

LOCAL TAX ENABLING ACT - OMNIBUS AMENDMENTS

Act of May. 4, 2018, P.L. 102, No. 18

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No. 2018-18

HB 866

AN ACT

Amending the act of December 31, 1965 (P.L.1257, No.511), entitled "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 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," in local taxes, further providing for definitions, for payroll tax, for payment of tax to other political subdivisions or states as credit or deduction and withholding tax, for limitation on assessment and for tax limitations; in consolidated collection of local income taxes, further providing for definitions, for declaration and payment of income taxes, for tax collection committees, for powers and duties of Department of Community and Economic Development, for powers and duties of tax officer and for withholding and remittance; and, in collection of delinquent taxes, further providing for penalties and for costs of collection of delinquent per capita, occupation, occupational privilege, emergency and municipal services, local services and income taxes.

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

Section 1. Section 301(a) of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, is amended by adding definitions to read:

Section 301. Definitions.--(a) The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Contingent fee audit" means an audit of a taxpayer's books and records for which the collection fee is based on a percentage of tax assessed or collected, or both.

* * *

"Private collection agency" means a business entity or person appointed to audit taxpayers and collect delinquent taxes.

* * *

Section 2. Sections 303(g), 317 and 319 of the act are amended to read:

Section 303. Payroll Tax.--* * *

(g) A city of the second class may bring suit for the recovery of taxes due and unpaid under this section. Any suit brought to recover the tax imposed by this section shall be commenced within three years after such tax is due or within three years after the declaration or return has been filed, whichever 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 this section, 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 city of the second class reveals a fraudulent evasion of taxes, there shall be no limitation.

(3) In the case of substantial understatement of tax liability of twenty-five percent or more and no fraud, suit shall be begun within six years.

(4) This section shall not be construed to limit the governing body from recovering delinquent taxes by any other means provided by law, **with the exception of contingent fee audits by a private collection agency, which shall be prohibited.**

* * *

Section 317. Payment of Tax to Other Political Subdivisions or States as Credit or Deduction; Withholding Tax.--**(a)** 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 businesses, professions or other activities and for any income tax imposed by any other political subdivision of this Commonwealth under the authority of this [chapter] **act**.

(b) Payment of any tax on salaries, wages, commissions, other compensation or on 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 [chapter] **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, commissions, other compensation or on net profits of businesses, professions or other activities imposed by any other political subdivision of this Commonwealth under the authority of this [chapter] **act**.

(c) 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 [chapter] **act** shall, to the extent that such income includes salaries, wages, commissions, other compensation or net profits of businesses, professions or other activities, but in such proportion 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 businesses, professions, or other activities imposed by any other political subdivision of this Commonwealth under the authority of this chapter.

(d) 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] **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 [chapter,] **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.

(e) 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 [chapter.] **act** .

(f) Where a credit or a deduction is allowable in any of the several cases hereinabove 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.

(g) No credit or deduction shall be allowed against any tax on earned income imposed under authority of this [chapter] **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, No.2) known as the "Tax Reform Code of 1971," on account of taxes imposed on income by other states or by their political subdivisions.

Section 319. Limitation on Assessment.--No assessment may be made of any **earned income** tax imposed under this [chapter] **act** more than five years after the date on which such tax should have been [paid] **filed, including extended due dates**, except where a fraudulent return [or no return] has been filed.

Section 3. Section 320 of the act is amended by adding a subsection to read:

Section 320. Tax Limitations.--* * *

(c) **Domicile.--An individual who does not meet the domicile requirements for the purpose of determining and paying the tax provided under Article III of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," shall be deemed to not meet the domicile requirements for local tax purposes.**

Section 4. The definitions of "nonresident," "nonresident tax" and "taxpayer" in section 501 of the act are amended and the definition of "earned income" is amended by adding a paragraph to read:

Section 501. Definitions.

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

* * *

"Earned income." The compensation as required to be reported to or as determined by the Department of Revenue under section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and rules and regulations promulgated under that section subject to the following:

* * *

(3) For purposes of collection of earned income and net profits taxes under this chapter and for crediting purposes under section 317, the term shall include all taxes on earned income or net profits whether authorized by this act or any other law of this Commonwealth unless the law expressly provides otherwise.

