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Taxation Manual

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Addendum to

Taxation Manual Eighth Edition

July 2004



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.

A copy of Acts 124 and 125 of 2002 (House Bills 927 and 928, Printer's Number 4199 and 4200) can be found on the Internet at:

<http://www2.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB0927P4199.pdf>
<http://www2.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB0928P4200.pdf>

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.

The definitions of earned income and net profits in the Local Tax Enabling Act reference the definitions of compensation and net profits in 61 Pa. Code Pt. I Subpt. B Art. Art. V. The regulations can be found on the Internet at:

http://www.pacode.com/secure/data/061/articleIBV_toc.html.

In addition, the Department of Revenue produces a Personal Income Tax Guide that provides more information than the regulations on what is considered compensation and net profits for state personal income tax purposes. The Guide can be found on the Internet at: <http://www.revenue.state.pa.us/revenue/cwp/browse.asp>.

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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Preparation of the publication was financed from appropriations of the General Assembly of the Commonwealth of Pennsylvania.

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Taxation Manual

Eighth Edition
October 2002

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Acknowledgments

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.

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I. Introduction

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, should be 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."¹ This may appear to be confusing in the case of owner-occupied residential property, since 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."² 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 67 percent of the taxes collected in 2000 for a total of \$9.8 billion. Real estate taxes produced 85 percent of school taxes, 97 percent of county taxes and 31 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
- Occupational privilege
- 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 support of local governments in the United States and remains the most important source today. In 2000, Pennsylvania real estate taxes accounted for \$9.8 billion, or 30 percent of total local government revenues and 70 percent of all local government tax revenues. For all practical purposes, the property tax is an exclusive source of revenue of local governments. The federal government collects no property taxes, and state governments collected \$11 billion from property taxation in 2000.

In Pennsylvania, real estate taxes in 2000 accounted for 85 percent of the total tax revenues of school districts, 31 percent of the total tax revenues of municipalities and 97 percent of the total tax revenues of counties. Pennsylvania was below the national median in levels of real estate taxes in 1999, ranking 26th out of the 50 states in real estate tax revenue per capita and 30th in real estate tax revenues as a percent of personal income.

The total market value of taxable real estate in Pennsylvania in 2000 was \$514.3 billion, its assessed value over \$236 billion, indicating a statewide ratio of assessed value to market value of 45.9 percent. The ratios vary widely among the various assessment jurisdictions; the lowest 2001 common level ratio was in Bucks County at 3.8 percent and the highest in Cumberland County at 98.6 percent.

Total Revenues, Total Taxes and Real Estate Taxes Pennsylvania Local Governments, 2000

(amounts in millions of dollars)

	Total Revenues	Total Taxes	Real Estate Taxes	Real Estate Taxes as % of Revenues	Real Estate Taxes as % of Taxes
School Districts, Total	15,647.0	8,582.7	7,267.1	46.4%	84.7%
Counties Total	6,382.3	1,616.9	1,564.2	24.5%	96.7%
Municipalities Total	11,271.3	4,476.5	1,403.4	12.5%	31.4%
Philadelphia	5,177.3	2,141.6	353.6	6.8%	16.5%
Pittsburgh	500.6	264.2	117.7	23.5%	44.5%
2A & 3rd Class Cities	1,068.3	346.2	202.7	19.0%	58.5%
Boroughs	1,566.2	517.6	258.1	16.5%	49.9%
1st Class Townships	963.3	416.8	217.5	22.6%	52.2%
2nd Class Townships	1,995.8	791.7	252.3	12.6%	31.9%
Total, All Local Taxing Bodies	33,300.6	14,676.1	10,234.7	30.7%	69.7%

Note: Approximately five percent of municipalities did not report revenues in 2000. County totals include 66 counties. For purposes of this chart, Philadelphia is considered a municipality. Since 2000 data was not available at the time of publication, 1999 totals were used for Cumberland and Lawrence Counties. Since the Taxation Manual was last published in 1999, there have been some minor changes in tax classifications and how tax revenues are categorized.

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

Statutory Provisions

Although the legislature has enacted a General County Assessment Law, each class of county is subject to a special assessment law, which takes precedence when it is in conflict with the provisions of the General Law. In addition, there are special provisions applicable to the few third class cities maintaining their own assessment staffs; almost all cities have elected to use the county assessment figures.

The various assessment laws are found in Purdon’s Pennsylvania Statutes. The citations are listed below.

General County Assessment Law	72 P.S. 5020.1 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.
Second Class A and Third Class County Assessment Law	72 P.S. 5342 et seq.
Fourth to Eighth Class County Assessment Law	72 P.S. 5453.101 et seq.
Third Class City Code	53 P.S. 37501 et seq.

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.¹

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 supervises assessments. The board may be composed of the three county commissioners, or they may appoint a board consisting of three members to serve for terms concurrent with the terms of the commissioners. 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 such assistant assessors as may be required. The compensation of the assessors is fixed by city ordinance. The council acts as the Board of Revision of Taxes and Appeals in third class cities.²

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. However, Commonwealth Court ruled that this restriction of a county’s power to inter-

fere 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 Assessment Law.³

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.

Election and 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 Real Estate Appraisers.⁴ Except in first and second class counties, all assessors must complete a 90-hour basic appraisal course and successfully pass a comprehensive examination in order to receive certification. A current certification is valid for two years. To be recertified, an assessor must successfully complete another 20 hours of training.

The Third Class City Code provides for election of a city assessor by the city council and appointment by the council of assistant assessors.⁵ However, such assessors do not act as county assessors. At present, such cities duplicate the functions of the county assessors and their assessments are effective only for the city's tax levy. Any city in any county may elect to have its property assessed by the county assessors.

In counties of the fourth to eighth classes, provision is made for the election of assessors in each ward of each borough, in each borough not divided into wards, in each ward in each town, and in each township (in townships of the first class, an assessor and an assistant assessor are elected).⁶ These elected assessors are nevertheless under the jurisdiction of the chief assessor appointed by the county board of assessment appeals and subject to the law and all lawful regulations prescribed by the Board.⁷ In fourth to eighth class counties, the elected assessors are generally used only for canvasses of the occupation tax and for adding names to the per capita tax rolls.

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." In arriving at such value, the price at which any property may actually have been sold shall be considered but shall not be controlling. Instead such selling price, estimated or actual, shall be subject to revision by increase or decrease to accomplish equalization with other similar property within the taxing district.⁸

To establish actual value the county may use current year market values or it may adopt a base year for market values. The base year can be the year of the most recent countywide reappraisal or it can be another designated prior year. All real property values must be equalized in terms of base year values if current year market values are not used.

In arriving at actual value, the county may use all three accepted assessment methods. These are cost (reproduction or replacement, as applicable less depreciation and all forms of obsolescence), comparable sales and income approaches. 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. 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.⁹ 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.¹⁰

When the county assessment board receives the assessment roll, revisions may be made for the sake of equalizing valuations from property to property or from local unit to local unit. 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, final delivery date is November 15 of the previous year. 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.”¹¹ The Fourth to Eighth Class County Assessment Law likewise provides for the real estate taxation of “houses, house trailers and mobile homes permanently attached to land or connected with water, gas, electric or sewage facilities.”¹² 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.¹³ 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.¹⁴

Aids in Assessment

In counties from the second 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. The General County Assessment Law also requires that lot numbers and the name of the plan be supplied, if the property conveyed is in a recorded plan mentioned in the deed.¹⁵

In political subdivisions of counties from the fourth to eighth class inclusive, local governments are authorized to maintain a daily record of every building permit issued which includes the names and addresses of the persons owning the property, the nature of the improvements and their cost. Each month this record, if maintained, is required to be filed in the chief assessor's office. The chief assessor is required to forward copies of these improvement records at least every three months to the tax assessors of the political subdivision where the improvements are made or contemplated. The assessor then is required to visit the site of the improvements to secure any additional information of value in reassessing the property.¹⁶

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 full or market value, at the rates and prices for which the properties would separately sell in a bona fide transaction. 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.¹⁷

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.¹⁸ 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.¹⁹ The assessed value of taxable property for tax purposes has varied between three and 102 percent of actual market value over the past five years in Pennsylvania counties.

All properties within the taxing district must be uniformly assessed at a similar ratio. This is necessary in order to satisfy the requirements of Article VIII, Section I of the Pennsylvania Constitution that 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.²⁰

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.²¹ 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 the 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.²²

Land and improvements must be valued separately according to the First Class and Fourth to Eighth Class County Assessment Laws, the Second Class City and Third Class City Codes.²³ The distinction is particularly important for real estate taxation in cities and boroughs. Cities may tax land at a different rate than improvements and boroughs may do the same, but must exclude farmland.²⁴

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.²⁵

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 cost less depreciation, 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. 37516; Third Class City Code, Section 2516.
3. *Board of Property Assessment, Appeals Review and Registry of Allegheny County v. County of Allegheny*, 773 A.2d 816, Pa. Cmwlth., 2001.
4. 63 P.S. 458.4; Assessors Certification Act, Section 4.
5. 53 P.S. 37501, 37503; Third Class City Code, Sections 2501, 2503.
6. 72 P.S. 5453.501; Fourth to Eighth Class County Assessment Law, Section 501.
7. 72 P.S. 5453.302; Fourth to Eighth Class County Assessment Law, Section 302.
8. 72 P.S. 5020-402; General County Assessment Law, Section 402.
9. 72 P.S. 5453.602; Fourth to Eighth Class County Assessment Law, Section 602.
10. *Appeal of Sunrise Properties, Inc.*, 28 D.&C.3d 19, at 22, 1983, C.P. Clearfield Co.
11. 72 P.S. 5020-201; General County Assessment Law, Section 201.
12. 72 P.S. 5453.201; Fourth to Eighth Class County Assessment Law, Section 201.
13. 72 P.S. 5020-407, 72 P.S. 5453.605b; General County Assessment Law, Section 407, Fourth to Eighth Class County Assessment Law, Section 605b.
14. 72 P.S. 5020-407, 72 P.S. 5453.617a; General County Assessment Law, Section 407, Fourth to Eighth Class County Assessment Law, Section 617a.
15. 72 P.S. 5020-407, 72 P.S. 5452.6, 72 P.S. 5453.605; General County Assessment Law, Section 407, Second Class County Assessment Law, Section 6, Fourth to Eighth Class County Assessment Law, Section 605.
16. 72 P.S. 5453.602b; Fourth to Eighth Class County Assessment Law, Section 602b.
17. 72 P.S. 5020-402; General County Assessment Law, Section 402.
18. *Beitch Co. v. Board of Property Assessment, Appeals and Review*, 209 A.2d 397, 417 Pa. 213, at 217, 1965.
19. 72 P.S. 5453.602; Fourth to Eighth Class County Assessment Law, Section 602.
20. *Carino v. Board of Commissioners, Armstrong County*, 468 A.2d 1201, 79 Pa.Cmwlth. 242, at 248, 1983.
21. *Allegheny Pittsburgh Coal Company v. County Commissioner of Webster County*, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed.2d 688, 1989.
22. *Garrett v. Banford*, 582 F.2d 810, 1978; *Sunderland Properties, Inc. v. County of Berks*, 750 F.Supp. 704, 1990.
23. 72 P.S. 5341.7, 72 P.S. 5453.603, 53 P.S. 25894, 53 P.S. 37504; First Class County Assessment Law, Section 7, Fourth to Eighth Class County Assessment Law, Section 603, 1901 P.L. 20, Article VI, as amended, Third Class City Code, Section 2504.
24. 53 P.S. 37501; Third Class City Code, Section 27501; 53 P.S. 46302.1; Borough Code Section 1302.1.
25. *McKnight Shopping Center, Inc. v. Board of Property Assessment, Appeals and Review*, 209 A.2d 389, 417 Pa. 234, 1956.

IV. Assessment Appeals

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	Filing Date Deadline	Hearing Date Deadline
First Class¹	First Monday in October	As determined by the Board
Second Class²	Last day of February	As determined by the Board
Second Class A and Third³	Sept. 1 or within 40 days of assessment notice	October 31
Fourth to Eighth Class⁴	Sept. 1 or within 40 days of assessment notice	October 31
Cities - Third Class⁵	Within 30 days after delivery of notice to taxpayer	As determined by the Board

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 ratio.⁶

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.⁷ The law stipulates 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.

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 pointed out that the taxpayer always bears the final burden of convincing the court of the merits of the appeal.

The Commonwealth Court recently ruled that a school district had statutory authority to appeal an assessment.⁸ The court also found that municipalities and school districts possess the same procedural due process rights as individual taxpayers in assessment appeals.⁹

A taxpayer is entitled to an assessment that reflects the ratio actually applied to other properties. Where the market value is found valid, the taxpayer can respond with credible, relevant evidence as to the ratio.¹⁰ 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.¹¹ 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.¹²

Formal assessment appeals before the board are often preceded by informal administrative appeals within the assessment office. These 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.¹³ Refunds are to cover the period of the error or six years, whichever is less.

Until recent years, legal actions attacking the county's total assessment scheme have generally been unsuccessful. Pennsylvania courts held that the various county assessment laws provide taxpayers with a plain, adequate and complete remedy for their allegations regarding the unconstitutionality of assessments.¹⁴ The first exceptions have been where taxpayers have been able to show that a county was in fact performing a countywide reassessment on a piecemeal basis.¹⁵ In Lancaster County, 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.¹⁶ Court orders requiring counties to undertake countywide reassessments are no longer rarities.

References

1. 72 P.S. 5341.10, 72 P.S. 5341.14; First Class County Assessment Law, Sections 10, 14.
2. 72 P.S. 5452.11; Second Class County Assessment Law, Section 11.
3. 72 P.S. 5349, Third Class County Assessment Law, Section 8.
4. 72 P.S. 5453.604, 72 P.S. 5453.701; Fourth to Eighth Class County Assessment Law, Sections 604, 701.
5. 53 P.S. 37518; Third Class City Code, Section 2518.
6. 72 P.S. 5020-511, 72 P.S. 5453.702; General County Assessment Law, Section 511, Fourth to Eighth Class County Assessment Law, Section 702.
7. 72 P.S. 5020-518.2, 72 P.S. 5453.704; General County Assessment Law, Section 518.2, Fourth to Eighth Class County Assessment Law, Section 704.
8. *Millcreek Township School District v. Erie County Board of Assessment Appeals*, 737 A.2d 335, Pa. Cmwlth, 1999.
9. *Richland School District v. County of Cambria Board of Assessment Appeals*, 724 A.2d 988, Pa. Cmwlth, 1999.
10. *Appeal of Chartiers Valley School District*, 447 A.2d 317, 67 Pa.Cmwlth. 121, 1982.
11. 72 P.S. 4656.16a; 1982 P.L. 1158, No. 267.
12. *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, 1981.
13. 72 P.S. 5020-505.1, 72 P.S. 5453.703c; General County Assessment Law, Section 505.1, Fourth to Eighth Class County Assessment Law, Section 703.3.
14. *Greenwich Township v. Murtagh*, 601 A.2d 1352, Pa.Cmwlth., 1992.
15. *City of Lancaster v. County of Lancaster*, 599 A.2d 289, Pa.Cmwlth., 1991, appeal denied 606 A.2d 903;
16. *Croasdale v. Dauphin County Board of Assessment Appeals*, 492 A.2d 793, 89 Pa.Cmwlth. 409, 1985.

