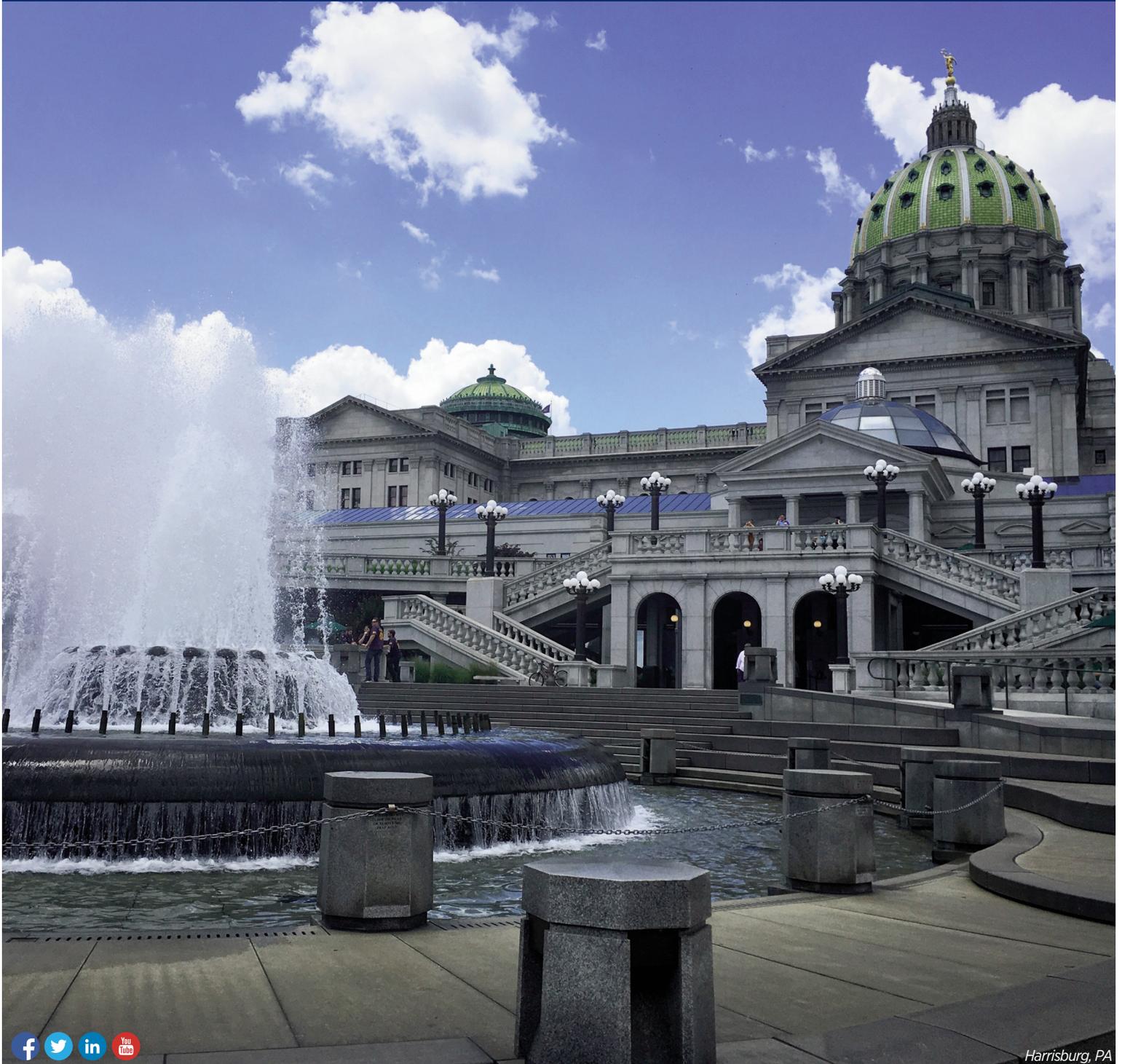


# TAXATION MANUAL

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# Acknowledgments

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The purpose of this *Taxation Manual* is to provide local government officials with a general guide to municipal tax revenue sources. In considering a particular tax, governing bodies are urged to consult their own solicitors for guidance. Material in this publication is offered only to inform its readers and does not constitute any statement of legal opinion nor constitute any exercise of regulatory authority by the Department of Community and Economic Development.

The *Taxation Manual* includes a discussion of taxes levied by counties, municipalities, and school districts. Because all Pennsylvania taxpayers are concurrently under the jurisdiction of a county, municipal and school taxing authority, a sound municipal tax policy must take into consideration taxes being levied by the school district and the county as well as those levied by the municipality itself.

First issued in 1979, the *Taxation Manual* is revised and updated on a periodic basis. It is intended to provide necessary background information to local elected officials who must make decisions on tax policy for their citizens.

# Addendum

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## **Acts 124 and 125 of 2002**

Acts 124 and 125 of 2002 amend the General County Assessment Law and Fourth through Eighth Class Assessment Law to make a number of changes to the amusements tax and the assessment of amusement rides for property tax purposes.

Acts 124 and 125 exempt amusement rides from property tax assessments. This change applies to property valuations for taxes levied for fiscal years beginning on or after January 1, 2002. In addition, Acts 124 and 125 prohibit municipalities and school districts from levying an admissions tax on ski facilities after December 1, 2002.

Acts 124 and 125 also limit the admissions tax on automobile racing facilities to 40 percent of the cost of admission. Additionally, Acts 124 and 125 freeze the rate of the admissions tax on automobile racing facilities with a seating capacity of over 25,000 and a continuous racetrack of one mile or more. The tax rate on admissions to these racing facilities is frozen at the rate levied on January 1, 2002. These changes take effect October 4, 2002.

*Disclaimer: The preceding summary is for informational purposes only, does not constitute legal advice and may not be legally relied upon by any person or organization. Local governmental organizations should consult their solicitors for legal advice concerning the effect of Act 124 and 125.*

## **Act 166 of 2002 and Act 24 of 2004**

Act 166 of 2002 and Act 24 of 2004 changed the definitions of "earned income" and "net profits" for purposes of the earned income tax imposed under the Local Tax Enabling Act, Act 511 of 1965, 53 P.S. §6901 et seq., to adopt, with certain exceptions, the definitions of "compensation" and "net profits" for state personal income tax purposes. The changes to the definitions of earned income and net profits are not optional. They apply for tax years beginning on and after January 1, 2003.

The definitions of "earned income" and "net profits" in the Local Tax Enabling Act, now reference the definitions of "compensation" and "net profits" that are used for the personal income tax in state law and regulations. (See below.) Local taxpayers are permitted to deduct from compensation the same employee business expenses that are deductible from compensation for state income tax purposes. Interest and dividends, which are taxable under the state personal income tax, are still not taxable at the local level.

### **Definitions of Earned Income and Net Profits in the Local Tax Enabling Act**

*From Section 13 of Act 511 of 1965 (53 P.S. §6913) as amended through April 6, 2004*

*"Earned income."* Compensation as determined under section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," and regulations in 61 Pa. Code Pt. I Subpt. B Art. V (relating to personal income tax), not including, however, wages or compensation paid to individuals on active military service. Employee business expenses are allowable deductions as determined under Article III of the "Tax Reform Code of 1971." The amount of any housing allowance provided to a member of the clergy shall not be taxable as earned income.

*"Net profits."* The net income from the operation of a business, profession, or other activity, except corporations, determined under section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," and regulations in 61 Pa. Code Pt. I Subpt. B Art. V (relating to personal income tax). The term does not include income which is not paid for services provided and which is in the nature of earnings from an investment. For taxpayers engaged in the business, profession or activity of farming, the term shall not include:

- (1) Any interest earnings generated from any monetary accounts or investment instruments of the farming business;
- (2) Any gain on the sale of farm machinery;
- (3) Any gain on the sale of livestock held twelve months or more for draft, breeding or dairy purposes; and
- (4) Any gain on the sale of other capital assets of the farm.

Taxable compensation at the local level is almost identical to taxable compensation at the state level, except that housing allowances provided to a member of clergy and active-duty military pay are not taxable at the local level.

While the definition of "net profits" in the Local Tax Enabling Act includes net income from the operation of a business, profession or other activity, it does not include income from corporations. In addition, net profits do not include income that is "not paid for services provided" or that is in the nature of earnings from an investment. Most distributions passed through to a taxpayer by an S Corporation are considered investment income and not subject to the earned income tax, unless the distributions are based on services provided by the taxpayer. For taxpayers engaged in farming net profits do not include interest earned on the monetary accounts of the farming business and gains from the sale of farm machinery, most livestock and the capital assets of the farm.

## **Act 6 of 2016**

Under the terms of the Local Tax Enabling Act signed into law under Act 32 of 2008, all active duty military pay earned within the Commonwealth became subject to local income taxes beginning in 2012. Act 6 explicitly amends the definition of "earned income" in the Local Tax Enabling Act to exempt wages paid to individuals on active duty military service, regardless of whether it is earned inside or outside the Commonwealth. The act applies to income taxes levied and collected after December 31, 2015.

## **Act 150 of 2016**

Act 150 amends Section 502(c) of the act to do the following:

- Changes the due date for taxpayers earning net profits to file quarterly estimated payments and declarations from April 15, June 15, September 15, and December 15 of each year, to the following: April 15, July 15, October 15, January 15 of the succeeding year
- If the filing or payment date falls on a weekend or legal holiday, the taxpayer is permitted to make the payment or filing on the next business day.

For an individual having an estimated gross income from farming which is at least two-thirds of his total estimated gross income, a declaration of estimated tax may be filed at any time on or before January 15 of the succeeding year. If the farmer files a final return and pays the entire tax by March 1, however, the return may be considered as his declaration due on or before January 15. This change is consistent with estimated income tax requirements contained in Section 325 of the Tax Reform Code of 1971 with regard to state personal income tax. The local income tax amendments relating to farming as proposed by SB 356 parallel existing law as it applies to state income tax.

A political subdivision, tax collection committee, or tax officer may not do any of the following:

- Prohibit a taxpayer from filing a return in person or by first-class mail.
- Prohibit a taxpayer from filing any local income tax return form, estimated tax return form, or other related forms posted on DCED's website.
- Impose a penalty for failing to file a timely quarterly estimated tax return where no tax was due as shown in the taxpayer's annual income tax return.
- Impose a penalty on a taxpayer unless it has issued a letter that notifies the taxpayer that he/she is required to take corrective action within 30 days, and that failure to do so will result in imposition of a penalty.

Section 512 of the act is amended to do the following:

- Changes the employer due date of filing and paying local withholding tax from 30 days following the end of each quarter to the last day of the month following the end of each calendar quarter.
- If the due date falls on a weekend or legal holiday, the filing or payment may be performed on the next business day.

## **Act 172 of 2016**

Act 172 amends Title 35 (Health and Safety) adding a chapter authorizing a governing body of a municipality to offer income and/or property tax credits for municipal volunteers of fire companies and nonprofit emergency medical services agencies. It requires the chief of a volunteer fire company or the supervisor or chief of a nonprofit emergency medical services agency or their designees to establish and maintain a service log that documents the activities of each volunteer that qualifies for credit toward active service under the volunteer service credit program and the calculation of the total credits earned for each volunteer in the volunteer fire company or nonprofit emergency medical services agency. It provides the tax credit shall not exceed 20 percent of the tax liability of the active volunteer and shall remain in effect until the governing body repeals the tax credit. An active volunteer who was injured during a response to an emergency call and can no longer serve as an active volunteer because of the injury and who would otherwise be eligible for the tax credit shall be eligible for the tax credit for the succeeding five tax years.

*Disclaimer: The preceding summary is for informational purposes only, does not constitute legal advice and may not be legally relied upon by any person or organization. Local governmental organizations should consult their solicitors for legal advice concerning the effect of the amendments made to the Local Tax Enabling Act by Act 166 of 2002 and Act 24 of 2004.*

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# I. Introduction

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All taxpayers understand that taxation is how they pay the expenses of carrying on the public business and the fundamental problem of taxation is to make it yield sufficient money to pay governmental expenses. Ideally, this will be done in the most efficient manner with the least disruption to the economic decision-making of households and businesses. Taxpayers would also agree that tax systems should be simple enough so they, as well as the tax collectors, are able to understand tax laws. Quite often these goals are not met.

From the nature of inquiries to the Department of Community and Economic Development, certain local taxes apparently cause much confusion and uncertainty. It is for this reason the Department is offering an easy-to-comprehend explanation of the complicated tax systems presently existing in counties, cities, boroughs, townships and school districts in Pennsylvania.

## Origin of the Tax System

A quick look at the origins of the local tax system in Pennsylvania will help explain the wide variety of taxes currently being levied in the commonwealth.

The system of property taxes coupled with a tax on occupations, still existing, in part, for the purpose of financing local governments in Pennsylvania, has its origins in the so-called Property and Income Tax that existed in England in the seventeenth and eighteenth centuries. The English levy included taxes on real property based on its "annual value" or "what it is worth to be let," plus taxes on the inventories of merchants and on "offices." The tax on "offices" or occupations was based on a value determined by the annual income expected to be derived from the occupation.

The tax was thus general in nature, including in its scope all sources of income of importance at that time. As manufacturing developed, it became the major source of income not taxed and was soon subjected to taxation. Similarly, salaried income grew in importance. Because it was difficult to tax business income and salaries under the property taxes, the income tax, which lent itself more readily to taxing all sources of income, was adopted.

The difference between income taxes and general property taxes is important. In the former, the base of the tax is the annual yield of income of property, business or employment; in the latter, in this country at least, the tax is the value of the source of that income, its capital value. "The theory of a property tax is simple," wrote Professor Henry C. Adams. "Property is regarded as the source of income, and such value as it possesses rests upon this fact."<sup>1</sup> This may appear to be confusing in the case of owner-occupied residential property, because one does not ordinarily think of homeowners as deriving an income from the property they occupy. But one can, on reflection, easily consider the homeowners as paying rent to themselves, as being their own tenants, and the value of the house as bearing some relation to the enjoyment they expect from occupying it. Thus the rental value or occupancy value can be considered income.

The general nature of taxes historically is illustrated by the tax systems of the colonies very early in our history. In 1646, the Massachusetts Bay Colony imposed taxes on personal and real property and on the "returns and gains" of tradesmen in proportion to the "produce of their estates."<sup>2</sup> Similarly, in Pennsylvania, from earliest times, there have been real and personal property taxes, as well as taxes on offices and occupations. These taxes are now employed in Pennsylvania exclusively by local governments, including counties, municipalities and school districts.

The general property tax soon developed in most states into separate or classified taxes on real estate, tangible personal property, intangible personal property and income, with each subject to different rates. Tangible personal property, including business inventories is not taxed in Pennsylvania. Intangible personal property ceased to be taxed in Pennsylvania in 1998. Occupations and real estate are the two remaining types of property subject to tax.

## **Real Estate Taxes**

The real estate tax is the only tax authorized by law to be levied by all classes of local government in the state. Every property owner pays real estate taxes to three independent classes: the county, the municipality and the school district. It is the leading local revenue producer in Pennsylvania, accounting for 68 percent of the taxes collected in 2013 for a total of \$16.9 billion. Real estate taxes produced 82 percent of school taxes, 92 percent of county taxes and 32 percent of municipal taxes.

## **Nonreal Estate Taxes**

Far reaching tax enabling legislation applicable to almost all political subdivisions in Pennsylvania has given the municipalities and school districts in the commonwealth a broad range of nonreal estate tax sources, greater local tax authority than is granted in most other states. The taxes commonly in use are listed below:

- Earned income or wage
- Per capita
- Occupation
- Local services tax (formerly known as occupational privilege tax)
- Real estate transfer
- Amusement/admissions
- Business gross receipts

The sales tax is potentially an important revenue sources for local governments, but so far it has only been authorized for two jurisdictions, Philadelphia and Allegheny Counties.

## **Statutory Authorizations**

There are three types of statutory sources for local taxing authority. The first is the respective codes of law applicable to counties, municipalities and school districts. These codes contain the basic general purpose and many special purpose real estate taxes, as well as some minor nonreal estate taxes. Composing the second group of tax authorizations are the general tax enabling acts. The Sterling Act, enacted in 1932, is applicable to the city of Philadelphia and the Philadelphia school district. The Local Tax Enabling Act is applicable to other classes of political subdivisions in the commonwealth, except counties and the Pittsburgh school district. It was first enacted in 1947 and reenacted in 1965.

The final group is composed of a series of single-purpose statutes, either authorizing a particular tax, such as the Library Code, or authorizing an increased rate of an existing tax, such as the Municipalities Financial Recovery Act.

## **REFERENCES**

1. *The Science of Public Finance*. New York: Henry Holt & Co., 1898, p.361.
2. Sidney Ratner. *American Taxation*. New York: W.W. Norton & Co., 1942, p. 52.

## II. Real Estate Taxes

Historically, the real estate tax has been a chief source of financial support for local governments in the United States and remains the most important source today. In 2013, Pennsylvania real estate taxes accounted for \$16.9 billion, or 38 percent of total local government revenues and 68 percent of all local government tax revenues. For all practical purposes, the property tax is an exclusive source of revenue of local governments.

Pennsylvania, real estate taxes in 2013 accounted for 82 percent of the total tax revenues of school districts, 32 percent of the total tax revenues of municipalities, and 92 percent of the total tax revenues of counties.

The total market value of taxable real estate in Pennsylvania in 2013 was \$781 billion, its assessed value over \$499 billion, indicating a statewide ratio of assessed value to market value of 63.9 percent. The ratios vary widely among the various assessment jurisdictions; the lowest 2013 common level ratio was in Bucks County at 10.8 percent and the highest in Adams County at 122 percent.

### Total Revenues, Total Taxes and Real Estate Taxes Pennsylvania Local Governments, 2013

(amounts in millions of dollars)

	Total Revenues	Total Taxes	Real Estate Taxes	Real Estate Taxes as % of Revenues	Real Estate Taxes as % of Taxes
<b>School Districts, Total</b>	26,004	14,311	11,694	44.9%	81.7%
<b>Counties Total</b>	8,296	3,053	2,803	33.8%	91.8%
<b>Municipalities Total</b>	17,953	7,476	2,416	13.5%	32.3%
<b>Philadelphia</b>	8,056	3,304	540	6.7%	16.4%
<b>Pittsburgh</b>	652	397	128	19.4%	32.2%
<b>2A &amp; 3rd Class Cities</b>	1,876	556	304	16.2%	54.8%
<b>Boroughs</b>	2,475	860	472	19.1%	54.9%
<b>1st Class Townships</b>	1,584	769	406	25.6%	52.8%
<b>2nd Class Townships</b>	3,307	1,588	564	17.1%	35.5%
<b>Total, All Local Taxing Bodies</b>	<b>52,255</b>	<b>24,840</b>	<b>16,915</b>	<b>38.1%</b>	<b>68.1%</b>

Note: Approximately 60 municipalities did not report revenues in 2013. For purposes of this chart, Philadelphia is considered a municipality.

## **Arguments For and Against the Real Estate Tax**

At various times, the real estate tax has been severely criticized on these grounds:

1. The tax is not directly related to taxpayer's ability to pay.
2. It is costly and difficult to administer.
3. Assessments often lack uniformity among different classes of property and among individual properties in the general class.
4. Assessments often lag behind evident changes in value.
5. Real estate tax revenues do not keep pace with the demands made for local government expenditures.
6. Tax rates differ among neighboring jurisdictions, affecting the location of housing and economic activities.
7. The tax affects the incentives to invest in housing and other forms of construction or improvement to property.
8. Assessments are often motivated by political considerations.

Defenders of the real estate tax have argued:

1. With existing real estate taxes, prospective purchasers buy free of the tax because taxes on land are capitalized and result in reduced prices of land. Recently, it has been argued that this is also true of taxes on urban buildings. If true, the tax is economically neutral, and the questions relating to equity and ability to pay are irrelevant; no one currently bears the burden of the tax. Those who owned property when the tax was imposed bore the entire burden in reduced land values.
2. Modern techniques have vastly improved the efficiency and economy of the administration of the tax.
3. Because the tax is economically neutral, there is little or no intergovernmental competition, and the location of housing and other real estate investment is not affected.
4. No alternative tax source for local governments has been shown to be superior.

## III. Assessment

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### Statutory Provisions

Historically, assessments in the Commonwealth of Pennsylvania were governed by the General County Assessment Law, with each class of county subject to a special assessment law, which took precedence when in conflict with the provisions of the General Law. This is still the case for counties of the first and second class. However, the Consolidated County Assessment Law, enacted by the Pennsylvania Legislature in 2010, combined the assessment laws governing counties of the second class A through eighth class and repealed the General County Assessment Law as to all counties except counties of the first and second class.

Additionally, Section 37522 of Third Class City Code permits cities to perform their own assessments following the procedures and methodologies set forth in the assessment law or laws applicable in the county in which the city is located or to utilize the county assessment office of the county in which the city is located for valuation and assessment of property; almost all cities have elected to use the county assessment figures.

The various assessment laws described above are found in Purdon's Pennsylvania Statutes and the Pennsylvania Consolidated Statutes. The citations are listed below:

General County Assessment Law	72 P.S. §§ 5020-101 et seq.
First Class County Assessment Law	72 P.S. §§ 5341.1 et seq.
Second Class County Assessment Law	72 P.S. §§ 5452.1 et seq.
Consolidated County Assessment Law (Second Class A to Eighth Class Counties)	53 Pa.C.S. §§ 8801 et seq.
Third Class City Code – Article XXV; Taxation	11 Pa.C.S. § 12522

### Assessment Organization

In each county, a board is established to supervise, equalize and revise assessments, and to hear appeals. In Philadelphia, the Board of Revision of Taxes consists of seven members appointed for terms of six years by a majority of judges of the court of common pleas. They appoint all real estate assessing officers. Under the city charter, such appointments must be made from a civil service register. The law requires land and improvements to be assessed separately, although in fact a uniform rate is levied against both. The city council has full powers to legislate with respect to compensation and organization of the Board of Revision of Taxes.<sup>1</sup>

The supervisory body in counties of the third class and counties of the second class A is the Board of Assessment Appeals, composed of three members appointed by the county commissioners to serve for terms of four years each. Salaries are fixed by the salary board of the county. The board may appoint a solicitor to advise it on all legal matters pertaining to its duties. Up to four temporary auxiliary appeal boards may be appointed to hear appeals during a countywide reassessment.

In counties of the fourth to eighth classes, a Board of Assessment Appeals may be established to supervise assessments. This Board is composed of three members appointed by the county commissioners to serve for terms of four years each. In counties of the fourth to eighth classes that have not created a separate Board of Assessment, the supervisory body is the Board of Assessment Revision. The Board of Assessment Revision is composed of the county commissioners. The county commissioner holding the oldest certificate of election is designated as the chairman. Salaries of the board and all personnel are fixed by the county's salary board. The board appoints the chief county assessor and such other personnel as deemed necessary.

Those few third class cities that have not elected to accept county assessments continue to have their own assessment organizations. Provision is made for the selection of a city assessor by the city council, and the council appoints as many assistant assessors as may be required. All such assessors must be certified pursuant to the Assessors Certification Act. A city, conducting its own assessments or utilizing the county assessment office, may, by ordinance, adopt an established predetermined ratio different from that used by the county. The city council acts as the Board of Revision of Taxes and Appeals in third class cities.<sup>2</sup>

The Home Rule Charter and Optional Plans Law contains a listing of specific prohibitions which apply to home rule counties. Counties adopting home rule charters are forbidden to change current law with respect to the assessment process.<sup>3</sup> However, the Commonwealth Court of Pennsylvania ruled that this restriction of a county's power to interfere with substantive rules governing valuation of property by professional assessors did not deny Allegheny County the power to establish an assessment system that was contrary to the Second Class County Assessment Law.<sup>4</sup>

In each home rule county, a board is established to supervise, equalize and revise assessments, and to hear and adjudicate all appeals from county real property tax assessments. The assessment organization is basically the same, with only slight variations. The charters of Delaware, Erie, Lackawanna and Lehigh counties retain the three-member Board of Tax Assessment Appeals. Northampton County, on the other hand, appoints a five-member Revenue Appeals Board. In general, these boards are limited to hearing appeals and do not participate in making assessments.

Allegheny County has a three-member Property Assessment Oversight Board to oversee the assessment process, a seven-member Board of Property Assessment Appeals and Review to hear assessment appeals, and an Office of Property Assessments to make all assessments and valuations of property.

## **Appointment of Assessors**

In non-home rule counties in Pennsylvania, the boards in charge of the supervision of assessments appoint assessors. All assessors responsible for real estate assessments must be certified by the State Board of Certified Real Estate Appraisers.<sup>5</sup> Except in first class counties, all assessors must complete a 90-hour basic appraisal course and successfully pass a comprehensive examination in order to receive certification.<sup>6</sup> A current certification is valid for two years.<sup>7</sup> To be recertified, an assessor must successfully complete another 20 hours of training.<sup>8</sup>

The Third Class City Code provides for the appointment and employment of persons to value and assess property for taxation within the city, in accordance with the procedures and methodologies set forth in the assessment law or laws applicable in the county in which the city is located.<sup>9</sup> Any city in any county may elect to have its property assessed by the county assessors.<sup>10</sup> A city, conducting its own assessments, may subsequently elect to utilize the county assessment office to value and assess property.<sup>11</sup>

In counties of the second class A through eighth class, a chief assessor is appointed by the county commissioners with the advice of the board of assessment appeals or the board of assessment revision, as applicable.<sup>12</sup> The chief assessor, with the approval of the board, will then hire subordinate assessors subject to any applicable county personnel policy and regulations of the board, as are necessary.<sup>13</sup> The chief and subordinate assessors receive compensation as determined by the salary board of the county.<sup>14</sup>

## **Assessment Process**

Assessors are required to value property "according to the actual value thereof and at such rates and prices for which the same would separately bona fide sell."<sup>15</sup> In arriving at actual value, the price at which any property may actually have been sold shall be considered but shall not be controlling.<sup>16</sup> Instead such selling price, estimated or actual, will be subject to revision by increase or decrease to accomplish equalization with other similar property within the taxing district.<sup>17</sup>

To establish actual value the county may use current year market values or it may adopt a base year for market values.<sup>18</sup> The base year can be the year of the most recent countywide reappraisal or it can be another designated prior year.<sup>19</sup> In arriving at actual value, the county may use all three accepted assessment methods, which include the cost (reproduction or replacement, as applicable less depreciation and all forms of obsolescence), comparable sales and income approaches.<sup>20</sup> However, all three approaches must be used in conjunction with one another.

Once the property is valued the county applies its established predetermined ratio to calculate the assessment.<sup>21</sup> The established predetermined ratio is the ratio of assessed to actual value set by the board of county commissioners. It may be set at up to 100 percent for first through eighth class counties.<sup>22</sup> The county may change the predetermined ratio without revaluing all the properties, retaining the same base year for market values. Such a change constitutes a countywide revision of assessments requiring a notice to all property owners.<sup>23</sup>

When the county assessment board or county assessment office receives the assessment roll, it may make additions and revisions, as appropriate, to such assessment roll.<sup>24</sup> The county then prepares a master duplicate of all real estate assessments in the county by district, showing the name of property owner, address, property location and assessed valuation. The assessment rolls are open to public inspection.

Counties are required by the major assessment laws to furnish assessment rolls to local taxing districts for purposes of taxing real estate and occupations. In second class A through eighth class counties, the final delivery date is November 15 of the previous year.<sup>25</sup> No date is specified by law for delivery of the tax duplicate to the collectors by the local district. Each taxing authority prepares its own duplicate, calculating the amount of tax due on each property and person on the basis of assessed valuations of real estate and occupations determined by the proper assessing authority.

## Assessment of Mobile Homes

The General County Assessment Law provides for the taxation of “house trailers and mobile homes buildings permanently attached to land or connected with water, gas, electric or sewage facilities . . . .”<sup>26</sup> The Consolidated County Assessment Law contains a similar provision.<sup>27</sup> A mobile home or house trailer must, therefore, be assessed as real estate if permanently attached to the land or connected with water, gas, electric or sewage facilities. The question of attachment is governed both by physical facts and the intention of the owner. Evidence such as removal of wheels, absence of a license for highway use, and presence of foundations and other accessory structures is taken into consideration.

Persons who lease land to two or more persons for siting mobile homes subject to real estate taxation are required to maintain a record of all leases open for inspection at all reasonable times by the tax assessor. The law also requires mobile home court operators to forward to the tax assessor each month the record of arrivals and departures of each mobile home or house trailer on their land.<sup>28</sup> The assessment is required to be made in the name of the owner of the mobile home, that is, the person named in the title issued by either the Commonwealth of Pennsylvania or another state.<sup>29</sup>

## Aids in Assessment

In counties from the second class A to eighth class, recorders of deeds are required to keep a daily record of every deed or conveyance of land entered in their office and to note its recording date, the names of the grantor and grantee, and the location of the property.<sup>30</sup>

In counties from the second class A to eighth class, every municipality or third-party agency responsible for the issuance of building permits is required to forward a copy of each building permit it issues to the county assessment office on or before the first day of every month.<sup>31</sup> If a person makes improvements to any real property, other than painting of or normal regular repairs to a building, aggregating more than \$2,500 in value and a building permit is not required for the improvements, the property owner must provide the following information to the board of assessment appeals or the board of assessment revision, as applicable: (1) the name and address of the person owning the property; (2) a description of the improvements made or to be made to the property; and (3) the dollar value of the improvements.<sup>32</sup>

## Valuation of Property

For the purpose of real estate taxation, assessment consists of placing a valuation on real property and then applying an assessment ratio. The assessment laws call for the valuing of properties at their actual value. The price at which any property may actually have been sold in the base year or the current tax year is to be considered but is not controlling. Such selling prices can be increased or decreased as part of the valuation process to accomplish equalization with other similar property within the taxing district.<sup>33</sup>

The courts have interpreted actual value to mean market value. Market value has been defined as the price which a purchaser is willing but not obligated to pay an owner who is willing but not obligated to sell, taking into consideration all uses to which the property is adapted.<sup>34</sup> The assessment laws provide for the establishment of a predetermined ratio of assessed to market value not to exceed 100 percent for first through eighth class counties.<sup>35</sup> The assessed value of taxable property for tax purposes has varied between 2.8 percent and 122 percent between the years 2004-2013.

All properties within the taxing district must be uniformly assessed at a similar ratio.<sup>36</sup> This is necessary in order to satisfy the requirements of Article VIII, Section I of the Pennsylvania Constitution, which provides that all taxes must be uniform on the same class of subjects within the territorial limits of the authority levying the tax. The controlling principle in matters of valuation is that no one taxpayer should pay any more or less than their proportionate share of the cost of government. Equalization may require periodic reappraisals of all parcels within the county, initiated at the discretion of the county commissioners.<sup>37</sup>

Equalization of assessments also raises issues of federal law. In a renowned case, the United States Supreme Court held inequitable assessment practices violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.<sup>38</sup> In this case, the county had a policy of reassessing recently purchased property at fair market value, resulting in significantly higher tax assessments than those on comparable longer-held neighboring properties which were not reassessed. No similar legal actions have been successful in federal courts in Pennsylvania. Here, courts have held that the principle of comity and the federal Tax Injunction Act require an exhaustion of state administrative remedies before raising constitutional issues in federal courts.<sup>39</sup>

Land and improvements must be valued separately according to the First Class County Assessment Law, Consolidated County Assessment Law and Second and Third Class City Codes.<sup>40</sup> The distinction is particularly important for real estate taxation in cities and boroughs, which may tax land at a different rate than improvements, but must exclude farmland.<sup>41</sup>

In determining the market value of real estate, recent sales of comparable properties, that is properties of a similar nature, are persuasive but not conclusive in helping to establish the market value. The properties selected need not be identical. The sales prices, however, are useful in showing relative values by bringing out characteristic qualities, whether similar or divergent. Comparison based on sales may be made according to location, age, income, expense, use, size, type of construction and in numerous other ways.<sup>42</sup>

In arriving at a proper valuation of real estate for tax purposes, there is a two-step procedure involved:

1. The fair market value of the property must be established. Reproduction or replacement cost, as applicable, less depreciation and all forms of obsolescence; comparable sales; and income methods can be used together.
2. The established predetermined ratio must then be applied to determine fair assessed value.

As an example, if the determined fair market value of a parcel of land is \$40,000 and the ratio is 30 percent, the fair market value is multiplied by the ratio, making the assessed value of the property \$12,000. For taxing purposes, tax bills are computed by multiplying the municipality's tax rate by the assessed valuation. As a further example, the current rate is 30 mills per \$1.00 of assessed valuation of taxable property, or \$3.00 per every \$100 value. Dividing the \$100 into the assessed valuation, or \$12,000 equals 120 x \$3.00, or a real estate tax bill amounting to \$360.00 due on that particular piece of property.

## REFERENCES

1. 53 P.S. § 13132; First Class City Home Rule Act, Section 17.1.
2. 53 P.S. § 37522; Third Class City Code, Section 2522.
3. 16 P.S. § 6107-C(h)(8);
4. *Board of Property Assessment, Appeals Review and Registry of Allegheny County v. County of Allegheny*, 773 A.2d 816 (Pa. Cmwlth. 2001).
5. 63 P.S. § 458.4; Assessors Certification Act, Section 4.
6. 63 P.S. §§ 458.5 & 458.11.
7. 63 P.S. § 458.4.
8. 63 P.S. § 458.4.
9. 53 P.S. § 37522(a).
10. 53 P.S. § 37522(a).
11. 53 P.S. § 37522(a)(4).
12. 53 Pa.C.S. § 8831
13. 53 Pa.C.S. §§ 8831-32.
14. 53 Pa.C.S. §§ 8831-32.
15. 72 P.S. § 5020-402(a).
16. 72 P.S. § 5020-402(a); 53 Pa.C.S. § 8842(b).
17. 72 P.S. § 5020-402(a); 53 Pa.C.S. § 8842(b).
18. 72 P.S. § 5020-402(a); 53 Pa.C.S. § 8842(a); *but see Clifton v. Allegheny Cty*, 969 A.2d 1197 (Pa. 2009) (holding that, as applied in Allegheny County, the statutory base year system of taxation, which permits “the prolonged and potentially indefinite use of an outdated base year assessment to establish property tax liability, violates the Uniformity Clause of the Pennsylvania Constitution.”); *see also* 53 Pa.C.S. § 8842(a).
19. 72 P.S. § 5020-102; 53 Pa.C.S. § 8802.
20. 72 P.S. § 5020-402(a); 53 Pa.C.S. § 8842(b).
21. 72 P.S. § 5020-402; 53 Pa.C.S. § 8842.
22. 72 P.S. § 5020-402(a); 53 Pa.C.S. § 8842(a).
23. *Appeal of Sunrise Properties, Inc.*, 28 D.&C.3d 19, 22 (Ct. Com. Pl. Clearfield Co. 1983).
24. 72 P.S. § 5020-505; 53 Pa.C.S. § 8841.
25. 53 Pa.C.S. § 8844.
26. 72 P.S. § 5020-201.
27. 53 Pa.C.S. § 8811 (a)(1).
28. 72 P.S. § 5020-407(b); 53 Pa.C.S. § 8821(b).
29. 72 P.S. § 5020-407(b); 53 Pa.C.S. § 8821(b).
30. 72 P.S. § 5020-407(a); 53 Pa.C.S. § 8862(a).
31. 53 Pa.C.S. § 8861(a).
32. 53 Pa.C.S. § 8861(b).
33. 72 P.S. § 5020-402(a); 53 Pa.C.S. § 8842(b).
34. *Beitch Co. v. Board of Property Assessment, Appeals and Review*, 209 A.2d 397, 417 Pa. 213, 217 (1965); *In re Springfield Sch. Dist.*, 101 A.3d 835, 842 (Pa. Cmwlth. 2014).
35. 72 P.S. § 5020-402(a); 53 Pa.C.S.A. § 8842(a).
36. *In re Brooks Bldg.*, 137 A.2d 273, 391 Pa. 94, 99 (1958).
37. *Carino v. Board of Commissioners, Armstrong County*, 468 A.2d 1201, 79 Pa.Cmwlth. 242, 248 (1983).
38. *Allegheny Pittsburgh Coal Company v. County Commissioner of Webster County*, 488 U.S. 336, 338, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989).
39. *Garrett v. Banford*, 582 F.2d 810 (3d Cir. 1978); *Sunderland Properties, Inc. v. County of Berks*, 750 F.Supp. 704 (E.D. Pa. 1990).
40. 72 P.S. § 5341.7 (First Class County Assessment Law); 53 Pa.C.S.A. § 8841 (Consolidated County Assessment Law); 53 P.S. § 25894 (Second Class Cities); 53 P.S. § 37531 (Third Class Cities).
41. 53 P.S. § 37531; 8 Pa.C.S. § 1302.1.
42. *McKnight Shopping Center, Inc. v. Board of Property Assessment, Appeals and Review*, 209 A.2d 389, 417 Pa. 234, 241 (1956).

## IV. Assessment Appeals

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The assessment laws provide procedures whereby any property owner may appeal the assessment of their property to the Board of Assessment Appeals if they feel the value was set too high or the ratio applied was not uniform.

Taxpayers contemplating filing an appeal can refer to the table below for filing dates and hearing dates of appeals by the Board in assessing jurisdictions:

County/City	Filing Date Deadline	Hearing Date Deadline
First Class Counties <sup>1</sup>	First Monday in October	As determined by the Board
Second Class Counties <sup>2</sup>	Last day of February	As determined by the Board
Second Class A to Eighth Class Counties <sup>3</sup>	Sept. 1 or an earlier date (but no earlier than August 1) if so designated by the county commissioners	October 31
Third Class Cities <sup>4</sup>	See assessment law or laws applicable in the county in which the city is located	See assessment law or laws applicable in the county in which the city is located

In hearing an appeal, the Board must determine the current market value of the property and the common level ratio of assessed to market value as established by the State Tax Equalization Board. After determining current market value, the Board is to apply the established predetermined ratio unless there is a variance of more than fifteen percent from the common level ratio. Base year valuations can be appealed without reference to the ratio.<sup>5</sup>

The decision of the Board may be appealed to the court of common pleas of the county. In an appeal, the court is to make similar determinations of current market value and common level ratio.<sup>6</sup> The law stipulates that an appeal does not prevent the collection of taxes upon the assessment. In case the assessment is reduced, the excess is to be returned to the taxpayer.<sup>7</sup>

Whenever an assessment is appealed, the taxing jurisdiction must introduce the assessment record into evidence at the trial. When this is done, a supposition arises in favor of the amount of the assessment. If the taxpayer fails to offer credible evidence, the taxing authority prevails and the assessment stands. If the taxpayer does produce credible evidence, the assessment record may not influence the court's determination of this correctness. It should be noted that the taxpayer always bears the final burden of convincing the court of the merits of the appeal.<sup>8</sup>

In the case of *Millcreek Township School District v. Erie County Board of Assessment Appeals*, the Commonwealth Court ruled that a school district had statutory authority to appeal an assessment.<sup>9</sup> The Commonwealth Court also has found that municipalities and school districts possess the same procedural due process rights as individual taxpayers in assessment appeals.<sup>10</sup>

A taxpayer is entitled to an assessment that reflects the ratio actually applied to other properties. In an appeal where the assessment to market value ratio is found facially valid, the taxpayer must respond with credible, relevant evidence to rebut the ratio.<sup>11</sup> Since 1983 the common level ratios for each county as determined by the State Tax Equalization Board are the definitive statement of assessment ratios in assessment appeals.<sup>12</sup> The same ratio must be applied to all types of land uses within the jurisdiction. Raw sales prices are not a reliable substitute for fair market values; they are only an indication of market values. Sales data must be adjusted to reflect the land use composition of property in the taxing jurisdiction.<sup>13</sup>

Formal assessment appeals before the board are often preceded by informal administrative appeals within the assessment office. These informal appeals often pinpoint simple errors in the assessment process. Whenever a mathematical or clerical error results in overpayment of taxes, the county assessment office must inform the appropriate taxing authorities which are required to make refunds.<sup>14</sup> Refunds must cover the period of the error or six years from the date of application for refund or discovery of such error by the board, whichever is less.

Until recent years, legal actions attacking the county's total assessment scheme were generally unsuccessful. Pennsylvania courts held that the various county assessment laws provide taxpayers with a plain, adequate and complete remedies to challenge the constitutionality of a taxing jurisdiction's method of property assessments.<sup>15</sup> One of the first exceptions resulted where taxpayers were able to show that a county was performing a de facto countywide reassessment on a piecemeal basis.<sup>16</sup> In *City of Lancaster v. County of Lancaster*, the county was using current market values to recalculate 1960 base year values on a district-by-district basis. The court found the resulting inequity was so pervasive that the assessment appeal procedure would no longer provide relief and ordered the county to conduct a countywide reassessment. The courts have now moved to accept overall challenges based on equity, poor assessment quality and the lapse of time since properties were assessed.<sup>17</sup> Court orders requiring counties to undertake countywide reassessments are no longer rarities.

In a more recent decision, the Pennsylvania Supreme Court examined the constitutionality of the base-year assessment system in Allegheny County, which system was challenged as a violation of the Uniformity Clause of the Pennsylvania Constitution.<sup>18</sup> The lower court found that the provisions of Pennsylvania's assessment laws that allow a county to arrive at actual value through use of a base year method violated the Uniformity Clause. The Pennsylvania Supreme Court rejected the lower court holding. In reversing, the Pennsylvania Supreme Court found that, as applied in Allegheny County, the statutory base year system of taxation at issue, which approved the prolonged and potentially indefinite use of an outdated base year assessment to establish property tax liability, violated the Uniformity Clause. However, the court held that the appropriate remedy was for the lower court to order a reassessment of all real estate in Allegheny County. This holding, requiring a reassessment, appears to be consistent with several Commonwealth Court decisions over the past 20 years, some of which are cited above.

## REFERENCES

1. 72 P.S. §§ 5341.10 & 5341.14; First Class County Assessment Law, Sections 10 & 14.
2. 72 P.S. § 5452.11; Second Class County Assessment Law, Section 11.
3. 53 Pa.C.S. §§ 8844(c)&(e).
4. 53 P.S. § 37522(a)(2).
5. 72 P.S. § 5020-511 (General County Assessment Law); 53 Pa.C.S. § 8844(e) (Consolidated County Assessment Law).
6. 72 P.S. §§ 5020-518.1 & 5020-518.2 (General County Assessment Law); 53 Pa.C.S. § 8854 (Consolidated County Assessment Law).
7. 72 P.S. § 5020-518.1 (General County Assessment Law); 53 Pa.C.S. § 8854 (Consolidated County Assessment Law).
8. *Deitch Co. v. Bd. of Prop. Assessment, Appeals & Review of Allegheny Cnty.*, 209 A.2d 397, 417 Pa. 213, 221 (1965); *Herzog v. McKean Cnty. Bd. of Assessment Appeals*, 14 A.3d 193, 200 (Pa. Cmwlth. 2011).
9. *Millcreek Township School District v. Erie County Board of Assessment Appeals*, 737 A.2d 335 (Pa. Cmwlth. 1999); *In re Springfield Sch. Dist.*, 101 A.3d 835, 847 (Pa. Cmwlth. 2014); see also 53 Pa.C.S. § 8855 (stating that a taxing district, which includes a school district, has the "right to appeal any assessment within its jurisdiction in the same manner, subject to the same procedure and with like effect as if the appeal were taken by a taxable person with respect to the assessment . . .").
10. *Richland School District v. County of Cambria Board of Assessment Appeals*, 724 A.2d 988, 990 (Pa. Cmwlth. 1999).
11. *Appeal of Chartiers Valley School District*, 447 A.2d 317, 67 Pa.Cmwlth. 121, 130 (1982).
12. 71 P.S. § 1709.1516a.
13. *Keebler Company v. Board of Revision of Taxes of Philadelphia*, 436 A.2d 583, 496 Pa. 140 (1981); *In re Appeal of Township of South Whitehall*, 436 A.2d 589, 496 Pa. 152, 158-59 (1981).
14. 72 P.S. § 5020-505.1 (General County Assessment Law); 53 Pa.C.S. § 8816 (Consolidated County Assessment Law).
15. *Murtagh v. Cnty. of Berks*, 715 A.2d 548, 551 (Pa. Cmwlth. 1998).
16. *City of Lancaster v. County of Lancaster*, 599 A.2d 289, 143 Pa. Cmwlth. 476 (1991), appeal denied 606 A.2d 903, 530 Pa. 634.
17. *Croasdale v. Dauphin County Board of Assessment Appeals (Croasdale I)*, 492 A.2d 793, 89 Pa.Cmwlth. 409, 1985; *City of Lancaster v. County of Lancaster*, 599 A.2d 289, 143 Pa. Cmwlth. 476, 497 (1991) (incomplete countywide reassessment); *City of Harrisburg v. Dauphin Cnty. Bd. of Assessment Appeals*, 677 A.2d 350, 354 (Pa. Cmwlth. 1996) (same); *Millcreek Twp. Sch. Dist. v. Cnty. of Erie*, 714 A.2d 1095, 1108 (Pa. Cmwlth. 1998) (outdated and non-uniform assessment system); *Ackerman v. Carbon Cnty.*, 703 A.2d 82, 89 (Pa. Cmwlth. 1997) (same); *but see In re Sullivan*, 37 A.3d 1250, 1257 (Pa. Cmwlth. 2012) (evidence was insufficient to support taxpayers' claim that a countywide reassessment was the only constitutionally appropriate remedy to an alleged nonuniform tax assessment of their residential property).
18. *Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 600 Pa. 662 (2009).

## V. Real Estate Tax Rates

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### General Rate Limits

Statutory rate limitations on real estate taxes have been established for all classes of taxing jurisdiction in Pennsylvania, with certain exceptions for a few cities.<sup>1</sup> Jurisdictions which have adopted home rule charters under the Home Rule Charter and Optional Plans Law are no longer subject to real estate tax limits imposed by the legislature in the various local government codes.<sup>2</sup> Voters in individual home rule municipalities may establish their own real estate tax rate limits in their local charters.

The cities of Pittsburgh and Scranton may levy real property taxes at a lower rate on buildings than the rate levied on land.<sup>3</sup> Third class cities may also set different rates for land and buildings provided that such rates are uniform within each classification.<sup>4</sup> Boroughs may set different rates for land, except for farmland, and buildings.<sup>5</sup> Third class school districts coterminous with third class cities may also levy separate rates on land and buildings.<sup>6</sup>

Legal limits on general purpose levies for other taxing jurisdictions are as follows:

<b>Taxing Jurisdiction</b>	<b>Rate Limit<sup>7</sup></b>
Counties, Second Class (Allegheny) .....	.25 mills
Counties, Second Class A (Bucks, Delaware & Montgomery) ..	.40 mills
Counties, Third through Eighth Class .....	.25 mills
Institution Districts .....	.10 mills
Cities, Third Class .....	.30 mills
Boroughs .....	.30 mills
Townships, First Class .....	.30 mills
Townships, Second Class .....	.14 mills
School Districts, First Class A (Pittsburgh) .....	.no limit
School Districts, Second, Third and Fourth Class .....	.25 mills

The statutory rate limits for school districts are misleading because schools can levy unlimited additional millage to pay salaries and debt service. For third through eighth class counties, cities, boroughs and townships, an additional five mills may be added to the foregoing rate limits by the applicable governing body with court approval. Court approval is to be granted if the taxing body shows the additional millage is necessary to meet the needs of an approved budget.<sup>8</sup>

## Special Purpose Rate Limits

In addition to the general purpose rate limits permitted, municipal codes authorize taxing bodies to levy additional real estate taxes for special purposes. Listings of special purpose taxes authorized for each classification are included in the Tax Sources section of this Manual. Other state laws authorize additional real estate taxing powers for community colleges, for financially distressed municipalities,<sup>9</sup> for distressed municipal pension systems and open space acquisition.

For years, it was common practice for municipalities in southeastern counties to levy a special police/public safety millage. This special tax was not explicitly authorized by the municipal codes or any other state law, but appeared to be a response to the problems raised for the municipal governments by the extremely low assessment ratios in those counties. During the early 1990s, Delaware, Bucks and Montgomery counties had the three lowest ratios in the state. In the first appellate challenge to this practice, the police/public safety millage was held invalid.<sup>10</sup> The court ruled it could not be justified by Section 1303 of the Borough Code as a levy to pay off borough indebtedness, nor could it be justified by Act 111 of 1968,<sup>11</sup> since the Eddystone police were not represented by a bargaining unit and there was no arbitration award present in the case requiring legislative action to implement.

## Limitation After Countywide Revision of Assessment

For taxing districts in counties of the second class A to eighth class, the Consolidated County Assessment Law limits the amount of real estate tax revenue such taxing districts may levy in the first year following a countywide revision of assessment (i.e., a countywide reappraisal or a change in the predetermined assessment ratio).<sup>12</sup> Specifically, each political subdivision in those counties is required to reduce its tax rate, if necessary, for the first year after a countywide revision of assessment such that the total amount of taxes levied for that year against the real properties contained in the duplicate does not exceed the total amount the political subdivision levied on the properties in the preceding year. After establishing this revenue-neutral tax rate, the taxing district may, by a separate and specific vote, establish a final tax rate for the first year in which the reassessment is implemented to levy its real estate taxes on the revised assessment, provided that the tax rate is fixed at a figure which limits the total amount of taxes levied that year against real properties contained in the duplicate for the preceding year to not more than 110 percent of the total amount levied the preceding year.

The foregoing limitation does not apply to school districts subject to Section 327 of the Taxpayer Relief Act.<sup>13</sup> Additionally, for purposes of determining the total amount of taxes to be levied for the first year following a countywide revision of assessment, the law excludes the amount to be levied on newly-constructed buildings or on increased valuations based on new improvements made to existing buildings.

