's true.

COUNCILMAN DICICCO: In your professional opinion, do you think the fact that we have continued with the tax reduction that that has had any impact on those collections?

MR. SAIDEL: I believe it does. I believe it does. I believe from an impressionistic standpoint. I think that the fact that we are the only major City in this country that is proactively looking to restructure our taxing system and to reduce the tax burden here in Philadelphia gives people pause to think that they should stay here or give an opportunity to move here. And if we don't do that, then we're just going to sit here and wait until everybody moves to South Jersey, to the suburban counties, and many cases to Arizona and New Mexico and a variety of other places that are now becoming a metropolitan area for high tech industry.

COUNCILMAN DICICCO: I don't remember if it was article that I read. Do you happen to know what the increase in the wage tax is, what that number represents? Is that in your chart as well, what the increase in the wage tax collections have been since we continued with that wage tax reduction? Ballpark number if you know.

MR. SAIDEL: I know it's about 2.6 percent. I don't know what that is in actual dollars. I do have -- based on first quarter of 2003 collections, the Controller's Office estimates that the City will collect at least 20 million more in taxes than were budgeted. Based on first quarter in FY 2003 collection, the Controller's Office estimates the City will collect at least $20 million more in locally generated non-tax revenue. The other one was tax revenue.

And those are the two main numbers when we looked at revenues for non-collection numbers as well as collection numbers, and locally generated and non-locally generated numbers.

COUNCILMAN DICICCO: Thank you. I don't have any further questions, Madam President.

COUNCIL PRESIDENT VERNA: Thank you.

At this time since the Controller is testifying on both bills, I would ask Mr. McPherson to please read the title of Bill No. 020436.

MR. MCPHERSON: Bill No. 020436, an ordinance amending Chapter 19-2600 of the Philadelphia Code, entitled "Business Privilege

Taxes" by amending the definition of "Net Income" with respect to determining what portion of net income is properly attributable to the doing of business in Philadelphia and therefore subject to tax, and by making technical amendments, all under certain terms and conditions.

COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilman Clarke.

COUNCILMAN CLARKE: Thank you, Madam Chair.

COUNCIL PRESIDENT VERNA: Excuse me, Councilman Clarke. Just a moment please. Would you yield to Councilman Kenney for a moment, please?

COUNCILMAN CLARKE: Sure.

COUNCIL PRESIDENT VERNA: Thank you.

Councilman Kenney.

COUNCILMAN KENNEY: Thank you, Madam President. I need to leave the Chamber for a few moments. If there are any amendments or final vote on either of these two bills, I would like to be recorded as voting aye in my absence. Thank you.

COUNCIL PRESIDENT VERNA: Thank you.

Councilman Clarke.

COUNCILMAN CLARKE: Thank you, Madam

Chair.

Good afternoon, Mr. Saidel.

MR. SAIDEL: Good afternoon, Councilman.

COUNCILMAN CLARKE: Mr. Saidel, I just want to ask a few questions. One, in your statement you talked about how some businesses choose to capitalize on a local demand. I'm assuming for the labor force. And you talk about a competitive advantage being in the City, but then you turn around and say that they can find this same or similar competitive advantages in locations outside the City. Can you explain that? I don't quite understand. It sounds like you're all over the place on that. If we have a competitive advantage inside the City, then I'm assuming it is competing with somebody else. Who?

MR. SAIDEL: Well, there are two things. One, what we have found is that when you talk about technology-based companies -- not companies like Cross Brothers which existed when I was a child which had capital intensive, they slaughtered animals for a living, those aren't companies that can leave automatically from a place like Philadelphia because they can't take a billion dollars worth of equipment and move outside the City of Philadelphia. But many of the companies that we are attempting to attract and have attracted when they're in the embryonic stage, which means they're not making any money. They then stay here while they're not making any money, and then once they began to make money, they have the portability because if you have 25 employees averaging $150,000 a year that you got from Penn, they can just pack up, and anywhere from Philadelphia in 5 or 10 minutes you could be sitting across City Line Avenue and not have to pay any of these taxes.

COUNCILMAN CLARKE: So our competitive advantage is in the early years of the operation.

MR. SAIDEL: That's right. That dissipates once they become taxable because if they're not selling to anyone in Philadelphia, they don't have to stay here like a five-and-ten-cent store and many of the other companies that existed when I was growing up.

COUNCILMAN CLARKE: Some of the information that you give in your testimony talks about what your office believes as a result of -- I'm assuming you did some analysis. Is there any information that shows trends towards these particular types of companies moving out of the City? Is there some detailed information on it? I mean, it's one thing to submit information with respect to testimony, but I'd like to see, you know, what are we looking at, the number of businesses who've opted to moved out of the City, are leaning towards that way, businesses that in fact have moved into the City. And I ask that because we are talking about the potential $11 million hit on the City's General Fund.

MR. SAIDEL: I will have my office send it to you.

COUNCILMAN CLARKE: How soon do you think you can get that?

MR. SAIDEL: As soon as they get on the phone and talk to Computer Alliance and a variety of associations that have those numbers available. They had previously testified last year, but I don't think we gave you a detailed analysis of the different companies, but I'll certainly get that for you in the next couple days.

COUNCILMAN CLARKE: Can you? I'd really like to have it.

MR. SAIDEL: Sure. Absolutely.

COUNCILMAN CLARKE: You had mentioned -- actually, I wasn't going to ask this question, but y you brought it up in your testimony after questioning by Councilman DiCicco.

This issue with respect to the wage taxes, and you said what I believe to the case that we were the only municipality, large municipality, that reduced our taxes when my understanding is everyone else of comparable size has either increased taxes or eliminated their tax decrease package. Why is that? What do we know that other people don't know?

MR. SAIDEL: I think we're smarter and better than anyone else in the country.

COUNCILMAN CLARKE: I agree with that, but we like to have some substantive data to support that.

MR. SAIDEL: I can't speak for Seattle and Chicago, but we are the only major city in this country that has a surplus today. Of the major cities, we're only city that I think has continuous over a number of years been proactive at some level of restructuring our taxes and reducing taxes and trying to be proactive. And I believe that these two bills are a continuation of the leadership of past and present and the Mayor's and Council leaders and Members of Council.

COUNCILMAN CLARKE: We're only major municipality that has a surplus or had a surplus?

MR. SAIDEL: Has a surplus. We have a surplus.

COUNCILMAN CLARKE: At this point?

MR. SAIDEL: At this point, yes.

COUNCILMAN CLARKE: With respect to the timing because, as you know, our economic times in earlier years were very strong and all the municipalities had surpluses, a substantial of them, and when say that we're only municipality that has a surplus, you're speaking as of today and you anticipate that we will continue to have a surplus?

MR. SAIDEL: I anticipate that we -- I anticipate that if we do the right thing and move forward next year and are proactive in more difficult times that I think that we'll be able to continue with the surplus and create an additional mixture of our economy that may leave. As things get more difficult, city taxes then play much more of an important role in decision-making whether to stay in Philadelphia or not. And what I'm concerned about and those that will follow me is to make sure that those companies that once they become profitable, they become a world-wide corporation, will stay in Philadelphia and not use their portability to move across City Line Avenue for the advantages of being in suburban areas or South Jersey, or for that matter they can move to the Midwest where many of the companies are moving now because there are no taxes at all out there.

COUNCILMAN CLARKE: So your belief that we will continue to have such a surplus, maybe not as large, but surplus is speculative at best?

MR. SAIDEL: I believe that there is talent on the 2nd floor and talent on what was traditionally the 4th floor which is now the 6th floor, and people concerned throughout the government that will die rather than have a negative impact on the future of this City for our children.

COUNCILMAN CLARKE: So you believe that -- and you opened up this can of worms, Mr. Saidel.

MR. SAIDEL: I'm trying to be as non-political as possible here.

COUNCILMAN CLARKE: You believe that if we continue on a substantive tax reduction strategy/policy, both wage, real estate, business, we will continue to have a surplus?

MR. SAIDEL: I think that if we showed the leadership to cut where we can and to reorganize our government on a continuous basis and watch everything that we do, then we can make a future for everyone in this City. I think if we don't pass bills like these two bills today and hope to God that people will stay in Philadelphia or that someone will move into Philadelphia, then we give them no reason to have that option. Revenue knew them no reason to have that option. And I think that one of them is revenue neutral and the other one Revenue says will cast $11 million a year. I think on a $3 billion budget with revenue streams increasing that this is something that I advocate and something I hope Council will pass and the Mayor will sign.

COUNCILMAN CLARKE: Can you give me -- and you may not be in a position to respond to this -- any of the townships, counties in the surrounding areas, the metropolitan area, what they have done with respect to taxes?

MR. SAIDEL: None of these taxes are paid in the suburban areas.

COUNCILMAN CLARKE: None of these particular taxes? There are no business taxes in any of --

MR. SAIDEL: No.

COUNCILMAN CLARKE: None at all?

MR SAIDEL: No. Some of them may have a small nominal amount.

And the suburban counties are feeling the pinch because of the reality that they no longer can have a volunteer fire department. But their growth was created because they left Philadelphia. You know, when I was a child and you drove to Atlantic City or you drove into the suburban areas, it was all farm land. Willow Grove Mall, my four kids think Willow Grove Mall is part of Northeast Philadelphia, though I continually tell them it's not, that Franklin Mills is. All of those are responses to people leaving Philadelphia and, more importantly in this discussion, businesses leaving Philadelphia because they can take advantage of being in a metropolitan area but don't have to pay for all the benefits necessitated by being located near Philadelphia. I just believe we have to remain competitive as best we can.

And certainly, if something, God forbid, happens in a few years, we're adult enough to know that we have to make changes.

COUNCILMAN CLARKE: So you acknowledge that --

MR. SAIDEL: I acknowledge the world may come to an end, yes.

COUNCILMAN CLARKE: -- that the growth in the suburban counties, the surrounding counties has caused those municipalities, those townships to possibly rethink their taxing strategy because the reality is that there needs to be infrastructure improvement, there needs to be new property taxes assessments based on the fact that they have grown by leaps and bounds and realistically within the next few years there will probably be some tax increases in those surrounding counties?

MR. SAIDEL: Yes. I hope it will be. I hope there will be tax increases. I'm not running statewide, so I hope they tax themselves to death and they come back into Philly.

COUNCILMAN CLARKE: I heard you were the Deputy Governor there for a few months.

