COUNCIL OF THE CITY OF PHILADELPHIA

COMMITTEE OF THE WHOLE

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Room 400, City Hall
Philadelphia, Pennsylvania
Tuesday, May 22, 2007
1:30 p.m.

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PRESENT:

COUNCIL PRESIDENT ANNA C. VERNA
COUNCILWOMAN JANNIE BLACKWELL
COUNCILMAN DARRELL L. CLARKE
COUNCILMAN FRANK DiCICCO
COUNCILMAN W. WILSON GOODE, JR.
COUNCILMAN WILLIAM GREENLEE
COUNCILMAN JACK KELLY
COUNCILMAN JAMES F. KENNEY
COUNCILWOMAN DONNA REED MILLER
COUNCILMAN BRIAN J. O'NEILL
COUNCILWOMAN BLONDELL REYNOLDS BROWN
COUNCILMAN DANIEL SAVAGE
COUNCILWOMAN MARIAN B. TASCO

BILLS 070114, 070115, 070116, 070306
RESOLUTION 070128

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COUNCIL PRESIDENT VERNA: Good afternoon. This is the public hearing of the Committee of the Whole. I would ask Mr. McPherson to please call Bill No. 070306. Read the title, please.

MR. McPHERSON: An ordinance amending Chapter 19-2600 of The Philadelphia Code, entitled "Business Privilege Taxes," by amending the definition of "Net Income" with respect to the portion of net income that is properly attributable and allocable to the doing of business in Philadelphia and therefore subject to tax, and by making technical amendments; and by making certain legislative findings with respect to manufacturing; all under certain terms and conditions.

COUNCIL PRESIDENT VERNA: Thank you.

I see the Revenue Commissioner is here. Would you please approach the witness table.

Good afternoon. Please

identify yourself for the record and proceed with your testimony.

MS. KAMMERDEINER: Good afternoon, Council President Verna and members of City Council. I am Nancy Kammerdeiner, Revenue Commissioner, and I'm here today to present testimony opposing Bill No. 070306.

This bill would amend Chapter 19-2600 of The Philadelphia Code, entitled "Business Privilege Taxes," by changing the definition of "Net Income" with respect to manufacturers doing business in Philadelphia. The amendment would establish a single factor, a sales apportionment formula for calculation of the BPT for manufacturers, while retaining the current four-factor formula, which includes payroll, property and sales double weighted, for all other taxpayers beginning with tax year 2008.

First, the state enabling legislation for the BPT specifically places the responsibility and authority for establishing "rules and regulations and methods of apportionment and allocation" with the "collector" defined as the "receiver of taxes in cities of the first class"; that is, the Department of Revenue. Revenue regulations establish the apportionment rules. These regulations are developed by Revenue, approved as to form by the Law Department and filed with the Department of Records for 30 days where they are advertised for public comment before becoming effective. City Council does not have the authority to enact such a change in legislation. The City Solicitor in a memorandum dated May 21, 2007 reaffirmed its position on this matter as originally presented in a November 13, 2002 memorandum regarding Bill No. 020436 that raised virtually identical issues.

From time to time in recent years, there have been proposals to adopt a single-factor apportionment formula for all taxpayers or for certain classes of taxpayers. The Tax Reform Commission had included this as one of their recommendations. At that time, the Department of Revenue estimated the cost of changing the apportionment formula to a single factor at approximately $13.1 million a year, or about 5.6 million of that coming from the manufacturing sector. Data from returns for tax year 2002 had been used to develop those estimates. I note that the Administration proposed the adoption of single-factor apportionment for all BPT payers in the FY05 budget. However, this, along with some other proposals from the Tax Reform Commission, was not adopted by City Council.

Last week, Revenue updated the cost estimates using data from the tax year 2005 returns. If the single sales factor had been in place for the calculation of the BPT that year, the City would have received approximately $33 million less in BPT revenue. If only the manufacturing sector had been affected by such a change, the loss in revenue would have been $17.4 million. A substantial portion of this change in revenue would have come from just a few businesses, but it would be difficult, if not impossible, to exclude them from the definition of a manufacturer while still maintaining uniformity for a defined class of businesses, as is required under the Pennsylvania Constitution.

The Urban Industry Initiative has been working with manufacturers to identify measures that would assist manufacturers to stay and to grow in Philadelphia. The single-factor apportionment is one of the measures that the manufacturers group has discussed with the Department of Revenue. We have talked with them about finding ways to offset this loss of revenue. As has been stated here many times in recent months, the FY08 budget and the FY08 to FY12 Five-Year Financial Plan are strained at best. A change in the BPT that would result in a reduction of $17 million per year in tax revenue would totally unbalance the plan by creating a gap of $68 to $85 million. For this reason, we must oppose Bill No. 070306.