* * *

"Nonresident." A person or business domiciled outside the political subdivision levying the tax **and performing services within the political subdivision levying the tax for at least 90 or more consecutive days.**

"Nonresident tax." An income tax levied by a municipality on a nonresident **who has performed services within the political subdivision levying the tax for at least 90 or more consecutive days.**

* * *

"Taxpayer." A person or business required under this act to file a return of an income tax or to pay an income tax. **The term includes a person or business that filed a return of taxable income during the prior year but that had no taxable income during the current year and was required by the tax collector to file a final return indicating why the person or business no longer has taxable income. The term does not include a person or business with no taxable income, which person or business shall not be required to file a return of income or to pay an income tax under this act.**

* * *

Section 5. Section 502(c) of the act is amended by adding a paragraph to read:

Section 502. Declaration and payment of income taxes.

* * *

(c) Declaration and payment.--Except as provided in subsections (a)(2) and (d), taxpayers shall declare and pay income taxes as follows:

* * *

(5) Every taxpayer subject to the declaration and payment provisions under this section shall be deemed to have met the requirements and therefore not be subject to a penalty so long as one of the following safe harbor exceptions is met:

(i) Make four equal, timely estimated payments equal to 100% of the prior year's tax less any earned income tax withheld for the current year.

(ii) Make four equal, timely estimated payments equal to 90% of the current year's tax less any earned income tax withheld for the current year.

* * *

Section 6. Section 505(a.1)(7) and (h) of the act are amended and the section is amended by adding a subsection to read:

Section 505. Tax collection committees.

* * *

(a.1) Duties.--A tax collection committee has the following duties:

* * *

(7) To adopt, amend and repeal policies and procedures consistent with the regulations under section 508 for the administration of income taxes within the tax collection district. The procedures shall supersede any contrary resolutions or ordinances adopted by a political subdivision **and no additional forms, policies or procedures may be adopted other than those promulgated by the department unless permitted by the department under subsection (a.3).** This authority shall not be construed to permit a tax collection committee to change the rate or subject of any tax.

* * *

(a.3) Form.--Beginning January 1, 2020, in administering this act, no political subdivision, tax collection committee or tax officer may use any form other than that which is promulgated by the department unless, for religious reasons, the department expressly grants an exception to this requirement.

* * *

(h) Audits of taxes received and disbursed.--

(1) By the end of each calendar year, the tax collection committee shall provide for at least one examination for each calendar year of the books, accounts, financial statements, compliance reports and records of the tax officer by a certified public accountant or public accountant approved by the tax collection committee. **The examination shall be conducted on a calendar-year basis. An examination conducted on any other basis shall not be accepted by the department, and failure to comply with this requirement shall be considered noncompliance with this act resulting in the imposition of penalties under section 510.** The examination shall include an audit of all records relating to the cash basis receipt and disbursement of all public money by the tax officer, a reconciliation of the monthly reports required by section 509(b), an analysis of the bond amount under section 509(d) and an analysis of the collection fees charged to the tax collection committee. In the case of a private agency, the examination shall not include payroll and other proprietary information. The examination shall be conducted according to generally accepted governmental auditing standards.

(2) The certified public accountant or public accountant shall issue a report, **on a calendar-year basis and in a format prescribed by the department, to the tax collection committee, which shall include an auditor's opinion letter, a financial statement for the year ending December 31, a reconciliation of the monthly reports required by section 509(b) with the receipts and disbursements on a calendar-year basis, a summary of collection fees charged to the tax collection committee on a calendar-year basis, a report on the tax officer's compliance with this act, a list of any findings of noncompliance with this act and a copy of a management letter if one is issued by the auditor.** If there are findings of noncompliance, a copy of the report shall be filed with the Department of the Auditor General and the department. A copy of the report shall be filed with all political subdivisions within the tax collection district and the department on or before September 1 of the succeeding year. The department may make available on its Internet

website summary data from the reports filed under this subsection. **The department may reject any report which is not in the proper format and does not meet the requirements of this paragraph. Failure to correct the submission within 30 days of the rejection shall constitute noncompliance with this act and result in the imposition of penalties under section 510.**

* * *

Section 7. Section 508 of the act is amended by adding a subsection to read:

Section 508. Powers and duties of the department.