MR. SAIDEL: Hey, I'm just going back across the street.

If you look at the history of the suburban counties, many of our former Philadelphians moved there, but more importantly than that, from a business standpoint, businesses had an opportunity because of the increase of modern road structures that when you drive down City Line Avenue, all those office buildings only need to exist because they get the benefit of being located near Philadelphia rather than in Wyoming County where no one lives, but they don't pay for any of the services or the burden of the taxing structure that we have.

When you look at the product coming out of our colleges and universities, which are non-taxable, by the way, one of the ways that we can keep those young people here -- and they do make quite more money than you and I did when we first entered the labor market -- is to keep these technical companies here, the technology companies here, the medical companies here that have the ability to sell world-wide. And that resource from outside of Philadelphia, those dollars that come in are then spent in Philadelphia and I think in the long run these two bills will be beneficial to the future that you and I care about here in Philadelphia.

COUNCILMAN CLARKE: Okay. And you will get the information in terms of trends both leaving, coming, staying?

MR. SAIDEL: Absolutely.

COUNCILMAN CLARKE: Thank you.

MR. SAIDEL: My pleasure, Councilman.

COUNCILMAN CLARKE: Thank you, Madam Chair.

COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilman Mariano.

COUNCILMAN MARIANO: Thank you, Madam President. Jonathan -- I can call you Jonathan, right?

MR. SAIDEL: That's fine.

COUNCILMAN MARIANO: Mr. Saidel, Jonathan, when I used to go play soccer at Lighthouse Field -- it's amazing you brought up Cross Brothers. We used to go past there and there was a young featherweight by the name of Saidel that used to hit the sides of beef. Sylvester Stallone stole that idea for Rocky from him. Was he any relation to you? I think his name was Issy.

MR. SAIDEL: Yes, that's true.

COUNCILMAN MARIANO: He used to hit the sides of beef. True story. 1965.

MR. SAIDEL: Yes, that's my father, yes.

COUNCILMAN MARIANO: Jonathan, 020115 is revenue neutral like you just said. And the other one cost you estimate about $11 million a year?

MR. SAIDEL: No, the Revenue Department estimates $11 million.

COUNCILMAN MARIANO: You estimate it a little less or more?

MR. SAIDEL: You know what, I believe what Revenue is doing -- and certainly the Commissioner is here to speak herself. The assumption is, what would be the estimated direct loss assuming no businesses ever left Philadelphia. We all know that one of the reasons that we have to change our taxing structure is because businesses do leave Philadelphia. And if we can bring businesses in, we can keep those businesses that are here which have left over -- trended over a period of time, then certainly that 11 million is not an accurate number, but it is an assessment, and an estimated number as any other numbers.

COUNCILMAN MARIANO: So if I got these estimates right -- and again they're only estimates; may be high, may be low -- what you're basing your synopsis on is that these businesses probably don't really have to stay here; can I assume that?

MR. SAIDEL: That's correct.

COUNCILMAN MARIANO: So if they all got up and left, we wouldn't have anything to go for anyhow, but the Revenue Department is saying but if we do this, it would be 10, 11 million?

MR. SAIDEL: Their assumption is that assuming no one leaves what the cost is for the particular bill on the multi-factor, on that income.

On the gross receipts on the double payment in the second year, you know, fledgling businesses that are open up for one year and then have to pay twice the amount of City taxes as anyone else the second year when that's the time that they really need the money; and at the end of 20 years, we give them a refund. What we would rather do is just have them pay in a normal course of business and then if they owe money before they go out, they file a tax return and pay whatever the remainder is when they do go out of the business or leave the City.

COUNCILMAN MARIANO: So the money that the City wouldn't get that the Revenue Department is supposing they would get if everybody stayed and it was perfect, to the Revenue Department, that's a loss; they consider that a loss probably, right?

MR. SAIDEL: Yes.

COUNCILMAN MARIANO: So basically, the one is revenue neutral so that's real easy. I'm trying to find a way with this -- we take a gamble with it and hopefully what we lose in the first couple years will be worth it because those businesses that we suppose will leave will stay here; is that what you're saying?

MR. SAIDEL: Yes, that they will stay here because the history has shown that they leave. If you look at many of the high tech businesses that are opening up and actually in part of your district, part of Councilman DiCicco district, Councilwoman Blackwell's District in the West

Philadelphia area where there are these embryonic companies opening up that are part of Penn, as long as they're not making money and they're getting a cash infusion from someone, they might as well stay here because we give them breaks on high tech. The moment that they begin making money and all their sales are located out of the City, in many cases outside the country, there is no reason for them to stay. And why I mentioned Cross Bothers is because you can't just pick a Cross Brothers up and move it.

COUNCILMAN MARIANO: But these companies could because they don't have the equipment.

MR. SAIDEL: That's right. You can take 15 young people with computers and tell them instead of driving to 15th and Locust or 38th and Spruce, you could drive across City Line Avenue to Bala Cynwyd.

COUNCILMAN MARIANO: Thank you.

MR. SAIDEL: My pleasure.

COUNCIL PRESIDENT VERNA: Thank you.

Are there any questions of Mr. Saidel.

The Chair recognizes Councilwoman Miller.

COUNCILWOMAN MILLER: Thank you, Madam

President.

Mr. Saidel, Councilman DiCicco and Councilwoman Tasco and I were having a discussion earlier about why companies would do just what you just said, move across City Line Avenue. I'd like to know how is Montgomery County's gross receipts tax set up? What makes it different than ours?

The situation you just described would not happen in Montgomery County, I'm assuming.

MR. SAIDEL: No. First of all, it's much lower than ours and the form is like a one-page agreement. We tax on a multi-level based upon payroll, based upon property that's located in our county, based upon sales, and a variety of other ways. The formula is very complicated. And it comes out to almost 7 percent of net income. What we are trying to say in the one bill is that just look at gross sales, just look at sales. If a company has 100 percent sales outside of Philadelphia, every dollar that they bring in from a sale is a dollar that we don't have because it's not you or I going into a store in that same cycle and giving money. To tell you the truth, the suburban counties is will eventually have a taxing structure probably not similar to ours, but it's becoming very costly to run Montgomery County as when you and I were younger -- certainly when I was younger, it was all farmland. But the people that have moved there and the businesses that have moved there are there because they're located near Philadelphia but don't have the tax burden of Philadelphia residents and/or businesses that are located Philadelphia. A company outside of Philadelphia that sells 50 percent of their sales to residents of Philadelphia pays almost 20 percent of the tax burden of a company that's located in Philadelphia and sells half of its sales to residents in Philadelphia and the other half outside the City. So if you were an economist or you were their lawyer or their CPA, you have to recommend just based on the numbers, why would you be in Philadelphia if you don't have to be?

I think these bills will be an added level that they can make a decision to stay here in Philadelphia. And I think we will continue to prosper and I think build up an economic mix that can sustain us during the good times and the bad times, which is the most important thing about a city.

COUNCILWOMAN MILLER: Thank you.

MR. SAIDEL: My pleasure.

COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilwoman Tasco.

COUNCILWOMAN TASCO: Madam President. I have to leave. I have appointment in my office. I'd like to leave my vote on Bill 020115.

COUNCIL PRESIDENT VERNA: Voting in favor?

COUNCILWOMAN TASCO: Yes.

COUNCIL PRESIDENT VERNA: And the amendment? I understand there will be an amendment.

COUNCILWOMAN TASCO: Right.

COUNCIL PRESIDENT VERNA: Any other questions of Mr. Saidel?

(No response.)

COUNCIL PRESIDENT VERNA: Seeing none, I would ask Mr. McPherson to please call our next witness.

MR. MCPHERSON: Jacqui Jenkins.

COUNCIL PRESIDENT VERNA: Good afternoon. Please identify yourself for the record.

MR. JENKINS: Good afternoon. My name is Jacqui Jenkins.

COUNCIL PRESIDENT VERNA: Please proceed with your testimony.

MS. JENKINS: My name is Jacqueline Jenkins. I'm a native Philadelphian, business owner, and community activist. When asked to share my thoughts regarding the City of Philadelphia Business Privilege Tax, I felt compelled to assess the City's business environment. From my assessment, I raise the question, is there a privilege to being a business owner in a City that has been plagued by the following challenges: A 10-plus year decline in population, which means the City's consumer base is dramatic shrinking; a loss of major corporate headquarters, which means that the potential contracting relationship for Philadelphia-based corporations is dramatically declining; a compounded effect of City structural issues such as the fact that it takes 90 to 120 days to gain a minority certification status with the City. In business terms it takes approximately a quarter and a half to gain access to City contract as a minority vendor.

The City's structural issues are combatted by the deterioration of the education system that is failing to produce a talented labor force. Additionally, at the university level, the City is losing skilled professionals due to numerous issues created by the regions brain drain. Thus, business owners will be forced to retain talent outside of the region to gain access to a competitive work force. By recruiting outside of the region, business owners are forced to incur relocation and recruitment expense and provide a more competitive compensation package.

I believe that the actions of Bill No. 020115 will assist business owners in the following manner:

First, the bill enables the City to implement business taxes in a more clearer fashion. Thus, minimizing the confusion regarding business tax liabilities.

Second, this bill attempts to address the cash flow burdens of business owners by eliminating the double tax of tax liabilities in the taxpayers third year of business.

Bill No. 020115 is a move in the positive direction to provide incentive for business owners while the City is still attempting to mitigate the challenges of the local economic environment.

COUNCIL PRESIDENT VERNA: Thank you.

Are there any questions of Members of the Committee of Ms. Jenkins?

(No response.)

COUNCIL PRESIDENT VERNA: Thank you very much for testifying. We appreciate your waiting to testify, too. Thank you.

Our next witness.

MR. MCPHERSON: Sarah Clark Stuart.

COUNCIL PRESIDENT VERNA: Good afternoon.

MS. STUART: Good afternoon. Thank you for inviting me here to testify. My name is Sarah Clark Stuart. I live in Philadelphia and I've worked here since 1995 and I became self-employed in the year 2000. I'm an environmental consultant and I have one client. I don't have any sales. I simply earn a salary and I get reimbursed for my expenses. I file my own taxes. And this past April, I was floored, shocked, to find out that I had to pay a doubling of my tax when I found my Business Privilege Tax return. It was a complete surprise to me. There was little or no explanation in the forms, and there was no warning of this when I applied for a business license in the year 2000.

