

**Pennsylvania House of Representatives**

**Majority Policy Committee Hearing**

**August 23, 2011**

**10am Majority Caucus Room**

**Testimony of James Manser, Associate Director State Government Affairs of Cephalon, Inc. Testifying on behalf of CompetePA Coalition**

Good Morning. Thank you Chairman Reed, and members of the committee, for inviting me to address you today.

To formally introduce myself, my name is James Manser and I'm the Associate Director of State Government Affairs for Cephalon, Inc., the largest U.S. publicly-traded bio-pharmaceutical company with a global headquarters in suburban Philadelphia. While I am not a tax expert, one aspect of my job is to track legislation in all 50 states. So I am fortunate to have the unique perspective on what other states around the country, Pennsylvania's competitors for attracting business, are doing to encourage job creation.

My company also has a heritage of growth. Only 10 years ago, Cephalon had just three products on the market and a global reach in six countries. Sales in 2001 were \$226.1 million, and there were a total of 250 people employed in Pennsylvania.

Today, Cephalon has more than 180 products available in more than 100 countries and had sales in 2010 of \$2.8 billion with therapeutic focus on oncology, pain, immunology and regenerative medicine. Cephalon employs 4,000 employees worldwide, with more than 1,000 in Pennsylvania alone.

This morning I have the privilege of representing CompetePA, a coalition of businesses and organizations representing more than half the private sector employment in Pennsylvania. Our group is united in our efforts to see the Commonwealth compete successfully for new jobs and investment.

Pennsylvania proudly boasts that it has hundreds of thousands of businesses, large and small. These businesses pay more than \$23.4 billion per year in state and local taxes -- the sixth highest in the nation -- in addition to innumerable state fees. What's more is that businesses finance 42% of state and local government operations in the Commonwealth. While these figures may seem well and good, the truth is that if Pennsylvania is to compete nationally and globally, we must have a pro-growth plan that attracts new companies to locate here and encourages those already in business here to expand.

We all know that a vital decision to the success of a business is where to locate. In the case of Cephalon, because the pharmaceutical industry is capital intensive and highly regulated, there was a distinct advantage for Cephalon to be within one hour of the financial markets of New York City and regulatory environment of Washington D.C.

In addition to geography, Pennsylvania is home to one of the largest concentrations of higher education institutions in the nation, thereby enabling a talented workforce to meet the challenges of tomorrow right here, in our own backyard.

Pennsylvania also maintains a relatively low cost of living when compared to other markets like Boston, New York City or Silicon Valley. With an ideal location, competitive workforce and low cost of living; Pennsylvania is uniquely situated to be a major economic power.

A major concept to instill in this conversation is that companies no longer establish their corporate headquarters and run all operations out of that building exclusively. As you are well aware, we live in an age where companies have a presence in numerous locations and can decide to add jobs in the state(s) in which the tax climate is most favorable.

When corporations decide where to locate, they first review the total tax environment. The same holds true for companies with an existing presence in Pennsylvania when deciding if they will expand operations here or in another state. While one-time economic development packages do indeed play a significant role, many states offer similar incentives. Economic incentive packages being equal, clearly the state with a lower cost of doing business has the advantage.

I can personally attest to receiving a constant stream of letters from other states touting their tax competitiveness, listing their economic development packages and requesting a few minutes to talk about Cephalon's plans for future expansion.

I'll now address what our unified coalition, CompetePA, has agreed are the top priorities to foster job growth in the Commonwealth.

### Single Sales Factor

To encourage companies to locate or expand in Pennsylvania, we must have an overall tax policy that makes the state attractive and builds long-term economic growth. Creating a single sales factor apportionment formula is an important part of that effort. In Pennsylvania, a corporation's profits are apportioned using three factors:

1. The ratio of sales in Pennsylvania to all sales
2. The ratio of assets in Pennsylvania to all assets, and
- 3) The ratio of payroll in Pennsylvania to total payroll.

This means that companies with operations and employees in Pennsylvania have a higher tax liability than a firm that only sells goods in Pennsylvania...goods that are made elsewhere – this is hardly an incentive to operate in the state.

