

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 176 Session of
2005

INTRODUCED BY SCAVELLO, ARMSTRONG, BELARDI, BELFANTI,
BENNINGHOFF, BIRMELIN, BOYD, CALTAGIRONE, CAPPELLI, CRAHALLA,
CREIGHTON, DALLY, DeLUCA, DENLINGER, GEIST, GRUCELA, HERMAN,
HERSHEY, McILHATTAN, MILLARD, R. MILLER, MUSTIO, O'NEILL,
PICKETT, RUBLEY, SCHRODER, SHANER, SIPTROTH, B. SMITH,
STABACK, STURLA, E. Z. TAYLOR, TIGUE, YOUNGBLOOD, GERGELY AND
THOMAS, APRIL 12, 2005

SENATOR EARLL, FINANCE, IN SENATE, AS AMENDED, JUNE 22, 2005

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," further providing, in realty transfer tax, for
11 determination and notice of tax and review; providing, in
12 realty transfer tax, for sharing information; further
13 providing, in local real estate transfer tax, for imposition
14 and for administration; providing, in local real estate
15 transfer tax, for regulations, for documentary stamps, for
16 collection agents, for disbursements, for judicial sale
17 proceeds, for stamps, for determination and review, for
18 liens, for refunds, for civil penalties, for violations and
19 for information; and making repeals.

20 The General Assembly of the Commonwealth of Pennsylvania
21 hereby enacts as follows:

22 Section 1. Section 1111-C(a) of the act of March 4, 1971
23 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended

1 July 2, 1986 (P.L.318, No.77), is amended to read:

2 Section 1111-C. Determination and Notice of Tax; Review.--

3 (a) If any person shall fail to pay any tax imposed by this
4 article for which he is liable, the department is hereby
5 authorized and empowered to make a determination of additional
6 tax and interest due by such person based upon any information
7 within its possession or that shall come into its possession.

8 All of such determinations shall be made within three years
9 after the date of the recording of the document[.], subject to
10 the following:

11 (1) If the taxpayer underpays the correct amount of the tax
12 by twenty-five per cent or more, the tax may be assessed at any
13 time within six years after the date of the recording of the
14 document.

15 (2) If any part of an underpayment of tax is due to fraud or
16 an undisclosed, intentional disregard of rules and regulations,
17 the full amount of the tax may be assessed at any time.

18 * * *

19 Section 2. The act is amended by adding a section to read:

20 Section 1114-C. Sharing Information.--Notwithstanding the
21 provisions of any other act, the department may divulge to the
22 proper officer of a political subdivision imposing a realty
23 transfer tax, or the authorized representative of that officer,
24 information gained pursuant to the department's administration
25 or collection respecting the collection of realty transfer tax
26 under this article.

27 Section 3. Sections 1101-D and 1102-D of the act, added July
28 2, 1986 (P.L.318, No.77), are amended to read:

29 Section 1101-D. Imposition.--The duly constituted
30 authorities of the following political subdivisions--cities of

1 the second class, cities of the second class A, cities of the
2 third class, boroughs, incorporated towns, townships of the
3 first class, townships of the second class, school districts of
4 the first class A, school districts of the second class, school
5 districts of the third class and school districts of the fourth
6 class, in all cases including independent school districts--may,
7 in their discretion, by ordinance or resolution, for general
8 revenue purposes, levy, assess and collect or provide for the
9 levying, assessment and collection of a tax upon a transfer of
10 real property or an interest in real property within the limits
11 of the political subdivision, regardless of where the
12 instruments making the transfers are made, executed or delivered
13 or where the actual settlements on the transfer take place, to
14 the extent that the transactions are subject to the tax imposed
15 by Article XI-C. [In addition, such political subdivision may
16 impose a local real estate transfer tax upon additional classes
17 or types of transactions if the tax was imposed by the political
18 subdivision under the act of December 31, 1965 (P.L.1257,
19 No.511), known as "The Local Tax Enabling Act," prior to the
20 effective date of this article. A] Except as to a city of the
21 second class which is a home rule municipality, a tax imposed
22 under this article shall be subject to rate limitations provided
23 by section 5 and section 17 of the act of December 31, 1965
24 (P.L.1257, No.511), known as "The Local Tax Enabling Act."

25 Section 1102-D. Administration.--[A] (a) The tax [imposed]
26 authorized under this article shall be administered, collected
27 and enforced under the act of December 31, 1965 (P.L.1257,
28 No.511), known as "The Local Tax Enabling Act[.]," provided,
29 however, that, if the correct amount of the tax is not paid by
30 the last date prescribed for timely payment as provided for in

1 section 1102-C, the department may determine the tax, interest
2 and penalty as provided for in section 1109-D and may collect
3 and enforce the tax, interest and penalty in the same manner as
4 tax, interest and penalty imposed by Article XI-C.

