

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 741 Session of
2009

INTRODUCED BY ERICKSON, EARLL, FERLO, ALLOWAY, TOMLINSON,
WONDERLING AND LEACH, APRIL 3, 2009

REFERRED TO FINANCE, APRIL 3, 2009

AN ACT

1 Providing options, subject to voter approval, for political
2 subdivisions to impose taxes on earned income and net profits
3 and personal income for the purpose of reducing real property
4 taxes; authorizing a county sales and use tax; and providing
5 for disbursement of sales tax revenues.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 CHAPTER 1

9 GENERAL PROVISIONS

10 Section 101. Short title.

11 This act shall be known and may be cited as the Local Tax
12 Choice Act.

13 Section 102. Definitions.

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

17 "Department." The Department of Revenue of the Commonwealth.

18 "Earned income." As defined in section 501 of the act of
19 December 31, 1965 (P.L.1257, No.511), known as The Local Tax

1 Enabling Act.

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

4 "Governing body." Any city council, borough council,
5 incorporated town council, board of county commissioners or a
6 home rule successor in function, board of township
7 commissioners, board of township supervisors, governing council
8 of a home rule municipality or optional plan municipality, or
9 governing council of a similar general purpose unit of
10 government which may be created by statute after the effective
11 date of this section.

12 "Homestead." As defined in 53 Pa.C.S. § 8401 (relating to
13 definitions).

14 "Homestead property." As defined in 53 Pa.C.S. § 8401
15 (relating to definitions).

16 "Income tax." A tax on earned income and net profits or a
17 tax on personal income imposed pursuant to this act.

18 "Local Tax Enabling Act." The act of December 31, 1965
19 (P.L.1257, No.511), known as The Local Tax Enabling Act.

20 "Net profits." As defined in section 501 of the act of
21 December 31, 1965 (P.L.1257, No.511), known as The Local Tax
22 Enabling Act.

23 "Per capita market value." The total market value of all
24 real property divided by population as determined by the most
25 recent decennial census.

26 "Personal income." Income enumerated in section 303 of the
27 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
28 of 1971, as returned to and ascertained by the Department of
29 Revenue, subject, however, to any correction for fraud, evasion
30 or error as finally determined by the department or a court of

1 competent jurisdiction.

2 "Political subdivision." Any city, county, borough,
3 incorporated town or township.

4 "Resident individual." An individual who is domiciled in a
5 political subdivision.

6 "Statewide average weekly wage." That amount determined
7 annually for each calendar year by the Department of Labor and
8 Industry under section 105.1 of the act of June 2, 1915
9 (P.L.736, No.338), known as the Workers' Compensation Act.

10 "Tax Reform Code." The act of March 4, 1971 (P.L.6, No.2),
11 known as the Tax Reform Code of 1971.

12 "Weighted tax revenues." Total tax revenues from all sources
13 of a municipality divided by the ratio of its per capita market
14 value to the per capita market value of its county.

15 CHAPTER 3

16 TAX AUTHORIZATION

17 Section 301. General tax authorization.

18 (a) General rule.--Subject to section 303, a political
19 subdivision may by resolution levy, assess and collect or
20 provide for the levying, assessment and collection of the earned
21 income and net profits tax or the personal income tax. A
22 political subdivision may levy either an earned income and net
23 profits tax or a personal income tax, but under no circumstance
24 may a political subdivision levy both the earned income and net
25 profits tax and a personal income tax.

26 (b) Exclusions.--No political subdivision that levies an
27 earned income and net profits tax or a personal income tax may
28 levy, assess or collect any of the following:

29 (1) A tax based upon a flat rate or on a millage rate on
30 an assessed valuation of a particular trade, occupation or

profession, commonly known as an occupation tax.

(2) A tax at a set or flat rate upon persons employed within the taxing district, commonly known as an occupational privilege tax.

(3) A per capita, poll, residence or similar head tax.

(4) Except for taxes permitted under 53 Pa.C.S. § 8402(b), (c), (d), (e) and (f) (relating to scope and limitations), any other tax authorized or permitted under the Local Tax Enabling Act.

(c) Delinquent taxes.--The provisions of subsection (b) shall not apply to collection of delinquent taxes.

Section 302. Continuity of tax.

The earned income and net profits tax or the personal income tax levied under this act shall continue in force on a fiscal year basis without annual reenactment unless the rate of tax is increased or the tax is subsequently repealed.

Section 303. Adoption of referendum.

(a) Submission.--The governing body of all political subdivisions shall submit the referendum question to the electors of these political subdivisions at the primary election of 2010.