All political subdivisions within counties of the second class A to eighth class, if good cause is shown, are authorized to increase the tax rate prescribed with court approval. This restriction also applies to third class cities bringing themselves under county assessment values for the first time after a countywide revision of assessment.<sup>14</sup>

The assessment laws prohibit political subdivisions within counties of the second class from levying real estate taxes on a countywide revised assessment of real property until it has been completed for the entire county.<sup>15</sup>

The Second Class County Code limits taxing bodies within second class counties to 105 percent of the total amount of real estate tax revenues received the prior year when the county carries out a reassessment or changes its predetermined ratio.<sup>16</sup> The real estate revenue limit excludes newly constructed buildings or increased valuations based on new improvements made to existing structures. However, the Allegheny County Court of Common Pleas has ruled that these “anti-windfall provisions” do not prevent tax increases in excess of the 105 percent limit as long as any increase is publicly announced and enacted.<sup>17</sup>

## REFERENCES

1. 53 P.S. § 12553 (authorizing city to fix property tax rates which will yield sufficient receipts to meet the liabilities of the city for the ensuing year); 53 P.S. §§ 23104 & 25942(a) (same).
2. 53 Pa.C.S. § 2962(b).
3. 53 P.S. § 25894.
4. 53 P.S. § 37531(c)(3).
5. 8 Pa.C.S. § 1302.1 (“Farmland” is “[a]ny tract of land that is actively devoted to agricultural use, including, but not limited to, the commercial production of crops, livestock and livestock products” as defined in section 3 of the Agricultural Area Security Law); Borough Code, Section 1302.1.
6. 24 P.S. § 6-672(e); Public School Code, Section 672(e).
7. 16 P.S. § 4970 (Counties, Second Class); 16 P.S. § 4970 (Counties, Second Class A); 16 P.S. § 1770 (Counties, Third through Eighth Class); 62 P.S. § 2257 (Institution Districts); 53 P.S. § 37531 (Cities, Third Class); 8 Pa.C.S. § 1302 (Boroughs); 53 P.S. § 56709 (Townships, First Class); 53 P.S. § 68205 (Townships, Second Class); 24 P.S. § 6-652 (School Districts, First Class); 24 P.S. §§ 6-652, 6-652.1(a)(1)(iv)&(3), 583.1, 583.10, 585.1, 585.5, 585.9, 585.14 & 586.1 (School Districts, First Class A); 24 P.S. § 6-672(a) (School Districts, Second, Third and Fourth Class).
8. *City of Altoona v. Central Pennsylvania Retiree's Association*, 510 A.2d 868, 97 Pa. Cmwlth. 637, 640-41 (1986).
9. 53 P.S. § 11701.123; Municipalities Financial Recovery Act, Section 123(c)(1).
10. *In re Borough of Eddystone*, 602 A.2d 464 (Pa. Cmwlth. 1992).
11. 43 P.S. § 217.7; *see also Tate v. Antosh*, 281 A.2d 192, 3 Pa. Cmwlth. 144 (1971).
12. 53 Pa.C.S. § 8823 (Consolidated County Assessment Law).
13. 53 P.S. § 6926.327.
14. 53 Pa.C.S. § 8823(e); *Harding v. City of Uniontown*, 25 Pa. D. & C.3d 368, 370 (Ct. Com. Pl. Fayette Co. 1982).
15. 72 P.S. § 5020-402(a), General County Assessment Law, Section 402(a).
16. 16 P.S. § 4980.2 (Second Class County Code, Section 1980.2).
17. *600 Grant St. Associates Ltd. P'ship v. City of Pittsburgh*, 53 Pa. D. & C.4th 18, 39 (Ct. Com. Pl. Allegheny Co. 2001).

## VI. Exemptions

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### Constitutional Provisions

The power to determine what property shall be exempt from taxation is vested in the Pennsylvania General Assembly. With one exception, Article VIII of the Constitution does not exempt property from real estate taxation. It does, however, permit the General Assembly to grant exemptions within the guidelines authorized by Article VIII, Section 2 of the Constitution.

Only one category of tax exemption in the Constitution is mandated: residential real estate owned and occupied by paraplegic, amputee, blind or totally disabled veterans or their surviving unmarried spouses certified as needy by the State Veterans' Commission.<sup>1</sup> The Commission reviews new applications for veterans exemptions and certifies those found qualified to the county assessment office. Upon determining that the conditions for the exemption are met, including that the property is the principal residence of the owner, the applicable assessment board will grant the exemption. The State Veterans' Commission reviews all determinations of need at least once every five years for any changes in economic circumstances.

### Statutory Provisions

Additional exemptions from real estate taxation are authorized by the Constitution and provided for by the General Assembly in the General County Assessment Law and the Consolidated County Assessment Law.<sup>2</sup> The exemptions are as follows:

- All churches or actual places of regularly stated religious worship.
- All burial grounds not used or held for private or corporate profit.
- All hospitals, institutions of learning or charity, including fire and rescue stations founded, endowed and maintained by public or private charity, provided that the entire revenue derived be applied to the support of the institution.
- All property of a charitable organization providing residential housing services in which the charitable nonprofit organization receives subsidies for at least 95% of the residential housing units from a low-income federal housing program.
- All schoolhouses belonging to any municipality or school district.
- All courthouses and jails.
- All public parks owned and held by trustees for the benefit of the public and used for amusements, recreation, sports and other public purposes without profit.
- All other public property used for public purposes.
- All real property used for limited access highways and maintained by public funds.
- All property owned, occupied and used by any branch, post or camp of honorably discharged servicemen or servicewomen actually and regularly used for benevolent, charitable or patriotic purposes.
- All real property owned by one or more institutions of purely public charity, used and occupied partly by the owner or owners and partly by other institutions of purely public charity and necessary for the occupancy and use of the institutions so using it.
- All playgrounds founded and maintained by public or private charity.
- All buildings owned and occupied by free public nonsectarian libraries.
- All property maintained by public or private charity and used exclusively for public libraries, museums, art galleries or concert music halls.
- All fire and rescue stations maintained by public or private charity along with their social halls.
- Silos used for processing or storing animal feed on a farm.
- Amusement park rides, regardless of whether they have become affixed to the real estate.

In applying for an exemption, the burden always falls on the taxpayers to establish their claim of exemption and to bring themselves clearly within one of the enumerated statutory exemptions.<sup>3</sup> The only exceptions to this rule are for property owned by the Commonwealth of Pennsylvania and the United States Government.<sup>4</sup> Otherwise, there is a prejudgment against any exemption from taxation.

## Institutions of Purely Public Charity

The past forty years have witnessed an unprecedented amount of litigation over challenges to long-held assessment exemptions. In the leading case of *Hospitalization Utilization Project v. Commonwealth*,<sup>5</sup> decided in 1985. In that case, the Pennsylvania Supreme Court set forth a five-part test (the “HUP Test”) to determine whether an entity qualified for tax exemption as a purely public charity. Under the HUP Test, an institution will qualify for tax-exempt status as a purely public charity if the institution:

1. Advances a charitable purpose;
2. Donates or renders gratuitously a substantial portion of its services;
3. Benefits a substantial and indefinite class of persons who are legitimate subjects of charity;
4. Relieves the government of some of its burden; and
5. Operates entirely free from private profit motive.

After this judicial test was established, what followed in counties across the state was a series of challenges to the tax-exempt status of nonprofit hospitals, nursing homes, continuing care facilities, colleges and universities. The rigidity used in applying the HUP Test varied from court to court. Many challenges ended in settlements where the institutions agreed to make payments in lieu of taxes in exchange for retention of their tax exempt statuses. However, over a decade after the HUP case, decisions by the Supreme Court on exemptions for charities appeared to be moving back to the traditional positions.<sup>6</sup>

Nonetheless, pressure on the legislature to clarify the tax exemption process for nonprofit institutions resulted in the enactment of the Institutions of Purely Public Charity Act in 1997.<sup>7</sup> The Act places the five elements for a purely public charity enumerated in the HUP test into statutory form and adds criteria for measuring whether an institution meets those elements. Formerly, charitable institutions had to qualify separately for real estate tax exemptions and state sales tax exemptions. The Act stipulates that any sales tax exemption determination by the Department of Revenue made after November 26, 1997 will constitute a rebuttable presumption of the applicable institution’s status as a purely public charity. Political subdivisions challenging that presumed status bear the burden of proving that the institution does not comply with the standards of the Act. The Act also validates existing voluntary payments in lieu of tax agreements and authorizes future agreements between charitable institutions and political subdivisions.

However, the Pennsylvania Supreme Court, in *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike Cnty. Bd. of Assessment Appeals*, held that a property owner seeking an exemption from real property taxation as a “purely public charity,” must first meet the five-prong HUP Test.<sup>8</sup> That is, before getting to the Institutions of Purely Public Charity Act requirements, an institution must satisfy the constitutional elements of the HUP Test in order to be deemed a purely public charity for tax exemption purposes. Notably, the *Mesivtah* decision did not alter prior case law interpretation or application of the prongs of either test.

## Keystone Opportunity Zones

The General Assembly enacted the Keystone Opportunity Zone Act (the “KOZ Act”) in 1998 and expanded it in 2000 and 2003.<sup>9</sup> The KOZ Act provides that businesses and individuals located within designated Keystone Opportunity Zones (“KOZs”), Keystone Opportunity Expansion Zones (“KOEZs”) and Keystone Opportunity Improvement Zones (“KOIZs”) enjoy total exemption from almost all state and local taxes, including real estate, sales, income and gross receipts. At the time of designation, the zones were required to meet specified economic distress criteria.

Tax exemptions for KOZs began January 1, 1999 for a maximum of 15 years; tax exemptions for KOEZs began January 1, 2001 for up to 13 years; and tax exemptions for KOIZs began January 1, 2003 for up to 15 years. As a result, tax benefits for KOZs, KOEZs and KOIZs began to expire in 2010. The effective date for the expiration of KOZ Act benefits is December 31st of the year in which such benefits expire. Taxpayers with a tax year end of December 31st will be entitled to credit for the entire year. Taxpayers with a tax year ending on a date other than December 31st will be entitled to a credit based on activity in the KOZs, KOEZs and KOIZs from the beginning of their tax year to December 31st.

## Exemption of Municipal Property

Local taxing jurisdictions must be alert to secure exemption for their own property since they do not share in the commonwealth's tax immunity. Exempt status must be affirmatively requested by local public property owners for public uses.<sup>10</sup> Exemptions of public property cannot be granted on a retroactive basis.

Property owned by one political subdivision may be leased to another and still qualify as public property used for a public purpose.<sup>11</sup> Real property owned by a borough and leased to the county for a district justice office qualified as public property used for a public purpose. However, property owned by an authority and leased to commercial tenants is not exempt from taxation.<sup>12</sup>

## REFERENCES

1. Pennsylvania Constitution, Article VIII, Section 2(c); 51 Pa.C.S. § 8902.
2. 72 P.S. §§ 5020-201 & 5020-204 (General County Assessment Law, Section 204); 53 Pa.C.S. §§ 8811 & 8812 (Consolidated County Assessment Law, Section 8812).
3. *Four Freedoms House of Philadelphia, Inc. v. City of Philadelphia*, 279 A.2d 155, 443 Pa. 215, 218 (1971).
4. *Appeal of Bd. of Sch. Directors of Owen J. Roberts Sch. Dist.*, 457 A.2d 1264, 500 Pa. 465, 468 (1983); *City of Philadelphia v. Cumberland Cnty. Bd. of Assessment Appeals*, 81 A.3d 24, 622 Pa. 581, 623 (2013); *M'Culloch v. State*, 17 U.S. 316, 4 L. Ed. 579 (1819).
5. *Hosp. Utilization Project v. Com.*, 487 A.2d 1306, 507 Pa. 1, 21 (1985).
6. *Wilson Area School District v. Easton Hospital*, 747 A.2d 877 (Pa. 2000); *Unionville-Chadds Ford School District v. Chester County Board of Assessment Appeals*, 714 A.2d 397 (Pa. 1998); *City of Washington v. Board of Assessment Appeals*, 704 A.2d 120 (Pa. 1997).
7. 10 P.S. §§ 371 et seq.
8. *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike Cnty. Bd. of Assessment Appeals*, 44 A.3d 3, 615 Pa. 463, 473 (2012).
9. 73 P.S. §§ 820.101 et seq.
10. *City of Pittsburgh v. Board of Property Assessment Appeals and Review of Allegheny County*, 412 A.2d 655, 49 Pa. Cmwlth. 442 (1980).
11. *Wesleyville Borough v. Erie County Board of Assessment Appeals*, 676 A.2d 298 (Pa. Cmwlth. 1996).
12. *Southeastern Pennsylvania Transportation Authority v. Board of Revision of Taxes*, 777 A.2d 1234, 1240 (Pa. Cmwlth. 2001) aff'd, 833 A.2d 710, 574 Pa. 707 (2003).

## VII. Special Tax Provisions

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### Constitutional Provisions

In 1968, amendments to the Pennsylvania Constitution authorized the General Assembly to make special tax provisions for certain classes of taxpayers and certain subjects of taxation, including to establish special provisions for forest and farmland, for persons in need because of age, disability, infirmity or poverty, for improvements to deteriorated property and for residential construction.<sup>1</sup> Various special provisions were enacted by the General Assembly subsequent to the effective date of those amendments.

Another amendment to the Pennsylvania Constitution, approved by the voters in November 1997, added an additional exemption from the uniformity of taxation clause. As a result of that amendment, local taxing districts are authorized to exclude from taxation a portion of the assessed value of homestead property. The exclusion level cannot exceed one half the median assessed value of all homestead property within the taxing jurisdiction.

### Homestead Exclusions

The law that implements the above-mentioned amendment and thereby authorizes local taxing bodies to implement homestead exclusions is the Homestead Property Exclusion Program Act.<sup>2</sup> Under the Act, a “homestead” is generally defined as the primary residence of the owner, including the dwelling, the land on which the dwelling is located and all improvements to the dwelling and land.<sup>3</sup> Local governing bodies, such as boards of county commissioners, city councils, school districts and boards of township commissioners, may grant a homestead exclusion from local real property taxes for a portion of the assessed value of owner-occupied residences. If the local governing body authorizes a homestead exclusion, it also must authorize a farmstead exclusion in the political subdivision for all for all “farmsteads” (i.e., buildings and structures on commercial farms at least 10 acres in size that are used for storing products, raising or maintaining animals, or storing agricultural supplies, machinery or equipment).

The exclusions are a fixed dollar amount, which cannot exceed 50% of the median value of all homestead property within the taxing jurisdiction, which median value is certified by the county assessment office. The county assessment office calculates this figure from homestead exclusion applications, which property owners must file before March 1 of each year. The assessment office then certifies the median value when it certifies the tax duplicate for the coming year. The county may adopt a schedule for the review or reapplication of properties previously approved.

Local governments implementing homestead exclusions may not increase the millage rate on real estate to offset the revenue lost by the reduction in the tax base. Where voters in a school district approve a higher earned income tax, the first-year gain in revenues must be offset first, by elimination of any occupation, per capita or occupational privilege tax; second, by any increase in budgeted revenues over the preceding fiscal year in accordance with an amount specified in a referendum question approved by voters; and third, by implementation of a homestead exclusion.<sup>4</sup> Counties and municipalities were given no new additional taxing powers with which to fund homestead exclusions. However, implementation is still possible for these units. For instance, where a municipality is consistently posting budget surpluses, it may choose to return a portion of the excess to its taxpayers through implementing the homestead exclusion. Other units may offset revenue losses from homestead exclusions through increases in user fees or service charges.

Unlike homestead exemptions in other states, the homestead exclusion amounts in Pennsylvania will vary from year to year as properties gain or lose qualification or as more owners apply for the exclusion. Once adopted, the taxing body may lower or raise the amount of the exclusion from year to year to meet its revenue needs. Additionally, the homestead exclusion may be adopted by some, but not all, of the taxing jurisdictions levying real estate taxes on a particular parcel, and where adopted, the exclusion will be at a different amount for each taxing district using it. For example, a homeowner may receive a homestead exclusion of \$8,000 from the parcel’s assessed value for municipal tax purposes, \$0 for county tax purposes and \$20,000 for school tax purposes. Such exclusion amounts will likely change from year to year.

It is entirely likely that in many places homeowners' applications for homestead exclusions will be processed for a number of years before a homestead exclusion is actually implemented by the homeowners' taxing jurisdictions. Moreover, once implemented, there is no guarantee such exclusion will be continued in future years.

## Senior Citizens

The Pennsylvania Taxpayer Relief Act, signed on June 27, 2006, and modified in June 2011 by Act 25 of 2011,<sup>5</sup> expanded the Senior Citizens Property Tax and Rent Rebate Program. The Program was originally established by the Senior Citizens Rebate and Assistance Act (Act 3 of 1971), which was repealed by the Taxpayer Relief Act. The Taxpayer Relief Act provides senior citizens with assistance in the form of property tax and rent rebates. Rebates are granted to Pennsylvanians age 65 and older, widows and widowers age 50 and older, and people with disabilities age 18 and over. The maximum eligible incomes for rebates are \$35,000 a year for a homeowner and \$15,000 a year for a renter, with a maximum standard rebate of \$650, annually. Claims for rebates must be filed on or before June 30 of the end of the year in which the tax or rent was due. Thus, rebates are for taxes paid during the claimant's prior calendar year.

Philadelphia is authorized to rebate or forgive that portion of real estate taxes due by low-income senior citizens caused by any increase in the real estate tax rate or an increase in the assessed value of their homestead.<sup>6</sup> The maximum amount of the benefit may be limited by the city. Allegheny County, Pittsburgh and other municipalities within Allegheny County are authorized to provide tax relief to qualified property owners through their own rebate programs.<sup>7</sup> Any such program must be modeled on the Taxpayer Relief Act program, but benefits may vary from taxing jurisdiction to taxing jurisdiction.

Additionally, Allegheny County and its political subdivisions may use a tax-neutral assessment for homesteads of qualified owner-occupants following a mandated county-wide reassessment. Individuals who qualified under the Senior Citizens Rebate and Assistance Act, which has since been repealed by the Taxpayer Relief Act, automatically qualified for the tax-neutral assessment. This tax-neutral assessment would continue until the owner fails to meet the requirements for a rebate or the owner's property is sold.<sup>8</sup>

## Real Estate Tax Deferral

Under the Real Estate Tax Deferment Program Act, all political subdivisions are authorized to establish a real estate tax deferral program for low-income homeowners.<sup>9</sup> The program is limited to persons with incomes not exceeding the eligibility limit of the Senior Citizens Rebate and Assistance Act (currently \$15,000), but a 2015 proposal to amend the Real Estate Tax Deferment Program Act would increase the income eligibility cap to \$50,000.<sup>10</sup> Currently, the deferrals apply to all increases in property taxes on the homestead over the amount paid in the year prior to application.

Once enrolled, claimants receive deferrals for subsequent years if they continue to meet the program's eligibility requirements. As part of the program, deferred property taxes become a lien against the value of the taxpayer's home and must be paid when the house is sold or the property is transferred on the death of the owner or spouse. There are limitations on the total amount of taxes that can be deferred based on the market value of the property. The deferral program is optional for local taxing bodies (although the proposed amendment mentioned above would require all political subdivisions to offer deferrals).

## Forest and Farmland

The Covenant Preserving Land Uses Act of 1966, as amended, authorizes all counties to enter into covenants with owners of land designated as farm, forest, water supply, or open space land on an adopted municipal, county or regional plan, for the purpose of preserving the land as open space.<sup>11</sup> The landowner may voluntarily agree that the land will remain in open space use as designated on the plan for a period of ten years commencing with the date of the covenant. Covenants are automatically renewed on a yearly basis unless the landowner or county gives advance notice of termination. The applicable real property tax assessment will then reflect the fair market value of the land as restricted by the covenant. The law also requires the applicable assessment appeals board to take the restriction into consideration in fixing the property's assessment.

Under the Pennsylvania Farmland and Forestland Assessment Act of 1974 (commonly referred to as the “Clean and Green Act”), preferential tax assessments are provided on tracts of land containing ten or more contiguous acres in agricultural use, agricultural reserve or forest reserve.<sup>12</sup> Tracts of land that are less than ten acres may qualify under agricultural use if the land has an anticipated yearly gross income of at least \$2,000. All agricultural use lands, however, must have been devoted to agricultural use for a three-year period prior to obtaining preferential treatment. Once approved for preferential treatment, the land is assessed on its value for agricultural or forest use (i.e., “use value”) and not on its potential market value. Subsequently, if any land is “split-off” and the resulting parcels do not meet the Act’s requirements to qualify for preferential assessment (e.g., the split-off parcel is less than 10 acres), the landowner will be required to pay roll-back taxes. For example, the Commonwealth Court of Pennsylvania has held that a landowner’s conveyance of a 3.56-acre tract of land to her son qualified as a “split-off” under the Act and as a result, the conveying landowner was subject to roll-back taxes.<sup>13</sup>

Landowners may apply for preferential use assessments by applying to the county board of assessment appeals in the county in which the land is located. Landowners must submit such application on or before June 1 of the year immediately preceding the tax year and on the appropriate form provided by the Department of Agriculture. When affording preferential tax treatment to farmland and forestland, counties must follow the procedures set forth in the Farmland and Forestland Assessment Act. County assessment boards have no authority to devise their own informal program of preferential tax treatment for farmland.<sup>14</sup>

Pennsylvania’s Open Space Lands Act provides that for any land where open space interests in real property have been acquired by the state or local government units, the assessment of the remaining private interests in the property must be reduced to reflect the change in the market value of that land.<sup>15</sup> Additionally, where agricultural conservation easements on land have been purchased by the state, local governments or nonprofit conservation entities, the land must be assessed at a restricted farmland market value, defined as market value solely for agricultural use.<sup>16</sup> After development rights have been purchased by state or local governments under the Open Space Lands Act or the Agricultural Area Security Law, local taxing authorities, including school districts, are authorized to exempt the parcels from any further increase in millage.<sup>17</sup>

## **Deteriorated Property or Areas**

The Improvement of Deteriorating Real Property or Areas Tax Exemption Act, permits each taxing authority, by ordinance or resolution, to exempt from real property taxation the assessed valuation of improvements to deteriorated residential properties within deteriorated neighborhoods, according to certain enumerated exemption schedules.<sup>18</sup> Prior to adopting such an ordinance or resolution, the taxing authority, or two or more taxing authorities acting jointly, must determine the boundaries of a deteriorated neighborhood or neighborhoods to which the tax exemption provisions will apply.

The Act provides that local taxing authorities may grant tax exemptions on the assessment attributable to the actual cost of construction of the new dwelling units or improvements up to an enumerated maximum cost per dwelling unit or up to any lesser multiple of \$1,000, as specified in the applicable ordinance or resolution. Whether or not the assessment eligible for exemption is based upon a maximum cost or a lesser cost, the actual amount of taxes exempted must be in accordance with one of the following exemption schedules: (1) a ten-year schedule with 100 percent exemption the first year and reductions by 10 percent each subsequent year; (2) a five-year schedule with annual 20 percent reductions; (3) a three-year schedule with 100 percent exemption in each year; (4) ten years of 100 percent exemption; or (5) an exemption schedule adopted by the local taxing authority, provided that such schedule does not exceed a period of ten years. The exemption from taxes is limited to the additional assessment valuation attributable to the actual costs of improvements to deteriorated property. The exemption may not terminate upon the transfer of the property.

An exemption request must be submitted on a form provided by the taxing authority at the time the owner secures a building permit, or if no building permit or other notification of improvement is required, at the commencement of construction. The assessment agency is required to assess the improvement separately and notify the owner and the taxing authority of the reassessment and the amounts eligible for exemption. The notice must include the amount of the assessment eligible for exemption and include the exact schedule of assessments over the abatement period.<sup>19</sup>

Pennsylvania's Local Economic Revitalization Tax Assistance Act (LERTA) authorizes each local taxing authority, by ordinance or resolution, to exempt from real property taxation the assessed valuation of new construction in deteriorated areas or improvements to deteriorated industrial, commercial or other business property.<sup>20</sup> Prior to the adoption of an ordinance or resolution, the municipal governing body must affix the boundaries of a deteriorated area or areas, wholly or partially located within its jurisdiction. Two or more municipal governments may jointly determine such boundaries and establish the uniform maximum cost per unit to be exempted and the schedule of taxes exempted.

The tax exemption schedule must not exceed ten years in duration, must stipulate the portion of new construction or improvement to be exempted each year and must limit the exemption to the additional assessment valuation attributable to the actual costs of new construction or improvements to deteriorated property or an amount not in excess of the maximum cost per unit established by a municipal governing body. Improvements and new construction are assessed after completion.

The exemption period begins in the year following the completion of the improvement, not the year following the application for a building permit and the application for an exemption.<sup>21</sup> However, the Pennsylvania Supreme Court has held that taxpayers who did not seek to challenge the commencement date of exemptions granted under LERTA when the exemptions were awarded could not do so after the exemptions expired.<sup>22</sup> The exemption may not terminate upon the sale or exchange of the property.

Taxpayers apply for an exemption on a form provided by the local taxing authority at the time they secure a building permit, or if no building permit or other notification of new construction or improvement is required, at the time they commence construction. Failure to meet the notification requirement can disqualify a taxpayer from an exemption. For example, the Commonwealth Court has upheld a Philadelphia LERTA ordinance requiring notice of an intention to seek an exemption within 60 days of securing a building permit.<sup>23</sup> After completion of the new construction or improvement, the assessment agency must assess the new construction or improvement separately and notify the taxpayer and the local taxing authorities of the amounts of the assessment eligible for exemption.

## **New Residential Construction**

The New Home Construction Local Tax Abatement Act, which implements Section 2(b)(iv) of Article VIII of the Constitution of Pennsylvania, authorizes local taxing bodies to exempt improvements to certain unimproved residential property.<sup>24</sup> Specifically, local taxing authorities may, by ordinance or resolution, exempt from real property taxation the assessed valuation of residences built upon unimproved land within designated boundaries. The exemptions are limited to a maximum duration of two years.

## **Special Tax Relief to Long-term Owner-Occupants**

An amendment to the Pennsylvania Constitution adopted by voters in 1984 authorizes local taxing authorities in counties of the first and second class to adopt special tax provisions for long-term homeowners who are adversely affected by sudden increases in property values due to extensive renovation in their neighborhoods. This provision was implemented by the First and Second Class County Property Tax Relief Act in 1988.<sup>25</sup> The governing bodies in Philadelphia and Allegheny Counties are authorized to, by ordinance or resolution, grant longtime owner-occupants tax deferrals, exemptions or a combination of both for that portion of an increase of real property taxes caused by any increase in the market value of their property resulting from widespread renovation of property in their neighborhood. These deferrals and/or exemptions are limited to areas designated by the applicable governing bodies. Additionally, school districts and municipalities within Allegheny County have the option to participate in this program.

## REFERENCES

1. Pennsylvania Constitution, Article VIII, Section 2(b).
2. 53 Pa.C.S. §§ 8581 et seq., Homestead Property Exclusion Program Act.
3. 53 Pa.C.S. § 8401.
4. 53 Pa.C.S. § 8717.
5. 53 P.S. §§ 6926.1301 et seq.
6. 72 P.S. §§ 4751-21 et seq.
7. 16 P.S. § 6171-B.
8. 16 P.S. §§ 4901-A et seq.
9. 53 Pa.C.S. §§ 8571 et seq., Real Estate Tax Deferment Program Act.
10. S.B. No. 31, 199th Gen. Assemb., Reg. Sess. (Pa. 2015).
11. 16 P.S. §§ 11941 et seq.; Covenant Preserving Land Uses Act.
12. 72 P.S. §§ 5490.1 et seq., Pennsylvania Farmland and Forestland Assessment Act; 7 Pa. Code §§ 137b.1 et seq.
13. *Saenger v. Berks County Bd. of Assessment Appeals*, 732 A.2d 681, (Pa. Cmwlth. 1999).
14. Appeal of Sidorek, 621 A.2d 1149, 153 Pa. Cmwlth. 476, 480 (1993).
15. 32 P.S. § 5009.
16. 72 P.S. § 5491.3, Preserved Farmland Tax Stabilization Act.
17. 32 P.S. § 5007.1(b).
18. 72 P.S. § 4711-202, Improvement of Deteriorating Real Property or Areas Tax Exemption Act.
19. *Banzhoff v. Dauphin County Board of Assessment Appeals*, 575 A.2d 164, 133 Pa. Cmwlth. 165, 170 (1990).
20. 72 P.S. §§ 4722 et seq., Local Economic Revitalization Tax Assistance Act.
21. *MacDonald, Illig, Jones and Britton v. Erie County Board of Assessment Appeals*, 604 A.2d 306, 145 Pa. Cmwlth. 521 (1992).
22. *Lincoln Philadelphia Realty Associates I v. Board of Revision of Taxes of City and County of Philadelphia*, 758 A.2d 1178, 563 Pa. 189 (2000).
23. *Northwood Nursing Care and Convalescent Home, Inc. v. City of Philadelphia, Board of Revision of Taxes*, 511 A.2d 281, 98 Pa. Cmwlth. 401 (1986).
24. 72 P.S. §§ 4754-1 et seq., New Home Construction Local Tax Abatement Act.
25. Pennsylvania Constitution, Article VIII, Section 2(b)(v).

## VIII. Payments In Lieu of Taxes

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One means of compensating taxing jurisdictions for taxes not received from tax-exempt properties is the making of payments in lieu of taxes. These payments are intended to cover the cost of governmental services provided by local governments or to offset the revenues lost when a property is removed from the tax rolls.

### State Payments In Lieu of Taxes

The Commonwealth of Pennsylvania makes annual payments to local subdivisions for state-owned land used for forest, water conservation, flood control and game purposes.<sup>1</sup> Currently, under the Forest Reserves Municipal Relief Law, the state pays \$1.20 per acre to each of the county, municipality and school district (i.e., a total of \$3.60 per acre) in which the tax-exempt land is located.<sup>2</sup> However, a 2015 proposal to amend the law would increase that amount to \$2.00 per acre to each of the county, municipality and school district (i.e., a total of \$6.00 per acre).<sup>3</sup>

Under the Public Utility Realty Tax Act (PURTA), lands and structures owned by public utilities and used in providing their services are subject to a state realty tax in lieu of local taxes on utility realty. The commonwealth redistributes PURTA tax funds it receives to the local taxing bodies on a formula basis.<sup>4</sup> Local taxing bodies must file an annual report with the Department of Revenue to qualify for this distribution.

Act 4 of 1999 changed the definition of “utility realty” to remove “land and improvement to land that are indispensable to the generation of electricity” from the PURTA tax after December 31, 1999. Act 4 was in response to the deregulation of electricity generators and has led to a substantial reduction in amount of money that is redistributed to political subdivisions from the PURTA tax beginning with the 2000 distribution. However, in July 2001, the Commonwealth Court held that Act 4 of 1999 authorized political subdivisions to impose real estate taxes on electric generating facilities beginning January 1, 2000. The court also held that the addition of electric generation realty to the tax rolls did not constitute an unconstitutional spot assessment and that school districts may revise their assessment rolls at any time during the fiscal year.<sup>5</sup>

### Federal Payments In Lieu of Taxes

Under the federal Payments-in-Lieu of Taxes Act, the Federal government makes payments to local governments to help offset losses in property taxes for those local governments due to the location of certain non-taxable Federal lands, referred to as entitlement lands, within their boundaries.<sup>6</sup> Payments are made on a fiscal year basis to each unit of local government and are based on the amount of entitlement acreage of federally owned lands within a county and limited by a per capita population factor. Subject to a maximum limit based on population, the amount of a payment under the Act to a county will be equal to the greater of either \$1.65 per acre of entitlement lands reduced by amounts the county received in the prior fiscal year under a different “payment law” (e.g., payments for timber, minerals or grazing), or \$0.22 per acre in addition to current payments. States may adopt legislation requiring that payments made under the Act be reallocated and redistributed, in whole or in part, to other smaller local subdivisions. In Pennsylvania, the funds are divided between municipalities and school districts.

### Authority Payments In Lieu of Taxes

Public housing authorities, with housing assistance funds received by the federal government, may make annual contributions in lieu of taxes to certain municipalities. However, public housing authorities may not make such payments unless the governing body of the municipality involved has entered into a cooperation agreement with the public housing authority, which agreement must include certain provisions. Specifically, the cooperation agreement must provide an exemption for the project from real and personal property taxes levied or imposed by any city, county or other political subdivision. The agreement also must require that the public housing authority make payments in lieu of taxes equal to ten percent of the annual rents collected from the project.<sup>7</sup>

As public instrumentalities of the commonwealth performing essential governmental functions, industrial development authorities are not required to pay any taxes upon property they acquire or use.<sup>8</sup> In those rare instances where title to real estate is transferred to an industrial development authority, the authority may choose to make payments in lieu of taxes to applicable taxing jurisdictions in amounts equal to those that would have been levied on the properties if they were not tax exempt.

## **Private Payments In Lieu of Taxes**

Some institutions, such as churches and nonprofit housing agencies, have historically made voluntary payments in lieu of taxes toward the cost of services received from local units of government. The payments are made as a gesture of good will and require no written or oral agreements.

A long series of legal challenges to the tax-exempt status of hospitals and other nonprofit institutions that began after 1985 often resulted in written settlements in which an institution would retain its exemption, but agree to pay a negotiated amount in lieu of taxes. The use of these agreements was approved by the Commonwealth Court of Pennsylvania.<sup>9</sup> Subsequently, the Institutions of Purely Public Charity Act explicitly authorized such agreements by statute.<sup>10</sup> In those cases where institutions opt to make payments in lieu of taxes, such payments may be made directly to political subdivisions or to a public service foundation that distributes funds to participating subdivisions to ensure continued provision of public services.

## **REFERENCES**

1. 72 P.S. § 4303; 34 Pa.C.S. § 708.
2. 72 P.S. § 4303.
3. H.B. No. 344, 199th Gen. Assemb., Reg. Sess. (Pa. 2015).
4. 72 P.S. §§ 8101-A et seq., Public Utility Realty Tax Act.
5. *Atlantic City Electric Company v. United School District*, 780 A.2d 766 (Pa. Cmwlth., 2001).
6. 31 U.S.C. § 6903.
7. 42 U.S.C. §§ 1437c(e)(2) & 1437d(d).
8. 73 P.S. § 385; Industrial and Commercial Development Authority Law, Section 15.
9. *Lee Hosp. v. Cambria Cnty. Bd. of Assessment Appeals*, 638 A.2d 344, 162 Pa. Cmwlth. 38, 53 (1994).
10. 10 P.S. § 377.

## IX. Nonreal Estate Taxes

Pennsylvania is unusual among the states in providing a wide range of subjects for local government taxation. It is even more unusual in authorizing local jurisdictions to invent new taxes in areas not prohibited or already occupied by state tax levies. Receipts from nonreal estate taxes constitute 15 percent of local revenues, ranging from three percent for counties to 41 percent for Pittsburgh. Tax revenues from nonreal estate taxes comprise 32 percent of all local government tax revenues, ranging from eight percent in counties to 84 percent in Philadelphia.

The adequacy of revenues from nonreal estate taxes and other sources allowed 51 Pennsylvania municipalities to operate without levying a real estate tax in 2013.

### Total Revenues, Total Taxes and Nonreal Estate Taxes Pennsylvania Local Governments, 2013

*(amounts in millions of dollars)*

	Total Revenues	Total Taxes	Nonreal Estate Taxes	Nonreal Estate Taxes as % of Revenues	Nonreal Estate Taxes as of % Taxes
<b>School Districts Total</b>	26,004	14,311	2,616	10.0%	18.3%
<b>Counties Total</b>	8,296	3,053	249	3.0%	8.2%
<b>Municipalities Total</b>	17,953	7,476	5,059	28.2%	67.7%
<b>Philadelphia</b>	8,056	3,304	2,763	34.3%	83.6%
<b>Pittsburgh</b>	652	397	269	41.3%	67.8%
<b>2A &amp; 3rd Class Cities</b>	1,876	556	251	13.4%	45.2%
<b>Boroughs</b>	2,475	860	387	15.7%	45.1%
<b>1st Class Townships</b>	1,584	769	363	22.9%	47.2%
<b>2nd Class Townships</b>	3,307	1,588	1,023	30.9%	64.5%
<b>Total, All Local Taxing Bodies</b>	<b>52,255</b>	<b>24,840</b>	<b>7,925</b>	<b>15.2%</b>	<b>31.9%</b>

**Note:** Approximately 60 municipalities did not report revenues in 2013. For purposes of this chart, Philadelphia is considered a municipality.

Tax sources other than real estate are authorized by several sources. The codes governing local taxing units authorize limited types of nonreal estate taxes. These include the Public School Code, County Code, Second Class County Code, Third Class County Code, Borough Code, First Class Township Code, Second Class Township Code and special laws for Philadelphia, Pittsburgh and their school districts. General enabling legislation allows municipalities and school districts to tax subjects not prohibited or already taxed by the state.

## Local Government Nonreal Estate Tax Revenues 2013

(amounts in thousands of dollars)

Tax	Counties	School Districts	Municipalities	Total
<b>Earned Income</b>		1,326,758	3,102,626	4,429,385
<b>Sales</b>	44,550			44,550
<b>Hotel Room Rental</b>	60,298			60,298
<b>Business Gross Receipts</b>		53,689	797,458	838,119
<b>Occupation</b>	48.4	33,680	6,458	40,187
<b>Per Capita</b>	4,019	11,727	11,431	27,178
<b>Realty Transfer</b>		176,701	373,780	550,481
<b>Occupational Privilege</b>		15,245	196,251	207,763
<b>Amusement/Admission</b>		4,264	49,407	47,449
<b>Mechanical Devices</b>		74.1	2,949	3,023
<b>Other</b>	140,839	129,661	519,503	790,004
<b>Total</b>	<b>249,756</b>	<b>2,616,166</b>	<b>5,059,866</b>	<b>7,038,443</b>

**Note:** Approximately 60 municipalities did not report revenues in 2013. For purposes of this chart, Philadelphia is considered a municipality.

On a statewide basis, the earned income tax is the most significant of these taxes, producing 64 percent of all receipts from nonreal estate taxes. The next most significant are business gross receipts taxes generating 12 percent and other taxes seven percent of receipts from nonreal estate taxes.

## Nonreal Estate Taxes Levied by Local Government Units, 2013

Tax	Counties	Municipalities	School Districts	Total
<b>Earned Income</b>		2,356	466	2,822
<b>Realty Transfer</b>		2,390	490	2,880
<b>Per Capita</b>	26	1,350	274	1,650
<b>Occupational Privilege</b>		1,473	262	1,735
<b>Occupation - Flat Rate</b>			61	61
<b>Occupation - Mills</b>	2	256	50	308
<b>Business Gross Receipts</b>		264	48	312
<b>Amusement/Admission</b>		158	37	195
<b>Mechanical Devices</b>		331	14	345
<b>Hotel Room Rental</b>	63			63
<b>Sales</b>	1			1

## Sterling Act

By far the most extensive grant of nonreal estate taxing power to any political subdivision in Pennsylvania, and the earliest of this type, was conveyed to Philadelphia by the Sterling Act of 1932. This act gives the “city the authority . . . to levy, assess and collect . . . such taxes on persons, transactions, occupations, privileges, subjects and personal property . . . as it shall determine. . . .”<sup>1</sup> The city may not levy or collect a tax on any subject preempted by a state tax or license fee, but otherwise there are no limits on the kinds of taxes Philadelphia can impose, no limits on the rates of those taxes, and no limit on the aggregate amount of revenue that can be raised.

Under the broad authority of the Sterling Act, Philadelphia has enacted taxes on wages, earnings and net profits, admissions to amusements, real estate transfers, parking lot receipts, mechanical devices, bowling alleys and sound reproduction. The income tax imposed by the city applies not only to residents of the city wherever they may work, but also to nonresidents earning income within the city. A 1977 law limited increases in the rate levied on nonresidents.<sup>2</sup> The split rate has been upheld by the Pennsylvania Supreme Court.

A 1963 law, dubbed the Little Sterling Act, allows Philadelphia city council to authorize the levy of any tax authorized by the Sterling Act for the Philadelphia School District.<sup>3</sup> The only limitation is the prohibition against levying an earned income tax on nonresidents.

## Local Tax Enabling Act

Comprehensive taxing authority similar to the Sterling Act was extended to other political subdivisions by Act 481 of 1947. Because of its uniqueness in granting this measure of taxing authority to so many political subdivisions, it quickly became known as the “Tax Anything” law. The original act applied to all school districts, except Philadelphia and Pittsburgh, to all cities except Philadelphia, and to all boroughs and first class townships. The act was extended to second class townships several years later. The original act excluded from local taxing power subjects of taxation preempted by state taxation, but otherwise had few restrictions. It contained no limits on the rates of specific taxes, but limited the overall yield to the equivalent of the maximum permissible real estate tax yield for that class of subdivision. Act 481 was repealed and reenacted by Act 511 of 1965, the Local Tax Enabling Act.

When originally enacted in 1947, it was conceived as an emergency measure to help solve the financial problems of local governments. Both of the original elements of the Act - its temporary nature and its broad delegation of taxing power - have been lost. The taxes authorized by the Act have become permanent sources of revenue for local governments, in some cases exceeding the return from real estate taxes. The broad general taxing power of the original law has been increasingly circumscribed by legislative amendments and court decisions to the point where the Act is now primarily an express grant of power to levy certain taxes with maximum rates set by the legislature. The enabling language is still there, and from time to time new tax sources are identified and used. For example the General Assembly prohibited the residential construction tax in 1981. Constraints continue to be added to the law, such as prohibiting the levy of amusement taxes on memberships to fitness clubs in 1987.

Taxes commonly levied under the Act are the earned income, per capita, realty transfer, business gross receipts, amusement, local services tax (formerly known as occupational privilege tax) and occupation taxes. The Act also authorizes an intangible personal property tax for the city of Pittsburgh. These taxes are defined somewhat through listing of rate limits found in the Act, through similar taxes authorized by other laws, and through the widespread practice of using other units’ ordinances as models in enacting the taxes. Section 501 of the Act contains standard definitions for the earned income tax, superseding any contrary definitions in local earned income tax ordinances.<sup>4</sup>

Numerous restrictions on taxing power have been written into the Local Tax Enabling Act. These include prohibitions against taxation of natural resources and farm products, taxation of manufacturing, taxation of public utilities or their services, taxation of nonresidents’ income by school districts and taxation of the same subjects levied under state taxes. The issues of state preemption and the manufacturing exclusion have generated the most legal controversy, mainly in delineating the scope of business gross receipts taxes. Increasingly, limitations on Act 511 taxes are enacted into other laws. The Second Class City Law prohibits Pittsburgh from levying the business gross receipts tax on financial services businesses; Act 50 of 1998 freezes amusement taxes for school districts and reduces the maximum rate for amusement taxes newly enacted by municipalities.

The aggregate of all local taxes levied under the Local Tax Enabling Act may not exceed the equivalent of twelve mills times the market value of real estate within the taxing district.<sup>5</sup> The original Act in 1947 set a limit based on the maximum permissible real estate levy. The limit was later changed to a uniform ten mills of market value, then raised to fifteen mills, then set at twelve mills of market value. This aggregate limit has never been a serious constraint on local taxing bodies levying taxes within the limits set in the Act.<sup>6</sup>

## Local Tax Reform Act

In 1988, the legislature enacted the Local Tax Reform Act.<sup>7</sup> This legislation would have made comprehensive changes in Pennsylvania's local tax structure. The new system focused on an increase in income taxing powers by school districts and municipalities accompanied by a reduction in residential real estate taxes. Most other personal taxes would have been abolished. Counties would have been given an optional sales tax.

The effective date of the Local Tax Reform Act was made dependent upon approval by the voters of a constitutional amendment to permit differential tax rates for residential real estate taxes. The amendment was placed on the ballot for the May 16, 1989 primary election, but was defeated by the voters. Except for a few provisions not made dependent on the passage of the constitutional amendment, the Local Tax Reform Act did not go into effect. Except for two sections freezing business gross receipts taxes and authorizing Philadelphia to use the state realty transfer tax base, the remainder of the Act was repealed by Act 50 of 1998.

## Act 50 of 1998

The defeat of the 1989 referendum resulted in increasing pressure on the real estate tax, particularly by school districts needing additional revenues. Public pressure moved legislators to reopen the issue of restructuring the local tax system as early as 1993. A constitutional exemption authorizing homestead exclusions was passed by two successive legislatures and approved by the voters in November 1997. Legislation to implement the amendment was enacted by the General Assembly and signed by the Governor in May of 1998. Act 50 of 1998 enacts various local tax provisions into Title 53 of the Pennsylvania Consolidated Statutes.<sup>8</sup>

The Act includes peripheral matters of tax administration, including a local taxpayer bill of rights, an optional tax deferral program and implementing procedures for the homestead exclusion program. All local taxing bodies, counties, municipalities and school districts are subject to these sections.

General provisions at the beginning of the Act prohibit any additional school districts from enacting an amusement tax after June 30, 1997 and any municipal amusement tax levied after December 31, 1997 is limited to five percent. The gross receipts tax freeze is continued. Sign privilege taxes are prohibited as are motor vehicle transfer taxes, except for the three sign privilege taxes in place before December 31, 1997.

The bulk of the Act is composed of procedures that can be used by school districts to move to an earned income tax of up to 1.5% with offsetting elimination of per capita, occupation and occupational privilege taxes and reduction of the real estate tax rate. Any real estate reductions must be implemented first through adoption of the homestead exclusion. Any change in the tax system under the Act must be approved by the voters in a referendum, as must any future increases in real estate taxes reduced by the proposal.

## REFERENCES

1. 53 P.S. § 15971; 1932 (Ex.Sess.) P.L. 45.
2. 72 P.S. § 7359(b); Tax Reform Code, Section 359(b); *Leonard v. Thornburgh*, 489 A.2d 1349, 507 Pa. 317 (1985).
3. 53 P.S. § 16101(a); 1963 P.L. 640.
4. 53 P.S. § 6924.501.
5. 53 P.S. § 6924.320; Local Tax Enabling Act, Section 320(a), *as amended*; *Prior v. Borough of Eddystone*, 374 A.2d 981, 30 Pa.Cmwlth. 536 (1977).
6. *See, e.g., Thompson v. West Branch Area School District*, 505 A.2d 386, 95 Pa.Cmwlth. 288 (1986).
7. 72 P.S. §§ 4750.101 et seq.; 1988 P.L. 1121, No. 145.
8. 53 Pa.C.S. 8401 et seq.

## X. Earned Income Taxes

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Local income taxes in Pennsylvania are variously termed earned income taxes, wage taxes or net profits taxes or a combination of these terms. They are authorized for use by municipalities and school districts and are their principal source of nonproperty taxation. In 2013, either municipal or school earned income taxes were levied everywhere in Pennsylvania except for 145 municipalities, or 5 percent of all municipalities.

### Statutory Authorization

Local income taxes were first authorized by the Sterling Act for Philadelphia.<sup>1</sup> Philadelphia's tax, adopted in 1939, made it the first municipality in the United States with a local income tax. The tax now constitutes the chief tax source for the city government.

The Local Tax Enabling Act authorizes local earned income taxes for other municipalities and school districts.<sup>2</sup> The tax is levied on the wages, salaries, commissions, net profits or other compensation of persons subject to the jurisdiction of the taxing body. Municipalities and school districts levying earned income taxes may exempt persons whose income from all sources is less than \$12,000 per year from the earned income tax.<sup>3</sup> The exemption must be adopted as part of or an amendment to the tax-levying ordinance or resolution. Local taxing bodies have the authority to adopt regulations for processing exemption claims.

An earned income and net profits tax for the Pittsburgh School District is authorized by the Public School Code.<sup>4</sup> This authorization also gives the school district access to certain tax subjects authorized by the Local Tax Enabling Act, but the district may not use this authority to increase its earned income tax above the limit established in the School Code.<sup>5</sup>

Act 50 of 1998 authorizes school districts to impose earned income taxes of up to 1.5% following approval by the voters in a referendum, beginning in the November 1999 election.<sup>6</sup> School districts would be required to offset increased earned income tax revenues by repealing occupation, occupational privilege and per capita taxes and reducing real estate taxes by implementing a homestead exclusion. They may exempt persons with incomes less than \$7,500 per year.<sup>7</sup>

Act 30 of 2008 permits political subdivisions that levy an occupation tax to replace the revenue provided by the occupation tax by increasing the rate of the earned income tax, within specified limits and subject to approval of a referendum.<sup>8</sup> After approval of the referendum, the taxing jurisdiction must eliminate the occupation tax.

When the state personal income tax was enacted in 1971, a saving clause was included to protect local income taxes from preemption by the state tax.<sup>9</sup>

### Tax Rates

There is no statutory limit on the Philadelphia wage and net profits tax. In 1977, a restriction was placed on Philadelphia's power to tax nonresidents. The tax rate applied to nonresidents was restricted to 4 and 5/16 percent until such time as the tax rate for residents exceeds 5 and 3/4 percent. After that point the rate for nonresidents may be increased at a rate of 75 percent of that for residents.<sup>10</sup>

The Pittsburgh School District tax is limited to two percent.<sup>11</sup> A special provision of the Local Tax Enabling Act allows the Scranton School District to levy the tax at one percent without the sharing requirement mandated for other school districts under the Act.<sup>12</sup>

In general, all other jurisdictions adopting income taxes under the Local Tax Enabling Act are limited to one and one-half percent. Where both municipality and school district levy the tax, the one percent limit must be shared on a 50/50 basis, unless otherwise agreed to by the taxing bodies.<sup>13</sup> The sharing requirement, plus the crediting provisions of the Act, were intended by the legislature to limit the cumulative effect of wage taxes where a

taxpayer might be subject to more than one tax.<sup>14</sup> The sharing provisions automatically halve the taxes of overlapping jurisdictions as they apply to residents. But because school districts may not levy earned income taxes on nonresidents, the sharing provisions will not affect the municipal tax rate applied against nonresidents working within the municipal limits.<sup>15</sup> Of course, if the nonresidents are liable for an earned income tax at their place of residence, this will provide a credit against any nonresident levy in their place of employment.

Earned income taxes are also subject to the overall limits on taxes enacted under the Local Tax Enabling Act found in Section 320 of the Act. Courts have been reluctant to question the actions of governing bodies enacting earned income taxes for the first time and producing large revenues without evidence that “suggests arbitrary and capricious action indicative of a wanton disregard of public duty.”<sup>16</sup>

As discussed in detail below, Pennsylvania law allows the Act 511 limit for earned income taxes to be exceeded under six circumstances:

1. Home rule municipalities.
2. Municipalities declared financially distressed.
3. Municipalities with financially distressed municipal pension systems.
4. Municipalities where voters approve an additional tax for open space purposes.
5. School districts where voters approve increased earned income taxes under Act 50.
6. School districts and municipalities where voters approve increased earned income taxes under Act 24.

