

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 176 Session of
2003

INTRODUCED BY SCAVELLO, LEWIS, DALLY, TIGUE, ARGALL, ARMSTRONG, BARD, BEBKO-JONES, BELARDI, BIRMELIN, CAPPELLI, CLYMER, DeLUCA, EGOLF, FAIRCHILD, FRANKEL, GEIST, GOODMAN, GRUCELA, HARHAI, HARPER, HENNESSEY, HERMAN, HERSHEY, HORSEY, HUTCHINSON, LAUGHLIN, MAHER, MAITLAND, McCALL, McNAUGHTON, R. MILLER, MUNDY, O'NEILL, PALLONE, PAYNE, PICKETT, READSHAW, REED, ROHRER, ROSS, RUBLEY, SAYLOR, SCRIMENTI, SEMMEL, SHANER, B. SMITH, STABACK, R. STEVENSON, STURLA, TANGRETTI, E. Z. TAYLOR, THOMAS, TURZAI, VANCE, WANSACZ, WATSON, WRIGHT, YOUNGBLOOD, YUDICHAK AND REICHLEY, FEBRUARY 18, 2003

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 14, 2003

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 for State real estate transfer
11 tax determination and for imposition of local real estate
12 transfer tax; providing for rules and regulation, documentary
13 stamps, collection agent, disbursements, proceeds of judicial
14 sale, failure to affix stamps, determination and notice of
15 tax and review, lien, refunds and penalties related to local
16 real estate transfer tax; and making repeals.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 Section 1. Sections 1111-C(a), 1101-D and 1102-D of the act
20 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of

1 1971, amended or added July 2, 1986 (P.L.318, No.77), are
2 amended to read:

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

4 (a) If any person shall fail to pay any tax imposed by this
5 article for which he is liable, the department is hereby
6 authorized and empowered to make a determination of additional
7 tax and interest due by such person based upon any information
8 within its possession or that shall come into its possession.
9 All of such determinations shall be made within three years
10 after the date of the recording of the document[.], subject to
11 the following:

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

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

19 * * *

20 Section 1101-D. Imposition.--The duly constituted
21 authorities of the following political subdivisions--cities of
22 the second class, cities of the second class A, cities of the
23 third class, boroughs, incorporated towns, townships of the
24 first class, townships of the second class, school districts of
25 the first class A, school districts of the second class, school
26 districts of the third class and school districts of the fourth
27 class, in all cases including independent school districts--may,
28 in their discretion, by ordinance or resolution, for general
29 revenue purposes, levy, assess and collect or provide for the
30 levying, assessment and collection of a tax upon a transfer of

1 real property or an interest in real property within the limits
2 of the political subdivision, regardless of where the
3 instruments making the transfers are made, executed or delivered
4 or where the actual settlements on the transfer take place, to
5 the extent that the transactions are subject to the tax imposed
6 by Article XI-C. [In addition, such political subdivision may
7 impose a local real estate transfer tax upon additional classes
8 or types of transactions if the tax was imposed by the political
9 subdivision under the act of December 31, 1965 (P.L.1257,
10 No.511), known as "The Local Tax Enabling Act," prior to the
11 effective date of this article.] A tax imposed under this
12 article shall be subject to rate limitations provided by section
13 5 and section 17 of the act of December 31, 1965 (P.L.1257,
14 No.511), known as "The Local Tax Enabling Act."

15 Section 1102-D. Administration.--[A] ~~(a) Except as provided~~ <—
16 ~~in section 1107 C(b), the THE~~ tax imposed under this article <—
17 shall be administered, collected and enforced under the act of
18 December 31, 1965 (P.L.1257, No.511), known as "The Local Tax
19 Enabling Act[.],"
20 provided, however, that, if the correct amount
21 of the tax is not paid by the last date prescribed for timely
22 payment, the tax, interest and penalty may be collected and <—
23 enforced by the Department of Revenue in the same manner as tax,
24 interest and penalty imposed by Article XI-C.

25 (b) Whenever a declaration is required to be filed under
26 Article XI-C, a declaration is also required to be filed under
27 this article.

28 Section 2. The act is amended by adding sections to read:

29 Section 1103-D. Rules and Regulations.--(a) The rules and
30 regulations promulgated under Article XI-C shall be applicable
to the taxes imposed under this article.

1 (b) The Department of Revenue shall administer and enforce
2 the provisions of this article and may promulgate and enforce
3 rules and regulations not inconsistent with the provisions of
4 this article relating to any matter or thing pertaining to the
5 administration and enforcement of the provisions of this
6 article. The department may prescribe the extent to which any of
7 such rules and regulations shall be applied without retroactive
8 effect.

9 ~~(c) The department, to cover its costs of administration,~~ <—
10 ~~may retain a sum equal to costs of collection of the local real~~
11 ~~estate transfer tax and shall inform the political subdivision~~
12 ~~in writing monthly of the sum retained and the costs of~~
13 ~~collection reimbursed. Not later than the date the Governor~~
14 ~~presents the budget to the General Assembly under section 619 of~~
15 ~~the act of April 9, 1929 (P.L.177, No.175), known as The~~
16 ~~Administrative Code of 1929, the department shall submit to the~~
17 ~~chairman and minority chairman of the Appropriations Committee~~
18 ~~of the Senate, the chairman and minority chairman of the Finance~~
19 ~~Committee of the Senate, the chairman and minority chairman of~~
20 ~~the Appropriations Committee of the House of Representatives and~~
21 ~~the chairman and minority chairman of the Finance Committee of~~
22 ~~the House of Representatives a report providing estimates for~~
23 ~~the costs of collection of the local real estate transfer tax~~
24 ~~and the actual sums retained by the department for that purpose.~~

25 Section 1104-D. Documentary Stamps.--(a) The payment of the
26 tax imposed by UNDER this article shall be evidenced by the <—
27 affixing of a documentary stamp or stamps to every document by
28 the person making, executing, delivering or presenting for
29 recording such document. The stamps shall be affixed in such
30 manner that their removal will require the continued application

1 of steam or water, and the person using or affixing the stamps
2 shall write, stamp or cause to be written or stamped thereon the
3 initials of that person's name and the date upon which the
4 stamps are affixed or used so that the stamps may not again be
5 used; provided that the Department of Revenue may prescribe such
6 other method of cancellation as it may deem expedient.