* * *

(g) Oversight.--The department shall oversee all tax collection committees, tax collectors and tax collection offices. In exercising this duty, the department shall:

(1) Provide the public with a method to report tax collection issues.

(2) Ensure that all ordinances, rules, regulations and forms adopted in the collection of the earned income and net profits taxes are those promulgated by the department.

Section 8. Section 509(b) of the act is amended to read:
Section 509. Powers and duties of tax officer.

* * *

(b) Monthly reports.--

(1) The tax officer shall, within 20 days after the end of each month, provide a written report, on forms prescribed by the department, to the secretary of the tax collection committee and to the secretary of each political subdivision in the tax collection district for which taxes were collected during the previous month.

(2) The report shall include a breakdown of all income taxes, income generated from investments under subsection (a)(6), penalties, costs and other money received, collected, expended and distributed for each political subdivision served by the tax officer and of all money distributed to tax officers for other tax collection districts.

(3) The report shall also include a calendar year-to-date total column of all the items enumerated in paragraph (2).

(4) In addition to the duty imposed under paragraph (1), a copy of the December monthly report shall be filed with the department.

* * *

Section 9. Section 512(a)(3) and (7) of the act, amended November 4, 2016 (P.L.1154, No.150), are amended to read:
Section 512. Withholding and remittance.

(a) General rule.--For taxable years commencing on and after January 1, 2012, or earlier taxable years if specified by a tax collection district, income taxes shall be withheld, remitted and reported as follows:

* * *

(3) Every employer having an office, factory, workshop, branch, warehouse or other place of business within a tax collection district that employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, shall, at the time of payment, deduct from the compensation due each employee employed at such place of business the greater of the employee's resident tax or the employee's nonresident tax as released in the official register under section 511. In the case of employees with temporary job assignments, the employer shall withhold and remit the following taxes:

(i) Employees working for less than 90 consecutive days at a job location, the greater of the employee's resident tax or the employee's nonresident tax based on the location of the permanent home office of the employer.

(ii) Employees working for 90 or more consecutive days at a job location, the greater of the employee's resident tax or the employee's nonresident tax based on the job location.

(iii) Employees working in the City of Philadelphia shall be exempt from the provisions of this section to the extent they are subject to the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act.

* * *

(7) On or before February 28 of the succeeding year, every employer shall file with the tax officer where income taxes have been deducted and remitted pursuant to paragraph (3):

(i) An annual return showing, for the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of compensation paid, the total amount of income tax deducted, the total amount of income tax paid to the tax officer and any other information prescribed by the department.

(ii) An individual withholding statement, which may be integrated with the Federal Wage and Tax Statement (Form W-2), 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 address and Social Security number, the amount of compensation paid to the employee during the period, the amount of income tax deducted, [the amount of income tax paid to the tax officer,] the numerical code prescribed by the department representing the [tax collection district where the payments required by paragraphs (4) and (5) were remitted] **political subdivision of the employee's work location and, in the case where an employer has made an election under paragraph (5) to file with a single tax officer, the two-digit code representing the tax collection district to whose tax officer the withheld taxes were remitted in the format of xxxxxx-xx** and any other information required by the department. Every employer shall furnish one copy of the individual withholding statement to the employee for whom it is filed.

* * *

Section 10. Section 706 of the act is amended to read:

Section 706. Penalties.--(a) Except as otherwise provided in the case of any tax levied and assessed upon 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].

(b) If for any reason any tax levied and assessed upon income by any such political subdivision is not paid when due, interest and penalties as provided in section 509(i) 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.

(c) In addition to any other power provided by this act, a tax collector or officer may abate any penalty imposed under any provision of this act.

Section 11. Section 707 of the act is amended by adding a subsection to read:

Section 707. Costs of Collection of Delinquent Per Capita, Occupation, Occupational Privilege, Emergency and Municipal Services, Local Services and Income Taxes.--* * *

(d) A contingent fee audit may not be conducted in the collection of delinquent taxes.

Section 12. This act shall take effect in 60 days.

APPROVED--The 4th day of May, A.D. 2018.

TOM WOLF