Municipalities which have adopted home rule charters under the Home Rule Charter and Optional Plans Law are no longer limited to statutory limits for personal taxes levied on residents, including the earned income tax.<sup>17</sup> Earned income tax rate limits are often placed in the charters themselves. Some home rule municipalities have moved to increase their rates. Nonresidents employed in a home rule municipality are liable for only one percent earned income tax, since home rule municipalities may not exceed the statutory limit for nonresidents.<sup>18</sup>

Municipalities which have been declared distressed under the Municipalities Financial Recovery Act (Act 47) may be able to increase their earned income taxes above the limit set in the Local Tax Enabling Act.<sup>19</sup> The increase must be part of the recovery plan adopted for the municipality. The municipality must petition the court of common pleas for approval to increase tax rates above the limit for a period of one year. Subsequent increases may be granted by the court upon annual petition of the municipality until the termination date of the recovery plan. Unlike the Home Rule Law, Act 47 allows the extension of the earned income tax increase to nonresidents, subject to certain requirements, when there is an “equal or greater increase in the rate of taxation on resident income over the highest rate levied in the previous fiscal year.”<sup>20</sup> However, if a municipality increases its nonresident earned income tax rate, then it must also increase its resident earned income tax rate by at least as much as the increase in nonresident earned income tax. Additionally, a municipality is prohibited from increasing its earned income tax rate (resident or nonresident) under Act 47 if it instead increases its local services tax rate under Act 47.<sup>21</sup>

In similar fashion, municipalities which are certified as having financially distressed municipal pension systems under Act 205 of 1984 have access to earned income tax power above the limit set in the Local Tax Enabling Act as one of the remedies of their pension recovery program.<sup>22</sup> Determination of municipal pension system financial distress must be made by the Public Employee Retirement Study Commission. After determination is made, the municipal governing body may elect to use any of the available remedies in the Act. To use the special taxing powers of Act 205, the municipality must already be at the maximum rate of earned income tax set by law. The proceeds from the tax levied above the limit must be used solely to defray additional pension funding costs which are “directly related to the pension plans of the municipality and which are included in the calculation of the financial requirements of the pension plan and the minimum municipal obligation.”<sup>23</sup> Previous levels of pension funding must be maintained. Act 205 does not prohibit extension of the earned income tax increase to nonresidents as well as residents.

Act 153 of 1996 authorizes levy of an earned income tax in addition to the tax levied under Act 511 for the purposes of financing purchases of open space lands.<sup>24</sup> The tax rate is set by the voters in the referendum. Any increase is limited to residents only. In the first referendum under this act, the voters of East Bradford Township, Chester County approved an additional .125% open space tax in November 1998. A similar open space tax was approved by East Rockhill Township, Bucks County voters in May 1999.

Act 50 of 1998 authorizes school districts to levy earned income taxes up to 1.5% with the approval of the voters.<sup>25</sup> The question presented to the voters must include the initial new rate. The increase in earned income tax revenues must be offset by repealing occupation, occupational privilege and per capita taxes and reducing real estate taxes. School boards began initiating proposals in 1999 and voters could initiate the process by petition beginning in 2001. As of 2015, only four referenda have been approved; Central Dauphin, Hazelton, Williamsport, and Southern Columbia.

Act 130 of 2008 permits a political subdivision that levies an occupation tax to replace the occupation tax with an increase in the rate of the earned income tax, if approved by referendum.<sup>26</sup> The increase in the earned income tax is calculated by adding (i) the earned income rate that would equal the amount of revenue brought in by the occupation tax in 2002, for a school district, or in 2001, for a municipality, to (ii) the earned income rate in 2002, for a school district, or in 2001, for a municipality.<sup>27</sup>

## Taxable Income

Section 501 of the Local Tax Enabling Act establishes uniform definitions for earned income, net profits, domicile and other terms.<sup>28</sup> These definitions supersede any omission or contrary definitions in any local tax ordinance or resolution adopted under the Act.

Act 32 of 2008 consolidated the collection of the local earned income tax and restated that the terms “earned income” and “net profits” as used in the Local Tax Enabling Act mean, with certain exceptions, “compensation” and “net profits” as such terms are used for Pennsylvania personal income tax purposes, effective for 2003.<sup>29</sup> Employee business expenses as reported to or determined by the Department of Revenue for purposes of personal income tax are allowable deductions in determining earned income.<sup>30</sup> Under Act 32, business losses cannot be used to offset earned income.<sup>31</sup> Net Profits includes the net income from the operation of a business, but does not include the net income from a corporation.<sup>32</sup> Additionally, net profits do not include income that is not paid for services provided or that is in the nature of earnings from an investment.<sup>33</sup> For taxpayers engaged in farming net profits do not include income which represents the gain on the sale of farm machinery, most livestock and the capital assets of a farm.<sup>34</sup>

Where a taxpayer deliberately acquires rental property, it can be considered a business and subject to the local earned income tax.<sup>35</sup> Net profits passed through to a taxpayer by a Chapter S corporation are investment income and not subject to the local earned income tax.<sup>36</sup>

Income from interest and dividends is not taxable under the earned income tax, including interest and capital appreciation earned through an employer’s incentive plan.<sup>37</sup> However, the Pennsylvania Supreme Court recently held that stock options constituted a form of “incentive payments” or “other compensation” under the Local Tax Enabling Act and are subject to a township’s earned income tax when an employee exercises this option.<sup>38</sup> Additionally, *Confair v. Municipal and School Income Tax Board of Appeals* (No. 00-00,464, Lycoming County) ruled that noncompete agreements are taxable.

Despite a prior Pennsylvania Supreme Court Ruling to the contrary, under Act 32 of 2008 business losses cannot be used to offset earned income.<sup>39</sup> However, despite earlier court rulings to the contrary, under Act 32 liability for earned income taxes on net profits is to be calculated in light of total net profits from all businesses combined, as is the case under the personal income tax.<sup>40</sup>

State law provides for sharing of income tax information between the Internal Revenue Service and the state Department of Revenue. The Department of Revenue also shares tax information with school districts. The school districts are authorized to share this information with their contiguous municipalities.<sup>41</sup>

## Residency

Determination of residency is a critical element for earned income taxes. School districts may only tax residents of the district.<sup>42</sup> Municipalities taxing nonresidents must credit liability for their taxes against taxes paid at the place of residence.

A resident is a person or business domiciled within the taxing district.<sup>43</sup> For wage earners domicile is defined as the place where one lives and has one's permanent home and to which one has the intention of returning whenever absent. Actual residence for a special or limited purpose does not constitute domicile, rather domicile is the voluntarily fixed place of habitation of a person with the intention of making a permanent home. For business net profits taxpayers, domicile is defined as the center of business affairs and the place where its functions are discharged.<sup>44</sup>

As provided in a recent Commonwealth Court case, in cases where residence cannot be clearly determined by applying the definition of domicile in the Local Tax Enabling Act, the rules for determining residence for voting and election purposes can be looked to for guidance.<sup>45</sup>

An individual whose spouse and children lived in the district, who owned property there, had a Pennsylvania driver's license and filed personal income tax returns in Pennsylvania was found to be a resident of the district, even though employed in Ohio.<sup>46</sup> Establishment of taxpayer's residence by opinion testimony of two witnesses was upheld on appeal.<sup>47</sup> The Commonwealth Court held the weight and credibility of evidence on residence was up to the trial judge sitting as a fact finder. Additionally, an individual who owned homes in Pennsylvania and Florida, held a Florida driver's license, was registered to vote in Florida, was active in many Florida organizations and spent the majority of the year in Florida was found to be domiciled in Florida and not subject to local income tax in Pennsylvania.<sup>48</sup>

Businesses or other associations are considered to be domiciled at the center of business affairs and the place where functions are discharged. The only cases on business domicile have involved Philadelphia's wage and net profits tax that lacks the statutory definition of business domicile found in the Local Tax Enabling Act. The Court held partnerships are not entities having a domicile distinct from the individuals who compose them.<sup>49</sup> Liability of partners for the Philadelphia tax was restricted to net profits earned within the city in the case of nonresident individuals.

## Crediting

Municipalities are authorized to levy the earned income tax on nonresidents earning income within their jurisdiction. However, the Local Tax Enabling Act requires the place of employment to grant a credit for any earned income tax levied at the place of residence.<sup>50</sup> In most cases, there will be a tax at the place of residence, so the ability to tax nonresidents does not constitute a significant source of revenue.

Taxes withheld by employers from nonresidents in municipalities with ordinances taxing nonresidents should be paid over promptly to the jurisdictions entitled to the taxpayers' funds. In a case where a township proceeded against the taxpayer for taxes withheld, but not paid over by the place of employment, the county court indicated the township should proceed against the municipality holding the money. "It is indeed difficult for a layman to understand why he should be sued and required to pay a tax twice when his tax payment is available to ... [the township] in an action against the city which holds his tax payment."<sup>51</sup> By failing to properly account for and pay over tax withholdings, taxing bodies are endangering the spirit of voluntary taxpayer compliance that makes the local tax system work with minimal enforcement. There is no statutory authority for a collecting municipality to unilaterally charge a fee for remitting nonresident withholdings to the municipalities to which they are due.<sup>52</sup> Outlying municipalities may negotiate a fee for prompt remittance of their funds.

The exception to the priority given to the place of residence is persons subject to the Philadelphia wage tax. The Local Tax Enabling Act requires municipalities to credit their residents for taxes paid to Philadelphia on income earned within the city. This credit, like the other credits provided in Section 317, is a direct reduction against the liability for tax owed by the taxpayer. In a case where Norristown attorneys claimed a credit against liability for local taxes for taxes paid to Philadelphia on net profits earned within the city, the court upheld the taxpayers'

interpretation. The Norristown tax collector had attempted to calculate local tax liability as one percent on income earned locally, but the court held the credit meant a direct reduction from liability for the tax owed. “Here, however, the Legislature said plainly that a tax paid to one taxing authority should be credited to the tax liability to the other taxing authority.”<sup>53</sup> The correct method of calculating the tax due was to take one percent of total taxable income then subtract the amount of tax paid to Philadelphia. The Commonwealth Court recently upheld this type of credit, known as the “super credit,” in holding that county tax collectors could not merely apply a apportioned credit for the earned income tax paid to Philadelphia; rather, the tax collectors were required to apply the super credit for income tax previously paid to Philadelphia.<sup>54</sup> For school districts levying higher earned income taxes under Act 50, taxpayers can claim a credit of 0.2756% of their nonresident Philadelphia taxable income as a credit against the state income tax.<sup>55</sup> Depending on the wording of the proposal approved by the voters of the school district, this tax credit either goes directly to the taxpayer or to the school district of residence.

Where Pennsylvania residents are employed in another state and subject to a state or local income tax at their place of employment, the local taxing body must credit against their liability for any local taxes the amount of tax paid out of state. The same dollar of the out-of-state tax cannot be claimed as credit against liability for both state and local taxes in Pennsylvania, but the credit can be divided and apportioned against Pennsylvania state and local tax liability.<sup>56</sup> Tax payments made voluntarily to another state do not qualify for the credit; there must be evidence the taxpayer was legally liable for the out-of-state taxes.<sup>57</sup> This credit does not extend to taxes paid to foreign countries.<sup>58</sup> Credit for taxes paid to other states is limited to the amount payable to the Pennsylvania political subdivision on that portion of the taxpayer’s income which was subject to taxation by the other state.<sup>59</sup>

The Local Tax Enabling Act authorizes, but does not require, local taxing bodies to grant credits to out-of-state residents for liability for nonresident earned income taxes on income earned in Pennsylvania for taxes paid in their home state. Refusal of municipal officials in southern Pennsylvania communities to grant credits to Maryland workers led to a tax war in the late 1970s with Pennsylvania residents working in Maryland being subjected to harsh retaliatory taxation. Exercise of fair play in granting credits in these cases seems to be the prudent course for Pennsylvania local officials.

## Withholding

The Act requires every employer having a factory, workshop, branch, warehouse or other place of business within the taxing jurisdiction to register with the earned income tax officer.<sup>60</sup> All employers with work sites within the taxing jurisdiction are mandated by law to deduct the earned income tax from their employees at that site if the tax is listed in the Earned Income Tax Register of the Department of Community and Economic Development. If the ordinance or resolution is not listed in the Register, employers are not required to withhold taxes levied under the Local Tax Enabling Act from employee wages. Except for Philadelphia and the Pittsburgh School District, employers have no legal responsibility to withhold taxes levied by jurisdictions where they have no worksites.

If an ordinance contains a provision imposing the earned income tax on nonresidents, the employer is required to withhold from all employees regardless of their place of residence and remit the money to the tax officer. Responsibility for transmitting withheld taxes of nonresidents to the employees’ place of residence rests with the tax officer, not with the employer.

Where the ordinance taxes residents of the taxing district only, the employer is required to withhold only from resident employees. Any other withholding under a resident-only taxing ordinance is voluntary on the part of the employer, usually done for the convenience of the employee. If the ordinance levies taxes on residents only, the municipal earned income tax officer may and often does refuse to accept withholdings for any nonresidents. In such a case the employer is left with the choice of refunding the withholdings or transmitting them directly to the nonresident’s tax officer. Some employers with work locations in resident only jurisdictions withhold from all employees as a matter of company policy, deciding to shoulder the additional filing costs as a benefit to their employees.

The exception to this rule is the earned income tax levied by the Pittsburgh School District. The district may require withholding of its tax from any nonresident employer who is believed to employ any resident of the district.<sup>61</sup> Beginning in 1994, state law has required all Pennsylvania employers to withhold the Philadelphia wage tax from all employees who are Philadelphia residents regardless of where they work.<sup>62</sup>

## Register of Earned Income Taxes

The Register of Earned Income Taxes is prepared and issued by the Department of Community and Economic Development. In order to have employers withhold taxes, the taxing district must have its tax listed in the Register.

Information must be supplied to the Governor's Center for Local Government Services on their forms prior to December 1 to be effective for December 15 and prior to June 1 to be effective for June 15 of each year in order to ensure the information appears in the Register for the next reporting period. Tax information forms are mailed to municipalities in November and to school districts in May to update and verify data on file for the Register for their forthcoming fiscal years. Failure to receive the information on taxes continued without change is construed by the department to mean the information contained in the previous Register remains in force.

The Register lists the municipalities and school districts levying the tax, their effective tax rates, and the name and address and telephone number of the tax officer responsible for collection of the earned income tax. Stated rates are shown for information purposes only. Copies of the Register can be purchased from the department. Information can be obtained by contacting:

Pennsylvania Department of Community and Economic Development  
Governor's Center for Local Government Services  
400 North Street, 4th Floor  
Commonwealth Keystone Building  
Harrisburg, Pennsylvania 17120-0225

866-466-3972  
dced.pa.gov

## REFERENCES

1. 53 P.S. § 15971; 1932 (Ex. Sess.) P.L. 45; Pennsylvania Economy League, *Philadelphia Government*, Seventh Edition, p.132.
2. 53 P.S. § 6924.301.1(a); Local Tax Enabling Act, Section 301, *as amended*.
3. 53 P.S. § 6924.301(b).
4. 24 P.S. § 6-652.1(a)(2), 24 P.S. § 588.2; Public School Code, Section 652.1, 1961 P.L. 1135, No. 508.
5. *School District of Pittsburgh v. City of Pittsburgh*, 443 A. 2d 1206, 66 Pa.Cmwlth. 238, 244 (1982).
6. 53 Pa.C.S. §§ 8701, 8711, 8716.
7. 53 Pa.C.S. § 8714.
8. 53 P.S. § 6924.401; 2008 P.L. 1615, No. 130.
9. 72 P.S. § 7359(a); Tax Reform Code, Section 359(a); *Dakoski v. Urda*, 358 A.2d 438, 25 Pa. Cmwlth. 77 (1976).
10. 72 P.S. § 7359(b); Tax Reform Code, Section 359(b); *Leonard v. Thornburg*, 489 A.2d 1349, 507 Pa. 317 (1985).
11. 24 P.S. § 6-652.1(1)(a)(2); Public School Code, Section 652.1.
12. 53 P.S. § 6924.311; Local Tax Enabling Act, Section 311.
13. 53 P.S. § 6924.311; Local Tax Enabling Act, Section 311.
14. *See Hanek v. City of Clairton*, 354 A.2d 35, 24 Pa.Cmwlth 69, 81 (1976), *overruled on other grounds by School District of Pittsburgh v. City of Pittsburgh*, 443 A. 2d 1206, 66 Pa.Cmwlth. 238, 244 (1982).
15. *Minich v. Sharon City*, 77 A.2d 347, 366 Pa. 267, 273 (1951); *Hanek, supra*, at 79.
16. *Donnelly v. Borough of Media*, 351 A.2d 299, 23 Pa.Cmwlth. 115, 119 (1976).
17. 53 Pa.C.S. § 2962; Home Rule Charter and Optional Plans Law, Section 2962; *Reilly v. City of Pittsburgh*, 484A.2d 736, 506 Pa. 165 (1984).
18. 53 Pa.C.S. § 2962(b); *City of Pittsburgh v. Commonwealth of Pennsylvania*, 559 A.2d 513, 522 Pa. 20, 22-3 (1989).
19. 53 P.S. § 11701.123; Municipalities Financial Recovery Act, Section 123(c); *Petition of City of Clairton*, 694 A.2d 372, (Pa. Cmwlth. 1997); *In re City of Scranton*, 638 A.2d 379, 162 Pa. Cmwlth. 109 (1994).
20. 53 P.S. § 11701.123(c).
21. 53 P.S. § 11701.123(d); Municipalities Financial Recovery Act, Section 123(d)(1).
22. 53 P.S. § 895.607(f); Municipal Pension Plan Funding Standard and Recovery Act, Section 607(f).
23. 53 P.S. § 895.607(f.1)
24. 32 P.S. § 5007.1; Open Space Act, Section 7.1.
25. 53 Pa.C.S. § 8711.
26. 53 P.S. § 6924.401;
27. 53 P.S. § 6924.404(b).

28. 53 P.S. 6924.501; Local Tax Enabling Act, Section 501.
29. 53 P.S. § 6924.501.
30. 53 P.S. § 6924.501.
31. 53 P.S. § 6924.501.
32. 53 P.S. § 6924.501.
33. 53 P.S. § 6924.501.
34. 53 P.S. § 6924.501.
35. *Oseroff v. City of Pittsburgh*, 453 A.2d 40 (Pa. Cmwlth. 1982).
36. *Scott v. Hempfield Area School District*, 643 A.2d 1140 (Pa. Cmwlth. 1994).
37. *Pugliese v. Township of Upper St. Clair*, 660 A.2d 416 (Pa. Cmwlth. 1995).
38. *Marchlen v. Township of Mount Lebanon*, 746 A.2d 566, 560 Pa. 453 (2001). *See also In re Whipain Twp. Bd. Of Supervisors*, 942 A.2d 959 (Pa. Cmwlth. 2008)
39. 53 P.S. § 6924.501; *O'Reilly v. Fox Chapel Area School District*, 555 A.2d 1288, 521 Pa. 471 (1989), *overruled in part by* 53 P.S. § 6924.501.
40. See 53 P.S. § 6924.501; 61 Pa. Code § 101.1; *Aronson v. City of Pittsburgh*, 485 A.2d 890, 86 Pa.Cmwlth. 591 (1985), *overruled in part by* 53 P.S. § 6924.501; *Wettach v. Com.*, 620 A.2d 730, 153 Pa. Cmwlth. 293, 301, (1993) *aff'd Wettach v. Com., Bd. of Fin. & Revenue*, 677 A.2d 831 (Pa. 1995).
41. 72 P.S. § 7356; Tax Reform Code, Section 356; 24 P.S. § 2514.1; Public School Code, Section 2514.1.
42. 53 P.S. § 6924.301.1(f)(5); Local Tax Enabling Act, Section 301.1(f)(5).
43. 53 P.S. § 6924.501.
44. 53 P.S. § 6924.501.
45. 25 P.S. § 2814, Pennsylvania Election Code, Section 704; *Sw. Reg'l Tax Bureau v. Kania*, 49 A.3d 529 (Pa. Cmwlth. 2012).
46. *Commonwealth ex rel. Southwest Butler County School District v. Smith*, 424 A.2d 1001, 56 Pa. Cmwlth 320 (1981).
47. *Boyer v. Commonwealth*, 426 A.2d 1302, 58 Pa. Cmwlth. 34 (1981).
48. *Sw. Reg'l Tax Bureau v. Kania*, 49 A.3d 529 (Pa. Cmwlth. 2012).
49. *Tax Review Board v. Belmont Laboratories Company*, 141 A.2d 234, 392 Pa. 473 (1958); *Tax Review Board v. D. H. Shapiro Company*, 185 A.2d 529, 409 Pa. 253 (1962).
50. 53 P.S. § 6924.317; Local Tax Enabling Act, Section 317; *Neshannock Township School District v. City of New Castle*, 13 D.&C.2d 255, 262, (Ct. Com. Pl. Lawrence Co. 1957)
51. *Patterson Township v. Daniel*, 21 D.&C.2d 248, 250 (Ct. Com. Pl. Beaver Co. 1959)
52. *Somerset Area Tax Collection Bureau v. Berlin Brothersvalley School District*, 23 D.&C.3d 606, 612 (Ct. Com. Pl. Somerset Co. 1982); *Harbor Creek School District v. City of Erie*, 579 A.2d 452, 134 Pa. Cmwlth. 463 (1990).
53. *Dunmire v. Applied Business Controls, Inc.*, 440 A.2d 638, 63 Pa.Cmwlth. 479, 484 (1981). *under the*
54. *Berks Cnty. Tax Collection Comm. v. Pennsylvania Dep't of Cmty. & Econ. Dev.*, 60 A.3d 589 (Pa. Cmwlth.) *aff'd* 82 A.3d 405 (Pa. 2013).
55. 53 Pa.C.S. § 8713(b).
56. 53 P.S. § 6924.317; *Stahl v. Township of Forks*, 65 D.&C.2d 398 (Ct. Com. Pl. Northampton Co. 1974)
57. Southwest Butler County, *supra*, at 328.
58. 53 P.S. § 6924.317; O'Reilly, *supra*.
59. *Towle v. Bethel Park Borough*, 45 D.&C.3d 18, (Ct. Com. Pl. Allegheny Co.1986)
60. 53 P.S. § 6924.512; Local Tax Enabling Act, Section 512.
61. 24 P.S. § 588.4(f); 1961 P.L. 1135, No. 508, Section 4; *Sgro Brothers Restaurant, Inc.*, 433 A.2d 589, 61 Pa.Cmwlth. 236, 238 (1981).
62. 72 P.S. § 7359(c); Tax Reform Code, Section 359(c).

## XI. Intangible Personal Property Taxes

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### Statutory Authorizations

Counties and the city of Philadelphia are authorized to levy a tax on intangible personal property at the statutory rate of four mills by a 1913 law.<sup>1</sup> The tax applies to mortgages, other interest bearing obligations and accounts, public loans, except those of the United States, Pennsylvania or Pennsylvania political subdivisions, corporate loans not subject to the corporate loans tax, and shares of stock other than those subject to the capital stock or bank shares taxes.

In 1978 this law was amended to authorize county commissioners to determine whether or not to impose and collect the tax, for the first time making this tax optional at the county level.<sup>2</sup> By 1992, the number of counties levying the tax had dropped to 40 and by 1995 to 27. In 1995, the law was further amended to permit rates less than 4 mills as some counties sought a gradual phase-out of their taxes.

The intangible personal property taxes of Allegheny County, Pittsburgh and the Pittsburgh School District were repealed in 1994 as required by the law authorizing the Allegheny County sales tax.<sup>3</sup> The Philadelphia School District had special statutory authority but dropped the tax in 1968 in favor of a tax on unearned income.<sup>4</sup>

### Legal Challenges to the Tax

On February 21, 1996, the United States Supreme Court struck down as unconstitutional a similar North Carolina intangibles tax.<sup>5</sup> Like, the Pennsylvania tax, the North Carolina tax exempted securities whose companies were paying North Carolina corporate taxes. The Supreme Court found that the North Carolina tax discriminated against interstate commerce. Almost immediately, a flurry of class action lawsuits and requests for refunds were filed in the 24 counties still levying the tax in 1996.

Concerned with limiting their potential liability for tax refunds, 22 counties dropped the tax in 1997, leaving only Clarion County and the City of Philadelphia levying the tax. These two dropped the personal property tax in 1998. An effort in the legislature to limit county's liability for refunds was halted when Governor Ridge vetoed a bill which would have limited refunds to those taxes levied in 1996 and subsequent years.<sup>6</sup>

In June 2001, the Pennsylvania Supreme Court ruled that the provision in the personal property statute that exempts stock held in Pennsylvania corporations from taxation violates the uniformity mandate of the Pennsylvania Constitution. The Court held that the constitutional violation could be remedied by carrying out either a retroactive collection of the tax on Pennsylvania corporation stock, granting a refund of the tax, giving a tax credit, or any combination of these three options.<sup>7</sup>

### REFERENCES

1. 72 P.S. § 4821; 1913 P.L. 507.
2. 72 P.S. § 4821.1; 1913 P.L. 507, Section 1.1.
3. 16 P.S. § 6171-B, Second Class County Code, Section 3171-B.
4. 24 P.S. § 581.31; 1949 P.L. 1676, Section 2.
5. *Fulton Corporation v. Faulkner*, 516 U.S. 325, 116 S.Ct. 848, 133 L.Ed.2d 796 (1996).
6. Veto 1997-2, 1997 P.L. 865.
7. *Annenberg v. Commonwealth*, 757 A.2d 338, (Pa. 2000); *Stranahan v. County of Mercer*, 697 A.2d 1049 (Pa.Cmwlt. 1997); *Israelit v. Montgomery County*, 703 A.2d 722 (Pa.Cmwlt. 1997).

## XII. Per Capita Taxes

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A per capita tax is a flat rate tax levied upon each adult within the taxing district. The tax has no connection with employment, income, voting rights or any other factor except residence within the community. Commonly referred to as a “head tax,” it is derived from the Latin words, “per,” meaning “by,” and “capita,” meaning “heads.” It is sometimes called a residence or poll tax and is levied equally on all adult residents or inhabitants of the taxing jurisdiction.

The tax is authorized in the respective codes of law for second through fourth class school districts,<sup>1</sup> for third class cities (referred to as a residence tax),<sup>2</sup> and for fourth to eighth class counties as an alternative to the occupation tax;<sup>3</sup> all of the foregoing at a maximum rate of \$5. Those political subdivisions under the authority of the Local Tax Enabling Act may levy an additional per capita tax at a maximum rate of \$10.<sup>4</sup> Where a coterminous municipality and school district wish to levy the tax, the maximum rate must be shared between them. School districts where voters have approved an earned income tax under Act 50 of 1998 are prohibited from levying per capita taxes.<sup>5</sup>

Municipalities and school districts levying the per capita tax under authority of these acts are permitted to exempt any person whose income from all sources is less than \$12,000.<sup>6</sup> Counties may exempt persons whose income is less than \$10,000.<sup>7</sup> The exemption must be adopted by ordinance or resolution of the governing body. The governing body has authority to adopt regulations for processing claims for the exemption. In determining whether or not a married person qualifies for the exemption, the income of the spouse cannot be taken into consideration.<sup>8</sup> The court held the General Assembly had defined those in poverty as persons whose income is below the limit, and local jurisdictions cannot distinguish between members of this class based on additional criteria of need or family relationships.<sup>9</sup>

However, the Commonwealth Court did uphold a municipal per capita tax ordinance limiting the exemption to low income persons over 62 years of age as a reasonable classification.<sup>10</sup> This case upheld application of the per capita tax to indigents, and stipulated the granting of exemptions under the Local Tax Enabling Act or exonerations under the Local Tax Collection Law is a matter of discretion with each individual taxing district.

Per capita taxes can be levied on the per capita tax duplicate furnished by the county assessment office, or they may be levied on a list prepared for the taxing body by its own employees.<sup>11</sup> Preparation of the list is often one of the functions discharged by periodic school censuses. Collection of per capita taxes is difficult. They can be billed with real estate taxes. Delinquent per capita taxes are often assigned to a special delinquent collector. However, there is no statutory authority for a taxing district to recover the costs of the delinquent tax collector from taxpayers.<sup>12</sup> The per capita tax has a high collection cost in relation to its yield in revenues. A growing number of municipalities are eliminating the tax.

### REFERENCES

1. 24 P.S. § 6-679; Public School Code, Section 679.
2. 53 P.S. § 37531; Third Class City Code, Section 2531.
3. 16 P.S. § 1770; County Code, Section 1770.
4. 53 P.S. § 624.3118(l); Local Tax Enabling Act, Section 311(l).
5. 53 Pa.C.S. § 8701(b).
6. 53 P.S. § 3924.301.1(b).
7. 16 P.S. § 1770.
8. *Keenan v. Penn Hills School District*, 65 D.&C.2d 767 (Ct. Com. Pl. Allegheny Co. 1974).
9. *Keenan v. Penn Hills School District*, 65 D.&C.2d 767 (Ct. Com. Pl. Allegheny Co. 1974).
10. *Borough of Rochester v. Geary*, 373 A.2d 1380, 30 Pa. Cmwlth. 493 (1977).
11. 72 P.S. 5505; 1951 P.L. 1026, No. 216; *Seely v. Ridgway Area Sch. Dist.*, No. 1645 C.D. 2010 (Pa. Cmwlth. 2011).
12. *Selinsgrove Area School District v. Krebs*, 507 A.2d 906, 96 Pa. Cmwlth. 303 (1986).

## XIII. Occupation Taxes

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### Origin of Occupation Tax

The 17th century English system of general property and income taxes was adopted for colonial Pennsylvania in the days of William Penn and continues to form the basis for much of the system of local government taxes still existing today. England taxed real estate, personal property and offices, the currently existing sources of income and wealth in the country. Together they were considered a system of general classified property taxation.

Historically, the occupation tax was considered to be a tax on property, in this case the property consisting of the office or occupation. It is difficult for modern people to think of an occupation as a form of property. It is less difficult if one observes that when the first taxes on occupations were levied, many offices were created by a grant or letter of appointment, often with a stipulated annual revenue. Offices could sometimes be sold or transferred, sometimes inherited and the practice of certain occupations required authorization and/or memberships in guilds or professional associations. Nor does it require too much of the imagination to recognize many occupations require licensing (doctors, lawyers, engineers, electrical and plumbing contractors, and many others), that membership in a union is often a prerequisite to the practice of certain trades as a practical matter, and that many professions require certain prerequisites even where the law is silent (teachers and professors). Unlike earlier centuries, modern occupations are not transferable by the occupant, and some may choose to call the practice of the occupation or profession a privilege rather than a property right. In Pennsylvania, the practice of selling liquor licenses is a rare example of occupational transferability.

However, Pennsylvania courts distinguish between occupation and privilege taxes. Occupation taxes are not based on income. "An occupation tax must be identical for all members of a particular occupation whereas a privilege tax is based on some other criterion such as net income or volume of sales."<sup>1</sup> Because they sound alike, occupation taxes are sometimes confused with occupational privilege taxes. The Commonwealth Court has clearly distinguished these two taxes.<sup>2</sup> An occupation tax may only be levied on residents and must be measured by the assessed value of a particular occupation. The occupation tax is levied on residents of a taxing jurisdiction regardless of where their occupation is practiced.<sup>3</sup> An occupational privilege tax must be levied on residents and nonresidents alike and may only be levied by the jurisdictions in which the occupation is pursued.

### Statutory Authorization

The occupation tax is authorized in the respective codes of law for fourth through eighth class counties,<sup>4</sup> cities,<sup>5</sup> boroughs,<sup>6</sup> and first class townships.<sup>7</sup> Counties which levy a per capita tax cannot also levy the occupation tax. Under the municipal codes, the maximum rate for the occupation tax is the same as the maximum rate for the real estate tax. In some cases, if an occupation tax is levied it must be at the same rate as the real estate tax for that year.

The occupation tax is also authorized by the Local Tax Enabling Act (the "Act").<sup>8</sup> Municipalities and school districts may either levy the tax at a flat rate, with a maximum \$10 limit, or on a millage rate applied against the assessed value of occupations. The \$10 maximum flat rate tax is subject to sharing when both municipality and school district levy it, but there is no limit on occupation taxes levied on a millage basis under the Act. Any change in the rate requires reenactment of the tax following the mandatory publication requirements of Section 306 of the Act.<sup>9</sup> School districts where voters have approved an increased earned income tax under Act 50 of 1998 are prohibited from levying occupation taxes.<sup>10</sup> Philadelphia<sup>11</sup> and Philadelphia School District<sup>12</sup> have authority to levy an occupation tax, but do not use it.

The unlimited millage authority under the Local Tax Enabling Act has been used, particularly by school districts, to impose taxes with rates set extremely high in order to produce significant tax yields. The highest occupational tax rate in 2015 was 1,900 mills (190 percent) levied by the Shamokin Area School District in Northumberland County.

Act 130 of 2008 permits a political subdivision that levies an occupation tax to replace the revenue provided by the occupation tax, millage or flat rate, with an increase in the rate of the earned income tax if approved by referendum.<sup>13</sup> After approval of the referendum, the taxing jurisdiction must eliminate the occupation tax.

For school districts extending into more than one county, the occupation tax must be levied uniformly on each occupational category. If valuations of occupations differ between counties, the district must levy the lowest valuation of any county uniformly throughout the school district.<sup>14</sup> School districts and municipalities cannot set their own occupational valuations; they must use the figures established by the county assessment board.<sup>15</sup>

Jurisdictions levying the occupation tax are authorized to exempt from the tax persons whose income from all sources is less than \$12,000.<sup>16</sup> The exemption must be adopted as part of or as an amendment to the tax levying ordinance. The governing body has authority to adopt regulations for processing claims for the exemption.

## Assessment of Occupations

Whether or not the county levies an occupation tax, the county assessors are required to list all inhabitants over eighteen years of age and value their occupations.<sup>17</sup> Taxing bodies levying occupation or per capita taxes are authorized to provide for preparation of a list of taxpayers by their own employees.<sup>18</sup> Jurisdictions not satisfied county assessors have located all taxables may use this authority; however, valuations of occupations set by the county assessment board must be used.

Occupations are usually classified into groups. There are no statutory guidelines as to the number of classifications, or how they are to be made. These range from as few as four to more than 500. In some counties all occupations are valued at the same rate. One county court upheld assessment of all occupations at \$250, stating there is no requirement that occupations be classified and valued by category.<sup>19</sup> However, another county court invalidated a single uniform assessment as creating a flat rate tax above the statutory \$10 limit.<sup>20</sup> The Commonwealth Court held that a county board of assessment appeals could not assign a zero value to all professional trades and occupations subject to an occupation assessment tax.<sup>21</sup>

Usually categories do reflect to some extent the differential in earning power among occupations, but they do not bear any direct relationship to the income of any particular individual within the category. But economic return is not the sole measure of the value of an occupation. Pennsylvania courts have held "It is apparent that other factors than income affect the value which may be attributed to an occupation. These may include social status, historical attributes, type, kind and quantity of work required, degree of education and training demanded and many other such real or fancied social and economic distinctions."<sup>22</sup>

Values do not have to reflect changes in earnings over a period of time; the occupation tax is clearly not an income tax. Neither do classifications have to reflect differences among job types and descriptions within classifications. Clumping related job types in a single classification meets the constitutional test of uniformity unless the classification is unreasonable.<sup>23</sup>

The *Haberman* court held a separate classification for retired persons over age 65 was not unreasonable and upheld Montgomery County's practice of assessing the value of the occupations of full-time students and retired persons as "none." Earlier the Supreme Court upheld exclusion of minors from the occupational assessment rolls as reasonable.<sup>24</sup> In a more recent case, the Commonwealth Court ruled retired persons and homemakers do not have taxable occupations and are excluded from the scope of the occupation tax.<sup>25</sup> Occupation taxes cannot be levied upon clergy; to do so would violate First Amendment rights to free exercise of religion.<sup>26</sup> Likewise, an ordained clergyperson administering a religious school was held to be exercising a religious activity and thus exempt from the occupation tax.<sup>27</sup>

An example of a simplified occupational assessment schedule is shown below to give readers an idea of how it is done.

- Corporation executives, contractors, county judges, surgeons, superintendents, physicians - \$1000.
- Accountants, attorneys, architects, bank executives, engineers, executives, stockbrokers, county and city officials - \$700.
- Bank cashiers, chefs, draftsmen, electricians, foremen, government employees (unclassified), skilled laborer - \$500.

- Weavers, welders, tanners, painters, masons - \$400.
- Auctioneers, bank clerks, barbers, bartenders, beauticians, bookkeepers, butchers, office clerks - \$300.
- Restaurant servers, township supervisors, laborers, factory workers - \$200.
- Homemakers, students, disabled persons, retired persons - \$0.

Although the values assigned to occupations are clearly artificial numbers, courts will uphold occupation assessments unless they are clearly unreasonable. In *Haberman*, the assessments were upheld even though one assessment board member lacked knowledge of the proper basis to be used in valuation. The board had arrived at present values by adopting the values shown in the previous assessment records and used from 1962 through 1972.

## Challenges to Occupation Tax

With heavier use of occupation taxes by school districts under the Local Tax Enabling Act at rates producing large one-time tax bills, taxpayer discontent and resentment has grown. As yet, none of the legal challenges to the tax have been successful. Occupation taxes have been upheld as valid and constitutional in the absence of a proper challenge showing them to be unreasonable.<sup>28</sup> The burden is on the taxpayer to show improper classification. Most challenges do not even receive a hearing because they are improperly brought before the courts. Any challenge to an occupation tax must follow the proper statutory remedies, either appeal of the tax under Section 309 of the Local Tax Enabling Act, or appeal of the assessment under the assessment laws.<sup>29</sup> Attempts to use the supersession clause of the Local Tax Enabling Act to gain exemption for particular classes of occupation have not been successful.<sup>30</sup>

## REFERENCES

1. *Crawford v. Southern Fulton School District*, 246 A.2d 332, 431 Pa. 324 (1968).
2. *Taylor v. Coatesville Area School District*, 279 A.2d 90, 2 Pa. Cmwlth. 510 (1971).
3. *Reizes v. Weller*, 504 A.2d 971, 95 Pa. Cmwlth. 120 (1986).
4. 16 P.S. § 1770; County Code, Section 1770.
5. 53 P.S. § 37531; Third Class City Code, Section 2531.
6. 8 Pa.C.S. § 1302; Borough Code, Section 1302.
7. 53 P.S. § 56709; First Class Township Code, Section 1709.
8. 53 P.S. § 6924.311(7); Local Tax Enabling Act, Section 311(7).
9. 53 P.S. § 6924.306; *Bradshaw v. Southern Fulton School District*, 494 A.2d 76, 90 Pa. Cmwlth. 162 (1985).
10. 53 Pa.C.S. § 8701(b).
11. 53 P.S. § 15971; 1932 (Ex.Sess.) P.L. 45, Section 1.
12. 53 P.S. § 16101; 1963 P.L. 640, Section 1.
13. 53 P.S. §§ 6924.401 et seq.; Optional Occupation Tax Elimination Act, Section 1.
14. 24 P.S. § 6-672.2; Public School Code, Section 672.2; *Carl v. Southern Columbia Area School District*, 399 A.2d 1159, 41 Pa. Cmwlth. 525 (1979).
15. *Lynch v. Owen J. Roberts School District*, 244 A.2d 1, 430 Pa. 461 (1968).
16. 53 P.S. § 6924.301.1.
17. 72 P.S. § 5020-404; General County Assessment Law, Section 404.
18. 72 P.S. § 5505; 1951 P.L. 1026, No. 216.
19. *McDevitt v. Central Dauphin School District*, 70 D.&C.2d 4, (Ct. Com. Pl. Dauphin Co. 1975)
20. *Mifflin County School District v. Mifflin County Board of Assessment Appeals*, Ct. Com. Pl. Mifflin Co, Civil Action No. 1110, 1979.
21. *Bald Eagle Area School District v. County of Centre, Board of Assessment Appeals*, 745 A.2d 689 (Pa. Cmwlth. 1999).
22. *Haberman Appeal*, 388 A.2d 1159, 37 Pa.Cmwlth. 97, (1978) (citing *Crosson v. Downingtown Area School District*, 270 A.2d 377, 440 Pa. 468 (1970).
23. *Haberman*, supra.
24. *Crosson*, supra.
25. *Lower Dauphin School District v. Kutler*, 463 A.2d 499, 76 Pa. Cmwlth. 87 (1983).
26. *Stajkowski v. Carbon County Board of Assessment and Revision of Taxes*, 541 A.2d 1384, 518 Pa. 150 (1988).
27. *Baylor v. Centre County Board of Assessment Appeals*, 623 A.2d 882, Pa. Cmwlth. (1993).
28. *Dowlin v. Coatesville Area School District*, 350 A.2d 190, 22 Pa. Cmwlth. 433 (1975); *Taylor*, supra; *Campbell v. Coatesville Area School District*, 270 A.2d 385, 440 Pa. 496 (1970).
29. *Scott v. Palmerton Area School District*, 439 A.2d 859, 63 Pa.Cmwlth. 528 (1981); *Lashe v. Northern York County School District*, 417 A.2d 260, 52 Pa. Cmwlth. 541 (1980); *Hudson v. Union County*, 413 A.2d 1148, 50 Pa. Cmwlth. 378 (1980).
30. *Gold v. Northampton Township*, 41 D.&C.3d 298, (Ct. Com. Pl. Bucks Co. 1985)

## XIV. Local Services Tax

*(Formerly known as Occupational Privilege Tax)*

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A tax levied on the privilege of engaging in an occupation within a particular taxing district was previously known as the occupational privilege tax. Act 222 of 2004, however, amended the Local Tax Enabling Act (“Act”) to change the name of the occupational tax to the emergency and municipal services tax (“EMST”) and to permit municipalities and school districts (except the Pittsburgh School District) deriving taxing authority from the Act, to impose on persons employed within the jurisdiction an EMST of up to a maximum of \$52 per year beginning on and after January 1, 2005.<sup>1</sup> Act 7 of 2007 amended the Act to change the name of the EMST to the local services tax.<sup>2</sup>

### Statutory Authorization

The local services tax may be levied only by the political subdivision where the taxpayer is employed and the tax becomes effective as of January 1 in the first year as specified in an ordinance or resolution.<sup>3</sup> The Act currently authorizes political subdivisions to levy the local services tax at the maximum annual rate of \$52 per person, regardless of whether the taxpayer is subject to multiple taxing localities.<sup>4</sup> Thus, where both municipality and school district levy the tax, they must share the maximum rate of \$52.<sup>5</sup> If the tax exceeds a combined rate of \$10 then it must be assessed and collected in pro rata installments based on payroll period withholdings by the employer.<sup>6</sup>

If a school district levied an EMST on June 21, 2007, the school district is permitted to levy the local services tax in the same amount the school district collected on that date.<sup>7</sup> However, if a municipality located in whole or in part within the school district subsequently levies the local services tax, the school district is only permitted to collect five dollars (\$5) on persons employed within the municipality each calendar year.<sup>8</sup> A school district that did not levy an EMST on June 21, 2007 is prohibited from levying the local services tax.<sup>9</sup>

Municipalities which have been declared distressed under the Municipalities Financial Recovery Act (Act 47) may be able to increase their Local Services Tax above the limit set in the Local Tax Enabling Act to a maximum rate of \$156.<sup>10</sup> The increase must be part of the recovery plan adopted for the municipality. The municipality must petition the court of common pleas for approval to increase the tax rate above the limit for a period of one year. Subsequent increases may be granted by the court upon annual petition of the municipality until the termination date of the recovery plan.<sup>11</sup>

A distressed municipality that levies the local services tax at a rate in excess of \$52 must, by ordinance, exempt any person from the local services tax whose total earned income and net profits from all sources within the municipality is less than \$15,600 for the calendar year in which the local services tax is levied (instead of \$12,000 for those municipalities levying the local services tax at no more than \$52).<sup>12</sup> Additionally, a municipality is prohibited from increasing its local services tax rate under Act 47 if it instead increases its earned income tax rate (resident or nonresident) under Act 47.<sup>13</sup>

Distressed municipalities that are also determined to have a level II or level III financially distressed pension system under the Municipal Pension Plan Funding Standard and Recovery Act (Act 205) and that are imposing an increased earned income tax under Act 205,<sup>14</sup> may not increase their Local Services Tax rate above \$104.<sup>15</sup>

The local services tax is separate and distinct from the occupation tax. In contrast to the occupation tax, the local services tax is levied on both residents and nonresidents employed within the taxing body’s jurisdiction.<sup>16</sup> It is also distinct from per capita taxes. Per capita taxes are a fixed amount levied on all persons living within the jurisdiction without regard to the amount of property they own or whether they are engaged in an occupation or business. Local services taxes do not have to vary with the particular mode of employment to be valid.<sup>17</sup>

## Situs and Exemptions

The local services tax is assessed and collected by the political subdivision in which an individual is employed. Because the situs of the tax is the place of employment, no taxing district may levy this tax as though it were another kind of per capita tax. It is intended to be a tax only on persons gainfully employed. If the taxpayer is subject to more than one taxing locality, due to, for example, working in more than one political subdivision during a payroll period, the Act establishes a priority to collect the tax as follows<sup>18</sup>:

1. the political subdivision in which the person maintains the principal office or is principally employed;
2. the political subdivision in which the person resides and works if, of course, the political subdivision of residence imposes the tax;
3. the political subdivision in which a person is employed imposing the tax which is nearest the person's home.

All employers with work sites within the taxing jurisdiction are required to deduct the local services tax from their employees at the site of employment. However, when two or more employers employ a taxpayer in a payroll period, an employer is not required to withhold the local services tax if the taxpayer provides a pay stub from his or her principal employer accompanied by an employee statement of principal employment that the pay stub is from the taxpayer's principal employer and that the taxpayer will notify the employer of any change in employment.<sup>19</sup>

If the local taxing authority's local services tax exceeds \$10, Section 301 of the Act requires such taxing authority, by ordinance or resolution, to exempt from its local services tax any person whose earned income and net profits from all sources is less than \$12,000.<sup>20</sup> If the local taxing authority's local services tax does not exceed \$10, Section 301 of the Act permits, but does not require, such taxing authority, by ordinance or resolution, to exempt from its local services tax any person whose earned income and net profits from all sources is less than \$12,000.<sup>21</sup> Additionally, Section 301 of the Act exempts from the local services tax Any person who (i) serves as a member of a reserve component of the armed forces and is called to active duty at any time during the taxable year and (ii) has served in any war or armed conflict and is honorably discharged or released so long as such person is blind, paraplegic or a double or quadruple amputee as a result of military services or is 100 percent disabled from a service connected disability.<sup>22</sup>

An employee who reasonably expects to receive earned income and net profits less than \$12,000 from all sources within the political subdivision may file an annual upfront exemption form (available through the Department of Economic Development) with the political subdivision levying the local services tax and the employee's employer.<sup>23</sup> A copy of the employee's last pay stubs or W-2 forms from the prior year's employment within the political subdivision where the employee is seeking exemption must be attached to the exemption certificate. Upon receipt of an upfront exemption form and until otherwise instructed by the political subdivision imposing the tax, employers must stop withholding the local services tax for the specific calendar year from employees for whom the exemption applies.<sup>24</sup> Employer's must "re-start" withholding the local services tax from an exempt taxpayer if (i) instructed to do so by the political subdivision levying the LST; (ii) notified by the employee that they are no longer eligible for the exemption; or (iii) the employer pays the employee more than \$12,000 for the calendar year.<sup>25</sup>

Other than monitoring whether an exempt employee has received in excess of \$12,000 in earned income and net profits, the intent of the Act is that employers are not be responsible for investigating exemption certificates, monitoring tax exemption eligibility or exempting any employee from a local services tax.<sup>26</sup>

## Withholding

Taxing jurisdictions may require employers to withhold local services taxes if the tax is listed on the *Register for Local Services Taxes* prepared and issued by the Department of Community and Economic Development.<sup>27</sup> In order to have employers withhold taxes, the taxing district must have its tax listed in the *Register*. Employers are required to remit the tax thirty (30) days after each calendar quarter.<sup>28</sup>

Information must be supplied to the Department of Community and Economic Development on their forms prior to May 31 of each year in order to ensure the information appears in the *Register* for the next reporting period. Tax information forms are mailed to municipalities in November and to school districts in May to update and verify data on file for the *Register* for their forthcoming fiscal years. Failure to receive the information on taxes continued without change is construed by the department to mean the information contained in the previous *Register* remains in force.

The *Register* lists the political subdivisions levying the tax, their effective tax rates, and the name, address and telephone number of the tax officer responsible for collection of the local services tax and from whom information, rules and regulations are available. Stated rates are shown for information purposes only. Copies of the *Register* can be purchased from the department. Information can be obtained by contacting:

Pennsylvania Department of Community and Economic Development  
Governor's Center for Local Government Services  
400 North Street, 4th Floor  
Commonwealth Keystone Building  
Harrisburg, Pennsylvania 17120-0225  
866-466-3972  
dced.pa.gov

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1. Act 222 of 2004, 2004 P.L. 1729, No. 222.
2. Act 7 of 2007, 2007 P.L. 13, No. 7.
3. 53 P.S. §§ 3924.301.1(f)(9), 3924.312.
4. 53 P.S. § 6924.311(8), Local Tax Enabling Act, Section 311(8); 53 P.S. 6924.301.1(f)(9).
5. 53 P.S. § 6924.301.1(f)(9).
6. 53 P.S. § 6924.301.1(f)(9)
7. 53 P.S. § 6924.301.1(f)(9).
8. 53 P.S. § 6924.301.1(f)(9).
9. 53 P.S. § 6924.301.1(f)(9).
10. 53 P.S. § 11701.123(d)(1); Municipalities Financial Recovery Act, Section 123(d)(1)).
11. 53 P.S. § 11701.123; Municipalities Financial Recovery Act, Section 123.
12. 53 P.S. § 11701.123(d)(1); Municipalities Financial Recovery Act, Section 123(d)(1)).
13. 53 P.S. § 11701.123(d)(1); Municipalities Financial Recovery Act, Section 123(d)(1)).
14. 53 P.S. § 895.604-607(f))
15. 53 P.S. § 11701.123; Municipalities Financial Recovery Act, Section 123(d)(1.1)).
16. *Danyluk v. Johnstown*, 178 A.2d 609, 406 Pa. 27 (1962).
17. *Gaugler v. City of Allentown*, 410 Pa. 315, 317, 189 A.2d 264, 265 (1963).
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19. 53 P.S. § 6924.301.1(f)(9).
20. 53 P.S. § 6924.301.1(d).
21. 53 P.S. § 6924.301.1(c).
22. 53 P.S. § 6924.301.1(c).
23. 53 P.S. § 6924.301.1(e).
24. 53 P.S. § 6924.301.1(e).
25. 53 P.S. § 6924.301.1(e).
26. 53 P.S. § 6924.301.1(e).
27. 53 P.S. § 6924.312.
28. 53 P.S. § 6924.312.

