

## Jason Gottesman

After being a summer intern with PLS in 2008, Mr. Gottesman formally joined the staff in January 2010 as a legislative reporter.

Mr. Gottesman received his B.A. in political science from the University of Montana in 2006 and, in 2009, his J.D. from the Widener University School of Law—Harrisburg, cum laude, where he is also a graduate of the Widener Law and Government Institute.

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Mr. Bright joined the Cozen O'Connor's Philadelphia office in April 2009 as a Member in the Business Law Department. Mr. Bright practices in the Tax Group, where he concentrates in state and local taxation. A former chief counsel of the Pennsylvania Department of Revenue, he has since represented hundreds of taxpayers in state and local tax planning, administrative, legislative and litigation matters.

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## GENERAL ASSEMBLY

### Natural Gas Impact Fee/Tax Legislation Takes Center Stage

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Taking center stage in the General Assembly during the week of November 14 was the debate and passage by each chamber of different natural gas fee/tax bills.

On Monday, the Senate Appropriations Committee moved an amended version of Senate Bill 1100 to be considered by the full Senate for third and final consideration on Tuesday by a bipartisan 17-9 vote with all Republican Senators on the committee and Democrat John Wozniak (D-Cambria) voting to move the legislation.

On third consideration Tuesday, the full Senate passed the amended legislation by a bipartisan vote of 29-20. The bill now moves over to the House for consideration by that chamber.

Similarly, the House debated its version of a natural gas impact fee/tax in the form of House Bill 1950. After three days of debate on over 150 amendments, the House passed the legislation along a bipartisan 107-76 vote on Thursday.

In a press release sent out after the final House vote on Tuesday, Gov. Tom Corbett praised both chambers' work on passing each piece of legislation and vowed to continue working with each chamber toward a signable bill.

## PHILADELPHIA

### Philadelphia Amends Business Privilege Tax Bases, Rates & Credits & Provides Relief to New Businesses

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Philadelphia City Council unanimously passed City of Philadelphia Bill 110554 and City of Philadelphia Bill 110548-A, both of which were signed by Mayor Michael Nutter on November 14<sup>th</sup>. Bill number 110554 amends the City's Business Privilege Tax ("BPT") to allow for an exclusion to all taxpayers for a flat amount of receipts from the gross receipts portion of the tax, a pro-rata exclusion from the net income portion of the tax to account for the excluded receipts, a credit against tax to allow for use of single-factor apportionment, and a restructuring of the tax rate reductions currently in place for both portions of the tax. Bill number 110548-A provides certain BPT and license fee relief to new businesses in Philadelphia.

Under the amended BPT law, the one-time Business Privilege license fee payable by all taxpayers doing business in the City (currently \$300) will be eliminated effective January 1, 2014. In addition,

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all taxpayers will receive an exclusion for a set amount of receipts from the gross receipts portion of the tax, to be phased-in over three years beginning in 2014. The exclusion is set at \$50,000 for tax year 2014, \$75,000 for tax year 2015 and \$100,000 for tax years 2016 and thereafter. Further, a taxpayer may exclude from net income a pro-rata portion of the net income attributable to these excluded receipts, although the ordinance does not provide a specific method of calculating the proration.

The amended law also changes the currently scheduled BPT rate reductions. A May 2008 ordinance phased-in lower tax rates for both the net income and gross receipts portion of the BPT, with a final result in 2017 of a complete phase-out of the gross receipts portion of the tax and a six percent rate on net income. A December 2008 ordinance slowed the phase-in to tax year 2022. The amended BPT ordinance freezes the tax on gross receipts at the current rate of 1.415 mills indefinitely and will slow the reduction in the rate for the net income portion, with rates for tax years 2014 through 2022 between .03 percent and .10 percent higher than per the December 2008 ordinance and the six percent rate not achieved until tax year 2023.

The amendment provides a new credit against the net income portion of the BPT, meant to ensure the use of single sales factor apportionment by tax year 2015. Beginning in tax year 2013, a taxpayer will be allowed a credit equal to a certain percentage of the difference between its liability for the net income portion of the tax calculated using the apportionment formula than in effect (currently three-factor with double-weighted sales) and what its liability would be using a single sales factor apportionment formula (the "Credit Base"). The credit will be non-refundable and cannot be carried forward. For tax years 2013 and 2014, the percentage of the Credit Base available as a credit will be set to what the Revenue Department determines to be fiscally prudent. Given the current economic client, it is expected that no credit will be allowed during tax years 2013 and 2014. For tax years 2015 and thereafter, the credit will be equal to 100 percent of the Credit Base. However, no credit will be available in any year where the Revenue Department has enacted regulations providing for a standard apportionment formula using a single sales factor. It is expected that such regulations will be in place by 2015; thus, the single sales factor apportionment credit will likely never be used.

Finally, the amended BPT law provides that the new tax rates and the single sales factor apportionment credit shall not affect a taxpayer's liability for estimated BPT payments. Under current law, at the time of the filing of its current year BPT return, a taxpayer must make an estimated payment of the following year's BPT tax equal to its current year BPT liability. For example, if a taxpayer shows a \$10,000 BPT liability on its 2011 BPT Return due April 15, 2012, it must at the same time make a 2012 BPT estimated payment of \$10,000. The amended law provides that a taxpayer's estimated BPT payment may not take into account any reduction in tax rate for the subsequent tax year, as well as that the current year BPT liability on which the estimated BPT payment is based is the amount due for the current year without regard to any single sales factor apportionment credit.

Pursuing business development, the City has put in place additional incentives for new businesses. Effective tax year 2012, all City license fees and the first two years of BPT liability are waived for any taxpayer that is a "New Business" as defined by ordinance. In order to be a New Business, the following requirements must be met: (1) the taxpayer cannot have been subject to BPT at any time during the five tax years prior to tax year 2012; (2) the taxpayer must hire within its first 12 months of operation at least 3 full-time employees who are not family members, which employees must continue to be employed through the taxpayer's first 18 months of operation, and an additional 3 full-time employees who are not family member within the subsequent 6 months, which employees must continue to be employed through the taxpayer's first 24 months of operation; and (3) the taxpayer must file an application with the Revenue Department. A new business does not include businesses affiliated with other businesses already subject to BPT or an entity created through an ownership change of a business already subject to BPT.



## IN THE AGENCY

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According to the Department of Revenue, there are no updated [Tax Bulletins](#) since the last date of this publication.

According to the Department of Revenue, there are no updated [private letter rulings](#) since the last date of this publication.

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