V. Real Estate Tax Rates

General Rate Limits

Statutory rate limitations on real estate taxes have been established for all classes of taxing jurisdiction in Pennsylvania, except the cities of Philadelphia, Pittsburgh and Scranton and the Philadelphia School District.¹ 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.² Voters of 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.³ Third class cities may also set different rates for land and buildings providing they are uniform within each classification.⁴ Boroughs may set different rates for land, except for farmland, and buildings.⁵ Third class school districts coterminous with third class cities may also levy separate rates on land and buildings.⁶

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

<u>Taxing Jurisdiction</u>	<u>Rate Limit</u>
Counties, Second Class (Allegheny)	25 mills
Counties, Second Class A (Bucks, Delaware & Montgomery)	30 mills
Counties, Third through Eighth Class	25 mills
Institution Districts	10 mills
Cities, Third Class	25 mills
Boroughs	30 mills
Townships, First Class	30 mills
Townships, Second Class	14 mills
School Districts, First Class A (Pittsburgh)	32.25 mills
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 imposed 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.⁷

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, for distressed municipal pension systems and open space acquisition.

Over the past ten or so years, it was common practice for municipalities in southeastern counties to levy a special police/public safety millage. This special tax is nowhere explicitly authorized by the municipal codes or any other state law. It appears to be a response to the problems raised for the municipal governments by the extremely low assessment ratios in these 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.⁸ 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 1968,⁹ since Eddystone police were not represented by a bargaining unit and there was no arbitration award present in the case requiring legislative action to implement. Countywide reassessments recently implemented in Chester, Montgomery and Delaware counties should help resolve this issue.

Limitation After Countywide Reassessment

The assessment law prohibits political subdivisions within counties of second to eighth class from levying real estate taxes on a countywide revised assessment of real property until it has been completed for the entire county. Tax revenue restrictions apply when there has been a countywide reappraisal or a change in the predetermined assessment ratio.¹⁰

In counties of the second A and third classes, each political subdivision is required to reduce its tax rate for the first year after a countywide reappraisal or after the county changes its established predetermined ratio in order that the total amount of taxes levied that year against real properties contained in the duplicate for the preceding year does not exceed 110 percent of the total amount levied the preceding year. The law excludes the amount to be levied on newly-constructed buildings or structures or on increased valuations based on new improvements made to existing buildings in determining the total amount of taxes to be levied for the first time.

The same restrictions apply to political subdivisions within counties of the fourth to eighth class. However, the percentage is not to exceed 110 percent in the case of a school district or 105 percent for any other taxing district. All political subdivisions within counties of the second A to the 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 reassessment.¹¹

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.¹² The real estate revenue limit excludes new construction and improvements to existing structures. The Allegheny County Court of Common Pleas ruled that the “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.¹³

References

1. 53 P.S. 12553, 53 P.S. 23104; First Class City Code, Article XVII, Section 3, Second Class City Code, Article XX, Section 3.
2. 53 Pa. C.S. 2962.
3. 53 P.S. 25894; 1913 P.L. 209, Section 1.
4. 53 P.S. 37531(4); Third Class City Code, Section 2531(4).
5. 53 P.S. 46302.1; Borough Code, Section 1302.1
6. 24 P.S. 6-672(e); Public School Code, Section 672(e).
7. *City of Altoona v. Central Pennsylvania Retiree's Association*, 510 A.2d 868, 97 Pa.Cmwlth. 637, 1986.
8. *In re Borough of Eddystone*, 602 A.2d 464, Pa.Cmwlth., 1992.
9. 43 P.S. 217.7(b); *Tate v. Antosh*, 281 A.2d 192, 3 Pa.Cmwlth. 144, 1971.
10. 72 P.S. 5020-402(b), 72 P.S. 5453.602(b); General County Assessment Law, Section 402(b), Fourth to Eighth Class County Assessment Law, Section 602(b).

11. *Harding v. City of Uniontown*, 25 D.&C.3d 368, 1982, C.P. Fayette Co.
12. 16 P.S. 4980.2; Second Class County Code, Section 1980.2.
13. *600 Grant Street Associates et. al. v. City of Pittsburgh et. al.*, GD01-1211 (C.C.P. Allegheny 2/27/2001).

VI. Exemptions

Constitutional Provisions

The power to determine what property shall be exempt from taxation is vested in the Pennsylvania General Assembly. With only 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 and that is 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.¹ The Commission reviews new applications for veterans exemptions and certifies those found qualified to the county assessment office. Upon determining that the property is the principal residence of the owner, the assessment board grants the exemption. The State Veterans Commission reviews all determinations of need at least every two 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 two major assessment laws.² 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 schoolhouses belonging to any county, borough or school district.
- All courthouses, jails and poorhouses.
- All public parks operated 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 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.
- Real estate owned by institutions of purely public charity and actually and regularly used for the purposes of the institution.
- All playgrounds founded and maintained by public or private charity.
- All property maintained by public or private charity and used exclusively for public libraries, museums, art galleries or concert music halls.
- Silos used for processing or storing animal feed on a farm.
- All fire and rescue stations maintained by public or private charity along with their social halls.

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

Institutions of Purely Public Charity

The past fifteen years have witnessed an unprecedented amount of litigation over challenges to long-held assessment exemptions. The leading case was *Hospitalization Utilization Project v. Commonwealth* decided by the Pennsylvania Supreme Court in 1985. In this case the Court set forth a five-part test to determine whether an entity qualified for tax exemption as a purely public charity. The following requirements have to be met to qualify for tax-exempt status as charity.

1. The organization must advance a charitable purpose.
2. The organization must donate or render gratuitously a substantial portion of its services.
3. The entity must benefit a substantial and indefinite class of persons who are legitimate subjects of charity.
4. It must relieve the government of some of its burden.
5. It must operate 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 criteria varied from court to court. Many challenges ended in settlements where the institution agreed to make in lieu of tax payments in exchange for retention of its tax exempt status. The most recent decisions by the Supreme Court on exemptions for charities seem to be moving back to the traditional positions.³

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 1997.⁴ The Act places the five tests for a purely public charity into statutory form and includes criteria for measuring whether an institution meets the tests. Formerly, charitable institutions had to qualify separately for real estate tax exemptions and state sales tax exemptions. Now 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 its status as a purely public charity. Political subdivisions challenging that status bear the burden of proving that the entity does not comply with the standards of the Act. The county assessment boards must still determine that a particular parcel is being used to advance the charitable purposes of the institution. The Act validates existing voluntary in lieu of tax agreements and authorizes future agreements between charitable institutions and political subdivisions.

Keystone Opportunity Zones

In a new departure to encourage economic development, the General Assembly enacted the Keystone Opportunity Zone Act in 1998 and expanded the act in 2000.⁵ Previous economic development legislation authorized partial abatement of local real estate taxes. Within designated Keystone Opportunity Zones and Keystone Opportunity Expansion Zones, businesses and individuals enjoy total exemption from almost all state and local taxes, including real estate, sales, income and gross receipts. The tax exemptions for the KOZs began January 1, 1999 for a maximum of 15 years and the expansion zone tax exemptions went into effect January 1, 2001 for up to 13 years. The state is limited to designating 12 zones, none of which may be larger than 5,000 acres, and 12 expansion zones, which cannot exceed 1,500 acres each. Local governments applying for designation

must agree to provide local tax exemptions. The zones must meet specified economic distress criteria. Projects within the zones receive priority consideration for state economic and community development assistance programs.

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 immunity. Exempt status must be affirmatively requested by local public property owners for public uses.⁶ 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.⁷ 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.⁸

References

1. Pennsylvania Constitution, Article VIII, Section 2(c); 51 Pa.C.S. 8902.
2. 72 P.S. 5020-204, 72 P.S. 5453.202, General County Assessment Law, Section 204, Fourth to Eighth Class County Assessment Law, Section 202.
3. *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.
4. 10 P.S. 371 et seq.
5. 73 P.S. 820.101; Keystone Opportunity Zone and Keystone Opportunity Expansion Zone Act.
6. *City of Pittsburgh v. Board of Property Assessment Appeals and Review of Allegheny County*, 412 A.2d 655, 49 Pa.Cmwlth. 442, 1980.
7. *Wesleyville Borough v. Erie County Board of Assessment Appeals*, 676 A.2d 298, Pa.Cmwlth, 1996.
8. *Southeastern Pennsylvania Transportation Authority v. Board of Revision of Taxes*, 777 A.2d 1234, Pa. Cmwlth., 2001, reargument denied 2001.

VII. Special Tax Provisions

Constitutional Provisions

The 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. It was permitted to establish special provisions for forest and farmland, for persons in need because of age, disability, infirmity or poverty, for improvements to deteriorated property or areas and for residential construction.¹ Various special provisions were enacted by the General Assembly subsequent to the effective date of the amendments.

An amendment to the Constitution approved by the voters in November 1997 added an additional exemption from the uniformity of taxation clause. Local taxing districts are now 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 authorizing local taxing bodies to implement homestead exclusions became effective January 1, 1999.² Counties, municipalities and school districts may exclude from taxation a portion of the assessed value of owner-occupied residences. The exclusion is a flat uniform dollar amount. It cannot exceed 50% of the median value of all homestead property within the taxing jurisdiction as certified by the county assessment office. The county calculates this figure from the applications which must be filed by property owners before March 1 of each year, then certifies it when it certifies the tax duplicate for the coming year. The county is to adopt a schedule for the review or reapplication of properties previously approved. All farms of at least 10 acres, which are the domicile of the owner, qualify for an additional exclusion known as the farmstead exclusion, which can be any amount up to the level of the homestead exclusion.

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, then by implementation of a homestead exclusion.³ 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 will not be a fixed amount. The maximum amount will vary from year to year as properties gain or lose qualification, or as more owners apply for the exclusion. Once adopted, there is nothing to prevent a taxing body from raising or lowering the amount of the exclusion from year to year to meet its revenue needs. The homestead exclusion may be adopted by some but not all the jurisdictions levying real estate taxes on a particular parcel, and where adopted it will be at a different amount for each taxing district using it. For instance a property owner may have a homestead exclusion of \$8,000 from the parcel's assessed value for municipal tax purposes, none for county tax purposes and \$20,000 for school tax purposes. These exclusion amounts will likely change from year to year. It is entirely likely that in many places, homeowners' applications for exclusions will be processed for a number of years before the homestead exclusion is implemented by one of the taxing jurisdictions. Then, once implemented, there is no guarantee the exclusion will be continued in future years.

Senior Citizens

The Senior Citizens Rebate and Assistance Act provides for rebates by the state on local property taxes and that portion of rent representing the tenant's share of property taxes.⁴ Rebates are granted to senior citizens, widows, widowers and permanently disabled persons with incomes less than \$15,000 per year on a sliding scale basis. The maximum individual rebate amount is \$500. The rebates are for taxes paid during the 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.⁵ The maximum amount of the benefit can be limited by the city. Allegheny County, Pittsburgh and other municipalities within Allegheny County are authorized to provide tax relief through their own rebate programs for qualified property owners.⁶ The program must be modeled on the state program, but benefits may vary from municipality to municipality.

In addition, Allegheny County and its political subdivisions may use a tax-neutral assessment for homesteads of qualified owner-occupants following a mandated county-wide reassessment. An individual qualifying for the Senior Citizens Rebate and Assistance Act automatically qualifies for the tax-neutral assessment. This assessment continues until the owner fails to meet the requirements for a rebate or the property is sold.⁷

Real Estate Tax Deferral

All political subdivisions are authorized to establish real estate tax deferral program for low-income homeowners.⁸ The deferral applies to all increases in property taxes on the homestead over the amount paid in the year prior to application. The program is limited to persons with incomes not exceeding the eligibility limit of the Senior Citizens Rebate and Assistance Act (currently \$15,000). Once enrolled, the claimant receives deferrals for subsequent years as long as they meet the eligibility requirements. A lien is entered against the property for the amount of taxes deferred 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.

Forest and Farmland

The Covenant Preserving Land Uses Act of 1966, as amended, authorizes all counties to enter into covenants with landowners for the preservation of land in 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.⁹ 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. Real property tax assessment will then reflect the fair market value of the land as restricted by the covenant. The law also requires the assessment appeals board to take the restriction into consideration in fixing the assessment.

Under the Pennsylvania Farmland and Forestland Assessment Act of 1974, preferential tax assessments are provided on tracts of land containing ten or more contiguous acres in agricultural use, agricultural reserve or forest reserve.¹⁰ Tracts of land less than ten acres may qualify under agricultural use, if the land has an anticipated yearly gross income of \$2,000. All agricultural use lands, however, must have been devoted to agricultural use for a three-year period. Once approved for preferential treatment, the land is assessed on its value for agricultural or forest use and not on its potential market value. If any land is "split-off," the resulting parcels must meet the act's requirements to qualify for preferential assessment. An example of this is The Commonwealth Court ruling that a taxpayer's conveyance of a 3.56-acre tract of land to her son qualified as a "split-off" under the act.¹¹

Property owners who decide to opt for preferential taxes may find out what their taxes would be by first obtaining soils information on their property from the County Agricultural Service Center. Application is then made to the county assessor, who informs the landowner within thirty days of both the normal and preferential assessment values.

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.¹² 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 value, defined as market value solely for agricultural use.¹³ After development rights have been purchased by state or local governments under the Agricultural Area Security Law or the Open Space Lands Act, school districts are authorized to exempt the parcels from any further increase in millage rates.¹⁴ The millage freeze is effective from the date of the school board's resolution or from the date the agricultural easement has been transferred.

When a county is undertaking assessments, it must follow the procedures of these statutory provisions. A county assessment board has no authority to devise its own informal program of preferential tax treatment for farmland.¹⁵

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 optional schedules.¹⁶ Each taxing authority, or two or more taxing authorities jointly, to implement the tax exemption provisions must determine the boundaries of a deteriorated neighborhood or neighborhoods.

Options are provided for a ten-year schedule with 100 percent exemption the first year and reductions by 10 percent each subsequent year, a five-year schedule with annual 20 percent reductions, three years of 100 percent exemption, or ten years of 100 percent exemption. Limitations are included in the ordinance or resolution at lesser multiples of \$1,000. The present limit is the previous year's maximum multiplied by the U.S. Census Bureau's New One-Family House Price Index. The exemption may not be terminated by 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 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.¹⁷

The 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.¹⁸ The boundaries of a deteriorated area or areas are determined by the municipal governing body prior to the adoption of an ordinance or resolution. 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 length of the schedule of taxes exempted is limited to a maximum of ten years. The schedule of taxes stipulates the portion of new construction or improvement to be exempted each year and limits the exemption to the additional assessment valuation attributable to the actual costs of new construction or improvements to deteriorated property or the maximum cost per unit established by a municipal governing body. The improvement is assessed after it is completed. 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.¹⁹ Termination of the exemption is prohibited because of the sale or exchange of property.

The Pennsylvania Supreme Court 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.²⁰

Taxpayers apply for an exemption on a form provided by the local taxing authority at the time they secure a building permit or at the commencement of construction. Failure to meet the notification requirement can disqualify a taxpayer from an exemption. Commonwealth Court upheld Philadelphia's LERTA ordinance requiring notice of an intention to seek an exemption within 60 days of securing a building permit.²¹ The assessment agency, after completion of the new construction or improvement, assesses them separately and notifies the taxpayer and the local taxing authorities of the amounts of the assessment eligible for exemption.

New Residential Construction

The section of the Pennsylvania Constitution authorizing special tax provisions for new residential construction is implemented by the New Home Construction Local Tax Abatement Act.²² This law authorizes local taxing bodies to grant real estate tax abatements to residences built upon unimproved land within designated boundaries. The exemptions are limited to a maximum of two years.

Special Tax Relief to Long-term Owner-Occupants

An amendment to the Pennsylvania Constitution adopted by the voters in 1984 authorizes 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 1988.²³ Philadelphia and Allegheny County are authorized to grant long-time owner-occupants tax deferrals, exemptions or a combination of both for the portion of real estate taxes caused by any increase in the market value of their property resulting from widespread renovation of property in their neighborhood. These provisions are limited to designated areas. School districts and municipalities within Allegheny County have the option to participate in this program.