5 (b) Whenever a declaration is required to be filed under
6 Article XI-C, a declaration is also required to be filed under
7 this article.

8 Section 4. The act is amended by adding sections to read:

9 Section 1103-D. Regulations.--(a) The regulations
10 promulgated under Article XI-C shall be applicable to the taxes
11 imposed under this article.

12 (b) The Department of Revenue may promulgate and enforce
13 regulations not inconsistent with the provisions of this
14 article.

15 (c) The department, to cover its costs of administration,
16 shall retain an amount equal to costs but not to exceed ten per
17 cent of the tax, interest, and penalty collected and enforced by
18 the department under section 1102-D.

19 Section 1104-D. Documentary Stamps.--(a) The payment of the
20 tax imposed under this article shall be evidenced by the
21 affixing of a documentary stamp or stamps to every document by
22 the person making, executing, delivering or presenting for
23 recording such document. The stamps shall be affixed in such
24 manner that their removal will require the continued application
25 of steam or water, and the person using or affixing the stamps
26 shall write, stamp or cause to be written or stamped thereon the
27 initials of that person's name and the date upon which the
28 stamps are affixed or used so that the stamps may not again be
29 used; provided that the Department of Revenue may prescribe such
30 other method of cancellation as it may deem expedient.

1 (b) The department may, in its discretion, use documentary
2 license meter impressions or similar indicia of payment in lieu
3 of stamps.

4 Section 1105-D. Collection Agent.--The recorder of deeds
5 shall be the collection agent for any political subdivision
6 levying a local realty transfer tax under this article. The
7 recorder of deeds shall pay tax, interest and penalty collected
8 under this article over to the appropriate political subdivision
9 in accordance with section 6(c) of the act of November 1, 1971
10 (P.L.495, No.113), entitled, as amended, "An act providing for
11 the compensation of county officers in counties of the second
12 through eighth classes, for compensation of district attorneys
13 in cities and counties of the first class, for compensation of
14 district election officers in all counties, for the disposition
15 of fees, for filing of bonds in certain cases and for duties of
16 certain officers."

17 Section 1106-D. Disbursements.--The tax, interest and
18 penalty that the Department of Revenue collects under this
19 article shall be remitted in the manner provided by law to the
20 appropriate recorder of deeds along with the "State Tax Payment
21 Imprint Receipt" which shall provide sufficient information for
22 the recorder of deeds to determine which political subdivisions
23 are entitled to the collections. The recorder of deeds shall
24 record the "State Tax Payment Imprint Receipt" whether or not
25 signed and acknowledged by the Department of Revenue and shall
26 index in the grantor/grantee index to the original document upon
27 which the tax has been paid. The department shall collect from
28 the taxpayer as part of its determination process the county
29 recording fee for the recording of the "State Tax Payment
30 Imprint Receipt."

1 Section 1107-D. Proceeds of Judicial Sale.--The tax imposed
2 under this article shall be fully paid and have priority out of
3 the proceeds of any judicial sale of real estate before any
4 other obligation, claim, lien, judgment, estate or costs of the
5 sale and of the writ upon which the sale is made. The sheriff or
6 other officer conducting the sale shall pay the tax imposed
7 under this article out of the first moneys paid to the sheriff
8 or officer in connection therewith. If the proceeds of the sale
9 are insufficient to pay the entire tax imposed under this
10 article, the purchaser shall be liable for the remaining tax.

11 Section 1108-D. Failure to Affix Stamps.--No document upon
12 which tax is imposed under this article shall at any time be
13 made the basis of any action or other legal proceeding, nor
14 shall proof thereof be offered or received in evidence in any
15 court of this Commonwealth or recorded in the office of any
16 recorder of deeds of any county of this Commonwealth unless a
17 documentary stamp or stamps as provided in this article have
18 been affixed thereto.

19 Section 1109-D. Determination and Notice of Tax; Review.--
20 (a) If any person fails to pay any tax imposed under this
21 article for which that person is liable, a political subdivision
22 may authorize the Department of Revenue to make a determination
23 of additional tax, penalty and interest due under this section
24 by the person. The determination will be based upon any
25 information which is within the possession or which will come
26 into the possession of the department. The determination will be
27 made within three years after the date of the recording of the
28 document, subject to the following:

29 (1) If the taxpayer underpays the correct amount of the tax
30 by twenty-five per cent or more, the tax may be assessed at any

time within six years after the date of the recording of the document.

(2) If any part of an underpayment of tax is due to fraud or an undisclosed, intentional disregard of rules and regulations, the full amount of the tax may be assessed at any time.

(b) (1) Promptly after the date of such determination, the department shall send by mail a copy thereof to the person against whom it was made. Within ninety days after the date upon which the copy of the determination was mailed, the person may file with the department a petition for redetermination of the taxes.

