February 28, 2023

To: Senator Dan Laughlin
Senate Majority Policy Committee
Senate of Pennsylvania

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History of the Sterling Act

Introduced as House Bill 214 by Representative Philip Sterling of Philadelphia in the Spring of 1932, and enacted later that same year as P.L. 45, the "Sterling Act", as it would come to be known, was the first local income tax enabling legislation passed in the history of the Commonwealth. When it was signed into law by then Governor Gifford Pinchot, the Sterling Act effectively conferred Philadelphia and Pittsburgh with the authority to impose taxes on anything that the Commonwealth did not already tax, or that the Commonwealth did not thereafter tax. As a result of the enactment of the Sterling Act, together with Philadelphia's status as both a city of the first class and a home rule municipality, the City of Philadelphia today imposes no fewer than 45 different taxes on residents, workers, and visitors in and to the City.

At the time of the introduction of the Sterling Act in 1932, Pennsylvania, like the rest of the country, was in the throes of the Great Depression. Government at all levels was facing increasing budget deficits, increasing unemployment, and decreasing tax revenues. Representative Sterling, Philadelphia Councilman Harry J. Trainer (who conceived the original idea behind the Sterling Act), and other supporters of the bill, all then believed that by conferring the independent power to tax on the cities of Philadelphia and Pittsburgh, it would allow those cities to alleviate many of their problems that were emanating from the Depression. Senator (and then President Pro Tempore) Samuel Salus of Philadelphia is quoted has having stated, during debate on the proposed bill, that by its anticipated ability to combat poverty and unemployment brought about by the Depression, the Sterling Act would be "the salvation of Philadelphia". The bill was subject to little debate or modification, and enjoyed almost unanimous support, as it moved through the Legislature. With little fanfare, and only a few months after its introduction, Governor Pinchot signed the Sterling Act into law on August 5, 1932.

One of the few, and perhaps the most notable, changes to the original version of Sterling's bill involved the categories of municipalities to which the taxing powers as stated in the legislation would be granted. The original legislation proposed to grant first class cities,

second class cities, and boroughs with the broad taking powers of the bill, but by the time the bill arrived at the Governor's desk, taxing authority was limited only to first and second class cities. In 1932, as is the case now, Philadelphia was the only city of the first class in the Commonwealth, and Pittsburgh was the only city of the second class. The bill also included a sunset provision for cities of the second class, so after 3 years, on July 1, 1935, the powers it conferred remained only with the City of Philadelphia.

The Sterling Act, was subsequently amended in 1961 to remove references to cities of the second class, but was otherwise largely unchanged in terms of its broad grant of taxing powers conferred upon the city of Philadelphia. Today, much as it did at the time of its adoption, the Sterling Act reads as follows:

> AN ACT Empowering cities of the first class to levy, assess and collect, or to provide for the levying, assessment and collection of, certain additional taxes for general revenue purposes; authorizing the establishment of bureaus, and the appointment and compensation of officers and employes to assess and collect such taxes; and permitting penalties to be imposed and enforced. (Title amended July 26, 1961, P.L.904, No.388)
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> Section 1. (a) From and after the effective date of this act, the council of any city of the first class shall have the authority by ordinance, for general revenue purposes, to levy, assess and collect, or provide for the levying, assessment and collection of, such taxes on persons, transactions, occupations, privileges, subjects and personal property, within the limits of such city of the first class, as it shall determine, except that such council shall not have authority to levy, assess and collect, or provide for the levying, assessment and collection of, any tax on a privilege, transaction, subject or occupation, or on personal property, which is now or may hereafter become subject to a State tax or license fee. If, subsequent to the passage of any ordinance under the authority of this act, the General Assembly shall impose a tax or license fee on any privilege, transaction, subject or occupation, or on personal property, taxed by any city of the first class hereunder, the act of Assembly imposing the State tax thereon shall automatically vacate the city ordinance passed under the authority of this act as to all taxes accruing subsequent to the effective date of the act imposing the State tax or license fee. It is the intention of this section to confer upon cities of the first class the power to levy, assess and collect taxes upon any and all subjects of taxation which the Commonwealth has power to tax but which it does not now tax or license, subject only to the foregoing provisions that any tax upon a subject which the Commonwealth may hereafter tax or license shall automatically terminate upon the effective date of the State act imposing the new tax or license fee.
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> (b) It shall be the duty of the State Treasurer or other appropriate State official at the time of payment of the salary, wage or other compensation to any officer or employe of the Commonwealth of Pennsylvania, with the exception of elected officials, domiciled or rendering services within any first class city, to deduct any tax imposed by such city on the salary, wage or other compensation paid by the Commonwealth to any officer or employe thereof.

