

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

**SENATE BILL****No. 292**      Session of  
2005

INTRODUCED BY SCARNATI, LEMMOND, WENGER, D. WHITE, CORMAN,  
RAFFERTY, M. WHITE, TOMLINSON, EARLL, WONDERLING, ERICKSON,  
CONTI, PIPPY, PILEGGI, ORIE, O'PAKE, BROWNE AND LOGAN,  
FEBRUARY 15, 2005

SENATOR EARLL, FINANCE, AS AMENDED, JUNE 20, 2006

## 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 collection of taxes, for audits of  
23 earned income taxes, for earned income taxes, for suits for  
24 tax collection, for penalties and for delinquent tax  
25 collection costs.

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

28 Section 1. Section 10 of the act of December 31, 1965

1 (P.L.1257, No.511), known as The Local Tax Enabling Act, amended  
2 November 30, 2004 (P.L.1520, No.192), and December 1, 2004  
3 (P.L.1729, No.222), is amended to read:

4 Section 10. Collection of Taxes.--(a) Administrative  
5 Personnel; Joint Agreements.--Except as provided in subsections  
6 (b) and (c), [any such] a political subdivision is hereby  
7 authorized to provide by ordinance or resolution for the  
8 creation of bureaus or the designation [of such bureaus or the],  
9 appointment and compensation of [such] officers, [clerks,  
10 collectors,] public employes, private agencies or other [person  
11 and other assistants] persons, and their employes[, either under  
12 existing departments, or otherwise] as [may be deemed]  
13 necessary, for the assessment and collection of taxes imposed  
14 under authority of this act. Each ordinance or resolution under  
15 this section authorizing a person, public employe or private  
16 agency to act [in the capacity and with the authority of] as a  
17 tax collector for the political subdivision shall continue in  
18 force without annual reauthorization unless otherwise repealed  
19 or revoked by the political subdivision. A political subdivision  
20 must enter into a written contract with an officer, private  
21 agency or other person, appointed or designated to collect the  
22 earned income tax. Except as provided in subsections (b) and <—  
23 EARNED INCOME TAX. <—

24 EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (c), any political  
25 subdivisions imposing taxes under authority of this act are  
26 authorized to make joint agreements for the collection of such  
27 taxes or any of them. The same person or agency may be employed  
28 by two or more political subdivisions to collect any taxes  
29 imposed by them under authority of this act.

30 (b) Single Collector for Earned Income Taxes [When Certain

1 School Districts Impose Such Taxes] Imposed by a School  
2 District.--Except as provided in subsection (c), whenever a  
3 school district of the second, third or fourth class shall be  
4 established pursuant to section 296[, ] of the act of March 10,  
5 1949 (P.L.30), known as the "Public School Code of 1949," added  
6 August 8, 1963 (P.L. 564), and [such school district shall levy,  
7 assess and collect or provide for the levying, assessment and  
8 collection of] the school district levies a tax upon earned  
9 income, such school district and all cities, boroughs, towns and  
10 townships within its geographical limits which levy, assess and  
11 collect [or provide for the levying, assessment and collection  
12 of] a tax upon earned income[, may on January 1, 1967, or] shall  
13 as soon [thereafter] as the school district [shall provide for  
14 the levying, assessment and collection of taxes upon earned  
15 income, select one person or agency] has levied, assessed or  
16 collected an earned income tax, designate or appoint an officer,  
17 public employe or private agency to collect the taxes upon  
18 earned income imposed by all [such] political subdivisions  
19 within the geographic limits of the school district. In  
20 [selecting such person] order to designate or appoint the  
21 officer, public employe or private agency, each political  
22 subdivision shall share in the [selection] designation or  
23 appointment upon a basis agreed upon by each political  
24 subdivision, [or in] including the school district. DISTRICT AT <—  
25 LEAST NINETY DAYS PRIOR TO THE END OF THE APPOINTMENT OR THE  
26 EXPIRATION OF A CONTRACT FOR EARNED INCOME TAX COLLECTION OF ALL  
27 POLITICAL SUBDIVISIONS WITHIN THE SCHOOL DISTRICT AND INCLUDING  
28 THE SCHOOL DISTRICT. In the absence of any agreement on the  
29 basis of voting, ~~voting~~ WITHIN THE TIME PERIOD, THE BOARD OF <—  
30 SCHOOL DIRECTORS SHALL CONVENE A MEETING WITH AT LEAST TEN DAYS'

