

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 875 Session of
2003

INTRODUCED BY SAYLOR, CIVERA, RUBLEY, STEIL, LEWIS, ADOLPH,
BUNT, CAPPELLI, CREIGHTON, GORDNER, HARHART, HERSHEY, HORSEY,
McCALL, McILHATTAN, McNAUGHTON, RAYMOND, ROHRER, TANGRETTI,
TIGUE, WASHINGTON, WATSON AND WRIGHT, MARCH 13, 2003

REFERRED TO COMMITTEE ON FINANCE, MARCH 13, 2003

AN ACT

1 Amending Title 53 (Municipalities Generally) of the Pennsylvania
2 Consolidated Statutes, authorizing school districts to impose
3 a tax on personal income; providing for the levying,
4 assessment and collection of local personal income tax; and
5 imposing powers and duties on the Department of Revenue and
6 the Department of Community and Economic Development.

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

9 Section 1. Section 8401 of Title 53 of the Pennsylvania
10 Consolidated Statutes is amended by adding a definition to read:
11 § 8401. Definitions.

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

15 * * *

16 "Personal income." Income enumerated in section 303 of the
17 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
18 of 1971, as returned to and ascertained by the Department of
19 Revenue, subject, however, to any correction thereof for fraud,

1 evasion or error as finally determined by the Commonwealth.

2 * * *

3 Section 2. Sections 8402(a), 8404, 8701, 8702, 8703(a), (b)
4 and (d), 8704(a), 8705(e), 8711 and 8713 of Title 53 are amended
5 to read:

6 § 8402. Scope and limitations.

7 (a) General rule.--Except as provided in subsections (b),
8 (c), (d), (e) and (f) and section 8405 (relating to
9 applicability), it is the intent of this subpart to confer upon
10 each school district the power to levy, assess and collect an
11 earned income and net profits tax or a local personal income tax
12 as set forth in this subpart.

13 * * *

14 § 8404. Certain rates of taxation limited.

15 If a municipality and school district both impose an earned
16 income and net profits tax on the same individual under the
17 Local Tax Enabling Act and the municipality and school district
18 are limited to or have agreed upon a division of the tax rate in
19 accordance with section 8 of the Local Tax Enabling Act, then
20 the municipality that continues to levy the earned income and
21 net profits tax under the Local Tax Enabling Act shall remain
22 subject to that limitation or agreement in the event that the
23 school district opts to impose an earned income and net profits
24 tax under section 8711 (relating to earned income and net
25 profits tax) or a local personal income tax under section 8721
26 (relating to local personal income tax).

27 § 8701. General tax authorization.

28 (a) General rule.--Subject to sections 8703 (relating to
29 adoption of referendum) and 8704 (relating to public referendum
30 requirements for increasing property taxes previously reduced)

1 and except as provided in subsection (b), each school district
2 shall have the power and may by resolution levy, assess and
3 collect or provide for the levying, assessment and collection of
4 the [earned income and net profits tax] taxes authorized under
5 this chapter.

6 (b) Exclusions.--No school district which levies [an earned
7 income and net profits tax] a tax authorized by this chapter
8 shall have any power or authority to levy, assess or collect:

9 (1) A tax based upon a flat rate or on a millage rate on
10 an assessed valuation of a particular trade, occupation or
11 profession, commonly known as an occupation tax.

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

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

16 (4) The earned income and net profits tax levied under
17 the Local Tax Enabling Act.

18 (5) An earned income tax under the act of August 24,
19 1961 (P.L.1135, No.508), referred to as the First Class A
20 School District Earned Income Tax Act, or under the
21 additional authority in section 652.1(a)(2) of the act of
22 March 10, 1949 (P.L.30, No.14), known as the Public School
23 Code of 1949.

24 (6) Any tax under section 652.1(a)(4) of the Public
25 School Code of 1949 except as it pertains to real estate
26 transfer taxes.

27 (7) Except for taxes permitted under section 8402(b)
28 (relating to scope and limitations), (c), (d), (e) and (f),
29 any other tax authorized or permitted under the Local Tax
30 Enabling Act.

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

3 § 8702. Continuity of tax.

4 The [earned income and net profits tax] taxes levied under
5 the provisions of this chapter shall continue in force on a
6 fiscal year basis without annual reenactment unless the rate of
7 tax is increased or the tax is subsequently repealed.

8 § 8703. Adoption of referendum.

9 (a) General rule.--

10 (1) In order to levy [an earned income and net profits]
11 a tax under this chapter, a governing body shall use the
12 procedures set forth in subsection (b).