I'm not a tax expert. But the policy baffles me. And I felt like as a business, which I am, I was being punished or at least considered untrustworthy that my taxes had to be escrowed until I ran out of town.

So I just wanted to come here and say that I'm sure there are many ways that the Business Privilege Tax can be reformed to make it fairer for businesses. And I know it's an obvious fact that the City of Philadelphia needs employed professionals as residents. But these tax laws are a disincentive to self-employed professionals and entrepreneurs who want to live and work in Philadelphia. This is the first time since I lived here that I really felt like, why should I reside here? I can just live in the suburb, I'd be much better off than paying almost 10 percent of my salary as a tax this past year.

So this bill would be a very good start to making the Business Privilege Tax a fairer tax for emerging businesses in Philadelphia, and I heartily support the bill introduced by Councilwoman Brown and urge the City Council to pass it. Thank you.

COUNCIL PRESIDENT VERNA: Thank you very much.

Are there any questions of this witness?

(No response.)

COUNCIL PRESIDENT VERNA: Thank you so much for coming in to testify.

Our next witness.

THE CLERK: Jack Hunter.

COUNCIL PRESIDENT VERNA: Good afternoon Mr. Hunter.

MR. HUNTER: Good afternoon. My name is Jack Hunter. I live in Center City, and I'm a certified public accountant and a partner in the Philadelphia accounting firm of Howe Keller & Hunter. I'm a past president of the Greater Philadelphia Chapter, Pennsylvania Institute of CPAs, currently a member of Council, PIPCA. I serve on the Philadelphia Commissioner's Tax Advisory Committee and I'm a member of the Philadelphia Tax Bar State and Local Tax Committee. My remarks today are my own remarks, not those of committees that I represent.

I've long been concerned with the prepaid structure of this tax and have worked with the Philadelphia Department of Revenue since at least 1996 in an effort to change it. I believe that this change is needed for the effective administration of the tax.

As you know, the Business Privilege Tax is imposed on the privilege of doing business in the City. It's payable on April 15th of the tax year. The taxes calculated currently for the privilege year of 2003 at the rate of .23 percent, 2.3 mills, of gross receipts attributable to sales made and services rendered in the City plus the 6.5 percent of taxable income attributable to business conducted in the City during the calendar year of the preceding year.

This ordinance would change the base of the tax so the tax is calculated on the actual taxable gross receipts and taxable income of the tax year rather than on the preceding year. This will remove the complexities and inequities of the new start provisions. I understand that this aspect of the current law accounts for a significant amount of correspondence between the City and taxpayers and results in the delay of the receipt of tax revenue and creates ill will among new businesses, as you just heard. The change will also require inclusion in the tax base of receipts and income of the final year which currently escapes tax.

As Mr. Saidel pointed out or as you discussed, $11 million shortfall, I believe that a significant portion of that will be made up by the businesses that are taxed in their final year.

Estimated tax provisions will equalize the tax receipts by the City in the year of change. They will be based on the tax paid for the preceding year and would not be required for the first year of business.

The new provisions could become effective for the year 2002. And I would point out, as we heard earlier, that the State Legislature, the House, passed the ordinance last night authorizing this change. However, the legislation requires the City Council to pass this legislation or this ordinance prior to November 30th, so I would bring that to your mind.

As we've heard, it's believed that this

change will be revenue neutral except for, of course, of final year.

I strongly urge that the Council pass this legislation, and I look forward to seeing it passed. Thank you very much.

COUNCIL PRESIDENT VERNA: Thank you, sir.

The Chair recognizes Councilman DiCicco.

COUNCILMAN DICICCO: Madam President, on second thought, I don't have any questions for this witness. Thank you.

COUNCIL PRESIDENT VERNA: Thank you very much, Mr. Hunter.

Any other questions from Members of the Committee?

(No response.)

COUNCIL PRESIDENT VERNA: Thank you very much.

Our next witness.

MR. MCPHERSON: Margo Davidson.

COUNCIL PRESIDENT VERNA: Is Ms. Davidson here?

(No response.)

COUNCIL PRESIDENT VERNA: Our next

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witness.

MR. MCPHERSON: David Thornburgh.

COUNCIL PRESIDENT VERNA: Good afternoon.

MR. THORNBURGH: Good afternoon, Madam President. I do have copies of my testimony.

COUNCIL PRESIDENT VERNA: We will have someone circulate it.

MR. THORNBURGH: Good afternoon. My name is David Thornburgh. I'm Executive Direct of the Pennsylvania Economy League here in Philadelphia. It's my pleasure to share a few thoughts with you today about some business tax issues you have in front of you.

Let me begin with a little perspective on Philadelphia tax issues that I think is relevant to this discussion. Simply to point out that tax burdens at the regional level much more than at the national level or the international do in fact influence people's choices. When a family or business person asks a question, where should we buy our first house? Where do we want to raise the kids? Where do I want to start my business? Should I move the business? Local taxes are one piece of the decision-making process. One of the things that is striking about this region with 239 municipalities and 67 school districts in the suburban Pennsylvania side and a hundred some municipalities in South Jersey, each with its own menu and level of taxes, is that people and business have lots of choices. They have many more choices than in other parts of the country, and that's what makes tax competitiveness much more relevant to this City than to other than cities across the country where people face more uniform taxation at the regional level.

We know from previous discussions, from all the data that we've collected, that Philadelphia is one of the most highly taxed locations in this region, both for businesses and for families. I won't put you through all the math again, but that's established fact. The difference in tax burdens between the City and a typical suburb are high enough that they have affected people's decisions. How do we know? All of the research points in that direction and survey after survey of public opinion comes to the same conclusion.

When we try to figure out what to do

about it, how to level of playing field, of course, we get into lengthy and complicated issues about City revenues, City budgets and the impact of City taxes on family income and family wealth. I'm sure we'll have ample opportunity to discuss those issues in the work of the Tax Commission, and the Economy League looks forward joining that debate.

In the meantime, you have before you a number of proposals that have been made for sometime that could improve the City's competitive position without much impact on City revenues. It's those proposals that I'd comment on.

First is Bill No. 020436, a proposal to change the Business Privilege Tax apportionment formula for the net income portion of the BPT from the current multi-factor formula to a single factor of sals only. The current formula has the unintended effect of taxing firms located in the City more than firms located outside the City, even when both firms do the same amount of business within the city limits. If a Philadelphia-based firm makes 100 percent of its sales in the City, 100 percent of its revenues are subject to the BPT. If that same firm were located outside the City but continued to make 100 percent of its sales in the City, only half of its revenues would be subject to the BPT. This tax differential may provide an incentive for those companies that can serve their customers in the City from a base outside the City to locate their businesses outside the City. This incentive will be particularly high for some business services firms.

Conversely, if a Philadelphia-based firm makes most or all of its sales outside the City, say an investment firm with a national market, the current allocation formula means that at a minimum, half of its revenues will be subject to the tax, while the fir's counterpart located outside the City would face a minimal tax. For example, a Philadelphia-based firm making 5 percent of its sales would have 52.5 of its revenues subject to the BPT. If that firm located outside the City, only 2.5 percent of its revenues would be subject to the BPT. That is, the firm located in the City, adding to the City's wage and property tax base, would face a BPT 21 times higher than it would if it moved outside the City.

The proposal in front of you, of course, is to change the formula in a way that levels in a small, but potentially significant way, the playing field between companies located in the City and those not in the City. This proposal, to base the net income portion of the BPT on receipts only rather than on a combination of receipts, payroll, and property, can be viewed as an extension of the change enacted in the apportionment formula during the 1990s from equal weighting of the three factors, property, payroll, and receipts, to a double weighting of receipts in the formula. This change was made in response to a 1993 recommendation of the Select Committee on Business Taxes in order to give local Philadelphia-based companies some tax relief.

What difference will this change make to the firm's decision about where to locate? In 2001, PEL hired Ernst and Young to develop a model of the impact of state and local taxes on the return of investments in expansion of businesses. This model calculates the reduction in the rate of return on an investment due to combined state and local taxes. This is termed the "effective tax rate" imposed by the state and local tax systems. Using this model we calculated the effective total state and local business tax rate on a Philadelphia-based firm doing 10 percent of its business in Philadelphia under the current apportionment formula as 11.98 percent. This model shows moving to a suburban Philadelphia location would give this firm a lower effective tax rate. For example, in Upper Merion, 8.89 percent; in Tredyfferin, 8.89 percent; and West Conshohocken, 9.17 percent.

We then ran the model using the proposed single apportionment and found it will reduce Philadelphia's effective tax rate on this firm to 10.89 percent, significantly closer to its suburban competitors.

Businesses make investment decision everyday based on very small differences in expected returns. It's not a huge difference, but for some kinds of firms does level the playing field versus their competitors located outside the City. In addition, based on '98 BPT returns, as we've mention earlier, the City's Department of Revenue estimated the impact on City revenues of this change at just over $10 million, a relatively small price for a change that will send a strong signal regarding a city's desire to keep businesses located in the

City.

I would also comment briefly on Bill No. 020115 introduced by Councilwoman Blondel Reynolds Brown on February 28th. This bill addresses what I would think of as an oddity and a complexity in another piece of the BPT that has been identified a number of times over a number of years, that the BPT for the current year is based upon the prior year's activities causing a doubling of tax liabilities in a business' second year and allowing income and receipts in a taxpayer's last year to go untaxed. This problem and a solution were identified by the Select Committee in 1992, the City's Controller's tax structure analysis report last year, and was also discussed during Mayor Street's Tax Policy Transition Team, which I co changed. While a final change does, as we've noted, require state legislative action, it's important that the City proceed with its own piece of the change, and I urge you to support this long overdue change as well.

Let me conclude by stating again that neither of these two provisions will re-draw the tax map in any dramatic fashion for businesses or individuals in this region. I sincerely hope that the work of the upcoming Tax Commission along with the City's involvement in Governor Rendell's proposed state tax reform initiative will afford us those opportunities. In the mean time, we should pursue small changes that can remove barriers for businesses to start and grow in the City and that don't appear to have significant revenue consequences for the City budget.

Thank you. I'd be happy to answer questions.

COUNCIL PRESIDENT VERNA: Thank you very much.

Are there any questions of this witness?

COUNCILMAN CLARKE: Yes.

COUNCIL PRESIDENT VERNA: The Chair recognizes Councilman Clarke.

COUNCILMAN CLARKE: Thank you, Madam Chair.

Good afternoon.