Let me just clarify something. I give that range because there is some uncertainty about when the actual impact would hit. The change would take effect for tax year 2008. The returns for that tax year aren't due until April 15th of 2009, which, of course, is in Fiscal '09, but the estimated payment for tax year '08 is due with the return that's filed in April of 2008 and, as a result, the City could start to see some of that reduction in revenue as early as Fiscal '08 even though the actual due date is in '09.

This concludes my testimony and I'll be happy to answer any questions.

COUNCIL PRESIDENT VERNA: Thank you.

Are there any questions from the Committee of the Revenue Commissioner?

The Chair recognizes Councilman DiCicco.

COUNCILMAN DiCICCO: Thank you, Madam President, and good afternoon, Commissioner.

MS. KAMMERDEINER: Good afternoon.

COUNCILMAN DiCICCO: I have several questions regarding your testimony.

Two years ago, the Mayor himself proposed single-factor apportionment and at the time, I believe, the former was for all businesses, but that proposal was never initiated. Could you tell me why?

MS. KAMMERDEINER: When that was presented in Fiscal '05 as part of the budget proposal, there was paired with it an increase in the parking tax that would cover at least a portion of that gap, and during the course of the budget hearings and the development of the actual final budget and Five-Year Plan, the mix of things that were to be implemented for that year changed and the single-factor formula was no longer part of that mix of items that would have had a cost impact on the City.

COUNCILMAN DiCICCO: It's my understanding that you provided the Urban Industry Initiative with some data on the cost of the single factor solely targeted at manufacturers; is that correct?

MS. KAMMERDEINER: That's correct, and it was the information that I referenced here in my testimony that we had developed for the Tax Reform Commission, which was about $13.1 million a year for all businesses and 5.6 million from the manufacturing sector. That was based on 2002 tax return data.

COUNCILMAN DiCICCO: 2002?

MS. KAMMERDEINER: Correct.

COUNCILMAN DiCICCO: And what

was the cost again?

MS. KAMMERDEINER: For all businesses it was 13.1 million and for manufacturing sector, 5.6 million. And that was our estimate based on information that we had in the system at the time we ran that report.

COUNCILMAN DiCICCO: And it's my understanding, now that this has been proposed, that you ran a new set of numbers?

MS. KAMMERDEINER: We used 2005 tax year data to see what had happened in the intervening time period.

COUNCILMAN DiCICCO: And between the original set and the new set, did we see any huge increase in manufacturing?

MS. KAMMERDEINER: As I indicated in my testimony, it went up by a dramatic amount for all -- from the 13 million to 33 million, and for manufacturers from 5.6 to 17.4.

COUNCILMAN DiCICCO: And I

apologize. I was following your testimony and then I got side-tracked with a conversation with my colleague, Councilman Clarke, so I apologize if I'm going over stuff that you already testified to.

So that is the difference in the amount of the receipts?

MS. KAMMERDEINER: It's basically -- what we did with both of these reviews of the numbers, we identified all of the businesses that we had returns in that particular tax year from the manufacturing sector and we looked at what their net income -- the tax they paid on the net income portion of the BPT. We then recalculated what they would have paid had there only been one factor, the sales factor, and identified what the tax would be that they would pay if their tax was calculated only on the sales factor, and then compared the two numbers for each and every business that had filed with that identification in terms of their industry code.

COUNCILMAN DiCICCO: Look, it's difficult for me and I'm not going to ask my colleagues to support this bill because of the impact on the budget. I mean, it certainly would not be the appropriate thing to do, and I will not put my colleagues in that position. I just find it really curious that only a few months after the original cost that we went from the $5 million to an estimate of over $17 million.

MS. KAMMERDEINER: It's three years difference in terms of the return data that were looked at. One thing I would say, any time you do something like this to change the formula, there are what you might characterize as winners and losers, businesses that would have a tax advantage, businesses that would end up paying more. And it so happens with single-factor formula you benefit a business that has a large payroll and large property factor in Philadelphia but very few sales that are actually within Philadelphia, and it appears from what we looked at here that we had some businesses that fell into that category that show a very big swing in terms of what tax they would be required to pay if we changed the formula to a single sales factor.

COUNCILMAN DiCICCO: Okay. No further questions.

No further questions, Madam President.

COUNCIL PRESIDENT VERNA: Thank you.

Are there any other questions of this witness?

(No response.)

COUNCIL PRESIDENT VERNA: Thank you very much.

MS. KAMMERDEINER: Thank you.