(b) Referendum question.--

(1) The referendum question must state the initial rate of the proposed earned income and net profits tax or personal income tax, the reason for the tax and the amount of proposed budgeted revenue growth, if any, in the first fiscal year following adoption of the referendum, expressed as a percent increase over the prior year's budgeted revenue. Any increase in budgeted revenue between the first fiscal year following adoption of the referendum and the prior year's budgeted

1 revenue shall not exceed the annual percent change in the
2 Statewide average weekly wage. The question shall be in clear
3 language that is readily understandable by a layperson. For
4 purpose of illustration, a referendum question may be framed
5 as follows:

6 Do you favor the imposition of an earned income and net
7 profits tax or a personal income tax of X% to be used to
8 replace (names of local taxes to be repealed), reduce
9 real property taxes by X% by and provide for a one-time
10 revenue increase of X% over the preceding fiscal year?

11 (2) A nonlegal interpretative statement must accompany
12 the question in accordance with section 201.1 of the act of
13 June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania
14 Election Code, that includes the following: the initial rate
15 of the earned income and net profits tax or personal income
16 tax and the maximum allowable rate of the earned income and
17 net profits tax or personal income tax imposed under this
18 act; the estimated revenues to be derived from the initial
19 rate of the earned income and net profits or personal income
20 tax imposed under this act; the amount of proposed revenue
21 growth, if any, in the first fiscal year following adoption
22 of the referendum; the estimated reduction in real property
23 taxes and the elimination of certain existing taxes under
24 this act; the identification of the existing taxes to be
25 eliminated under this act; the method to be used to reduce
26 real property taxes; the class or classes of real property
27 for which real property taxes would be reduced; and the
28 estimated amount of real property tax reduction by class,
29 expressed as an average percent reduction by class.

30 Section 304. Taxes authorized.

1 (a) General rule.--A political subdivision may levy, assess
2 and collect a tax authorized under either subsection (b) or (c),
3 but may not levy, assess and collect both taxes.

4 (b) Earned income and net profits tax.--A political
5 subdivision shall have the power to levy, assess and collect a
6 tax on earned income and net profits up to a maximum rate of
7 1.5%. The tax may be levied by a political subdivision at a rate
8 of 1%, 1.25% or 1.5%.

9 (c) Personal income tax.--A political subdivision may levy,
10 assess and collect a tax on personal income up to a maximum rate
11 of 1.5%. The tax may be levied by the political subdivision at a
12 rate of 1%, 1.25% or 1.5%.

13 Section 305. Collections.

14 (a) General rule.--A political subdivision imposing a tax
15 under section 304 shall designate the tax officer who is
16 appointed under section 506 of the Local Tax Enabling Act, or
17 otherwise by law, as the collector of the earned income and net
18 profits tax and may designate that tax officer as the collector
19 of the personal income tax. In the performance of the tax
20 collection duties, the designated tax officer shall have the
21 same powers, rights, responsibilities and duties for the
22 collection of the taxes that may be imposed under the Local Tax
23 Enabling Act or as otherwise provided by law.

24 (b) Collection of personal income tax by Commonwealth.--

25 (1) A political subdivision imposing a tax upon personal
26 income may enter into an agreement with the department for
27 the collection of that personal income tax by the department
28 in conjunction with the collection of any tax on personal
29 income imposed by the Commonwealth under the Tax Reform Code.

30 (2) The agreement may not include any provisions

1 regarding enforcement. The agreement and any renewal shall be
2 executed at least six months prior to the date for the
3 collection of the tax; shall have a duration of at least
4 three years; and, after expiration, shall not be reinstituted
5 for a period of three years. The agreement authorized by this
6 subsection shall contain a provision appointing the
7 department as the tax officer within the meaning of this act.

8 (3) The department, by regulation, shall establish the
9 procedures for collecting the tax and paying the full amount
10 collected to the political subdivision.

11 Section 306. Credits.

12 (a) General rule.--The provisions of section 317 of the
13 Local Tax Enabling Act shall be used to determine any credits
14 under the provisions of this chapter for any taxes imposed under
15 section 304.

16 (b) State tax credit.--

17 (1) This section only applies to a taxpayer who is a
18 resident of this Commonwealth and not a resident of a city of
19 the first class but who is subject to the tax on salaries,
20 wages, commissions or other compensation imposed by a city of
21 the first class under the authority of the act of August 5,
22 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling
23 Act.

24 (2) For tax years beginning in the first year in which a
25 political subdivision adopts a tax authorized by section 304
26 and each tax year thereafter, payment of a tax on salaries,
27 wages, commissions or other compensation as set forth in
28 paragraph (1) shall be credited to the political subdivision
29 of the taxpayer's residence at an amount no greater than the
30 tax on salaries, wages, commissions or other compensation as

1 set forth in paragraph (1) imposed by the political
2 subdivision in which the taxpayer resides.