References

1. Pennsylvania Constitution, Article VIII, Section 2(b); 72 P.S. 4691; 1963 P.L. 174.
2. 53 Pa.C.S. 8581 *et seq.*; Homestead Property Exclusion Act.
3. 53 Pa.C.S. 8717.
4. 72 P.S. 4751; Senior Citizens Rebate and Assistance Act.
5. 72 P.S. 4751-21 *et seq.*
6. 16 P.S. 6171-B; Second Class County Code, Section 3171-B.
7. 16 P.S. 4901-A; Second Class County Code, Section 1901-A.
8. 53 Pa.C.S. 8571 *et seq.*; Real Estate Tax Deferral Program Act.
9. 16 P.S. 11941; Covenant Preserving Land Uses Act.
10. 72 P.S. 5490. 1; Pennsylvania Farmland and Forestland Assessment Act; 7 Pa.Code 137. 1.
11. *Saenger v. Berks County Bd. of Assessment Appeals*, 732 A.2d 681, Pa. Cmwlth, 1999.
12. 32 P.S. 5009; 1967 P.L. 992, Section 9.
13. 72 P.S. 5491.3; Preserved Farmland Tax Stabilization Act.
14. 32 P.S. 5007.1(b); 1967 P.L. 992, Section 7.1.
15. *Appeal of Sidorek*, 621 A.2d 1149, Pa.Cmwlth., 1993.
16. 72 P.S. 4711-202; Improvement of Deteriorating Real Property or Areas Tax Exemption Act.
17. *Banzhoff v. Dauphin County Board of Assessment Appeals*, 575 A.2d 164, 133 Pa.Cmwlth. 165, 1990.

18. 72 P.S. 4722; Local Economic Revitalization Tax Assistance Act.
19. *MacDonald, Illig, Jones and Britton v. Erie County Board of Assessment Appeals*, 604 A.2d 306, Pa.Cmwlt., 1992.
20. *Lincoln Philadelphia Realty Associates I v. Board of Revision of Taxes of City and County of Philadelphia*, 758 A.2d 1178, Pa., 2000.
21. *Northwood Nursing Care and Convalescent Home, Inc. v. City of Philadelphia, Board of Revision of Taxes*, 511 A.2d 81, 98 Pa.Cmwlt. 401, 1986.
22. 72 P.S. 4754-1; 1986 P.L. 1693, No. 202.
23. 72 P.S. 4749.1; 1988 P.L. 1190, No. 146.

VIII. In Lieu of Tax Payments

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 to cover the cost of governmental services provided by local governments or to offset the revenues lost when the property is removed from the tax rolls.

State In Lieu of Tax Payments

The Commonwealth makes annual payments to local subdivisions for state-owned land used for forest, water conservation, flood control and game purposes.¹ The state pays 40 cents per acre each to the county, municipality and school district where the land is located.

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 state then redistributes funds to the local taxing bodies on a formula basis.² Local taxing bodies must file an annual report with the Department of Revenue to qualify for the 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.

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.³

Federal In Lieu of Tax Payments

The federal Payments-in-Lieu of Taxes Act makes payments to units of government that contain certain federal lands.⁴ Referred to as entitlement lands, 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. A county will receive the greater amount of either \$1.65 per acre of entitlement lands “less current timber, mineral or grazing payments,” or 22 cents per acre in addition to current payments. The payments can be reallocated and redistributed to local subdivisions. In Pennsylvania, the funds are divided between municipalities and school districts.

Authority In Lieu of Tax Payments

Public housing authorities may make annual contributions in lieu of taxes to certain municipalities. No contract for contributions shall be made unless the governing body of the locality involved has entered into an agreement with the public housing authority. The cooperation agreement requires exemption from real and personal property taxes levied or imposed by the city, county or other political subdivision. The contract requires payments in lieu of taxes to equal ten percent of the annual rents collected, less the cost of utilities. In the agreement, the municipality must promise to provide, at no cost, the same public services and facilities to the project that are furnished, at no cost to others within the local government body's jurisdiction.⁵

As public instrumentalities of the Commonwealth performing essential governmental functions, industrial development authorities are not required to pay any taxes upon property acquired or used by them.⁶ Payments in lieu of taxes are made to the taxing jurisdictions in the amounts equal to the amount which would have been levied on the properties if they were not tax exempt. A certification signed by the authority provides that the sale or lease agreement will provide for payment of ad valorem taxes by the occupant.

Private In Lieu of Tax Payments

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

The 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 where the institution retained its exemption, but yet agreed to pay a negotiated amount in lieu of taxes. The use of these agreements was approved by the Commonwealth Court.⁷ Subsequently, the Institutions of Purely Public Charity Act explicitly authorized these agreements in statute.⁸ 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. 8101-A; Public Utility Realty Tax Act.
3. *Atlantic City Electric Company v. United School District*, 780 A.2d 766, Pa. Cmwlt., 2001.
4. 32 U.S.C. 6903.
5. 42 U.S.C. 1437d(d) and 1437c(e)(2).
6. 73 P.S. 385; Industrial and Commercial Development Authority Law, Section 15.
7. *Lee Hospital v. Cambria County Board of Commissioners*, 638 A.2d 344, Pa.Cmwlt., 1994.
8. 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 almost 13 percent of local revenues, ranging from less than one percent for counties to 35 percent for Philadelphia. Tax revenues from nonreal estate taxes comprise 30 percent of all local government tax revenues, ranging from three percent in counties to 84 percent for Philadelphia.

The adequacy of revenues from nonreal estate taxes and other sources allowed 53 Pennsylvania municipalities to operate without levying a real estate tax in 2000.

Total Revenues, Total Taxes and Nonreal Estate Taxes Pennsylvania Local Governments, 2000

(amounts in millions of dollars)

	Total Revenues	Total Taxes	Nonreal Estate Taxes	Nonreal Estate Taxes as % of Revenues	Nonreal Estate Taxes as of % Taxes
School Districts Total	15,647.0	8,582.7	1,315.6	8.4%	15.3%
Counties Total	6,382.3	1,616.9	52.7	0.8%	3.3%
Municipalities Total	11,271.3	4,476.5	3,073.1	27.3%	68.6%
Philadelphia	5,177.3	2,141.6	1,788.0	34.5%	83.5%
Pittsburgh	500.6	264.2	146.5	29.3%	55.5%
2A & 3rd Class Cities	1,068.3	346.2	143.5	13.4%	41.5%
Boroughs	1,566.2	517.6	259.5	16.6%	50.1%
1st Class Townships	963.3	416.8	199.3	20.7%	47.8%
2nd Class Townships	1,995.8	791.7	539.4	27.0%	68.1%
Total, All Local Taxing Bodies	33,300.6	14,676.1	4,441.4	13.3%	30.3%

Note: Approximately five percent of municipalities did not report revenues in 2000. County totals include 66 counties. For purposes of this chart, Philadelphia is considered a municipality. Since 2000 data was not available at the time of publication, 1999 totals were used for Cumberland and Lawrence Counties. Since the Taxation Manual was last published in 1999, there have been some minor changes in tax classifications and how tax revenues are categorized.

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 2000

(amounts in thousands of dollars)

Tax	Counties	School Districts	Philadelphia	Other Municipalities	Total
Earned Income		781,426.4	1,244,760.6	842,027.7	2,868,214.7
Sales	35,930.2		103,697.9		139,628.1
Hotel Room Rental	10,505.7		22,630.2		33,135.9
Business Gross Receipts		43,043.0	290,121.4	170,532.8	503,697.2
Occupation	2,280.4	123,304.8		10,941.0	136,526.2
Per Capita	4,021.5	32,952.2		18,998.5	55,972.2
Realty Transfer		147,130.8	77,709.2	150,071.5	374,911.5
Occupational Privilege		15,315.8		30,623.5	45,939.3
Amusement/Admission		5,036.7	11,710.8	15,667.6	32,415.1
Mechanical Devices		136.9	3.0	3,261.7	3,401.6
Other	30.1	167,300.0	37,373.3	42,935.3	247,638.7
Total	52,767.9	1,315,646.6	1,788,006.4	1,285,059.6	4,441,480.5

Note: Approximately five percent of municipalities did not report revenues in 2000. County totals include 66 counties. For purposes of this chart, Philadelphia is considered a municipality. Since 2000 data was not available at the time of publication, 1999 totals were used for Cumberland and Lawrence Counties. Half of the counties that impose a Hotel Room Rental Tax did not report Hotel Room Rental Tax Rental revenues for 2000. Since 1999 and 2000 data was inconsistent, 1998 totals were used for Municipal Occupation and Occupational Privilege Tax Totals. Since the Taxation Manual was last published in 1999, there have been some minor changes in tax classifications and how tax revenues are categorized.

On a statewide basis, the earned income tax is the most significant of these taxes, producing 65 percent of all receipts from nonreal estate taxes. The next most significant are business gross receipts taxes generating 11 percent and realty transfer taxes eight percent of receipts from nonreal estate taxes. Per capita and occupational privilege taxes are widely used, but because of rate limitations, they do not generate a significant share of revenue.

Nonreal Estate Taxes Levied by Local Government Units, 2000

Tax	Counties	Municipalities	School Districts	Total
Earned Income		2,398	460	2,858
Realty Transfer		2,387	483	2,870
Per Capita	30	1,577	343	1,950
Occupational Privilege		1,283	271	1,554
Occupation - Flat Rate		164	53	217
Occupation - Mills	3	235	94	332
Business Gross Receipts		251	61	312
Amusement/Admission		210	46	256
Mechanical Devices		489	15	504
Hotel Room Rental	16	1		17
Sales	1	1		2

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. . . .”¹ 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.² 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.³ 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, occupational privilege 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 13 contains standard definitions for the earned income tax, superseding any contrary definitions in local earned income tax ordinances.

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.⁴ 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.⁵

Local Tax Reform Act

In 1988, the legislature enacted the Local Tax Reform Act.⁶ 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.⁷

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; 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. 6917(a) Local Tax Enabling Act, Section 17(a); *Prior v. Borough of Eddystone*, 374 A.2d 981, 30 Pa.Cmwlth.
5. *Thompson v. West Branch Area School District*, 505 A.2d 386, 95 Pa.Cmwlth. 288, 1986.
6. 72 P.S. 4750.101; 1988 P.L. 1121, No. 145.
7. 53 Pa.C.S. 8401 et seq.

X. Earned Income Taxes

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. While school districts continue to be heavily reliant on real estate taxes, in 1997, 59 percent of all municipalities received more revenues from earned income than property taxes. In 2000, either municipal or school earned income taxes were levied everywhere in Pennsylvania except in 158 municipalities, or 6 percent of all municipalities. These municipalities are located primarily in Potter County, the northeastern counties of Pike, Susquehanna and Wayne, and the suburban counties of Bucks, Chester, Delaware and Montgomery.

Statutory Authorization

Local income taxes were first authorized by the Sterling Act for Philadelphia.¹ 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.² 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 \$5,000 per year from the earned income tax. 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.³ 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.⁴

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.⁵ 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.

Act 24 of 2001 permits school districts and municipalities to replace the occupation tax, millage or flat rate, with an increase in the rate of the earned income tax, if approved by referendum.⁶ 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.⁷

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.⁸

The Pittsburgh School District tax is limited to two percent.⁹ 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.¹⁰

In general, all other jurisdictions adopting income taxes under the Local Tax Enabling Act are limited to one 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.¹¹ 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.¹² The sharing provisions automatically halve the taxes of overlapping jurisdictions as they apply to residents. But since 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.¹³ 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 17 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 to “suggest arbitrary and capricious action indicative of a wanton disregard of public duty.”¹⁴

State 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.¹⁵ 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.¹⁶

Municipalities which have been declared distressed under the Municipalities Financial Recovery Act may be able to increase their earned income taxes above the limit set in the Local Tax Enabling Act.¹⁷ 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 does not prohibit extension of the earned income tax increase to nonresidents.

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.¹⁸ 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. 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.¹⁹ 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.²⁰ 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 July 2002, only four Act 50 referenda have been approved.

Act 24 of 2001 permits school districts to replace the occupation tax with an increase in the rate of the earned income tax, if approved by referendum.²¹ The increase in the earned income tax is calculated by adding the earned income rate that would equal the amount of revenue brought in by the occupation tax in the prior fiscal year to the current earned income rate. After approval of the referendum, the school district must eliminate the occupation tax. In the November 2001 election, 36 school districts approved Act 24 referendum. In June 2002, Act 24 was amended to allow municipalities to replace the occupation tax with an increase in the rate of the earned income tax. This legislation also restricted the rate of the increased earned income tax to what was necessary to replace occupation tax returns collected in 2001.

Taxable Income

Section 13 of the Local Tax Enabling Act establishes uniform definitions for earned income, net profits, domicile and other terms.²² These definitions supersede any omission or contrary definitions in any local tax ordinance or resolution adopted under the Act. The definitions are designated as exclusive and political subdivisions are prohibited from altering or changing the definitions.

Often questions arise as to the inclusion of certain classes of income not directly covered by the definitions in Section 13. Some tax officers have used the regulations issued for the state personal income tax to answer such questions.²³ These regulations have no legal status for local earned income taxes. Local taxing bodies may use the state regulations as a guideline in formulating their own regulations, but they must be careful to exclude classes of income taxable under the state personal income tax, but not under the earned income tax, such as interest and dividends. Earned income tax regulations must exempt unreimbursed ordinary and necessary business expenses from the tax base.²⁴ Where a taxpayer deliberately acquires rental property, it can be considered a business and subject to the local earned income tax.²⁵ Net profits passed through to a taxpayer by a Chapter S corporation are investment income and not subject to the local earned income tax.²⁶

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.²⁷ 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.²⁸ *Confair v. Municipal and School Income Tax Board of Appeals (Lycoming County)* ruled that noncompete agreements are taxable.

The Pennsylvania Supreme Court has ruled that the tax is levied on total earned income. Taxpayers may deduct business losses from wage and salary income.²⁹ However, the Court let stand a prior Commonwealth Court ruling that taxpayers could not apply net losses from one business against net profits from another. Liability for earned income taxes on net profits is to be calculated for each business separately.³⁰

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.³¹

Residency

Determination of residency is a critical element for earned income taxes. School districts may only tax residents of the district.³² Municipalities taxing nonresidents must credit liability for their taxes against taxes paid at the place of residence.

A resident is a taxpayer domiciled within the taxing district. 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 it is the voluntarily fixed place of permanent habitation of a person. For business net profits taxpayers, domicile is defined as the center of business affairs.

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 purposes can be looked to for guidance.³³ Although there is no direct legal connection, the definition of domicile in the Election Code is similar to that in the Local Tax Enabling Act, so legislative intent can be implied.

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.³⁴ Establishment of taxpayer's residence by opinion testimony of two witnesses was upheld on appeal.³⁵ The Commonwealth Court held the weight and credibility of evidence on residence was up to the trial judge sitting as a fact finder.

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.³⁶ 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.³⁷ 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."³⁸ 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.³⁹ 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 14, 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."⁴⁰ 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. 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.⁴¹ 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.⁴² 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.⁴³ This credit does not extend to taxes paid to foreign countries.⁴⁴ 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.⁴⁵

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.⁴⁶ 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.⁴⁷ 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.⁴⁸

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 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 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
888-223-6837
www.inventpa.com

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16. *City of Pittsburgh v. Commonwealth of Pennsylvania*, 559 A.2d 513, Pa.Cmwlth., 1989, affirmed 559 A.2d 513.
17. 53 P.S. 11701.123; Municipalities Financial Recovery Act, Section 123(c); *Petition of City of Clairton for Court Approval of Additional One-Half Percent General Purpose Earned Income Tax*, 590 A.2d 838, Pa.Cmwlth., 1991; *In re City of Scranton*, 638 A.2d 379, Pa.Cmwlth., 1994.
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XI. Intangible Personal Property Taxes

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.¹ 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.² 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.³ The Philadelphia School District had special statutory authority but dropped the tax in 1968 in favor of a tax on unearned income.⁴

Legal Challenges to the Tax

On February 21, 1996, the United States Supreme Court struck down as unconstitutional a similar North Carolina intangibles tax.⁵ 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 discriminates 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.⁶

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.⁷

References

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2. 72 P.S. 4821.1; 1913 P.L. 507, Section 1.1.
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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.
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XII. Per Capita Taxes

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,¹ for third class cities (referred to as a residence tax),² and for fourth to eighth class counties as an alternative to the occupation tax;³ 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 \$10.⁴ 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.⁵

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 \$5,000. Counties may exempt persons whose income is less than \$10,000. 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.⁶ 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.