MR. THORNBURGH: Good afternoon, Councilman.

COUNCILMAN CLARKE: I just have one quick question with respect to the Tax Commission. And I'm glad to see that you're going to play a key role in that. We look forward to your good work.

The issue with respect to when we should start referring bills to the Tax Commission, I know there have been a number of tax-related bills all across the business, real estate, wage. At what point do you anticipate or would you suggest that we start looking to the Tax Commission to actually deal with some of these issues? I mean, it seems like every other week we have a bill related to some sort of tax. And my concern is that at some point there will be nothing for the Tax Commission to review. I mean, at what point do you suggest we have a cutoff?

MR. THORNBURGH: Well, Councilman, that's obviously a decision for Council to make. I guess my observation on these two bills is that these have been discussed and analyzed and solutions offered in some cases for the better part of 10 years, and in addition, neither would seem to have a significant revenue impact --

COUNCILMAN CLARKE: But you'll agree that things have changed over the last 10 years? I mean, you reference a 1993 discussion. I mean, it's a little bit different in the national economy and similarly in the state and local economy.

MR. THORNBURGH: Right.

COUNCILMAN CLARKE: So what we talked about 10 years ago doesn't necessarily apply today.

MR. THORNBURGH: I guess my suggestion and testimony here is that the Tax Commission look at major issues that have major consequences for the city's competitive position and that we take that opportunity to maybe learn some more about some things that we don't know about yet.

My sense of these two proposals is that they have been well understood and digested over time and that in small but important ways could make a difference also don't seem to have extraordinary impact on City revenues. I guess that would be my take on these bills.

COUNCILMAN CLARKE: What about the question I asked. When you say tax issues that have broader implications, what are you talking about?

I'm just trying to get a sense from your perspective since you will play a key role. When and in what role should the Tax Commission play in this whole issue?

MR. THORNBURGH: Just maybe to revisit a

couple of issues from the spring. It's clear that the most significant and important aspect of this City's tax structure relative to other cities, relative to the rest of the state is the wage tax, reliance on the wage tax. That's one, I think, significant piece that ought to come back up. I think the recent discussions property taxes and assessments, I suspect, will get some space on that agenda. And then I think the third piece that I mentioned in our testimony is our Governor has pledged a very focussed short-term look at state tax reform issues, and I think it's got to be clear from the City of Philadelphia exactly what we would like to see come from that and, in fact, put our proposals forward to contribute to that state tax reform effort.

COUNCILMAN CLARKE: Should that come from the Tax Commission or should it come prior to the Tax Commission?

I mean, right now I understand there's actually a rush to do something --

MR. THORNBURGH: I think there are timing issues on both things that are not yet clear. I'm don't know the Governor's timetable for his tax work. And I think the timetable for the Tax Commission is still clearly being put together. Let me just say, the more the two can be aligned, I think, the better, because this suggestion was made this spring often that the only way that the City could deal tax competitiveness challenges was in the context of state-wide tax reform. So with the possibility of state-wide tax reform looming, seems to me we'd be well served to contribute to that.

COUNCILMAN CLARKE: Thank you.

Thank you, Madam Chair.

COUNCIL PRESIDENT VERNA: Thank you. The Chair recognizes Councilman Ortiz.

COUNCILMAN ORTIZ: Mr. Thornburgh, given the nature of the changing world economy that we have and the fact that we're never going to become the manufacturer center that we were in the first half of the last century and the nature of today's businesses, which are very transferable and movable, how does a City such as ours remain competitive if we want Silicon Valley type of situation or industries to develop with national headquarters here but that most of their businesses are done either national or worldwide? And how does the tax structure that we currently have impact on those revenues in a negative fashion and when do we need to begin doing in order to become competitive with the Californias and San Diegos and Boston that is enacted legislation along these lines?

MR. THORNBURGH: Well, I think those are among the most significant questions we can address in these issues. Just controllers testimony earlier, I think one principle that we need to adhere is to recognize this City's great strengths and advantages and recognize when our tax policy gets in the way of taking advantage of those very unique characteristics. And here I guess I'm really talking about this quality of this place, whether that's the quality of life in our neighborhoods or the quality of life in our downtown business environment. We've got to find ways of getting out of the way so that families and individuals and businesses can, in fact, enjoy those advantages without being unduly constrained by the tax picture.

COUNCILMAN ORTIZ: So when the Controller says that he differs with the City Revenue Department and the cost of the one bill that may cost in terms of revenue $11 million, that it might be less, what you're saying is in order to grow you've got to gamble?

MR. THORNBURGH: I wouldn't put it quite that way.

COUNCILMAN ORTIZ: In order to be competitive you've got to take the risk.

MR. THORNBURGH: The point was made earlier that many companies that used to have to be in Philadelphia because of plant and equipment or natural resources no longer have to be.

COUNCILMAN ORTIZ: But even the law firms, I mean, the law firms could just move across the --

MR. THORNBURGH: Even law firms. So we've got to understand what's important to them and we've got to focus on those that are more mobile, those that have more choices. And we've got to try to make sure that we're not making the choice for them through our tax policy.

COUNCIL PRESIDENT VERNA: Councilman Ortiz, are you finished with your questions?

COUNCILMAN ORTIZ: Yes.

COUNCIL PRESIDENT VERNA: The Chair recognizes Councilman Goode.

COUNCILMAN GOODE: Thank you, Madam President.

Good afternoon, Mr. Thornburgh.

MR. THORNBURGH: Good afternoon, Councilman.

COUNCILMAN GOODE: In your estimation, if a company is thinking about moving out of Philadelphia would the successful passage of legislation affect that decision at all?

MR. THORNBURGH: Which legislation, both bills?

COUNCILMAN GOODE: The second bill, 020436.

MR. THORNBURGH: You know, my short answer is yes, I think it would make a difference in particular circumstances. Many of these tax --

COUNCILMAN GOODE: I'm actually talking about in terms of general -- we talk a lot about the competitiveness of the City and lack of competitiveness. If a company for all the reasons that our tax structure is not competitive and for other reasons they may not want to stay in Philadelphia, they're actually considering moving, does passing this legislation actually affect that decision for them in any way?

I understand that not passing this legislation may serve as a disincentive. But passing this legislation actually serve as an incentive for them to stay in the real world?

MR. THORNBURGH: I think this would -- passing this legislation would be an advantage to those companies that are located here but selling elsewhere who find advantage because of labor force, the transportation access, the kind of companies that the Controller referred to that are not neighborhood grocery stores but in fact are selling to the rest of the world and bringing that money back here, I think that would be an advantage.

COUNCILMAN GOODE: But in the he real word, it probably doesn't keep anyone here?

MR. THORNBURGH: Well, you heard from two business people today, admittedly talking about the other bill, for whom our tax process and policy does, in fact, make a difference.

COUNCILMAN GOODE: I'm actually referring strictly to 020436.

MR. THORNBURGH: Right. I believe it would make a difference to particular firms in particular circumstances.

COUNCILMAN GOODE: But in general, any company that's thinking about moving, this piece of legislation, if passed, doesn't really impact their decision, doesn't really keep them here? This is removing disincentive, it's not actually creating an incentive to stay.

COUNCILMAN DICICCO: Point of order. Councilman, there are some other people who are going to testify I think to answer some of those questions that would be more specific as to a company or companies that are nearing end of leases that are looking at this as a possible reason for either staying or not staying. So I think they may be in better position. I understand the question to Mr. Thornburgh, but I think they may be able to answer some of those questions as well.

COUNCILMAN GOODE: I will wait for their testimony.

Thank you, Mr. Thornburgh.

COUNCIL PRESIDENT VERNA: Thank you. Are there any other questions from Members of the Committee of Mr. Thornburgh?

(No response.)

COUNCIL PRESIDENT VERNA: Thank you very much.

MR. THORNBURGH: Thank you.

COUNCIL PRESIDENT VERNA: Our next witness.

THE CLERK: Denise Earley.

COUNCIL PRESIDENT VERNA: Thank you for your patience. We appreciate your coming in to testify.

MS. EARLEY: Good afternoon, Madam Chairman and Members of the Committee of the Whole. For the record, my name is Denise Earley. I'm Director the Public Policy for the Greater Philadelphia Chamber of Commerce.

I come here today in support of Bill 020115 which would streamline the reporting requirements by eliminating the need for businesses to simultaneously file and pay their second Business Privilege Tax obligation. As you are aware, the Business Privilege Tax is currently paid in advance, making it a prospective tax. This bill would make the BPT a retrospective tax which is more business friendly and less onerous on the taxpayer.

The Chamber has always supported

legislation that moves the business agenda forward, thereby improving the economic climate of the City and the region. We believe Bill 020115 will do just that. The Revenue Commissioner has informed me that this bill is revenue neutral and will have no impact on the budget when implemented.

Again, the Chamber supports this bill and would like to see more bills that help the business community escape from the stronghold on burdensome taxes introduced. We applaud the sponsor of the bill, Councilwoman Blondel Reynolds Brown, and stand ready to work with each of you on major tax reform in the City.

I am also here to support Bill 020436. Philadelphia currently uses multiple waiting factors to determine tax liability for the net income portion of the Business Privilege Tax: Property, payroll, and double counting of receipts. Under this multi-factor apportionment formula, the business located wholey in Philadelphia with 50 percent of its receipts in the City would factor 100 percent of its property, 100 percent of its property, 100 percent of its payroll, and 100 percent of receipts. Because of the apportionment formula, the city business pays a higher tax burden than the suburban business when both businesses have an equal sales presence in Philadelphia.

Under the single factor apportionment, this system would be dramatically simplified, as all businesses would be taxed on the percentage of gross receipts generated within the City.

The apportionment factors of property and payroll would be eliminated from the formula. And since this would reduce taxes for Philadelphia business, it would encourage them to stay in the City.

The recent election produced a mandate to chang the City ay Charter by creating a tax Reform Commission. This Commission, to which the Chamber will have representation, will convene shortly to prepare a report for recommended tax reform by November 2003. This bill and others like it are small but significant steps in accomplishing major tax reform and send the right message to the business community.

Therefore, the Chamber supports Bill 020436 and thanks the sponsor of the bill, Councilman Frank DiCicco, for his leadership on this front. Thank you for this opportunity.

COUNCIL PRESIDENT VERNA: Thank you.

Are there any questions from Members of the Committee of Ms. Earley?

(No response.)

COUNCIL PRESIDENT VERNA: Thank you very much.