## XV. Realty Transfer Taxes

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### Statutory Authorization

The Local Tax Enabling Act and the Tax Reform Code jointly authorize the levy of a realty transfer tax at the maximum rate of one percent on the transfer price of real property within the taxing jurisdiction.<sup>1</sup> Pursuant to Act 40 of 2005, the local realty transfer tax parallels that of the state realty transfer tax, but is administered, collected and enforced under the provisions of the Local Tax Enabling Act.<sup>2</sup> If both municipality and school district levy the tax, they must share the one percent maximum. Home rule municipalities may levy the tax at rates above the maximum established in the Act.<sup>3</sup> Under the Sterling Act, Philadelphia may levy a realty transfer tax.<sup>4</sup> No limit is imposed. The tax is usually paid by the purchase and affixing of deed transfer stamps to the transfer documents.

Local governments were already levying the realty transfer tax when the commonwealth imposed its tax in 1951 at a rate of one percent. To override the supersession clause in Act 511, the act levying the state tax contained a specific provision stating it would not invalidate any similar taxes then or subsequently imposed by local governments under existing legislation.<sup>5</sup> State regulation of the insurance industry is not so pervasive as to preempt application of a local realty transfer tax to stock transfers of real estate corporations.<sup>6</sup>

The county recorder of deeds is mandated by law to be the collection agent for both state and local realty transfer taxes.<sup>7</sup> The local political subdivisions for whom the tax is collected do not compensate the recorder of deeds; two percent of the amount collected is withheld to reimburse the county for the cost of collection.<sup>8</sup> The state tax is collected from the purchaser of the property. Thus, although the Local Tax Enabling Act says nothing as to which party should be liable for the tax, most local ordinances make it payable by the seller.

### Taxable Transactions

The tax is imposed only on transactions where there is a real transfer of beneficial interest. Because the state tax base was broader in some areas than the local tax base, the Tax Reform Code was amended in 1986 to authorize local taxing bodies to levy realty transfer taxes on the same transactions taxed by the state. This provision preserved the right of local taxing bodies to levy the tax upon any additional transactions already taxed before 1986 under the authority of the Local Tax Enabling Act. A court upheld imposition of the Pittsburgh realty transfer tax on a stock purchase when over 50 percent of the corporate assets were in the form of real estate, even though the state tax is not triggered until more than 90 percent of a corporation's assets are real estate.<sup>9</sup> Philadelphia was extended similar authority to tax realty transfers on the state base by the Local Tax Reform Act.<sup>10</sup> This authorization became effective immediately and remains effective in spite of the failure of the remainder of the Act to be implemented following defeat of the constitutional amendment. The retained local tax authorization from Act 511 has been interpreted as somewhat broader than the state tax.<sup>11</sup>

Transfers exempt from the tax are listed in Section 301.1 of the Act.<sup>12</sup> They include transfers:

1. By will, mortgage or interstate laws.
2. Trading in residences for newly built residences.
3. To nonprofit housing and industrial development corporations.<sup>13</sup>
4. Between specified family members and family farm corporations.
5. To nonprofit historic, recreational, scenic, agricultural or open space conservancies.
6. For making mortgages or ground rents.
7. For correctional deeds.
8. To the United States or the commonwealth, or any of their instrumentalities, agencies or political subdivisions, by gift, deed or condemnation.<sup>14</sup>

9. To trustees for debt security.
10. In sheriff sales to mortgage holders.

In 2000, Commonwealth Court held that Philadelphia had authority under the Local Tax Reform Act to impose realty transfer tax on a corporate taxpayer who acquired properties by way of a deed in lieu of foreclosure when the transaction would not be subject to a state tax or license fee.<sup>15</sup>

## REFERENCES

1. 53 P.S. § 6924.301.1; Local Tax Enabling Act, Section 301.1; 72 P.S. § 8101-D; Tax Reform Code, Section 1101-D.; 53 P.S. § 6924.311.
2. 72 P.S. § 8102-D.
3. 53 Pa. C.S. § 2962 (a)(7); *Reily v. City of Pittsburgh*, 484 A.2d 736, 506 Pa. 165 (1984).
4. 53 P.S. § 15971; 1932 (Ex.Sess.). P.L. 45, Section 1.
5. *L.J.W. Realty Corp. v. Philadelphia*, 134 A.2d 878, 390 Pa. 197 (1957).
6. *Equitable Life Assurance Society of United States v. Murphy*, 621 A.2d 1078, Pa. Cmwlth. (1993).
7. 16 P.S. § 11011-6(c); 1971 P.L. 495, Section 6(c); *Della Vecchia v. City of Pittsburgh*, 39 Pa. D. & C.3d 16, 19 (Ct. Com. Pl. Allegheny Co. 1985).
8. 16 P.S. § 11011-6(c); 1971 P.L. 495, Section 6(c).
9. *Health Group Centers, Inc. v. City of Pittsburgh*, 552 A.2d 323, 122 Pa. Cmwlth. 384 (1988).
10. 72 P.S. § 4750.1301(b); Local Tax Reform Act, Section 1301(b).
11. *Wolf v. Mount Lebanon Township*, 240 A.2d 86, 212 Pa. Super. 65 (1968).
12. 53 P.S. § 6924.301.1(f)(1).
13. *Foster v. Borough of Green Tree*, 12 D.&C.3d 71 (Ct. Com. Pl. Allegheny Co. 1979).
14. *Braddock Borough v. Bartoletta*, 186 A.2d 243, 409 Pa. 281 (1962).
15. *Provident Mutual Life Insurance Company v. Tax Review Board*, 750 A.2d 942, Pa. Cmwlth (2000).

## XVI. Business Gross Receipts Taxes

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Business gross receipts taxes are levied on the privilege of doing business within a jurisdiction. These taxes are known as mercantile or business privilege taxes, but are now collectively referred to as business gross receipts taxes. Despite the different names, they are essentially the same tax. Mercantile taxes on wholesale and retail trade were generally levied first because they are defined somewhat by the rate limits imposed on wholesale dealers, retail dealers and restaurants under Section 311(2) of the Local Tax Enabling Act. Mercantile taxes are generally understood as limited to these classes of business. Business privilege taxes are also levied on the privilege of doing business within a jurisdiction. They are generally of two types: The first applies to all business except those subject to a mercantile tax; the second is a universal business privilege tax covering all businesses where the jurisdiction has no separate mercantile tax. The differences between mercantile and business privilege taxes have become more semantic than real. Much depends on the wording of the local ordinances.

The pattern for a mercantile tax on wholesale and retail transactions and a separate business privilege tax on all other businesses was established by Pittsburgh. The city first levied a mercantile tax, then enacted a business privilege tax on all other businesses. The Pennsylvania Supreme Court outlines the difference between the two Pittsburgh taxes: "While the ordinance here involved does tax the privilege of engaging in business, it is no way limited, as the mercantile tax, to the transactions of merchants who sell at wholesale or retail; its scope, subject to the exclusions, reaches all persons engaged in any business in the city of Pittsburgh."<sup>1</sup> Beginning in the 1970s, municipalities and school districts first levying the tax did so with a single universal business privilege tax covering all businesses, including those covered by older mercantile tax ordinances in other jurisdictions.

Business gross receipts taxes are measured by the gross receipts of the person doing business. To be valid, tax liability must be measured by the actual gross receipts.<sup>2</sup> The tax is imposed on the taxpayer, or the person engaged in business without regard to the number of establishments maintained. It is not a tax on separate places of business.<sup>3</sup> Business gross receipts tax ordinances usually exclude political subdivisions, employment for a wage or salary and businesses where power to tax is withheld by law.

Business gross receipts taxes are distinct from earned income taxes and occupational privilege taxes. Each is levied on a different tax base with a different group of taxpayers. The privilege of engaging in an occupation is different than the privilege of engaging in a business.<sup>4</sup> For instance an attorney employed by a company is engaging in an occupation, while an attorney in private practice is engaging in a business as well as an occupation.

### REFERENCES

1. *F.J. Busse Company v. Pittsburgh*, 279 A.2d 14, 443 Pa. 349, 359 (1971).
2. *Allentown School District Mercantile Tax Case*, 87 A.2d 480, 370 Pa. 161 (1952), *overruled on other grounds by Bilbar Const. Co. v. Bd. of Adjustment of Easttown Twp.*, 393 Pa. 62, 141 A.2d 851 (1958).
3. *Pittsburgh v. Cities Service Oil Company*, 280 A.2d 463, 2 Pa.Cmwlt. 567, 570 (1971), *reversed in part on other grounds by Cities Serv. Oil Co. v. City of Pittsburgh*, 449 Pa. 481, 297 A.2d 466 (1972).
4. *Appeals of Munnell*, 219 Pa. Super. 525, 281 A.2d 906 (1971).

### Statutory Authorization

Business gross receipts taxes are levied under the general power to tax persons, transactions, occupations or privileges under the authority of the Local Tax Enabling Act.<sup>1</sup> The Local Tax Enabling Act authorizes levy of business gross receipts taxes subject to a limit of one mill on wholesale vendors and one and one-half mills on retail dealers and restaurants, except in Pittsburgh where the authorized limit is one mill on wholesale dealers and two mills on retail vendors and restaurants.<sup>2</sup> Gross receipts taxes on wholesale and retail businesses and restaurants are subject to sharing provisions when levied by both municipality and school district under the Local Tax Enabling Act. Taxes on other types of businesses, such as services, are not limited by the Act and are not subject to the sharing provisions.<sup>3</sup>

The Public School Code authorizes the Pittsburgh School District to levy a mercantile tax, but also includes amusement and recreation businesses and is subject to a rate limit of one-half mill on wholesale business and one mill on retail business.<sup>4</sup> In addition, although the district is authorized to levy a gross receipts tax under the provisions of the Local Tax Enabling Act,<sup>5</sup> other than imposing the aforementioned mercantile tax on wholesale and retail businesses, the Pittsburgh School District may not impose a tax on the gross receipts of other types of businesses.<sup>6</sup> Additionally, beginning with 2010 the business privilege tax was repealed in the city of Pittsburgh.<sup>7</sup>

Philadelphia repealed its mercantile license tax levied under the authority of the Sterling Act. It now levies a business privilege tax on all business within the city measured by gross receipts and net income under special statutory authorization.<sup>8</sup>

Second, second class A and third class cities are authorized to levy business license taxes on a flat rate basis.<sup>9</sup> There is no limit on second and second class A cities. Third class cities may levy the tax at a maximum rate of \$100. These taxes may be levied in addition to business privilege taxes levied under the Local Tax Enabling Act.<sup>10</sup>

The imposition of any new business gross receipts tax is prohibited after November 30, 1988 under the terms of the Local Tax Reform Act.<sup>11</sup> Even though most of the Act never became effective because of the defeat of the constitutional amendment in 1989, the court found this prohibition to be in effect. The Act also prohibits rates of business gross receipts taxes from being increased above levels in effect on November 30, 1988, or extended to subjects not taxed as of that date. The only exception to this freeze during the past 10 years came in 1997 when Upper Darby Township was authorized to reenact its business gross receipts tax to extend it to all businesses.<sup>12</sup>

The freeze established in the Local Tax Reform Act does not prohibit new flat rate business privilege taxes. In an appeal to a \$100 flat rate business privilege tax enacted by Newtown Borough in 1990, the Commonwealth Court ruled the Local Tax Reform Act does not prohibit flat rate taxes, only those measured by gross receipts.<sup>13</sup>

## REFERENCES

1. 53 P.S. § 6924.301.1(a); Local Tax Enabling Act, Section 301.1(a).
2. 53 P.S. § 6924.311(2); Local Tax Enabling Act, Section 311(2).
3. *Carpenter and Carpenter v. City of Johnstown*, 605 A.2d 456, 146 Pa. Cmwlth. 274 (1992).
4. 24 P.S. § 582.4; 1947 P.L. 745, Section 4.
5. 24 P.S. § 6-652.1(4); Public School Code, Section 652.1(4).
6. 24 P.S. § 6-652.1(a)(5).
7. 53 P.S. § 6924.303(d)(3); Pitt. Code, tit. 2, art. VII, ch. 243.02.
8. 53 P.S. §§ 16181 et seq.; First Class City Business Tax Reform Act.
9. 53 P.S. § 23107, 53 P.S. §§ 37601 et seq.; 1901 P.L. 20, Article XIX, Section 3, Third Class City Code, Section 2601.
10. *City of Wilkes-Barre v. Ebert*, 349 A.2d 520, 22 Pa. Cmwlth. 356 (1975).
11. 72 P.S. § 4750.533; Local Tax Reform Act, Section 533; 53 Pa.C.S. § 8402(d); *Borough of West Chester v. Taxpayers of the Borough of West Chester*, 566 A.2d 373, 129 Pa. Cmwlth. 545 (1989); *Burrell School District v. City of Lower Burrell*, 608 A.2d 605, 147 Pa. Cmwlth. 471 (1992); *Penn Traffic Company v. City of DuBois*, 626 A.2d 1257, 156 Pa. Cmwlth. 107 (1993); *Taxpayers of Sandy Township v. Sandy Township Supervisors*, 625 A.2d 1321, 155 Pa. Cmwlth. 665 (1993); *Shelly Funeral Home, Inc. v. Warrington Twp.*, 618 Pa. 469, 476, 57 A.3d 1136, 1140 (2012).
12. 53 P.S. § 56709.2; First Class Township Code, Section 1709.2.
13. *Smith and McMaster v. Newtown Borough*, 669 A.2d 452, Pa. Cmwlth. (1995). See also *Shelly Funeral Home, Inc. v. Warrington Twp.*, 618 Pa. 469, 476, 57 A.3d 1136, 1140 (2012).

## Imposition of Tax

Under the Local Tax Enabling Act, business is defined an enterprise, activity, profession or any other undertaking of an unincorporated nature conducted for profit or ordinarily conducted for profit whether by a person, partnership, association or any other entity.<sup>1</sup> All businesses, trades and professions where any service is offered to the public are generally liable for payment of this tax. Two broad areas of enterprise are excluded under the terms of the Local Tax Enabling Act, those qualifying for the manufacturing exclusion and those subject to preempting state taxes or license fees.

Many of the business gross receipts taxing schemes of Pennsylvania local governments impose taxes only on the sale of goods by wholesale and retail merchants and restaurants. The validity of such an arrangement was challenged by the owner of a restaurant in Uniontown, asserting that by not taxing service businesses, the city was

applying the gross receipts tax to only 237 of the approximately 800 businesses operating there. The Commonwealth Court agreed and held that the city's tax was unconstitutional as violating the uniformity clause of the Pennsylvania Constitution and the equal treatment clause of the 14th Amendment to the United States Constitution.<sup>2</sup> However, the Commonwealth Court subsequently upheld a business privilege tax levied by the City of Allentown at one rate on services and another on sales at retail or wholesale.<sup>3</sup> The Pennsylvania Supreme Court dismissed the appeal from *City of Allentown v. MSG Associates, Inc.*, effectively affirming the Commonwealth Court's decision.<sup>4</sup>

**Activities Taxable.** In an early case, the Pennsylvania Supreme Court ruled so-called passive income earned from rents on property and dividends from stock was not exempt from business privilege taxes. The court said the test was neither the character of the receipt nor the size of business, but the nature of the activity producing the receipt.<sup>5</sup> Critical differences occur in how property was acquired or the circumstances under which it was retained, how it is used, the services performed by way of management and the overall objectives of the owner. In this case, although the company did not manage its properties, it actively engaged in acquisition and leasing of properties after its formation. Subsequent cases have upheld application of business privilege taxes to companies active in acquiring and renting commercial properties, even where they did not actively engage in managing their properties.<sup>6</sup> Corporation income from stock dividends and capital gains from sale of stock have also been held to be business income taxable under gross receipts taxes.<sup>7</sup> Taxpayer's gross media receipts arising from television broadcast of football games were "copyright royalties" and subject to the business privilege tax.<sup>8</sup>

Services held to be taxable under business gross receipts taxes have been defined to include school and educational services conducted by corporations organized for profit.<sup>9</sup>

The Pennsylvania Supreme Court upheld inclusion of revenues from sale of admissions tickets in calculating the gross receipts of a movie theater business.<sup>10</sup> The Court held the prohibition in the Local Tax Enabling Act against taxing movie admissions was limited to a direct tax on admissions and did not apply to a tax on the privilege to do business as measured by gross receipts.

The Supreme Court also held that a business privilege tax assessed against a general building contractor, who constructed new residential dwellings, was imposed upon the privilege of conducting business within the city and school district as determined by the gross receipts of the business, and was not a tax on the construction of a residential dwelling or the issuance of a building permit. The tax could be calculated from amounts listed on the residential building permits and did not duplicate the realty transfer tax.<sup>11</sup>

The assessment of a township's business privilege tax on gross receipts from rental commercial property was upheld by the Pennsylvania Commonwealth Court.<sup>12</sup> In that case, the taxpayer was assessed a business privilege tax for 15 years of gross receipts tax attributable to a rental commercial property. The court ultimately found that the rental of the commercial property was a performance of services that was carried on for profit and was thus subject to the township's ordinance which imposed tax on gross receipts from any activity carried on or exercised for gain or profit in the township.<sup>13</sup>

A corporation that provided financial and management services to other companies in an affiliated group was subject to a township's business privilege tax even though the corporation claimed that it did not offer services to the general public or a limited group thereof.<sup>14</sup> The Commonwealth Court reasoned that the taxpayer was a separate legal entity from the affiliated companies, but the affiliated companies which the corporation provided services to were members of the public and corporation's services were normal business services subject to the tax.<sup>15</sup>

Additionally, the courts have also found that jurisdictions are precluded from imposing business privilege taxes on leases or rental income since the Local Tax Enabling Act specifically prohibits tax on lease or lease transactions.<sup>16</sup>

**Tax Base Exemptions.** Section 301.1(f)(12) of the Act now excludes certain transactions from the tax base.<sup>17</sup> These include the following items:

1. Cash discounts to purchasers for prompt payment of bills.
2. Freight delivery or transportation charges paid by the seller for the purchaser.
3. Sales of trade-ins up to the amount given the prior owner as a trade-in allowance.
4. Refunds or credits given customers for defective goods returned.
5. Pennsylvania sales tax.
6. Trades between sellers of identical goods, but the exemption does not extend to any additional cash payment accompanying the trade.
7. Sales to other sellers at the same price the first seller acquired the merchandise.
8. Transfers between one department, branch or division of a business entity and another recorded on the books as interdepartmental transfers.

A 1996 amendment to the Second Class City Law prohibits Pittsburgh from levying its business gross receipts tax on brokers or dealers of securities and investment fund management companies or other regulated financial services institutions.<sup>18</sup>

**Rate Limits.** Business gross receipts taxes are subject to the limits found in Section 311(2) of the Local Tax Enabling Act when they apply to wholesale vendors, retail dealers and proprietors of restaurants.<sup>19</sup> Where business privilege or mercantile taxes are levied by both school district and municipality, the maximum limit is subject to the sharing provisions of the Act. This will also occur if one jurisdiction is levying a mercantile tax and the other is levying a business privilege tax. However, in a case where a home rule municipality levied its mercantile tax under authority of the Home Rule Law, the Commonwealth Court ruled that the school district was not subject to the tax sharing provisions of the Local Tax Enabling Act.<sup>20</sup> Where taxpayers challenged a business privilege tax as excessive and unreasonable, the court held they had to prove it was entirely disproportionate to a tax rate controlled by the limits in Section 311 of the Act for a comparable tax.<sup>21</sup>

This limitation had earlier been applied to Pittsburgh's institution and service privilege tax levied against nonprofit organizations.<sup>22</sup> The court upheld the tax as applied to a private club, but stated the tax, otherwise six mills, was limited to two mills on receipts from food and beverage sales to members under the terms of Section 311(2) of the Act.

In ruling on the validity of Pittsburgh's business privilege tax in general, the Supreme Court upheld different tax rates on various classes in the taxing ordinance. Although the general tax rate was six mills, it was reduced to one mill when applied against wholesalers. The rate of taxation need be equal only with respect to taxpayers that are within the same class. In this case several of the variations were based on specific limitations set by the Local Tax Enabling Act or other state laws.<sup>23</sup>

The rate limits and sharing provisions apply only to wholesale vendors, retail dealers and restaurants. There are no limits and no sharing provisions for business gross receipts taxes levied on service businesses.<sup>24</sup>

**Classification.** The Act sets separate rates for wholesale dealers and retail vendors and restaurants. Differing tax rates for these classifications have been upheld by the courts; the difference between a wholesale dealer and retail vendor is a genuine distinction recognized in the business world.<sup>25</sup>

Determination of whether a business is wholesale or retail lies in the activities of the buyer. If the buyer buys to sell again, then the business is a wholesaler. If the business's customers buy to consume the materials in producing different products, then they are not vendors of the specific goods they buy and the business is a retail dealer. In the case of prefinished kitchen and bathroom cabinets sold to building contractors, the court held they were purchased for resale. The cabinets were not altered. By being affixed to walls, they did not lose their essential identity and were not subsumed into the housing unit, but remained separately recognizable units.<sup>26</sup>

If the company's customers buy materials to consume in the production of different products, they are not vendors of the specific goods they buy and the taxpayer is a retail dealer. Craftspeople are not dealers because they do not buy to sell again in the sense a merchant buys to sell.<sup>27</sup> In the case of building materials sold to contractors where the contractors changed and used the parts to create a new product, the sale of the building materials was a retail sale, rather than wholesale.<sup>28</sup> Likewise paint sold to painting contractors is a retail sale, since it is sold for the use of the painters in performing their task. Sales of products like plumbing fixtures and oil burners are held to be wholesale, since they are installed in the same form and character in which they were purchased and they remain readily identifiable.<sup>29</sup>

Brokers are neither wholesale dealers nor retail vendors, since their business is to bring buyer and seller together. They negotiate contracts of sale between merchants who are parties to the transactions, but they are not party to the sale themselves.<sup>30</sup> Distributors who buy from suppliers and then sell to customers on their own terms qualify as dealers, since they are a party to two separate transactions, even where some direct shipments are made from the manufacturer to the distributor's customer.<sup>31</sup>

A deduction that the city's business privilege tax ordinance provided for real estate brokers, which excluded from gross receipts the commissions paid from one broker to another, violated the uniformity clause of the Pennsylvania Constitution because no constitutionally valid distinction existed between brokers and other taxpayers that paid for work performed.<sup>32</sup>

A dealer or vendor does not have to maintain inventories to fall within the classification under the business gross receipts taxes. A person can buy and sell without inventories.<sup>33</sup> Neither does a specific charge have to be made for the individual product when the cost of the product is included in the price of other products sold with it.<sup>33</sup>

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4. *City of Allentown v. MSG Associates, Inc.*, 772 A.2d 413 (Pa. 2001).
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## Manufacturing Exclusion

The Local Tax Enabling Act prohibits any local gross receipts tax on any privilege, act or transaction relating to the business of manufacturing from being levied on manufacturers.<sup>1</sup> Manufacturing generally consists of giving new shapes, new qualities or new combinations to matter which has already gone through some other artificial process. A thing is a manufactured article when the product is a new and different article with a distinctive name, character and use. The process of manufacturing brings about the production of some new article by applying skill and labor to the original substances or material out of which the new product emerges.

In a case involving the application of business gross receipts taxes to television and radio broadcasting companies, the Supreme Court defined manufacturing for the purpose of the exclusion from the Local Tax Enabling Act authority.

“Manufacturing,” as used in a legislative enactment, is given its ordinary and general meaning. It consists in the application of labor or skill to material whereby the original article is changed into a new, different and useful article. Whether or not an article is a manufactured product depends upon whether or not it has gone through a substantial transformation in form, qualities and adaptability in use from the original material, so that a new article or creation has emerged. If there is merely a superficial change in the original materials without any substantial and well signalized transformation in form, qualities and adaptability in use, it is not a new article or new production.<sup>2</sup>

Manufacturers selling their own products are excluded from business gross receipts taxes. Because the manufacturing exclusion is not an exemption, any doubt is resolved in favor of the taxpayer.<sup>3</sup> Although manufacturers sell their wares, they are not dealers because they do not sell what they buy.<sup>4</sup>

The manufacturing exclusion applies no matter where manufacturers sell their products. By selling its own products at a place other than the factory where they were produced, the manufacturer has not abandoned the role so as to become a dealer subject to the tax.<sup>5</sup> The exclusion for processing byproducts of manufacturing was applicable to slag processing by a company other than the original manufacturer.<sup>6</sup>

**Metal Products.** Courts have found a maker of custom aluminum awnings<sup>7</sup> and a custom steel fabricator and engineering firm<sup>8</sup> to be manufacturers. A company selling automotive and industrial parts who rebuilt engines and other heavy equipment,<sup>9</sup> and a scrap dealer<sup>10</sup> did not constitute manufacturers and were held liable for local mercantile taxes. The process of annealing and galvanizing rolled steel does not qualify as manufacturing.<sup>11</sup>

**Textiles, Garments.** Likewise, a company engaged in dyeing and finishing cloth was held not to be engaged in manufacturing.<sup>12</sup> Even though the finished cloth was different from the original in color, dimension, stretch, stain, heat and water resistance, texture and bulk, the product remained cloth, not a new and different article. Likewise the business of treating unfinished cloth is not manufacturing.<sup>13</sup> Production of apparel is considered manufacturing.<sup>14</sup> But printing designs on ready-made clothing (T-shirts and sweatshirts) is not manufacturing because there is no substantial change in the product.<sup>15</sup>

**Food Products.** Preparation of certain food products by cooling does not constitute manufacturing.<sup>16</sup> Preparing fruit drinks by adding water to slurry or powered mix is not manufacturing.<sup>17</sup> A wholesale meatpacking and processing facility cannot qualify as manufacturing.<sup>18</sup>

**Television.** The court held broadcasting was essentially transmission rather than manufacturing and the company was subject to the business privilege tax.<sup>19</sup> The same conclusion was reached in the case of a cable television business.<sup>20</sup>

**Publishing.** As opposed to broadcasting, printing has always been considered manufacturing. In a case where Pittsburgh exempted newspaper circulation receipts, but attempted to levy its tax on advertising revenues, the court held printing and circulating of advertising content is manufacturing as well as printing of news content.<sup>21</sup> Preprinted advertising supplements inserted in a newspaper were considered component parts of the newspaper and excluded from the tax under the manufacturing exemption.<sup>22</sup> Where a newspaper sold advertising and conducted substantial photographic, graphic and typesetting activities it qualified as manufacturing even though the actual printing was done elsewhere.<sup>23</sup> But a publisher who contracted out all printing and binding was found not to be a manufacturer,<sup>24</sup> nor did a business which prepared a newsletter but did not actually print it.<sup>25</sup> Bookbinding qualifies as manufacturing<sup>26</sup> but commercial illustration<sup>27</sup> and photocopying do not.<sup>28</sup>

**Paper Products.** A processor of scrap cardboard used to create packaging was found to be a manufacturer.<sup>29</sup> The manufactured article does not have to be sold separately to qualify for the exclusion. Where a heavy construction company operated an asphalt plant, it was entitled to the manufacturing exclusion both for asphalt sold to others and asphalt used in its own paving contracts.<sup>30</sup> Income from manufactured articles does not have to come from sales to qualify for the manufacturing exclusion. Profits from leasing manufacturing equipment were held to fall within the manufacturing exclusion.<sup>31</sup> The exclusion applies to out-of-state manufacturers doing business in Pennsylvania, as well as Pennsylvania manufacturers.

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## State Preemption

Both the Local Tax Enabling Act and the Sterling Act contain a preemption clause prohibiting local taxation of a privilege, transaction, subject, occupation or personal property subject to a state tax or license fee.<sup>1</sup> The First Class City Business Tax Reform Act under which Philadelphia's business privilege tax is levied does not contain such a

preemption clause. For other jurisdictions levying business gross receipts taxes, a series of court cases sets forth criteria to determine when preemption of a local tax by a state measure has occurred.

In *Philadelphia Tax Review Board v. Smith, Kline and French Laboratories*, a pharmaceutical company asked for a refund of mercantile license taxes on the grounds payment of registration fees to the state under the Drug, Devices and Cosmetic Act preempted Philadelphia's prior mercantile license tax.<sup>2</sup> The court's opinion reviewed recent precedents establishing the interpretation of "license fee" to mean a measure adopted to pay for the cost of regulating the industry under the state's police powers. A previous case had drawn a distinction between a "license fee" where the charge was sufficient to pay for the cost of regulation and a "registration fee" where a nominal charge merely covered clerical costs of issuing licenses.<sup>3</sup> In that case, the court held that true license fees based on the costs of regulation preempted local taxation while mere registration fees did not, and outlined four criteria for distinguishing between license and registration fees.<sup>4</sup> This distinction was overruled in *Smith*. The *Smith* court set the critical distinction for preemption purposes between license fees levied for regulatory purposes and those levied for general revenue purposes. The court overturned its previous decision by holding that local powers of taxation are preempted "only when the legislature has enacted a revenue producing measure covering the same person, transaction, occupation, activity, privilege, subjects or personal property."<sup>5</sup> Payment of a license fee intended merely to cover the cost of regulation and inspection will not act to preempt local taxing power.

The *Smith* court set forth two criteria to determine whether a particular fee is a state revenue measure: (1) whether a large monetary income is derived to the state and (2) whether the income is large compared to the cost of collection and supervision. The court proceeded to determine the fee paid by the company was a regulatory license fee and not a revenue producing measure, thus the mercantile license tax was not preempted.

**Preemption by State Tax.** In the following year, the Supreme Court invalidated a ten percent tax on retail liquor sales by the Philadelphia School District. The court held two state taxes levied on the sale of liquor preempted the school district's tax. In this case the court found the local tax was imposed directly on the specific transaction on which the state is dependent for revenues.<sup>6</sup> But the court carefully distinguished a prior case upholding the application of the gross receipts tax on holders of state liquor licenses.<sup>7</sup> In the prior case, the gross receipts tax was levied against the business generally, rather than specifically levied on liquor sales.

Another important test was implemented in a case where the court held that preemption occurs only where the local tax duplicates a state tax.<sup>8</sup> The test of duplication is if the tax falls on the same subject matter and is measured by the same tax base. The court held that local mercantile or business privilege taxes did not duplicate the state corporate franchise tax.<sup>9</sup> Also a local tax was not preempted by the state realty transfer tax paid by construction contractors.<sup>10</sup> In a 1977, the Commonwealth Court found a local gross receipts tax was not superseded by the state gross premiums tax on insurance premiums paid by insurance agents,<sup>11</sup> but 20 years later, without expressly overruling its prior decision in *Man*, the court held that a township's business privilege tax was preempted by the State's gross premium tax.<sup>12</sup>

**Preemption by State License Fee.** Application of these judicial doctrines has validated local business privilege taxes levied on persons paying some sort of state license fee in a number of instances. The Commonwealth Court held local business privilege taxes were not superseded by the state registration fee for used car dealers,<sup>13</sup> by the state license fee paid by nursing homes,<sup>14</sup> or by the state license fee paid by realtors.<sup>15</sup> Common pleas courts have held local business gross receipts taxes were not superseded by state license fees paid under the Securities Act by stockbrokers,<sup>16</sup> or by fees paid to the Disciplinary Board of the Supreme Court by attorneys.<sup>17</sup>

**Preemption by Pervasive State Regulation.** The Supreme Court created a new doctrine of preemption when it held that nontraditional businesses of banks were not taxable under Pittsburgh's business privilege tax. The court held that state banking legislation shows the legislature's intention to exclusively occupy the banking field. The tax was held invalid as it applies to banks because it impermissibly impinges on this regulated area in contravention of the legislative preemption for the commonwealth.<sup>18</sup> This doctrine of preemption by exclusive control by the state was followed and applied to malt and brewed beverage distributors.<sup>19</sup> The court held the legislature's scheme of regulation was so pervasive that it had preempted any local legislative control by regulation or taxation. But since the *Wilsbach* decision, the Commonwealth Court has pulled away from any further application of the preemption

by pervasive regulation doctrine. The legal profession,<sup>20</sup> insurance business,<sup>21</sup> the dairy industry,<sup>22</sup> nursing homes<sup>23</sup> and securities dealers<sup>24</sup> were found to be subject to local business gross receipts taxes. The registration fees they paid to the state and the state's control of their activities were not pervasive enough to preempt the imposition of local taxes.

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## Situs

Because the tax is levied on the privilege of doing business within the taxing jurisdiction, the situs of the tax depends on the definition of “doing business.”<sup>1</sup> Because of the widespread and complex nature of commercial transactions, there is considerable confusion as to where transactions are taxable. There generally must be a minimal nexus between the taxing district and a business before the business can be subjected to taxation. Over the last several decades, Pennsylvania courts have decided a multitude of cases in determining whether a taxpayer is subject to a jurisdiction's business privilege tax. The cases can generally be split into two categories: mercantile taxes on sales and gross receipts taxes on services.

**Situs of Sales.** Within the purview of mercantile license taxes, “doing business” has been defined by the “solicitation plus” doctrine, meaning that there must be other activities in addition to the solicitation of business.<sup>2</sup> The Supreme Court has held that “[d]oing business requires proof that the taxpayer was actually affecting sales of its products and performing acts regularly and continuously which, in a direct as opposed to an incidental manner, effect the taxpayer's objectives.”<sup>3</sup> One court noted that the test is “not whether a company is ‘doing business’ within the artful meaning of those words, but more narrowly, whether the company is a ‘vendor or dealer.’”<sup>4</sup> Often only a small part of a complete sale will occur within a jurisdiction. “The mercantile tax is not laid on a completed piece of business, but only on so much of it as, occurring locally, is more than solicitation and constitutes one a vendor or dealer.”<sup>5</sup>

The taxable event for mercantile license taxes has been held to be the effecting of the order.<sup>6</sup> A sale is effected when a salesman or the district office receives an order and instructs a distribution center to ship goods to the customer. Mere solicitation will not make a person be categorized as a dealer or vendor. The situs of the tax is where the decision to accept the customer's order is made and shipment of the goods is ordered. The place where the shipment is made cannot determine the situs of the sale.

In one case a company with no office, facility or plant in Philadelphia was found to be outside the jurisdiction of the school district's tax because its promotion personnel active in the city were simply goodwill agents and could not bind the company.<sup>7</sup> In another case a company with personnel promoting products on a regular basis was found to be engaging only in solicitation.<sup>8</sup> Even though Philadelphia customers ordered and purchased the company's products in substantial quantities, it did not constitute doing business since all sales were effected outside Philadelphia.

The fact that a mercantile transaction involves interstate commerce does not prohibit taxation locally. The tax is exacted on the privilege of doing business in the jurisdiction. In one case, all business dealings between the seller and buyer - placing purchase orders, their acceptance and payment - occurred in Pittsburgh and even though delivery was made outside the state, the tax was held valid.<sup>9</sup> Even where a transaction as a whole may be in interstate commerce, there may be local activities that permit imposition of a local tax, since sales are considered consummated where accepted at the level of the company with discretion to order shipment of goods.<sup>10</sup>

**Situs of Services.** Determining where services are taxable has been more difficult than for sales of merchandise. Often a company with a place of business in one municipality will provide services to customers in many surrounding jurisdictions.

**Historical Background.** In 1986 the Supreme Court decided the *Gilberti* case, which initially became solidified as precedent for how Pennsylvania courts would address the situs of the business privilege tax. In *Gilberti*, an architect maintaining his sole office in Pittsburgh excluded from his calculation of gross receipts such income as he maintained was derived from on-site supervision of a construction project outside the city limits.<sup>11</sup> The taxpayer did not maintain a place of business outside the city. The Court held that maintaining a business office in the city was an exercise of a taxable privilege within the limits of the taxing district. Further, the Court held that the city could determine the amount of tax based on gross receipts of the business, including income derived from services provided outside city limits, because having a place of business inside the city enabled the taxpayer to manage, direct and control business activities occurring both inside and outside city limits. The Court held that the city's taxing power was broad enough to encompass the contribution to out-of-city activities provided by the taxpayer maintaining a base of operations within the city.

Following *Gilberti*, the Commonwealth Court ruled that the entire intrastate gross receipts of a highway construction company were subject to the business privilege tax of the township where the company had its sole permanent office.<sup>12</sup> The township ordinance excluded receipts attributable to interstate or foreign commerce or to an office or place of business regularly maintained outside the township limits. The Court found that all intrastate receipts could be taxed by the township even though almost all services were performed outside the township, because the root of all of the company's business was at its sole permanent business headquarters.

The *Gilberti* base of operations test was similarly applied to the entire gross receipts of an automobile leasing company, even for transactions enacted outside township limits, because the company operated from its headquarters within the township.<sup>13</sup> The Court reached the same result in a case dealing with an engineering firm with a large amount of interstate business.<sup>14</sup> In that case, the fact that a portion of the firm's revenues were derived from interstate commerce did not alter the benefit it enjoyed from conducting its activities from its established base of operations within the township. The Commonwealth Court subsequently held that a taxpayer was not subject to the business privilege tax of Lower Merion Township because the taxpayer's base of operations was in Radnor, not Lower Merion.<sup>15</sup> In another case, although *Gilberti* would have otherwise allowed the imposition of tax on receipts from business activities outside the taxing jurisdiction, the Commonwealth Court held that a taxpayer was not liable for city business privilege tax on the gross receipts earned outside the city's territorial limits because the tax ordinance only provided for tax on gross volume of business "transacted within the territorial limits of the city."<sup>16</sup>

In 2007, the Pennsylvania Supreme Court decided the *V.L. Rendina* case, which imparted a substantial change to how prior courts had interpreted *Gilberti*.<sup>17</sup> In *V.L. Rendina* the Court found that a taxpayer may be subject to the jurisdiction's business privilege tax regardless of whether the taxpayer had a base of operations within the jurisdiction.<sup>18</sup> In that case, a contractor with headquarters outside the City of Harrisburg was working on an office building in the City of Harrisburg and maintained a jobsite trailer in the City to run the project. The Court held that the maintenance of an in-city base of operations from which the taxpayer conducted business *may have* been a condition which would allow the City's taxation of such business, but it was not a strict requirement. Rather, the Court held that the presence of business activities within the jurisdiction was the main focus of whether the Local Tax Enabling Act permitted the imposition of the tax.<sup>19</sup> Thus, the contractor's presence in the City at the construction jobsite was the appropriate nexus for taxing the contractor's gross receipts.

Shortly after *V.L. Rendina*, an unreported case in the Commonwealth Court (*A&L, Inc.*) found that the jurisdiction containing a taxpayer's base of operations could tax the gross receipts earned at any business location in the Commonwealth.<sup>20</sup> When combined with the Court's prior ruling in *V.L. Rendina*, a taxpayer's non-home jurisdiction could tax receipts earned within its jurisdiction through application of *V.L. Rendina* and a taxpayer's home-jurisdiction could tax receipts earned in any in-state location through application of *A&L* and former base of operation cases. Thus, double taxation could result from such rulings.

**Statutory Authority.** In order to address the aforementioned conflicting case law as well as ambiguity in the law, the General Assembly enacted Act 42 of 2014. Act 42 amended Section 301.1 of the Local Tax Enabling Act to specify that the business privilege tax may be levied on a business if it conducts transactions in the levying jurisdiction for all or part of fifteen (15) or more calendar days within a year or if the business is operated through a base of operations in the levying jurisdiction.<sup>20</sup> Act 42 defines a base of operations as "an actual, physical and permanent place of business from which a taxpayer manages, directs and controls its business activities at that location."<sup>21</sup> Additionally, Act 42 provides that a taxpayer can be credited in its home jurisdiction (i.e., the location of the base of operations) for the gross receipts tax paid to a jurisdiction pursuant to the 15 day rule.<sup>22</sup>

Thus, the question as to whether a business privilege tax may be levied on a business will now be resolved under the statutory authority of Act 42.

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13. *Diamond Auto Leasing v. Cheltenham Township*, 525 A.2d 870, 106 Pa. Cmwlth. 161 (1987).
14. *Lawrence G. Spielvogel, Inc. v. Township of Cheltenham*, 601 A.2d 1310 (Pa. Cmwlth. 1992). *But see Northwood Const. Co. v. Twp. of Upper Moreland*, 579 Pa. 463, 856 A.2d 789 (2004) (finding that township's business privilege tax ordinance that allowed taxation of all of taxpayer's interstate gross receipts violated the external consistency test of the Commerce Clause, even though the base of operations of the business was located in the township).
15. *Township of Lower Merion v. QED, Inc.*, 738 A.2d 1066 (Pa. Cmwlth. 1999).
16. *J & K Trash Removal, Inc. v. City of Chester*, 842 A.2d 983 (Pa. Cmwlth. 2004).
17. *V.L. Rendina, Inc. v. City of Harrisburg*, 595 Pa. 407, 938 A.2d 988, (2007).
18. *V.L. Rendina*, 938 A.2d at 996.
19. *V.L. Rendina*, 938 A.2d at 994-95.
20. *A & L, Inc. v. Twp. of Rostraver*, No. 1651 C.D. 2008 (Pa. Commw. Ct. June 4, 2009) (Unreported Decision).
21. 53 P.S. § 6924.301.1(a.1)(1); Act 42 of 2014, 2014 P.L. 642.
22. 53 P.S. § 6924.301.1(a.1)(1).
23. 53 P.S. § 6924.301.1(a.1)(1).

## Nonprofit Organizations

It is possible to tax gross receipts of nonprofit organizations, as long as the organization does not qualify for exemption from taxation as a purely public charity. The fact that an organization is a nonprofit corporation does not mandate that it should be exempt from taxation. Exemption from federal income taxes does not qualify an organization for exemption from Pennsylvania taxes. The organization must meet the tests to qualify as a purely public charity.<sup>1</sup>

Early cases involved the application of Pittsburgh's mercantile tax to nonprofit operations. These ran afoul of the wording of the mercantile tax ordinance. The mercantile tax was held to be "a levy on the privilege of conducting a commercial enterprise for profit."<sup>2</sup> Where a manufacturing company operated a cafeteria for its employees at a loss, sales of food in the cafeteria were not subject to the mercantile tax.<sup>3</sup> Similarly, private clubs selling food, liquor, and tobacco to their members at a loss were not subject to the mercantile tax.<sup>4</sup> The clubs were found to be providing services, not for profit, but for the convenience and comfort of their members. Losses incurred on meals were absorbed by income from membership dues.

Where a profit making company sells novelty items to nonprofit organizations for resale, such sales were to be considered retail.<sup>5</sup> Because nonprofit organizations are excluded from the definition of retail vendors, the supplier could not be considered a wholesaler.

Beginning in 1969, Pittsburgh levied a privilege tax on nonprofit institutions at a rate of six mills on gross receipts. The tax is limited to taxpayers not subject to the city's mercantile and business privilege taxes.<sup>6</sup> In a challenge to the validity of the tax, the Supreme Court held the tax could not be applied against hospitals and other institutions of purely public charity.<sup>7</sup> The court relied on the exemption from "all taxes" for charities in the General County Assessment Law. Further, the court noted the longstanding rule that broad taxing statutes do not cover charities unless the legislature specifically states they are to be included.

The tax has been upheld as applied against private clubs organized as nonprofit corporations. The common pleas court found charges for meals, rooms and other services to members do not constitute membership dues or fees exempted under Section 301.1(f)(7) of the Local Tax Enabling Act.<sup>8</sup> The tax was upheld even though it applies to only a limited number of taxpayers after charitable institutions were declared exempt.

Since 1982, Lower Merion Township has levied an Institution and Service Privilege Tax.<sup>9</sup> The ordinance levies a one mill tax against the gross receipts of social or recreational nonprofit organizations regularly providing food, beverage or tobacco services to the public or any limited group of the public, or renting space for social events. All governments, schools, nursing homes, colleges or universities are exempted, as are membership dues or member assessments. The ordinance specifically includes country clubs and veterans organizations within the meaning of institution.

## REFERENCES

1. *Hospital Utilization Project v. Commonwealth*, 487 A.2d 1306, 507 Pa. 1, 21 (1985).
2. *H.J. Heinz Company v. School District of Pittsburgh*, 87 A.2d 85, 170 Pa. Super. 441, 443 (1952).
3. *H.J. Heinz Company v. School District of Pittsburgh*, 87 A.2d 85, 170 Pa. Super. 441, 443 (1952).
4. *Duquesne Club v. Pittsburgh*, 87 A.2d 81, 170 Pa. Super. 426, 432 (1952); *Twentieth Century Club v. Pittsburgh*, 87 A.2d 84, 170 Pa. Super. 433 (1952).
5. *Willis v. City of Pittsburgh*, 377 A.2d 1064, 32 Pa. Cmwlth. 63 (1977).
6. Pitt. City Code, tit. 2, art. VII § 247.
7. *Pittsburgh Appeal*, 266 A.2d 619, 439 Pa. 295, 297 (1970).
8. *University Club*, 59 D&C.2d 165, 169 (Ct. Com. Pl. Allegheny Co. 1972).
9. Lower Merion Twp. Code, ch. 138, art. 138-58.

## **Payroll Preparation Tax**

In Pittsburgh, the Business Gross Receipts Taxes have been replaced with Payroll Tax, not to exceed 0.55% on payroll amounts generated as a result of an employer conducting business activity within Pittsburgh.<sup>1</sup> This is a tax levied on an employer's total payroll amounts. Similar to Business Gross Receipts Taxes, entities that are acting as a purely public charity can be exempt from the Payroll Tax.<sup>2</sup>

Additionally, distressed municipalities that currently impose Business Gross Receipts Taxes may, through the Coordinator's plan and court approval, impose a Payroll Tax to replace their existing Business Gross Receipts Taxes.<sup>3</sup> This Payroll Tax is identical to the one imposed by Pittsburgh, except that the rate is based on current revenues generated by the Business Gross Receipts Taxes. That is, the rate of the Payroll Tax may not exceed a rate that is sufficient to produce revenues equal to revenues collected as a result of the Business Gross Receipts Taxes in the preceding fiscal year.<sup>4</sup> After approval by the court of that tax rate, the distressed municipality may levy the tax in any subsequent year without additional court approval, including any year after the termination of the municipality's distressed status, at a rate not to exceed that initially approved by the court.

### **REFERENCES**

1. 53 P.S. § 6924.303(d)(3), Local Tax Enabling Act, Section 303; Pitt. Code, tit. 2, art. VII, ch. 243.02.
2. 53 P.S. § 6924.303(a.1).
3. 53 P.S. § 11701.123(d)(2); Municipalities Financial Recovery Act, Section 123(d)(2).
4. 53 P.S. § 11701.123(d)(2).

## XVII. Amusement/Admissions Taxes

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### Statutory Authorization

Amusement taxes are levied on the privilege of engaging in an amusement and are measured by admission prices to places of amusement, entertainment or recreation. Admissions taxes are somewhat more general being levied on admissions to all places or events whether or not they constitute amusements. The Local Tax Enabling Act restricts these taxes to a maximum rate of ten percent.<sup>1</sup> When both municipality and school district levy the tax, it is subject to sharing provisions. Under the Sterling Act, Philadelphia levies an amusement tax at the current rate of five percent.<sup>2</sup>

Pursuant to Act 50 of 1998, school districts that did not levy an amusement or admissions tax as of June 30, 1997 are prohibited from levying such a tax in the future. School districts which did have the tax on that date cannot increase the rate above the rate levied for the 1996-97 fiscal year, nor collect revenues in excess of those collected in 1996-97.<sup>3</sup> For districts where the revenues are growing, the rate will have to be reduced in future years to keep revenues below the cap. Any municipality first levying an amusement or admissions tax after December 31, 1997 is limited to a maximum rate of 5%.<sup>4</sup> The maximum rate for Pittsburgh's amusement tax was reduced to 5% when the Allegheny County sales tax was adopted.<sup>5</sup>

The Local Tax Enabling Act establishes the tax base for admissions to ski facilities as forty percent of the cost of the lift ticket and for admissions to golf courses as forty percent of the greens fees.<sup>6</sup> This effectively creates a maximum tax rate of 4% on these classes of amusement where the overall rate is 10%, and an effective rate of 2% where the overall rate is 5%. A miniature golf course does not qualify as a golf course for this special rate.<sup>7</sup>

Regardless of the authority under the Local Tax Enabling Act, Act 124 of 2002, prohibits municipalities and school districts from levying an admissions tax on ski facilities after December 1, 2002<sup>8</sup> and limits the admissions tax on automobile racing facilities with a seating capacity of over 25,000 and a continuous racetrack of one mile or more to the rate that was levied on January 1, 2002, but not to exceed 40% of the cost of admission.<sup>9</sup>

### Tax Administration

A series of court cases have upheld the validity of the amusement tax as a tax on the privilege of engaging in an amusement levied on the patron, as opposed to a tax on the operator of an amusement facility.<sup>10</sup> This was held to be the interpretation of a tax-levying ordinance even where the ordinance required the operator to obtain a permit, maintain certain records of admissions and pay over money collected to the municipality.<sup>11</sup>

An amusement tax can be considered general in nature, even if it falls only on one enterprise within the taxing jurisdiction.<sup>12</sup> However unequal enforcement of the tax, such as treating a single amusement to more intense collection efforts, violates the uniformity clause of the state constitution.<sup>13</sup>

**Public Property.** The Supreme Court has held that the Local Tax Enabling Act gives taxing bodies the authority to require amusement operators to collect and pay over the tax. However, a municipal taxing ordinance could not require a school district to collect an amusement tax on admissions to football games absent express statutory consent.<sup>14</sup> A private enterprise operating an amusement under a license from the state is a licensee and not an agent of the Commonwealth and can be required to collect the tax from its patrons.<sup>15</sup> Location of the amusement on public property does not exempt its patrons from another jurisdiction's tax.<sup>16</sup>

## Tax Base

Admissions to motion picture theaters may not be taxed, except in second class cities.<sup>17</sup> Real property used for camping purposes may not be considered a place of amusement;<sup>18</sup> but admissions to campgrounds have been held taxable where the ordinance levies an admissions tax on all places and events, not just amusements.<sup>19</sup> Amusement or admissions taxes may not be levied on memberships or charges for health, fitness or weight control facilities.<sup>20</sup>

A local admissions tax cannot be applied against a racetrack. The Commonwealth Court held the state had preempted the field by virtue of its fifteen percent tax imposed on all admission fees paid by patrons at a thoroughbred racing track.<sup>21</sup> A prostitution enterprise was held to be a taxable amusement under a local ordinance.<sup>22</sup> An amusement tax can be applied against cover charges levied at the door of restaurants and night clubs.<sup>23</sup> The Commonwealth Court has held that a township's collection of an amusement tax from public golf courses, while exempting membership fees charged by private, non-profit clubs from the tax, did not violate equal protection uniformity principles.<sup>24</sup> A woman's professional golf tournament and its related charitable corporation were not institutions of purely public charity exempt from the local amusement tax.<sup>25</sup>

**Defining Amusements.** The nature of the amusement to be taxed is not defined in the Local Tax Enabling Act. This definition usually is placed in the tax ordinances. An admission tax was upheld as applied to a county fair. The Superior Court found the tax fell upon the privilege of attending a fair, not upon the fairground itself.<sup>26</sup> In this case, the ordinance levied an admissions tax on a variety of activities not necessarily considered amusements and specifically included admissions to fairgrounds. The court noted agricultural and horticultural exhibits had less draw for people than the various types of amusements and entertainments offered at the fair.