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.⁷ 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.⁸ 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.⁹ 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.

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XIII. Occupation Taxes

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."¹ Because they sound alike, occupation taxes are sometimes confused with occupational privilege taxes. The Commonwealth Court has clearly distinguished these two taxes.² 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.³ 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,⁴ cities,⁵ boroughs,⁶ and first class townships.⁷ 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.⁸ 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 4 of the Act.⁹ School districts where voters have approved an increased earned income tax under Act 50 of 1998 are

prohibited from levying occupation taxes.¹⁰ Philadelphia¹¹ and Philadelphia School District¹² 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 2000 was 4,275 mills (427.5 percent) levied by the Montgomery Area School District in Lycoming County. Eleven other school districts had millages of 2000 or higher. For 2000-01 occupation tax revenues exceeded earned income tax revenues in 42 school districts, almost all concentrated in the Susquehanna River valley.

Act 24 of 2001 permits school districts and municipalities to replace the occupation tax, millage or flat rate, with an increase in the rate of the earned income tax if approved by referendum.¹³ After approval of the referendum, the taxing jurisdiction must eliminate the occupation tax. In the November 2001 election, Act 24 referenda were approved in 36 school districts.

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.¹⁴ School districts and municipalities cannot set their own occupational valuations; they must use the figures established by the county assessment board.¹⁵

Jurisdictions levying the occupation tax are authorized to exempt from the tax persons whose income from all sources is less than \$5,000.¹⁶ 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.¹⁷ Taxing bodies levying occupation or per capita taxes are authorized to provide for preparation of a list of taxpayers by their own employees.¹⁸ 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.¹⁹ However, another county court invalidated a single uniform assessment as creating a flat rate tax above the statutory \$10 limit.²⁰ 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.²¹

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."²²

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.²³

The courts held a separate classification for retired persons over age 65 was not unreasonable. The court 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.²⁴ 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.²⁵ Occupation taxes cannot be levied upon clergy; to do so would violate First Amendment rights to free exercise of religion.²⁶ Likewise, an ordained clergyperson administering a religious school was held to be exercising a religious activity and thus exempt from the occupation tax.²⁷

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.²⁸ 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 6 of the Local Tax Enabling Act, or appeal of the assessment under the assessment laws.²⁹ Attempts to use the supersession clause of the Local Tax Enabling Act to gain exemption for particular classes of occupation have not been successful.³⁰

References

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2. *Taylor v. Coatesville Area School District*, 279 A.2d 90, 2 Pa.Cmwth. 510, 1971.
3. *Reizes v. Weller*, 504 A.2d 971, 95 Pa.Cmwth. 120, 1986.
4. 16 P.S. 1770; County Code, Section 1770.
5. 53 P.S. 37531; Third Class City Code, Section 2531.
6. 53 P.S. 46302; Borough Code, Section 1302.
7. 53 P.S. 56709; First Class Township Code, Section 1709.

8. 53 P.S. 6908(7); Local Tax Enabling Act, Section 8(7).
9. *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. 6927.1; 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. 72 P.S. 5453.202(d), 53 P.S. 6902; Fourth to Eighth Class County Assessment Law, Section 202(d), Local Tax Enabling Act, Section 2.
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, 1975, C.P. Dauphin Co
20. *Mifflin County School District v. Mifflin County Board of Assessment Appeals*, C.P. 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.
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25. *Lower Dauphin School District v. Kieler*, 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, 1985, C.P. Bucks Co.

XIV. Occupational Privilege Taxes

Statutory Authorization

The occupational privilege tax is levied on the privilege of engaging in an occupation within the taxing district. It is authorized by the Local Tax Enabling Act for municipalities and school districts at the maximum rate of \$10 per year.¹ Where both municipality and school district levy the tax, they must share the maximum rate. School districts where voters have approved an increased earned income tax under Act 50 of 1998 are prohibited from levying occupational privilege taxes.²

The occupational privilege tax is separate and distinct from the occupation tax. In contrast to the occupation tax, the occupational privilege tax is levied on both residents and nonresidents employed within the taxing body's jurisdiction.³ 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. Occupational privilege taxes do not have to vary with the particular mode of employment to be valid.⁴

Section 2 of the Local Tax Enabling Act permits each taxing authority, by ordinance or resolution, to exempt from its occupational privilege tax any person whose yearly income from all sources is less than \$5,000.⁵ Taxing bodies are authorized to adopt regulations for processing claims for exemptions.

Situs and Crediting

The situs for the occupational privilege tax is the actual location where the individual taxpayer works. It is not the headquarters of the employer where the payroll checks are prepared.⁶ If a taxpayer works in more than one political subdivision during the tax year and is subject to more than one occupational privilege tax, the Act establishes priorities of liability. The situs of the tax is the place of employment; therefore, 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 gainful employment takes persons into more than one taxing district levying the tax, priorities of collection are as follows.

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.

The place of employment is to be determined as of the day the taxpayer first becomes subject to the tax during the calendar year. The legislative intent as expressed in the law is that no person is to pay more than \$10 in any calendar year for occupational privilege taxes, regardless of the number of political subdivisions where they work during a year. A tax receipt showing payment at an earlier date in the same calendar year must be accepted by all other political subdivisions where an individual subsequently becomes liable for the tax.⁷

Withholding

Taxing jurisdictions may require employers to withhold occupational privilege taxes if the tax is listed on the *Register for Occupational Privilege Taxes* prepared and issued by the Department of Community and Economic Development.⁸ In order to have employers withhold taxes, the taxing district must have its tax listed in the *Register*.

Information must be supplied to the Center for Local Government Services 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 municipalities and school districts levying the tax, their effective tax rates, and the name, address and telephone number of the tax officer responsible for collection of the occupational privilege 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
888-223-6837
www.inventpa.com

References

1. 53 P.S. 6908(8), Local Tax Enabling Act, Section 8(8); *Gaugler v. Allentown*, 189 A.2d 264, 410 Pa. 315, at 318, 1963.
2. 53 Pa.C.S. 8701(b).
3. *Danyluk v. Johnstown*, 178 A.2d 609, 406 Pa. 27, 1962.
4. *Gaugler*, supra.
5. 53 P.S. 6902; Local Tax Enabling Act, Section 2.
6. *Octorara Education Association v. West Fallowfield Township*, 7 D.&C.4th 209, 1990, C.P. Chester Co.
7. 53 P.S. 6902(9); Local Tax Enabling Act, Section 2(9).
8. 53 P.S. 6909; Local Tax Enabling Act, Section 9; *Sullivan v. Peters*, 265 A..2d 799, 438 Pa. 460, 1970.

XV. Realty Transfer Taxes

Statutory Authorization

Originally authorized only in Act 511 for municipalities and school districts, the Local Tax Enabling Act and the Tax Reform Code now jointly authorize its levy at the maximum rate of one percent on the transfer price of real property within the taxing jurisdiction.¹ 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.² Under the Sterling Act, Philadelphia may levy a realty transfer tax.³ 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.⁴ 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.⁵

The county recorder of deeds is mandated by law to be the collection agent for both state and local realty transfer taxes.⁶ 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. 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. Since 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.⁷ Philadelphia was extended similar authority to tax realty transfers on the state base by the Local Tax Reform Act.⁸ 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.⁹

Transfers exempt from the tax are listed in Section 2 of the Act. 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.¹⁰
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.¹¹
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.¹²

References

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

XVI. Business Gross Receipts Taxes

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 8(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.”¹ 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.² 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.³ 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.⁴ 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. *FJ. Busse Company v. Pittsburgh*, 279 A.2d 14, 443 Pa. 349, at 359, 1971.
2. *Allentown School District Mercantile Tax Case*, 87 A.2d 463, 370 Pa. 161, 1952.
3. *Pittsburgh v. Cities Service Oil Company*, 280 A.2d 463, 2 Pa.Cmwith. 567, at 570, 1971.
4. *Munnell Appeal*, 280 A.2d 463, 219 Pa.Super. 525, 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.¹ 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 limit is one mill on wholesale dealers and two mills on retail vendors and restaurants.² 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.³

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.⁴ In addition the district may levy a gross receipts tax under the provisions of the Local Tax Enabling Act.⁵

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.⁶

Second, second class A and third class cities are authorized to levy business license taxes on a flat rate basis.⁷ 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.⁸

The imposition of any new business gross receipts tax is prohibited after November 30, 1988 under the terms of the Local Tax Reform Act.⁹ 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.¹⁰

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.¹¹

References

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2. 53 P.S. 6908(2); Local Tax Enabling Act, Section 8(2).
3. *Carpenter and Carpenter v. City of Johnstown*, 605 A.2d 456, Pa.Cmwlt., 1992.
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5. 24 P.S. 6-652.1(4); Public School Code, Section 652.1(4).
6. 53 P.S. 16181; First Class City Business Tax Reform Act.
7. 53 P.S. 23107, 53 P.S. 37601; 1901 P.L. 20, Article XIX, Section 3, Third Class City Code, Section 2601.
8. *City of Wilkes-Barre v. Ebert*, 349 A.2d 520, 22 Pa.Cmwlt. 356, 1975.
9. 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.Cmwlt. 545, 1989; *Burrell School District v. City of Lower Burrell*, 608 A.2d 605, Pa.Cmwlt., 1992; *Penn Traffic Company v. City of DuBois*, 626 A.2d 1257, Pa.Cmwlt., 1993; *Taxpayers of Sandy Township v. Sandy Township Supervisors*, 625 A.2d 1321, Pa.Cmwlt., 1993.
10. 53 P.S. 56709.2; First Class Township Code, Section 1709.2.
11. *Smith and McMaster v. Newtown Borough*, 669 A.2d 452, Pa.Cmwlt., 1995.

Imposition of Tax

Business is defined as any activity carried on or exercised for gain or profit, including but not limited to sale of merchandise or the performance of services. All businesses, trades and professions where any service is offered to the public are 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.¹ 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. The Pennsylvania Supreme Court dismissed the appeal from *City of Allentown v. MSG Associates, Inc.*, effectively affirming the Commonwealth Court's decision.²

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.³ 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.⁴ 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.⁵ Taxpayer's gross media receipts arising from television broadcast of football games were "copyright royalties" and subject to the business privilege tax.⁶

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.⁷

The Pennsylvania Supreme Court upheld inclusion of revenues from sale of admissions tickets in calculating the gross receipts of a movie theater business.⁸ 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.⁹

Tax Base Exemptions. Section 2(12) of the Act now excludes certain transactions from the tax base.¹⁰ 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.¹¹

Rate Limits. Business gross receipts taxes are subject to the limits found in Section 8(2) of the Local Tax Enabling Act when they apply to wholesale vendors, retail dealers and proprietors of restaurants.¹² 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.¹³ 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 8 of the Act for a comparable tax.¹⁴

This limitation had earlier been applied to Pittsburgh's institution and service privilege tax levied against nonprofit organizations.¹⁵ 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 8(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.¹⁶

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.¹⁷

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.¹⁸

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.¹⁹

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. In the case of building materials sold to contractors, the company has sold some that is not to be sold again in the state in which it was bought.²⁰ 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.

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.²¹ 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.

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 since no constitutionally valid distinction existed between brokers and other taxpayers that paid for work performed.²²

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.²³ 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.

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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.¹ 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 and 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 signaled transformation in form, qualities and adaptability in use, it is not a new article or new production.²

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.³ Although manufacturers sell their wares, they are not dealers because they do not sell what they buy.⁴

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.⁵ The exclusion for processing byproducts of manufacturing was applicable to slag processing by a company other than the original manufacturer.⁶

Metal Products. Courts have found a maker of custom aluminum awnings⁷ and a custom steel fabricator and engineering firm⁸ to be manufacturers. A company selling automotive and industrial parts who rebuilt engines and other heavy equipment,⁹ and a scrap dealer¹⁰ 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.¹¹

Textiles, Garments. Likewise, a company engaged in dyeing and finishing cloth was held not to be engaged in manufacturing.¹² 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.¹³ Production of apparel is considered manufacturing.¹⁴ But printing designs on ready-made clothing (T-shirts and sweatshirts) is not manufacturing because there is no substantial change in the product.¹⁵

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

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

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.²¹ Preprinted advertising supplements inserted in a newspaper were considered component parts of the newspaper and excluded from the tax under the manufacturing exemption.²² 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.²³ But a publisher who contracted out all printing and binding was found not to be a manufacturer,²⁴ nor did a business which prepared a newsletter but did not actually print it.²⁵ Book-binding qualifies as manufacturing²⁶ but commercial illustration²⁷ and photocopying do not.²⁸

Paper Products. A processor of scrap cardboard used to create packaging was found to be a manufacturer.²⁹

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.³⁰ 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.³¹ 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. 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.

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. 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.¹ This case had held 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.

This distinction was overruled in *Philadelphia Tax Review Board v. Smith, Kline and French Laboratories*. The court now 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."² Payment of a license fee intended merely to cover the cost of regulation and inspection will not act to preempt local taxing power.

The court set forth two criteria for determining if a particular fee is a revenue measure: (1) a large monetary income is derived to the state and (2) 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.³ But the court carefully distinguished a prior case upholding the application of the gross receipts tax on holders of state liquor licenses.⁴ The gross receipts tax was levied against the business generally, rather than specifically levied on liquor sales.

Another important test was applied when the court held preemption occurs only where the local tax duplicates a state tax. The test of duplication is if the tax falls on the same subject matter and is measured by the same tax base. Here the court held local mercantile or business privilege taxes did not duplicate the state corporate franchise tax.⁵ Also a local tax was not preempted by the state realty transfer tax paid by construction contractors.⁶ In a 1977, Commonwealth Court found a local gross receipts tax was not superseded by the state gross premiums tax on insurance premiums paid by insurance agents,⁷ but 20 years later determined that it was superseded in a similar case.⁸

Preemption by State License Fee. Application of these judicial doctrines has upheld 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,⁹ by the state license fee paid by nursing homes,¹⁰ or by the state license fee paid by realtors.¹¹ Common pleas courts have held local business gross receipts taxes were not superseded by state license fees paid under the Securities Act by stockbrokers,¹² or by fees paid to the Disciplinary Board of the Supreme Court by attorneys.¹³

Preemption by Pervasive State Regulation. The Supreme Court created a new doctrine of preemption when it held nontraditional businesses of banks were not taxable under Pittsburgh's business privilege tax. The court held 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.¹⁴ This doctrine of preemption by exclusive control by the state was followed and applied to malt and brewed beverage distributors.¹⁵ The court held the legislature's scheme of regulation was so pervasive that it has 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,¹⁶ insurance business,¹⁷ the dairy industry,¹⁸ nursing homes¹⁹ and securities dealers²⁰ 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

Since the tax is levied on the privilege of doing business within the jurisdiction, the situs of the tax depends on defining “doing business.” Early court cases involving mercantile taxes are useful in determining the situs of transactions involving sales of merchandise. The Supreme Court has determined liability for a business gross receipts tax occurs only if the taxpayer is carrying on or engaging in business or a commercial activity within the jurisdiction. Doing business is defined by the “solicitation plus” doctrine. There must be other activities in addition to the solicitation of business. “Doing 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.”¹ There must be a minimal nexus between the taxing district and a company before the company can be subjected to taxation.