(c) The State Treasurer or other appropriate State official shall on or before the last day of April, July, October and January of each year, beginning with October, 1961, make a return on a form furnished by or obtainable from the revenue commissioner of such city and remit to the revenue commissioner the amount of tax so deducted for the three month period ending on the last day of the month preceding. (1 amended July 26, 1961, P.L.904, No.388)

Section 2. Cities of the first and second classes are hereby authorized to provide, by ordinance, for the creation of such bureaus, or the appointment and compensation of such officers, clerks, collectors, and other assistants and employes, either under existing departments or otherwise, as may be deemed necessary for the assessment and collection of taxes imposed under authority of this act.

Section 3. The council of cities of the first and second classes shall have power to prescribe and enforce penalties for the nonpayment, within the time fixed for their payment, of taxes imposed under authority of this act, and for the violation of the provisions of ordinances passed under authority of this act.

Section 4. This act shall become effective immediately upon its passage, and approval by the Governor. As to cities of the second class, this act shall remain in force only until June first, one thousand nine hundred and thirty-five, reserving to such cities the right to collect taxes assessed and levied prior to said date.

It should be noted that the Sterling Act does not, within its above text, define key terms such as "privilege," "transaction," "subject" or "occupation." Nor does It express any intention of the Legislature as to whether the statute, when applied, should be construed in favor of the City or in favor of the taxpayer. This broad and general statutory language would become a factor in how the Courts of this Commonwealth would interpret and apply the Sterling Act when determining the legality and constitutionality of the many, various taxes that would be enacted by the City over the ensuing years.

Following the passage of the Sterling Act in August of 1932, the Philadelphia City Council immediately sprang into action. The various tax proposals then being considered ranged from levies on clinical service at city hospitals to taxes on hot-dog stands, all with the intention of raising sufficient revenue to offset the huge and growing deficit in the City budget and to obtain money to help the unemployed. By November of 1932, just three months after the adoption of the Sterling Act, the first version of a city wage tax was introduced to a great deal of opposition. The initial legislation proposed a 0.5 percent payroll tax on "the gross earned income of every person residing or employed or engaged in business...within the territorial limits of Philadelphia", the revenue from which would be used to address an anticipated $20 million deficit in the 1933 City budget. The proposal was met with fierce hostility from both residents and labor groups. As a result, the City Council unanimously (by a vote of 17-0) killed the legislation on November 14, 1932.

The City's budget difficulties would continue, and worsen, in the ensuing years, but the idea of a City wage tax under the Sterling Act was not reintroduced into the City Council until 1937. At that time, the wage tax proposal was modified to include not only City residents, but also workers who earned a living within Philadelphia but lived outside the city borders. This change, together with the City's dire financial problems, made the 1937 wage tax proposal a more acceptable option for both the City Council and the citizens of Philadelphia. It would not be until December 13, 1939, however, that the City's first wage tax was finally approved by a Council vote of 17-3 (the "Wage Tax"). The initial tax rate had been set at one and one-half percent, and it was paid not only by city residents but also by approximately 200,000 non-residents who worked in the City. Then Councilmember Edward A. Kelley is quoted as saying, "In principle, such a proposal is a fair and equitable means of raising necessary additional revenue, and about 200,000 non-residents who earn their living here would pay a pro rata share of the cost of Philadelphia government." All indications are that, at the time, the wage tax was intended to be a temporary measure.