A taxing body has the right to provide its own set of operative definitions in the tax ordinance. The Commonwealth Court upheld application of an amusement tax against admissions to a builders' show in a case where the taxpayer argued it was not commonly understood as an amusement, but the tax ordinance did include trade shows, craft shows and similar exhibitions in the definition of amusement.<sup>27</sup> Such definitions can vary from traditional or customary usage, but not to such an extreme as to render the language senseless. Similarly the court upheld a school tax resolution defining the amusement of skiing to include use of ski lifts, rental of ski equipment and ski lessons applicable for the years before the Act was amended to limit the amusement tax base for ski facilities to forty percent of the lift ticket.<sup>28</sup> In this case the court found the taxing district's definition was reasonable.

**Educational Experiences.** However, the Commonwealth Court found that caverns were not a place of amusement within the meaning of the Local Tax Enabling Act or the local ordinance.<sup>29</sup> The caverns were classified as an educational experience of historical, natural and geological dimensions. As opposed to the local ordinance in Cambria Township where admissions to fairgrounds were specifically taxed, in this case the local ordinances were restricted to admissions to amusements. The operator of the caverns had places of amusement associated with the caverns, but these had been discontinued before the ordinance was passed. Also, a museum and fort operated by a foundation for historical and educational purposes was held not to be an amusement within the meaning of the Act.<sup>30</sup>

## Mechanical Devices Taxes

Amusement taxes levied against coin-operated mechanical devices have been upheld by the courts.<sup>31</sup> The admission taxed was defined as the amount of money required to operate the machine. The tax is restricted to machines providing amusements, including jukeboxes, pinball machines, video games and coin operated pool tables. The tax can be measured by the gross receipts from such machines, however, it cannot exceed the sum of ten percent of each individual price to activate the machine.<sup>32</sup>

## REFERENCES

1. 53 P.S. § 6924.311(6); Local Tax Enabling Act, Section 311(6).
2. 53 P.S. § 15971; 1932 (Ex. Sess.) P.L. 45.; Phila. Code §§ 19-601 et seq.
3. 53 Pa.C.S. § 8402(c)(1).
4. 53 Pa.C.S. § 8402(c)(2).
5. 16 P.S. § 6171-B(a)(3.1); Second Class County Code, Section 3171-B(a)(3.1).
6. 53 P.S. § 6924.311(9), (10); Local Tax Enabling Act, Section 311(9), (10).
7. *San Van, Inc. v. School District of Derry Township*, 635 A.2d 254, 160 Pa. Cmwlth. 483 (1993).
8. 72 Pa.C.S. § 5020-203.3.
9. 72 Pa.C.S. § 5020-203.2.
10. *Plymouth Lanes, Inc. v. Plymouth Township*, 202 A.2d 811, 415 Pa. 206, 1964; *Bensalem Township School District v. Rose Bowl, Inc.*, 209 A.2d 23, 205 Pa.Super. 265 (1965).
11. *Swatara Township v. Automatic Bowling Centre, Inc.*, 214 A.2d 725, 419 Pa. 482 (1965); *Clearview Bowling Centre, Inc. v. Hanover Borough*, 244 A.2d 20, 430 Pa. 579 (1968).
12. *Country Paradise, Inc. v. Sugarcreek Township*, 441 A. 2d 821, 65 Pa. Cmwlth. 93 (1982).
13. *Tredyffrin-Easttown School District v. Valley Forge Music Fair, Inc.*, 627 A.2d 814, 156 Pa. Cmwlth. 178 (1993).
14. *Wilkinsburg Borough v. Wilkinsburg School District*, 74 A.2d 138, 365 Pa. 254 (1950).
15. *Weatherly Area School District v. Whitewater Challengers, Inc.*, 616 A.2d 620, 532 Pa. 504 (1992).
16. *Township of South Park v. County of Allegheny*, 641 A.2d 20, 163 Pa. Cmwlth. 273 (1994).
17. 53 P.S. § 6924.301.1(f)(10); Local Tax Enabling Act, Section 301.1(f)(10).
18. 53 P.S. § 6924.301.1(f)(3); Local Tax Enabling Act, Section 301.1(f)(3).
19. *Timberline Recreational Enterprises, Inc. v. Highland Township*, 473 A.2d 1130, 81 Pa. Cmwlth. 290, 295 (1984).
20. 53 P.S. § 6924.301.1(f)(13); Local Tax Enabling Act, Section 301.1(f)(13).
21. *Lakeland Racing Association, Inc. v. Fairview Township*, 320 A.2d 391, 13 Pa. Cmwlth. 561 (1974); *Liberty Bell Racing Association v. City of Philadelphia*, 483 A.2d 1063, 86 Pa. Cmwlth. 83 (1984).
22. *Spartacus, Inc. v. Borough of McKees Rocks*, 470 A.2d 1134, 80 Pa. Cmwlth. 191 (1984).
23. *Gettysburg Borough v. The Retreat, Inc.*, 27 D.&C.3d 567, 572 (Ct. Com. Pl. Adams Co. 1983).
24. *Conley Motor Inns, Inc. v. Township of Penn*, 728 A.2d 1012 (Pa. Cmwlth. 1999) appeal denied, 745 A.2d 1225.
25. *Betsy King LPGA Classic, Inc. V. Township of Richmond*, 739 A.2d 612 (Pa. Cmwlth. 1999).
26. *Cambria Twp. School District v. Cambria County Legion Recreation Assoc.*, 192 A.2d 149, 201 Pa. Super. 163 (1963).
27. *City of Harrisburg v. Homebuilders Association of Metropolitan Harrisburg*, 507 A.2d 1307, 96 Pa. Cmwlth. 549 (1986).
28. *Ski Roundtop, Inc. v. Fairfield Area School District*, 533 A.2d 828, 111 Pa.Cmwlth. 256 (1987).
29. *Derry Township v. Swartz*, 346 A.2d 853, 21 Pa. Cmwlth. 587 (1975) (citing *Cambria Twp. School District v. Cambria County Legion Recreation Assoc.*, 192 A.2d 149, 201 Pa. Super. 163 (1963)).
30. *Ligonier Valley School District v. Fort Ligonier Memorial Foundation*, 62 D.&C.2d 210 (Ct. Com. Pl. Westmoreland Co. 1962).
31. *Fierro v. Williamsport*, 120 A.2d 889, 384 Pa. 568 (1968).
32. *Moon Union School District v. Tiglio*, 128 A.2d 150, 183 Pa.Super. 67 (1956).

## XVIII. Other Taxes

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The taxes discussed in the previous sections are the principal nonreal estate taxes levied by Pennsylvania local governments, either under the general enabling laws or under special laws. They have been widely applied across the state. In addition to these more common taxes, there are a number of current local taxes not widely applied in Pennsylvania. Some have direct statutory authorization limited to one or a few subdivisions. Others are levied under general enabling legislation, but have been adopted by only a few jurisdictions.

### Sales Taxes

**General Sales Taxes.** Although common in other states, local option sales taxes had never been authorized for Pennsylvania local governments until the enactment of the Pennsylvania Intergovernmental Cooperation Authority Act in 1991. This Act establishes a state oversight board to issue bonds and assist Philadelphia in recovery from the financial emergency caused by the inability of the city to sell its bonds on the open financial market during 1990-91.

Section 503 of the Act authorizes Philadelphia to levy a sales tax at the rate of either 0.5 percent or one percent.<sup>1</sup> The city levies the tax at the rate of one percent.<sup>2</sup> The tax is levied on the same tax base as the state sales tax and is collected by the vendor from the purchaser and is paid over to the commonwealth. Situs for sales of vehicles, aircraft and motorboats is the address of the purchaser; situs of sales of steam, gas, electric, telephone and telegraph utilities is the address to which service is delivered.<sup>3</sup> The local sales tax may be levied directly by the city for its uses or may, along with an additional realty transfer tax and/or a wage tax, be levied for purposes of the Pennsylvania Intergovernmental Cooperation Authority.<sup>4</sup>

A local one percent sales tax was authorized by the General Assembly for Allegheny County in 1993 and was first levied by the county commissioners in 1994.<sup>5</sup> Like the Philadelphia tax, it is collected by the vendor from the purchaser and paid over to the commonwealth with the same situs provisions. But the county government only receives 25% of the sales tax revenues. The revenues are distributed out of a special fund by the State Treasurer as follows: 50% to the Allegheny Regional Asset District, 25% to Allegheny County and 25% to the county's municipalities on a formula basis.<sup>6</sup> The act requires repeal of the intangible personal property taxes previously levied by the county, Pittsburgh and the Pittsburgh School District and reduction of Pittsburgh's amusement tax to 5%.<sup>7</sup> The act also makes tax relief available for qualified property owners. The Asset District funds civic, recreational, library, sports and cultural activities with regional impact.

**Liquor Sales Tax.** A ten percent liquor sales tax levied for the Philadelphia School District by the city under the Sterling Act was found unconstitutional in 1971 as being preempted by state liquor taxes.<sup>8</sup> Subsequently the General Assembly enacted a special law specifically authorizing the tax.<sup>9</sup> The tax was levied in 1994 at the maximum 10% rate and upheld in a court challenge.<sup>10</sup> This tax is collected directly by the school revenue commissioner.

### REFERENCES

1. 53 P.S. § 12720.503; Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, Section 503.
2. Phila. Code § 19-2701,-02.
3. 53 P.S. § 12720.504.
4. 53 P.S. § 12720.601(a).
5. 16 P.S. § 6152-B; Second Class County Code, Section 3152-B.
6. 53 P.S. § 6157-B.
7. 53 P.S. § 6171-B.
8. *United Tavern Owners of Philadelphia v. Philadelphia School District*, 272 A.2d 868, 441 Pa. 274 (1971).
9. 53 P.S. 16133; First Class School District Liquor Sales Tax Act, Section 3.
10. *Licensed Beverage Association of Philadelphia v. Board of Education of School District of Philadelphia*, 669 A.2d 447 (Pa. Cmwlth. 1995), abrogated on other grounds by *Buffalo Twp. v. Jones*, 571 Pa. 637, 813 A.2d 659 (2002).

## Hotel Room Rental Taxes

A 1977 amendment to the Second Class County Code authorized Allegheny County to levy a one percent tax on hotel room rentals within the county with the tax to expire in 1983. Some of the features of this tax fell afoul of the uniformity clause of the state constitution.<sup>1</sup> As amended in 1997 and 2008, the tax was extended to second class A counties at a rate of three percent, and the rate for second class counties was raised to seven percent.<sup>2</sup> The revenue from this tax is to be used for tourist promotion activities and to subsidize operation of convention centers or exhibition halls. Numerous counties have levied hotel room taxes under this authority since 1998.

A hotel room rental tax for Philadelphia was first authorized in 1982 at a maximum rate of three percent. This tax was replaced by the Pennsylvania Convention Center Authority Act which implemented a hotel room rental tax whose revenues are to be used for tourist promotion activities and to subsidize the Pennsylvania Convention Center.<sup>3</sup> Philadelphia currently levies the tax at a rate of eight and one-half percent.<sup>4</sup>

In 1994 a hotel room rental tax was authorized for those counties where a convention center was constructed by an authority formed under the Third Class County Convention Center Authority Act.<sup>5</sup> The maximum rate is five percent. In certain circumstances the county commissioners can restrict the tax to hotels located within a market area defined as located within 15 miles of the convention center.<sup>6</sup>

In 1997 an amendment to the County Code added two additional authorizations for hotel room rental taxes. Certain third, fourth and fifth class counties are authorized to levy the tax at a rate of up to three percent.<sup>7</sup> A separate authorization permits Lackawanna County to levy a hotel room rental tax of up to seven percent.<sup>8</sup>

A series of amendments to the County Code in 1999 and 2000 extended the authority to levy a hotel tax of up to 3% to all third to eighth class counties that did not already have this authority.<sup>9</sup> Additionally between 1999 and 2008 several amendments were made to the County Code authorizing certain third class counties to levy the tax at five percent<sup>10</sup> or four percent<sup>11</sup> and certain fifth class counties to levy the tax at five percent.<sup>12</sup>

A municipal ordinance levying a two percent tax on hotel room rentals under the general enabling authority of the Local Tax Enabling Act was invalidated by the courts.<sup>13</sup> The Superior Court held the township tax was preempted by the state sales tax already charged on hotel room rentals. The preemption clause in the Local Tax Enabling Act forbids a municipal tax on a subject already taxed by the state.

## REFERENCES

1. *Allegheny County v. Monzo*, 500 A.2d 1096, 509 Pa. 26 (1985).
2. 53 Pa.C.S. § 8721; 16 P.S. 3000.3061.
3. 64 Pa.C.S. § 6025.
4. Phila. Code § 19-2400 et seq.
5. 16 P.S. 2399.1; County Code, Section 2399.1; Appeal of Torbik, 696 A.2d 1141 (Pa. 1997).
6. *Eways v. Board of Commissioners of Berks County*, 717 A.2d 8 (Pa. Cmwlth. 1998).
7. 16 P.S. § 1770.2; County Code, Section 1770.2.
8. 16 P.S. § 1770.4; County Code, Section 1770.4.
9. 16 P.S. § 1770.6; County Code, Section 1770.6.
10. 16 P.S. §1770.5; County Code, Section 1770.5.
11. 16 P.S. §1770.8; County Code, Section 1770.8.
12. 16 P.S. §1770.7; County Code, Section 1770.7.
13. *Shanken v. Upper Moreland Township*, 201 A.2d 249, 203 Pa.Super. 323 (1964).

## Parking Lot Taxes

Under the authority of the Sterling Act, Philadelphia levies a tax on the gross receipts of parking lots at the current rate of twenty percent.<sup>1</sup> This tax was upheld by the Pennsylvania Supreme Court, holding it was not superseded by state corporate taxes. “What the ordinance taxes is the ‘transaction,’ the activity specified in the enabling act; it is the transaction that results when one parks one’s car in an open parking place.”<sup>2</sup> The court held the separation of open parking lots and closed garages was not an unreasonable classification.

This parking lot tax was upheld in a later case.<sup>3</sup> However, the Superior Court excluded from taxable gross receipts the credits on rent the operator received from his landlord bank for parking bank customers in a reserved area of the lot. No fee was involved. The court held the landlord had reserved the right of occupancy to part of the premises.

Taxes on the gross receipts of commercial parking lots enacted under the authority of the Local Tax Enabling Act have been upheld. In reviewing Johnstown’s ten percent parking lot tax the Supreme Court stated: “There can be no doubt of the city’s power to enact a tax such as is here under consideration. The Local Tax Enabling Act clearly confers authority for the enactment of such a tax.”<sup>4</sup> A 15 percent parking tax levied by the Moon Area School District fell only on parking facilities close to Greater Pittsburgh International Airport, but the Supreme Court upheld the tax, saying it did not impinge on interstate commerce and the tax was justified because taxpayers benefitted from the existence of a civilized society of which education was a part.<sup>5</sup> However, in a later case the court ruled the district has no power to compel the collection of the tax by an agent of the county under contract to manage county-owned airport parking lots.<sup>6</sup> In a similar case, a school parking tax imposed on the patrons of parking facilities was upheld as applied to transactions conducted on public property. However, the school district does not have the authority to impose on other governmental bodies, such as a parking authority, the duty of collecting the tax.<sup>7</sup>

Pittsburgh adopted a tax on the gross receipts of commercial nonresidential parking operations at the rate of ten percent in 1962. The rate was increased to fifteen percent in 1968 and 20 percent in 1969. The United States Supreme Court upheld the tax, holding it did not violate the Due Process clause of the Fifth Amendment nor the Fourteenth Amendment, even though the city parking authority competed directly with the taxpayers.<sup>8</sup> The court held a tax cannot be declared unconstitutional because it renders a business unprofitable. It found the Pittsburgh tax a valid revenue measure.

In 1973 the tax on parking lot operators was replaced by a 20 percent tax on patrons of nonresidential parking places. This tax was upheld by the Pennsylvania Supreme Court.<sup>9</sup> In construing the Pittsburgh tax, the court held the definition of commercial parking lot in the ordinance extended to a private club which charged its members a parking fee, holding “It is the imposition of a charge for parking that makes a parking lot ‘commercial’ under the clear language of the ordinance.”<sup>10</sup> Pittsburgh’s tax was levied at a rate of 37.5% in 2015.<sup>11</sup>

The Commonwealth Court has ruled that parking taxes enacted under the Local Tax Enabling Act are not subject to any limit, which was upheld by a divided Pennsylvania Supreme Court.<sup>12</sup> Nor are they subject to the sharing provisions. This decision came out of a challenge to a 6% parking tax levied by the Interboro School District by a parking operator already paying a 6% parking tax to Tinicum Township for the same facility at the Philadelphia airport. In 2013, parking taxes were levied by 254 municipalities.

## REFERENCES

1. 53 P.S. 15971; 1932 (Ex.Sess.) P.L. 45; Phila. Code § 19-1202.
2. *Philadelphia v. Samuels*, 12 A.2d 79, 338 Pa. 321, 326 (1940).
3. *Philadelphia v. Broomall*, 130 A.2d 713, 183 Pa. Super. 296 (1957).
4. *Chwatek v. Parks*, 299 A.2d 631, 450 Pa. 62, 66 (1972).
5. *Airway Arms, Inc. v. Moon Area School District*, 446 A.2d 234, 498 Pa. 286 (1982).
6. *Moon Area School District v. Garzony*, 560 A.2d 1361, 522 Pa. 178 (1989).
7. *Capitol Associates v. School District of the City of Harrisburg*, 684 A.2d 1119 (Pa. Cmwlth. 1996).
8. *City of Pittsburgh v. Alco Parking Corp.*, 94 S.Ct. 2291, 417 U.S. 369 (1974).
9. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 464 Pa. 168 (1975).
10. *University Club v. Pittsburgh*, 271 A.2d 221, 440 Pa. 562, 566 (1970).
11. Pitt. Code tit. 2, art. VII, ch. 253 § .02(a).
12. *Airpark International I v. Interboro School District*, 677 A.2d 388 (Pa. Cmwlth. 1996) *aff’d*, 735 A.2d 646 (Pa. 1999).

## Vehicle Rental Tax

In 1999, the General Assembly gave Philadelphia the authority to levy an excise tax of up to 2% on the rental of vehicles.<sup>1</sup> The situs is where the renter takes possession of the car. All funds from the vehicle rental tax must be dedicated to capital to fund the costs of capital projects.

### REFERENCE

1. 16 P.S. § 2398; County Code, Section 2398.

## Flat Rate Business Privilege Taxes

New business privilege taxes measured by the gross receipts of the business were prohibited after November 30, 1988.<sup>1</sup> However, this prohibition does not extend to flat rate business privilege taxes. In 1990 Newtown Borough enacted a \$100 per year business privilege tax on all businesses maintaining a place of business within the borough. This tax was upheld as not subject to the freeze on gross receipts taxes.<sup>2</sup> The court also found it was not an illegal licensing fee. In 2012, the Pennsylvania Supreme Court acknowledged the rule implemented in Newtown, but created an exception to the permissibility of flat rate business privilege taxes.<sup>3</sup> In that case, the Court held that a flat rate business privilege tax of \$2,600 on all businesses in the township with gross receipts over \$1 million was in violation of the Local Tax Enabling Act as a tax on business gross receipts or parts thereof. The Court distinguished Newtown on the basis that the tax in Newtown applied to all businesses and did not condition the tax to a threshold of gross receipts at which the tax would be triggered. In 2013, three school districts levied flat rate business privilege taxes.

### REFERENCE

1. 72 P.S. § 4750.533; Local Tax Reform Act, Section 533.
2. *Smith and McMaster, P.C. v. Newtown Borough*, 669 A.2d 452 (Pa. Cmwlth. 1995).
3. *Shelly Funeral Home, Inc. v. Warrington Twp.*, 618 Pa. 469, 476, 57 A.3d 1136, 1140 (2012).

## Trailer Tax

Section 2, subsection (8) of the Local Tax Enabling Act prohibits levy of a tax on mobilehomes or house trailers subject to real estate taxes unless the same tax is levied on all other real estate within the taxing jurisdiction.<sup>1</sup> A number of school districts had levied house trailer taxes on mobilehomes not carried on the assessment roll. These taxes were levied at a flat rate of \$2 to \$8 monthly and terminated when the mobilehome was put on the assessment roll. The tax was principally an interim tax between the time the mobilehome was moved into the district and the time it was assessed for real estate taxes.

However, lower court cases invalidated house trailer taxes as levied on mobilehomes permanently attached to the land or connected with water, gas, electric or sewage facilities.<sup>2</sup> The courts ruled such mobilehomes are subject to real estate taxes, whether or not they are actually on the tax rolls, and are not liable to be taxed under a house trailer tax. These decisions essentially removed the tax base for trailer taxes. By 1998, only four school districts and two townships retained a trailer tax.

### REFERENCE

1. 53 P.S. § 6924.301.1(f)(8).
2. *In re North East School District Resolution*, 68 D.&C.2d 622 (Ct. Com. Pl. Erie Co. 1974); *Lewistown Borough v. Mannino*, 38 D.&C.2d 33 (Ct. Com. Pl. Mifflin Co. 1965).

## Business Use and Occupancy Tax

A 1963 law known as the Little Sterling Act authorizes Philadelphia City Council to levy any tax authorized under the Sterling Act for school district purposes.<sup>1</sup> The city has imposed a business use and occupancy tax for school purposes.<sup>2</sup> The tax is imposed on the use of real estate for commercial or industrial activity. Effective July 1, 2013, it is levied at the rate of 1.13% on assessed value of real estate, with factors for the amount of space occupied and the number of days of occupancy.<sup>3</sup>

When challenged, the tax was upheld by the Pennsylvania Supreme Court as a valid privilege tax on the use of real estate.<sup>4</sup> The court found the use and ownership of property are distinct and separate, with the right of use just one of the several rights incident to ownership. The tax was upheld as applied to insurance companies, not being preempted by state insurance licensing fees.<sup>5</sup>

**Recreational Use Tax.** A number of small townships in northern Pennsylvania had enacted recreational use taxes. The tax is usually a flat rate charge levied against structures used for seasonal or recreational purposes. The main burden of the tax falls on owners of hunting and fishing camps in forested areas. In 2013, 800 municipalities collect revenues from culture and recreation.

## References

1. 53 P.S. § 16101(a); 1963 P.L. 640.
2. Phila. Code § 19-1806.
3. Phila. Code § 19-1806(c).
4. *Wanamaker v. Philadelphia School District*, 274 A.2d 524, 441 Pa. 567, at 569 (1971).
5. *Industrial Valley Title Insurance Co. v. School District of Philadelphia*, 661 A.2d 497 (Pa. Cmwlth. 1995).

## Unearned Income Tax

A 1967 amendment to the Little Sterling Act authorizes Philadelphia to impose a tax on unearned income of residents for school purposes.<sup>1</sup> The tax is levied on income from the ownership, lease or sale of tangible and intangible real and personal property. Excluded from the tax are interest from federal, state or Pennsylvania local government debt obligations, interest on savings deposits and certificates from banks and thrift institutions and capital gains from property owned more than six months. The unearned income tax was imposed in 1967, replacing the intangible personal property tax then in effect.

The tax must be levied at the same rate as the city net profits and wage tax. Classes of income subject to the wage tax and net profits tax are excluded from the unearned income tax, also called the nonbusiness income tax.

### REFERENCE

1. 53 P.S. § 16101(b); 1967 P.L. 500.

## Video Programming Tax

In 1995, the legislature authorized municipalities to levy a five percent tax on the gross receipts of companies providing video programming to consumers.<sup>1</sup> This tax applies only to businesses who are not subject to cable television franchise fees enacted by the municipality under FCC regulations. Advancing technology has enabled video programmers to offer services to customers through telephone wires. This tax puts video programmers on the same basis as cable TV providers subject to the franchise fee.

### REFERENCE

1. 72 P.S. §§ 6171 et seq.; Video Programming Municipal Tax Authorization Act.

## Frozen Tax Sources

In addition to the business gross receipts tax (for all jurisdictions) and the amusement/admissions tax (for school districts), two other taxes can continue to be levied where they already exist, but cannot be levied by any additional jurisdictions.

**Landfill Taxes.** Before 1988 a few townships and school districts levied taxes on the operators of landfills under the authority of the Local Tax Enabling Act. In 1981 Smith Township, Washington County, levied a ten percent tax on the gross receipts of the operators of sanitary landfills and chemical, liquid waste or other refuse disposal facilities. Williams Township, Northampton County, adopted a sanitary landfill business privilege tax in 1982 at the rate of three percent of gross receipts. This tax was limited to receipts from landfill operations. In 1983, Carroll Township,

Washington County, levied a ten percent landfill business privilege tax. The tax does not appear to be limited to sanitary landfills, but extends to every place fill is dumped. Montgomery Area School District, Lycoming County, levied a landfill dumping privilege tax in 1984 at the rate of 30 cents per tire per vehicle delivering refuse to landfills within the district.

The first judicial review of these taxes came when a landfill operator challenged the waste disposal privilege tax of Union Township, Adams County.<sup>1</sup> The township's ordinance taxed waste disposal businesses at a rate of seven percent of gross receipts. The Commonwealth Court found the tax was unreasonable because the benefit received was palpably disproportionate to the burden imposed by the tax. In this case the township had not budgeted the revenues from the tax and could not establish a need for them.

To the contrary, another township landfill tax was upheld.<sup>2</sup> Plainfield Township, Northampton County had a plan for spending the revenues from the tax on needed public benefits and it had not run a revenue surplus. The Court found the township's tax was not excessive at three percent of gross revenues, even though it generated greater revenues than the host municipality fee under the Recycling Act.

Any further imposition of landfill privilege taxes has been terminated by the enactment of the Municipal Waste Planning, Recycling and Waste Reduction Act.<sup>3</sup> This Act establishes a host municipality benefit fee of one dollar per ton to be paid by operators of landfills or resource recovery facilities. The Act preempts and supersedes any tax on landfills or resource recovery facilities above the rate in effect on December 31, 1987. No new landfill privilege taxes may be enacted.

**Sign Tax.** Emmaus Borough levied a tax on signs under the authority of the Local Tax Enabling Act beginning in 1948. The tax was levied on signs of any nature attached to any building, pole or post or exterior of any structure for purposes of display or advertisement. For signs of less than twenty square feet, the tax rate was \$5 per year. For larger signs, the rate was \$5 per year for every fifty square feet or fraction thereof. Similar taxes were later enacted in Stroudsburg and Pottstown. The Stroudsburg ordinance was upheld in a court challenge.<sup>4</sup> Act 50 of 1998 allows these three jurisdictions to continue to collect their sign taxes at the rate levied as of December 31, 1997, but no additional jurisdictions may levy this tax.<sup>5</sup>

## REFERENCES

1. *Keystone Sanitation Co., Inc. v. Union Township*, 522 A.2d 691, 104 Pa. Cmwlth. 521 (1987).
2. *Grand Central Sanitary Landfill v. Township of Plainfield*, 589 A.2d 767, 138 Pa. Cmwlth. 640 (1991).
3. 53 P.S. § 4000.1301; 1988 P.L. 556, No. 101, Section 1301(d).
4. *Adams Outdoor Advertising v. Stroudsburg*, 667 A.2d 21 (Pa. Cmwlth. 1995).
5. 53 Pa.C.S. § 8402(e).

## Prohibited Taxes

**Occupancy Taxes.** A number of Allegheny County municipalities had levied occupancy taxes under the authority of the Local Tax Enabling Act. For example, in 1971 Forest Hills Borough levied an occupancy tax on all occupants of buildings at the rate of \$40 per year. The tax was levied on both owners and renters of residential, commercial and other buildings suitable for human occupancy. In 1978 the rate was raised to \$50 per year, payable on a quarterly basis. A similar tax at a rate of \$40 per year was levied by Swissvale Borough in 1978. Other taxes ranged from \$25 to \$50 per year.

These real estate occupancy taxes were struck down by the Commonwealth Court in a challenge to the \$25 annual tax levied by Crafton in 1987.<sup>1</sup> The court found that such taxes were indistinguishable from per capita taxes. As such, the Crafton tax was invalid because it violated the ten dollar limit on per capita taxes found in Section 311 of the Local Tax Enabling Act.

**Residential Construction Taxes.** In the late 1970s school districts began levying taxes on residential construction. The tax was usually imposed on applicants for building permits to construct a residence or convert a building into a residence. The tax was usually imposed at a flat rate ranging from \$150 to \$2,500 or at a percentage of the cost of construction.

The first challenge to this tax was upheld by the Commonwealth Court. The court upheld an \$875 residential construction tax as a valid privilege tax on the owner's privilege of using realty as a location for a residence.<sup>2</sup> The distinction between newly constructed and already existing residences was upheld as a reasonable classification.

In a second challenge the Commonwealth Court invalidated a tax on the privilege of obtaining a building permit and engaging in building construction. The tax was levied at the rate of one percent of the cost of construction, repair or renovation of any type of building. The court found the tax to be unreasonable and operated with an exclusionary impact against newcomers. The effect of the tax "is to exempt most of the present residents from an added tax, while collecting it mostly from families coming into the community."<sup>3</sup> On appeal, the Pennsylvania Supreme Court disagreed with the Commonwealth Court's reasoning and instead held that the tax was invalid based on a legislative amendment enacted in 1981 which prohibited such tax after July 1, 1982.<sup>4</sup>

Protests from the building industry, construction union and financial institutions led the General Assembly to prohibit this tax in 1981.<sup>5</sup> All residential construction taxes were prohibited after June 30, 1982. That section was held to allow application of general business privilege taxes against contractors engaged in the business of constructing dwellings.<sup>6</sup> Two townships have levied nonresidential construction taxes, Bensalem at a flat rate of \$1000 per unit and Middletown at \$2 per square foot. These have not been tested in court.

**Lease Rental Taxes.** Middletown Area School District levied a tax on the privilege of renting tax-exempt real estate under the authority of the Local Tax Enabling Act. The tax was levied at the rate of five percent of the rental paid by companies and persons leasing real estate not appearing on the tax rolls, excluding residential dwellings. In the first challenge to this tax, the county court held a company leasing a service station from the Pennsylvania Turnpike Commission was exempt from the tax.<sup>7</sup> The tax would eventually be a burden on the Commission, which is exempted by state law from all local taxes. The court raised the question of whether the privilege of leasing tax exempt realty is a proper subject of taxation, but did not address this issue.

Lower Swatara Township adopted a similar tax in 1972 at a rate of five percent, but exempted leases from the Turnpike Commission. The tax was raised to ten percent in 1974. The tax fell chiefly upon private firms leasing facilities at Harrisburg International Airport. Benner Township, Centre County also levied a lease rental tax at the rate of five percent. It fell chiefly on individuals and private firms renting tiedowns and hangars at an airfield owned by Penn State University, a tax-exempt entity. These taxes were not further challenged. But when the Harrisburg School District attempted to levy a tax of 10% on the privilege of leasing tax-exempt realty, the issue reached the Pennsylvania Supreme Court.<sup>8</sup> The court held the tax unconstitutional as violating the uniformity clause of the Pennsylvania Constitution.

**Off-Track Wager Tax.** The Catasauqua Area School District attempted to levy a 1% tax on all wagers made at an off-track betting facility located within the commonwealth. The court found the tax illegal, being preempted by the state tax on wagers.<sup>9</sup>

**Motor Vehicle Transfer Tax.** The Manheim Township School District intended to levy a \$10 privilege tax on all transfers of motor vehicles at a used auto auction facility within the district. The business started the process of moving to a new site in another county and the tax was never enacted. However, Act 50 of 1998 now prohibits such taxes.<sup>10</sup>

## REFERENCES

1. *Borough of Crafton v. Gaitens*, 534 A.2d 1149,112 Pa. Cmwlth. 147 (1987).
2. *Smith v. Southern York County School District*, 403 A.2d 1034, 44 Pa. Cmwlth. 227 (1979).
3. *Heisey v. Elizabethtown Area School District*, 445 A.2d 1344, 67 Pa. Cmwlth. 27, 35 (1982).
4. *Heisey v. Elizabethtown Area School District*, 467 A.2d 818,502 Pa. 571 (1983).
5. Formerly 53 P.S. § 6902; Local Tax Enabling Act, Section 2(11); see now 53 P.S. § 6924.301.1(f)(11).
6. *Middletown Township v. Alverno Valley Farms*, 524 A.2d 1039, 105 Pa. Cmwlth. 311 (1987).
7. *Gulf Oil Corporation v. Middletown Area School District*, 50 Pa. D.&C.2d 247, at 254, (Ct. Com. Plea. Dauphin Co. 1970).
8. *City of Harrisburg v. School District of the City of Harrisburg*, 710 A.2d 49, 551 Pa. 295 (1998).
9. *Pocono Downs, Inc. v. Catasauqua Area School District*, 669 A.2d 500 (Pa. Cmwlth. 1996).
10. 53 Pa.C.S. § 8402(f).

## Appendix I. Tax Sources

### A. Counties

<u>Potential Tax Sources</u>	<u>Legal Limit<sup>1</sup></u>	<u>Citation</u>
<b>General Purpose Tax Levies</b>		
Real Estate		
Second Class Counties	25 mills	16 P.S. § 4970
Second Class A Counties	40 mills	16 P.S. § 4970
Third-Eighth Class Counties	25 mills <sup>2</sup>	16 P.S. § 1770
Personal Property		
Second Class A to Eighth Class Counties	4 mills	72 P.S. § 4821
Sales		
Second Class Counties	1 percent	16 P.S. § 6152-B
Per Capita		
Fourth-Eighth Class Counties	\$5	16 P.S. § 1770
Occupation		
Fourth-Eighth Class Counties	20 Mills	16 P.S. § 1770
<b>Special Purpose Taxes</b>		
Debt Service	unlimited	16 P.S. §§ 1770 & 4970
Lease Rental Payments to Authorities		
Third-Eighth Class Counties	10 mills	16 P.S. § 1770
Institution Districts		
Second Class Counties	10 mills	62 P.S. § 2257
Second Class A Counties	15 mills	16 P.S. § 4970.1
Third Class Counties	10 mills	62 P.S. § 2257
Parks and Playgrounds		
Second and Second Class A Counties	2 mills	16 P.S. §§ 6007 & 6035 <sup>3</sup>
Third-Eighth Class Counties	no limit	16 P.S. § 2507
Libraries	no limit	24 Pa.C.S. § 9351
Roads	2 mills	16 P.S. §§ 2707, 2724, 2733, 5901, 5902 & 5903
Memorial Hall	no limit	16 P.S. §§ 2366 & 5571
Tuberculosis Hospital	no limit	16 P.S. §§ 2118 & 5324
Bridges	no limit	16 P.S. §§ 2675, 5734 & 5778
Community Colleges	4) (	24 P.S. § 19-1909-A
Municipalities Financial Recovery Program <sup>5</sup>	no limit	53 P.S. § 11701.123(c)

Hotel Room Rental		
Second Class Counties	5 percent (7 percent)	53 Pa.C.S. § 8721; (16 P.S. § 3000.3061)
Second Class A Counties	3 percent	53 Pa.C.S. § 8721
Lackawanna County	7 percent	16 P.S. § 1770.4
Certain Third Class Counties	5 percent	16 P.S. §§ 1770.5 & 2399.23
Certain Third Class Counties	4 percent	16 P.S. § 1770.8
Certain Fifth Class Counties	5 percent	16 P.S. §§ 1770.6 & 1770.7
Third to Eighth Class Counties	3 percent	16 P.S. §§ 1770.2, 1770.6, 1770.7

1. Counties adopting home rule charters may set rates higher than the limits provided in state law for property taxes and for personal taxes levied on residents. They may not create new subjects of taxation
2. Five additional mills available with court appeal.
3. Limit of 1 mill for purpose of establishing, making, enlarging, extending and maintaining parks and playgrounds.
4. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed five mills of the market value of real estate, except for first class cities and first class school districts where it cannot exceed one mill of the market value of real estate.
5. Levied only with court approval.

## **B. First Class Cities**

<b><u>Potential Tax Sources</u></b>	<b><u>Legal Limit<sup>1</sup></u></b>	<b><u>Citation</u></b>
<b>General Purpose Tax Levies</b>		
Real Estate	no limit	53 P.S. § 12553
Personal Property	4 mills	72 P.S. § 4821
Business Privilege	no limit	53 P.S. § 16184
Sales	1 percent	53 P.S. § 12720.503
Sterling Act Taxes <sup>1</sup>		53 P.S. § 15971
Wage, Earnings and Net Profits		
Realty Transfer		
Amusement		
Parking Lot		
<b>Special Purpose Taxes</b>		
Community Colleges	( <sup>2</sup> )	24 P.S. § 19-1909-A
Hotel Room Rental	6 percent <sup>53 P.S. § 16223</sup>	
Distressed Pension System Recovery Program	no limit <sup>3</sup>	53 P.S. § 895.607(f)
Open Space (real estate or earned income) <sup>4</sup>	set by voters	32 P.S. § 5007.1

1. The Sterling Act gives Philadelphia the power to levy taxes on any privilege, transaction, subject or personal property not subject to a state tax or license. There are no limits on the rate of taxation under the Act. Taxes listed are those currently levied.
2. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed one mill of the market value of real estate for first class cities.
3. May only be assessed or used to defray the additional costs required to be paid under Municipal Pension Plan Funding Standard and Recovery Act (and which are directly related to the pension plans of the municipality and which are included in the calculation of the financial requirements of the pension plan and the minimum municipal obligation).
4. Requires approval of voters in referendum.

## C. Second Class Cities

<u>Potential Tax Sources</u>	<u>Legal Limit<sup>1</sup></u>	<u>Citation</u>
<b>General Purpose Tax Levies</b>		
Real Estate	no limit	53 P.S. §§ 23104 & 25942
License Taxes	no limit	53 P.S. §§ 23107, 23126, 23127 & 23136
Dog Owners	no limit	53 P.S. § 23144
Act 511 Taxes		53 P.S. §§ 6924.311; 16 P.S. § 6171-B
Per Capita	\$10	
Occupation (Flat Rate) <sup>2</sup>	\$10	
Occupation (Millage) <sup>2</sup>	no limit	
Local Services Tax	\$52	
Earned Income/Net Profits	1 percent	
Realty Transfer	1 percent	
Mechanical Devices	5 percent	
Parking	no limit	
Amusement & Movie Theaters	5 percent	
Business Gross Receipts	1 mill wholesale 2 mills retail	
Institution/Service Privilege	no limit <sup>8</sup>	
Act 130 Earned Income <sup>3</sup>	set by referendum	53 P.S. § 6924.407
<b>Special Purpose Taxes</b>		
Public Parks	no limit	53 P.S. § 23140
Sinking Fund	3 mills	53 P.S. § 25851
Community Colleges	4) (	24 P.S. § 19-1909-A
Open Space (real estate or earned income) <sup>5</sup>	set by voters	32 P.S. § 5007.1
Distressed Pension System Recovery Program <sup>6</sup>	no limit	53 P.S. § 895.607(f)
Municipalities Financial Recovery Program <sup>7</sup>	no limit	53 P.S. § 11701.123(c)

1. As a home rule municipality, Pittsburgh may set rates higher than the limits provided in state law for property taxes and for personal taxes levied on residents. It may not create new subjects of taxation.
2. If a municipality raises the rate of its income tax through a referendum authorized under 53 P.S. §§ 6924.401 et seq., it must eliminate its occupation tax.
3. Act 130 of 2008, 53 P.S. §§ 6924.401 et seq., provides that a political subdivision that levies an occupation tax may, by referendum, replace the revenues provided from the occupation tax by increasing the rate, within specified limits, of the earned income tax.
4. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed 5 mills of the market value of real estate
5. Requires approval of voters in referendum.
6. May only be assessed or used to defray the additional costs required to be paid under Municipal Pension Plan Funding Standard and Recovery Act (and which are directly related to the pension plans of the municipality and which are included in the calculation of the financial requirements of the pension plan and the minimum municipal obligation.
7. Levied only with court approval.
8. As of 2015, Pittsburgh levied the tax at 6 mills. Pitt. City Code, tit. 2, art. VII § 247.

## D. Second Class A Cities

<u>Potential Tax Sources</u>	<u>Legal Limit</u> <sup>1</sup>	<u>Citation</u>
<b>General Purpose Tax Levies</b>		
Real Estate	no limit	53 P.S. §§ 23104 & 25942
Act 511 Taxes		53 P.S. § 6924.311
Per Capita	\$10 <sup>2</sup>	
Occupation (Flat Rate) <sup>3</sup>	\$10 <sup>2</sup>	
Occupation (Millage) <sup>3</sup>	no limit	
Local Services Tax	\$5 <sup>2</sup>	
Earned Income	1 percent	
Realty Transfer	1 percent <sup>2</sup>	
Mechanical Devices	10 percent <sup>2</sup>	
Amusement <sup>4</sup>	10 percent <sup>2</sup>	
Business Gross Receipts <sup>5</sup>	1 mill wholesale <sup>2</sup> 1 1/2 mills retail <sup>2</sup>	
Act 130 Earned Income <sup>6</sup>	set by referendum	53 P.S. § 6924.407
<b>Special Purpose Taxes</b>		
Community Colleges	7) (	24 P.S. § 19-1909-A
Open Space (real estate or earned income) <sup>8</sup>	set by voters	32 P.S. § 5007.1
Distressed Pension System Recovery Program <sup>9</sup>	no limit	53 P.S. § 895.607(f)
Municipalities Financial Recovery Program <sup>10</sup>	no limit	53 P.S. § 11701.123(c)

1. As a home rule municipality, Scranton may set rates higher than the limits provided in state law for property taxes and for personal taxes levied on residents. It may not create new subjects of taxation.
2. Maximum rate subject to sharing with school district.
3. If a municipality raises the rate of its income tax through a referendum authorized under 53 P.S. §§ 6924.401 et seq., it must eliminate its occupation tax.
4. For taxes first levied after December 31, 1997, maximum rate is 5 percent. See 53 Pa.C.S. § 8402(c)(2).
5. Only if enacted before December 1, 1988. See 72 P.S. § 4750.533.
6. Act 130 of 2008, 53 P.S. §§ 6924.401 et seq., provides that a political subdivision that levies an occupation tax may, by referendum, replace the revenues provided from the occupation tax by increasing the rate, within specified limits, of the earned income tax.
7. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed 5 mills of the market value of real estate.
8. Requires approval of voters in referendum.
9. May only be assessed or used to defray the additional costs required to be paid under Municipal Pension Plan Funding Standard and Recovery Act (and which are directly related to the pension plans of the municipality and which are included in the calculation of the financial requirements of the pension plan and the minimum municipal obligation).
10. Levied only with court approval.

## E. Third Class Cities

<u>Potential Tax Sources</u>	<u>Legal Limit</u> <sup>1</sup>	<u>Citation</u>
<b>General Purpose Tax Levies</b>		
Real Estate	30 mills <sup>2</sup>	53 P.S. § 37531
Residence	\$5	53 P.S. § 37531
Business License	\$100	53 P.S. § 37601.1
Act 511 Taxes		53 P.S. § 6924.311
Per Capita	\$10 <sup>3</sup>	
Occupation (Flat Rate) <sup>4</sup>	\$10 <sup>3</sup>	
Occupation (Millage) <sup>4</sup>	no limit	
Local Services Tax	\$5 <sup>2</sup>	
Earned Income	1 percent <sup>3</sup>	
Realty Transfer	1 percent <sup>3</sup>	
Mechanical Devices	10 percent <sup>3</sup>	
Amusement <sup>5</sup>	10 percent <sup>3</sup>	
Business Gross Receipts <sup>6</sup>	1 mill wholesale <sup>3</sup> 1 1/2 mills retail <sup>3</sup>	
Act 130 Earned Income <sup>7</sup>	set by referendum	53 P.S. § 6924.407
<b>Special Purpose Taxes</b>		
Bonded Debt and Sinking Fund	no limit	53 P.S. § 37531
Recreation	no limit	53 P.S. §§ 37531(a)(4) & 38709
Library	no limit	24 Pa.C.S. § 9351
Shade Trees		53 P.S. §§ 37416; 39501-A et seq.
Community Colleges	<sup>8</sup> ) (	24 P.S. § 19-1909-A
Open Space (real estate or earned income) <sup>9</sup>	set by voters	32 P.S. § 5007.1
Distressed Pension System Recovery Program <sup>10</sup>	no limit	53 P.S. § 895.607(f)
Municipalities Financial Recovery Program <sup>11</sup>	no limit	53 P.S. § 11701.123(c)

- Home rule municipalities may set rates higher than the limits provided in state law for property taxes and for personal taxes levied on residents. They may not create new subjects for taxation
- Five additional mills available with court approval.
- Maximum rate subject to sharing with school district.
- If a municipality raises the rate of its income tax through a referendum authorized under 53 P.S. §§ 6924.401 et seq., it must eliminate its occupation tax.
- For taxes first levied after December 31, 1997, maximum rate is 5 percent. See 53 Pa.C.S. § 8402(c)(2).
- Only if enacted before December 1, 1988. See 72 P.S. § 4750.533.
- Act 130 of 2008, 53 P.S. §§ 6924.401 et seq., provides that a political subdivision that levies an occupation tax may, by referendum, replace the revenues provided from the occupation tax by increasing the rate, within specified limits, of the earned income tax.
- Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed 5 mills of the market value of real estate.
- Requires approval of voters in referendum.
- May only be assessed or used to defray the additional costs required to be paid under Municipal Pension Plan Funding Standard and Recovery Act (and which are directly related to the pension plans of the municipality and which are included in the calculation of the financial requirements of the pension plan and the minimum municipal obligation.
- Levied only with court approval.

## F. Boroughs

<u>Potential Tax Sources</u>	<u>Legal Limit<sup>1</sup></u>	<u>Citation</u>
<b>General Purpose Tax Levies</b>		
Real Estate*	30 mills <sup>2</sup>	8 Pa.C.S. § 1302
Occupation	30 mills <sup>2</sup>	8 Pa.C.S. § 1302
Local Tax Enabling Act Taxes		53 P.S. § 6924.311
Per Capita	\$10 <sup>3</sup>	
Occupation (Flat Rate) <sup>4</sup>	\$10 <sup>3</sup>	
Occupation (Millage) <sup>4</sup>	no limit	
Local Services Tax	\$52 <sup>3</sup>	
Earned Income	1 percent <sup>3</sup>	
Realty Transfer	1 percent <sup>3</sup>	
Mechanical Devices	10 percent <sup>3</sup>	
Amusement <sup>5</sup>	10 percent <sup>3</sup>	
Business Gross Receipts <sup>6</sup>	1 mill wholesale <sup>3</sup> 1 1/2 mill retail <sup>3</sup>	
Act 130 Earned Income <sup>7</sup>	set by referendum	53 P.S. § 6924.407
<b>Special Purpose Taxes</b>		
Debt Service*	no limit	8 Pa.C.S. § 1302(a)(1)
Pensions and Retirement*	1/2 mill	8 Pa.C.S. § 1302(a)(2)
Shade Trees*	1/10 mills	8 Pa.C.S. § 1302(a)(3)
Street Lighting*	8 mills	8 Pa.C.S. § 1302(a)(4)
Library*	no limit	8 Pa.C.S. § 1302(a)(8); 24 Pa.C.S. § 9351
Special Road Fund	5 mills	8 Pa.C.S. § 1304
Recreation*	no limit	8 Pa.C.S. § 1302(a)(10)
Gas, Water, Electric <sup>8</sup>	8 mills	8 Pa.C.S. § 1302(a)(5)
Fire Engines, Fire Apparatus, Fire Hose	3 mills <sup>9</sup>	8 Pa.C.S. § 1302(a)(6)
Firehouse, Lockup or Municipal Building <sup>6</sup>	2 mills	8 Pa.C.S. § 1302(a)(7)
Community College*	10) (	24 P.S. § 19-1909-A
Debt Payment <sup>11</sup>	no limit	8 Pa.C.S. § 1303
Ambulance, Rescue & Other Emergency Services	1/2 mill	8 Pa.C.S. § 1302(a)(9)
Open Space (real estate or earned income) <sup>8*</sup>	set by voters	32 P.S. § 5007.1
Distressed Pension System Recovery Program <sup>12*</sup>	no limit	53 P.S. § 895.607(f)
Municipalities Financial Recovery Program <sup>11*</sup>	no limit	53 P.S. § 11701.123(c)

- Home rule boroughs may set rates higher than the limits provided in state law for property taxes and for personal taxes levied on residents. They may not create new subjects of taxation.
- Five additional mills available with court approval.
- Maximum rate subject to sharing with school district.
- If a municipality raises the rate of its income tax through a referendum authorized under 53 P.S. §§ 6924.401 et seq., it must eliminate its occupation tax.
- For taxes first levied after December 31, 1997, maximum rate is 5 percent. See 53 Pa.C.S. § 8402(c)(2).
- Only if enacted before December 1, 1988. See 72 P.S. § 4750.533.
- Act 130 of 2008, 53 P.S. §§ 6924.401 et seq., provides that a political subdivision that levies an occupation tax may, by referendum, replace the revenues provided from the occupation tax by increasing the rate, within specified limits, of the earned income tax.