Situs of Sales. Because of the widespread and complex nature of commercial transactions, there is confusion as to where transactions are taxable. Pennsylvania courts have held 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.’”² Often only a small part of a complete transaction 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.”³

The taxable event is held to be the effecting of the order. 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 constitute one 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.⁴

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.⁵ In another case a company with personnel promoting products on a regular basis was found to be engaging only in solicitation.⁶ 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.

Transactions performed within a township by a general contractor who had an office in another township were outside the scope of a tax on the "privilege" of doing business in the township, as the privilege being taxed was maintenance of the actual, physical, permanent base of operations.⁷

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, even though delivery was made outside the state; the tax was held valid.⁸ 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.⁹

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. In an early case that has not been followed, the Commonwealth Court held Brookhaven Borough could not tax services performed outside its limits. In this case, the ordinance and regulations tax all receipts from services for companies maintaining a place of business only in the borough, whether or not the services are performed in the borough. The Court held the taxable event is the privilege of doing business in the borough, and to the extent that services are performed outside borough limits, the company was not subject to the tax.¹⁰ In its decision, the Commonwealth Court carefully distinguished an earlier Supreme Court case involving Sharpsburg Borough.¹¹ The Sharpsburg ordinance taxes persons offering any service to the general public from places within the borough, and the company did not challenge the authority of Sharpsburg to tax transactions outside the limits of the borough. The court saw Brookhaven as attempting to tax the privilege of doing business in the borough without regard as to whether the taxpayer had a place of business within the borough.

Taxation of services was again brought before the Supreme Court in the *Gilberti* case.¹² An architect maintaining an office in Pittsburgh excluded receipts from on-site supervision of a project outside city limits from the calculation of gross receipts. *Gilberti* did not maintain a place of business outside the city. The Court held that maintaining a business office in the city is an exercise of a taxable privilege within the limits of the taxing district. The city could determine the amount of tax based on gross receipts of the business, including income derived from services provided outside city limits. 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 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.¹³ 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. 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 is at its sole permanent business headquarters.

Similarly, the entire gross receipts of an automobile leasing company were held to be taxable, even for transactions enacted outside township limits.¹⁴ The Court found the company operates its business from its headquarters within the township. Maintenance of the office within the township gave the township the right to levy its business privilege tax on all the company's receipts.

The Court reached the same result in a case dealing with an engineering firm with a large amount of interstate business.¹⁵ The fact that a portion of the firm's revenues are derived from interstate commerce does not alter the benefit it enjoys from conducting its activities from its established base of operations within the township.

The business privilege tax does not directly tax interstate commerce; it is taxing the firm's business office presence in the township.

Taxation of partnerships doing business within a jurisdiction has been upheld regardless of the domicile of the partners; the basis for taxation is that the partners were all doing business in Philadelphia.¹⁶ Where a company operated a dyeing and finishing plant, the court held it was performing services within the city and was taxable, even when services were performed for customers from outside the city limits.¹⁷ A school district business privilege tax can be levied on nonresidents conducting business within the district.¹⁸

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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.¹

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."² 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. Similarly, private clubs selling food, liquor, and tobacco to their members at a loss were not subject to the mercantile tax.³ 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.⁴ Because nonprofit organizations are excluded from the definition of retail vendors, the supplier could not be considered a wholesaler.

Beginning in 1969, Pittsburgh has levied a privilege tax on nonprofit institutions at a rate of six mills on gross receipts. This tax is limited to taxpayers not subject to the city's mercantile and business privilege taxes. 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.⁵ The exemption for charities found in the General County Assessment Law is for "all taxes" and is not limited to real estate taxes. 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 2(7) of the Local Tax Enabling Act.⁶ 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. 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.

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XVII. Amusement/Admissions Taxes

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.¹ 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.²

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 1996-97.³ 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%.⁴ The maximum rate for Pittsburgh's amusement tax was reduced to 5% when the Allegheny County sales tax was adopted.⁵

The Local Tax Enabling Act establishes the tax base for admissions to ski facilities as forty percent of the cost of the lift ticket, for admissions to golf courses as forty percent of the greens fees and for bowling alleys as forty percent of the cost of admission.⁶ 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.⁷

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.⁸ 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.⁹

An amusement tax can be considered general in nature, even if it falls only on one enterprise within the taxing jurisdiction.¹⁰ 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.¹¹

Public Property. The court held that the Local Tax Enabling Act gave 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.¹² A private enterprise operating an amusement under a license from the state is not an agent of the Commonwealth and can be required to collect the tax from its patrons.¹³ Location of the amusement on public property does not exempt its patrons from another jurisdiction's tax.¹⁴

Tax Base

Admissions to motion picture theaters may not be taxed, except in second class cities.¹⁵ Real property used for camping purposes may not be considered a place of amusement,¹⁶ but admissions to campgrounds have been held taxable where the ordinance levies an admissions tax on all places and events, not just amusements.¹⁷

Amusement or admissions taxes may not be levied on memberships or charges for health, fitness or weight control facilities.¹⁸

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.¹⁹ A prostitution enterprise was held to be a taxable amusement under a local ordinance.²⁰ An amusement tax can be applied against cover charges levied at the door of restaurants and night clubs.²¹ 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.²² A woman's professional golf tournament and its related charitable corporation were not institutions of purely public charity exempt from the local amusement tax.²³

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.²⁴ 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.²⁵ 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.²⁶ In this case the court found the taxing district's definition was reasonable.

Educational Experiences. However, the Commonwealth Court found caverns were not a place of amusement within the meaning of the Local Tax Enabling Act or the local ordinance.²⁷ The caverns were classified as an educational experience of historical, natural and geological dimensions. As opposed to the local ordinance in the Cambria Township case 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.²⁸

Mechanical Devices Taxes

Amusement taxes levied against coin-operated mechanical devices have been upheld by the courts.²⁹ 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.³⁰

References

1. 53 P.S. 6908(6); Local Tax Enabling Act, Section 8(6).
2. 53 P.S. 15971; 1932(Ex.Sess.) P.L. 45.
3. 53 Pa.C.S. 8402(c)(1).
4. 53 Pa.C.S. 8402(c)(2).

5. 16 P.S. 6171-B; Second Class County Code, Section 3171-B.
6. 53 P.S. 6908(9), (10), (11); Local Tax Enabling Act, Section 8(9), (10), (11).
7. *San Van, Inc. v. School District of Derry Township*, 635 A.2d 254, Pa.Cmwlth., 1993.
8. *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 867, 205 Pa.Super. 263, 1965.
9. *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.
10. *Country Paradise, Inc. v. Sugarcreek Township*, 441 A. 2d 821, 65 Pa.Cmwlth. 93, 1982.
11. *Tredyffrin-Easttown School District v. Valley Forge Music Fair, Inc.*, 627 A.2d 814, Pa.Cmwlth., 1993.
12. *Wilkesburg Borough v. Wilkesburg School District*, 74 A.2d 138, 365 Pa. 254, 1950.
13. *Weatherly Area School District v. Whitewater Challengers, Inc.*, 616 A.2d 620, Pa., 1992.
14. *Township of South Park v. County of Allegheny*, 641 A.2d 20, Pa.Cmwlth., 1994.
15. 53 P.S. 6902(10); Local Tax Enabling Act, Section 2(10).
16. 53 P.S. 6902(3); Local Tax Enabling Act, Section 2(3).
17. *Timberline Recreational Enterprises, Inc. v. Highland Township*, 473 A.2d 1130, 81 Pa.Cmwlth. 290, at 295, 1984.
18. 53 P.S. 6902(13); Local Tax Enabling Act, Section 2(13).
19. *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.
20. *Spartacus, Inc. v. Borough of McKees Rocks*, 470 A.2d 1134, 80 Pa.Cmwlth. 191, 1984.
21. *Gettysburg Borough v. The Retreat, Inc.*, 27 D.&C.3d 567, at 572, 1983, C.P. Adams Co.
22. *Conley Motor Inns, Inc. v. Township of Penn*, 728 A.2d 1012, Pa. Cmwlth., 1999. Appeal denied, 745 A.2d 1225.
23. *Betsy King LPGA Classic, Inc. V. Township of Richmond*, 739 A.2d 612, Pa. Cmwlth., 1999.
24. *Cambria Twp. School District v. Cambria County Legion Recreation Assoc.*, 192 A.2d 149, 201 Pa.Super. 163, 1963.
25. *City of Harrisburg v. Homebuilders Association of Metropolitan Harrisburg*, 507 A.2d 1307, 96 Pa.Cmwlth. 549, 1986.
26. *Ski Roundtop, Inc. v. Fairfield Area School District*, 533 A.2d 828, 111 Pa.Cmwlth. 256, 1987.
27. *Derry Township v. Swartz*, 346 A.2d 853, 21 Pa.Cmwlth. 587, 1975.
28. *Ligonier Valley School District v. Fort Ligonier Memorial Foundation*, 62 D.&C.2d 210, 1962, C.P. Westmoreland Co.
29. *Fierro v. Williamsport*, 120 A.2d 889, 384 Pa. 568, 1968.
30. *Moon Union School District v. Tiglio*, 128 A.2d 150, 183 Pa.Super. 67, 1956.

XVIII. Other Taxes

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.¹ The city levies the tax at the rate of one percent. The tax is levied on the same tax base as the state sales tax and is collected by the Pennsylvania Department of Revenue. 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. 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. The city has chosen to fund the bonds issues by the Authority by dedicating 1.5% of the wage tax for that purpose, with the sales tax revenues being used for general city purposes.

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 1994.² Like the Philadelphia tax, it is collected by the Pennsylvania Department of Revenue under state regulations 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. 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%. 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.³ Subsequently the General Assembly enacted a special law specifically authorizing the tax.⁴ The tax was levied in 1994 at the maximum 10% rate and upheld in a court challenge.⁵ 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. 16 P.S. 6152-B; Second Class County Code, Section 3152-B.
3. *United Tavern Owners of Philadelphia v. Philadelphia School District*, 272 A.2d 868, 441 Pa. 274, 1971.
4. 53 P.S. 16133; First Class School District Liquor Sales Tax Act, Section 3.
5. *Licensed Beverage Association of Philadelphia v. Board of Education of School District of Philadelphia*, 669 A.2d 447, Pa.Cmwth., 1995.

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.¹ This section of the Code was reenacted and amended in 1982 to extend the tax to second class A counties (Bucks, Delaware and Montgomery), raise the rate limit, and make the authorization permanent.² The revenue from this tax is to be used for tourist promotion activities and to subsidize operation of convention centers or exhibition halls. In 1998, only Allegheny County levied a 5% hotel room rental tax under this authority, and Bucks and Montgomery counties levied 2% taxes.

A hotel room rental tax for Philadelphia was first authorized in 1982 at a maximum rate of three percent. This tax was replaced in 1986 with an hotel room rental tax whose revenues are to be used for tourist promotion activities and to subsidize the Pennsylvania Convention Center.³ The tax is currently levied at the maximum rate of six percent.

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.⁴ The maximum rate is five percent. Berks and Luzerne counties levy taxes under this authority. 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.⁵

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 two percent.⁶ They include only Blair, Cambria, Centre and York counties. Blair County has levied a 1% tax under this authority. A separate authorization permits Lackawanna County to levy a hotel room rental tax of up to four percent.⁷

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.⁸ Lehigh and Northampton Counties were given special authorization to levy a hotel tax up to 3.5%.⁹

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.¹⁰ 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. 16 P.S. 4970.2; Second Class County Code, Section 1970.2.
3. 53 P.S. 16223; Pennsylvania Convention Center Authority Act, Section 23; *Leventhal v. City of Philadelphia*, 542 A.2d 1328, 518 Pa. 233, 1988; *Paustian v. Pennsylvania Convention Center Authority*, 561 A.2d 1337, 127 Pa.Cmwlth. 470, 1989.
4. 16 P.S. 2399.1; County Code, Section 2399.1; Appeal of Torbik, 696 A.2d 1141, Pa., 1997.
5. *Eways v. Board of Commissioners of Berks County*, 717 A.2d 8, Pa.Cmwlth., 1998.
6. 16 P.S. 1770.2; County Code, Section 1770.2.
7. 16 P.S. 1770.4; County Code, Section 1770.4.
8. 16 P.S. 1770.6; County Code, Section 1770.6
9. 16 P.S. 13211; Hotel Room Rental Tax Act.
10. *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 fifteen percent.¹ 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.”² 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.³ 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.”⁴ 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.⁵ 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.⁶ 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.⁷

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.⁸ 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.⁹ 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 it ‘commercial’ under the clear language of the ordinance.”¹⁰ Pittsburgh's tax was levied at a rate of 26% in 1999.

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. Nor are they subject to the sharing provisions.¹¹ 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 Tincum Township for the same facility at the Philadelphia airport. In 1998, parking taxes were levied by sixteen municipalities and six school districts.

References

1. 53 P.S. 15971; 1932(Ex.Sess.) P.L. 45.
2. *Philadelphia v. Samuels*, 12 A.2d 79, 338 Pa. 321, at 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, at 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, at 566, 1970.
11. *Airpark International I v. Interboro School District*, 677 A.2d 388, Pa.Cmwlth., 1996, 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.¹ 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 have prohibited after November 30, 1988. 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.¹ The court also found it was not an illegal licensing fee. In 1998 sixteen municipalities and one school district levied flat rate business privilege taxes with rates ranging from \$15 to \$365 per business.

Reference

1. *Smith and McMaster, P.C. v. Newtown Borough*, 669 A.2d 452, Pa.Cmwlth., 1995.

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. 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.¹ 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. *Re North East School District Resolution*, 68 D.&C.2d 622, 1974, C.P. Erie Co.; *Lewistown Borough v. Mannino*, 38 D.&C.2d 33, 1965, C.P. Mifflin Co.

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.¹ The city has imposed a business use and occupancy tax for school purposes. The tax is imposed on the use of real estate for commercial or industrial activity. It is levied at the rate of 46.2 mills on assessed value of real estate, with factors for the amount of space occupied and the number of days of activity.

When challenged, the tax was upheld by the Pennsylvania Supreme Court as a valid privilege tax on the use of real estate.² 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.³

Vacant Property Tax. Philadelphia also levies a similar use privilege tax on vacant property for city purposes. The rate is 100 mills on the assessed valuation of the parcel.

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. Only one such tax was reported in 1998.

References

1. 53 P.S. 16101(a); 1963 P.L. 640.
2. *Wanamaker v. Philadelphia School District*, 274 A.2d 524, 441 Pa. 567, at 569, 197 1.
3. *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.¹ 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.¹ 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 opened the possibility for video programmers to offer services to customers through telephone wires. This tax would put them on the same basis as cable TV providers subject to the franchise fee.

Reference

1. 72 P.S. 6171; 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 is limited to receipts from landfill operations. In 1983, Carroll Township, Washington County, levied a ten percent landfill business privilege tax. This 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.¹ 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.

Another township landfill tax was upheld.² 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 generates 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.³ 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 supercedes 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. In 1998, landfill privilege taxes remained only in seven municipalities and three school districts.