COUNCIL PRESIDENT VERNA: I would ask Mr. McPherson to read into the record a letter that we received from the

Greater Chamber of Commerce.

MR. McPHERSON: "Dear President Verna and members of the Committee of the Whole, on behalf of the Greater Philadelphia Chamber of Commerce, I am writing in support of the subject bill and would like to applaud the sponsors of Bill No. 070306, Councilmembers Verna and DiCicco.

"As you know, the GPCC has long been a proponent of business privilege tax reform and this bill would definitely be a step in the right direction for manufacturers in the City. As the bill clearly states, manufacturers, once the backbone of employment in the City, are taxed at a proportionately higher level than other industries in the City. The manufacturing industry provides well-paying jobs which helps to stabilize our neighborhoods. The GPCC has a number of member manufacturers and we are happy to support this tax incentive bill on their behalf."

5/22/07 - WHOLE - BILL 070114, ETC.

COUNCIL PRESIDENT VERNA: Thank you.

Is there anyone else to testify on this bill? Please approach the witness table, kindly identify yourself for the record and proceed with your testimony.

MR. JURASH: Good afternoon, Madam Chairman and members of the Committee of the Whole. My name is Stephen Jurash. I'm the President and CEO of the Urban Industry Initiative, an economic development agency responsible for the manufacturing sector in the City. I'm here today to testify in response to Ordinance No. 070306, an ordinance amending Chapter 19-2600 of The Philadelphia Code, entitled "Business Privilege Taxes."

I would like to begin my testimony by explaining why, in my opinion, the manufacturing sector should be singled out for an adjustment to the way it is taxed. Manufacturing has a number of unique burdens placed upon it which I would like the members of this Committee to understand. These are, one, manufacturing cannot raise its prices in response to increased costs, as other types of businesses can, due to the intensity of global competition. Companies have continually seen their margins shrink in response to competition. Many have simply had to close their doors and lay off their workforce.

The cost of doing business in the United States, in the Commonwealth and in the City due to externally imposed costs, such as taxes, legal, regulatory, energy and healthcare, keep rising. A recent study shows that these costs add about 22 percent to the cost of doing business here, almost equal to the total cost of production in China.

Some foreign competitors are engaging in unfair trade practices, such as currency manipulation, dumping and counterfeiting. In spite of these things, manufacturing continues to have a tremendous effect on economic growth. Every dollar worth of goods produced generates an additional dollar 50 in other economic activities, more than any other sector of our economy. In 2006, manufacturing was the fourth largest contributor to the City revenue, ahead of education, with a contribution through City wage tax alone of $115 million.

Additionally, I'd like to clarify that the concept of calculating tax differently for different economic sectors is not without precedent. What this ordinance proposes is the use of single-factor apportionment as the formula used in calculating business privilege tax. This approach is often referred to as the Massachusetts Formula. The Massachusetts Legislature has phased in single-factor sales apportionment formula for defense contractors and manufacturers but not for wholesalers, retailers or service corporations. The rationale for Massachusetts' policy decision was fairly simple, to lower the Massachusetts tax burden on corporations investing in property and personnel in Massachusetts, while increasing the burden of out-of-state taxpayers who gain economic advantages in the state without making an investment in property or personnel in the state.

In the City of Philadelphia, when we talk about apportionment, we are referring to how the business privilege tax, BPT, is calculated and the benefit it gives our resident manufacturers. I will leave a description of how single-factor apportionment will be applied to those better technically qualified to do so, but I can tell you that by amending the way business privilege tax is calculated to single-factor apportionment, we are simply eliminating the other factors used in apportioning net income, property and payroll, which have their own tax anyway through wage and real estate taxes. Gone is the outmoded double-weighting method. Under the single-factor apportionment method, the BPT calculation for Philadelphia companies is simpler. By simplifying the formula and removing the impact of a taxpayer's property and payroll from the apportionment factor calculation, we level the playing field.

In one example under our current double-weighted method, a hypothetical company with significant investment in the City pay tax on $32 of net sales, while an out-of-City company with no investment here pays tax on only $12 of the same net sales. This is hardly fair, that a company so invested in this city pays more in tax than a company from outside the City limits with no investments here.

The proposed simplified formula has each company paying the same, more in the out-of-City company and less for the inner City company when compared with the current method used.

Although we believe it's unlikely that new companies will select Philadelphia as their home simply because it has a single-factor formula, it is reasonable to expect our existing companies, manufacturing in particular, to be more willing to invest in both people and equipment as a result.