8. Additional millage permitted only following a favorable referendum on the matter.
9. Higher rate may be approved by voters in referendum.
10. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed 5 mills of the market value of real estate.
11. Levied only with court approval.
12. May only be assessed or used to defray the additional costs required to be paid under Municipal Pension Plan Funding Standard and Recovery Act (and which are directly related to the pension plans of the municipality and which are included in the calculation of the financial requirements of the pension plan and the minimum municipal obligation).

\*These taxes are also authorized for the incorporated town of Bloomsburg, 1972, P.L. 1441, No. 320.

## G. First Class Townships

<u>Potential Tax Sources</u>	<u>Legal Limit<sup>1</sup></u>	<u>Citation</u>
<b>General Purpose Tax Levies</b>		
Real Estate	30 mills <sup>2</sup>	53 P.S. § 56709
Occupation	30 mills <sup>2</sup>	53 P.S. § 56709
Local Tax Enabling Act Taxes		53 P.S. § 6924.311
Per Capita	\$10 <sup>3</sup>	
Occupation (Flat Rate) <sup>4</sup>	\$10 <sup>3</sup>	
Occupation (Millage) <sup>4</sup>	no limit	
Local Services Tax	\$52 <sup>3</sup>	
Earned Income	1 percent <sup>3</sup>	
Realty Transfer	1 percent <sup>3</sup>	
Mechanical Devices	10 percent <sup>3</sup>	
Amusement <sup>5</sup>	10 percent <sup>3</sup>	
Business Gross Receipts <sup>6</sup>	1 mill wholesale <sup>3</sup> 1 1/2 mill retail <sup>3</sup>	
Act 130 Earned Income <sup>7</sup>	set by referendum	53 P.S. § 6924.407
<b>Special Purpose Taxes</b>		
Firehouses and Equipment	3 mills <sup>8</sup>	53 P.S. § 56709(a)(2)
Shade Trees	1/10 mill	53 P.S. § 56709(a)(3)
Municipal Building	no limit	53 P.S. § 56709(a)(4)
Debt Service	no limit	53 P.S. § 56709(a)(5)
Pensions and Retirement	1/2 mill	53 P.S. § 56709(a)(6)
Fire Districts	2 mills	53 P.S. § 56515
Permanent Improvement Fund	5 mills	53 P.S. § 57601
Recreation	no limit	53 P.S. § 58012
Library	no limit	24 Pa.C.S. § 9351
Open Space (real estate or earned income)	set by voters	32 P.S. § 5007.1
Community Colleges	9) (	24 P.S. § 19-1909-A
Ambulance, Rescue & Other Emergency Services	1/2 mill <sup>8</sup>	53 P.S. § 56709(a)(7)
Distressed Pension System Recovery Program <sup>10</sup>	no limit	53 P.S. 895.607(f)
Municipalities Financial Recovery Program <sup>11</sup>	no limit	53 P.S. 11701.123(c)

- Home rule townships may set rates higher than the limits provided in state law for property taxes and for personal taxes levied on residents. They may not create new subjects of taxation.
- Five additional mills available with court approval.
- Maximum rate subject to sharing with school district.
- If a municipality raises the rate of its income tax through a referendum authorized under 53 P.S. §§ 6924.401 et seq., it must eliminate its occupation tax.
- For taxes first levied after December 31, 1997, maximum rate is 5 percent. See 53 Pa.C.S. § 8402(c)(2).
- Only if enacted before December 1, 1988. See 72 P.S. § 4750.533.
- Act 130 of 2008, 53 P.S. §§ 6924.401 et seq., provides that a political subdivision that levies an occupation tax may, by referendum, replace the revenues provided from the occupation tax by increasing the rate, within specified limits, of the earned income tax.
- Higher rate may be approved by voters in referendum.
- Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed 5 mills of the market value of real estate.
- May only be assessed or used to defray the additional costs required to be paid under Municipal Pension Plan Funding Standard and Recovery Act (and which are directly related to the pension plans of the municipality and which are included in the calculation of the financial requirements of the pension plan and the minimum municipal obligation).
- Levied only on court order.

## H. Second Class Townships

<u>Potential Tax Sources</u>	<u>Legal Limit<sup>1</sup></u>	<u>Citation</u>
<b>General Purpose Tax Levies</b>		
Real Estate	14 mills <sup>2</sup>	53 P.S. § 68205
Local Tax Enabling Act Taxes		53 P.S. § 6924.311
Per Capita	\$10 <sup>3</sup>	
Occupation (Flat Rate) <sup>4</sup>	\$10 <sup>3</sup>	
Occupation (Millage) <sup>4</sup>	no limit	
Local Services Tax	\$52 <sup>3</sup>	
Earned Income	1 percent <sup>3</sup>	
Realty Transfer	1 percent <sup>3</sup>	
Mechanical Devices	10 percent <sup>3</sup>	
Amusement <sup>5</sup>	10 percent <sup>3</sup>	
Business Gross Receipts <sup>6</sup>	1 mill wholesale <sup>3</sup> 1 1/2 mill retail <sup>3</sup>	
Act 130 Earned Income <sup>7</sup>	set by referendum	53 P.S. § 6924.407
<b>Special Purpose Taxes</b>		
Municipal Building	1/2 general rate	53 P.S. § 68205(a)(3)
Firehouses and Equipment	3 mills <sup>8</sup>	53 P.S. § 68205(a)(4)
Recreation	no limit	53 P.S. § 68205(a)(6)
Debt Service	no limit	53 P.S. § 68205(a)(7)
Permanent Improvement Fund	5 mills	53 P.S. § 68205(a)(9)
Road Machinery Fund	2 mills	53 P.S. § 68205(a)(10)
Library	no limit	24 Pa.C.S. § 9351
Ambulance, Rescue & Other Emergency Services	1/2 mill <sup>8</sup>	53 P.S. § 68205(a)(8)
Fire Hydrants for Township	2 mills	53 P.S. § 68205(a)(5)
Street Lights for Township	5 mills	53 P.S. § 68205(a)(2)
Debt Payment <sup>9</sup>	no limit	53 P.S. § 68205(b)
Open Space (real estate or earned income)	set by voters	32 P.S. § 5007.1
Community Colleges	(10)	24 P.S. § 19-1909-A
Distressed Pension System Recovery Program <sup>11</sup>	no limit	53 P.S. § 895.607(f)
Municipalities Financial Recovery Program <sup>9</sup>	no limit	53 P.S. § 11701.123(c)

- Home rule townships may set rates higher than the limits provided in state law for property taxes and for personal taxes levied on residents. They may not create new subjects of taxation
- Five additional mills available with court approval.
- Maximum rate subject to sharing with school district.
- If a municipality raises the rate of its income tax through a referendum authorized under 53 P.S. §§ 6924.401 et seq., it must eliminate its occupation tax.
- For taxes first levied after December 31, 1997, maximum rate is 5 percent. See 53 Pa.C.S. § 8402(c)(2).
- Only if enacted before December 1, 1988. See 72 P.S. § 4750.533.
- Act 130 of 2008, 53 P.S. §§ 6924.401 et seq., provides that a political subdivision that levies an occupation tax may, by referendum, replace the revenues provided from the occupation tax by increasing the rate, within specified limits, of the earned income tax.
- Higher rate may be approved by voters in referendum.
- Levied only on court order.
- Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed 5 mills of the market value of real estate.
- May only be assessed or used to defray the additional costs required to be paid under Municipal Pension Plan Funding Standard and Recovery Act (and which are directly related to the pension plans of the municipality and which are included in the calculation of the financial requirements of the pension plan and the minimum municipal obligation.

## I. First Class School Districts

<u>Potential Tax Sources</u>	<u>Legal Limit</u>	<u>Citation</u>
<b>General Education Purposes</b>		
Real Estate	no limit	24 P.S. §§ 6-652, 583.1, 583.6, 583.10 & 583.14; 53 P.S. § 16101
Unearned Income or Non-Business Income	1) (	53 P.S. § 16101(b)
Business Occupancy	no limit	53 P.S. § 16101(a)
Liquor Sales	10 percent	53 P.S. § 16134
<b>Special Purpose Tax</b>		
Community Colleges	2) (	24 P.S. § 19-1909-A

1. The tax must be levied at the same rate as the city net profits and wage tax.
2. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed one mill of the market value of real estate for first class school districts.

## J. First Class A School Districts

<u>Potential Tax Sources</u>	<u>Legal Limit</u>	<u>Citation</u>
<b>General Education Purposes</b>		
Real Estate	no limit	24 P.S. §§ 6-652, 6-652.1(a)(1)(iv)&(3), 583.1, 583.10, 585.1, 585.5, 585.9, 585.14 & 586.1
Earned Income	2 percent	24 P.S. §§ 588.2 & 6-652.1(a)(2)
Mercantile	1/2 mill wholesale 1 mill retail	24 P.S. § 582.4
Act 511 Taxes		24 P.S. § 6-652.1(4); 53 P.S. § 6924.311
Per Capita	\$10 <sup>1</sup>	
Earned Income	1 percent <sup>1</sup>	
Realty Transfer	1 percent <sup>1</sup>	
Business Gross Receipts <sup>2</sup>	1 mill wholesale <sup>1</sup> 1 1/2 mill retail <sup>1</sup>	
Act 50 Earned Income Tax <sup>3</sup>	1.5 percent	53 Pa.C.S. §§ 8701 & 8711
Act 130 Earned Income <sup>8</sup>	set by referendum	53 P.S. § 6924.407
<b>Special Purpose Taxes</b>		
Parks and Playgrounds	2 mills	24 P.S. § 7-706
Capital Reserve Fund	3 mills	24 P.S. § 6-690
Community Colleges	4) (	24 P.S. § 19-1909-A

1. Maximum rate subject to sharing with municipality.

2. Only if enacted before December 1, 1988. See 72 P.S. § 4750.533.

3. Must be approved by the voters in referendum.

4. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed 5 mills of the market value of real estate.

## K. Second, Third and Fourth Class School Districts

<u>Potential Tax Sources</u>	<u>Legal Limit</u>	<u>Citation</u>
<b>General Education Purposes</b>		
Real Estate	25 mills <sup>1</sup>	24 P.S. § 6-672
Per Capita	\$5	24 P.S. § 6-679
Local Tax Enabling Act Taxes		53 P.S. § 6924.311
Per Capita	\$10 <sup>2</sup>	
Occupation (Flat Rate) <sup>3</sup>	\$10 <sup>2</sup>	
Occupation (Millage) <sup>3</sup>	no limit	
Local Services Tax <sup>4</sup>	\$5 <sup>2</sup>	
Earned Income	1 percent <sup>2</sup>	
Realty Transfer	1 percent <sup>2</sup>	
Mechanical Devices	10 percent <sup>2</sup>	
Amusement <sup>5</sup>	10 percent <sup>2</sup>	
Business Gross Receipts <sup>6</sup>	1 mill wholesale <sup>2</sup> 1 1/2 mill retail <sup>2</sup>	
Act 50 Earned Income <sup>7</sup>	1.5 percent	53 Pa.C.S. §§ 8701 & 8711
Act 130 Earned Income <sup>8</sup>	set by referendum	53 P.S. § 6924.407
<b>Special Purpose Taxes</b>		
Debt Service <sup>9</sup>	no limit	24 P.S. § 2-232
Parks and Playgrounds	2 mills	24 P.S. § 7-706
Capital Reserve Fund	3 mills	24 P.S. § 6-690
Community Colleges	<sup>10</sup> ) (	24 P.S. § 19-1909-A

1. Additional unlimited millage may be levied to pay salaries and debt service charges for school buildings.
2. Maximum rate subject to sharing with municipality.
3. If a school district raises the rate of its income tax through a referendum authorized under 53 P.S. §§ 6924.401 et seq., it must eliminate its occupation tax.
4. If a school district levied an emergency and municipal services tax (EMST) on June 21, 2007, the school district is permitted to levy the local services tax in the same amount the school district collected on that date. However, if a municipality located in whole or in part within the school district subsequently levies the local services tax, the school district is only permitted to collect five dollars (\$5) on persons employed within the municipality each calendar year. A school district that did not levy an EMST on June 21, 2007 is prohibited from levying the local services tax.
5. Only if enacted before July 1, 1997. See 53 Pa.C.S. § 8402(c)(1).
6. Only if enacted before December 1, 1988. See 72 P.S. § 4750.533.
7. Requires approval by voters in referendum.
8. Act 130 of 2008, 53 P.S. §§ 6924.401 et seq., provides that a school district that levies an occupation tax may, by referendum, replace the revenues provided from the occupation tax by increasing the rate, within specified limits, of the earned income tax.
9. Levied only by court order.
10. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed 5 mills of the market value of real estate.

## Appendix II. Local Tax Enabling Act

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*The following version of the Local Tax Enabling Act (the “Act”) is taken from and is available at the Pennsylvania General Assembly’s official website. This version is provided for reference purposes only.*

**Act of December 31, 1965, P.L. 1257, No. 511,  
as enacted and amended through May 6, 2014**

### AN ACT

Empowering cities of the second class, cities of the second class A, cities of the third class, boroughs, towns, townships of the first class, townships of the second class, school districts of the second class, school districts of the third class and school districts of the fourth class including independent school districts, to levy, assess, collect or to provide for the levying, assessment and collection of certain taxes subject to maximum limitations for general revenue purposes; authorizing the establishment of bureaus and the appointment and compensation of officers, agencies and employes to assess and collect such taxes; providing for joint collection of certain taxes, prescribing certain definitions and other provisions for taxes levied and assessed upon earned income, providing for annual audits and for collection of delinquent taxes, and permitting and requiring penalties to be imposed and enforced, including penalties for disclosure of confidential information, providing an appeal from the ordinance or resolution levying such taxes to the court of quarter sessions and to the Supreme Court and Superior Court.

**Section 101. Short Title.**—This act shall be known and may be cited as “The Local Tax Enabling Act.”

*(101 renumbered from 1 July 2, 2008, P.L.197, No.32)*

**Section 301. Definitions.**—(a) The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Family farm corporation” means a Pennsylvania corporation at least seventy-five percent of the assets of which are devoted to the business of agriculture, which business, for the purposes of this definition, shall not be deemed to include:

- (i) recreational activities, such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;
- (ii) the raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;
- (iii) fur farming;
- (iv) stockyard and slaughterhouse operations; or
- (v) manufacturing or processing operations of any kind: Provided, however, That at least seventy-five percent of all of the stock of the corporation must be owned by members of the same family.

“Members of the same family” means an individual, such individual’s brothers and sisters, the brothers and sisters of such individual’s parents and grandparents, the ancestors and lineal descendants of any of the

foregoing and a spouse of any of the foregoing. Individuals related by the half blood or by legal adoption shall be treated as if they were related by the whole blood.

(b) As used in this chapter, the terms “business entity,” “earned income,” “employer,” “net profits,” “private agency,” “public agency” and “tax bureau” shall have the same meanings as those terms given in section 501.

*(301 added July 2, 2008, P.L.197, No.32)*

**Section 301.1. Delegation of Taxing Powers and Restrictions Thereon.**—(a) The duly constituted authorities of the following political subdivisions, cities of the second class, cities of the second class A, cities of the third class, boroughs, towns, townships of the first class, townships of the second class, school districts of the second class, school districts of the third class, and school districts of the fourth class, in all cases including independent school districts may, in their discretion, by ordinance or resolution, for general revenue purposes, levy, assess and collect or provide for the levying, assessment and collection of such taxes as they shall determine on persons, transactions, occupations, privileges, subjects and personal property within the limits of such political subdivisions, and upon the transfer of real property, or of any interest in real property, situate within the political subdivision levying and assessing the tax, regardless of where the instruments making the transfers are made, executed or delivered or where the actual settlements on such transfer take place. The taxing authority may provide that the transferee shall remain liable for any unpaid realty transfer taxes imposed by virtue of this chapter.

(a.1) (1) A local taxing authority may levy a tax on the privilege of doing business in the jurisdiction of the local taxing authority if:

(i) the privilege is exercised by conducting transactions in the jurisdiction of the levying local taxing authority for all or part of fifteen or more calendar days within the calendar year; or

(ii) the privilege is exercised through a base of operations in the jurisdiction of the levying local taxing authority. The gross receipts subject to this tax shall not include any receipts subject to a tax measured by such gross receipts which is imposed under subparagraph (i).

(2) As used in this subsection, the term “base of operations” shall mean an actual, physical and permanent place of business from which a taxpayer manages, directs and controls its business activities at that location.

*(a.1) added May 6, 2014, P.L.642, No.42)*

(b) Each local taxing authority may, by ordinance or resolution, exempt any person whose total income from all sources is less than twelve thousand dollars (\$12,000) per annum from the per capita or similar head tax, occupation tax or earned income tax, or any portion thereof, and may adopt regulations for the processing of claims for exemptions.

(c) (1) Each political subdivision levying the local services tax shall exempt the following persons from the local services tax:

(i) Any person who has served in any war or armed conflict in which the United States was engaged and is honorably discharged or released under honorable circumstances from active service if, as a result of military service, the person is blind, paraplegic or a double or quadruple amputee or has a service-connected disability declared by the United States Veterans’ Administration or its successor to be a total one hundred percent permanent disability.

(ii) Any person who serves as a member of a reserve component of the armed forces and is called to active duty at any time during the taxable year.

(2) For purposes of this subsection, “reserve component of the armed forces” shall mean the United States Army Reserve, United States Navy Reserve, United States Marine Corps Reserve, United States Coast Guard Reserve, United States Air Force Reserve, the Pennsylvania Army National Guard or the Pennsylvania Air National Guard.

(d) Each political subdivision levying the local services tax at a rate exceeding ten dollars (\$10) shall, and each political subdivision levying the local services tax at a rate of ten dollars (\$10) or less may, by ordinance or resolution, exempt any person from the local services tax whose total earned income and net profits from all sources within the political subdivision is less than twelve thousand dollars (\$12,000) for the calendar year in which the local services tax is levied.

(e) (1) A person seeking to claim an exemption from the local services tax may annually file an exemption certificate with the political subdivision levying the tax and with the person’s employer affirming that the person reasonably expects to receive earned income and net profits from all sources within the political subdivision of less than twelve thousand dollars (\$12,000) in the calendar year for which the exemption certificate is filed. In the event the political subdivision utilizes a tax collection officer pursuant to section 10 of this act, the political subdivision shall provide a copy of the exemption certificate to that officer. The exemption certificate shall have attached to it a copy of all the employee’s last pay stubs or W-2 forms from employment within the political subdivision for the year prior to the fiscal year for which the employee is requesting to be exempted from the local services tax. Upon receipt of the exemption certificate and until otherwise instructed by the political subdivision levying the tax or except as required by clause (2), the employer shall not withhold the tax from the person during the calendar year or the remainder of the calendar year for which the exemption certificate applies. Employers shall ensure that the exemption certificate forms are readily available to employees at all times and shall furnish each new employee with a form at the time of hiring. The Department of Community and Economic Development shall develop and make available to political subdivisions and employers uniform exemption certificates required by this clause.

(2) With respect to a person who claimed an exemption for a given calendar year from the local services tax, upon notification to an employer by the person or by the political subdivision that the person has received earned income and net profits from all sources within that political subdivision equal to or in excess of twelve thousand dollars (\$12,000) in that calendar year or that the person is otherwise ineligible for the tax exemption for that calendar year, or upon an employer’s payment to the person of earned income within that political subdivision in an amount equal to or in excess of twelve thousand dollars (\$12,000) in that calendar year, an employer shall withhold the local services tax from the person under clause (3).

(3) If a person who claimed an exemption for a given calendar year from the local services tax becomes subject to the tax for the calendar year under clause (2), the employer shall withhold the tax for the remainder of that calendar year. The employer shall withhold from the person, for the first payroll period after receipt of the notification under clause (2), a lump sum equal to the amount of tax that was not withheld from the person due to the exemption claimed by the person under this subsection, plus the per payroll amount due for that first payroll period. The amount of tax withheld per payroll period for the remaining payroll periods in that calendar year shall be the same amount withheld for other employees. In the event the employment of a person subject to withholding of the tax under this clause is subsequently severed in that calendar year, the person shall be liable for any outstanding balance of tax due, and the political subdivision levying the tax may pursue collection under this act.

(4) Except as provided in clause (2), it is the intent of this subsection that employers shall not be responsible for investigating exemption certificates, monitoring tax exemption eligibility or exempting any employee from a local services tax.

(f) Such local authorities shall not have authority by virtue of this act:

(1) To levy, assess and collect or provide for the levying, assessment and collection of any tax on the transfer of real property when the transfer is by will or mortgage or the intestate laws of this Commonwealth or on a transfer by the owner of previously occupied residential premises to a builder of new residential premises when such previously occupied residential premises is taken in trade by such builder as part of the consideration from the purchaser of a new previously unoccupied single family residential premises or on a transfer between corporations operating housing projects pursuant to the housing and redevelopment assistance law and the shareholders thereof, or on a transfer between nonprofit industrial development agencies and industrial corporations purchasing from them, or on transfer to or from nonprofit industrial development agencies, or on a transfer between husband and wife, or on a transfer between persons who were previously husband and wife but who have since been divorced; provided such transfer is made within three months of the date of the granting of the final decree in divorce, or the decree of equitable distribution of marital property, whichever is later, and the property or interest therein, subject to such transfer, was acquired by the husband and wife, or husband or wife, prior to the granting of the final decree in divorce, or on a transfer between parent and child or the spouse of such a child, or between parent and trustee for the benefit of a child or the spouse of such child, or on a transfer between a grandparent and grandchild or the spouse of such grandchild, or on a transfer between brother and sister or brother and brother or sister and sister or the spouse of such brother or sister, or on a transfer to a conservancy which possesses a tax-exempt status pursuant to section 501(c)(3) of the Internal Revenue Code, and which has as its primary purpose the preservation of land for historic, recreational, scenic, agricultural or open space opportunities, by and between a principal and straw party for the purpose of placing a mortgage or ground rent upon the premises, or on a correctional deed without consideration, or on a transfer to the United States, the Commonwealth of Pennsylvania, or to any of their instrumentalities, agencies or political subdivisions, by gift, dedication or deed in lieu of condemnation, or deed of confirmation in connection with condemnation proceedings, or reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation which reconveyance may include property line adjustments provided said reconveyance is made within one year from the date of condemnation; or leases or lease transactions; or on a conveyance to a trustee under a recorded trust agreement for the express purpose of holding title in trust as security for a debt contracted at the time of the conveyance under which the trustee is not the lender and requiring the trustee to make reconveyance to the grantor-borrower upon the repayment of the debt, or a transfer within a family from a sole proprietor family member to a family farm corporation, or in any sheriff sale instituted by a mortgagee in which the purchaser of said sheriff sale is the mortgagee who instituted said sale, or on a privilege, transaction, subject, occupation or personal property which is now or does hereafter become subject to a State tax or license fee;

(2) To levy, assess or collect a tax on the gross receipts from utility service of any person or company whose rates and services are fixed and regulated by the Pennsylvania Public Utility Commission or on any public utility services rendered by any such person or company or on any privilege or transaction involving the rendering of any such public utility service;

(3) Except on sales of admission to places of amusement, other than on sales of admission to professional baseball events in a city of the third class with a population of not less than one hundred six thousand and not more than one hundred seven thousand based on the 2000 Federal decennial census, or on sales or other transfers of title or possession of property, to levy, assess or collect a tax on the privilege of employing such tangible property as is now or does hereafter become subject to a State tax; and for the purposes of this clause, real property rented for camping purposes shall not be considered a place of amusement;

(4) To levy, assess and collect a tax on goods and articles manufactured in such political subdivision or on the by-products of manufacture, or on minerals, timber, natural resources and farm products produced in such political subdivision or on the preparation or processing thereof for use or market, or on any privilege, act or transaction related to the business of manufacturing, the production, preparation or processing of

minerals, timber and natural resources, or farm products, by manufacturers, by producers and by farmers with respect to the goods, articles and products of their own manufacture, production or growth, or on any privilege, act or transaction relating to the business of processing by-products of manufacture, or on the transportation, loading, unloading or dumping or storage of such goods, articles, products or by-products; except that local authorities may levy, assess and collect a local services tax and taxes on the occupation, per capita and earned income or net profits of natural persons engaged in the above activities whether doing business as individual proprietorship or as members of partnerships or other associations;

(5) To levy, assess or collect a tax on salaries, wages, commissions, compensation and earned income of nonresidents of the political subdivisions: Provided, That this limitation (5) shall apply only to school districts of the second, third and fourth classes;

(6) To levy, assess or collect a tax on personal property subject to taxation by counties or on personal property owned by persons, associations and corporations specifically exempted by law from taxation under the county personal property tax law: Provided, That this limitation (6) shall not apply to cities of the second class;

(7) To levy, assess or collect a tax on membership in or membership dues, fees or assessment of charitable, religious, beneficial or nonprofit organizations including but not limited to sportsmens, recreational, golf and tennis clubs, girl and boy scout troops and councils;

(8) To levy, assess or collect any tax on a mobilehome or house trailer subject to a real property tax unless the same tax is levied, assessed and collected on other real property in the political subdivision.

(9) To levy, assess or collect any tax on individuals for the privilege of engaging in an occupation except that such a tax, to be known as the local services tax, may be levied, assessed and collected only by the political subdivision of the taxpayer's place of employment. The following apply:

(i) If a local services tax is levied at a combined rate exceeding ten dollars (\$10) in a calendar year, a person subject to the local services tax shall be assessed a pro rata share of the tax for each payroll period in which the person is engaging in an occupation. The pro rata share of the tax assessed on the person for a payroll period shall be determined by dividing the combined rate of the local services tax levied for the calendar year by the number of payroll periods established by the employer for the calendar year. For purposes of determining the pro rata share, an employer shall round down the amount of the tax collected each payroll period to the nearest one-hundredth of a dollar. Collection of the local services tax levied under this subclause shall be made on a payroll period basis for each payroll period in which the person is engaging in an occupation, except as provided in subclause (v).

(ii) If a school district levied an emergency and municipal services tax on the effective date of this subclause, the school district may continue to levy the local services tax in the same amount the school district collected on the effective date of this subclause. However, if a municipality located in whole or in part within the school district subsequently levies the local services tax, the school district may only collect five dollars (\$5) on persons employed within the municipality each calendar year. A school district that did not levy an emergency and municipal services tax on the effective date of this subclause shall be prohibited from levying the local services tax. If a school district and a municipality located in whole or in part within the school district both levy a local services tax at a combined rate exceeding ten dollars (\$10), the school district's pro rata share of the aggregate local services taxes levied on persons employed within the municipality shall be collected by the municipality or its tax officer based on payroll periods as provided under subclause (i) and shall be paid to the school district on a quarterly basis within sixty days of receipt by the municipality or its tax officer.

(iii) Except as provided in subclause (ii), no person shall be subject to the payment of the local services tax by more than one political subdivision during each payroll period as established by subclause (iv).

(iv) With respect to a person subject to the local services tax at a combined rate exceeding ten dollars (\$10), the situs of the tax shall be the place of employment on the first day the person becomes subject to the tax during each payroll period. With respect to a person subject to the local services tax at a combined rate of not more than ten dollars (\$10), the situs of the tax shall be the place of employment determined as of the day the person first becomes subject to the tax during the calendar year. In the event a person is engaged in more than one occupation, that is, concurrent employment, or an occupation which requires the person working in more than one political subdivision during a payroll period, the priority of claim to collect the local services tax shall be in the following order: first, the political subdivision in which a person maintains the person's principal office or is principally employed; second, the political subdivision in which the person resides and works, if the tax is levied by that political subdivision; and third, the political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home.

(v) In the case of concurrent employment, an employer shall refrain from withholding the local services tax if the employee provides a recent pay statement from a principal employer that includes the name of the employer, the length of the payroll period and the amount of the local services tax withheld and a statement from the employee that the pay statement is from the employee's principal employer and the employee will notify other employers of a change in principal place of employment within two weeks of its occurrence. The Department of Community and Economic Development shall develop a uniform employee statement form.

(vi) The local services tax shall be no more than fifty-two dollars (\$52) on each person for each calendar year, irrespective of the number of political subdivisions within which a person may be employed. A political subdivision shall provide a taxpayer a receipt of payment upon request by the taxpayer.

(vii) Political subdivisions shall adopt regulations for the processing of refund claims for overpaid local services taxes for any calendar year. The regulations shall be consistent with 53 Pa.C.S. §§ 8425 (relating to refunds of overpayments) and 8426 (relating to interest on overpayment). Refunds made within seventy-five days of a refund request or seventy-five days after the last day the employer is required to remit the local services tax for the last quarter of the calendar year under section 312 of this act, whichever is later, shall not be subject to interest imposed under 53 Pa.C.S. § 8426. Political subdivisions shall only provide refunds for amounts overpaid in a calendar year that exceed one dollar (\$1).

(viii) The Department of Community and Economic Development shall provide suggested forms and technical assistance to facilitate the administration of the local services tax for political subdivisions and reduce the burden of implementation, accounting and compliance for employers and taxpayers.

(ix) For purposes of this clause, "combined rate" shall mean the aggregate annual rate of the local services tax levied by a school district and a municipality located in whole or in part within the school district.

(10) To levy, assess or collect a tax on admissions to motion picture theatres: Provided, That this limitation (10) shall not apply to cities of the second class.

(11) To levy, assess or collect a tax on the construction of or improvement to residential dwellings or upon the application for or issuance of permits for the construction of or improvements to residential dwellings.

(12) To levy, assess and collect a mercantile or business privilege tax on gross receipts or part thereof which are: (i) discounts allowed to purchasers as cash discounts for prompt payment of their bills; (ii) charges advanced by a seller for freight, delivery or other transportation for the purchaser in accordance with the terms of a contract of sale; (iii) received upon the sale of an article of personal property which was acquired by the seller as a trade-in to the extent that the gross receipts in the sale of the article taken in trade does not exceed the amount of trade-in allowance made in acquiring such article; (iv) refunds, credits or allowances given to a purchaser on account of defects in goods sold or merchandise returned; (v) Pennsylvania sales tax; (vi) based on the value of exchanges or transfers between one seller and another seller who transfers property with the understanding that property of an identical description will be returned at a subsequent date; however, when sellers engaged in similar lines of business exchange property and one of them makes payment to the other in addition to the property exchanged, the additional payment received may be included in the gross receipts of the seller receiving such additional cash payments; (vii) of sellers from sales to other sellers in the same line where the seller transfers the title or possession at the same price for which the seller acquired the merchandise; or (viii) transfers between one department, branch or division of a corporation or other business entity of goods, wares and merchandise to another department, branch or division of the same corporation or business entity and which are recorded on the books to reflect such interdepartmental transactions.

(13) To levy, assess or collect an amusement or admissions tax on membership, membership dues, fees or assessments, donations, contributions or monetary charges of any character whatsoever paid by the general public, or a limited or selected number thereof, for such persons to enter into any place, indoors or outdoors, to engage in any activities, the predominant purpose or nature of which is exercise, fitness, health maintenance, improvement or rehabilitation, health or nutrition education, or weight control.

(14) Except by cities of the second class, to levy, assess or collect a tax on payroll amounts generated as a result of business activity.

(15) Except by cities of the second class in which a sports stadium or arena that has received public funds in connection with its construction or maintenance is located, to levy, assess and collect a publicly funded facility usage fee upon those nonresident individuals who use such facility to engage in an athletic event or otherwise render a performance for which they receive remuneration.

(16) To levy, assess or collect an amusement or admissions tax on the charge imposed upon a patron for the sale of admission to or for the privilege of admission to a bowling alley or bowling lane to engage in one or more games of bowling.

*(301.1 amended Oct. 15, 2008, P.L.1615, No.130)*

**Section 302. Recapture of Tax.**—(a) Notwithstanding the provisions of section 301.1(f)(1), if any stock of a family farm corporation is transferred to a person who is not a family member within ten years from the date of the conveyance from a sole proprietor family member to a family farm corporation, the tax imposed by this article shall become immediately due and payable.

(b) (Deleted by amendment).

*(302 renumbered from 2.1 and amended July 2, 2008, P.L.197, No.32)*

**Section 303. Payroll Tax.**—(a) A city of the second class may levy, assess or collect a tax that does not exceed fifty-five hundredths percent on payroll amounts generated as a result of an employer conducting business activity within a city of the second class. For purposes of a payroll tax levied, assessed or collected by a city of the second class, the business activity shall be directly attributable to activity within a city of the

second class. For purposes of computation of the payroll tax imposed pursuant to this section, the payroll amount attributable to the city shall be determined by applying an apportionment factor to total payroll expense based on that portion of payroll expense which the total number of days an employe, partner, member, shareholder or other individual works within the city bears to the total number of days such employe or person works within and outside of the city.

(a.1) A charitable organization that qualifies for tax exemption pursuant to the act of November 26, 1997 (P.L.508, No.55), known as the "Institutions of Purely Public Charity Act," shall calculate the tax that would otherwise be attributable to the city, but shall only pay the tax on that portion of its payroll expense attributable to business activity for which a tax may be imposed pursuant to section 511 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.). If the charity has purchased or is operating branches, affiliates, subsidiaries or other business entities that do not independently meet the standards of the "Institutions of Purely Public Charity Act," the tax shall be paid on the payroll attributable to such for-profit branches, affiliates or subsidiaries, whether or not the employes are leased or placed under the auspices of the charity's umbrella or parent organization. Nothing in this subsection shall restrict the ability of a charitable organization to contract with the city to provide services to the city in lieu of some or all taxes due under this section.

(b) For purposes of the payroll tax assessed pursuant to this section, an employer is conducting business within a city of the second class if the employer engages, hires, employs or contracts with one or more individuals as employes and, in addition, the employer does at least one of the following:

(1) maintains a fixed place of business within the city;

(2) owns or leases real property within the city for purposes of such business;

(3) maintains a stock of tangible personal property in the city for sale in the ordinary course of such business;

(4) conducts continuous solicitation within the city related to such business; or

(5) utilizes the streets of the city in connection with the operation of such business other than transportation through the city.

(c) All employers in a city of the second class shall file quarterly returns and make quarterly payments as provided for by ordinance enacted by a city of the second class. Every employer making a return shall certify the correctness thereof. A city of the second class may audit, examine or inspect the books, records or accounts of all employers subject to the tax imposed pursuant to this section.

(d) A city of the second class may enact ordinances and regulations necessary to implement this section. The ordinance levying the tax authorized by this section shall permanently replace the city's existing mercantile tax and shall reduce the business privilege tax rate as follows:

(1) In tax years 2005 and 2006, the business privilege tax shall be two mills.

(2) In tax years 2007, 2008 and 2009, the business privilege tax shall be one mill unless the revenues collected from the payroll expense tax exceed fifty million five hundred thousand dollars (\$50,500,000) in any fiscal year, at which time the business privilege tax shall be replaced for the subsequent fiscal year. After the phaseout of the business privilege tax, all amounts of moneys in excess of fifty million five hundred thousand dollars (\$50,500,000) shall be used by the city of the second class to further accelerate the reduction of the tax imposed by the city of the second class on parking as provided in section 308.

(3) In tax year 2010 and thereafter, the business privilege tax may not be imposed.

(e) All taxes, additions and penalties collected pursuant to this section shall be used by a city of the second class exclusively for the general revenue purposes of the city.

(f) An employer shall not offset the amount of tax paid pursuant to this section by reducing compensation or benefits paid to employees.

(g) A city of the second class may bring suit for the recovery of taxes due and unpaid under this section. Any suit brought to recover the tax imposed by this section shall be commenced within three years after such tax is due or within three years after the declaration or return has been filed, whichever is later: Provided, however, That this limitation shall not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:

(1) Where no declaration or return was filed by any person although a declaration or return was required to be filed by him under provisions of this section, there shall be no limitation.

(2) Where an examination of the declaration or return filed by any person or of other evidence relating to such declaration or return in the possession of the city of the second class reveals a fraudulent evasion of taxes, there shall be no limitation.

(3) In the case of substantial understatement of tax liability of twenty-five percent or more and no fraud, suit shall be begun within six years.

(4) This section shall not be construed to limit the governing body from recovering delinquent taxes by any other means provided by law.

(h) If for any reason the payroll tax is not paid when due, interest at the rate of six percent per annum on the amount of said tax and an additional penalty of one percent of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid shall be added and collected. Where suit is brought for the recovery of any such tax, the employer shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed. A city of the second class may, by ordinance or resolution, establish a one-time period during which interest or interest and penalties that would otherwise be imposed for the nonreporting or underreporting of payroll tax liabilities or for the nonpayment of payroll taxes previously imposed and due shall be waived in total or in part if the taxpayer voluntarily files delinquent returns and pays the taxes in full during the period so established.

(i) In addition to any other additions, penalties or enforcement proceedings provided for by ordinance of a city of the second class or a law of this Commonwealth for the collection and enforcement of taxes or the submission of information to a government entity:

(1) Any employer who wilfully makes any false or untrue statement on the employer's return commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not more than two thousand dollars (\$2,000) or to imprisonment for not more than two years, or both.

(2) Any employer who wilfully fails or refuses to file a return required by this section commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than one thousand dollars (\$1,000) or to imprisonment for not more than one year, or both.

(3) Any person who wilfully fails or refuses to appear before the collector in person with the employer's books, records or accounts for examination when required under the provisions of this section or of an ordinance to do so, or who wilfully refuses to permit inspection of the books, records or accounts of any employer in the person's custody or control when the right to make such inspection by the collector is requested, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than five hundred dollars (\$500) or to imprisonment for not more than six months, or both.

(j) As used in this section:

“Employer” means all persons conducting business activity within a city of the second class except for a governmental entity.

“Payroll amounts” means all amounts paid by an employer as salaries, wages, commissions, bonuses, net earnings and incentive payments, whether based on profits or otherwise, fees and similar remuneration for services rendered, whether directly or through an agent and whether in cash, in property or the right to receive property.

*(303 renumbered from 2.2 and amended July 2, 2008, P.L.197, No.32)*

**Section 304. Nonresident Sports Facility Usage Fee.**—A city of the second class in which is located a sports stadium or arena that has received public funds in connection with its construction or maintenance may enact a publicly funded facility usage fee upon those nonresident individuals who use such facility to engage in an athletic event or otherwise render a performance for which they receive remuneration. The fee may be a flat dollar amount or a percentage of the individual’s income attributable to such individual’s usage of the facility. If the fee is a percentage, it may not exceed three percent of the earned income of the individual attributable to the usage of the facility. If any fee is imposed, those individuals liable for the fee shall be exempt from any earned income tax imposed by the city of the second class pursuant to this chapter and any such tax imposed under section 652.1 of the act of March 10, 1949 (P.L.30, No.14), known as the “Public School Code of 1949.” Should a court of competent jurisdiction determine this provision to be invalid for any reason, persons subject to the publicly funded facility usage fee shall not be exempt from any previously applicable earned income tax.

*(304 renumbered from 2.3 and amended July 2, 2008, P.L.197, No.32)*

**Section 305. Vacation of Tax Ordinances and Resolutions by State Tax Measures.**—If, subsequent to the passage of any ordinance or resolution under the authority of this chapter, the General Assembly shall impose a tax or license fee on any privilege, transactions, subject or occupation, or on personal property or on sales of admission to places of amusement or on sales or other transfer of title or possession of property taxed by any such political subdivision hereunder, the act of Assembly imposing the State tax or license fee thereon shall automatically vacate the ordinance or resolution passed under the authority of this chapter as to all taxes accruing subsequent to the end of the current fiscal year of such political subdivision. It is the intention of this section to confer upon such political subdivision the power to levy, assess and collect taxes upon any and all subjects of taxation, except as above restricted and limited, which the Commonwealth has power to tax but which it does not tax or license, subject only to the foregoing provision that any tax or license shall automatically terminate at the end of the current fiscal year of the political subdivision.

*(305 renumbered from 3 and amended July 2, 2008, P.L.197, No.32)*

**Section 306. Advertisement of Intention to Adopt Tax Ordinance or Resolution.**—Prior to the passage of any ordinance or the adoption of any resolution imposing a tax or license fee under the authority hereunder granted, such political subdivision shall give notice of the intention to pass such ordinance or adopt such resolution. Such notice shall be given in addition to all other notices required by law to be given and shall set forth the substantial nature of the tax or license fee to be imposed by the proposed ordinance or resolution, the reason which, in the judgment of the officials of the subdivision, necessitates the imposition of the tax, and the amount of revenue estimated to be derived from the tax. Publication of such notice shall be made by advertisement once a week for three weeks in a newspaper of general circulation within such political subdivision if there is such newspaper and, if there is not, then such publication shall be made in a newspaper of general circulation within the county in which the advertising political subdivision is located.

Every such tax shall continue in force on a calendar or fiscal year basis, as the case may be, without annual reenactment unless the rate of the tax is subsequently changed.

*(306 renumbered from 4 July 2, 2008, P.L.197, No.32)*

**Section 307. Rate, Amount, Court Approval; Revision of Budget.**—Any tax imposed under this chapter shall not be subject to any limitations under existing laws as to rate or amount or as to the necessity of securing court approval or as to budgetary requirements. Any city, borough or township imposing a tax under this chapter may revise its budget during any fiscal year by increasing or making additional appropriations from funds to be provided from such tax.

The ordinance or resolution may be passed or adopted prior to the beginning of the fiscal year and prior to the preparation of the budget when desirable.

Every ordinance or resolution which imposed a tax under the authority of this chapter shall be passed or adopted, if for a school district, during the period other school taxes are required by law to be levied and assessed by such district. Each ordinance and resolution shall state that it is enacted under the authority of this chapter, known as “The Local Tax Enabling Act”.

*(307 renumbered from 5 and amended July 2, 2008, P.L.197, No.32)*

**Section 308. Second Class City Parking Tax Rates.**—*(308 repealed Sept. 18, 2009, P.L.396, No.44)*

**Section 309. Appeals by Taxpayers.**—No tax levied for the first time by any political subdivision to which this chapter applies shall go into effect until thirty days from the time of the adoption of the ordinance or resolution levying the tax. Within said thirty days, taxpayers representing twenty-five percent or more of the total valuation of real estate in the political subdivision as assessed for taxation purposes, or taxpayers of the political subdivision not less than twenty-five in number aggrieved by the ordinance or resolution shall have the right to appeal therefrom to the court of quarter sessions of the county upon giving bond with sufficient security in the amount of five hundred dollars (\$500), approved by the court, to prosecute the appeal with effect and for the payment of costs. The petition shall set forth the objections to the tax and the facts in support of such objections, and shall be accompanied by the affidavit of at least five of the petitioners that the averments of the petition are true and the petition is not filed for the purpose of delay.

No such appeal shall act as a supersedeas unless specifically allowed by the court to which the appeal is taken or a judge thereof.

Immediately upon the filing of any such petition, the petitioners shall serve a copy of the petition and any rule granted by the court upon the president, chairman, secretary or clerk of the legislative body levying the tax.

The court shall fix a day for a hearing not less than fifteen days nor more than thirty days after the filing of the petition. Notice of the time of such hearing shall be given to all interested parties as the court shall direct. The court shall promptly hear and dispose of the appeal.

It shall be the duty of the court to declare the ordinance and the tax imposed thereby to be valid unless it concludes that the ordinance is unlawful or finds that the tax imposed is excessive or unreasonable; but the court shall not interfere with the reasonable discretion of the legislative body in selecting the subjects or fixing the rates of the tax. The court may declare invalid all or any portion of the ordinance or of the tax imposed or may reduce the rates of tax.

*(309 renumbered from 6 and amended July 2, 2008, P.L.197, No.32)*

**Section 310. Filing of Certified Copies of Ordinances and Resolutions.**—When an ordinance or a resolution is first passed or adopted by a political subdivision imposing a tax or license fee under the authority of this chapter, an exact printed or typewritten copy thereof, certified to by the secretary of the taxing body, shall be filed with the Department of Community and Economic Development within fifteen days after the same becomes effective.

Any secretary or person acting as the clerk or secretary of the taxing body of any political subdivision during the meeting at which an ordinance or resolution imposing a tax or license fee is passed or adopted as herein provided who shall fail to file the certified copy or statement relative thereto with the Department of Community and Economic Development as herein required, shall, upon summary conviction thereof in the county in which the political subdivision is located, be sentenced to pay a fine of not less than five dollars (\$5) nor more than twenty-five dollars (\$25), and the costs of prosecution.

*(310 renumbered from 7 and amended July 2, 2008, P.L.197, No.32)*

**Section 311. Limitations on Rates of Specific Taxes.**—No taxes levied under the provisions of this chapter shall be levied by any political subdivision on the following subjects exceeding the rates specified in this section:

(1) Per capita, poll or other similar head taxes, ten dollars (\$10).

(2) On each dollar of the whole volume of business transacted by wholesale dealers in goods, wares and merchandise, one mill, by retail dealers in goods, wares and merchandise and by proprietors of restaurants or other places where food, drink and refreshments are served, one and one-half mills; except in cities of the second class, where rates shall not exceed one mill on wholesale dealers and two mills on retail dealers and proprietors. No such tax shall be levied on the dollar volume of business transacted by wholesale and retail dealers derived from the resale of goods, wares and merchandise, taken by any dealer as a trade-in or as part payment for other goods, wares and merchandise, except to the extent that the resale price exceeds the trade-in allowance. When a political subdivision which currently levies, assesses or collects a mercantile or business privilege tax on gross receipts under section 533 of the act of December 13, 1988 (P.L.1121, No.145), known as the "Local Tax Reform Act," merges with one or more political subdivisions to form a new political subdivision on or after August 1, 2008, the new political subdivision may levy that mercantile or business privilege tax in the first year following the merger at a rate necessary to generate the same revenues generated in the last fiscal year that the merging political subdivision generated before the merger. Such rate shall remain in effect for the new political subdivision in subsequent years, but the revenue-neutral limitation shall only apply to the first year following the merger. If the merging political subdivision had previously shared the rate of taxation with another political subdivision, the nonmerging political subdivision which had shared the rate is capped at the rate it was previously levying. ((2) amended July 2, 2013, P.L.240, No.39)

(3) On wages, salaries, commissions and other earned income of individuals, one percent.

(4) On retail sales involving the transfer of title or possession of tangible personal property, two percent.

(5) On the transfer of real property, one percent.

(6) On admissions to places of amusement, athletic events and the like, and on motion picture theatres in cities of the second class, ten percent.

(7) Flat rate occupation taxes not using a millage or percentage as a basis, ten dollars (\$10).

(8) Local services taxes, fifty-two dollars (\$52).

(9) On admissions to ski facilities, ten percent. The tax base upon which the tax shall be levied shall not exceed forty percent of the cost of the lift ticket. The lift ticket shall include all costs of admissions to the ski facility.

(10) On admissions to golf courses, ten percent. The tax base upon which the tax shall be levied shall not exceed forty percent of the greens fee. The greens fee shall include all costs of admissions to the golf course.

(11) *((11) deleted by amendment Dec. 1, 2003, P.L.1729, No.222)*

(12) On payrolls, fifty-five hundredths percent.

Except as otherwise provided in this chapter, at any time two political subdivisions shall impose any one of the above taxes on the same person, subject, business, transaction or privilege, located within both such political subdivisions, during the same year or part of the same year, under the authority of this chapter then the tax levied by a political subdivision under the authority of this chapter shall, during the time such duplication of the tax exists, except as hereinafter otherwise provided, be one-half of the rate, as above limited, and such one-half rate shall become effective by virtue of the requirements of this chapter from the day such duplication becomes effective without any action on the part of the political subdivision imposing the tax under the authority of this chapter. When any one of the above taxes has been levied under the provisions of this chapter by one political subdivision and a subsequent levy is made either for the first time or is revived after a lapse of time by another political subdivision on the same person, subject, business, transaction or privilege at a rate that would make the combined levies exceed the limit allowed by this subdivision, the tax of the second political subdivision shall not become effective until the end of the fiscal year for which the prior tax was levied, unless:

(1) Notice indicating its intention to make such levy is given to the first taxing body by the second taxing body as follows: (i) when the notice is given to a school district it shall be given at least forty-five days prior to the last day fixed by law for the levy of its school taxes; (ii) when given to any other political subdivision it shall be prior to the first day of January immediately preceding, or if a last day for the adoption of the budget is fixed by law, at least forty-five days prior to such last day; or

(2) Unless the first taxing body shall indicate by appropriate resolution its desire to waive notice requirements in which case the levy of the second taxing body shall become effective on such date as may be agreed upon by the two taxing bodies.

It is the intent and purpose of this provision to limit rates of taxes referred to in this section so that the entire burden of one tax on a person, subject, business, transaction or privilege shall not exceed the limitations prescribed in this section: Provided, however, That any two political subdivisions which impose any one of the above taxes, on the same person, subject, business, transaction or privilege during the same year or part of the same year may agree among themselves that, instead of limiting their respective rates to one-half of the maximum rate herein provided, they will impose respectively different rates, the total of which shall not exceed the maximum rate as above permitted.

Notwithstanding the provisions of this section, any city of the second class A may enact a tax upon wages, salaries, commissions and other earned income of individuals resident therein, not exceeding one percent, even though a school district levies a similar tax on the same person provided that the aggregate of both taxes does not exceed two percent.

*(311 renumbered from 8 and amended July 2, 2008, P.L.197, No.32)*

**Section 312. Register for and Withholding of Local Services Taxes.**—It shall be the duty of the Department of Community and Economic Development to have available an official continuing register supplemented annually of all local services taxes levied under authority of this chapter. The register and its supplements, hereinafter referred to as the register, shall list such jurisdictions levying local services taxes, the rate of the tax as stated in the tax levying ordinance or resolution, and the effective rate on resident and nonresident

taxpayers, if different from the stated rate because of a coterminous levy, the name and address of the officer responsible for administering the collection of the tax and from whom information, forms for reporting and copies of rules and regulations are available. With each jurisdiction listed, all jurisdictions making coterminous levies shall also be noted and their tax rates shown.

Information for the register shall be furnished by the secretary of each taxing body to the Department of Community and Economic Development in such manner and on such forms as the Department of Community and Economic Development may prescribe. The information must be received by the Department of Community and Economic Development by certified mail not later than May 31 of each year to show new tax enactments, repeals and changes. Failure to comply with this date for filing may result in the omission of the levy from the register for that year. Failure of the Department of Community and Economic Development to receive information of taxes continued without change may be construed by the department to mean that the information contained in the previous register remains in force.

The Department of Community and Economic Development shall have the register with such annual supplements as may be required by new tax enactments, repeals or changes available upon request not later than July 1 of each year. The effective period for each register shall be from July 1 of the year in which it is issued to June 30 of the following year.