Sign Tax. Emmaus Borough has levied a tax on signs under the authority of the Local Tax Enabling Act beginning in 1948. The tax is 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 is \$5 per year. For larger signs, the rate is \$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.⁴ 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.⁵

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. 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 1987.¹ 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 8 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 \$2500 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.² 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."³

Protests from the building industry, construction union and financial institutions led the General Assembly to prohibit this tax in 1981.⁴ All residential construction taxes were prohibited after June 30, 1982. This section has been held to allow application of general business privilege taxes against contractors engaged in the business of constructing dwellings.⁵ 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.⁶ 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 Supreme Court.⁷ The court held the tax unconstitutional as violating the uniformity clause of the Pennsylvania Constitution and the equal protection clause of the Fourteenth Amendment to the U.S. 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.⁸

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.⁹

References

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

Appendix I. Tax Sources

A. Counties

Potential Tax Sources	Legal Limit ¹	Citation
General Purpose Tax Levies		
Real Estate:		
Second Class Counties	25 mills	16 P.S. 4970
Second Class A Counties	30 mills	16 P.S. 4970
Third-Eighth Class Counties	25 mills ²	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 or } Class	\$5	16 P.S. 1770
Occupation } Counties	20 Mills	
Special Purpose Taxes		
Debt Service	no limit	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
Third-Eighth Class Counties	no limit	16 P.S. 2507
Libraries		
Roads and Bridges	6 mills	16 P.S. 2707, 2724, 2733, 5901, 5902, 5903
Memorial Hall		
Tuberculosis Hospital	no limit	16 P.S. 2118, 5324
Roads and Bridges	no limit	16 P.S. 2675, 5734, 5778
Community Colleges	(3)	24 P.S. 19-1909-A
Municipalities Financial Recovery Program ⁴	no limit	53 P.S. 11701.123(c)
Hotel Room Rental		
Second Class Counties	7 percent	16 P.S. 4970.2, 3000.3061
Second Class A Counties	3 percent	16 P.S. 4970.2
Lackawanna County	4 percent	16 P.S. 1770.4
Certain Third Class Counties	5 percent	16 P.S. 2399.1
Certain Third Class Counties	3.5 percent	16 P.S. 13211
Third to Eighth Class Counties	3 percent	16 P.S. 1770.2, 1770.5, 1770.6, 1770.7

- 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
- Five additional mills available with court appeal.
- 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, except for first class cities and first class school districts where it cannot exceed one mill of the market value of real estate.
- Levied only with court approval.

B. First Class Cities

Potential Tax Sources

General Purpose Tax Levies

	Legal Limit ¹	Citation
Real Estate	no limit	53 P.S. 12553
Personal Property	4 mills	72 P.S. 4821
Business Privilege	no limit	53 P.S. 16181
Sales	1 percent	53 P.S. 12720.503
Sterling Act Taxes ¹		53 P.S. 15971
Wage, Earnings and Net Profits		
Realty Transfer		
Amusement		
Parking Lot		

Special Purpose Taxes

Community Colleges	(2)	24 P.S. 19-1909-A
Hotel Room Rental	6 percent	53 P.S. 16223
Distressed Pension System Recovery Program	no limit	53 P.S. 895.607(f)
Open Space (real estate or earned income) ³	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. Requires approval of voters in referendum.

C. Second Class Cities

Potential Tax Sources	Legal Limit ¹	Citation
General Purpose Tax Levies		
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. 6901
Per Capita	\$10	
Occupation (Flat Rate) ²	\$10	
Occupation (Millage) ²	no limit	
Occupational Privilege	\$10	
Earned Income/Net Profits	1 percent	
Realty Transfer	1 percent	
Mechanical Devices	5 percent	
Parking	no limit	
Amusement	5 percent	
Business Gross Receipts	1 mill wholesale 2 mills retail no limit other businesses	
Institution/Service Privilege	no limit	
Act 24 Earned Income ²	set by referendum	53 P.S. 6927.1
Special Purpose Taxes		
Public Parks	no limit	53 P.S. 23140
Sinking Fund	3 mills	53 P.S. 25851
Community Colleges	(3)	24 P.S. 19-1909-A
Open Space (real estate or earned income) ⁴	set by voters	32 P.S. 5007.1
Distressed Pension System Recovery Program	no limit	53 P.S. 895.607(f)
Municipalities Financial Recovery Program ⁵	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 the earned income tax through a referendum authorized by Act 24 of 2001, it can not levy an occupation tax.
3. 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
4. Requires approval of voters in referendum.
5. Levied only with court approval.

D. Second Class A Cities

Potential Tax Sources	Legal Limits ¹	Citation
General Purpose Tax Levies		
Real Estate	no limit	53 P.S. 23104, 23105,
Act 511 Taxes		53 P.S. 6901
Per Capita	\$10 ²	
Occupation (Flat Rate) ³	\$102	
Occupation (Millage) ³	no limit	
Occupational Privilege	\$10 ²	
Earned Income	1 percent	
Realty Transfer	1 percent ²	
Mechanical Devices	10 percent ²	
Amusement ⁴	10 percent ²	
Business Gross Receipts ⁵	1 mill wholesale ² 1 ½ mills retail ²	
Act 24 Earned Income ³	no limit other businesses set by referendum	53 P.S. 6927.1
Special Purpose Taxes		
Community Colleges	(6)	24 P.S. 19-1909-A
Open Space (real estate or earned income) ⁷	set by voters	32 P.S. 5007.1
Distressed Pension System Recovery Program	no limit	53 P.S. 895.607(f)
Municipalities Financial Recovery Program ⁸	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 the earned income tax through a referendum authorized by Act 24 of 2001, it can not levy an occupation tax.
4. For taxes first levied after December 31, 1997, maximum rate is 5 percent.
5. Only if enacted before December 1, 1988.
6. 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.
7. Requires approval of voters in referendum.
8. Levied only with court approval.

E. Third Class Cities

Potential Tax Sources	Legal Limit ¹	Citation
General Purpose Tax Levies		
Real Estate	25 mills ²	53 P.S. 37531
Residence	\$5	53 P.S. 37531
Business License	\$100	53 P.S. 37601
Act 511 Taxes		53 P.S. 6901
Per Capita	\$10 ³	
Occupation (Flat Rate) ⁴	\$10 ³	
Occupation (Millage) ⁴	no limit	
Occupational Privilege	\$10 ³	
Earned Income	1 percent ³	
Deed Transfer	1 percent ³	
Mechanical Devices	10 percent ³	
Amusement ⁵	10 percent ³	
Business Gross Receipts ⁶	1 mill wholesale ³ 1 ½ mills retail ³	
Act 24 Earned Income ⁴	no limit other businesses set by referendum	53 P.S. 6927.1
Special Purpose Taxes		
Bonded Debt and Sinking Fund	no limit	53 P.S. 37531
Recreation	no limit	53 P.S. 38709
Library	no limit	24 P.S. 4401
Shade Trees	1/10 mill	53 P.S. 38809
Support Bureau of Charity	10 mills	53 P.S. 39502
Community Colleges	(7)	24 P.S. 19-1909-A
Open Space (real estate or earned income) ⁸	set by voters	32 P.S. 5007.1
Distressed Pension System Recovery Program	no limit	53 P.S. 895.607(f)
Municipalities Financial Recovery Program ⁹	no limit	53 P.S. 11701.123(c)

1. 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
2. Five additional mills available with court approval.
3. Maximum rate subject to sharing with school district.
4. If a municipality raises the rate of the earned income tax through a referendum authorized by Act 24 of 2001, it can not levy an occupation tax.
5. For taxes first levied after December 31, 1997, maximum rate is 5 percent.
6. Only if enacted before December 1, 1988.
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. Levied only with court approval.

F. Boroughs

Potential Tax Sources	Legal Limit ¹	Citation
General Purpose Tax Levies		
Real Estate *	30 mills ²	53 P.S. 46302
Occupation	30 mills ²	53 P.S. 46302
Act 511 Taxes*		53 P.S. 6901
Per Capita	\$10 ³	
Occupation (Flat Rate) ⁴	\$10 ³	
Occupation (Millage) ⁴	no limit	
Occupational Privilege	\$10 ³	
Earned Income	1 percent ³	
Realty Transfer	1 percent ³	
Mechanical Devices	10 percent ³	
Amusement ⁵	10 percent ³	
Business Gross Receipts ⁶	1 mill wholesale ³ 1½ mill retail ³	
Act 24 Earned Income ⁴	no limit other businesses set by referendum	53 P.S. 6927.1
Special Purpose Taxes		
Debt Service*	no limit	53 P.S. 46302
Pensions and Retirement*	½ mill	53 P.S. 46302
Shade Trees*	1/10 mills	53 P.S. 46302, 47729
Street Lighting*	8 mills	53 P.S. 46302
Library*	no limit	24 P.S. 4401, 53 P.S. 46302
Special Road Fund	5 mills	53 P.S. 46304
Recreation*	no limit	53 P.S. 47712
Fire Equipment & Firehouses	3 mills ⁷	53 P.S. 46302, 49235
Gas, Water, Electric Light ⁸	8 mills	53 P.S. 46302, 49231
Firehouse, Lockup or Municipal Building ⁸	2 mills	53 P.S. 46302, 49241
Community College*	(9)	24 P.S. 19-1909-A
Debt Payment ¹⁰	no limit	53 P.S. 46303
Ambulance and Rescue Squads	½ mill ⁷	53 P.S. 46302
Open Space (real estate or earned income) ^{8*}	set by voters	32 P.S. 5007.1
Distressed Pension System Recovery Program*	no limit	53 P.S. 895.607(f)
Municipalities Financial Recovery Program ^{10*}	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 the earned income tax through a referendum authorized by Act 24 of 2001, it can not levy an occupation tax.
- For taxes first levied after December 31, 1997, maximum rate is 5 percent
- Only if enacted before December 1, 1988.
- Higher rate may be approved by voters in referendum.
- Must 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.
- Levied only on court order.

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

G. First Class Townships

Potential Tax Sources	Legal Limit ¹	Citation
General Purpose Tax Levies		
Real Estate	30 mills ²	53 P.S. 56709
Occupation	30 mills ²	53 P.S. 56709
Act 511 Taxes		53 P.S. 6901
Per Capita	\$10 ³	
Occupation (Flat Rate) ⁴	\$10 ³	
Occupation (Millage) ⁴	no limit	
Occupational Privilege	\$10 ³	
Earned Income	1 percent ³	
Realty Transfer	1 percent ³	
Mechanical Devices	10 percent ³	
Amusement ⁵	10 percent ³	
Business Gross Receipts ⁶	1 mill wholesale ³ 1½ mills retail ³ no limit other businesses	
Act 24 Earned Income ⁴	set by referendum	53 P.S. 6927.1
Special Purpose Taxes		
Firehouses and Equipment	3 mills ⁷	53 P.S. 56709
Shade Trees	1/10 mill	53 P.S. 56709
Municipal Building	no limit	53 P.S. 56709
Debt Service	no limit	53 P.S. 56709
Pensions and Retirement	½ mill	53 P.S. 56709
Fire and Water District	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 P.S. 4401
Open Space (real estate or earned income) ⁸	set by voters	32 P.S. 5007.1
Community Colleges	(9)	24 P.S. 19-1909-A
Ambulance and Rescue Squads	½ mill ⁷	53 P.S. 56709
Distressed Pension System Recovery Program	no limit	53 P.S. 895.607(f)
Municipalities Financial Recovery Program ¹⁰	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 the earned income tax through a referendum authorized by Act 24 of 2001, it can not levy an occupation tax.
- For taxes first levied after December 31, 1997, maximum rate is 5 percent.
- Only if enacted before December 1, 1988.
- Higher rate may be approved by voters in referendum.
- Requires approval of voters in a 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.
- Levied only on court order.

H. Second Class Townships

Potential Tax Sources	Legal Limit ¹	Citation
General Purpose Tax Levies		
Real Estate	14 mills ²	53 P.S. 68205
Act 511 Taxes		53 P.S. 6901
Per Capita	\$10 ³	
Occupation (Flat Rate) ⁴	\$10 ³	
Occupation (Millage) ⁴	no limit	
Occupational Privilege	\$10 ³	
Earned Income	1 percent ³	
Realty Transfer	1 percent ³	
Mechanical Devices	10 percent ³	
Amusement ⁵	10 percent ³	
Business Gross Receipts ⁶	1 mill wholesale ³ 1½ mills retail ³	
Act 24 Earned Income ⁴	no limit other businesses set by referendum	53 P.S. 6927.1
Special Purpose Taxes		
Municipal Building	½ general rate	53 P.S. 68205
Firehouses and Equipment	3 mills ⁷	53 P.S. 68205
Recreation	no limit	53 P.S. 68205
Debt Service	no limit	53 P.S. 68205
Permanent Improvement Fund	5 mills	53 P.S. 68205
Road Machinery Fund	2 mills	53 P.S. 68205
Library	no limit	24 P.S. 4401
Ambulance and Rescue Squads	½ mill ⁷	53 P.S. 68205
Fire Hydrants for Township	2 mills	53 P.S. 68205
Street Lights for Township	5 mills	53 P.S. 68205
Debt Payment ⁸	no limit	53 P.S. 68205
Open Space (real estate or earned income) ⁹	set by voters	32 P.S. 5007.1
Community Colleges	(10)	24 P.S. 19-1909-A
Distressed Pension System Recovery Program	no limit	53 P.S. 895.607(f)
Municipalities Financial Recovery Program ⁸	no limit	53 P.S. 11701.123(c)

1. 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
2. Five additional mills available with court approval.
3. Maximum rate subject to sharing with school district.
4. If a municipality raises the rate of the earned income tax through a referendum authorized by Act 24 of 2001, it can not levy an occupation tax.
5. For taxes first levied after December 31, 1997, maximum rate is 5 percent.
6. Only if enacted before December 1, 1988.
7. Higher rate may be approved by voters in referendum.
8. Levied only on court order.
9. Requires approval of 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.

I. First Class School Districts

Potential Tax Sources	Legal Limit	Citation
General Education Purposes		
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	no limit	53 P.S. 16101
Business Occupancy	no limit	53 P.S. 16102
Liquor Sales	10 percent	53 P.S. 16134
Special Purpose Tax		
Community Colleges	(1)	24 P.S. 19-1909-A

1. 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

Potential Tax Sources	Legal Limit	Citation
General Education Purposes		
Real Estate	no limit	24 P.S. 6-652, 6-652.1(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	½ mill wholesale 1 mill retail	24 P.S. 582.4
Act 511 Taxes		24 P.S. 6-652.1(4)
Per Capita	\$10	
Deed Transfer	1 percent	
Mechanical Devices	no limit	
Mercantile	1 mill wholesale 1½ mills retail	
Act 50 Taxes ¹		53 Pa.C.S. 8701, 8711
Earned Income	1.5 percent	
Realty Transfer	1 percent	
Business Gross Receipts ²	1 mill wholesale 1½ mills retail	
Special Purpose Taxes		
Debt Service	8½ mills	24 P.S. 6-653
Parks and Playgrounds	2 mills	24 P.S. 7-706
Capital Reserve Fund	3 mills	24 P.S. 6-690
Community Colleges	(3)	24 P.S. 19-1909-A

1. Must be approved by the voters in referendum.
2. Only if enacted before December 1, 1988.
3. 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

Potential Tax Sources	Legal Limit	Citation
General Education Purposes		
Real Estate	25 mills ¹	24 P.S. 6-672
Per Capita	\$5	24 P.S. 6-679
Act 511 Taxes		53 P.S. 6901
Per Capita	\$10 ²	
Occupation (Flat Rate) ³	\$10 ²	
Occupation (Millage) ³	no limit	
Occupational Privilege	\$10 ²	
Earned Income	1 percent ²	
Realty Transfer	1 percent ²	
Mechanical Devices	no limit	
Amusement ⁴	10 percent ²	
Business Gross Receipts ⁵	1 mill wholesale ² 1½ mills retail ² no limit other businesses	
Act 50 Taxes ⁶		53 Pa.C.S. 8701, 8711
Earned Income	1.5 percent	
Realty Transfer	1 percent ²	
Amusement ⁴	10 percent ²	
Business Gross Receipts ⁵	1 mill wholesale ² 1½ mills retail ² no limit other businesses	
Act 24 Earned Income ³	set by referendum	53 P.S. 6927.1
Special Purpose Taxes		
Debt Service ⁷	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	(8)	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 the earned income tax through a referendum authorized by Act 24 of 2001, it cannot levy an occupation tax.
4. Only if enacted before July 1, 1997.
5. Only if enacted before December 1, 1988
6. Requires approval by voters in referendum.
7. Levied only by court order.
8. 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

Act of December 31, 1965, P.L. 1257, No. 511, and all amendments through November 30, 2001

An Act

Empowering cities of the second class, cities of the second class A, cities of the third class, boroughs, town, 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 employees 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 1. Short Title. - This act shall be known and may be cited as “The Local Tax Enabling Act.”