We have made recent strides in this area. Thanks to the Pennsylvania state legislature, our apportionment factor has increased to 90 percent sales. Though this was an improvement, we recognize that the goal of instituting a corporate net income tax based on 100 percent on sales would make the state more attractive and therefore lead to job expansion and creation.

More than half of the states in nation have passed some form of single sales factor apportionment, recognizing its importance in attracting, retaining and expanding business, and many of these competitors are our neighboring states; including New York, Virginia, and Maryland.

It is imperative that Pennsylvania demonstrate a pro-business growth agenda. Creating a single sales factor apportionment formula is one part of that job creation equation.

## Net Operating Loss

Since its inception, Cephalon has invested more than \$3 billion in research and development; more than \$130 million has been invested in their R&D facility in Chester County.

While Cephalon was founded in 1987, it was not until 2005, after 18 years and at that time over \$1 Billion dollars invested, that the company became profitable.

Every state that imposes a tax on corporate net income allows businesses to carry losses forward to be applied against future taxable income. The ability to use net operating losses allows businesses, especially those which are cyclical or capital intensive, to invest funds in hiring additional employees or improving their infrastructure (lab space, manufacturing equipment, etc). This capital intensive period is a great economic benefit as it is a job multiplier for the local economy. Ultimately, as a company grows and becomes profitable, such as Cephalon has, the state will reap the benefit by realizing significant corporate tax liabilities.

As a comparison, forty-eight (48) other states do not cap the NOL carryforward deduction.

## Corporate Net Income Tax Rate Reduction

Clearly the way to make Pennsylvania most attractive is to lower the corporate net income tax rate. The Commonwealth has the second highest state corporate income tax (behind Iowa, which has more generous deductions and exemptions). When compounding state and federal corporate taxes, Pennsylvania's corporate income tax rate is higher than that of every other country.

While this task has seemed daunting, especially amidst recent budget constraints, it has also been largely ignored. Creating a timeline to phase down the CNI would send a clear message that Pennsylvania is indeed open for business.

In summary, the key points to highlight include:

- **Create a single sales factor (SSF) apportionment formula, removing the disincentive for employers to grow jobs and investment in Pennsylvania.**
- **Removing the cap on net operating loss (NOL) carryforwards, which will even the playing field for many types of Pennsylvania businesses, especially cyclical businesses and those with high-growth potential.**
- **Reduction in the corporate net income (CNI) tax rate**

Assessing Pennsylvania's tax climate is an essential step towards job creation in the Commonwealth. I applaud the members of the House Majority Policy committee for taking up this responsibility. By raising this issue as a top priority, Pennsylvania will again be able to boast not only of the expansion of existing companies, but an influx of new businesses.

As other states do, Pennsylvania needs to review the comprehensive business climate. Not just tax changes, but examination of the entire economic development structure and marketing in other states. We need to set goals of where we want to be in 10-yrs, like we've seen in California, Utah, Texas and Research Triangle Park, North Carolina. Most importantly, this can

only be achieved by unifying business organizations, the administration and both sides of the aisle in the state legislature.

Families across Pennsylvania have the vital support of corporations that are paying billions of dollars in state and local taxes every year as well as consistently and generously investing in their communities. In 2010 alone, Cephalon contributed over \$3 million in community support.

Now more than ever, Pennsylvania needs to send the message that we have a competitive business climate. As the economy recovers, let's make Pennsylvania one of the first places to grow new jobs, not the last. Enacting changes such as moving the single sales factor to 100%, removing the cap on net operating loss carry forwards and ultimately lowering the corporate net income tax rate would benefit Pennsylvania's economy. As the current recession wanes and businesses are looking to reinvest capital into their operations, the Commonwealth must prepare to once again be a leader amongst states and a competitor amongst nations.

Thank you.

James Manser  
Associate Director, State Government Affairs  
Cephalon, Inc.  
[jmanser@cephalon.com](mailto:jmanser@cephalon.com)