3 (3) An amount equal to the aggregate amount of the tax
4 credited under paragraph (2) shall be paid by the
5 Commonwealth to the political subdivision of residence of
6 each taxpayer under paragraph (1) for the purpose of funding
7 homestead exclusions. The department shall prescribe
8 procedures to calculate the amount due to each political
9 subdivision qualifying under this paragraph and shall publish
10 the procedures in the Pennsylvania Bulletin.

11 Section 307. Exemptions.

12 A political subdivision that imposes an authorized tax under
13 this act may exempt from the payment of that tax any person
14 whose total income from all sources is less than \$7,500.

15 Section 308. Regulations.

16 (a) General rule.--Taxes imposed under section 304(b) shall
17 be subject to regulations adopted under Chapter 5 of the Local
18 Tax Enabling Act. A political subdivision may adopt regulations
19 for the processing of claims for credits or exemptions under
20 sections 306 and 307.

21 (b) Personal income tax.--Regulations promulgated by the
22 department for personal income tax shall apply to any personal
23 income tax imposed by a political subdivision pursuant to this
24 act.

25 Section 309. Disposition of earned income and net profits tax
26 revenue or personal income tax revenue.

27 The disposition of revenue from any tax imposed under this
28 act or an increase in the rate of any tax imposed by political
29 subdivisions under the authority of this act shall occur in the
30 following manner:

1 (1) For the fiscal year of implementation of a newly
2 imposed income tax, all tax revenue received by a political
3 subdivision shall be used first to offset any lost revenue to
4 the political subdivision from the taxes prohibited under
5 section 301(b) in an amount equal to the revenue collected
6 from the prohibited taxes in section 301(b) in the preceding
7 fiscal year; second, to provide for an increase in budgeted
8 revenues over the preceding fiscal year in accordance with
9 the amount specified in the referendum question approved by
10 the voters under section 303; and third, to reduce the
11 political subdivision real property tax in the following
12 order:

13 (i) By means of an exclusion for homestead property
14 pursuant to 53 Pa.C.S. § 8583 (relating to exclusion for
15 homestead property).

16 (ii) By means of a reduction in the millage rate
17 after the limit on the exclusion for homestead property
18 has been reached under 53 Pa.C.S. § 8586 (relating to
19 limitations).

20 (2) For the fiscal year of implementation of an increase
21 in the rate of the existing tax imposed under this act, all
22 revenue received by a political subdivision directly
23 attributable to the increased rate shall be used to reduce
24 the political subdivision real property tax in the following
25 order:

26 (i) By means of an exclusion for homestead property
27 pursuant to 53 Pa.C.S. § 8583.

28 (ii) By means of a reduction in the millage rate
29 after the limit on the exclusion for homestead property
30 has been reached under 53 Pa.C.S. § 8586.

CHAPTER 5

COUNTY SALES AND USE TAX

Section 501. Construction.

The tax imposed by the governing body under this chapter shall be in addition to any tax imposed by the Commonwealth under Article II of the Tax Reform Code. Except for the differing situs provisions under section 503, the provisions of Article II of the Tax Reform Code shall apply to the tax.

Section 502. Imposition.

(a) Sales.--The governing body may levy and assess upon each separate sale at retail of tangible personal property or services, as defined in Article II of the Tax Reform Code, within the boundaries of the county, a tax on the purchase price. The tax shall be collected by the vendor from the purchaser and shall be paid over to the Commonwealth as provided in this chapter.

(b) Use.--In any county within which the tax authorized in subsection (a) is imposed, there shall be levied, assessed and collected upon the use, within the county, of tangible personal property purchased at retail and on services purchased at retail, as defined in Article II of the Tax Reform Code, a tax on the purchase price. The tax shall be paid over to the Commonwealth by the person who makes the use. The use tax imposed under this chapter shall not be paid over to the Commonwealth by any person who has paid the tax imposed under subsection (a) or has paid the tax imposed by this subsection to the vendor with respect to the use.

(c) Occupancy.--In any county within which a tax authorized by subsection (a) is imposed, there shall be levied, assessed and collected an excise tax on the rent upon every occupancy of

1 a room or rooms in a hotel in the county. The tax shall be
2 collected by the operator or owner from the occupant and paid
3 over to the Commonwealth.

4 (d) Rate and uniformity.--

5 (1) The tax authorized by subsections (a), (b) and (c)
6 shall be imposed at a rate of 1%.