7 (b) The department may, in its discretion, use documentary
8 license meter impressions or similar indicia of payment in lieu
9 of stamps.

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

23 Section 1106-D. Disbursements.--The tax, interest and
24 penalty that the Department of Revenue collects under this
25 article shall be remitted in the manner provided by law to the
26 appropriate recorder of deeds along with sufficient information
27 for the recorder of deeds to determine which political
28 subdivisions are entitled to the collections.

29 Section 1107-D. Proceeds of Judicial Sale.--The tax imposed
30 by UNDER this article shall be fully paid and have priority out

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of the proceeds of any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made. The sheriff or other officer conducting the sale shall pay the tax imposed by UNDER this article out of the first moneys paid to the sheriff or officer in connection therewith. If the proceeds of the sale are insufficient to pay the entire tax imposed by UNDER this article, the purchaser shall be liable for the remaining tax.

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

Section 1109-D. Determination and Notice of Tax; Review.--

(a) If any person shall fail to pay any tax imposed by UNDER this article for which that person is liable, a political subdivision may call upon the Department of Revenue to make a determination of additional tax, penalty and interest due by the person based upon any information within its possession or that shall come into its possession. The determination shall be made within three years after the date of the recording of the document, subject to the following:

(1) If the taxpayer underpays the correct amount of the tax by twenty-five percent 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 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
imposed upon corporations.

(2) The political subdivision may request in writing the
Office of General Counsel to render such legal advice and such

representation as are required concerning every matter and issue arising in connection with an appeal from a decision of the Board of Finance and Revenue.

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

(b) (1) At any time after it makes a determination of additional tax, penalty or interest, the department may transmit to the prothonotaries of the respective counties certified copies of all liens for the taxes, penalties and interest.

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

(3) After the department's determination becomes final, a writ of execution may directly issue upon the lien without the issuance and prosecution to judgment of a writ of scire facias; provided that not less than ten days before issuance of any execution on the lien, notice shall be sent by certified mail to the taxpayer at the taxpayer's last known post office address. 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 by UNDER this article is due to fraud, an amount equal to fifty per cent of the underpayment shall be added to the tax.

(b) In the case of failure to record a declaration required under this article on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause, five per cent of the amount of such tax shall be added to the tax if the

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1 failure is for not more than one month, with an additional five
2 per cent for each additional month or fraction thereof during
3 which the failure continues, not exceeding fifty per cent in the
4 aggregate.

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

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

10 (2) make use of any documentary stamp to denote payment of
11 any tax imposed by UNDER this article without cancelling such <—
12 stamp as required by this article or as prescribed by the
13 department;

14 (3) fail, neglect or refuse to comply with or violate the
15 rules and regulations prescribed, adopted and promulgated by the
16 Department of Revenue under this article;

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

19 (5) fraudulently affix to any document upon which tax is
20 imposed by UNDER this article any documentary stamp which has <—
21 been cut, torn or removed from any other document upon which tax
22 is imposed by UNDER this article, or any documentary stamp of <—
23 insufficient value, or any forged or counterfeited stamp, or any
24 impression of any forged or counterfeited stamp, die, plate or
25 other article;

26 (6) wilfully remove or alter the cancellation marks of any
27 documentary stamp, or restore any such documentary stamp, with
28 intent to use or cause the same to be used after it has already
29 been used, or knowingly buy, sell, offer for sale, or give away
30 such altered or restored stamp to any person for use, or

1 knowingly use the same;

2 (7) knowingly have in his possession any altered or restored
3 documentary stamp which has been removed from any document upon
4 which a tax is imposed by UNDER this article, provided that the <—
5 possession of such stamps shall be prima facie evidence of an
6 intent to violate the provisions of this clause; or

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

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

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

15 (c) A person who makes a false statement of value or
16 declaration of acquisition, not believing the statement or
17 declaration to be true, commits a misdemeanor of the second
18 degree.

19 Section 3. Any ordinance or resolution providing for the
20 levying, assessment or collection of a tax upon a transfer of
21 real property or an interest in real property which has been
22 enacted by a political subdivision prior to the effective date
23 of this act shall continue in full force and effect, without
24 reenactment, insofar as the transactions upon which the tax is
25 levied, assessed or collected are also subject to the tax
26 imposed by Article XI-C, provided, however, such ordinance or
27 resolution shall continue in full force and effect with respect
28 to documents made, executed and delivered prior to the effective
29 date of this act.

30 Section 4. The following acts and parts of acts are repealed

1 insofar as they are inconsistent with this act:

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

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

6 Section 5. The provisions of this act shall apply to any
7 document made, executed, delivered, accepted or presented for
8 recording on or after the effective date of this section.

9 Section 6. This act shall take effect on the first day of
10 the first month beginning more than 60 days after the date of
11 enactment of this act.