

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 425 Session of
1991

INTRODUCED BY VROON, CLYMER, GEIST, SAURMAN, RAYMOND, ITKIN,
E. Z. TAYLOR, HECKLER, BIRMELIN AND FLICK, MARCH 11, 1991

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, MARCH 11, 1991

AN ACT

1 Amending the act of December 31, 1965 (P.L.1257, No.511),
2 entitled "An act empowering cities of the second class,
3 cities of the second class A, cities of the third class,
4 boroughs, towns, townships of the first class, townships of
5 the second class, school districts of the second class,
6 school districts of the third class and school districts of
7 the fourth class including independent school districts, to
8 levy, assess, collect or to provide for the levying,
9 assessment and collection of certain taxes subject to maximum
10 limitations for general revenue purposes; authorizing the
11 establishment of bureaus and the appointment and compensation
12 of officers, agencies and employes to assess and collect such
13 taxes; providing for joint collection of certain taxes,
14 prescribing certain definitions and other provisions for
15 taxes levied and assessed upon earned income, providing for
16 annual audits and for collection of delinquent taxes, and
17 permitting and requiring penalties to be imposed and
18 enforced, including penalties for disclosure of confidential
19 information, providing an appeal from the ordinance or
20 resolution levying such taxes to the court of quarter
21 sessions and to the Supreme Court and Superior Court,"
22 further providing for the occupational privilege tax; and
23 providing for a municipal services tax.

24 The General Assembly of the Commonwealth of Pennsylvania
25 hereby enacts as follows:

26 Section 1. The introductory paragraph and clause (9) of
27 section 2 of the act of December 31, 1965 (P.L.1257, No.511),
28 known as The Local Tax Enabling Act, amended October 11, 1984

1 (P.L.885, No.172), are amended to read:

2 Section 2. Delegation of Taxing Powers and Restrictions

3 Thereon.--The duly constituted authorities of the following
4 political subdivisions, cities of the second class, cities of
5 the second class A, cities of the third class, boroughs, towns,
6 townships of the first class, townships of the second class,
7 school districts of the second class, school districts of the
8 third class, and school districts of the fourth class, in all
9 cases including independent school districts, may, in their
10 discretion, by ordinance or resolution, for general revenue
11 purposes, levy, assess and collect or provide for the levying,
12 assessment and collection of such taxes as they shall determine
13 on persons, transactions, occupations, privileges, subjects and
14 personal property within the limits of such political
15 subdivisions, and upon the transfer of real property, or of any
16 interest in real property, situate within the political
17 subdivision levying and assessing the tax, regardless of where
18 the instruments making the transfers are made, executed or
19 delivered or where the actual settlements on such transfer take
20 place. The taxing authority may provide that the transferee
21 shall remain liable for any unpaid realty transfer taxes imposed
22 by virtue of this act. Each local taxing authority may, by
23 ordinance or resolution, exempt any person whose total income
24 from all sources is less than five thousand dollars (\$5,000) per
25 annum from the per capita or similar head tax, occupation tax
26 and [occupational privilege] municipal services tax, or earned
27 income tax, or any portion thereof, and may adopt regulations
28 for the processing of claims for exemptions. Such local
29 authorities shall not have authority by virtue of this act:

30 * * *

1 (9) To levy, assess or collect any tax on individuals for
2 [the privilege of engaging in an occupation (occupational
3 privilege tax)] providing municipal services except that such a
4 tax may be levied, assessed and collected only by the political
5 subdivision of the taxpayer's place of employment.

6 Payment of any [occupational privilege] municipal services
7 tax to any political subdivision by any person pursuant to an
8 ordinance or resolution passed or adopted under the authority of
9 this act shall be limited to [ten dollars (10)] twenty-five
10 dollars (\$25) on each person for each calendar year.

11 The situs of such tax shall be the place of employment, but,
12 in the event a person is engaged in more than one occupation, or
13 an occupation which requires his working in more than one
14 political subdivision during the calendar year, the priority of
15 claim to collect such [occupational privilege] municipal
16 services tax shall be in the following order: first, the
17 political subdivision in which a person maintains his principal
18 office or is principally employed; second, the political
19 subdivision in which the person resides and works, if such a tax
20 is levied by that political subdivision; third, the political
21 subdivision in which a person is employed and which imposes the
22 tax nearest in miles to the person's home. The place of
23 employment shall be determined as of the day the taxpayer first
24 becomes subject to the tax during the calendar year.