The passage of the Sterling Act and the Philadelphia Wage Tax did, in fact, have the intended effect on the city's finances. In 1940, the very first year of the Wage Tax, the city collected over $16 million in revenue at a 1.5 percent rate, and revenues continued to increase in the years that immediately followed, helping the City to erase its budget deficits. In 1942, the Pennsylvania Economy League noted that the wage tax "reaches, as perhaps nothing else could, that large group of persons who earn their living in the city, but live beyond its borders. There is a growing feeling that some way must be found by our large cities to make these non-residents share in meeting the cost of government of the communities in which they earn their living."

In those same years immediately following the adoption of the Sterling Act and the Wage Tax, however, a wave of legal and legislative challenges were also undertaken seeking to reduce or eliminate the city's wage taxing power.

My testimony will focus on the various legal challenges to the Sterling Act and the Wage Tax that would follow, and the testimony of Panel Members, namely David A. Greene, Executive Director of the Local Government Commission, will focus on the legislative challenges to the Sterling Act and attempts to amend and/or repeal the city's taxing powers, specifically its Wage Tax.

The first challenges to the Wage Tax and the Sterling Act came from across the Delaware River. The Camden County Board of Freeholders, Camden County Mayors Association, and the Wage Tax Protest League all began drives in the early 1940's to repeal Philadelphia's wage tax application to residents of other states, specifically New Jersey. Chief among them was a lawsuit brought against the City of Philadelphia by Howard Kiker, a New Jersey resident who worked at the Philadelphia Naval Yard, who challenged the constitutionality of the Wage Tax. The Pennsylvania Supreme Court ultimately ruled in Kiker v. City of Philadelphia, however, that "the income tax ordinance of the City of Philadelphia as applied to New Jersey resident employed by

federal government at Philadelphia Navy Yard on League Island is not unconstitutional as depriving him of property without 'due process of law' on theory that he received no benefit or protection from city where all benefits of facilities of Philadelphia were legally available to him." The U.S. Supreme Court would similarly refuse to hear appeals filed by the Wage Tax Protest League on two different occasions.

At about the same time, in 1942, both the Pennsylvania Superior Court and the Pennsylvania Supreme Court affirmed the City's authority to impose the wage tax on federal employees in City of Philadelphia v. Schaller.

Opponents of the Philadelphia wage tax did gain a small victory in 1949 when the Court of Common Pleas Court ruled that Philadelphia could not extend the wage tax to investment profits, as the wage tax is "not a general income tax" and is limited to wages and net earned profits from the operation of business. This ruling would be upheld the following year by the Pennsylvania Supreme Court in Murray v. City of Philadelphia.

As the 1940's were drawing to a close, it was apparent that both legal and legislative challenges to the Sterling Act were continuing to be unsuccessful within the City Council, the State Legislature, and the State and Federal Courts. It was a this time that the Legislature enacted Act 481 (the precursor to Act 511) which empowered "cities of the second class, cities of the second class A, cities of the third class, boroughs, towns, townships of the first class, school districts of the second class, school districts of the third class and school districts of the fourth class to levy, assess, and collect or to provide for the levying, assessment and collection of certain additional taxes subject to maximum limitations for general revenue purposes."

This "Tax Anything Act," as Act 481 was then known, was signed into law on June 25, 1947 by then Governor James H. Duff, and was intended to provide local government, particularly the Southeastern Pennsylvania Region, with greater tax collection equity in relation to the City of Philadelphia. It accomplished this by providing most municipalities within the Commonwealth, especially those in the counties bordering the City, with taxing powers similar to those that were conferred upon Philadelphia via the Sterling Act, including the power to tax non-residents.

Ironically, however, one portion of Act 481 would later come to play the most significant role in shaping tax disparities that would come to exist between Philadelphia and its surrounding suburbs. It stated the following:

> "Payment of any tax to any political subdivision pursuant to an ordinance or resolution passed or adopted prior to the effective date of this act shall be credited to and allowed as a deduction from the liability of taxpayers for any like tax respectively on salaries, wages, commissions, other compensation or on net profits of business, professions or other activities and for any income tax imposed by any other political subdivision of this Commonwealth under the authority of this act."