(2) Every petition for redetermination must state specifically the reasons which the petitioner believes to be entitled to redetermination and shall be supported by affirmation that it is not made for the purpose of delay and that the facts set forth therein are true.

(3) The department, within six months after the date of filing of a petition for redetermination, shall dispose of the petition. Notice of the action taken upon a petition for redetermination shall be given to the petitioner promptly after the date of redetermination by the department.

(c) A person shall have the right to review by the Board of Finance and Revenue and appeal in the same manner and within the same time as provided by law in the case of capital stock and franchise taxes imposed upon corporations.

(d) (1) Notice of the action of the Board of Finance and Revenue shall be given by mail to the political subdivision. A political subdivision shall have the right to appeal in the same manner and within the same time as provided by law for the Commonwealth in the case of capital stock and franchise taxes

1 imposed upon corporations.

2 (2) The political subdivision may request in writing the
3 Office of General Counsel to render such legal advice and such
4 representation as are required concerning every matter and issue
5 arising in connection with an appeal from a decision of the
6 Board of Finance and Revenue.

7 Section 1110-D. Lien.--(a) Any tax that the Department of
8 Revenue determines to be due under this article and remains
9 unpaid after demand for the same, and all penalties and interest
10 thereon, shall be a lien in favor of the affected political
11 subdivision upon the property, both real and personal, of the
12 person but only after the lien has been entered and docketed of
13 record by the prothonotary of the county where such property is
14 situated.

15 (b) (1) At any time after it makes a determination of
16 additional tax, penalty or interest under this article, the
17 department may transmit to the prothonotaries of the respective
18 counties certified copies of all liens for the taxes, penalties
19 and interest under this article or copies of all liens under
20 Article XI-C and this article on a single form.

21 (2) A prothonotary receiving the lien shall enter and docket
22 the lien of record in the prothonotary's office, which lien
23 shall be indexed as judgments are now indexed.

24 (3) After the department's determination becomes final, a
25 writ of execution may directly issue upon the lien without the
26 issuance and prosecution to judgment of a writ of scire facias;
27 provided that not less than ten days before issuance of any
28 execution on the lien, notice shall be sent by certified mail to
29 the taxpayer at the taxpayer's last known post office address.
30 No prothonotary shall require as a condition precedent to the

entry of the liens, the payment of any costs incident thereto.

(c) (1) The lien imposed under this section shall have priority from the date of its recording and shall be fully paid and satisfied out of the proceeds of any judicial sale of property subject thereto before any other obligation, judgment, claim, lien or estate to which the property may subsequently become subject, except costs of the sale and of the writ upon which the sale was made, and real estate taxes and municipal claims against such property, but shall be subordinate to mortgages and other liens existing and duly recorded or entered of record prior to the recording of the tax lien.

(2) In the case of a judicial sale of property subject to a lien imposed under this section upon a lien or claim over which the lien has priority, the sale shall discharge the lien to the extent only that the proceeds are applied to its payment and the lien shall continue in full force and effect as to the balance remaining unpaid.

(d) A lien imposed under this article shall be equal in priority to the lien imposed under Article XI-C.

Section 1111-D. Refunds.--(a) Whenever the amount due upon determination, redetermination or review is less than the amount paid on account thereof, the political subdivision shall refund the difference.

(b) Where there has been no determination of unpaid tax, application for refund shall be made to the political subdivision in the manner prescribed by the act of December 31, 1965 (P.L.1257, No.511), known as "The Local Tax Enabling Act."

Section 1112-D. Civil Penalties.--(a) If any part of any underpayment of tax imposed under this article is due to fraud, an amount equal to fifty per cent of the underpayment shall be

1 added to the tax.

2 (b) In the case of failure to record a declaration required
3 under this article on the date prescribed therefor, unless it is
4 shown that such failure is due to reasonable cause, five per
5 cent of the amount of such tax shall be added to the tax if the
6 failure is for not more than one month, with an additional five
7 per cent for each additional month or fraction thereof during
8 which the failure continues, not exceeding fifty per cent in the
9 aggregate.