Employers shall not be required by any local ordinance to withhold from the wages, salaries, commissions or other compensation of their employes any tax imposed under the provisions of this act, which is not listed in the register, or make reports of wages, salaries, commissions or other compensation in connection with taxes not so listed: Provided, That if the register is not available by July 1, the register of the previous year shall continue temporarily in effect for an additional period not to exceed one year. The provisions of this section shall not affect the liability of any taxpayer for taxes lawfully imposed under this act.

Ordinances or resolutions imposing local services taxes under authority of this chapter may contain provisions requiring employers doing business within the jurisdiction of the political subdivision imposing the tax to withhold the tax from the compensation of those of their employes who are subject to the tax: Provided, That no employer shall be held liable for failure to withhold the local services tax or for the payment of the withheld tax money to a political subdivision if the failure to withhold taxes arises from incorrect information submitted by the employe as to the employe's place or places of employment, the employe's principal office or where the employe is principally employed: And provided further, That an employer shall not be liable for payment of the local services tax in an amount exceeding the amount withheld by the employer if the employer complies with the provisions of section 301.1(e) and (f)(9) and remits the amount so withheld in accordance with this section: And provided further, That the local services tax shall be applicable to employment in the period beginning January 1, of the current year and ending December 31 of the current year, except that taxes imposed for the first time shall become effective from January 1 of the year specified in the ordinance or resolution, and the tax shall continue in force on a calendar year basis: And provided further, That employers shall be required to remit the local services taxes thirty days after the end of each quarter of a calendar year.

*(312 renumbered from 9 and amended July 2, 2008, P.L.197, No.32)*

**Section 312.1.** (Reserved).

*(312.1 added July 2, 2008, P.L.197, No.32)*

**Section 313. Collection of Taxes.**—(a) Administrative Personnel; Joint Agreements.—

(1) Except as provided in section 506, any political subdivision is hereby authorized to provide by ordinance or resolution for the creation or designation of tax bureaus or the appointment and compensation of a political subdivision, public employe, tax bureau or public or private agency for the assessment and

collection of taxes imposed under authority of this chapter. Each ordinance or resolution under this section authorizing a political subdivision, public employe, tax bureau or public or private agency to act in the capacity and with the authority of a tax collector shall continue in force without annual reauthorization unless otherwise repealed or revoked by the political subdivision or unless otherwise provided by this act.

(2) Except as provided in section 506, political subdivisions imposing taxes under authority of this chapter are authorized to make joint agreements for the collection of such taxes or any of them. The same political subdivision, tax bureau or public or private agency may be employed by two or more political subdivisions to collect any taxes imposed by them under authority of this chapter.

(b) Single Collector for Earned Income Taxes When Certain School Districts Impose Such Taxes.—(Deleted by amendment).

(c) Single Tax Collector in Certain Home Rule Municipality.—(Deleted by amendment).

*(313 renumbered from 10 and amended July 2, 2008, P.L.197, No.32)*

**Section 314.** (Reserved).

***(314 added July 2, 2008, P.L.197, No.32)***

**Section 315. Audits of Taxes Other Than Earned Income Taxes.**—The books, accounts and records of tax collectors pursuant to this chapter, other than taxes levied, assessed and collected upon earned income, shall be audited, adjusted and settled in the manner prescribed by law for the auditing, adjusting and settling of accounts of persons receiving or expending funds of the political subdivision which has levied, assessed and collected the taxes pursuant to this chapter, other than taxes levied, assessed and collected upon earned income.

*(315 renumbered from 12 and amended July 2, 2008, P.L.197, No.32)*

**Section 316.** (Reserved).

*(316 added July 2, 2008, P.L.197, No.32)*

**Section 317. Payment of Tax to Other Political Subdivisions or States as Credit or Deduction; Withholding Tax.**—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 businesses, professions or other activities and for any income tax imposed by any other political subdivision of this Commonwealth under the authority of this chapter.

Payment of any tax on salaries, wages, commissions, other compensation or on net profits of business, professions or other activities to a political subdivision by residents thereof pursuant to an ordinance or resolution passed or adopted under the authority of this chapter shall be credited to and allowed as a deduction from the liability of such persons for any other like tax respectively on salaries, wages, commissions, other compensation or on net profits of businesses, professions or other activities imposed by any other political subdivision of this Commonwealth under the authority of this chapter.

Payment of any tax on income to any political subdivision by residents thereof pursuant to an ordinance or resolution passed or adopted under the authority of this chapter shall, to the extent that such income includes salaries, wages, commissions, other compensation or net profits of businesses, professions or other activities, but in such proportion as hereinafter set forth, be credited to and allowed as a deduction from the liability of such persons for any other tax on salaries, wages, commissions, other compensation or on net profits of businesses, professions, or other activities imposed by any other political subdivision of this Commonwealth under the authority of this chapter.

Payment of any tax on income to any state or to any political subdivision thereof by residents thereof, pursuant to any State or local law, may, at the discretion of the Pennsylvania political subdivision imposing such tax, to the extent that such income includes salaries, wages, commissions, or other compensation or net profits of businesses, professions or other activities but in such proportions as hereinafter set forth, be credited to and allowed as a deduction from the liability of such person for any other tax on salaries, wages, commissions, other compensation or net profits of businesses, professions or other activities imposed by any political subdivision of this Commonwealth under the authority of this chapter, if residents of the political subdivision in Pennsylvania receive credits and deductions of a similar kind to a like degree from the tax on income imposed by the other state or political subdivision thereof.

Payment of any tax on income to any State other than Pennsylvania or to any political subdivision located outside the boundaries of this Commonwealth, by residents of a political subdivision located in Pennsylvania shall, to the extent that such income includes salaries, wages, commissions, or other compensation or net profits of businesses, professions or other activities but in such proportions as hereinafter set forth, be credited to and allowed as a deduction from the liability of such person for any other tax on salaries, wages, commissions, other compensation or net profits of businesses, professions or other activities imposed by any political subdivision of this Commonwealth under the authority of this chapter.

Where a credit or a deduction is allowable in any of the several cases hereinabove provided, it shall be allowed in proportion to the concurrent periods for which taxes are imposed by the other state or respective political subdivisions, but not in excess of the amount previously paid for a concurrent period.

No credit or deduction shall be allowed against any tax on earned income imposed under authority of this chapter to the extent of the amount of credit or deduction taken for the same period by the taxpayer against any income tax imposed by the Commonwealth of Pennsylvania under section 314 of the act of March 4, 1971 (P.L.6, No.2) known as the "Tax Reform Code of 1971," on account of taxes imposed on income by other states or by their political subdivisions.

*(317 renumbered from 14 and amended July 2, 2008, P.L.197, No.32)*

**Section 318. Personal Property.**—Any assessment of a tax on personal property of a decedent shall include all property owned, held or possessed by a decedent, which should have been returned by him for taxation for any former year or years not exceeding five years prior to the year in which the decedent died. Wherever any personal property taxable under the provisions of this chapter, was owned by a decedent at the time of his death and is held by his executor or administrator, return of such personal property shall be made and the tax paid, if such decedent was domiciled at the time of his death in the political subdivision imposing the tax, notwithstanding the residence or location of such executor or administrator or of any beneficiary, or the place which such securities are kept.

*(318 renumbered from 15 and amended July 2, 2008, P.L.197, No.32)*

**Section 319. Limitation on Assessment.**—No assessment may be made of any tax imposed under this chapter more than five years after the date on which such tax should have been paid except where a fraudulent return or no return has been filed.

*(319 renumbered from 16 and amended July 2, 2008, P.L.197, No.32)*

**Section 320. Tax Limitations.**—(a) Over-all Limit of Tax Revenues.—The aggregate amount of all taxes imposed by any political subdivision under this section and in effect during any fiscal year shall not exceed an amount equal to the product obtained by multiplying the latest total market valuation of real estate in such political subdivision, as determined by the board for the assessment and revision of taxes or any similar board

established by the assessment laws which determines market values of real estate within the political subdivision, by twelve mills. In school districts of the second class, third class and fourth class and in any political subdivision within a county where no market values of real estate have been determined by the board for the assessment and revision of taxes, or any similar board, the aggregate amount of all taxes imposed under this section and in effect during any fiscal year shall not exceed an amount equal to the product obtained by multiplying the latest total market valuation of real estate in such school district, or other political subdivision, as certified by the State Tax Equalization Board, by twelve mills. In school districts of the third and fourth class, taxes imposed on sales involving the transfer of real property shall not be included in computing the aggregate amount of taxes for any fiscal year in which one hundred or more new homes or other major improvements on real estate were constructed in the school district.

The aggregate amount of all taxes imposed by any independent school district under this section during any fiscal year shall not exceed an amount equal to the product obtained by multiplying the latest total valuation of real estate in such district by fifteen mills.

(b) **Reduction of Rates Where Taxes Exceed Limitations; Use of Excess Moneys.**—If, during any fiscal year, it shall appear that the aggregate revenues from taxes levied and collected under the authority of this chapter will materially exceed the limitations imposed by this chapter, the political subdivision shall forthwith reduce the rate or rates of such tax or taxes to stay within such limitations as nearly as may be. Any one or more persons liable for the payment of taxes levied and collected under the authority of this chapter shall have the right to complain to the court of common pleas of the county in an action of mandamus to compel compliance with the preceding provision of this subsection. Tax moneys levied and collected in any fiscal year in excess of the limitations imposed by this chapter shall not be expended during such year, but shall be deposited in a separate account in the treasury of the political subdivision for expenditure in the following fiscal year. The rates of taxes imposed under this chapter for the following fiscal year shall be so fixed that the revenues thereby produced, together with the excess tax moneys on deposit as aforesaid, shall not exceed the limitations imposed by this chapter.

*(320 renumbered from 17 and amended July 2, 2008, P.L.197, No.32)*

**Section 329. Legal Representation.**—When bringing a suit under any provision of this chapter, the taxing district or the person, public employe or private agency designated by the taxing district shall be represented by an attorney.

*(329 added July 2, 2008, P.L.197, No.32)*

**Section 330. Restricted Use.**—(a) Any municipality deriving funds from the local services tax may only use the funds for:

- (1) Emergency services, which shall include emergency medical services, police services and fire services.
- (2) Road construction and maintenance.
- (3) Reduction of property taxes.

(4) Property tax relief through implementation of a homestead and farmstead exclusion in accordance with 53 Pa.C.S. Ch. 85 Subch. F (relating to homestead property exclusion).

(a.1) A municipality shall use no less than twenty-five percent of the funds derived from the local services tax for emergency services.

(b) In the event that a municipality decides to implement a homestead and farmstead exclusion for purposes of providing property tax relief in accordance with subsection (a)(4), the following shall apply:

(1) The decision to provide a homestead and farmstead exclusion shall be made, by ordinance, prior to December 1, with the homestead and farmstead exclusion to take effect for the fiscal year beginning the first day of January following adoption of the ordinance. Upon adopting an ordinance in accordance with this paragraph, a municipality shall, by first class mail, notify the assessor, as defined in 53 Pa.C.S. § 8582 (relating to definitions), of its decision to provide a homestead and farmstead exclusion.

(2) The assessor shall provide a municipality that will be imposing a homestead and farmstead exclusion in accordance with subsection (a)(4) with a certified report, as provided in 53 Pa.C.S. § 8584(i) (relating to administration and procedure), listing information regarding homestead and farmstead properties in the municipality as determined pursuant to applications filed with the assessor in connection with this or any other law under which a homestead or farmstead exclusion has been adopted. In the year in which an ordinance is adopted in accordance with paragraph (1), the assessor shall provide the certified report after being notified by the municipality of its decision to provide a homestead and farmstead exclusion. In each succeeding year, the assessor shall provide the certified report by December 1, or at the same time the tax duplicate is certified to the municipality, whichever occurs first. Any duty placed on an assessor in accordance with this paragraph shall be in addition to those established in 53 Pa.C.S. Ch. 85 Subch. F and the act of June 27, 2006 (1st Sp.Sess. P.L.1873, No.1), known as the "Taxpayer Relief Act."

(3) Only homestead or farmstead properties identified in the certified report of the assessor obtained in any year shall be eligible to receive the exclusion for the next fiscal year.

(4) In the year in which a municipality adopts the ordinance evidencing its decision to implement a homestead and farmstead exclusion, the municipality shall notify by first class mail the owner of each parcel of residential property within the municipality which is not approved as a homestead or farmstead property or for which the approval is due to expire of the following:

(i) That the homestead and farmstead exclusion program is to be implemented to provide property tax relief as authorized by subsection (a)(4), beginning in the next fiscal year.

(ii) That only properties currently identified in the certified report of the assessor as having been approved in whole or in part as homestead or farmstead properties shall be entitled to an exclusion in the next fiscal year.

(iii) That owners of properties that have not been approved by the assessor as homestead or farmstead properties may file an application in accordance with 53 Pa.C.S. § 8584(a) by the annual application deadline of March 1 in order to qualify for the program in the year following the next fiscal year.

(5) The one-time notice required by paragraph (4) may be combined and made together with the annual notice required by paragraph (7) or with an annual notice by a coterminous political subdivision that has implemented a homestead and farmstead exclusion.

(6) In the year in which the initial decision to provide a homestead and farmstead exclusion is made and in each succeeding year, a municipality shall, by resolution, fix the dollar amount that is to be excluded from the assessed value of each homestead and farmstead property for the next fiscal year, consistent with 53 Pa.C.S. §§ 8583 (relating to exclusion for homestead property) and 8586 (relating to limitations). This determination of the amount of the homestead and farmstead exclusion shall be made, after receipt of the tax duplicate and the certified report from the assessor, at the time the governing body of a municipality determines the municipal budget and estimates revenues to be derived from the local services tax for the next fiscal year.

(7) Each year after the year in which the municipality implements a homestead and farmstead exclusion and no later than one hundred twenty days prior to the application deadline, the municipality shall

give notice of the existence of the municipality's homestead and farmstead exclusion program; the need to file an application in accordance with 53 Pa.C.S. § 8584(a) in order to qualify for the program; and the application deadline, which, notwithstanding 53 Pa.C.S. § 8584(b), shall be December 15. This annual notice, which shall be given by first class mail, need only be sent to the owner of each parcel of residential property in the municipality which is not approved as homestead or farmstead property or for which the approval is due to expire.

(c) For purposes of this section, the term "municipality" does not include a school district.

*(330 added July 2, 2008, P.L.197, No.32)*

#### **Section 401. Scope of chapter.**

This chapter relates to optional occupation tax elimination.

*(401 added Oct. 15, 2008, P.L.1615, No.130)*

#### **Section 402. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Earned income tax." A tax on earned income and net profits levied under this act or a tax on earned income and net profits levied under the act of June 27, 2006 (1st Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act.

"Election officials." The county board of elections of a county.

"Governing body." A city council, borough council, incorporated town council, board of township commissioners, board of township supervisors, a governing council of a home rule municipality or optional plan municipality, a governing council of any similar general purpose unit of government which may hereafter be created by statute or a board of school directors of a school district.

"Income tax." An earned income tax or a personal income tax imposed under this chapter.

"Occupation tax." A tax based upon an assessed valuation of a particular trade, occupation or profession. The term includes a tax imposed on a flat rate on all trades, occupations or professions. The term does not include a tax upon persons employed in a taxing district, commonly known as an occupational privilege tax.

"Personal income tax." A tax on income enumerated under section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, as determined by the Department of Revenue, subject to any correction or fraud, evasion or error as finally determined by the Commonwealth and levied pursuant to the act of June 27, 2006 (1st Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act.

"Political subdivision." Any city, borough, incorporated town, township or school district.

"Taxpayer Relief Act." The act of June 27, 2006 (1st Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act.

*(402 added Oct. 15, 2008, P.L.1615, No.130)*

**Section 403. Occupation tax replacement generally.**

A political subdivision that levies an occupation tax may replace the revenues provided by the occupation tax by increasing the rate of the income tax as provided in this chapter.

*(403 added Oct. 15, 2008, P.L.1615, No.130)*

**Section 404. Income tax rate limits.**

(a) Income tax rate limits.—For the first fiscal year beginning after approval of the referendum under section 407, and each fiscal year thereafter, the governing body of a political subdivision using the procedures authorized by this chapter shall be authorized to impose an income tax at a rate not exceeding the maximum income tax rate as calculated under subsection (b) or (b.1).

(b) Calculation of maximum earned income tax rate.—The maximum earned income tax rate shall be determined by taking the sum of the rates calculated under paragraphs (1) and (2) and limited by paragraph (3):

(1) The rate of the earned income tax that would have resulted in the collection by the political subdivision of an amount equal to the amount collected from the occupation tax. The calculation by a school district under this paragraph shall be made using actual revenue collections for the fiscal year ending in 2002. The calculation by a municipality under this paragraph shall be made using actual revenue collections for the calendar year ending December 31, 2001.

(2) The rate at which the earned income tax was collected by a school district for the fiscal year ending in 2002 or the rate at which the earned income tax was collected by a municipality for the calendar year ending December 31, 2001.

(3) The tax rate determined under paragraphs (1) and (2) shall be rounded off to the nearest increment of ten hundredths of one percent.

The maximum rate of the earned income tax calculated under this subsection shall not be subject to the limits on the earned income tax specified under section 311(3).

(b.1) Calculation of maximum income tax rate.—The maximum income tax rate for a school district that levied an occupation tax for the fiscal year ending in 2009, or a municipality that levied an occupation tax for the calendar year ending December 31, 2008, shall be determined by taking the sum of the rates calculated under paragraphs (1) and (2) and limited by paragraph (3):

(1) The rate of the income tax that would have resulted in the collection by the political subdivision of an amount equal to the amount collected from the occupation tax. The calculation by a school district under this paragraph shall be made using actual revenue collections for the fiscal year ending in 2009. The calculation by a municipality under this paragraph shall be made using actual revenue collections for the calendar year ending December 31, 2008.

(2) The rate at which the income tax was collected by a school district for the fiscal year ending in 2009 or the rate at which an earned income tax was collected by a municipality for the calendar year ending December 31, 2008.

(3) The tax rate determined under paragraphs (1) and (2) shall be rounded off to the nearest increment of ten hundredths of one percent.

The maximum rate of the income tax calculated under this subsection shall not be subject to the limits on the earned income tax specified under section 311(3).

(c) Other rates of taxation.—If a municipality or school district, both of which impose an earned income tax on the same individual under this act or the Taxpayer Relief Act and both of which are limited to or have agreed upon a division of the tax rate in accordance with section 311 or 304 of the Taxpayer Relief Act, and the municipality or school district receives voter approval under section 407 and opts to increase the rate of income tax in excess of that limit or agreement, then the municipality or school district which does not receive voter approval shall remain subject to that limit or agreement.

*(404 added Oct. 15, 2008, P.L.1615, No.130)*

**Section 405. Occupation tax prohibited.**

(a) General rule.—For the first fiscal year beginning after approval of the referendum required under section 407 and each fiscal year thereafter, a political subdivision is prohibited from levying, assessing or collecting an occupation tax.

(b) Occupation assessment tax roll.—In a county where no political subdivision levies the tax, the county shall not be required under the provisions of this or another statute to maintain the occupation assessment tax roll.

(c) Applicability.—This section shall not apply to the collection of delinquent occupation taxes.

*(405 added Oct. 15, 2008, P.L.1615, No.130)*

**Section 406. Resolution required.**

The governing body may seek authority to increase the maximum limits of the income tax by adopting a resolution to place a referendum on the ballot pursuant to section 407. The governing body shall transmit a copy of the resolution to the appropriate election officials. Prior to approving the resolution, the governing body shall:

(1) Give public notice of its intent to adopt the resolution in the manner provided under section 306.

(2) Conduct at least one public hearing regarding eliminating the occupation tax and increasing the maximum rate of the income tax.

*(406 added Oct. 15, 2008, P.L.1615, No.130)*

**Section 407. Binding referendum.**

(a) Referendum to be held.—A political subdivision may increase the maximum rate of the income tax only by obtaining the approval of the electorate of the affected political subdivision in a public referendum at the general or municipal election preceding the fiscal year when the maximum rate of the income tax will be increased. The election officials shall cause a question to be placed on the ballot at the first general or municipal election occurring at least 90 days after their receipt of the resolution required under section 406.

(b) Contents of question.—The referendum question must state the maximum rate of the income tax calculated under section 404 and that the additional revenue generated by an increase in the income tax will be used to eliminate the occupation tax. The question shall be in clear language that is readily understandable by a layperson. For the purpose of illustration, a referendum question may be framed as follows:

Do you favor increasing the rate of the (earned or personal) income tax to a maximum of X%, with the requirement that the increase be used to eliminate the occupation tax?

(c) Vote.—If a majority of the electors voting on the question vote “yes,” then the governing body shall be authorized to implement an increase in the income tax pursuant to section 404 and shall be required to eliminate the occupation tax as required under section 405. If a majority of the electors voting on the question vote “no,” the governing body shall have no authority to increase the rate of the income tax above the maximum rate otherwise provided by law.

(d) Voting proceedings.—Proceedings under this section shall be in accordance with the provisions of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code.

*(407 added Oct. 15, 2008, P.L.1615, No.130)*

#### **Section 408. Applicability.**

This chapter shall apply to political subdivisions which levy an occupation tax on the date of enactment of this section.

*(408 added Oct. 15, 2008, P.L.1615, No.13)*

#### **Section 409. Applicability of personal income tax.**

Nothing in this chapter shall be construed to authorize a municipality to levy, assess or collect a personal income tax. The authority to levy, assess or collect a personal income tax shall only apply to a school district in which a board of school directors sought to impose a personal income tax under section 321(c) of the Taxpayer Relief Act and the referendum under section 331.2 or 332 of the Taxpayer Relief Act is approved by the electorate under the Taxpayer Relief Act.

*(409 added Oct. 15, 2008, P.L.1615, No.130)*

#### **Section 501. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Article XIII tax officer.” The tax officer authorized by a political subdivision to collect income taxes levied prior to January 1, 2012.

“Business.” An enterprise, activity, profession or any other undertaking of an unincorporated nature conducted for profit or ordinarily conducted for profit whether by a person, partnership, association or any other entity.

“Business entity.” A sole proprietorship, corporation, joint-stock association or company, partnership, limited partnership, limited liability company, association, business trust, syndicate or other commercial or professional activity organized under the laws of this Commonwealth or any other jurisdiction.

“Certified public accountant” or “public accountant.” A certified public accountant, public accountant or firm, as provided for in the act of May 26, 1947 (P.L.318, No.140), known as the CPA Law.

“Claim.” A written demand for payment made by a tax officer or tax collection district for income taxes collected by another tax officer or tax collection district.

“Corporation.” A corporation or joint-stock association organized under the laws of the United States, the Commonwealth of Pennsylvania or any other state, territory, foreign country or dependency. The term shall include an entity which is classified as a corporation for Federal income tax purposes.

“Current year.” The calendar year for which the tax is levied.

“Department.” The Department of Community and Economic Development of the Commonwealth.

“Domicile.” The place where a person lives and has a permanent home and to which the person has the intention of returning whenever absent. Actual residence is not necessarily domicile, for domicile is the fixed place of abode which, in the intention of the taxpayer, is permanent rather than transitory. Domicile is the voluntarily fixed place of habitation of a person, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some event occurs to induce the person to adopt some other permanent home. In the case of a business, domicile is that place considered as the center of business affairs and the place where its functions are discharged.

“Earned income.” The compensation as required to be reported to or as determined by the Department of Revenue under section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and rules and regulations promulgated under that section. Employee business expenses as reported to or determined by the Department of Revenue under Article III of the Tax Reform Code of 1971 shall constitute allowable deductions in determining earned income. The term does not include offsets for business losses. The amount of any housing allowance provided to a member of the clergy shall not be taxable as earned income.

“Earned income and net profits tax.” The tax levied by a political subdivision on earned income and net profits.

“Effective income tax rate.” The actual tax rate levied by a political subdivision on a taxpayer based on the total of all income taxes imposed under this act and all other acts, adjusted under section 311.

“Effective local services tax rate.” The actual local services tax rate levied by a political subdivision on taxpayers based on the total of all local services taxes imposed under this act and all other acts, adjusted under section 311.

“Employer.” A person, business entity or other entity, employing one or more persons for a salary, wage, commission or other compensation. The term includes the Commonwealth, a political subdivision and an instrumentality or public authority of either. For purposes of penalties under this chapter, the term includes a corporate officer.

“Income tax.” Except as set forth in section 511(b), an earned income and net profits tax, personal income tax or other tax that is assessed on the income of a taxpayer levied by a political subdivision under the authority of this act or any other act.

“Joint tax collection committee.” An entity formed by two or more tax collection committees for the purpose of income tax collection in more than one tax collection district.

“Local services tax.” A tax on individuals for the privilege of engaging in an occupation that is levied, assessed and collected only by the political subdivision of the taxpayer’s place of employment under the authority of this act or any other act.

“Municipality.” A city of the second class, city of the second class A, city of the third class, borough, town, township of the first class or township of the second class.

“Net profits.” The net income from the operation of a business, other than a corporation, as required to be reported to or as determined by the Department of Revenue under section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and rules and regulations promulgated under that section. The term does not include income under any of the following paragraphs:

(1) Income which:

- (i) is not paid for services provided; and
- (ii) is in the nature of earnings from an investment.

(2) Income which represents:

- (i) any gain on the sale of farm machinery;
- (ii) any gain on the sale of livestock held 12 months or more for draft, breeding or dairy purposes; or
- (iii) any gain on the sale of other capital assets of a farm.

“Nonresident.” A person or business domiciled outside the political subdivision levying the tax.

“Nonresident tax.” An income tax levied by a municipality on a nonresident.

“Official register.” The part of the tax register that includes withholding tax rates as provided in section 511(a)(3).

“Person.” A natural person.

“Political subdivision.” A city of the second class, city of the second class A, city of the third class, borough, town, township of the first class, township of the second class, school district of the first class A, school district of the second class, school district of the third class, school district of the fourth class or municipal authority.

“Preceding year.” The calendar year before the current year.

“Private agency.” A business entity or person appointed as a tax officer by a tax collection committee.

“Public agency.” Any and all public bodies, authorities, agencies, instrumentalities, political subdivisions, intermediate units, councils, boards, commissions or similar governmental entities.

“Resident.” A person or business domiciled in the political subdivision levying the tax.

“Resident tax.” An income tax levied by:

- (1) a municipality on a resident of that municipality; or
- (2) a school district on a resident of that school district.

“Resident tax officer.” The tax officer administering and collecting income taxes for the tax collection district in which a taxpayer is domiciled.

“Succeeding year.” The calendar year following the current year.

“Tax bureau.” A public nonprofit entity established for the administration and collection of taxes.

“Tax collection committee.” The committee established to govern each tax collection district for the purpose of income tax collection. The term shall include a joint tax collection committee.

“Tax collection district.” A tax collection district established under section 504.

“Tax officer.” A political subdivision, public employee, tax bureau, county, except a county of the first class, or private agency which administers and collects income taxes for one or more tax collection districts. Unless otherwise specifically provided, for purposes of the obligations of an employer, the term shall mean the tax officer for the tax collection district within which the employer is located, or, if an employer maintains workplaces in more than one district, the tax officer for each such district with respect to employees principally employed therein.

“Tax records.” Tax returns, supporting schedules, correspondence with auditors or taxpayers, account books and other documents, including electronic records, obtained or created by the tax officer to administer or collect a tax under this act. The term includes documents required by section 509(e). The term “electronic records” includes data and information inscribed on a tangible medium or stored in an electronic or other medium and which is retrievable in perceivable form.

“Tax register.” A database of all county, municipal and school tax rates available on the Internet as provided in section 511(a)(1).

“Taxable income.” Includes:

(1) In the case of an earned income and net profits tax, earned income and net profits.

(2) In the case of a personal income tax, income enumerated in section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, as reported to and determined by the Department of Revenue, subject to correction for fraud, evasion or error, as finally determined by the Commonwealth.

“Taxpayer.” A person or business required under this act to file a return of an income tax or to pay an income tax.

“Withholding tax.” An income tax or a local services tax levied by a political subdivision under the authority of this act or any other act, or any other tax levied by a municipality or school district for which employer withholding may be required under this act or any other act.

*(501 added July 2, 2008, P.L.197, No.32)*

## **Section 502. Declaration and payment of income taxes.**

(a) Application.—

(1) Income taxes shall be applicable to taxable income earned or received based on the method of accounting used by the taxpayer in the period beginning January 1 of the current year and ending December 31 of the current year, except that taxes imposed for the first time and changes to existing tax rates shall become effective on January 1 or July 1, as specified in the ordinance or resolution, and the tax shall continue in force on a calendar year or taxpayer fiscal year basis, without annual reenactment, unless the rate of the tax is subsequently changed.

(2) For a taxpayer whose fiscal year is not a calendar year, the tax officer shall establish deadlines for filing, reporting and payment of taxes which provide time periods equivalent to those provided for a calendar year taxpayer.

(b) Partial domicile.—The taxable income subject to tax of a taxpayer who is domiciled in a political subdivision for only a portion of the tax year shall be an amount equal to the taxpayer’s taxable income multiplied by a fraction, the numerator of which is the number of calendar months during the tax year that the individual is domiciled in the political subdivision, and the denominator of which is 12. A taxpayer shall include in the numerator any calendar month during which the taxpayer is domiciled for more than half the calendar

month. A day that a taxpayer's domicile changes shall be included as a day the individual is in the new domicile and not the old domicile. If the number of days in the calendar month in which the individual lived in the old and new domiciles are equal, the calendar month shall be included in calculating the number of months in the new domicile.

(c) Declaration and payment.—Except as provided in subsection (a)(2), taxpayers shall declare and pay income taxes as follows:

(1) Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the resident tax officer, a final return showing the amount of taxable income received during the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of tax due on the taxable income, the amount of tax paid, the amount of tax that has been withheld under section 512 and the balance of tax due. All amounts reported shall be rounded to the nearest whole dollar. At the time of filing the final return, the taxpayer shall pay the resident tax officer the balance of the tax due or shall make demand for refund or credit in the case of overpayment.

(2) (i) Every taxpayer making net profits shall, by April 15 of the current year, make and file with the resident tax officer a declaration of the taxpayer's estimated net profits during the period beginning January 1 and ending December 31 of the current year, and shall pay to the resident tax officer in four equal quarterly installments the tax due on the estimated net profits. The first installment shall be paid at the time of filing the declaration, and the other installments shall be paid on or before June 15 of the current year, September 15 of the current year and January 15 of the succeeding year, respectively.

(ii) Any taxpayer who first anticipates any net profit after April 15 of the current year shall make and file the declaration required on or before June 15 of the current year, September 15 of the current year or December 31 of the current year, whichever date next follows the date on which the taxpayer first anticipates such net profit, and shall pay to the resident tax officer in equal installments the tax due on or before the quarterly payment dates that remain after the filing of the declaration.

(iii) Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the resident tax officer a final return showing the amount of net profits earned or received based on the method of accounting used by the taxpayer during the period beginning January 1 of the current year, and ending December 31 of the current year, the total amount of tax due on the net profits and the total amount of tax paid. At the time of filing the final return, the taxpayer shall pay to the resident tax officer the balance of tax due or shall make demand for refund or credit in the case of overpayment. Any taxpayer may, in lieu of paying the fourth quarterly installment of the estimated tax, elect to make and file with the resident tax officer on or before January 31 of the succeeding year, the final return.

(iv) The department, in consultation with the Department of Revenue, shall provide by regulation for the filing of adjusted declarations of estimated net profits and for the payments of the estimated tax in cases where a taxpayer who has filed the declaration required under this subsection anticipates additional net profits not previously declared or has overestimated anticipated net profits.

(v) Every taxpayer who discontinues business prior to December 31 of the current year, shall, within 30 days after the discontinuance of business, file a final return as required under this paragraph and pay the tax due.

(3) Every taxpayer who receives any other taxable income not subject to withholding under section 512(3) shall make and file with the resident tax officer a quarterly return on or before April 15 of the current year, June 15 of the current year, September 15 of the current year, and January 15 of the succeeding year, setting forth the aggregate amount of taxable income not subject to withholding by the taxpayer during the

three-month periods ending March 31 of the current year, June 30 of the current year, September 30 of the current year, and December 31 of the current year, respectively, and subject to income tax, together with such other information as the department may require. Every taxpayer filing a return shall, at the time of filing the return, pay to the resident tax officer the amount of income tax due. The department shall establish criteria under which the tax officer may waive the quarterly return and payment of the income tax and permit a taxpayer to file the receipt of taxable income on the taxpayer's annual return and pay the income tax due on or before April 15 of the succeeding year.

*(502 added July 2, 2008, P.L.197, No.32)*

**Section 503. (Reserved).**

*(503 added July 2, 2008, P.L.197, No.32)*

**Section 504. Tax collection districts.**

(a) General rule.—A tax collection district is established in each county, except a county of the second class, for purposes of collecting income taxes. The geographic boundaries of a tax collection district shall be coterminous with the county in which it is created, except as provided in this section. A school district located in more than one county shall be included in the tax collection district with the greatest share of the school district's population based on the 2000 Federal Decennial Census. A municipality shall be included in the tax collection district in which its school district is located. If a municipality is located in more than one school district, each of which is in a different tax collection district, the portion of the municipality in each school district shall be included in the tax collection district for that school district. The department shall establish a list of all tax collection districts and the political subdivisions in each tax collection district. By January 16, 2009, the list shall be transmitted to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin, and by January 28, 2009, the list shall be made available on the department's Internet website.

(b) Counties of the second class.—Each county of the second class with a population of more than 1,000,000 persons, and which also contains a city of the second class, shall be divided into four tax collection districts, each to be as consistent as practicable with the general rules pertaining to municipalities and school districts contained in subsection (a), and to be further established as follows:

(1) One district shall be comprised of a city of the second class and any municipality and school district geographically located within the boundaries of such city.

(2) The remainder of the county shall be divided into three tax collection districts of relatively equal population which contain coterminous municipalities and school districts that are bordered by the county boundaries and by commercially navigable rivers which are at least 100 miles in length.

(3) The department shall develop a map and a list of all tax collection districts in each county of the second class and the political subdivisions in each tax collection district. By January 16, 2009, the list shall be transmitted to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin and by January 28, 2009, the list shall be made available on the department's Internet website.

(c) Existing consolidated collection arrangements.—Notwithstanding the provisions of subsection (a), in any county in which, on the effective date of this section, all political subdivisions levying an income tax, including a county school district located partially outside of but contiguous to the county, are served by one existing tax bureau, the county tax collection district shall also include such a school district and all of its component municipalities in the event a tax collection committee is established for that county pursuant to section 505(m).

*(504 added July 2, 2008, P.L.197, No.32)*

**Section 505. Tax collection committees.**

(a) General rule.—Subject to the provisions of subsection (m), each tax collection district shall be governed by a tax collection committee constituted and operated as set forth in this section. Meetings of the tax collection committee shall be conducted under 65 Pa.C.S. Ch. 7 (relating to open meetings) and the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law.

(a.1) Duties.—A tax collection committee has the following duties:

(1) To keep records of all votes and other actions taken by the tax collection committee.

(2) To appoint and oversee a tax officer for the tax collection district as provided in section 507(a).

(3) To set the compensation of the tax officer under section 507(c).

(4) To require, hold, set and review the tax officer's bond required by section 509(d).

(5) To establish the manner and extent of financing of the tax collection committee.

(6) To adopt, amend and repeal bylaws for the management of its affairs consistent with subsection (f) and regulations under section 508.

(7) To adopt, amend and repeal policies and procedures consistent with the regulations under section 508 for the administration of income taxes within the tax collection district. The procedures shall supersede any contrary resolutions or ordinances adopted by a political subdivision. This authority shall not be construed to permit a tax collection committee to change the rate or subject of any tax.

(a.2) Powers.—A tax collection committee has the following powers:

(1) To adopt, amend and repeal resolutions to carry out its powers and duties under this section.

(2) To create a tax bureau and to provide for its operation and administration. The department shall, upon request of a tax collection committee, provide technical assistance to the tax collection committee in the creation of a tax bureau.

(3) To enter into contracts as necessary.

(4) To appoint a director for the tax collection committee and other employees as necessary and to fix their compensation.

(5) To retain counsel, auditors and other consultants or advisors to render professional services as necessary.

(6) To acquire, lease, rent or dispose of real or personal property.

(7) To enter into agreements with one or more other tax collection committees to form a joint tax collection committee. Such agreements may assign to a joint tax collection committee some or all of the powers and duties enumerated in subsection (a.1) and this subsection with respect to all tax collection districts from which the joint tax collection committee is formed.

(8) To sue and be sued, and complain and defend in all courts.

(9) To borrow money, accept grants, incur indebtedness and issue notes, debentures and other obligations to evidence borrowing for the purposes for which it is organized in an amount not to exceed 50% of the total revenues anticipated in the following fiscal year.

(b) Delegates.—

(1) The governing body of each political subdivision within a tax collection district that imposed an income tax prior to July 1, 2009, shall appoint one voting delegate and one or more alternates to represent the political subdivision on the tax collection committee by September 15, 2009. The governing body of each political subdivision that after June 30, 2009, imposes an income tax for the first time shall appoint one voting delegate and one or more alternates to represent the political subdivision on the tax collection committee. A voting delegate or alternate shall serve at the pleasure of the governing body of the political subdivision.

(2) The governing body of each political subdivision within a tax collection district that prior to July 1, 2009, does not impose an income tax may appoint one nonvoting delegate and one or more alternates to represent the political subdivision on the tax collection committee. If, after June 30, 2009, the political subdivision imposes an income tax, the nonvoting delegate shall become a voting delegate to represent the political subdivision on the tax collection committee.

(b.1) Quorum.—Unless otherwise provided for in the bylaws of a tax collection committee, a majority of the delegates of a tax collection committee appointed under subsection (b)(1) constitutes a quorum. A quorum must be present in order to take official action.

(b.2) Lack of quorum at first meeting.—If a quorum is not present at the first meeting, the chair of the governing body of the county in which the tax collection district is located or the chair's designee shall reschedule the meeting within three weeks. The chair or the chair's designee shall provide, by first class mail, notice of the rescheduled meeting to the department and to the governing bodies of all political subdivisions in the tax collection district on a form prescribed by the department. The form shall include the date, time and location of the rescheduled meeting and a notice that the delegates present at the rescheduled meeting shall constitute a quorum. The rescheduled meeting shall be deemed to be the first meeting for purposes of this chapter.

(c) Voting rights.—

(1) Only a delegate appointed by the governing body of a political subdivision may represent a political subdivision at a tax collection committee meeting. If a delegate cannot be present for a tax collection committee meeting, the alternate appointed under this section may represent the political subdivision. Each delegate or alternate shall be entitled to vote upon any action authorized or required of the tax collection committee under this chapter.

(2) For the first meeting of the tax collection committee, actions of the tax collection committee shall be determined by a majority vote of those delegates present. Votes shall be weighted among the governing bodies of the member political subdivisions according to the following formula: 50% shall be allocated according to the proportional population of each political subdivision in proportion to the population of each tax collection district as determined by the most recent Federal decennial census data and 50% shall be weighted in direct proportion to income tax revenues collected in each political subdivision, based on each political subdivision's most recent annual financial report submitted to the department or the Department of Education. For subsequent meetings, votes shall be taken in accordance with this paragraph unless the bylaws provide otherwise.

(3) No later than September 1, 2009, the department shall calculate the weighted vote for each political subdivision within each tax collection district based on the formula specified in paragraph (2). By July 1 of the year following the first meeting, and of each year thereafter, each tax collection committee shall recalculate the weighted vote unless the bylaws provide for a more frequent recalculation.

(4) If a political subdivision within the tax collection district imposes an income tax for the first time, the tax collection committee shall recalculate the weighted vote or other method of voting under the bylaws.

(d) First meeting schedule.—The first meeting of the tax collection committee in each tax collection district shall be on or before November 15, 2009. The chair of the county commissioners or the chief executive of the county in which the tax collection district is primarily located or the chair's designee shall schedule the first meeting of the tax collection committee and shall provide, at least 21 days before the meeting, public notice, as required by 65 Pa.C.S. § 703 (relating to definitions), and notice by first class mail by September 15, 2009, to the department and to the governing body of each political subdivision located in the tax collection district.

(e) First meeting agenda.—The chair of the county commissioners or the chair's designee or the chief executive of the county or his designee shall convene the first meeting of the tax collection committee, conduct the meeting and record all votes until a chairperson, vice chairperson and secretary are elected by the tax collection committee. The voting delegates of the tax collection committee shall elect a chairperson and a vice chairperson, each of whom must be duly appointed voting delegates, and a secretary who need not be a duly appointed voting delegate. The chairperson shall schedule meetings, set the agenda, conduct meetings, record votes and perform other duties as determined by the tax collection committee. The secretary shall maintain the minutes and records of the tax collection committee and provide public notices and all notices to each delegate and alternate appointed to the tax collection committee.

(f) Bylaws.—No later than April 15, 2010, the delegates of each tax collection committee shall adopt bylaws to govern the tax collection committee and notify the department within 30 days of adoption. The department shall provide sample bylaws to the tax collection committee. Written notice shall be provided to each delegate and alternate delegate that the adoption or amendment of bylaws will be considered at a meeting. Notice shall include copies of the proposed bylaws or amendments. The bylaws for each tax collection committee shall provide for the following:

(1) Rules of procedure, quorum requirements, voting rights and provisions for managing the affairs of the tax collection committee.

(2) A list of officers, their terms and powers and a process for their election.

(3) Meetings, including special meetings.

(4) The process for adopting and amending bylaws.

(5) The procedure for the addition of new political subdivisions to the tax collection committee.

(g) Officers.—Upon the election of any new officers, the tax collection committee shall notify the department within 30 days and shall provide the department with the name and address of each officer.

(h) Audits of taxes received and disbursed.—

(1) By the end of each calendar year, the tax collection committee shall provide for at least one examination for each calendar year of the books, accounts, financial statements, compliance reports and records of the tax officer by a certified public accountant or public accountant approved by the tax collection committee. The examination shall include an audit of all records relating to the cash basis receipt and disbursement of all public money by the tax officer, a reconciliation of the monthly reports required by section 509(b), an analysis of the bond amount under section 509(d) and an analysis of the collection fees charged to the tax collection committee. In the case of a private agency, the examination shall not include payroll and other proprietary information. The examination shall be conducted according to generally accepted governmental auditing standards.

(2) The certified public accountant or public accountant shall issue a report, in a format prescribed by the department, to the tax collection committee, which shall include an auditor's opinion letter, a financial statement, a reconciliation of the monthly reports required by section 509(b) with the receipts and

disbursements, a summary of collection fees charged to the tax collection committee, a report on the tax officer's compliance with this act, a list of any findings of noncompliance with this act and a copy of a management letter if one is issued by the auditor. If there are findings of noncompliance, a copy of the report shall be filed with the Department of the Auditor General and the department. A copy of the report shall be filed with all political subdivisions within the tax collection district and the department on or before September 1 of the succeeding year. The department may make available on its Internet website summary data from the reports filed under this subsection.

(i) Applicability of statutes.—Each tax collection committee shall be subject to the provisions of the following:

- (1) The Right-to-Know Law.
- (2) The act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act.
- (3) 65 Pa.C.S. Ch. 7 (relating to open meetings).
- (4) 65 Pa.C.S. Ch. 11 (relating to ethics standards and financial disclosure).

(j) Appeals board.—

(1) By June 1, 2010, each tax collection committee shall establish an appeals board comprised of a minimum of three delegates or, in the case of a tax collection committee established pursuant to subsection (m), a minimum of three residents of the county.

(2) A determination of the tax officer relating to the assessment, collection, refund, withholding, remittance or distribution of income taxes may be appealed to the appeals board by a taxpayer, employer, political subdivision or another tax collection district.

(3) All appeals, other than those brought under subsection (k), shall be conducted in a manner consistent with 53 Pa.C.S. §§ 8431 (relating to petitions), 8432 (relating to practice and procedure), 8433 (relating to decisions), 8434 (relating to appeals) and 8435 (relating to equitable and legal principles to apply).

(4) A tax collection committee may enter into an agreement with another tax collection committee to establish a joint appeals board.

(5) No member of an appeals board or joint appeals board may be a tax officer or an employee, agent or attorney for a tax officer.

(6) An appeals board appointed pursuant to this section shall constitute a joint local tax appeals board as provided for in 53 Pa.C.S. § 8430 (relating to administrative appeals) for purposes of taxes collected under the supervision of the appointing tax collection committee.

(k) Mediation and appeals of tax collector actions.—

(1) Any dispute among the affected parties involving a 10% or greater deviation from taxes received in the previous tax year shall be subject to mandatory mediation under this section, in accordance with regulations and guidelines to be adopted by the department. A dispute involving less than the 10% threshold may be the subject of voluntary mediation in accordance with regulations and guidelines to be adopted by the department.

(2) One or more affected political subdivisions shall give written notice to the tax collection committee and the department of its desire to submit the disputed matter to mediation by the department.

Thereafter, the affected political subdivisions, tax collection committee and tax officer shall submit to mediation to which the following provisions shall apply:

(i) Within 20 days of submission of the written notice, the affected political subdivisions, tax collection committee and tax officer shall each submit to the mediator and each other party to the mediation a statement of no more than five pages, stating the position of such party as to the disputed and undisputed facts and issues in the case and whether prior settlement negotiations have occurred.

(ii) Within 30 days of submission of the written notice, the department shall determine whether the dispute meets the threshold conditions for mandatory mediation under paragraph (1), which decision shall be final and not appealable. Notice of such determination shall be given in writing to all affected parties.

(iii) If the mediator determines that the dispute meets the threshold conditions of paragraph (1), a mediation shall be commenced in accordance with procedures established under guidelines adopted by the department. The mediation efforts shall be completed no later than 30 days following the notice that the dispute has met the threshold requirement of paragraph (1), unless the time period is extended by mutual agreement of the parties to the mediation. The parties shall have any official authorized to settle the matter on their behalf available at the mediation. At the discretion of the mediator, the mediation may be held via telephonic communication or in person.

(iv) The mediation sessions shall be closed to the public and shall not be subject to the requirements of 65 Pa.C.S. Ch. 7.

(v) No offers or statements made in a mediation session, excluding the final written settlement agreement, if any, shall be admissible as evidence in any subsequent judicial or administrative proceedings in accordance with the provisions of 42 Pa.C.S. § 5949 (relating to confidential mediation communications and documents).

(vi) If a settlement is reached during the mediation, the department shall prepare a written settlement agreement and obtain all necessary signatures of the parties within 30 days of the agreement of the parties to settle the issue. The settlement agreement shall be binding upon the parties to the agreement. Such settlement agreement shall be subject to the provisions of the Right-to-Know Law. Such agreements shall be admissible as evidence in any subsequent judicial or administrative proceedings in accordance with the provisions of the Pennsylvania Rules of Court, the Pennsylvania Rules of Evidence and 42 Pa.C.S. § 5949.

(vii) If the mediation has not resulted in a written agreement signed by the parties as provided in subparagraph (vi), the mediation shall be deemed to have been unsuccessful unless all parties and the department agree in writing to extend the mediation. The mediator shall have the right to determine that the mediation has been unsuccessful and to terminate the mediation if the parties have not executed a settlement agreement by the ending date of the extension, or any further extension agreeable to the affected parties and the mediator.

(viii) Costs incurred by the department for a mandatory mediation under this section shall be equitably assessed by the department against the parties to the mediation. The assessment of costs shall be final and not appealable.

(3) The department shall adopt guidelines to further provide for the mandatory and voluntary mediation processes in this subsection.

(l) Annual budget required.—

(1) Each tax collection committee shall adopt an annual budget providing for compensation of the tax officer and other expenses of operating the tax collection district.

(2) The expenses of operating the tax collection district shall be shared among and paid by all political subdivisions within the tax collection district that are represented by voting delegates on the tax collection committee and shall be weighted in direct proportion to income tax revenues collected in each participating political subdivision based on the political subdivision's most recent annual audit report required under this section.

(m) Committee establishment in counties with existing consolidated collection arrangements.—In any county in which, on the effective date of this section, all political subdivisions levying an income tax, including a county school district located partially outside of but contiguous to the county, are served by one existing tax bureau and that tax bureau is governed by a single governing entity created solely by the action of the school districts located wholly within and one or more partially outside of but contiguous to that county, such existing governing entity shall constitute the tax collection committee for that county and school district, provided, a majority of the governing bodies of the political subdivisions served by such tax bureau and within the tax collection district as defined in section 504(c) adopt uniform resolutions on or before July 1, 2009, designating said governing entity as the county tax collection committee for purposes of this act. In the event such a majority is not achieved, the establishment of a tax collection committee for that county and such school district shall proceed as otherwise provided for in this section. The following apply:

(1) A tax collection committee established pursuant to this subsection shall not be subject to any of the following:

(i) Subsection (b).

(ii) Subsection (b.1).

(iii) Subsection (b.2).

(iv) Subsection (c).

(v) Subsection (d).

(vi) Subsection (e).

(vii) Subsection (f), except that the substance of bylaws utilized by such a tax collection committee shall address the subjects enumerated therein.

(viii) Subsection (l)(2).

(2) All of the following requirements shall be deemed to have been met without the necessity of further action by a tax collection committee established pursuant to this subsection:

(i) The initial adoption of bylaws otherwise required of a tax collection committee under subsection (a.1)(6).

(ii) The initial adoption of policies and procedures otherwise required of a tax collection committee under subsection (a.1)(7).

(3) In addition to the withdrawal options for political subdivisions under section 510(h), each political subdivision governed by a tax collection committee established pursuant to this subsection may, within the

90-day period ending November 15, 2013, and November 15 every fourth year thereafter, adopt and file with the department and the tax collection committee a resolution evidencing its desire to withdraw from governance by such tax collection committee as of January 1 of the second succeeding calendar year. The following apply:

(i) If a majority of the governing bodies of such political subdivisions adopt resolutions evidencing a desire to withdraw, a new tax collection committee shall be established in accordance with subparagraph (iii).

(ii) If a majority of the governing bodies of such political subdivisions fail to adopt resolutions evidencing a desire to withdraw from governance by the tax collection committee established pursuant to this subsection, such governance shall continue as before for all political subdivisions.

(iii) The department shall promulgate appropriate regulations governing the establishment of a new county tax collection committee necessitated by the action of political subdivisions under this paragraph in withdrawing from a tax collection committee established pursuant to this subsection. Among other things, such regulations shall provide for voting rights, quorum requirements, meeting requirements, meeting agendas, bylaw requirements and other items as provided for in this section and other parts of this act dealing with the initial establishment of tax collection committees, to the extent warranted, and shall establish the time frame and schedule within which any and all actions necessary to establish such a new tax collection committee are to be effectuated to ensure a timely and efficient transfer of tax collection and governance responsibilities.