At the time of Act 481, as Philadelphia was the only city with the authority to impose a local income tax, Act 481 exempted non-residents of Philadelphia who paid the Philadelphia wage tax from paying the wage tax respective to their area of residence. This credit essentially neutralized the revenue generation potential of Philadelphia's surrounding communities, as at the time of its enactment, most employees were still subject to the Philadelphia Wage Tax. Thus, at first, this credit was not a significant issue, as most communities surrounding Philadelphia had relatively small populations and relatively insignificant earned income tax bases. The credit, also considered an exemption, would, however, over time become a greater source of controversy within Suburban Philadelphia communities, beginning in the 1950's as the economic decline of Philadelphia began (with businesses and residents who were subject to more and greater taxes within the City, thanks largely to the enactment of the Sterling Act, leaving the City for the Philadelphia Suburbs).

Several significant legal decisions regarding the Sterling Act were issued in the 1950s, although not all of them applied to the wage tax being levied by the City, and instead, some were focused on the interpretation of the language of the Act as Philadelphia continued to expand the scope and the numbers of the taxes being implemented and imposed by the City pursuant to the broad grant of taxing powers bestowed upon it under the Sterling Act.

To that end, dating back to the 1950s, and continuing to as recently as the 2018 litigation regarding the Philadelphia Sugar-Sweetened Beverage Tax (commonly referred to as the "Soda Tax"), the courts of this Commonwealth have struggled to consistently interpret and apply the language of the Sterling Act to the many, various taxes being imposed by the City of Philadelphia, in large measure because, as stated previously, the Sterling Act itself offers little, if any, guidance as to what the Legislature intended in terms of the application or interpretation of this, the very first local tax enabling legislation passed in the Commonwealth.

An example of this inconsistency are two Pennsylvania Supreme Court decisions of the early 1950's regarding the interpretation and application of the Philadelphia Wage Tax. In Murray v. City of Philadelphia, the Supreme Court espoused a strict construction of the Sterling Act in favor of taxpayers, however, in Breitinger v. City of Philadelphia, the Supreme Court stated that while "the construction of the [Sterling Act] should be against the government", nonetheless, and at the same time, the taxes imposed by the City nonetheless enjoy a presumption of validity, as "the "Courts must presume that city council intended to pass and ordinance within its legislative power and that the city did not intend to levy a tax which it had no authority to impose."

Perhaps the most significant court ruling of the 1950's in regard to the Sterling Act and the Wage Tax was Lefferts v. City of Philadelphia. The decision stated that the Sterling Act "does not empower the City of Philadelphia to levy a tax on that portion of the gross income of persons engaged in a profession in Philadelphia received for services rendered outside Philadelphia." The implication meant that work hours within and outside city limits would have

to be recorded separately in order to determine the proper taxable income amount, as there is a presumption against an interpretation of taxing statutes that would result in double taxation, and in the case of the Sterling Act, the plain language of the statute empowers the City to levy, assess, and collect, taxes on persons, transactions, occupations, privileges, subjects and personal property "within the limits of such city of the first class".

Other than the Lefferts decision, however, the significant amount of legislative and judicial activity of the 1950s attacking the Sterling Act, and specifically the Philadelphia Wage Tax, had little if any impact on the City's taxing powers, particularly as they applied to suburban residents who worked in the City.

The rising tide of new taxes that were being enacted following the adoption of Act 481 also led to several amendments to that Act, chief among them a 1949 amendment that placed a one (1%) percent cap on wage tax levies imposed by Act 481 municipalities. This cap, coupled with the aforementioned Philadelphia Wage Tax credit/exemption, would serve to exacerbate the suburban vs. urban animus that was growing between Philadelphia and the surrounding communities in the years that followed. This conflict was driven by the demand for more and greater governmental services that was increasing exponentially in suburban Philadelphia in the 1950's, 1960's and 1970's, coupled with the fact that, at the same time, those communities closest to the City were also the ones most unable to realize the necessary levels of income tax revenue from their residents, as many of these residents were still subject to payment of the Philadelphia Wage Tax under the Sterling Act, and as suburban communities, unlike the City, were now limited in the amount of wage taxes they could assess and collect.