Our next witnesses are the Revenue Commissioner and Director of Commerce. Maybe they would both come to the table at the same time.

Good afternoon. Kindly identify yourself for the record and proceed with your testimony.

MR. CUORATO: Good afternoon, Madam President. My name is James Cuorato, I'm the City Representative and Director of Commerce for the City of Philadelphia. I appreciate the opportunity to testify. And I am testifying in support of Bill No. 020115, which will provide positive changes to the City's Business Privilege Tax. I have submitted a short statement in support of this bill which I would ask be entered into the record, and I will just briefly summarize my testimony, Madam President.

The City Controller, I thought, did a very good job of explaining the positive impacts of this bill and the Revenue Commissioner will also be, in her testimony, providing some very clear examples of how this will benefit businesses in the City.

From my perspective as Director of Commerce, I would just like to say that the current filing requirement adds to the perception that the Business Privilege Tax is burdensome and unfair to the City's small and struggling businesses. The changes proposed in this legislation would clarify and in many ways simplify the filing and payment of the City's principal business tax. By bringing this tax filing process into conformance with those of most other city, state, and federal tax filings, this bill allows us to respond positively to some of the criticisms aimed at your business tax structure.

It is important that we make every effort to streamline the City's tax structure if we want to create an environment conducive to business investment and growth. The new and start-up business that would benefit most from this proposal are the very businesses that we must encourage if the City is to prosper in the future.

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The changes to the Business Privilege Tax being proposed today will help to reinforce the message that Philadelphia is a great place to grow your business.

Bill No. 020115 allows us to make the Business Privilege Tax easier to understand and thereby more accessible and equitable to the business community, therefore, I urge passage of Bill 020155 and would like to thank Councilwoman Blondell Reynolds Brown for both inviting me to testify today and also for her introduction of this legislation which would help us a great deal. Thank you.

COUNCIL PRESIDENT VERNA: Mr. Cuorato are you giving any testimony on the other bill that's listed, Bill No. 020436?

MR. CUORATO: No, Madam President, I have not.

COUNCIL PRESIDENT VERNA: May I ask why not?

MR. CUORATO: Revenue Commissioner Kammerdeiner will be presenting the Administration's position on the other bill. I was here solely to testify on 020115.

COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilman DiCicco.

COUNCILMAN DICICCO: Thank you, Madam President.

On that same not, Mr. Cuorato, although you won't be testifying, do you have any opinion of this as the Commerce Director what impact it may be having on businesses, attracting businesses, keeping businesses going forward?

MR. CUORATO: Councilman, I think that the bill would be advantageous to us in retaining businesses in certain circumstances, and I think the City Controller outlined situations where it does present problems for us. And I can also tell you that in my visits to various businesses throughout the City, that issue has come up. So I think it would be helpful. I think the Revenue Commissioner, as I said, will give the City's position on Administration's position on the bill.

COUNCILMAN DICICCO: I think I know what that position will be. I'm asking you as the Commerce Director who has a lot of interaction with, not only existing businesses in the City of Philadelphia, but potential businesses when they look at that huge chart of what the cost of doing business in our wonderful city is all about in terms of taxes. Do you have an opinion as the Commerce Director -- and I hate to put you on a spot, Jim, but we get paid a lot of money to do this. Actually, you get paid a little more than we do. But anyway, what is your opinion?

MR. CUORATO: Councilman, any measure that reduces the tax burden on businesses helps me do my job in a better fashion. I was put in a similar position earlier this year when we had the debate over continuing the reductions in the wage tax. I, on the one hand, have to consider the fact that I am a part of this Administration and that there are budget parameters that have to be taken into consideration. On the other hand, I will tell you that any way that we can continue to reduce taxes certainly makes my job easier and is more advantageous in making us competitive.

COUNCILMAN DICICCO: Would it be fair to say as the Commerce Director whose job it is to promote commerce, promote business in this City, that when you go to a potential company who is thinking about considering moving into the City to do business when you have the tools that say Philadelphia is getting its act together, we are slowly but surely reducing our wage taxes, we are addressing the tax bill that Councilwoman Blondell Reynolds Brown and Councilman Wilson Goode introduced today by making it simplified, those are good tools to have. So any type of reduction it's safe to say in the long run should result in an increase in businesses moving into our city and retaining business that are currently here; is that a safe assumption?.

MR. CUORATO: Yes.

COUNCILMAN DICICCO: Thank you.

COUNCIL PRESIDENT VERNA: Thank you. Are there any other questions of Mr. Cuorato?

The Chair recognized Councilwoman Blackwell.

COUNCILWOMAN BLACKWELL: Thank you, Madam President. My question is for Commissioner Nancy Kammerdeiner. Am I in order now?

COUNCIL PRESIDENT VERNA: She hasn't testified yet.

COUNCILWOMAN BLACKWELL: Okay, I'll wait. Thank you.

COUNCIL PRESIDENT VERNA: Thank you.

Are there any other questions of Mr. Cuorato.

(No response.)

COUNCIL PRESIDENT VERNA: Seeing none, the Chair recognizes Commissioner Kammerdeiner.

MS. KAMMERDEINER: Good afternoon President Verna and Members of City Council. My Nancy Kammerdeiner. I'm the Revenue Commissioner City of Philadelphia. I'm please to be here today to support Bill No. 020115.

This bill will amend Chapter 19-2600 of the Philadelphia Code, and we've heard a lot already this afternoon about the provisions of the bill. So I won't go into a lot of detail. You have a copy of my written testimony, and I would ask that that be considered as part of the record. Let me just note a couple of highlights from it.

When the Business Privilege Tax was first enacted by City Council, it was considered to be a vast improvement over the General Business Tax and the Mercantile License Tax that it replaced. Although that may be hard to believe today, it was really considered to be an improvement. It wasn't long, however, until one aspect of the legislation proved to be confusing and even onerous. And we've heard both members of the business community and other observers testify about some of the problems with that.

The fact that the tax paid in advance and the requirement for filing two returns for two tax years in the second year of operation of a new business has been really at the center of this confusion. That often translates into a business filing only one return in that year when two are actually required. And the Department of Revenue, as a result, issuing a considerable number of non-filer notices and ultimately the Law Department files code enforcement complaints in court that carry a fine as much as $5,000. No one really benefits from that kind of situation: The taxpayers confused and unhappy; the Department of Revenue and Law Department both spend significant staff time and resources attempting to explain these tax requirements and pursuing non-filers who've simply not understood the requirements.

And so we look forward to implementing the provisions of the bill. We think that the changes in the Business Privilege Tax, making it a retrospect tax instead of a prospective one, will help to reduce this confusion, make the tax less onerous for all, make it clearer to file, clearer to enforce, and generally be an improvement in the way we handle this tax.

There have been many comments about this being revenue neutral. We do look at this as a tax that will be neutral in both the tax year and the fiscal year because of the use of estimated payments in terms of the filing so that we can keep this as close to a revenue neutral situation as possible. And it's with that in mind that we support the legislation.

It has been mentioned several times today that there's State enabling legislation that's required in order to implement this. And I believe there was also a mention that that legislation, as it was approved buy the House yesterday, includes a provision that this body must approve of the local implementation legislation by the end of November for us to put the new changes into effect for the tax filing in April of 2003. If your approval would come after that date, it would go into effect in the subsequent year. And so with that in mind, not only do I support the approval of Bill 020115, but I would ask that you suspend the rules in order to have the approval prior to November 30th so that we can put this in place for taxpayers as soon as possible.

That completes my testimony on that bill. Would you like to have me go on to testify on the other bill at this time?

COUNCIL PRESIDENT VERNA: Would you, please?

MS. KAMMERDEINER: With regard to Bill No. 020436, the Administration has carefully reviewed the provisions of the bill and feels that it's unable to support this proposed legislation. And let me detail some of the reasons for that.

In some other context, and has been mentioned by others today, the Tax Reform Commission has recently been approved by the voters, and we believe that this should be the forum for consideration of Bill 020436, that it should not be considered in isolation here. We support the basic goals of this legislation which we understand to be to discourage existing firms from leaving the City of Philadelphia, to make relocation into the City more attractive, to encourage new businesses to locate here and to equitably tax the activity of non-resident businesses. But we believe that this legislation should be considered in conjunction with other measures which might be proposed to meet these same ends. And we do that for a couple of reasons. And those relate to the language of the Bill itself.

In particular, I'm concerned that the bill, as drafted, doesn't really meet the objectives that I have stated and that we believe the bill is intended to meet. It does attempt to simplify the net income apportionment formula by deleting the traditional three-factor formula that includes receipts, property, and payroll as the primarily apportionment language and inserts in its place a single gross receipts factor. The definition of net income that's presently used in the Philadelphia Code and that would be deleted here is extracted directly from the State enabling legislation. Merely changing the wording in the code without corresponding change in the enabled legislation will create legal confusion since the language in the state enable legislation is the controlling language.

However, even if the State enabling language were amended, I question whether the bill, as drafted, would accomplish what was intended. In making this change, the bill introduces a new concept of cost of performance to determine where the gross receipts are to be allocated. The cost of performance concept actually weakens the effectiveness of the proposed single-factor formula. It shifts the allocation determination from where the gross receipts are generated to where the costs to generate the receipts are incurred. Under generally accepted accounting principles, cost of performance includes all the costs directly involved in generating the receipts. Wages, depreciation, property taxes, interest, materials, et cetera. These costs bring property and payroll back into the calculation but in an indirect fashion. In addition, under this concept, the jurisdiction in which the highest proportion of cost of performance is incurred gets 100 percent of the allegation of the gross receipts. Under the current three-factor formula, all factors are prorated proportionately.

In addition to replacing the primary

apportionment language, the bill would delete he language that provides for the application of an alternative apportionment method when and if the statutory formula does not satisfy the specific situation. It is this language that permits the Revenue Commissioner to promulgate other methods of apportionment by regulation and approve exceptions based upon the unique circumstances of a taxpayer. Since no allegation formula will satisfy every possible situation, there must be some way to provide an appeal process and a fair apportionment for taxpayers adversely affected by the statutory requirement. Indeed, fair apportionment is required under th US Constitution under both a due process clause and the commerce clause.

This bill would also change the location for the imposition of the tax when the property is taken out of the City. However, as with the definition of income, it would change language that is very specific the in the State enabling legislation. Under the language in the present code, any tangible property picked in the City by a firm's non-resident customer is subject to the tax. The new language would exclude from taxation any transaction when a non-resident customer takes physical possession of an item and takes it outside the City. This would diminish the revenue generated by the tax from non-resident customers of businesses in the City.