7 (2) The tax imposed by subsections (a), (b) and (c)
8 shall be uniform.

9 (e) Computation.--The tax imposed under this section shall
10 be computed in the manner set forth in section 503(e)(2) of the
11 act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania
12 Intergovernmental Cooperation Authority Act for Cities of the
13 First Class.

14 Section 503. Situs.

15 The situs of sales at retail or uses, including leases, of
16 motor vehicles, aircraft, motorcraft and utility services shall
17 be determined in the manner specified by section 504 of the act
18 of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania
19 Intergovernmental Cooperation Authority Act for Cities of the
20 First Class.

21 Section 504. Licenses.

22 A license for the collection of the tax imposed by this
23 chapter shall be issued in the same manner as is provided for in
24 section 505 of the act of June 5, 1991 (P.L.9, No.6), known as
25 the Pennsylvania Intergovernmental Cooperation Authority Act for
26 Cities of the First Class. Licensees shall be entitled to the
27 same discount as provided in section 227 of the Tax Reform Code.

28 Section 505. Rules and regulations; collection costs.

29 (a) Regulations.--Rules and regulations shall be applicable
30 to the taxes imposed under section 502 in the same manner as is

provided for in section 506(1) and (2) of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

(b) Administrative costs.--The department, to cover its costs of administration, shall be entitled to retain a sum equal to 1% of the revenues collected under this chapter for administrative costs. When the annual operating budget for the department is submitted to the General Assembly, the department shall also submit to the chairman and minority chairman of the Appropriations Committee of the Senate and to the chairman and minority chairman of the Appropriations Committee of the House of Representatives the actual sums retained for costs of collection in the preceding fiscal year, together with all supporting details.

Section 506. Procedure and administration.

(a) Ordinance.--Any county desiring to impose the tax authorized by section 502 shall give at least 60 days' written notice to every municipality and school district located in the county of its intent to impose the tax and shall adopt an ordinance after the expiration of 60 days after the date of the notice. The notice and an ordinance shall state the tax rate and refer to this chapter. The ordinance shall authorize the imposition of all taxes provided for in section 502. Prior to adopting an ordinance imposing the tax authorized by section 502, the governing body of the county shall give public notice of its intent to adopt the ordinance in the manner provided by section 306 of the Local Tax Enabling Act and shall conduct at least one public hearing regarding the proposed adoption of the ordinance.

(b) Notification to department.--A certified copy of the

1 county ordinance shall be delivered to the department by
2 September 1 of the year prior to the effective date of the
3 ordinance. The county ordinance shall become effective on the
4 January 1 following at least four months after the date of
5 enactment of the county ordinance.

6 (c) Delivery of repeal ordinance.--A certified copy of a
7 repeal ordinance shall be delivered to the department at least
8 120 days prior to the effective date of the repeal.

9 Section 507. County sales and use tax funds.

10 There is hereby created for each county levying the tax under
11 section 502 the (proper name) County Sales and Use Tax Fund. The
12 State Treasurer shall be custodian of the funds which shall be
13 subject to the provisions of law applicable to funds listed in
14 section 302 of the act of April 9, 1929 (P.L.343, No.176), known
15 as The Fiscal Code. Taxes imposed under section 502 shall be
16 received by the department and paid to the State Treasurer and,
17 along with interest and penalties, less any collection costs
18 allowed under this chapter and any refunds and credits paid,
19 shall be credited to the funds not less frequently than every
20 two weeks. During any period prior to the credit of money to the
21 funds, interest earned on money received by the department and
22 paid to the State Treasurer under this chapter shall be
23 deposited into the respective funds. All money in each fund,
24 including, but not limited to, money credited to the funds under
25 this section, prior year encumbrances and the interest earned
26 thereon, shall not lapse or be transferred to any other fund,
27 but shall remain in that fund. Pending their disbursement, money
28 received on behalf of or deposited into each fund shall be
29 invested or reinvested as is other money in the custody of the
30 State Treasurer in the manner provided by law. All earnings

received from the investment or reinvestment of the money shall be credited to the respective funds.

Section 508. Disbursements.

(a) General rule.--On or before the tenth day of every month, the State Treasurer shall make the disbursements on behalf of the county imposing the tax out of the money which is, as of the last day of the previous month, contained in the respective county sales and use tax fund.

(b) Disbursement to counties.--

(1) The State Treasurer shall disburse to a county imposing the tax authorized under section 502 an amount of money equal to 50% of the tax collected in that county and remitted to the department and deposited in the respective county sales and use tax fund.