13 (2) Any governing body after making an election to levy
14 [an earned income and net profits] a tax under this chapter
15 may, after a period of at least three full fiscal years,
16 elect under the provisions of subsection (c) to levy, assess
17 and collect the taxes prohibited by section 8701(b) (relating
18 to general tax authorization) to the extent otherwise
19 provided by law. If the electorate approves such referendum,
20 the governing body shall lose the authority to continue to
21 levy [an earned income and net profits] any tax authorized
22 under this chapter.

23 (b) Public referendum requirements.--Subject to the notice
24 and public hearing requirements of section 8716 (relating to
25 procedure and administration), a governing body may levy [the
26 earned income and net profits] a tax under this chapter only by
27 obtaining the approval of the electorate of the affected school
28 district in a public referendum at only the municipal election
29 preceding the fiscal year when the [earned income and net
30 profits] tax under this chapter will be initially imposed. The

1 referendum question must state the initial rate of the proposed
2 [earned income and net profits] tax, the reason for the tax and
3 the amount of proposed budgeted revenue growth, if any, in the
4 first fiscal year following adoption of the referendum,
5 expressed as a percent increase over the prior year's budgeted
6 revenue. Any increase in budgeted revenue between the first
7 fiscal year following adoption of the referendum and the prior
8 year's budgeted revenue shall not exceed the annual percent
9 change in the Statewide average weekly wage. The question shall
10 be in clear language that is readily understandable by a
11 layperson. For the purpose of illustration, a referendum
12 question may be framed as follows:

13 Do you favor the imposition of [an earned income and net
14 profits tax of X%] a (name of tax) to be used to replace
15 (names of local taxes to be repealed), reduce real
16 property taxes by X% by means of a homestead exclusion
17 and provide for a one-time revenue increase of X% over
18 the preceding fiscal year?

19 A nonlegal interpretative statement must accompany the question
20 in accordance with section 201.1 of the act of June 3, 1937
21 (P.L.1333, No.320), known as the Pennsylvania Election Code,
22 that includes the following: the initial rate of the [earned
23 income and net profits tax] taxes imposed and the maximum
24 allowable rate of the [earned income and net profits tax] taxes
25 imposed under this chapter; the estimated revenues to be derived
26 from the [initial rate of the earned income and net profits tax]
27 taxes imposed under this chapter; the amount of proposed revenue
28 growth, if any, in the first fiscal year following adoption of
29 the referendum; the estimated reduction in real property taxes
30 and the elimination of certain existing taxes under this

1 chapter; the identification of the existing taxes to be
2 eliminated under this chapter; the method to be used to reduce
3 real property taxes; the class or classes of real property for
4 which real property taxes would be reduced; and the estimated
5 amount of real property tax reduction by class, expressed as an
6 average percent reduction by class. Any governing body which
7 uses the procedures under this section shall not be subject to
8 the provisions of section 8704 (relating to public referendum
9 requirements for increasing property taxes previously reduced)
10 for any future increases in the [earned income and net profits
11 tax rates] taxes authorized under this chapter. Any future real
12 property tax rate increases are subject to the provisions of
13 section 8704. If the ballot question fails to receive a majority
14 vote pursuant to this section, approval of the electorate under
15 section 8704 shall not be required to increase the rate of any
16 tax which the governing body of the affected school district is
17 authorized to levy and increase pursuant to any other act.

18 * * *

19 (d) Public requirements to initiate referendum.--

20 (1) If the governing body of a school district fails to
21 place a referendum question on the ballot within two years
22 after the effective date of this chapter, the electors of the
23 school district may:

24 (i) Circulate a petition which, if signed by
25 electors comprising 2% of the number of electors voting
26 for the office of Governor in the last gubernatorial
27 election in the school district and filed with the
28 election officials and submitted to the governing body
29 thereof, shall require the governing body to establish a
30 local tax study commission. The provisions under

paragraph (2)(v), (vi), (vii), (viii) (ix) and (x) shall not apply to this subparagraph.

(ii) If the local tax study commission makes a recommendation to levy [the earned income and net profits tax] a tax authorized under this chapter and the governing body fails to place the recommendation or other alternative of the governing body authorized under this chapter on the ballot in accordance with this chapter at the next municipal election occurring at least 90 days after the submission of the recommendation to the governing body, a petition under this paragraph may be circulated. If the petition is signed by the electors comprising 5% of the number of electors voting for the office of Governor in the last gubernatorial election in the school district and filed with election officials at least 90 days prior to the next municipal election, the petition shall compel the election officials to place the recommendation upon the ballot at the next municipal election occurring at least 90 days after the filing of the petition.