The Department of Revenue looked in the concept of a single-factor formula a year or more ago. And this is where the $11 million or $10 million that's been mentioned several times this afternoon comes in. To do this, we used the Business Privilege Tax returns for 1999 that were filed using the three-factor formula and we recalculated them using only the gross receipts factor. Although there were some individual winners and losers among the filing taxpayers, we found that on balance the BPT revenue to the City in that year would have been $11 million lower had the single-factor formula been in place. This estimate was done without the cost of performance concept and the change in location for taxation that were introduced in this bill. We expect City greater if though fact toward into the analysis.

Before I close, I'd like to come back to the statement I made earlier about the introduction of cost of performance concept the a single-factor formula and that it would not produce the result intended. And I said then that this would occur because payroll and property would still be used in the computation and that 100 percent of the gross receipts would be allocated to the jurisdiction with the largest proportion of the cost of performance.

I'd like to illustrate that with two examples that are really at the extremes, but they show what the potential impact of this bill could be.

Under the present gross receipts rules, a company with one location in the City that delivers its entire product outside the City or renders all of its services outside the City would have 50 percent of its net income subject to the Business Privilege Tax. That same company under the concept proposed in this legislation would have 100 percent of its net income subject to the BPT because of the costs of performance took place in the City. I don't think that's what was intended.

Under the present gross receipts rules, a company with one location outside the City that delivers its entire product into the City or renders all of it services inside the City would have 50 percent of its net income subject to the BPT. That same company under the concept proposed here would have 100 percent of its net income excluded from the Business Privilege Tax because all of the cost of performance took place outside the City. Again, I don't think either of those extremes are what's intended. And it's for this reason that I really question that this bill does what was intended to do and what we would all like to see happen in terms of a fairness of apportionment.

That completes my prepared testimony and I would be happy to answer any questions.

COUNCIL PRESIDENT VERNA: Thank you. Commissioner, please clarify how you're going to treat the final payment due for someone going out of business.

MS. KAMMERDEINER: This its under the change in the BPT to retrospective?

COUNCIL PRESIDENT VERNA: Yes.

MS. KAMMERDEINER: Every business would be required to file a return on April 15th of the year following the business activity. And, therefore, whether it's your first year or your last year in business, a return would be required on April 15th of the following year. And we would taxing that final year of business that way.

Today, if a business pays its business privilege tax on April 15th and goes out of business between then and the end of the calendar, not only would we not be getting another business tax return from them, but we might actually owe them a refund for that portion of the calendar year in which they no longer operated.

COUNCIL PRESIDENT VERNA: Can you tell us how you're going to treat taxpayers during the transition from the current tax methodology to the proposed changes?

MS. KAMMERDEINER: Assuming that both this local legislation and the State enabling legislation are in place in time and that on April 15, 2003 we would be operating under the new rules. We would as a result of the transition language in the State legislation be considering the return that was filed in 2002 on April 15 as an estimated return for 2002. And they would file their final return for 2002 on April 15, 2003, making any adjustments in terms of the total tax due. They would either have a credit or owe additional money based on their actual performance in 2002. They would at that time be paying an estimated amount for 2003 that would be equal to the amount that they owed for 2002.

COUNCIL PRESIDENT VERNA: Thank you.

At this time the Chair recognizes Councilman DiCicco.

COUNCILMAN DICICCO: Thank you, Madam President.

Good afternoon, Commissioner.

MS. KAMMERDEINER: Good afternoon.

COUNCILMAN DICICCO: The last portion of your testimony where you referenced the intent of the bill, you certainly didn't think that the intent of the bill as it relates to the cost of performance -- I agree with you on that one. We actually have an amendment. My legislative assistant will hand you a copy of that. We recognized that as a flaw and we were prepared to offer an amendment. The amendment basically reads in that portion under Section C where it says "receipts," we would strike receipts other than the sale of tangible personal property re in Philadelphia if, Section A, the income producing activity is performed in

Philadelphia, or B, the income producing activity is performed both in and outside of Philadelphia and a greater portion of the income producing activity is perform in Philadelphia than in any other jurisdiction based on a cost of performance.

So I am full agreement with you that that was a problem with the bill and obviously would have flawed the intent of the bill.

That being said, with that amendment, would that change your opinion on the bill or at least the concept of what we're trying to attempt here today?

MS. KAMMERDEINER: That flaw as you described it was something that was of particular concern to us because even though we understand the potential benefits down the road of a single factor formula, we felt that the cost of performance aspect that was introduced here would certainly not let us get us to that intention. And so, yes, that would mitigate the problems and issues. It would not remove the concern that we have about the initial cost, and we think this should still be weighed in comparison to other measures that might be used to both stimulate business and create a fairer tax structure and would still want to see it go to the Tax Reform Commission for consideration.

COUNCILMAN DICICCO: But you also just said that you that this is a good opportunity because you think you could support the single-factor tax legislation going forward.

MS. KAMMERDEINER: The potential is there. I think it needs som further study and comparison to other things that we might do to balance and create a fair tax structure, but there certainly strong potential here and know there have been a lot of supporters for the concept of single factor. And right now, there are opportunities for a business that feels that the three-factor formula is really not workable in their situation to appeal to the Revenue Commissioner for a alternative method. And we have a few businesses that are filing with an alternative methods that are single-factor on close to that.

COUNCILMAN DICICCO: Is it safe to say that then your department would be willing to work with my office and other members of City Council to work on this concept, at least, of the single-factor and come up with something that is more meaningful and less problematic in terms of any budget issues that we may be faced with?

MS. KAMMERDEINER: We'd be certainly happy to work with you.

COUNCILMAN DICICCO: On that same note, in your testimony, and I think it may have been in the testimony of Mr. Cuorato or someone else -- and I know there's a question asked by my colleague Councilman Clarke as it relates to Tax Reform Commission. At the earliest, we're looking at a year from date before any recommendations, if any, that will come out of that the Commission and then we still have to figure out as a legislative body what bills we think are appropriate, what bills are not appropriate and then go through that whole public hearing process. So conceivably, we're looking at anywhere from 18 months to 24 months before anything that comes out of that Tax Reform Commission -- which, by the way, I supported and encouraged people to vote for. So we're approximately two years out before any of these bills may actually become a reality.

You said that you would prefer that this bill in particular not be looked at in total isolation and let that be a part of what the Tax Reform Commission is going to be looking at. I have a problem with that, again, for the reasons I just explained that we could be talking at a minimum of 12 months, but more likely 12 to 24 months. And I don't think as legislatures, as elected officials, any of us are going to put any of our ideas and concepts on hold just to wait for the Reform Commission because we still don't know what will come out of that Commission eventually. So I personally will fully continue to look at opportunities that I think are going to be attractive and necessary tools that promote business opportunities in this City in terms of tax legislation. I don't intend to wait two years. And I'm not saying that you're asking me to, but when you mentioned this bill in isolation, I kind of get the impression that we should wait for all our bills, and that is something I'm not willing to do.

That being said, I just asked you and I thin you indicated yes that you would be willing to work with my office the other Members of City Council and staff to talk about the single factor.

MS. KAMMERDEINER: Certainly. We are

always willing to work with Members of Council.

COUNCILMAN DICICCO: My legislative assistant wants me to apologize for the lateness in producing the amendment, but we didn't get your testimony until today either so I guess we're kind of even on that.

MS. KAMMERDEINER: Quid pro quo.

COUNCILMAN DICICCO: It's a wash.

MS. KAMMERDEINER: I would just like to mention that with the rare exception of the other bill that we're looking at today which has the potential of being effective for the filing in 2003, we're really at the very closure of the window to effect the tax filings for 2003, and so we would be looking at 2004 even if we were doing this without the Tax Reform Commission. So I think we can and should look at this measure and any others in an orderly way with enough time to do something that's effective for the taxpayers.

COUNCILMAN DICICCO: And I appreciate that and accept that, but it goes to the question that my colleague Councilman Goode was asking of Mr. Thornburgh earlier. I think you will hear some testimony very shortly from individuals who will testify that there is somewhat of urgency in respect to what some companies are contemplating as we speak whether or not to renew their leases in the next few months, I believe, is what the testimony will speak to. So again, no disrespect to the fact that we're going to wait for the Tax Reform Commission report or reports on various types of tax legislation, we do have -- and you will hear that shortly -- an issue that is approaching us relatively quickly. Thank you.

MS. KAMMERDEINER: And even in the process of activities of the Tax Reform Commission, I would imagine we would learn an awful lot more about what can and might work. So I think even with a referral to that Commission, it doesn't necessarily mean that we have to wait until it concludes its activity for every single piece of legislation we look at.

COUNCILMAN DICICCO: Thank you.

No further questions at this time, Madam President.

COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilwoman Blackwell.

COUNCILWOMAN BLACKWELL: Thank you, Madam President.

Commissioner, with respect to wage tax collections, what level of collections are we now for October and what do you anticipate for November and December?

MS. KAMMERDEINER: I don't exact figures with me. And I'll be happy to share exact figures. But let me say that in general we have seen wage tax collections barely equal last year -- slight increase over last year's collections, but not of any real magnitude. And in some sectors when you look at various business sectors, we actually are seeing declines in wage tax collections year over year. And so there are some real signs of weakness there that are of concern as we look at what's happening both today and going forward. I'll be happy to provide some more detail to the Members of Council on that.

COUNCILWOMAN BLACKWELL: Thank you.

COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilman Mariano.

COUNCILMAN MARIANO: Thank you, Madam President. Madam President, unfortunately, Council business is going to take me out of the Chambers so I'm going to leave my vote yes for Bill No. 020115. Thank you.

COUNCIL PRESIDENT VERNA: Thank you. Are there any other questions of Members of the Committee for the Commissioner?

(No response.)

COUNCIL PRESIDENT VERNA: Commissioner, thank you very much.

MS. KAMMERDEINER: Thank you.

COUNCIL PRESIDENT VERNA: Our next witness.

MR. MCPHERSON: Robert Hornick.

COUNCIL PRESIDENT VERNA: Gentlemen, thank you very much for waiting. We appreciate your patience.