25 It is the intent of this provision that no person shall pay
26 more than [ten dollars (\$10)] twenty-five dollars (\$25) in any
27 calendar year as [an occupational privilege] a municipal
28 services tax irrespective of the number of political
29 subdivisions within which such person may be employed within any
30 given calendar year.

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

5 * * *

6 Section 2. Section 8 of the act, amended or added October
7 11, 1984 (P.L.885, No.172) and July 9, 1987 (P.L.203, No.30), is
8 amended to read:

9 Section 8. Limitations on Rates of Specific Taxes.--No taxes
10 levied under the provisions of this act shall be levied by any
11 political subdivision on the following subjects exceeding the
12 rates specified in this section:

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

15 (2) On each dollar of the whole volume of business
16 transacted by wholesale dealers in goods, wares and merchandise,
17 one mill, by retail dealers in goods, wares and merchandise and
18 by proprietors of restaurants or other places where food, drink
19 and refreshments are served, one and one-half mills; except in
20 cities of the second class, where rates shall not exceed one
21 mill on wholesale dealers and two mills on retail dealers and
22 proprietors. No such tax shall be levied on the dollar volume of
23 business transacted by wholesale and retail dealers derived from
24 the resale of goods, wares and merchandise, taken by any dealer
25 as a trade-in or as part payment for other goods, wares and
26 merchandise, except to the extent that the resale price exceeds
27 the trade-in allowance.

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

30 (4) On retail sales involving the transfer of title or

1 possession of tangible personal property, two percent.

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

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

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

8 (8) [Occupational privilege taxes, ten dollars (\$10)]

9 Municipal services taxes, twenty-five dollars (\$25).

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

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

18 (11) On admissions to bowling alleys or bowling lanes, ten
19 percent. The tax base upon which the tax shall be levied shall
20 not exceed forty percent of the charge imposed upon a patron for
21 the sale of admission to or the privilege of admission to a
22 bowling alley or bowling lane to engage in one or more games of
23 bowling.

24 Except as otherwise provided in this act, at any time two
25 political subdivisions shall impose any one of the above taxes
26 on the same person, subject, business, transaction or privilege,
27 located within both such political subdivisions, during the same
28 year or part of the same year, under the authority of this act
29 then the tax levied by a political subdivision under the
30 authority of this act shall, during the time such duplication of

1 the tax exists, except as hereinafter otherwise provided, be
2 one-half of the rate, as above limited, and such one-half rate
3 shall become effective by virtue of the requirements of this act
4 from the day such duplication becomes effective without any
5 action on the part of the political subdivision imposing the tax
6 under the authority of this act. When any one of the above taxes
7 has been levied under the provisions of this act by one
8 political subdivision and a subsequent levy is made either for
9 the first time or is revived after a lapse of time by another
10 political subdivision on the same person, subject, business,
11 transaction or privilege at a rate that would make the combined
12 levies exceed the limit allowed by this subdivision, the tax of
13 the second political subdivision shall not become effective
14 until the end of the fiscal year for which the prior tax was
15 levied, unless:

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

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

30 It is the intent and purpose of this provision to limit rates

1 of taxes referred to in this section so that the entire burden
2 of one tax on a person, subject, business, transaction or
3 privilege shall not exceed the limitations prescribed in this
4 section: Provided, however, That any two political subdivisions
5 which impose any one of the above taxes, on the same person,
6 subject, business, transaction or privilege during the same year
7 or part of the same year may agree among themselves that,
8 instead of limiting their respective rates to one-half of the
9 maximum rate herein provided, they will impose respectively
10 different rates, the total of which shall not exceed the maximum
11 rate as above permitted.

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

18 Section 3. Section 9 of the act, amended December 12, 1968
19 (P.L.1203, No.377), is amended to read:

20 Section 9. Register for Earned Income and [Occupational
21 Privilege] Municipal Services Taxes.--It shall be the duty of
22 the Department of Community Affairs to have available an
23 official continuing register supplemented annually of all earned
24 income and [occupational privilege] municipal services taxes
25 levied under authority of this act. The register and its
26 supplements, hereinafter referred to as the register, shall list
27 such jurisdictions levying earned income and/or [occupational
28 privilege] municipal services taxes, the rate of the tax as
29 stated in the tax levying ordinance or resolution, and the
30 effective rate on resident and nonresident taxpayers, if

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

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

20 The Department of Community Affairs shall have the register
21 with such annual supplements as may be required by new tax
22 enactments, repeals or changes available upon request not later
23 than July 1 of each year. The effective period for each register
24 shall be from July 1 of the year in which it is issued to June
25 30 of the following year.