(2) The following requirements shall apply to the process under paragraph (1):

(i) The name and street address of each elector signing the petition and of the person filing the petition shall be clearly stated on the petition. The petition shall include an affidavit of the circulator that he or she is a qualified elector of the school district referred to in the petition; that the signers signed with full knowledge of the contents of the petition; that the signers' residences are correctly

1 stated; and that, to the best of the circulator's
2 knowledge and belief, the signers are qualified electors.

3 (ii) The election officials shall, within ten days
4 after filing, review the petition as to the number and
5 qualifications of signers. If the petition appears to be
6 defective, the election officials shall immediately
7 notify the person filing the petition of the defect and
8 may reject the petition if warranted.

9 (iii) The petition as submitted to the election
10 officials, along with the list of signatories, shall be
11 open to public inspection in the office of the election
12 officials.

13 (iv) If the election officials find that the
14 petition as submitted is in proper order, they shall send
15 copies of the petition without signatures thereon to the
16 governing body involved.

17 (v) The procedure for the referendum shall be
18 governed by the act of June 3, 1937 (P.L.1333, No.320),
19 known as the Pennsylvania Election Code.

20 (vi) If the election officials find the petition
21 meets the requirements of this chapter, they shall place
22 the proposal on the ballot in a manner fairly
23 representing the content of the petition for decision by
24 referendum at the proper election.

25 (vii) The election officials shall certify the date
26 for the referendum and shall notify the governing body at
27 least 30 days prior to such date.

28 (viii) At least 30 days' notice of the referendum
29 shall be given by proclamation of the governing body. A
30 copy of the proclamation shall be posted at each polling

1 place on the day of the election and shall be published
2 once in at least one newspaper of general circulation
3 which is distributed within the school district during
4 the 30-day period prior to the election.

5 (ix) Approval of a referendum shall be by majority
6 vote of those voting in the school district involved.

7 (x) The election officials shall certify the results
8 of the referendum to the governing body.

9 * * *

10 § 8704. Public referendum requirements for increasing property
11 taxes previously reduced.

12 (a) General rule.--Except as provided in subsections (c) and
13 (d), a governing body that elects to levy [an earned income and
14 net profits] a tax under this chapter pursuant to section
15 8703(a) (relating to adoption of referendum) shall not increase
16 the rate of its tax on real property without first obtaining the
17 approval of the electorate of the affected school district in a
18 referendum at the primary election immediately preceding the
19 fiscal year of the proposed tax increase.

20 * * *

21 § 8705. Local tax study commission.

22 * * *

23 (e) Recommendation.--Within 90 days of its appointment, the
24 local tax study commission shall make a nonbinding
25 recommendation to the governing body regarding the imposition of
26 [an earned income and net profits tax] a tax under this chapter,
27 to be levied, assessed and collected commencing the next fiscal
28 year. Except as provided in subsection (f), if the governing
29 body appoints a commission, [the earned income and net profits]
30 a tax authorized under this chapter may not be levied, assessed

or collected until receipt of the recommendation. No later than 90 days prior to the next municipal election occurring at least 150 days after the submission of the recommendation, the governing body shall accept or reject the recommendation of the local tax study commission or adopt an alternative proposal authorized under this chapter.

* * *

§ 8711. Earned income and net profits tax.

A school district shall have the power to levy, assess and collect a tax on the earned income and net profits of resident individuals of the school district up to a maximum rate of [1.5%] 2.0%. The earned income and net profits tax may be levied by the school district at a rate of 0.75%, 1.0%, 1.25% [or 1.5%], 1.5%, 1.75% or 2.0%. A school district that levies a local personal income tax under section 8721 (relating to local personal income tax) shall have no authority to levy, assess or collect an earned income and net profits tax under this section.

§ 8713. Credits.

(a) General rule.--The provisions of section 14 of the Local Tax Enabling Act shall be used to determine any credits under the provisions of this chapter for any taxes imposed under section 8711 (relating to earned income and net profits tax). Notwithstanding the foregoing, a tax levied under this chapter shall be in addition to any taxes on salaries, wages, commissions, compensation or other income received that is imposed by a city of the first class and no credit shall be allowed by a school district levying a tax under this subchapter for any such taxes imposed by a city of the first class.