In my opinion, this change responds to a consideration that has become an important issue in Philadelphia, where tax incentives have often seemed to focus on job creation rather than job retention. It does not give tax benefits to those who promise to put their assets and employment in the City but rather to those who actually do so.

Lastly, I would like to point out to this committee that when this change to single factor was first considered by a manufacturing work group on tax facilitated by the Urban Industry Initiative, we also proposed an offset. The Revenue Department believes there are millions of dollars in uncollected BPT owed by companies selling here who have not registered with the City. We have proposed that this unfair condition be remedied by requiring all companies to provide a list of who they purchase goods from as a part of their annual submissions. This will enable Revenue to simply cross-reference these lists with known registries. It is our hope that by closing this gap, we may offset the cost to the City of a change to single-factor apportionment.

Thank you for your time and consideration.

COUNCIL PRESIDENT VERNA: Thank you very much, sir.

Are there any questions or comments of this witness?

(No response.)

COUNCIL PRESIDENT VERNA: Thank

you very much for coming in to testify.

Do we have anyone else to testify on this bill?

(No response.)

COUNCIL PRESIDENT VERNA: Anyone else to testify on Bill No. 070306?

(No response.)

COUNCIL PRESIDENT VERNA: Seeing no one, I would ask Mr. McPherson to please read the title of Bill Nos. 070114, 070115, 070116 and Resolution No. 070128.

MR. McPHERSON: Bill No. 070114, an ordinance to adopt a Capital Program for the six Fiscal Years 2008 through 2013 inclusive.

Bill No. 070115, an ordinance to adopt a Fiscal 2008 Capital Budget.

Bill No. 070116, an ordinance adopting the Operating Budget for Fiscal Year 2008.

Resolution 070128, providing for the approval by the Council of the

City of Philadelphia of a Revised Five-Year Plan for the City of Philadelphia covering Fiscal Years 2008 through 2012.

COUNCIL PRESIDENT VERNA: Do we have anyone to testify on any one of the bills that were just read?

I believe Ms. Reed's testimony is on the back page of what has been put on your desks.

Do you have a cleaner copy of it?

MS. REED: No.

COUNCIL PRESIDENT VERNA: Okay. Please proceed. Identify yourself for the record and we'll try to follow what you have here. Please proceed.

MS. REED: Good afternoon, Council President and members of Council. My name is Dianne Reed. I'm the Budget Director for the City of Philadelphia, and I am here to offer testimony on Bills 070114 and 070115, which transfer -- which add carry-forward funds to the '08 to '13 Capital Program and the '08 Capital Budget. You should have received copies -- the members should have received copies of both of those carry-forward amendments in detail.

The '08 carry-forward amendment adds 1.65 billion, 500 of which is new '08 operating appropriations. The program bill adds 2.135 billion, of which still the only new money is the new 500 million of operating funds.

In the proposed amendment, all unobligated general obligation, PICA, grant, private, other government and revenue bond capital appropriations have been carried forward from prior years, with few exceptions. Overall, these exceptions fall mainly into three categories: unspent budget line appropriations of less than a thousand dollars for projects that have been completed; water payroll costs which do not carry forward; appropriations for federal, state and private grants that didn't materialize. We're also not carrying forward revolving funds which rely on new appropriations only and don't carry forward as a matter of policy. Portions of other funding sources such as 911 operating revenue and Health Department operating revenue do not carry forward if the revenue to support appropriations is insufficient.

A large number of projects has been included in the carry-forward budget at the direct request of City Councilmembers through their discretionary funding. I can assure the members of Council that all the remaining funding for these projects has been included in the carry-forward amendment proposed today. All unencumbered Council funding has been carried forward regardless of whether individual projects have been completed, which is to say any surplus funding is still in the line.

Other than the addition of carry-forward appropriations, there is one other proposed modification to Bills 070114 and 070115 as introduced. The requested modification would transfer 2.96 million of other government appropriation from the Human Services New Youth Study Center to a new Certified Juvenile Detention Facility on the Philadelphia Prison System's campus to match the 11.02 million of Pennsylvania Intergovernmental Cooperation Authority funds that we have requested from PICA and are in the Capital Program and Budget.

Thank you. I'd be happy to answer any specific questions that Council may have related to the recommended Capital Budget and Program amendments as presented.

COUNCIL PRESIDENT VERNA: Thank you very much.

Are there any questions from members of the Committee?

Councilman Clarke, didn't you want to be recognized on this?

COUNCILMAN CLARKE: No.

COUNCIL PRESIDENT VERNA: Okay. Are there any questions of Ms. Reed?

(No response.)

COUNCIL PRESIDENT VERNA: Ms. Reed, would you please wait until we're finished?

MS. REED: Yes.