Section 2. Delegation of Taxing Powers and Restrictions Thereon. - 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 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 act. Each local taxing authority may by ordinance or resolution, exempt any person whose total income from all sources is less than five thousand dollars (\$5,000) per annum from the per capita or similar head tax, occupation and occupational privilege, or earned income tax, or any portion thereof, and may adopt regulations for the processing of claims for exemptions. Such local authorities shall not have authority by virtue of this act: *(As amended 1971 P.L. 204, No.33, 1974 P.L. 941, No.310, 1978 P.L. 592, No. 113 and 1982 PL. 763, No. 217)*

- (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 or 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 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, leases, 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:
(As amended 1979 PL. 276, No. 74; 1981 PL. 184, No. 53, 1982 P.L. 593, No. 168 and 1984 P.L. 885, No 172).

- (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 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 purpose of this clause, real property rented for camping purposes shall not be considered a place of amusement.
(As amended 1967 P.L. 878, No. 391)
- (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 taxes on the occupation, occupational privilege, 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 sportsmen's, recreational, golf and tennis clubs, girl and boy scout troops and councils;
- (8) To levy, assess or collect any tax on a mobile home 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 (occupational privilege tax) except that such a tax may be levied, assessed, and collected only by the political subdivision of the taxpayer's place of employment.

Payment of any occupational privilege tax to any political subdivision by any person pursuant to an ordinance or resolution passed or adopted under the authority of this act shall be limited to ten dollars (\$10) on each person for each calendar year.

The situs of such tax shall be the place of employment; but, in the event a person is engaged in more than one occupation, or an occupation which requires his working in more than one political subdivision during the calendar year, the priority of claim to collect such occupational privilege tax shall be in the following order: first, the political subdivision in which a person maintains his principal office or is principally employed; second, the political subdivision in which the person resides and works, if such a tax is levied by that political subdivision; third, the political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home. The place of employment shall be determined as of the day the taxpayer first becomes subject to the tax during the calendar year.

It is the intent of this provision that no person shall pay more than ten dollars (\$10) in any calendar year as an occupational privilege tax, irrespective of the number of political subdivisions within which such person may be employed within any given calendar year.

In case of dispute, a tax receipt of the taxing authority for that calendar year declaring that the taxpayer has made prior payment which constitutes prima facie certification of payment to all other political subdivisions.

- (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.
(Subsection (11) added 1981 P.L. 184, No. 53).
- (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.

(Subsection (12) added 1984 PL. 885, No. 172).

- (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.

(Subsection (13) added 1987 P.L. 203, No. 30).

Section 2.1. Recapture of Tax. - (a) Notwithstanding the provisions of section 2(1) of this act, 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) As used in this act:

“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.

(Added 1984 PL. 885, No. 172)

Section 3. 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 act, 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 act 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.

Section 4. 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.

(As amended 1967 P.L. 361, No. 160).

Section 5. Rate, Amount, Court Approval; Revision of Budget. - Any tax imposed under this act 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 act 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 act, 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 act, known as "The Local Tax Enabling Act."

Section 6. Appeals by Taxpayers. - No tax levied for the first time by any political subdivision to which this act 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 of 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.

(As amended 1971 P.L. 118, No. 6).

Section 7. 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 act, an exact printed or typewritten copy thereof, certified to by the secretary of the taxing body shall be filed with the Department of Community Affairs 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 Affairs 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.

(As amended 1967 P.L. 228, No. 83 and 1967 PL. 361, No. 160).

Section 8. Limitations on Rates of Specific Taxes. - No taxes levied under the provisions of this act 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.
- (3) On wages, salaries, commissions and other earned income of individuals, one per cent.
- (4) On retail sales involving the transfer of title or possession of tangible personal property, two per cent.
- (5) On the transfer of real property, one per cent.
- (6) On admissions to places of amusement, athletic events and the like, and on motion picture theatres in cities of the second class, ten per cent.
- (7) Flat rate occupation taxes not using a millage or percentage as a basis, ten dollars (\$10).
- (8) Occupational privilege taxes, ten dollars (\$10).
- (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) On admissions to bowling alleys or bowling lanes, ten percent. The tax base upon which the tax shall be levied shall not exceed forty percent of the charge imposed upon a patron for the sale of admission to or the privilege of admission to a bowling alley or bowling lane to engage in one or more games of bowling.

Except as otherwise provided in this act, 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 act then the tax levied by a political subdivision under the authority of this act 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 act 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 act. When any one of the above taxes has been levied under the provisions of this act 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 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 per cent, 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.

(As amended 1967 P.L. 894, No. 404, 1984 P.L. 885, No. 172 and 1987 P.L. 203, No. 30)

Section 9. Register for Earned Income and Occupational Privilege Taxes. - It shall be the duty of the Department of Community Affairs to have available an official continuing register supplemented annually of all earned income taxes and occupational privilege taxes levied under the authority of this act. The register and its supplements, hereinafter referred to as the register, shall list such jurisdictions levying earned income and/or occupational privilege 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 Affairs in such manner and on such forms as the Department of Community Affairs may prescribe. The information must be received by the Department of Community Affairs 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 Affairs 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 Affairs 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 employees 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 earned income or occupational privilege taxes under authority of this act 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 employees who are subject to the tax: Provided, That no employer shall be held liable for failure to withhold earned income taxes or for the payment of such withheld tax money to a political subdivision other than the political subdivision entitled to receive such money if such failure to withhold or such incorrect transmittal of withheld taxes arises from incorrect information as to the employee's place of residence submitted by the employee: And provided further, That employers shall not be required by a local ordinance to withhold from compensation for any one of their employees for the occupational privilege tax more than one time in any fiscal period: And provided further, That the occupational privilege 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 the date specified in the ordinance or resolution, and the tax shall continue in force on a calendar year basis.

(As amended 1967 P.L. 228, No. 83 and 1968 P.L. 1203, No. 377).

Section 10. Collection of Taxes. - (a) Administrative Personnel; Joint Agreements. - Any such political subdivision is hereby authorized to provide by ordinance or resolution for the creation of such bureaus or the appointment and compensation of such officers, clerks, collectors, and other assistants and employees, either under existing departments, or otherwise as may be deemed necessary, for the assessment and collection of taxes imposed under authority of this act.

Any political subdivisions imposing taxes under authority of this act are authorized to make joint agreements for the collection of such taxes or any of them. The same person or agency may be employed by two or more political subdivisions to collect any taxes imposed by them under authority of this act.

- (b) **Single Collector for Earned Income Taxes When Certain School Districts Impose Such Taxes.** - Whenever a school district of the second, third or fourth class shall be established pursuant to section 296, act of March 10, 1949, (P.L. 30), known as the "Public School Code of 1949," added August 8, 1963 (P.L. 564), and such school district shall levy, assess and collect or provide for the levying, assessment and collection of a tax upon earned income, such school district and all cities, boroughs, towns and townships within its geographical limits which levy, assess and collect, or provide for the levying, assessment and collection of a tax upon earned income, may on January 1, 1967, or as soon

thereafter as the school district shall provide for the levying, assessment and collection of taxes upon earned income, select one person or agency to collect the taxes upon earned income imposed by all such political subdivisions. In selecting such person or agency each political subdivision shall share in the selection upon a basis agreed upon by each political subdivision, or in the absence of any agreement on the basis of voting according to the proportion that the population of each bears to the entire population of the combined collection district, according to the latest official Federal census, and the majority of such votes cast shall determine the person or agency selected to collect the taxes. The provisions of this paragraph shall not prohibit school districts and other political subdivisions which levy, assess and collect or provide for the levying, assessment and collection of taxes upon earned income, under authority of this act, from selecting the same person or agency to collect such tax upon earned income in an area larger than the geographical limits of a school district established pursuant to Section 296 of the "Public School Code of 1949."

Section 11. Audits of Earned Income Taxes. - Except in cities of the second class, the governing body of each political subdivision which levies, assesses and collects or provides for the levying, assessment and collection of a tax upon earned income, shall provide for not less than one examination each year of the books, accounts and records of the income tax collector, by a certified public accountant, a firm of certified public accountants, a competent independent public accountant, or a firm of independent public accountants appointed by the governing body. Whenever one person or agency is selected to collect earned income taxes for more than one political subdivision, the books, accounts and records of such person or agency shall be examined as provided above in the case of a tax collector for each political subdivision, except that the accountant shall be selected in the manner provided for selection of one person or agency to collect earned income taxes for the school district established under section 296 of the "Public School Code of 1949," and the cities, boroughs, towns and townships within the geographical limits of such school district. The reports of the audit shall be sent to the governing body or bodies of the political subdivision or political subdivisions employing the accountant. No further or additional audit shall be performed by elected or appointed auditors.

Section 12. Audits of Taxes Other Than Earned Income Taxes. - The books, accounts, and records of persons collecting taxes pursuant to this act, 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 act, other than taxes levied, assessed and collected upon earned income.

Section 13. Earned Income Taxes. - On and after the effective date of this act the remaining provisions of this section shall be included in or construed to be a part of each tax levied and assessed upon earned income by any political subdivision levying and assessing such tax pursuant to this act. The definitions contained in this section shall be exclusive for any tax upon earned income and net profits levied and assessed pursuant to this act, and shall not be altered or changed by any political subdivision levying and assessing such tax.

I. Definitions

"Association." A partnership, limited partnership, or any other unincorporated group of two or more persons.

"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.

"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.

"Current year." The calendar year for which the tax is levied.

“Domicile.” The place where one lives and has his permanent home and to which he has the intention of returning whenever he is 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 voluntary 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 him to adopt some other permanent home. In the case of businesses, or associations, the domicile is that place considered as the center of business affairs and the place where its functions are discharged.
(As amended 1978 P.L. 930, No. 177)

“Earned Income.” Salaries, wages, commissions, bonuses, incentive payments, fees, tips and other compensation received by a person or his personal representative for services rendered, whether directly or through an agent, and whether in cash or in property; not including, however, wages or compensation paid to persons on active military service, periodic payments for sickness and disability other than regular wages received during a period of sickness, disability or retirement or payments arising under workmen’s compensation acts, occupational disease acts and similar legislation, or payments commonly recognized as old age benefits, retirement pay or pensions paid to persons retired from service after reaching a specific age or after a stated period of employment or payments commonly known as public assistance, or unemployment compensation payments made by any governmental agency or payments to reimburse expenses or payments made by employers or labor unions for wage and salary supplemental programs, including, but not limited to, programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, social security and retirement.

“Income tax officer or officer.” Person, public employee or private agency designated by governing body to collect and administer the tax on earned income and net profits.

“Employer.” A person, partnership, association, corporation, institution, governmental body or unit or agency or any other entity employing one or more persons for a salary, wage, commission or other compensation.

“Net Profits.” The net income from the operation of a business, profession, or other activity except corporations, after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with the accounting system used in such business, profession, or other activity but without deduction of taxes based on income. 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.
(As amended 2000 P.L. 781, No. 100)

“Nonresident.” A person, partnership, association or other entity domiciled outside the taxing district.

“Person or individual.” A natural person.

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

“Resident.” A person, partnership, association or other entity domiciled in the taxing district.

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

“Taxpayer.” A person, partnership, association, or any other entity required hereunder to file a return of earned income or net profits, or to pay a tax thereon.

II. Imposition of Tax

The tax levied under this act shall be applicable to earned income received and to net profits earned in the period beginning January 1, of the current year, and ending December 31, of the current year or for taxpayer fiscal years beginning in the current year, except that taxes imposed for the first time shall become effective from the date 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. Changes in rate shall become effective on the date specified in the ordinance.

III. Declaration and Payment of Tax

A. Net Profits

- (1) Every taxpayer making net profits shall, as the governing body elects (i) pay to the officer an annual payment of tax due on or before April 15, of the succeeding year for the period beginning January 1, and ending December 31, of the current year, or (ii) on or before April 15, of the current year, make and file with the officer on a form prescribed or approved by the officer, a declaration of his estimated net profits during the period beginning January 1, and ending December 31, of the current year and pay to the officer in four equal quarterly installments the tax due thereon as follows: The first installment at the time of filing the declaration, and the other installments on or before June 15, of the current year, September 15, of the current year and January 15, of the succeeding year, respectively.
- (2) Where the governing body elects to require the filing of a declaration and quarterly payments, any taxpayer who first anticipates any net profit after April 15, of the current year, shall make and file the declaration hereinabove required on or before June 15, of the current year, September 15, of the current year, or December 31, of the current year, whichever of these dates next follows the date on which the taxpayer first anticipates such net profit, and pay to the officer in equal installments the tax due thereon on or before the quarterly payment dates which remain after the filing of the declaration.
- (3) Where the governing body requires a declaration of estimated net profits and quarterly payments of tax due on such profits, every taxpayer shall, on or before April 15, of the succeeding year, make and file with the officer on a form prescribed or approved by the officer a final return showing the amount of net profits earned during the period beginning January 1, of the current year and ending December 31, of the current year, the total amount of tax due thereon and the total amount of tax paid thereon. At the time of filing the final return, the taxpayer shall pay to the 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 his estimated tax, elect to make and file with the officer on or before January 31, of the succeeding year, the final return as hereinabove required.
- (4) The officer may be authorized to provide by regulation for the making and 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 hereinabove required anticipates additional net profits not previously declared or finds that he has overestimated his anticipated net profits.
- (5) Every taxpayer who discontinues business prior to December 31, of the current year, shall, within thirty days after the discontinuance of business, file his final return as hereinabove required and pay the tax due.

B. Earned Income

Annual Earned Income Tax Return

At the election of the governing body every taxpayer shall, on or before April 15, of the succeeding year, make and file with the officer on a form prescribed or approved by the officer a final return showing the amount of earned 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 thereon, the amount of tax paid thereon, the amount of tax thereon that has been withheld pursuant to the provisions relating to the collection at source and the balance of tax due. At the time of filing the final return, the taxpayer shall pay the balance of the tax due or shall make demand for refund or credit in the case of overpayment.

Earned Income Not Subject to Withholding

Every taxpayer who is employed for a salary, wage, commission, or other compensation and who received any earned income not subject to the provisions relating to collection at source, shall as the governing body elects:

- (1) Make and file with the officer on a form prescribed or approved by the officer, an annual return setting forth the aggregate amount of earned income not subject to withholding from him during the period beginning January 1, and ending December 31, of the current year, and such other information as the officer may require, and pay to the officer the amount of tax shown as due thereon on or before April 15, of the succeeding year, or
- (2) Make and file with the officer on a form prescribed or approved by the officer, a quarterly return on or before April 30, of the current year, July 31, of the current year, October 31, of the current year, and January 31, of the succeeding year, setting forth the aggregate amount of earned income not subject to withholding by him 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 the tax together with such other information as the officer may require. Every taxpayer making such return shall, at the time of filing thereof, pay to the officer the amount of tax shown as due thereon.