10 Section 1113-D. Unlawful Acts and Penalty.--(a) It shall be
11 unlawful for any person to:

12 (1) accept or present for recording or cause to be accepted
13 or presented for recording any document without the full amount
14 of tax thereon being duly paid;

15 (2) make use of any documentary stamp to denote payment of
16 any tax imposed under this article without cancelling such stamp
17 as required by this article or as prescribed by the Department
18 of Revenue;

19 (3) fail, neglect or refuse to comply with or violate the
20 rules and regulations prescribed, adopted and promulgated by the
21 department under this article;

22 (4) fraudulently cut, tear or remove from a document any
23 documentary stamp;

24 (5) fraudulently affix to any document upon which tax is
25 imposed under this article any documentary stamp which has been
26 cut, torn or removed from any other document upon which tax is
27 imposed under this article, or any documentary stamp of
28 insufficient value, or any forged or counterfeited stamp, or any
29 impression of any forged or counterfeited stamp, die, plate or
30 other article;

1 (6) wilfully remove or alter the cancellation marks of any
2 documentary stamp, or restore any such documentary stamp, with
3 intent to use or cause the same to be used after it has already
4 been used, or knowingly buy, sell, offer for sale, or give away
5 such altered or restored stamp to any person for use, or
6 knowingly use the same;

7 (7) knowingly have in his possession any altered or restored
8 documentary stamp which has been removed from any document upon
9 which a tax is imposed under this article, provided that the
10 possession of such stamps shall be prima facie evidence of an
11 intent to violate the provisions of this clause; or

12 (8) knowingly or wilfully prepare, keep, sell, offer for
13 sale, or have in his possession any forged or counterfeited
14 documentary stamps.

15 (b) (1) Except as otherwise provided in clause (2), a
16 person who violates subsection (a) commits a misdemeanor of the
17 second degree.

18 (2) A person who violates subsection (a) (1), (2) or (3)
19 commits a summary offense.

20 (c) A person who makes a false statement of value or
21 declaration of acquisition, not believing the statement or
22 declaration to be true, commits a misdemeanor of the second
23 degree.

24 Section 1114-D. Information.--Notwithstanding the provisions
25 of any other act, the officer of a political subdivision
26 imposing a realty transfer tax or the authorized representative
27 of the officer may divulge to the Department of Revenue
28 information concerning the administration or collection of
29 realty transfer tax authorized by this article.

30 Section 5. Any ordinance or resolution providing for the

1 levying, assessment or collection of a tax upon a transfer of
2 real property or an interest in real property which has been
3 enacted by a political subdivision prior to the effective date
4 of this section shall continue in full force and effect, without
5 reenactment, insofar as the transactions upon which the tax is
6 levied, assessed or collected are also subject to the tax
7 imposed by Article XI-C of the act. The ordinance or resolution
8 shall continue in full force and effect with respect to
9 documents made, executed and delivered prior to the effective
10 date of this section.

11 Section 6. The following provisions shall apply to any
12 document made, executed, delivered, accepted or presented for
13 recording ~~after November 30, 2005~~ ON OR AFTER THE EFFECTIVE DATE <—
14 OF THIS ACT:

- 15 (1) The amendment of section 1101-D of the act.
- 16 (2) The amendment of section 1102-D of the act.
- 17 (3) The addition of section 1103-D of the act.
- 18 (4) The addition of section 1104-D of the act.
- 19 (5) The addition of section 1105-D of the act.
- 20 (6) The addition of section 1106-D of the act.
- 21 (7) The addition of section 1107-D of the act.
- 22 (8) The addition of section 1108-D of the act.
- 23 (9) The addition of section 1109-D of the act.
- 24 (10) The addition of section 1110-D of the act.
- 25 (11) The addition of section 1111-D of the act.
- 26 (12) The addition of section 1112-D of the act.
- 27 (13) The addition of section 1113-D of the act.

28 Section 7. Repeals are as follows:

- 29 (1) The following acts and parts of acts are repealed as
30 set forth in paragraph (2):

1 (i) Section 2(1) of the act of December 31, 1965
2 (P.L.1257, No.511), known as The Local Tax Enabling Act.

3 (ii) Section 652.1(a)(4) of the act of March 10,
4 1949 (P.L.30, No.14), known as the Public School Code of
5 1949.

6 (2) The acts and parts of acts referred to in paragraph
7 (1) are repealed insofar as they are inconsistent with the
8 following provisions:

9 (i) The amendment of section 1111-C of the act.

10 (ii) The addition of section 1114-C of the act.

11 (iii) The amendment of section 1101-D of the act.

12 (iv) The amendment of section 1102-D of the act.

13 (v) The addition of section 1103-D of the act.

14 (vi) The addition of section 1104-D of the act.

15 (vii) The addition of section 1105-D of the act.

16 (viii) The addition of section 1106-D of the act.

17 (ix) The addition of section 1107-D of the act.

18 (x) The addition of section 1108-D of the act.

19 (xi) The addition of section 1109-D of the act.

20 (xii) The addition of section 1110-D of the act.

21 (xiii) The addition of section 1111-D of the act.

22 (xiv) The addition of section 1112-D of the act.

23 (xv) The addition of section 1113-D of the act.

24 (xvi) The addition of section 1114-D of the act.

25 Section 8. This act shall take effect ~~immediately~~ IN 90

26 DAYS.

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