26 Employers shall not be required by any local ordinance to
27 withhold from the wages, salaries, commissions or other
28 compensation of their employees any tax imposed under the
29 provisions of this act, which is not listed in the register, or
30 make reports of wages, salaries, commissions or other

1 compensation in connection with taxes not so listed: Provided,
2 That if the register is not available by July 1, the register of
3 the previous year shall continue temporarily in effect for an
4 additional period not to exceed one year. The provisions of this
5 section shall not affect the liability of any taxpayer for taxes
6 lawfully imposed under this act.

7 Ordinances or resolutions imposing earned income or
8 [occupational privilege] municipal services taxes under
9 authority of this act may contain provisions requiring employers
10 doing business within the jurisdiction of the political
11 subdivision imposing the tax to withhold the tax from the
12 compensation of those of their employees who are subject to the
13 tax: Provided, That no employer shall be held liable for failure
14 to withhold earned income taxes or for the payment of such
15 withheld tax money to a political subdivision other than the
16 political subdivision entitled to receive such money if such
17 failure to withhold or such incorrect transmittal of withheld
18 taxes arises from incorrect information as to the employee's
19 place of residence submitted by the employee: And provided
20 further, That employers shall not be required by any local
21 ordinance to withhold from compensation for any one of their
22 employees for the [occupational privilege] municipal services tax
23 more than one time in any fiscal period: And provided further,
24 That the [occupational privilege] municipal services tax shall
25 be applicable to employment in the period beginning January 1,
26 of the current year and ending December 31 of the current year,
27 except that taxes imposed for the first time shall become
28 effective from the date specified in the ordinance or
29 resolution, and the tax shall continue in force on a calendar
30 year basis.

Section 4. Section 19 of the act, amended October 4, 1978
(P.L.930, No.177), is amended to read:

Section 19. Collection of Delinquent Per Capita, Occupation,
[Occupational Privilege] Municipal Services and Earned Income
Taxes 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] municipal services and earned income
taxes, or whose spouse owes delinquent per capita, occupation,
[occupational privilege] municipal services 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] municipal services and
earned income taxes, or whose spouse owes delinquent per capita,
occupation, [occupational privilege] municipal services 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 employes, 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] municipal services and earned income taxes and costs,

1 shown upon the written notice or demand, and to pay the same to
2 the tax collector of the taxing district in which such
3 delinquent tax was levied within sixty days after such notice
4 shall have been given. No more than ten percent of the wages,
5 commissions or earnings of the delinquent taxpayer or spouse
6 thereof may be deducted at any one time for delinquent per
7 capita, occupation, [occupational privilege] municipal services
8 and earned income taxes and costs. Such corporation, political
9 subdivision, association, firm or individual shall be entitled
10 to deduct from the moneys collected from each employe the costs
11 incurred from the extra bookkeeping necessary to record such
12 transactions, not exceeding two percent of the amount of money
13 so collected and paid over to the tax collector. Upon the
14 failure of any such corporation, political subdivision,
15 association, company, firm or individual to deduct the amount of
16 such taxes or to pay the same over to the tax collector, less
17 the cost of bookkeeping involved in such transaction, as herein
18 provided, within the time hereby required, such corporation,
19 political subdivision, association, company, firm or individual
20 shall forfeit and pay the amount of such tax for each such
21 taxable whose taxes are not withheld and paid over, or that are
22 withheld and not paid over together with a penalty of ten
23 percent added thereto, to be recovered by an action of assumpsit
24 in a suit to be instituted by the tax collector, or by the
25 proper authorities of the taxing district, as debts of like
26 amount are now by law recoverable, except that such person shall
27 not have the benefit of any stay of execution or exemption law.
28 The tax collector shall not proceed against a spouse or his
29 employer until he has pursued collection remedies against the
30 delinquent taxpayer and his employer under this section.

1 Section 5. This act shall take effect in 60 days.