With much of the litigation of the 1950's challenging the Sterling Act and the Philadelphia Wage Tax having proved largely unsuccessful in repealing or limiting the Wage Tax in any meaningful way, and with Act 481 having provided some means for suburban communities to try and level the playing field, little litigation of note took place in the 1960s and 1970s. During this time, much of the efforts to limit the City's taxing authority were focused in the State Legislature, and they included continued efforts to exempt non-residents entirely from Philadelphia wage taxes, to place a cap on Philadelphia Wage Taxes for all taxpayers, and/or to allow suburban municipalities with earned income taxes to retain a percentage of the Wage Tax being paid by non-residents in an amount equal to the earned income tax the non-resident would have otherwise paid to its home community. It was also during this time that the Legislature, in 1965, passed an amended version of Act 481, known as the "Local Tax Enabling Act" or Act 511.

The above-described efforts finally resulted in some success, as State Senator Craig Lewis, representing Bucks County's 6th Senatorial District, introduced a three (3%) percent wage tax limitation for non-residents of Philadelphia in 1976, and on December 21, 1977, Savings Clause and Limitations 7359 was passed. As a result, the non-resident tax rate could no longer exceed 4.3125 percent until the residential rate reached higher than 5.75 percent. At that point,

the nonresidential rate could be increased but could not exceed 75 percent of the residential rate. Codified as part of the Pennsylvania Tax Code at 72 P.S. 7359, the clause stated,

> " ...the provisions of such ordinance imposing a tax rate in excess of four and five-sixteenths per cent with respect to persons who are not legal residents of such city shall be deemed suspended and without any validity to the extent that such tax rate exceeds the tax rate of four and five sixteenths per cent on income of such nonresidents. And such excess tax rate provisions shall remain suspended and without validity until such date as the city of the first class, by ordinance, imposes a rate of tax on income of both legal residents and nonresidents of such city in excess of the tax rate imposition of five and three-fourths per cent per year…such suspension is removed and the rate deemed valid only to the extent the tax rate imposed on income of such nonresidents does not exceed seventy-five per cent of the tax rate imposed by ordinance per year on the income of legal residents…"

It should also be noted that over the period of the 1960's and 1970's, while the economic decline of the City continued, the rate of the Wage Tax increased significantly in response, as the City became more and more dependent on Wage Tax revenues to balance the City's budgets. In 1960, the Philadelphia Wage Tax rate stood at 1.5 percent. By the close of that decade, the rate had increased to 3 percent, and despite strong opposition during the 1970's, the Philadelphia wage tax continued to grow, increasing to a residential rate of 4.315 percent by the end of the 1970's.

One of the more meaningful judicial challenges to the Philadelphia Wage Tax was brought in 1983 by Thomas Leonard, an independent candidate for Mayor of Philadelphia, who challenged the constitutionality of the then two-tiered City Wage Tax system in Commonwealth Court in Leonard v. Thornburgh. Leonard's claim was based on the state uniformity clause that states, "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." Commonwealth Court Judge James Crumlish Jr. ruled that the two-tiered tax was unconstitutional. In his decision, Judge Crumlish wrote:

> "We are of the opinion that the non-resident distinction is without a difference, an artificial one which splits in two the class of wage taxpayers in the City of Philadelphia. In our view, the legislature and City Council have arbitrarily created an unjust burden and have discriminated against those members of a class who, because of an invisible boundary line, live by command or choice within the city's limits."