(2) An amount of money equal to the remaining 50% of the tax collected in that county shall be allocated to all of the municipalities and school districts within that county as follows:

(i) Twenty-five percent shall be allocated to all municipalities within the county. Each municipality shall be allocated a portion as computed under section 510(a).

(ii) Twenty-five percent shall be allocated to all school districts within the county. Each school district shall be allocated a portion as computed under section 510(b).

(3) The State Treasurer shall disburse to a county, in addition to its share under paragraph (1), an amount of money equal to the allocations to nonqualified municipalities and school districts within the county.

(4) The county shall deposit the revenue from the

1 respective county sales and use tax fund into the county
2 general fund for disposition as provided under section
3 511(a).

4 (c) Disbursement to municipalities.--The State Treasurer
5 shall, at the same time, disburse to the qualified
6 municipalities an amount of money equal to their allocations
7 under subsection (b) (2) (i). Each municipality's portion shall be
8 deposited in the municipal general fund for disposition as
9 provided in section 511(b).

10 (d) Disbursement to school districts.--The State Treasurer
11 shall, at the same time, disburse to the qualified school
12 districts an amount of money equal to their allocations under
13 subsection (b) (2) (ii). Each school district's portion shall be
14 deposited in the school district's general fund for disposition
15 as provided in section 511(b).

16 (e) Penalty.--If disbursements are not made on or before the
17 tenth day of each month, a 5% penalty shall be added thereto
18 plus an additional 1% late charge per month delayed.

19 Section 509. Adoption of municipal resolutions and school
20 district petitions.

21 (a) General rule.--No municipality shall be entitled to a
22 disbursement under section 508(c) and no school district may
23 receive a disbursement under section 508(d) unless one of the
24 following applies:

25 (1) Prior to enactment of the county ordinance, it
26 adopts a municipal resolution or a school district petition
27 containing the statement:

28 We strongly urge the county to enact a county sales and
29 use tax and intend to accept disbursements of the sales
30 and use taxes collected.

1 Any municipality which does not enact an ordinance and a
2 school district which does not enact a petition in compliance
3 with this paragraph may not receive any distribution from
4 funds collected during the first 24 months immediately
5 following the initial date of imposition of the tax.

6 (2) Prior to October 1 of any year after the enactment
7 of the county resolution, it adopts a municipal resolution or
8 a school district petition containing the statement:

9 We support the enactment by the county of the county
10 sales and use tax and strongly urge its continuation and
11 intend to accept disbursements of the sales and use taxes
12 collected.

13 (b) Delivery.--A certified copy of the municipal resolution
14 or the school district petition shall be delivered to the county
15 commissioners on or before the enactment of the county
16 resolution or October 15 of any year thereafter, as the case may
17 be.

18 Section 510. Allocations and qualifications.

19 (a) Allocations to municipalities.--The State Treasurer
20 shall compute allocations to municipalities in the following
21 manner:

22 (1) Fifty percent of the money allocated to
23 municipalities shall be pursuant to a format in which the
24 total allocation to municipalities multiplied by the ratio of
25 weighted tax revenues of the municipality divided by the sum
26 of the weighted tax revenues of all municipalities located in
27 the county.

28 (2) Fifty percent of the money allocated to
29 municipalities shall be returned to the municipality of
30 origin of the sales tax revenue.

1 (b) Allocations to school districts.--Each school district
2 shall be allocated a portion of the total allocation to school
3 districts which is equal to the total allocation to school
4 districts multiplied by the ratio of average daily membership of
5 the school district divided by the sum of the average daily
6 membership of all school districts in the county.

7 (c) Qualifications.--Municipalities and school districts
8 qualified to receive disbursements under section 508(c) or (d)
9 are municipalities and school districts located within the
10 county, which:

11 (1) Adopt in a timely fashion the ordinance or petition
12 required under section 509.

13 (2) Adopt the necessary ordinances or, in the case of
14 school districts, take the legally necessary action and
15 impose the taxes authorized under this chapter.

16 (d) Calculation of weighted tax revenues.--Calculations of
17 weighted tax revenues shall be made by the Department of
18 Community and Economic Development or any successor agency and
19 certified to the State Treasurer based upon information reported
20 to the Department of Community and Economic Development or any
21 successor agency, subject to review, verification and approval
22 by the Department of Community and Economic Development or any
23 successor agency.

24 Section 511. Sales tax revenues.

25 (a) Counties.--One hundred percent of any additional
26 revenues received by a county from the sales and use tax shall
27 be used to offset the revenues lost as a result of the
28 prohibition against imposition of the taxes enumerated in
29 section 301(b) and then to reduce the county real property tax
30 by means of a homestead exclusion.