Thank you. Good afternoon Madam President and Members of City Council. We're here to testify on Bill No. 020436. I am Robert Hornick, CPA, Chairman of the Pennsylvania Institute of Certified Public Accountants, its Greater Philadelphia Chapter on Local Legislation and Taxes. With me today are my colleagues, on my right, Michael Toklish, CPA; and on my left, Matthew

Melinson, CPA; both of whom are members of my committee and have a large range of experience with what we'll be discussing here today: The Philadelphia Business Privilege Tax.

First, let me state that my committee can be relied upon to support legislation that is good for our clients, good for our profession, and good for our community. I want to underscore that it is the policy of the Pennsylvania Institute of Certified Public Accountants and the American Institute of Certified Public Accountants -- the national organization to which many of our members belong -- to strive for tax simplification wherever possible.

I would like to compliment City Council on the recent support that they've given to continuing City wage tax reductions and supporting business-friendly legislation in general. As Philadelphia continues with its tax restructuring accomplishments, the City will be recognized as more and more business friendly, and that is a big step forward.

With regard to the issue being discussed here today, our committee strongly supports changing the present Business Privilege Tax income apportionment formula, which is based on the location of property, payment, and sales to a single-factor formula based on sales only. In fact, we've been meeting with various public officials supporting this change for almost two years. This change would be in accordance with a nationwide trend among states and cities.

Today, I would like to ,A, restate and describe the problem; B, a suggested solution; C, and explain why the suggested solution will work and be most effect.

The problem, A, is the current tax climate in the City of Philadelphia is unattractive for companies that are considering where to locate their operations. While taxes may not be the sole factor considered in businesses' decisions regarding location, they clearly play an important role. The Business Privilege Tax is widely perceived by businesses to be among the most onerous of Philadelphia's taxes. Modifying he current Business Privilege Tax apportionment formula in a manner which we suggest would be an important step in changing the perceived and actual tax advantages of locating within Philadelphia.

Let me give you an example to help everyone understand. I know we've gone through this a couple times, bear with me, we'll go through it a little again and I'll try and be short.

Let us look at two identical businesses, one located within Philadelphia and the other located outside the City. Each business is exactly the same in the three factors, property, wages, and sales that are the three factors that are considered for the Business Privilege Tax income allocations. Under the present apportionment formula, the business located in Philadelphia will pay a greater amount of Business Privilege Tax than the identical business outside the City. And that fact is illustrated by the that attached page, Schedule 1. I trust everyone has a copy of our testimony.

COUNCIL PRESIDENT VERNA: Yes, we do.

MR. HORNICK: Thank you. The disadvantage caused by this inequity encourages Philadelphia businesses to move out of the City. It discourages businesses from locating in Philadelphia. In instances of firms with offices both inside and outside Philadelphia, it promotes a policy of keeping work associated with new business outside the Philadelphia office and actually moving work to the suburban office.

The Business Privilege Tax formula as it stands today is a relic of our City's proud and industrial past, but that formula is now ill-suited for our service-based economy of today and it is impelling businesses to exit the City as a result.

The suggested solution. The solution to this problem is to level the playing field so businesses inside and outside the City with identical business factors will pay the same amount of tax. This can be accomplished by changing the current Business Privilege Tax apportionment formula to a single-factor formula.

Again, let me refer to the illustration attached which shows how two almost identical businesses fair under the proposed single-factor formula. You will not that that single-factor formula, each business pays the same taxes you would expect if a level playing field is created for all businesses whether they are in or out of the City.

C, why the suggested solution will work and be most effective. To change to a single-factor formula provides a strong incentive for existing businesses to remain here and an incentive to businesses to locate here. Putting the single-factor formula into effect means that in-city businesses will pay less tax and out-of-city business will pay more tax relative to what they're currently paying. That raises the question of whether the City would net more or less tax as a result of these outsetting increases and decreases. According to the Philadelphia Department of Revenue as you have just heard, maybe twice, which has worked with us in the studying this issue, the net tax change is projected to be an annual net loss of about $11 million in taxes. That projected loss is the result of an about $19 million in less revenue from Philadelphia-based businesses and about $8 million from outside-Philadelphia businesses.

What has not been put into the mix is the projection of how many businesses will be kept in the City and how many new businesses will be attracted into the City. Those potential gains and losses obviously, as we discussed already, are a little more difficult to project with any certainty.

More certain, however, is that if

Philadelphia keeps and attracts businesses, those businesses not only pay the Business Privilege Tax, but they also will pay the City Wage Tax, the real estate tax, the sales tax, and the Use and Occupancy tax, and as well, they will spend money locally on the needs of the business and the employees.

The proposed single-factor formula change will also simplify the business tax. It will reduce the amount of time and effort that is expended by a business and its professionals to prepare the Business Privilege Tax return. In addition, upon ordered by the City, there would be easier documentation and verification.

Now, Philadelphia businesses regularly consider costs they incur in doing business within City limits. The way the Business Privilege Tax is currently structured, it throws equation out of kilter. Businesses run the numbers and clearly see they will have significant tax savings by relocating outside the City. That fact is made crystal clear by the example we have presented. Businesses vote with their feet. And because they can see they can save by moving, they leave the City.

Michael Toklish, here on my right, was

recently involved with such consideration for a substantial company presently located in the City. Quite a number of other large businesses in Philadelphia are currently doing the same type of study as major 30-year leases in Center City expire within the next two to five years. Often, we CPAs are consulted to identified new business locations.

Matthew Melinson, here on my left, for instance, gets calls on a regular basis inquiring about tax costs of doing business a Philadelphia. For businesses that have a choice right now, we generally cannot recommend Philadelphia as a site for a new business location. We certainly would prefer the City of Philadelphia to be a prime candidate for new business locations.

COUNCILMAN NUTTER: Point the order.

COUNCIL PRESIDENT VERNA: Councilman Nutter has a point of order.

COUNCILMAN NUTTER: I apologize for interrupting.

Thank you, Madam President. Madam President, I need to leave for other Council-related business, but I'm also aware of a quorum issue. I'd like to ask if the president would consider temporarily recessing the hearing, moving into public, I'd like to leave my vote with regard to both bills, and then reconvene back into a public hearing to finish receiving the gentleman's testimony.

COUNCIL PRESIDENT VERNA: I certainly have no objection to that.

(Public hearing adjourned.)

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COUNCIL OF THE CITY OF PHILADELPHIA

PUBLIC MEETING

COMMITTEE OF THE WHOLE

- - -

November 13, 2002

- - -

Public Meeting conducted by the Committee of the Whole, held in Room 696, City Hall, Philadelphia, Pennsylvania, on the above date, to consider action on the following:

BILLS 020115, 020346

- - -

PRESENT:

COUNCIL PRESIDENT ANNA C. VERNA
COUNCILWOMAN JANNIE BLACKWELL
COUNCILWOMAN BLONDELL REYNOLDS BROWN
COUNCILMAN DARRELL L. CLARKE
COUNCILMAN DAVID COHEN
COUNCILMAN FRANK J. DI CICCO
COUNCILMAN W. WILSON GOODE, JR.
COUNCILMAN JAMES F. KENNEY
COUNCILWOMAN JOAN L. KRAJEWSKI
COUNCILMAN RICHARD T. MARIANO
COUNCILWOMAN DONNA REED MILLER
COUNCILMAN MICHAEL A. NUTTER
COUNCILMAN ANGEL L. ORTIZ

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COUNCIL PRESIDENT VERNA: The committee go into the public meeting.

The Chair recognizes Councilman Nutter.

COUNCILMAN NUTTER: Madam President, I wish to leave my vote with regard to supporting an amendment to be made to Bill 020115. I'd also like to be recorded as voting aye on the amended bill.

COUNCIL PRESIDENT VERNA: I think we're take everyone's vote at this time. Your vote will be recorded, Councilman.

COUNCILMAN NUTTER: Madam President, I think the amendment has not been --

COUNCIL PRESIDENT VERNA: Has not be introduced as yet.

COUNCILMAN NUTTER: Right.

Councilwoman Brown, would you present your amendment, please?

COUNCILWOMAN BROWN: Surely. Thank you, Madam President. I make a motion to amend the Bill No. 020155. It has been circulated to all Members of City Council.

(Duly seconded.)

COUNCIL PRESIDENT VERNA: It has been moved and seconded that the amendment be approved.

All in favor will signify by saying aye.

(Aye.)

COUNCIL PRESIDENT VERNA: Those opposed?

(No response.)

COUNCIL PRESIDENT VERNA: The ayes have it and the motion carries.

The Chair recognizes Councilwoman Brown.

COUNCILWOMAN BROWN: Thank you, Madam President. I move that Bill No. 020115, as amended, be reported out of committee with a favorable recommendation, and a further recommendation for the suspension of the rules to allow for first reading.

(Duly seconded.)

COUNCIL PRESIDENT VERNA: It has been moved and seconded that Bill No. 020115, as amended, be reported out of committee with a favorable recommendation, also a recommendation that the Rules of Council be suspended so as to permit first reading at our next Council Session.

All in favor will indicate by saying aye.

(Aye.)

COUNCIL PRESIDENT VERNA: Those opposed?

(No response.)

COUNCIL PRESIDENT VERNA: The ayes have it, and the motion carries.

At this time, the Chair recognizes Councilman DiCicco.

COUNCILMAN DICICCO: Thank you, Madam President. At this time I'd like to offer an amendment to Bill No. 020436, and as I've discussed with my colleagues, the purpose is only to do the amendment to the bill and I will hold the bill for further discussion with the Revenue Department and any other person who would like to be involved in that process.

COUNCIL PRESIDENT VERNA: Councilman, your amendment has been circulated?

COUNCILMAN DICICCO: I believe so, yes.

(Duly seconded.)

COUNCIL PRESIDENT VERNA: It has been moved and seconded that the amendment be adopted.

All in favor will signify by saying aye.

(Aye.)

COUNCIL PRESIDENT VERNA: Those opposed?

(No response.)

COUNCIL PRESIDENT VERNA: The ayes have it and the amendment has been adopted. And the bill will be held to the call of the Chair.

This concludes the public meeting.

(Public meeting concluded.)

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11/13/02 - WHOLE - BILLS 020115, 020346

(Public hearing resumes.)

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COUNCIL PRESIDENT VERNA: We will now go back into our public hearing.

I am sorry to have interrupted you, but I know the councilman has other business to attend to.

MR. HORNICK: Thank you, Madam President. Let me get back to my thought, and you may have done away with the rest of my talk, but I'll still continue here so you will have an idea that we have given it some thought.