IV. Collection at Source

- (a) Every employer having an office, factory, workshop, branch, warehouse, or other place of business within the taxing jurisdiction imposing a tax on earned income or net profits within the taxing 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 fifteen days after becoming an employer, register with the officer his name and address and such other information as the officer may require.
- (b) Every employer having an office, factory, workshop, branch, warehouse, or other place of business within the taxing jurisdiction imposing a tax on earned income or net profits within the taxing district who employs one or more persons, other than domestic servants, for a salary wage, commission or other compensation, shall deduct at the time of payment thereof, the tax imposed by ordinance or resolution on the earned income due to his employee or employees, and shall, on or before April 30, of the current year, July 31, of the current year, October 31, of the current year, and January 31, of the succeeding year, file a return and pay to the officer the amount of taxes deducted during the preceding 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. Such return unless otherwise agreed upon between the officer and employer shall show the name and social security number of each such employee, the earned income of such employee during such preceding three-month period, the tax deducted therefrom, the political subdivisions imposing the tax upon such employee, the total earned

income of all such employees during such preceding three-month period, and the total tax deducted therefrom and paid with the return.

Any employer who for two of the preceding four quarterly periods has failed to deduct the proper tax, or any part thereof, or has failed to pay over the proper amount of tax to the taxing authority may be required by the officer to file his return and pay the tax monthly. In such cases, payments of tax shall be made to the officer on or before the last day of the month succeeding the month for which the tax was withheld.

- (c) On or before February 28, of the succeeding year, every employer shall file with the officer:
 - (1) An annual return showing the total amount of earned income paid, the total amount of tax deducted, and the total amount of tax paid to the officer for the period beginning January 1, of the current year, and ending December 31, of the current year.
 - (2) A return withholding statement 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 employee's name, address and social security number, the amount of earned income paid to the employee during said period, the amount of tax deducted, the political subdivisions imposing the tax upon such employee, the amount of tax paid to the officer. Every employer shall furnish two copies of the individual return to the employee for whom it is filed.
- (d) Every employer who discontinues business prior to December 31, of the current year, shall, within thirty days after the discontinuance of business, file the returns and withholding statements hereinabove required and pay the tax due.
- (e) Except as otherwise provided in Section 9, every employer who willingly or negligently fails or omits to make the deductions required by this section shall be liable for payment of the taxes which he was required to withhold to the extent that such taxes have not been recovered from the employee.
- (f) 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 tax or from complying with the requirements of the ordinance or resolution relating to the filing of declarations and returns.

V. Powers and Duties of Officer

- (a) It shall be the duty of the officer to collect and receive the taxes, fines and penalties imposed by the ordinance or resolution. It shall also be his duty to keep a record showing the amount received by him from each person or business paying the tax and the date of such receipt.
- (b) Each officer, before entering upon his official duties shall give and acknowledge a bond to the political subdivision or political subdivisions appointing him. If such political subdivision or political subdivisions shall by resolution designate any bond previously given by the officer as adequate, such bond shall be sufficient to satisfy the requirements of the subsection.

Each such 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 duly licensed by the Insurance Commissioner of this Commonwealth.

Each bond shall be conditioned upon the faithful discharge by the officer, his clerks, assistants and appointees of all trusts confided in him by virtue of his office, upon the faithful execution of all duties required of him by virtue of his office, upon the just and faithful accounting or payment over, according to law, of all moneys and all balances thereof paid to, received or held by him by virtue of his office and upon the delivery to his successor or successors in office of all books, papers, documents or other official things held in right of his office.

Each such bond shall be taken in the name of the appointing authority or authorities, and shall be for the use of the political subdivision or political subdivisions appointing the officer, and for the use of such other person or persons for whom money shall be collected or received, or as his or her interest shall otherwise appear in case of a breach of any of the conditions thereof by the acts or neglect of the principal on the bond.

The political subdivision or political subdivisions appointing the officer, or any person may sue upon the said bond in its or his own name for its or his own use.

Each such bond shall contain the name or names of the surety company or companies bound thereon. The political subdivision or political subdivisions appointing the officer shall fix the amount of the bond at an amount equal to the maximum amount of taxes which may be in the possession of the officer at any given time.

The political subdivision or political subdivisions appointing the officer may at any time, upon cause shown and due notice to the officer, and his surety or sureties, require or allow the substitution or the addition of a surety company acceptable to such political subdivision or political subdivisions for the purpose of making the bond sufficient in amount, without releasing the surety or sureties first approved from any accrued liability or previous action on such bond.

The political subdivision or political subdivisions appointing the officer shall designate the custodian of the bond required to be given by the officer.

- (c) The officer charged with the administration and enforcement of the provisions of the ordinance or resolution is hereby empowered to prescribe, adopt, promulgate and enforce, rules and regulations relating to any matter pertaining to the administration and enforcement of the ordinance or resolution, including provisions for the re-examination and correction of declarations and returns, and of payments alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred, and to make refunds in cases of overpayment, for any period of time not to exceed six years subsequent to the date of payment of the sum involved, and to prescribe forms necessary for the administration of the ordinance or resolution. No rule or regulation of any kind shall be enforceable unless it has been approved by resolution by the governing body. A copy of such rules and regulations currently in force shall be available for public inspection.
- (d) The officer shall refund, on petition of, and proof by the taxpayer, earned income tax paid on the taxpayer's ordinary and necessary business expenses, to the extent that such expenses are not paid by the taxpayer's employer.
- (e) The officer and agents designated by him are hereby authorized to examine the books, papers, and records of any employer or of any taxpayer or of any person whom the officer reasonably believes to be an employer or taxpayer, in order to verify the accuracy of any declaration or return, or if no declaration or return was filed, to ascertain the tax due. Every employer and every taxpayer and every person whom the officer reasonably believes to be an employer or taxpayer is hereby directed and required to give to the officer, or to any agency designated by him, the means, facilities and opportunity for such examination and investigations, as are hereby authorized.
- (f) Any information gained by the officer, his agents, or by any other official or agent of the taxing district, as a result of any declarations, returns, investigations, hearing or verifications required or authorized by the ordinance or resolution, shall be confidential, except for official purposes and except in accordance with a proper judicial order, or as otherwise provided by law.
- (g) The officer is authorized to establish different filing, reporting and payment dates for taxpayers whose fiscal years do not coincide with the calendar year.

- (h) The officer shall, at least quarterly, distribute earned income taxes to the appropriate political subdivisions. The political subdivisions shall not be required to request the officer to distribute the funds collected but shall at least annually reconcile their receipts with the records of the officer and return to or credit the officer with any overpayment. If the officer, within one year after receiving a tax payment, cannot identify the taxing jurisdiction entitled to a tax payment, he shall make payment to the municipality in which the tax was collected. Within one hundred twenty days of the passage of this act, any present accumulated funds that are unclaimed shall be distributed on the same basis.
(Subsec. (h) added 1976 PL. 1047, No. 210).

VI. Compensation of Income Tax Officer

The income tax officer shall receive such compensation for his services and expenses as determined by the governing body. In the case of a single collector established pursuant to subsection (b) of Section 10 of this act, the taxing jurisdictions shall share in the compensation and expenses of a single officer according to the proportionate share that the total annual collections for each jurisdiction bears to the total annual collection for all political subdivisions in a single collector district, except that with the agreement of two-thirds of all participating political subdivisions, a different manner of sharing may be substituted.

VII. Suit for Collection of Tax

- (a) The officer may sue in the name of the taxing district for the recovery of taxes due and unpaid under this ordinance.
- (b) Any suit brought to recover the tax imposed by the ordinance or resolution shall be begun within three years after such tax is due, or within three years after the declaration or return has been filed, whichever date 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 the ordinance or resolution, 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 officer, reveals a fraudulent evasion of taxes, there shall be no limitation.
 - (3) In the case of substantial understatement of tax liability of twenty-five per cent or more, and no fraud, suit shall be begun within six years.
 - (4) Where any person has deducted taxes under the provisions of the ordinance or resolution, and has failed to pay the amounts so deducted to the officer, or where any person has willfully filed or omitted to make the deductions required by this section, there shall be no limitation.
 - (5) This section shall not be construed to limit the governing body from recovering delinquent taxes by any other means provided by this act.
- (c) The officer may sue for recovery of an erroneous refund provided such suit is begun two years after making such refund, except that the suit may be brought within five years if it appears that any part of the refund was induced by fraud or misrepresentation of material fact.

VIII. Interest and Penalties

- (a) If for any reason the tax is not paid when due, interest at the rate of six per cent per annum on the amount of said tax, and an additional penalty of one-half of one per cent 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 person liable therefor shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

- (b) Notwithstanding the provisions of subsection (a), the governing body 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 earned income tax liabilities or for the nonpayment of earned income 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. Each governing body may adopt regulations to implement the provisions of this subsection.
(Subsection (b) added 1987 P.L. 203, No. 30).
- (c) The provisions of subsection (b) shall not affect or terminate any petitions, investigations, prosecutions or other proceedings pending under the provisions of this act, 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 (b) if the returns are determined to be substantially true and correct and the taxes are paid in full within the prescribed time.
(Subsection (c) added 1987 P.L. 203, No. 30).

IX. Fines and Penalties for Violation of Ordinances or Resolutions

- (a) Any person who fails, neglects, or refuses to make any declaration or return required by the ordinance or resolution, any employer who fails, neglects or refuses to register or to pay the tax deducted from his employees, or fails, neglects or refuses to deduct or withhold the tax from his employees, any person who refuses to permit the officer or any agent designated by him to examine his books, records, and papers, and any person who knowingly makes any incomplete, false or fraudulent return, or attempts to do anything whatsoever to avoid the full disclosure of the amount of his net profits or earned income in order to avoid the payment of the whole or any part of the tax imposed by the ordinance or resolution, shall, upon conviction thereof before any justice of the peace, alderman or magistrate, or court of competent jurisdiction in the county 92 or counties in which the political subdivision imposing the tax is located, be sentenced to pay a fine of not more than five hundred dollars (\$500) for each offense, and costs, and, in default of payment of said fine and costs to be imprisoned for a period not exceeding thirty days.
- (b) Any person who divulges any information which is confidential under the provisions of the ordinance or resolution, shall, upon conviction thereof before any justice of the peace, alderman or magistrate, or court of competent jurisdiction, be sentenced to pay a fine of not more than five hundred dollars (\$500) for each offense, and costs, and, in default of payment of said fines and costs to be imprisoned for a period not exceeding thirty days.
- (c) The penalties imposed under this section shall be in addition to any other penalty imposed by any other section of the ordinance or resolution.
- (d) The failure of any person to receive or procure forms required for making the declaration or returns required by the ordinance or resolution shall not excuse him from making such declaration or return.

Section 14. 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 business, professions or other activities and for any income tax imposed by any other political subdivision of this Commonwealth under the authority of this act.

Payment of any tax on salaries, wages, commissions, other compensation or 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 act shall be credited to and allowed as a deduction from the liability of such persons for any other like tax respectively on salaries, wages, commission, other compensation or on net

profits of business, professions or other activities imposed by any other political subdivision of this Commonwealth under the authority of this act.

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 act shall, to the extent that such income include salaries, wages, commissions, other compensation or net profits of business, 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 persons for any other tax on salaries, wages, commissions, other compensation or on net profits of business, professions, or other activities imposed by any other political subdivision of this Commonwealth under the authority of this act.

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 act, 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 Act.

Where a credit or a deduction is allowable in any of the several cases herein above 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 act 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) known as the Tax Reform Code of 1971, on account of taxes imposed on income by other states or by their political subdivisions.

(As amended 1967 P.L. 171, No. 47 and 1972 P.L. 1043, No. 261).

Section 15. 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 act, 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.

Section 16. Limitation on Assessment. - No assessment may be made of any tax imposed under this act 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.

Section 17. 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 an 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 act will materially exceed the limitations imposed by this act, 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 act 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 act 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 act 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 act.

Section 18. Distress and Sale of Goods and Chattels of Taxpayer. - Every tax collector shall have power, in case of the neglect or refusal of any person, copartnerships, association, or corporation, to make payment of the amount of any tax due by him, 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.

Section 19. Collection of Delinquent Per Capita, Occupation, Occupational Privilege and Earned Income Tax from Employers, etc. - The tax collector shall demand receive and collect from all corporations, political subdivisions, associations, companies, firms or individuals, employing persons owing delinquent per capita, or occupation, occupational privilege and earned income taxes or whose spouse owes delinquent per capita, occupation, occupational privilege and earned income taxes, or having in possession unpaid commissions or earnings belonging to any person or persons owing delinquent per capita, occupation, occupational privilege and earned income taxes, or whose spouse owes delinquent per capita, occupation, occupational privilege and earned income taxes, 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 such corporation, political subdivision, association, company, firm or individual to deduct from the wages, commissions or earnings of such individual employees, then owing or that shall within sixty days thereafter become due, or from any unpaid commissions or earnings of any such taxable in its or his possession, or that shall within sixty days thereafter come into its or his possession, a sum sufficient to pay the respective amount of the delinquent per capita, occupation, occupational privilege and earned income taxes and costs, shown upon the written notice or demand, and to pay the same to the tax collector of the taxing 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 maybe deducted at any one time for delinquent per capita, occupation, occupational privilege and earned income taxes and costs. Such corporation, political subdivision, association, firm or individual shall be entitled to deduct from the moneys collected from each employee 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. Upon the failure of any such corporation, political subdivision, association, company, firm or individual to deduct the amount of such taxes or to pay the same over to the tax collector less the cost of bookkeeping involved in such transaction, as herein provided, within the time hereby required, such corporation, political subdivision, association, company, firm or individual 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 by the proper authorities of the taxing 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 shall not proceed against a spouse or his employer until he has pursued collection remedies against the delinquent taxpayer and his employer under this section.

(As amended 1967 P.L. 52 7, No. 253, 1971 P.L. 279, No. 71 and 1978 P.L. 930, No. 177).

Section 20. Collection of Delinquent Per Capita, Occupation, Occupational Privilege and Earned 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 employee, a sum sufficient to pay the respective amount of the delinquent per capita, occupation, occupational privilege and earned income taxes and costs shown on the written notice. The same shall be paid to the tax collector of the taxing district in which said delinquent tax was levied within sixty days after such notice shall have been given.⁹⁵

Section 20.1. Notice. - The tax collector 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 corporation, political subdivision, association, company or individual, notify the taxpayer owing the delinquent tax by registered or certified mail that a written notice and demand shall be presented to his 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.

(Added 1975 P.L. 425, No. 118).

Section 21. Collection of Taxes by Suit. - Each taxing district 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 of each such taxing district 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.

Section 22. Penalties. - Except as otherwise provided in the case of any tax levied and assessed upon earned 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 earned income by any such political subdivision 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 half 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. 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.

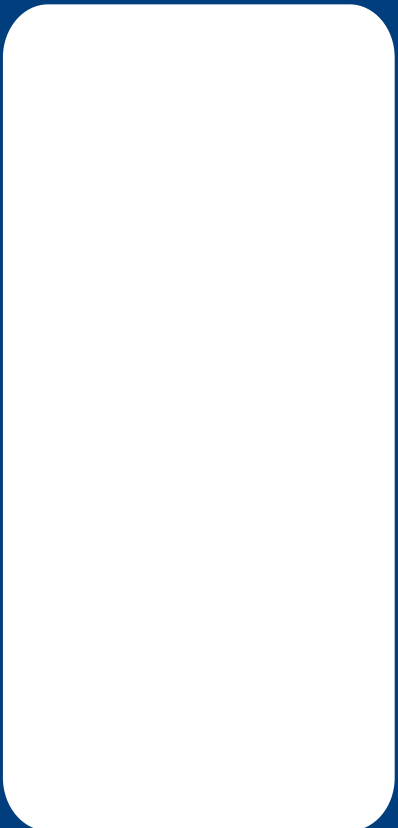
Section 23. Repeals. - The act of June 25, 1947 (P.L. 1145), entitled, as amended, "An act empowering cities of the second class, cities of the second class A, cities of the third class, boroughs, towns, townships of the first class, townships of the second class, school districts of the second class, 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 employees 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.

All other acts and parts of acts are repealed in so far as they are inconsistent herewith.

Section 24. Effective Date. - This act shall take effect January 1, 1966.

Pennsylvania Department of Community & Economic Development
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