COUNCIL PRESIDENT VERNA: Thank you.

I believe we have someone from the Mural Arts.

(No response.)

COUNCIL PRESIDENT VERNA: Do we have anyone that would like to testify on any of the bills before us?

(No response.)

COUNCIL PRESIDENT VERNA: Since we don't have any other witnesses to testify, this will conclude our public hearing.

We will now go into our public meeting, and the Chair recognizes Councilwoman Blackwell regarding Bill No.

070114.

COUNCILWOMAN BLACKWELL: Thank you, Madam President. I move that the amendment to Bill No. 070114 be adopted.

(Duly seconded.)

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

All in favor will say aye.

(Aye.)

COUNCIL PRESIDENT VERNA: Those opposed?

(No response.)

COUNCIL PRESIDENT VERNA: The ayes have it and the amendment is adopted.

The Chair again recognizes Councilwoman Blackwell.

COUNCILWOMAN BLACKWELL: Thank you, Madam President. I move that Bill No. 070114 as amended be reported out of Committee with a favorable recommendation and also a recommendation for a suspension of the rules so as to permit first reading at our next session of Council.

(Duly seconded.)

COUNCIL PRESIDENT VERNA: It has been moved and properly seconded that Bill No. 070114 be reported out of Committee with a favorable recommendation as amended; further, that the rules of Council be suspended so as to permit first reading at our next session of Council.

All in favor will please say aye.

(Aye.)

COUNCIL PRESIDENT VERNA: Those opposed?

(No response.)

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

The Chair recognizes Councilwoman Blackwell regarding Bill No. 070115.

COUNCILWOMAN BLACKWELL: Thank you, Madam President. I move that both amendments as circulated be adopted.

(Duly seconded.)

COUNCIL PRESIDENT VERNA: It has been moved and seconded that both amendments as circulated on Bill No. 070115 be adopted.

All in favor will say aye.

(Aye.)

COUNCIL PRESIDENT VERNA: Those opposed?

(No response.)

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

The Chair recognizes Councilwoman Blackwell.

COUNCILWOMAN BLACKWELL: Thank you, Madam President. I move that Bill No. 070115 as amended be reported out of Committee with a favorable recommendation and also a recommendation that the rules of Council be suspended so as to permit first reading at our next session of Council.

(Duly seconded.)

COUNCIL PRESIDENT VERNA: It has been moved and properly seconded that Bill No. 070115 be reported out of Committee with a favorable recommendation as amended; further, that the rules of Council be suspended so as to permit first reading at our next session of Council.

All in favor will say aye.

(Aye.)

COUNCIL PRESIDENT VERNA: Those opposed?

(No response.)

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

The Chair again recognizes Councilwoman Blackwell regarding Bill No. 070116.

COUNCILWOMAN BLACKWELL: Thank you, Madam President. I move that the amendment to Bill No. 070116 be adopted.

(Duly seconded.)

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

All in favor will please say aye.

(Aye.)

COUNCIL PRESIDENT VERNA: Those opposed?

(No response.)

COUNCIL PRESIDENT VERNA: The ayes have it and the amendment is adopted.

The Chair again recognizes Councilwoman Blackwell.

COUNCILWOMAN BLACKWELL: Thank you, Madam President. I move that Bill No. 070116 as amended be reported out of Committee with a favorable recommendation and also a recommendation for the suspension of the rules so as to permit first reading at our next session of Council.

(Duly seconded.)

COUNCIL PRESIDENT VERNA: It has been moved and properly seconded that

Bill No. 070116 be reported out of Committee with a favorable recommendation as amended; further, that the rules of Council be suspended so as to permit first reading at our next session of Council.

All in favor will say aye.

(Aye.)

COUNCIL PRESIDENT VERNA: Those opposed?

(No response.)

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

The Chair recognizes Councilman DiCicco regarding Bill No. 070306.

COUNCILMAN DiCICCO: Madam President, I will ask that bill be held.

COUNCIL PRESIDENT VERNA: Thank you.

Regarding Bill No. 070128, I am suggesting that we report this bill out of Committee with no recommendation.

All in favor will say aye.

(Aye.)

COUNCIL PRESIDENT VERNA: Those opposed?

(No response.)

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

This concludes our public hearing and meeting. Thank you all very much for your patience.

(Committee of the Whole adjourned at 2:00 p.m.)

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CERTIFICATE

I HEREBY CERTIFY that the proceedings, evidence and objections are contained fully and accurately in the stenographic notes taken by me upon the foregoing matter on May 22, 2007, and that this is a true and correct transcript of same.

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MICHELE L. MURPHY
RPR-Notary Public

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