COUNCIL PRESIDENT VERNA: Thank you, and we appreciate that.

MR. HORNICK: As I was saying, we certainly would prefer the City of Philadelphia be a prime candidate for new business locations. If we can attract and maintain businesses because Philadelphia adopts business-friendly tax laws, of course the result will be a positive flow of tax revenue, jobs, and everything else that I call cascades from those.

Now, this is important. Until this amendment was made, it's important to understand we strongly support the change to the single-factor apportionment formula, but we could not support the bill until it was amended with its present wording. The current wording, we thought, would be a major problem by creating a tax elite allowing large multi-location business taxpayers to easily manipulate the interpretation of the present wording before the amendment and those taxpayers could avoid paying thousands and millions of dollars in BPT. It also would have allowed the City to incorrectly tax certain other taxpayers. Specifically, the item that was amended, the cost of performance language, must be removed for us to consider that. Then we would expert support this bill. So now, I see that we will be able to.

In conclusion, I wish to state that we believe in changing from the current apportionment formula to a single-factor formula based on sales and will significantly help the City retain and attract businesses. This change is a vote of confidence for the business development in Philadelphia, and it holds forth a potential of more business-friendly tax environment. We urge you to make that change.

Thank you and that is my testimony, Madam President.

COUNCIL PRESIDENT VERNA: Thank you. Thank you very much for your patience. We appreciate your testimony.

Are there any questions from Members of the Committee?

The Chair recognizes Councilman Clarke.

COUNCILMAN CLARKE: Thank you, Madam Chair. I just wanted a quick request.

Mr. Hornick, I'd just like to ask -- earlier we had had some discussions with the City Controller on getting some information as to trends. And I know by you having to deal with the money of the various companies, you have a real sense of the trends. I will ask that your organization help us put together some information that gives us an analysis on the trends of companies moving in and on out of the City based on this onerous tax. So would you be willing to help us on that?

MR. HORNICK: Sure. We certainly will.

COUNCILMAN CLARKE: Sometimes we're somewhat limited in government in terms of our ability to access certain information, so I ask you to help us with that.

MR. HORNICK: We certainly will.

COUNCILMAN CLARKE: Thank you.

MR. HORNICK: You're welcome.

COUNCIL PRESIDENT VERNA: Thank you.

Councilman DiCicco, is your light on?

COUNCILMAN DICICCO: Yes, Madam President.

Good afternoon and thank you.

MR. HORNICK: Good afternoon, Councilman.

COUNCILMAN DICICCO: You testify as to some of your clients or companies that you do business with or know of who have leases that their 30-year leases are coming out. Could you be more specific as to the number of companies? Any specifics as to the number of employees who are currently employed in those companies whose leases are coming due?

MR. HORNICK:: Well, I don't have the number of companies, but I will tell you the companies we're speaking about are significant size with hundreds and hundreds of employees.

Michael, could you address that at all

specifically?

COUNCILMAN DICICCO: Excuse me. If you don't want to mention the company's name, I can understand that. But if you can say, "Company X that employees whatever number of people," that would be helpful.

MR. TOKLISH: Sure. We do have client confidentiality restrictions. But there are probably at least 5 to 10 major firms in Center City Philadelphia, some of whom occupy entire office towers that are presently undergoing these studies as to how much, if not all, of their business enterprises they will move out to substantially reduce the City tax burden they currently have on their operations.

COUNCILMAN DICICCO: You cannot be more specific as to the number of employees? .

MR. TOKLISH: I've done a study for one that has 2000 employees in just one building. I know there are probably 5 to 10 similar other size companies.

COUNCILMAN DICICCO: And how soon is their lease expiring?

MR. TOKLISH: They're all expiring

within two to five years. B4t you couldn't move a firm that size in two years. The activity has to begun now.

COUNCILMAN DICICCO: Years in advance.

MR. TOKLISH: To find the location --

COUNCILMAN DICICCO: To find the appropriate location and make the necessary legal documents for spaces and leases and et cetera.

MR. TOKLISH: That's correct.

COUNCILMAN DICICCO: And then notifying the employees.

MR. TOKLISH: That's correct.

COUNCILMAN DICICCO: Do you have any idea as to what the average salary of the employees who work in these companies may be?

MR. TOKLISH: I don't. A large firm like that could have -- if it's a professional firm, you would have highly paid senior executives making close to a million dollars or more a piece. You could have filing clerks and everything in between. But if it's a professional firm, it's mostly professionals and I would think they're making sizable salaries.

COUNCILMAN DICICCO: I think it would be

helpful if I ca impose on you gentlemen, it would be helpful to the process going forward in our discussions with the Revenue Department and helpful to Council to look at the potential loss in terms of number of jobs, the amount of the wage tax that is related to those jobs going forward. Again, without being specific as to the name of the company. You can just say that there are four companies, five companies, whatever the amount of companies whose leases are due in the next two to five years and are reviewing their options, what the potential -- not to be overly dramatic about it, but to say these are people who are in fact in that category of potential companies who could leave City, may decide to leave the City as a result of some of the issues we're talking about today. If you can supply that to the Chair, that would be helpful.

MR. TOKLISH: We will try.

COUNCILMAN DICICCO: Thank you.

COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilman Ortiz.

COUNCILMAN ORTIZ: Madam Chair, I stepped out of the room when the vote was taken. I'd like to be shown to be voting aye on Bill 020115 and yes on the amendment to Bill two 020436.

COUNCIL PRESIDENT VERNA: Thank you. The record will so reflect your vote.

At this time the Chair recognizes Councilman Goode.

COUNCILMAN GOODE: Thank you, Madam President.

Following up on Councilman DiCicco's question, are any of the firms, not referencing them specifically, that I've talked to about moving out of the City, have any of them specifically cited that if this bill, as amended, they would absolutely stay.

MR. TOKLISH: Not of this bill has been widely circulated thought that community yet.

COUNCILMAN GOODE: So there is no one you know of if this bill is successfully passed, as amended, will stay? There's not one company --

MR. TOKLISH: Those that know --

COUNCILMAN GOODE: There's not one company you can cite that if we pass this bill will stay?

MR. TOKLISH: I can't quote the names of my clients.

COUNCILMAN GOODE: Take a guess at how many companies you think might stay just from successful passage of this bill, as amended?

MR. TOKLISH: Of the major ones, I would say that they will all certainly move some small piece out under any circumstance.

COUNCILMAN GOODE: But you don't know of any company that will actually just leave because of this particular matter?

MR. TOKLISH: Passing this bill would remove the majority of the benefit of them leaving. They would see no more benefit to going.

COUNCILMAN GOODE: I asked a pretty direct question.

MR. HORNICK: Councilman, if you recall, when I said the problem, I said taxes may not be the sole factor considered in business decisions, but regarding location, but they clearly play an important role. So we have to look at the situation where a firm considering whether to stay in Philadelphia is going to weigh a number of factors, and this is one of them, in my opinion.

COUNCILMAN GOODE: I agree. But successful passage of this bill is not going to cause any company to stay.

MR. TOKLISH: I would like to add this comment that may be helpful. The corporate clients I have done this work for when they staying or going that have done this work for, when they wanted to consider whether they're staying or going, their first question was tax.

MR. MELINSON: First ,Councilman, I'll answer your question directly.

COUNCIL PRESIDENT VERNA: Excuse me, sir, you're going to have to identify yourself for the record.

MR. MELINSON: I apologize. It's Matthew Melinson, I'm a CPA also here on behalf of the PICPA.

COUNCIL PRESIDENT VERNA: Thank you.

MR. MELINSON: Councilman, I've done a number of these studies as well. I work in the state and local tax department in one of the big four public accounting firms, and I would state that at this moment I could not cite one business that would stay at this moment. But I bet you that if we dug hard enough we could probably nail a few down over a couple years span. Again, when these studies are done, they are done basically -- my experience at least, based on the tax law as it currently is. So we'll analyze a number of factors, obviously, amongst our primary factors being considered is taxes. And Bob and Michael's point is well taken. That's obviously not on the only factor. I wouldn't say it's as clear cut always as to whether a business will completely move out of the City or absolutely relocate all of its operations here. Some of the other factors that are considered are they're going minor expansion, where do they want to expand, in their Montgomery County location in their Texas location or in their Philadelphia location.

COUNCILMAN GOODE: Let me ask a question. Since we're speaking anecdotally, let's limit the conversation to taxes. Let's say that the only reason for leaving or staying is actually taxes. Do you think that a business company you represent would actually choose to leave or stay based upon a successful pass of the legislation of based upon the fact that they think that this Council is actually going to be deliberative about comprehensive tax reform and look at the tax structure in general?

MR. MELINSON: Probably more the latter. But I believe that under the right facts and circumstances, you could come up with businesses, specifically technology type who are service oriented businesses, that could leave, not choose to expand -- however you want to describe it -- based on this bill passage.

COUNCILMAN GOODE: So this bill is probably a good bill as a tax reform measure if it's part of broader package and part of a more thought-out deliberative process?

MR. MELINSON: I would concur with that. I would also say, in my opinion, it's a good bill as a stand-alone.

COUNCILMAN GOODE: Oh, I agree it's a good bill as a stand-alone. I'm speaking really in the context of anecdotally in terms of sending messages. How important is it to send a message tat we be more deliberative about reforming our tax structure?

MR. MELINSON: I know our Governor-elect would say that it was highly important to him in terms of the wage tax reductions. And I guess that's a matter of one's opinion, but I believe serving some of my clients that it's fairly important from a perception standpoint.

COUNCILMAN GOODE: Thank you.

Thank you, Madam President.

COUNCIL PRESIDENT VERNA: Thank you.

Are there any other questions of the witnesses before us?

(No response.)

COUNCIL PRESIDENT VERNA: Thank you, gentlemen.

Is there anyone else to testify on either one of the bills before us? Do you have any other witnesses that would like to testify?

(No response.)

COUNCIL PRESIDENT VERNA: Seeing none, this will conclude our public hearing and our public meeting. I thank you all very much for your patience.

(Council adjourned at 4:30 p.m.)

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C E R T I F I C A T I O N

I HEREBY CERTIFY that the foregoing proceedings of the Council of the City of Philadelphia of November 13, 2002, were reported fully and accurately by me, and that this is a correct transcript of the same.

RE: COMMITTEE OF THE WHOLE

Lisa C. Bradley, RPR
and Notary Public