(b) State tax credit.--A credit against personal income tax due to the Commonwealth under section 302 of the Tax Reform Code

1 shall be granted to all nonresidents of a city of the first
2 class who are subject to a tax imposed by a city of the first
3 class pursuant to the act of August 5, 1932 (Sp.Sess., P.L.45,
4 No.45), referred to as the Sterling Act. The credit shall equal
5 [0.2756% of salaries, wages, commissions, compensation or other
6 income received for work done or services performed within a
7 city of the first class.] the amount of tax levied under this
8 chapter by the taxpayer's school district of residence on the
9 taxpayer's salaries, wages, commissions, compensation or other
10 income received that is subject to tax by a city of the first
11 class. The State personal income tax withheld from the taxpayer
12 by the taxpayer's employer in a city of the first class pursuant
13 to Article III of the Tax Reform Code of 1971 shall be reduced
14 by the amount of such credit. The Secretary of Revenue shall
15 promulgate such regulations and forms as are necessary to
16 implement the provisions of this subsection. This section shall
17 only apply to residents of school districts which impose the tax
18 under this subchapter. [A governing body of a school district in
19 a county of the second class A shall, and a governing body of a
20 school district in a county of the third class may, include in
21 the referendum question under section 8703 (relating to adoption
22 of referendum) language asking whether the credit against the
23 personal income tax in this subsection should be provided to the
24 nonresident taxpayer in the city of the first class or the
25 school district in which the taxpayer resides for the purpose of
26 making additional tax reductions in the same manner as section
27 8717 (relating to disposition of earned income and net profits
28 tax revenue).] Should any court of competent jurisdiction
29 determine that this subsection is unconstitutional, the
30 provisions of this subsection shall be void and no credit shall

1 be expanded or extended in any way by any court.

2 Section 3. Chapter 87 of Title 53 is amended by adding a
3 subchapter to read:

4 SUBCHAPTER C

5 LOCAL PERSONAL INCOME TAX

6 Sec.

7 8721. Local personal income tax.

8 8722. Collections.

9 8723. Credits.

10 8724. Local personal income tax exemption.

11 8725. Rules and regulations.

12 8726. Procedure and administration.

13 8727. Disposition of local personal income tax revenue.

14 § 8721. Local personal income tax.

15 A school district shall have the power to levy, assess and
16 collect a tax on the personal income of resident individuals of
17 the school district up to a maximum rate of 2.0%. The local
18 personal income tax may be levied by the school district at a
19 rate of 0.75%, 1.0%, 1.25%, 1.5%, 1.75% or 2.0%. A school
20 district that levies an earned income and net profits tax under
21 section 8711 (relating to earned income and net profits tax)
22 shall have no power to levy, assess or collect a local personal
23 income tax under this section.

24 § 8722. Collections.

25 Any school district imposing a tax under section 8721
26 (relating to local personal income tax) shall designate the tax
27 officer who is appointed under section 10 of the Local Tax
28 Enabling Act, or otherwise by law, as the collector of the local
29 personal income tax. In the performance of the tax collection
30 duties under this subchapter, the designated tax officer shall

1 have all the same powers, rights, responsibilities and duties
2 for the collection of the taxes which may be imposed under the
3 Local Tax Enabling Act, Subchapter C of Chapter 84 (relating to
4 local taxpayers bill of rights) or as otherwise provided by law.
5 § 8723. Credits.

6 (a) General rule.--The provisions of section 14 of the Local
7 Tax Enabling Act shall be used to determine any credits under
8 the provisions of this subchapter for any taxes imposed under
9 section 8721 (relating to local personal income tax) on the
10 earned income portion of the personal income tax.

11 Notwithstanding the foregoing, a tax levied under this chapter
12 shall be in addition to any taxes on salaries, wages,
13 commissions, compensation or other income received that is
14 imposed by a city of the first class and no credit shall be
15 allowed by a school district levying a tax under this subchapter
16 for any such taxes imposed by a city of the first class.

17 (b) State tax credit.--A credit against personal income tax
18 due to the Commonwealth under section 302 of the Tax Reform Code
19 shall be granted to all nonresidents of a city of the first
20 class who are subject to a tax imposed by a city of the first
21 class pursuant to the act of August 5, 1932 (Sp.Sess., P.L.45,
22 No.45), referred to as the Sterling Act. The credit shall equal
23 the amount of tax levied under this chapter by the taxpayer's
24 school district of residence on the taxpayer's salaries, wages,
25 commissions, compensation or other income received that is
26 subject to tax by a city of the first class. The State personal
27 income tax withheld from the taxpayer by the taxpayer's employer
28 in a city of the first class pursuant to Article III of the Tax
29 Reform Code shall be reduced by the amount of such credit. The
30 Secretary of Revenue shall promulgate such regulations and forms

1 as are necessary to implement the provisions of this subsection.
2 This section shall only apply to residents of school districts
3 which impose the tax under this subchapter. Should any court of
4 competent jurisdiction determine that this subsection is
5 unconstitutional, the provisions of this subsection shall be
6 void and no credit shall be expanded or extended in any way by
7 any court.