*(505 added July 2, 2008, P.L.197, No.32)*

**Section 506. Tax officer.**

(a) Collection and administration.—Notwithstanding any other provision of law to the contrary, income taxes shall be collected and administered by one tax officer in each tax collection district appointed under section 507(a). Two or more tax collection districts may appoint the same tax officer. If two or more tax collection districts form a joint tax collection committee, the joint tax collection committee shall appoint a single tax officer.

(b) Standards.—A tax collection committee may not appoint a tax officer that:

(1) has been convicted of a felony involving fraud, extortion or dishonesty in any jurisdiction;

(2) has engaged in conduct which significantly adversely reflects on the applicant's credibility, honesty or integrity;

(3) is unable to obtain the bond required by section 509(d);

(4) has not satisfied the mandatory education requirements under section 508(e); or

(5) does not meet the qualifications and requirements established by the department under section 508(f).

*(506 added July 2, 2008, P.L.197, No.32)*

**Section 507. Appointment of tax officer.**

(a) Appointment.—By September 15, 2010, each tax collection committee shall appoint a tax officer by resolution and shall notify the department of the appointment, including the tax officer's name, address and telephone number and any other information required by the department within ten days of the appointment.

The name, telephone number and address of the tax officer appointed shall be added to the official register and shall be effective for the assessment, collection and administration of income taxes levied, imposed and collected in fiscal years beginning on and after January 1, 2012. If the position of tax officer becomes vacant, the tax collection committee shall appoint a new tax officer by resolution.

(b) Court selection.—

(1) If a tax collection committee has not appointed a tax officer under subsection (a) or if a tax officer ceases to hold office and a successor has not been appointed within 30 days of the vacancy, the tax collection committee shall immediately notify the department and shall submit the names of at least two nominees for the position of tax officer to the court of common pleas in the county in which the tax collection district is located. The court shall select a tax officer from among the nominees submitted by the tax collection committee.

(2) If the tax collection committee fails to submit nominees in accordance with this subsection, any political subdivision within the tax collection district may, after notifying the department, petition the court to select a tax officer. The court may provide for other persons to submit nominations for the position of tax officer. The court may select a tax officer from among the nominees.

(3) In the event that a tax officer is to be selected by the court under this subsection, the department shall inform the court of the time frame by which an appointment of a tax officer is needed and of upcoming deadlines which the tax officer must meet in order to timely fulfill the duties of appointment.

(4) Upon the selection of a tax officer by the court, the tax collection committee shall appoint the person selected.

(c) Compensation.—The tax officer shall receive reasonable compensation for services and expenses as determined by the tax collection committee. At the discretion of the tax collection committee, the tax officer may be permitted to withhold the amount of the tax officer's compensation from income taxes collected, if the monthly reports required by section 509(b) submitted by the tax officer include an accounting for all compensation withheld.

(d) Written agreement.—Except when a tax collection committee establishes a tax bureau under section 505(a.2)(2), all appointments of a tax officer shall be made pursuant to a written agreement between the tax officer and the tax collection committee. The agreement shall be approved by the committee by resolution.

(e) Eligibility of existing tax collection entities.—Notwithstanding any provision of law to the contrary, it shall not be regarded as a conflict of interest for a delegate or alternate to participate in discussions and voting of the tax collection committee relating to the appointment of a tax officer, solely on the basis that the delegate or alternate also is an employee or member of the governing body of an existing tax bureau or other public tax collection entity which is under consideration for appointment as the tax officer or which has submitted a proposal for appointment as tax officer, or is an employee or member of the governing body of a political subdivision participating in such an existing tax bureau or other public tax collection entity.

*(507 added July 2, 2008, P.L.197, No.32)*

**Section 508. Powers and duties of the department.**

(a) Additional powers.—In addition to the powers and duties provided for in this act, the department, in consultation with the Department of Revenue, shall prescribe standardized forms, reports, notices, returns and schedules and shall promulgate regulations as necessary to carry out the provisions of this act.

(b) Temporary regulations.—The department may promulgate temporary regulations, for a period of two years, as necessary, which shall be published in the Pennsylvania Bulletin. The temporary regulations promulgated by the department shall expire no later than three years following the effective date of this section or upon promulgation of regulations as generally provided by law. The temporary regulations shall not be subject to any of the following:

(1) Sections 201, 202, 203 and 204 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

(2) The act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(c) Interim regulations.—Until promulgation of the temporary or permanent regulations under this section, rules and regulations in use by tax officers under the former Division V(c) of section 13 shall remain valid.

(d) Departmental study.—

(1) Immediately upon the earliest effective date of this section, the department shall commence a study of existing local earned income tax collection methods and practices within this Commonwealth, with particular attention to the practices and methods of previously existing cooperative collection bureaus established by one or more political subdivisions, for the purpose of identifying, collecting and comparing those practices, methods, structures, procedures, regulations, software, information systems, governance alternatives, risk management strategies and other characteristics that appear to promote the greatest likelihood of effectiveness, cost efficiency, loss prevention and willing intergovernmental cooperation.

(2) No later than December 31, 2009, the department shall furnish each tax collection committee a report of the findings and recommendations resulting from the study, including sample bylaws, procedures, regulations, forms, agreements, requests for proposals for the selection of tax officers, requests for proposals for the procurement of software systems and other critical systems and other appropriate samples.

(3) As a part of the study, the department shall also investigate and report upon the feasibility of contracting on a Statewide basis for the development and procurement of appropriate software systems that may be adopted and purchased by county tax collection districts or their appointed tax officers through the Commonwealth's cooperative purchasing programs.

(4) Nothing in this subsection shall be construed to authorize the department to compel the disclosure of information that is confidential, proprietary or a trade secret.

(e) Mandatory education for tax officers.—Persons and entities seeking or maintaining appointment as tax officers shall complete mandatory education as a prerequisite for their appointment and, for continuing appointment, not less than annually. The department shall provide the mandatory education and shall adopt regulations, guidelines and procedures for the mandatory education sufficient to meet the requirements of this act.

(f) Establishment of qualifications and requirements.—

(1) The department shall, by regulation, establish the qualifications and requirements a tax officer must meet prior to being appointed and must meet for continuing appointment.

(2) A tax collection committee may establish additional qualifications and requirements a tax officer must meet prior to being appointed and must meet for continuing appointment.

*(508 added July 2, 2008, P.L.197, No.32)*

**Section 509. Powers and duties of tax officer.**

(a) Tax collection.—In addition to any other power and duty conferred upon a tax officer in this act, it shall be the duty of the tax officer:

(1) To collect, reconcile, administer and enforce income taxes imposed on residents and nonresidents of each political subdivision included in the tax collection district.

(2) To receive and distribute income taxes and to enforce withholding by employers located in the tax collection district.

(3) To receive income taxes distributed by tax officers for other tax collection districts.

(4) To distribute income taxes to political subdivisions as required by section 513.

(5) To comply with all regulations adopted by the department under this act and all resolutions, policies and procedures adopted by the tax collection committee.

(6) To invest all income taxes in the custody of the tax officer in authorized investments, subject to the approval of the tax collection committee. The tax officer shall observe the standard of care that would be observed by a prudent person dealing with property of another. For the purposes of this paragraph, the term “authorized investment” shall include all of the following:

(i) Short-term obligations of the United States Government or its agencies or instrumentalities which are backed by the full faith and credit of the United States or are rated in the highest category by a nationally recognized statistical rating organization.

(ii) Deposits in savings accounts, time deposits, share accounts or certificates of deposit of institutions, insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, or their successor agencies, to the extent that the accounts are insured and, for the amount above the insured maximum, that collateral, free from other liens, for the amount is pledged by the depository institution.

(iii) Deposits in investment pools established by the State Treasurer or established by local governments pursuant to 53 Pa.C.S. Ch. 23 Subch. A (relating to intergovernmental cooperation) and related statutes, provided that the investment pools are rated in the highest category by a nationally recognized statistical rating organization.

(iv) Repurchase agreements which are fully collateralized by obligations of the United States Government or its agencies or instrumentalities, which are free from other liens and backed by the full faith and credit of the United States or are rated in the highest category by a nationally recognized statistical rating organization.

(7) To distribute income generated from investments authorized under paragraph (6) as determined by the tax collection committee.

(b) Monthly reports.—The tax officer shall, within 20 days after the end of each month, provide a written report, on forms prescribed by the department, to the secretary of the tax collection committee and to the secretary of each political subdivision in the tax collection district for which taxes were collected during the previous month. The report shall include a breakdown of all income taxes, income generated from investments under subsection (a)(6), penalties, costs and other money received, collected, expended and distributed for each political subdivision served by the tax officer and of all money distributed to tax officers for other tax collection districts.

(c) Overpayments.—A tax officer shall refund, under 53 Pa.C.S. §§ 8425 (relating to refunds of overpayments) and 8426 (relating to interest on overpayment), on petition of and proof by the taxpayer, income taxes paid in excess of income taxes rightfully due.

(d) Bonds.—Prior to initiating any official duties, each tax officer shall give and acknowledge a bond to the appointing tax collection committee as follows:

(1) The tax collection committee shall fix the amount of the bond in an amount equal to the maximum amount of taxes that may be in the possession of the tax officer at any given time or an amount sufficient, in combination with fiscal controls, insurance and other risk management and loss prevention measures used by the tax collection district, to secure the financial responsibility of the tax officer in accordance with guidelines adopted by the department. The amount of the bond shall be revised annually by the tax collection committee based upon the annual examination required under section 505(h).

(2) Each bond shall be joint and several, with one or more corporate sureties, which shall be surety companies authorized to do business in this Commonwealth and licensed by the Insurance Department.

(3) Each bond shall be conditioned upon the completion of all of the following by the tax officer's employees and appointees:

(i) The faithful execution of all duties required of the tax officer.

(ii) The just and faithful accounting or payment over of all moneys and balances paid to, received or held by the tax officer by virtue of the office in accordance with law.

(iii) The delivery of all tax records or other official items held in right as the tax officer to the tax officer's successor in office.

(4) Each bond shall be taken in the name of the tax collection district and shall be for the use of the tax collection district appointing the tax officer, and for the use of any other political subdivision or tax collection district for which income taxes shall be collected or distributed in case of a breach of any conditions of the bond by the acts or neglect of the principal on the bond.

(5) A tax collection committee or any political subdivision may sue upon the bond for the payment or distribution of income taxes.

(6) Each bond shall contain the name of the surety company bound on the bond.

(7) The tax collection committee may, upon cause shown and due notice to the tax officer and the tax officer's sureties, require or allow the substitution or the addition of a surety company acceptable to the tax collection committee for the purpose of making the bond sufficient in amount, without releasing the sureties first approved from any accrued liability or previous action on the bond.

(8) The tax collection committee shall designate the custodian of the bond.

(9) The tax officer shall file copies of all bonds in effect with each political subdivision in the tax collection district.

(10) A copy of all bonds in effect shall be made available upon request and at no cost to the department or to a tax collection district or political subdivision seeking payment or distribution of income taxes authorized by this act.

(e) Records.—It shall be the duty of the tax officer to keep a record showing the amount of income taxes received from each taxpayer or other tax officer, the date of receipt, the amount and date of all other moneys received or distributed and any other information required by the department. All tax records shall be the property of the political subdivision and the tax collection district in which the taxes were collected. The tax collection district and tax officer shall retain all tax records as directed by the tax collection committee and, when applicable, in accordance with retention and disposition schedules established by the Local Government Records Committee of the Pennsylvania Historical and Museum Commission under 53 Pa.C.S. Ch. 13 Subch. F (relating to records). Tax records under this subsection may be retained electronically as permitted by law.

(f) Employer and taxpayer audits.—

(1) In order to verify the accuracy of any income tax declaration or return or, if no declaration or return was filed, to ascertain the income tax due, the tax officer and the tax officer's designated employees may examine or audit the records pertaining to income taxes due of any of the following:

(i) An employer.

(ii) A taxpayer.

(iii) A person whom the tax officer reasonably believes to be an employer or taxpayer.

(2) The examination or audit conducted by the tax officer and the tax officer's designated employees shall conform to the requirements set forth in 53 Pa.C.S. Ch. 84 Subch. C (relating to local taxpayers bill of rights).

(3) Every employer and taxpayer or other person whom the tax officer reasonably believes to be an employer or taxpayer shall provide to the tax officer and the tax officer's designated employees the means, facilities and opportunity for the examination and investigation authorized under paragraph (1).

(4) For purposes of this subsection, the term "records" shall include any books, papers and relevant Federal or State tax returns and accompanying schedules, or supporting documentation for any income taxable under this act.

(g) Exchange of information.—

(1) The tax officer of each tax collection district shall ensure that the tax collection district enters into an agreement with the Department of Revenue for the exchange of information as necessary for the collection of income taxes.

(2) The Department of Revenue may enter into agreements with each tax collection district and shall establish procedures under which tax collection, filing and other taxpayer and locality information in its custody will be made available to tax officers for purposes of collection, reconciliation and enforcement no later than one year after the deadline for filing returns for the tax year in question.

(h) Actions for collection of income taxes.—The tax officer may file an action in the name of a political subdivision within the tax collection district for the recovery of income taxes due to the political subdivision and unpaid. Nothing in this subsection shall affect the authority of a political subdivision to file an action in its own name for collection of income taxes under this chapter. This subsection shall not be construed to limit a tax officer, a tax collection district or political subdivision from recovering delinquent income taxes by any other means provided by this act. Actions for collection of income taxes shall be subject to the following:

(1) Except as set forth in paragraph (2) or (4), an action brought to recover income taxes must be commenced within three years of the later of the date:

- (i) the income taxes are due;
- (ii) the declaration or return has been filed; or
- (iii) of a redetermination of compensation or net profits by the Department of Revenue.

(2) If there is substantial understatement of income tax liability of 25% or more and there is no fraud, an action must be commenced within six years.

(3) Except as set forth in paragraph (4)(ii), (iii) or (iv), an action by a tax officer for recovery of an erroneous refund must be commenced as follows:

(i) Except as set forth in subparagraph (ii), within two years after making the refund.

(ii) If it appears that any part of the refund was induced by fraud or misrepresentation of material fact, within five years after making the refund.

(4) There is no limitation of action if any of the following apply:

(i) A taxpayer fails to file a declaration or return required under this act.

(ii) An examination of a declaration or return or of other evidence in the possession of the tax officer relating to the declaration or return reveals a fraudulent evasion of income taxes.

(iii) An employer has deducted income taxes under section 512 and has failed to pay the amount deducted to the tax officer.

(iv) An employer has intentionally failed to make deductions required by this act.

(i) Interest and penalties.—

(1) Except as provided in paragraph (2), if the income tax is not paid when due, interest at the rate the taxpayer is required to pay to the Commonwealth under section 806 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, on the amount of the income tax, and an additional penalty of 1% of the amount of the unpaid income tax for each month or fraction of a month during which the income tax remains unpaid shall be added and collected but the amount shall not exceed 15% in the aggregate. Where an action is brought for the recovery of the income tax, the taxpayer liable for the income tax shall, in addition, be liable for the costs of collection, interest and penalties.

(2) The department may establish conditions under which a tax officer, with the concurrence of the tax collection committee, may abate interest or penalties that would otherwise be imposed for the nonreporting or underreporting of income tax liabilities or for the nonpayment of income taxes previously imposed and due if the taxpayer voluntarily files delinquent returns and pays the income taxes in full.

(3) The provisions of paragraph (2) shall not affect or terminate any petitions, investigations, prosecutions or other proceedings pending under this chapter, or prevent the commencement or further prosecution of any proceedings by the proper authorities for violations of this act. No proceedings shall, however, be commenced on the basis of delinquent returns filed pursuant to subsection (h) if the returns are determined to be substantially true and correct and the income taxes are paid in full within the prescribed time.

(j) Fines and penalties for violations.—

(1) Any taxpayer who fails, neglects or refuses to make any declaration or return required by this chapter, any employer who fails, neglects or refuses to register, keep or supply records or returns required by section 512 or to pay the income tax deducted from employees, or fails, neglects or refuses to deduct or withhold the income tax from employees, any taxpayer or employer who refuses to permit the tax officer appointed by a tax collection committee or an employee or agent of the tax officer to examine books, records and papers, and any taxpayer or employer who knowingly makes any incomplete, false or fraudulent return, or attempts to do anything whatsoever to avoid the full disclosure of the amount of income in order to avoid the payment of income taxes shall, upon conviction thereof, be sentenced to pay a fine of not more than \$2,500 for each offense and reasonable costs, and in default of payment of said fine and costs, to imprisonment for not more than six months.

(2) Any employer required under this chapter to collect, account for and distribute income taxes who willfully fails to collect or truthfully account for and distribute income taxes, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding \$25,000 or to imprisonment not exceeding two years, or both.

(3) The penalties imposed under this subsection shall be in addition to any other costs and penalties imposed by this act.

(4) The failure of any person to obtain forms required for making the declaration or returns required by this act shall not excuse the person from making the declaration or return.

(k) Collection.—In addition to the powers and duties enumerated in this section, when designated by the tax collection committee, a tax officer may collect other taxes levied pursuant to this act, the act of June 27, 2006 (1st Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act, or other statutory law.

*(509 added July 2, 2008, P.L.197, No.32)*

#### **Section 510. Fines and penalties against tax officers.**

(a) Distribution of nonresident taxes.—A tax collection district or a political subdivision that brings an action under subsection (e) with respect to distribution of income taxes under section 513 may seek equitable relief from a tax officer, including an accounting of all undistributed income taxes and monetary damages, in the form of recovery of the income taxes not previously distributed plus interest calculated from the date that the income taxes should have been distributed. In addition, the court may impose a civil penalty not to exceed \$2,500 for each quarter for which income taxes were not distributed in accordance with section 513, plus reasonable costs and attorney fees. If a tax officer fails to distribute income taxes to the appropriate political subdivision as required under section 513 for four consecutive tax quarters, the court may impose a civil penalty not to exceed \$5,000. In addition, the court may impose a fine not to exceed \$100 per day for every day past the deadline that a tax officer does not respond to a claim under section 513(b).

(b) Monthly reports and audits of income taxes.—If a tax officer fails to submit the report required under section 509(b), a tax collection district or a political subdivision entitled to receive the report may bring an action in the court of common pleas of the county in which the tax collection district is primarily located. The court may impose a civil penalty of \$20 a day for each day that the report is overdue, not to exceed \$500. If an examination submitted under section 505(h) includes any findings of noncompliance, the court may impose an additional civil penalty of not less than \$500 but not more than \$2,500.

(c) Failure of duty.—An action may be brought against the tax officer to compel the performance of duties required by this chapter or imposed by regulations adopted pursuant to this chapter, including the duty to deliver all tax records and other official items held in right as tax officer to the tax officer's successor. Upon a finding of failure to perform a duty, the court may impose a penalty not to exceed \$5,000, and the tax officer may be held liable for the cost of reproducing tax records if they are lost or cannot be delivered.

(d) Other violations.—A tax officer who violates any other provision of this act shall be subject to a civil penalty of up to \$2,500 for each violation.

(e) Actions against a tax officer.—An action against a tax officer for a violation of this chapter may be brought by a tax collection district or a political subdivision for which the tax officer collects income taxes, a political subdivision or tax collection committee owed income taxes by the tax officer or by a surety.

(f) Rescinded appointment.—

(1) A tax collection committee shall temporarily remove a tax officer if a criminal action is commenced against the tax officer for an offense which would constitute a violation of the standards of office under section 506(b). If the tax officer is convicted or pleads guilty or nolo contendere in the action, the tax collection committee shall rescind the appointment and remove the tax officer permanently.

(2) A tax collection committee may remove or rescind the appointment of a tax officer where the tax officer or an employee or agent of the tax officer violates the provisions under section 514(b).

(3) A tax collection committee may remove or rescind the appointment of a tax officer for cause.

(4) A tax collection committee may not retain a tax officer who has been penalized under subsection (a), (b), (c) or (d) more than three times or who fails to satisfy the requirements under section 506.

(g) Interpretation.—A tax officer shall not be considered a debt collector for purposes of the act of March 28, 2000 (P.L.23, No.7), known as the Fair Credit Extension Uniformity Act. Except as otherwise authorized in this act, a tax officer shall be subject to the restrictions and prohibitions imposed on creditors. Notwithstanding the provisions of the Fair Credit Extension Uniformity Act, this act shall supersede any restrictions and prohibitions on creditors otherwise applicable under the Fair Credit Extension Uniformity Act.

(h) Withdrawal from tax collection district.—

(1) In an action brought by a political subdivision under this section after January 1, 2014, the court may, in addition to other available remedies, grant a request by the political subdivision to withdraw from the tax collection district for good cause, provided the court determines, after hearing, that all of the following conditions exist:

(i) The political subdivision has suffered loss in income tax revenues that is directly and primarily attributable to the willful and continued failure of the tax officer or tax collection committee to comply with the provisions of this act.

(ii) The tax collection committee has failed to take reasonable measures to correct the deficiencies in the performance of the tax officer and otherwise assure compliance with the requirements of this act.

(iii) The political subdivision and the tax collection committee have engaged in good faith mediation before a special master appointed by the court, but nonetheless have failed to reach agreement about alternative corrective measures in lieu of withdrawal of the political subdivision from the tax collection district.

(iv) Other relief available that could be ordered by the court would not be adequate to provide a reasonable prospect of compliance by the tax officer and tax collection committee with the requirements of this act, and that withdrawal of the political subdivision from the tax collection district is otherwise in the best interests of the political subdivision, taxpayers and employers.

(2) (i) In the event the court grants a request by a political subdivision under this section to withdraw from the tax collection district in which it is located, the governing body of the political subdivision may withdraw by adopting a resolution to that effect and appointing a tax officer to collect the income tax levied by that political subdivision, effective for the next calendar year beginning at least six months after the adoption of such resolution.

(ii) With respect to the income tax levied by that political subdivision, a tax officer appointed pursuant to this paragraph shall have the same powers and duties as a tax officer appointed by a tax collection district and all other requirements of this act pertaining to the functions and qualifications of tax collection districts and tax officers, and the related obligations of employers and taxpayers shall apply equally to the political subdivision, its governing body and a tax officer appointed by that political subdivision.

*(510 added July 2, 2008, P.L.197, No.32)*

### **Section 511. Tax registers.**

(a) Requirement.—The department shall maintain a tax register and an official register. All of the following shall apply:

(1) The department shall maintain a tax register on the department's Internet website. Information for the tax register shall be furnished by each county and each political subdivision to the department as prescribed by the department. The department shall continuously update the tax register.

(2) As part of the tax register under paragraph (1), the department shall maintain an official register. The requirement to maintain an official register in accordance with this section shall supersede the requirements for an official register in any act.

(3) The official register shall be organized by municipality and shall list:

(i) Each municipality and coterminous school district.

(ii) The effective income tax rate on taxpayers who reside in the municipality.

(iii) The effective income tax rate on taxpayers who reside in the school district.

(iv) The combined municipal and school district income tax rate on taxpayers residing in each municipality.

(v) The income tax rate on taxpayers working within the municipality.

(vi) Whether an income tax is a personal income tax levied under the act of June 27, 2006 (1st Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act, or any other act.

(vii) The effective emergency and municipal services tax rate on taxpayers working within the municipality.

(viii) The effective emergency and municipal services tax rate on taxpayers working within the school district.

(ix) The combined municipal and school district emergency and municipal services tax rate.

(x) The amount of any other withholding tax.

(xi) The name, telephone number, address, e-mail and Internet address, where available, of the tax officer responsible for administering the collection of the tax.

(xii) Any other information deemed necessary by the department.

(4) Each year the department shall update and officially release withholding tax rates on the official register on June 15 and December 15. Tax rates released on June 15 shall become effective July 1. Tax rates released on December 15 shall become effective January 1 of the following year. The department may revise the notification, official release and effective dates of the register for good cause. Six months prior to the revision, the department shall notify each affected political subdivision of the revision and shall publish notice of the revision in the Pennsylvania Bulletin.

(5) Information for the official register shall be furnished by each political subdivision to the department as prescribed by the department and shall include a copy of the ordinance or resolution enacting, repealing or changing the tax. The department shall be notified of changes to the official register as follows:

(i) New withholding tax enactments, repeals and changes shall be received by the department no later than June 1 to require withholding of a new tax, withholding at a new rate or to suspend withholding of such tax effective July 1 of that year. All new withholding tax enactments, repeals and changes received by the department by June 1 shall be officially released by the department June 15 and become effective July 1. Failure of the department to receive information by June 1 from political subdivisions regarding current withholding tax rates, new withholding tax enactments, repeals and changes shall be construed by the department to mean that the information contained in the previous December 15 release of the official register is still in force. Information received by the department after June 1 but before December 1 shall be officially released on December 15.

(ii) New withholding tax enactments, repeals and changes shall be received by the department no later than December 1 to require withholding of a new tax, withholding at a new rate or to suspend withholding of such tax effective January 1 of the following year. All new withholding tax enactments, repeals and changes received by the department by December 1 shall be officially released by the department on December 15 and become effective January 1 of the following year. Failure of the department to receive information by December 1 from political subdivisions regarding current withholding tax rates, new withholding tax enactments, repeals and changes shall be construed by the department to mean that the information contained in the previous June 15 release of the official register is still in force. Information received by the department after December 1 but before June 1 shall be officially released on June 15.

(6) (i) Employers shall not be required to deduct from compensation of their employees or make reports of compensation in connection with any withholding tax that is not released on the official register as of June 15 and December 15 of each year as provided in paragraphs (4) and (5), unless the political subdivision imposing the tax has provided written notice to the employer of the tax or tax rate and the withholding requirement.

(ii) Notwithstanding any law to the contrary, no political subdivision or tax officer may require any employer to deduct a withholding tax at a rate or amount that is not released on the official register, unless the political subdivision imposing the tax has provided written notice to the employer of the tax or tax rate and the withholding requirement.

(iii) The provisions of this paragraph shall not affect the liability of any taxpayer for withholding taxes lawfully imposed under this act.

(7) An employer may withhold at the most recently available rate on the tax register even if such rate is different than the tax rate released on the official register as provided in paragraphs (4) and (5), provided that an employer shall not be required to withhold at a tax rate that is not released on the official register, unless the political subdivision imposing the tax has provided written notice to the employer of the current tax rate.

(8) No employer shall be held liable for failure to withhold an income tax from an employee if the failure to withhold the income tax arises from incorrect information submitted by the employee as to the employee's place of residence.

(9) No employer shall be held liable for failure to withhold the emergency and municipal services tax or for the payment of tax money withheld to a tax officer if the failure to withhold the taxes arises from incorrect information submitted by the employee as to the employee's place of employment, the employee's principal office or where the employee is principally employed.

(b) Definition.—As used in this section, notwithstanding section 501, the terms “income tax” and “withholding tax” include a tax assessed on the income of a taxpayer and levied by a municipality under the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act.

*(511 added July 2, 2008, P.L.157, No.32)*

## **Section 512. Withholding and remittance.**

For taxable years commencing on and after January 1, 2012, or earlier taxable years if specified by a tax collection district, income taxes shall be withheld, remitted and reported as follows:

(1) Every employer having an office, factory, workshop, branch, warehouse or other place of business within a tax collection district who employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, who has not previously registered, shall, within 15 days after becoming an employer, register with the tax officer the name and address of the employer and such other information as the department may require.

(2) An employer shall require each new employee to complete a certificate of residency form, which shall be an addendum to the Federal Employee's Withholding Allowance Certificate (Form W-4). An employer shall also require any employee who changes their address or domicile to complete a certificate of residency form. Upon request, certificate of residency forms shall be provided by the department. The certificate of residency form shall provide information to help identify the political subdivisions where an employee lives and works.

(3) Every employer having an office, factory, workshop, branch, warehouse or other place of business within a tax collection district that employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, shall, at the time of payment, deduct from the compensation due each employee employed at such place of business the greater of the employee's resident tax or the employee's nonresident tax as released in the official register under section 511.

(4) Except as set forth in paragraph (5), within 30 days following the end of each calendar quarter, every employer shall file a quarterly return and pay the amount of income taxes deducted during the preceding calendar quarter to the tax officer for the place of employment of each employee. The form shall show the name, address and Social Security number of each employee, the compensation of the employee during the preceding three-month period, the income tax deducted from the employee, the political subdivisions imposing the income tax upon the employee, the total compensation of all employees during the preceding calendar quarter, the total income tax deducted from the employees and paid with the return and any other information prescribed by the department.

(5) Notwithstanding paragraph (4), the provisions of this paragraph shall apply if an employer has more than one place of employment in more than one tax collection district. Within 30 days following the last day of each month, the employer may file the return required by paragraph (4) and pay the total amount of income taxes deducted from employees in all work locations during the preceding month to the tax officer for either the tax collection district in which the employer's payroll operations are located or as determined by the department. The return and income taxes deducted shall be filed and paid electronically. The employer must file a notice of intention to file combined returns and make combined payments with the tax officer for each place of employment at least one month before filing its first combined return or making its first combined payment. This paragraph shall not be construed to change the location of an employee's place of employment for purposes of nonresident tax liability.

(6) Any employer who, for two of the preceding four quarterly periods, has failed to deduct the proper income tax, or any part of the income tax, or has failed to pay over the proper amount of income tax as required by paragraph (3) to the tax collection district, may be required by the tax officer to file returns and pay the income tax monthly. In such cases, payments of income tax shall be made to the tax officer on or before the last day of the month succeeding the month for which the income tax was withheld.

(7) On or before February 28 of the succeeding year, every employer shall file with the tax officer where income taxes have been deducted and remitted pursuant to paragraph (3):

(i) An annual return showing, for the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of compensation paid, the total amount of income tax deducted, the total amount of income tax paid to the tax officer and any other information prescribed by the department.

(ii) An individual withholding statement, which may be integrated with the Federal Wage and Tax Statement (Form W-2), for each employee employed during all or any part of the period beginning January 1 of the current year and ending December 31 of the current year, setting forth the address and Social Security number, the amount of compensation paid to the employee during the period, the amount of income tax deducted, the amount of income tax paid to the tax officer, the numerical code prescribed by the department representing the tax collection district where the payments required by paragraphs (4) and (5) were remitted and any other information required by the department. Every employer shall furnish one copy of the individual withholding statement to the employee for whom it is filed.

(8) Any employer who discontinues business prior to December 31 of the current year shall, within 30 days after the discontinuance of business, file returns and withholding statements required under this section and pay the income tax due.

(9) Except as otherwise provided in section 511, an employer who willfully or negligently fails or omits to make the deductions required by this subsection shall be liable for payment of income taxes which the employer was required to withhold to the extent that the income taxes have not been recovered from the employee. The failure or omission of any employer to make the deductions required by this section shall not relieve any employee from the payment of the income tax or from complying with the requirements for filing of declarations and returns.

*(512 added July 2, 2008, P.L.197, No.32)*

**Section 513. Distribution of income taxes.**

(a) General rule.—Subject to subsection (b), all of the following apply:

(1) Unless otherwise agreed to or required by the tax collection committee, distribution of income taxes from a tax officer to political subdivisions within the tax collection district or to other tax collection districts shall be as follows:

(i) Income taxes received from employers prior to April 1, 2013, under section 512(4) shall be distributed within 60 days of the later of:

(A) receipt; or

(B) the deadline for payment under section 512(4).

(ii) Income taxes received from employers on or after April 1, 2013, under section 512(4) shall be distributed within 30 days of the later of:

(A) receipt; or

(B) the deadline for payment under section 512(4).

(iii) Income taxes received from employers under section 512(5) shall be distributed within 30 days of the last day of the month following receipt.

(iv) Income taxes received from taxpayers and other tax collection districts prior to April 1, 2013, shall be distributed within 60 days of receipt.

(v) Income taxes received from taxpayers and other tax collection districts on or after April 1, 2013, shall be distributed within 30 days of receipt.

(2) Income taxes received from employers, taxpayers or other tax collection districts shall be distributed based on the information submitted by the employers, taxpayers or tax collection districts. It shall not be permissible to base the distribution of income taxes on any method not expressly authorized by act of the General Assembly.

(3) A tax officer shall maintain a record of all income taxes distributed under this section, which shall include all of the information required in the reports under section 512(4) and (5), the date of distribution, the political subdivision or tax officer to which the income taxes are distributed and any other information required by the department. The record shall be provided to another tax collection district at the time of distribution.

(4) A tax officer who, within two years after receiving an income tax payment after reasonable efforts meeting conditions established by the tax collection committee, cannot identify the political subdivision entitled to the income tax payment shall make payment to the municipality in which the income tax was collected.

(b) Other tax collection districts.—In addition to subsection (a), for distribution of income taxes to other tax collection districts, the following shall apply:

(1) If nonresident taxes are not distributed to the appropriate tax officer as required under subsection (a)(1), a tax officer may make a claim for income taxes attributable to residents of the tax collection district served by that tax officer. The tax officer for the tax collection district against which a claim is made shall, within 30 days:

- (i) pay the claim if it is undisputed; or
- (ii) respond in writing stating the reasons why the claim cannot be paid.

(2) If the tax officer for the tax collection district against which the claim is made does not act under paragraph (1)(i) or (ii), the tax officer making the claim may bring an action in the court of common pleas in the county in which the tax collection district with the claim is primarily located for both the amount of the claim and interest at the rate provided for in 53 Pa.C.S. § 8426 (relating to interest on overpayment) from the date which the income taxes were received from the taxpayer, employer or other tax officer. Notwithstanding any other law to the contrary, an action under this paragraph must be brought within seven years after the claim is made.

(c) Codes.—Employers and tax officers shall use political subdivision and tax collection district codes prescribed by the department.

(d) Fee prohibition.—No tax officer, political subdivision or tax collection district shall be required to pay a fee or commission to another tax collection district on account of income taxes distributed under this section.

*(513 added July 2, 2008, P.L.197, No.32)*

#### **Section 514. Confidentiality.**

(a) General rule.—Any information gained by a tax officer or any employee or agent of a tax officer or of the tax collection committee as a result of any declarations, returns, investigations, hearings or verifications shall be confidential tax information.

(b) Prohibited conduct.—It shall be unlawful, except for official purposes or as provided by law, for the Commonwealth, any political subdivision, tax collection committee member, tax officer or employee or agent of a tax officer or tax collection committee to do any of the following:

(1) Divulge or make known confidential tax information.

(2) Permit confidential tax information or a book containing an abstract or particulars of the abstract to be seen or examined by any person.

(3) Print, publish or otherwise make known any confidential tax information.

(c) Penalties.—A person who violates subsection (b) commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$2,500 or to imprisonment for not more than one year, or both. If the offender is a member of the tax collection committee, the member shall be removed from the tax collection committee. If the offender is an employee of a tax collection committee or a political subdivision, the employee shall be discharged from employment. The offender shall pay the costs of prosecution.

*(514 added July 2, 2008, P.L.197, No.32)*

#### **Section 515. Transition.**

(a) Fines and penalties against tax officers.—

(1) A political subdivision which brings an action under former Division V(h) of section 13 may seek equitable relief from a tax officer, including an accounting of all undistributed income taxes and monetary damages, in the form of recovery of the income taxes not previously distributed. In addition, the court may impose a civil penalty not to exceed \$2,500 for each quarter for which income taxes were not distributed in accordance with former Division V(h) of section 13, plus reasonable costs and attorney fees.

(2) If a tax officer fails to distribute income taxes to the appropriate political subdivision as required under former Division V(h) of section 13 for four consecutive quarters, the court may impose a civil penalty not to exceed \$5,000.

(3) An action may be brought against the tax officer to compel the performance of duties required by Chapter 3 or former section 13 or imposed by regulations adopted pursuant to this chapter, including the duty to deliver all tax records and other official items held in right as tax officer to the tax officer's successor. Upon a finding of failure to perform a duty, the court may impose a penalty not to exceed \$5,000, and the tax officer may be held liable for the cost of reproducing tax records if they are lost or cannot be delivered.

(4) An Article XIII tax officer who violates any other provision of this section or former section 13 shall be subject to a civil penalty of up to \$2,500 for each violation.

(5) An action against an Article XIII tax officer for a violation of this act may be brought by a political subdivision for which the Article XIII tax officer collects income taxes, a political subdivision owed income taxes by the Article XIII tax officer or by a surety that is liable because of the violation.

(6) A political subdivision shall remove or rescind the appointment of an Article XIII tax officer who has been penalized more than three times under paragraph (1), (2), (3) or (4).

(b) Transition.—

(1) (i) The governing body of each political subdivision which imposed an income tax prior to January 1, 2011, shall do all of the following:

(A) Determine by November 1, 2010, whether the Article XIII tax officer or the newly appointed tax officer shall collect 2011 income taxes.

(B) Notify the department by December 1, 2010, of the determination under clause (A) in accordance with section 511(a)(5).

(ii) Every employer shall remit 2011 income taxes and file the quarterly and annual reports required by former Division IV(b) and (c) of section 13 to either the Article XIII tax officer or the newly appointed tax officer, as determined by the appropriate political subdivision and released on the official register in accordance with section 511.

(2) By July 1, 2011, each tax collection committee shall develop a plan to transition from the provisions of former section 13 to the provisions of sections 512 and 513, and from the Article XIII tax officer to the newly appointed tax officer for 2012 income taxes.

(3) The Article XIII tax officer shall deliver all tax records to the political subdivision and the newly appointed tax officer by June 30, 2012, unless otherwise agreed to by the political subdivision and the newly appointed tax officer.

(4) Any delinquent income taxes or reports from 2011, or previous years which have not been remitted or provided to the Article XIII tax officer by June 30, 2012, shall become the responsibility of the newly appointed tax officer. A political subdivision which has made other provisions for the collection of delinquent income taxes or reports for 2011 or previous years shall notify the newly appointed tax officer.

(5) Beginning with the first quarter of 2012, employers shall remit income taxes withheld and make reports as required by section 512 to the newly appointed tax officer.

(c) Definitions.—The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

“Newly appointed tax officer.” A tax officer appointed under section 507(a) responsible for the collection of 2012 income taxes.

*(515 added July 2, 2008, P.L.197, No.32)*

**Section 516. Regulatory conflict.**

In the event of a conflict between a regulation under this chapter and a regulation under the act of June 27, 2006 (1st Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act, in the area of tax collection, the regulation under this chapter shall prevail.

*(516 added July 2, 2008, P.L.197, No.32)*

**Section 517. Audit and evaluation.**

(a) General rule.—Before 2017, the Legislative Budget and Finance Committee shall conduct an audit and evaluation of the impact of this chapter and consolidated collection of local income taxes. The committee shall consult with the Auditor General in the course of its audit and evaluation. The audit and evaluation shall:

- (1) Determine the extent to which income tax revenue losses have been minimized or eliminated by the implementation of uniform collection standards and a countywide income tax collection system.
- (2) Determine whether consolidated collection and standardized withholding and remittance of local income taxes as required in section 512 has simplified the system, reduced fragmentation and reduced the burden of withholding, remitting and distributing the local income tax for employers.
- (3) Determine if tax compliance is simpler, easier, fairer and less time-consuming for taxpayers.
- (4) Determine whether the tax collection system under this chapter is more efficient than the prior system.
- (5) Determine if tax collection committees are exercising their powers and duties under section 505 effectively.
- (6) Determine the extent to which cooperation and coordination exists among tax officers and tax collection districts.
- (7) Determine whether authorized investments under section 509(a)(6) and the bonding requirements under section 509(d) provide sufficient protection to income tax collections.
- (8) Determine whether nonresident and resident taxes are being properly distributed among tax collection districts within this Commonwealth and to political subdivisions within each tax collection district.
- (9) Determine whether the reporting, audit, accountability, transparency and oversight requirements for taxes collected, distributed and administered in this chapter are adequate and being met within and among tax collection districts.
- (10) Determine if the appeals boards created under section 505(j) are impartial, fair and effective.
- (11) Determine whether the penalties against tax officers under section 510 are effective and the extent to which tax officers are in compliance with the rules and regulations required by this chapter, and identify any tax officers that are in substantial noncompliance with these rules and regulations.

(12) Determine whether the agreements under section 509(g) have been approved by the Department of Revenue and each tax collection district, and that the exchange of information is reciprocal, timely and useful.

(13) Determine whether the interest, penalties and fines under section 509(i) and (j) are appropriate and adequate.

(14) Recommend needed improvements to the system.

(b) Filing requirement.—Copies of the audit findings of the Legislative Budget and Finance Committee under subsection (a) shall be filed with the chair of the Finance Committee of the Senate, the chair of the Finance Committee of the House of Representatives, the department, the Auditor General and with each tax collection committee.

*(517 added July 2, 2008, P.L.197, No.32)*

**Section 701. Definitions.**—As used in this chapter:

“Business entity” means a sole proprietorship, corporation, joint-stock association or company, partnership, limited partnership, limited liability company, association, business trust, syndicate or other commercial or professional activity organized under the laws of this Commonwealth or any other jurisdiction.

“Employer” means a person, business entity or other entity, including the Commonwealth, its political subdivisions and instrumentalities and public authorities, employing one or more persons for a salary, wage, commission or other compensation.

“Private agency” means a business entity or person appointed as a tax collector by a political subdivision.

*(701 added July 2, 2008, P.L.197, No.32)*

**Section 701.1. Distress and Sale of Goods and Chattels of Taxpayer.**—Every tax collector under Chapter 3 and tax officer under Chapter 5 shall have power, in case of the neglect or refusal of any person or business entity, to make payment of the amount of any tax due from the person or the business entity, after two months from the date of the tax notice, to levy the amount of such tax, any penalty due thereon and costs, not exceeding costs and charges allowed constables for similar services by distress and sale of the goods and chattels of such delinquent, wherever situate or found, upon giving at least ten days’ public notice of such sale, by posting ten written or printed notices, and by one advertisement in a newspaper of general circulation published in the county.

No failure to demand or collect any taxes by distress and sale of goods and chattels shall invalidate any return made, or lien filed for nonpayment of taxes, or any tax sale for the collection of taxes.

*(701.1 renumbered from 18 and amended July 2, 2008, P.L.197, No.32)*

**Section 702. Collection of Delinquent Per Capita, Occupation, Occupational Privilege, Emergency and Municipal Services, Local Services and Income Taxes from Employers, etc.**—The tax collector under Chapter 3 and the tax officer under Chapter 5 shall demand, receive and collect from all employers, other than the Commonwealth, employing persons owing delinquent per capita, occupation or occupational privilege taxes under Chapter 3 or emergency and municipal services, local services and income taxes under Chapter 5, or whose spouse owes delinquent per capita, occupation or occupational privilege taxes under Chapter 3 or emergency and municipal services, local services and income taxes under Chapter 5, or having in possession unpaid commissions or earnings belonging to any person or persons owing delinquent per capita, occupation or occupational privilege taxes under Chapter 3 or emergency and municipal services, local services and income taxes under Chapter 5, or whose spouse owes delinquent per capita, occupation or occupational

privilege taxes under Chapter 3 or emergency and municipal services, local services and income taxes under Chapter 5, upon the presentation of a written notice and demand certifying that the information contained therein is true and correct and containing the name of the taxable or the spouse thereof and the amount of tax due. Upon the presentation of such written notice and demand, it shall be the duty of any employer to deduct from the wages, commissions or earnings of such individual employes, then owing or that shall within sixty days thereafter become due, or from any unpaid commissions or earnings of any such taxable in the employer's possession, or that shall within sixty days thereafter come into the employer's possession, a sum sufficient to pay the respective amount of the delinquent taxes and costs, shown upon the written notice or demand, and to pay the same to the tax collector of the taxing district or to the tax officer for the tax collection district in which such delinquent tax was levied within sixty days after such notice shall have been given. No more than ten percent of the wages, commissions or earnings of the delinquent taxpayer or spouse thereof may be deducted at any one time for delinquent taxes and costs. The employer shall be entitled to deduct from the moneys collected from each employe the costs incurred from the extra bookkeeping necessary to record such transactions, not exceeding two percent of the amount of money so collected and paid over to the tax collector or tax officer. Upon the failure of any employer to deduct the amount of such taxes or to pay the same over to the tax collector or tax officer, less the cost of bookkeeping involved in such transaction, as herein provided, within the time hereby required, the employer shall forfeit and pay the amount of such tax for each such taxable whose taxes are not withheld and paid over, or that are withheld and not paid over together with a penalty of ten percent added thereto, to be recovered by an action of assumpsit in a suit to be instituted by the tax collector or tax officer, or by the proper authorities of the taxing district or tax collection district, as debts of like amount are now by law recoverable, except that such person shall not have the benefit of any stay of execution or exemption law. The tax collector or tax officer shall not proceed against a spouse or the spouse's employer until the tax collector or tax officer has pursued collection remedies against the delinquent taxpayer and his employer under this section.

*(702 renumbered from 19 and amended July 2, 2008, P.L.197, No.32)*

**Section 703. Collection of Delinquent Per Capita, Occupation, Occupational Privilege, Emergency and Municipal Services, Local Services and Income Taxes from the Commonwealth.**—Upon presentation of a written notice and demand under oath or affirmation, to the State Treasurer or any other fiscal officer of the State, or its boards, authorities, agencies or commissions, it shall be the duty of the treasurer or officer to deduct from the wages then owing, or that shall within sixty days thereafter become due to any employe, a sum sufficient to pay the respective amount of the delinquent per capita, occupation or occupational privilege, emergency and municipal services, local services under Chapter 3 and income taxes under Chapter 5 and costs shown on the written notice. The same shall be paid to the tax collector or the tax officer of the tax collection district of the taxing district in which said delinquent tax was levied within sixty days after such notice shall have been given.

*(703 renumbered from 20 and amended July 2, 2008, P.L.197, No.32)*

**Section 704. Notice.**—The tax collector or tax officer shall, at least fifteen days prior to the presentation of a written notice and demand to the State Treasurer or other fiscal officer of the State, or to any employer, notify the taxpayer owing the delinquent tax by registered or certified mail that a written notice and demand shall be presented to the taxpayer's employer unless such tax is paid. The return receipt card for certified or registered mail shall be marked delivered to addressee only, and the cost of notification by certified or registered mail shall be added to the costs for collecting taxes.

*(704 renumbered from 20.1 and amended July 2, 2008, P.L.197, No.32)*

**Section 705. Collection of Taxes by Suit.**—(a) Each taxing district or person, public employe or private agency designated by the taxing district under Chapter 3 and each tax officer under Chapter 5 shall have

power to collect unpaid taxes from the persons owing such taxes by suit in assumpsit or other appropriate remedy. Upon each such judgment, execution may be issued without any stay or benefit of any exemption law. The right to collect unpaid taxes under the provisions of this section shall not be affected by the fact that such taxes have been entered as liens in the office of the prothonotary, or the fact that the property against which they were levied has been returned to the county commissioners for taxes for prior years.

(b) (1) All taxes deducted and withheld from employes pursuant to this chapter or under cover of this chapter, plus any penalties and interest with respect thereto, shall constitute a trust fund for the political subdivision and shall be enforceable against such employer, his representative or any other person receiving any such fund.

(2) When suit is brought for the recovery of any such tax, the person liable therefore shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

*(705 renumbered from 21 and amended July 2, 2008, P.L.197, No.32)*

**Section 706. Penalties.**—Except as otherwise provided in the case of any tax levied and assessed upon income, any such political subdivision shall have power to prescribe and enforce reasonable penalties for the nonpayment, within the time fixed for their payment, of taxes imposed under authority of this act and for the violations of the provisions of ordinances or resolutions passed under authority of this act.

If for any reason any tax levied and assessed upon income by any such political subdivision is not paid when due, interest and penalties as provided in section 509(i) shall be added and collected. When suit is brought for the recovery of any such tax, the person liable therefor shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

*(706 renumbered from 22 and amended July 2, 2008, P.L.197, No.32)*

**Section 707. Costs of Collection of Delinquent Per Capita, Occupation, Occupational Privilege, Emergency and Municipal Services, Local Services and Income Taxes.**—(a) A bureau, political subdivision or private agency designated by a governing body of a political subdivision or a tax collection district to collect and administer per capita, occupation or occupational privilege, emergency and municipal services, local services taxes under Chapter 3 or income taxes under Chapter 5 may impose and collect the reasonable costs incurred to provide notices of delinquency or to implement similar procedures utilized to collect delinquent taxes from a taxpayer as approved by the governing body of the political subdivision or the tax collection committee. Reasonable costs collected may be retained by the tax collector under Chapter 3 or the tax officer under Chapter 5. An itemized accounting of all costs collected shall be remitted to the political subdivision or the tax collection committee on an annual basis.

(b) Costs related to the collection of unpaid per capita, occupation, occupational privilege, emergency and municipal services or local services taxes may only be assessed, levied and collected for five years from the last day of the calendar year in which the tax was due.

(c) A delinquent taxpayer may not bring an action for reimbursement, refund or elimination of reasonable costs of collection assessed or imposed prior to the effective date of this section. Additional costs may not be assessed on delinquent taxes collected prior to the effective date of this section.

*(707 renumbered from 22.1 and amended July 2, 2008, P.L.197, No.32)*

**Section 708. Clarification of Existing Law.**—The addition of section 707 is intended as a clarification of existing law and is not intended to:

(1) establish new rights or enlarge existing rights of political subdivisions or employes or agents of political subdivisions; or

(2) establish new obligations or enlarge existing obligations of taxpayers.

*(708 renumbered from 22.2 and amended July 2, 2008, P.L.197, No.32)*

**Section 901. Repeals.**—(a) (1) The act of June 25, 1947 (P.L.1145), entitled, as amended, “An act empowering cities of the second class, cities of the second class A, cities of the third class, boroughs, towns, townships of the first class, townships of the second 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; 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; providing an appeal from the ordinance or resolution levying such taxes to the court of quarter sessions and to the Supreme Court and Superior Court,” is repealed.

(2) All other acts and parts of acts are repealed in so far as they are inconsistent herewith.

(b) The following acts and parts of acts are repealed to the extent specified:

(1) Section 224 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, insofar as it is inconsistent with this act.

(2) The act of August 24, 1961 (P.L.1135, No.508), referred to as the First Class A School District Earned Income Tax Act, insofar as it is inconsistent with this act.

(3) Sections 322, 326, 351 and 5004.1 of the act of June 27, 2006 (1st Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act, insofar as it is inconsistent with this act.

*(901 renumbered from 23 and amended July 2, 2008, P.L.197, No.32)*

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