Despite his ruling, however, Crumlish refused to order an injunction against collection of the Wage Tax. "With regret", Crumlish wrote, "If this court enjoins the collection of the current wage tax, a $60 million deficit would result, causing an unbalanced budget, and propel the city into a state of fiscal paralysis." The rulings of Judge Crumlish were of little consequence, however, as the Pennsylvania Supreme Court ultimately overturned his decision, unanimously,

on appeal. In upholding the constitutionality of the two-tier tax, Supreme Court Justice John P. Flaherty wrote:

> "The tax scheme in question meets constitutional requirements for there exists the requisite basis for treating residents and non-residents of Philadelphia as separate classes of wage earners subject to different tax rates. The legitimate distinction between those classes rests not upon the superficial fact that one class resides in Philadelphia while the other resides elsewhere, but rather, at a deeper level of analysis, upon significant differences between the two classes of wage earners that provide reasonable and concrete justifications for their being taxed at different rates."

As we entered the 21st Century, issues regarding the Sterling Act, the Philadelphia Wage Tax, and the issues surrounding them remained largely unchanged from earlier decades. Legislative attempts to amend or repeal the Sterling Act remained unsuccessful, and judicial challenges to the Sterling Act and the Philadelphia Wage Tax were seldom if ever still pursued.

One notable legal challenge that did, recently, involve the Sterling Act is the challenge to the aforementioned Philadelphia Soda Tax in Williams v. City of Philadelphia, which in 2016 saw a number of consumer groups, retailers, distributors, producers, and trade associations challenge the City's ability to levy that tax under the Sterling Act, arguing that it was a duplicate tax to the Commonwealth sales tax and therefore preempted by the language of the Sterling Act. In upholding the City's right to impose the Soda Tax, the Pennsylvania Supreme Court restated and confirmed a holding it had previously handed down in litigation dating back to the 1950s, namely that the Sterling Act granted the City with "an enormously broad and sweeping power of taxation." The Court also noted that the expansive delegation of taxing power was made with the Legislature's express reservation of the power to preempt the City's taxing powers through future legislation, as stated in the language of Sterling Act itself. As a result, the Supreme Court expressed a reluctance to amend the Sterling Act from the bench, concluding that "Subject to constitutional limitations, of course, the Legislature remains free to modify the [Sterling Act]," just as it has modified taxing legislation applicable to other classes of municipalities in the Commonwealth.

Conclusion

More than 80 years after their adoption, the Sterling Act, and the Philadelphia Wage Tax remain almost virtually unchanged in form and content from the days in which they were first proposed. During that same period of time, the wage tax has undergone a number of legislative and court challenges that have had little impact on its existence as a primary source of the City's tax revenues. The Wage Tax also continues to force business and jobs to leave Philadelphia's boundaries, and the continued resistance of the Legislature and the City Government to make

meaningful and necessary amendments to the Wage Tax, either by City ordinance or by amendment to the Sterling Act, continues to deter any meaningful regional answers to economic development issues, and continues to negatively impact the ability of communities that surround the City to fund basic governmental services, namely public safety services and infrastructure projects, that are made all the more necessary by virtue of these communities' proximity to Philadelphia.

Inasmuch as the Philadelphia Wage Tax and the Sterling Act have been largely impervious to legal challenges throughout the decades, if there is to be any meaningful changes or limitations to the Wage Tax, as has been stated by experts and by the Courts, such changes or limitations must come by way of Legislative enactment. As the Pennsylvania Supreme Court stated in 2018, following more than a half century of litigation involving the Sterling Act and the Philadelphia Wage Tax, the Legislature at all times is able to modify the Sterling Act and other taxing statutes, and such actions by the Legislature are, and at all times have been, anticipated by the plain language of the Sterling Act itself. As others on this Panel will most certainly testify, as times have changed, as the City has changed, as the Southeast Region has changed, and as the needs and costs to deliver governmental services has changed during the almost century since the Sterling Act was first adopted, now, more than ever, is the time for the Legislature to consider and adopt changes to the Sterling Act so as to alleviate, if not eliminate, its negative impacts on the Suburban Communities surrounding the City of Philadelphia.

Thank you for the opportunity to present this testimony and for your thoughtful consideration of the same.

Regards,

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