8 (c) Low income tax credit.--The provisions of section 304 of
9 the Tax Reform Code shall be applied by any school district that
10 levies a tax under section 8721.

11 § 8724. Local personal income tax exemption.

12 A school district that imposes a local personal income tax
13 under this subchapter may exempt from the payment of that tax
14 any person whose total income from all sources is less than
15 \$7,500.

16 § 8725. Rules and regulations.

17 Taxes imposed under section 8721 (relating to local personal
18 income tax) shall be subject to all regulations adopted by the
19 Department of Revenue pursuant to Article III of the Tax Reform
20 Code. A school district may adopt regulations for the processing
21 of claims for credits or exemptions under sections 8723
22 (relating to credits) and 8724 (relating to local personal
23 income tax exemption).

24 § 8726. Procedure and administration.

25 In order to levy the tax under section 8721 (relating to
26 local personal income tax), the governing body shall adopt a
27 resolution which shall refer to this subchapter prior to placing
28 a question on the ballot under section 8703 (relating to
29 adoption of referendum). Prior to adopting a resolution imposing
30 the tax authorized by section 8721, the governing body shall

1 give public notice of its intent to adopt the resolution in the
2 manner provided by section 4 of the Local Tax Enabling Act and
3 shall conduct at least one public hearing regarding the proposed
4 adoption of the resolution.

5 § 8727. Disposition of local personal income tax revenue.

6 The disposition of revenue from a local personal income tax
7 or an increase in the rate of a local personal income tax
8 imposed by school districts under the authority of this chapter
9 shall occur in the following manner:

10 (1) For the fiscal year of implementation of a newly
11 imposed local personal income tax, all local personal income
12 tax revenue received by a school district shall be used first
13 to offset any lost revenue to the school district from the
14 taxes prohibited under section 8701(b) (relating to general
15 tax authorization) in an amount equal to the revenue
16 collected from the prohibited taxes in section 8701(b) in the
17 preceding fiscal year; second, to provide for an increase in
18 budgeted revenues over the preceding fiscal year in
19 accordance with the amount specified in the referendum
20 question approved by the voters under section 8703 (relating
21 to adoption of referendum); and third, to reduce the school
22 district real property tax in the following order:

23 (i) By means of an exclusion for homestead property
24 pursuant to section 8583 (relating to exclusion for
25 homestead property).

26 (ii) By means of a reduction in the millage rate
27 after the limit on the exclusion for homestead property
28 has been reached under section 8586 (relating to
29 limitations).

30 (2) For the fiscal year of implementation of an increase

1 in the rate of an existing local personal income tax imposed
2 under this chapter, all revenue received by a school district
3 directly attributable to the increased rate shall be used to
4 reduce the school district real property tax in the following
5 order:

6 (i) By means of an exclusion for homestead property
7 pursuant to section 8583.

8 (ii) By means of a reduction in the millage rate
9 after the limit on the exclusion for homestead property
10 has been reached under section 8586.

11 Section 4. Sections 8912 and 8915 of Title 53 are amended to
12 read:

13 § 8912. Register for taxes.

14 (a) General rule.--The department shall maintain an official
15 continuing register supplemented annually of all local earned
16 income and net profits taxes and local personal income taxes
17 levied under Chapter 87 (relating to other subjects of
18 taxation).

19 (b) Contents of register.--The register shall list:

20 (1) The school districts levying local earned income and
21 net profits tax or local personal income tax.

22 (2) The rate of tax as stated in the resolution levying
23 the tax.

24 (3) The rate on taxpayers.

25 (4) The name and address of the official responsible for
26 administering the collection of the tax and from whom
27 information, forms and copies of regulations are available.

28 § 8915. Effect of nonfiling.

29 Employers shall not be required by any ordinance to withhold
30 from the compensation of their employees any local earned income

1 and net profits tax or local personal income tax imposed under
2 Chapter 87 (relating to other subjects of taxation) which is not
3 listed in the register or to make reports of compensation in
4 connection with taxes not so listed. If the register is not
5 available by August 15, the register of the previous year shall
6 continue to be effective for an additional period of not more
7 than one year.

8 Section 5. This act shall take effect January 1, 2004.