1 NOTICE BY FIRST CLASS MAIL. THE MEETING FOR THE PURPOSE OF  
2 VOTING SHALL BE CONVENED NO LESS THAN SIXTY DAYS PRIOR TO THE  
3 END OF THE APPOINTMENT OR THE EXPIRATION OF A CONTRACT FOR  
4 EARNED INCOME TAX COLLECTION OF ALL POLITICAL SUBDIVISIONS  
5 WITHIN THE SCHOOL DISTRICT AND INCLUDING THE SCHOOL DISTRICT.  
6 VOTING shall be conducted according to the proportion that the  
7 population of each bears to the entire population of the  
8 combined collection district, according to the latest official  
9 Federal census, and the majority of such votes cast shall  
10 determine the [person or agency selected] bureau, officer,  
11 public employe or private agency designated to collect the  
12 [taxes] earned income tax. The provisions of this paragraph  
13 shall not prohibit school districts and other political  
14 subdivisions which levy, assess and collect [or provide for the  
15 levying, assessment and collection of] taxes upon earned income,  
16 under authority of this act, from [selecting] designating or  
17 appointing the same [person] officer, public employe or private  
18 agency to collect such tax upon earned income in an area larger  
19 than the geographical limits of a school district established  
20 pursuant to section 296 of the "Public School Code of 1949."

21 (c) Single Tax Collector in Certain Home Rule  
22 Municipality.--In a municipality having a population under the  
23 2000 Federal decennial census of at least forty thousand and  
24 less than ninety thousand located in a second class county which  
25 municipality has adopted a home rule charter under 53 Pa.C.S.  
26 Pt. III Subpt. E (relating to home rule and optional plan  
27 government), the person or persons appointed by the board of  
28 school directors for the school district in which the  
29 municipality is located as collector or collectors of taxes  
30 levied by the school district under this act shall also serve as

1 the collector or collectors of taxes levied by the municipality  
2 under this act.

3 (d) Records.--All tax collection records shall be a property  
4 of the political subdivision in which the taxes were collected.  
5 The political subdivision or its tax collector shall retain all  
6 records for at least seven years. Unclaimed tax records shall be  
7 retained for fifteen years. THIS SUBSECTION DOES NOT PRECLUDE A ←  
8 TAX COLLECTOR FROM RETAINING COPIES OF TAX COLLECTION RECORDS.

9 Section 2. Section 11 of the act is amended to read:

10 Section 11. Audits of Earned Income Taxes.--Except in cities  
11 of the second class, [the governing body of] each political  
12 subdivision which levies, assesses and collects [or provides for  
13 the levying, assessment and collection of] a tax upon earned  
14 income, shall provide for not less than one examination each  
15 year of the books, accounts, financial statements, compliance  
16 reports and records of the income tax collector, by a certified  
17 public accountant, a firm of certified public accountants, a  
18 competent independent public accountant, or a firm of  
19 independent public accountants appointed by the [governing body]  
20 political subdivision. Whenever one person or agency is selected  
21 to collect earned income taxes for more than one political  
22 subdivision, the books, accounts and records of such person or  
23 agency shall be examined as provided above in the case of a tax  
24 collector for each political subdivision, except that the  
25 accountant shall be selected in the manner provided for  
26 selection of one person or agency to collect earned income taxes  
27 for the school district established under section 296 of the  
28 "Public School Code of 1949," and the cities, boroughs, towns  
29 and townships within the geographical limits of such school  
30 district. The examination shall be conducted according to

1 generally accepted governmental auditing standards and shall  
2 include a financial statement, a report on the income tax  
3 officer's compliance with this act, a list of any findings of  
4 noncompliance with this act and a copy of a management letter if  
5 one is issued by the auditor. The reports of the audit shall be  
6 sent to the governing body [or bodies] of the political  
7 subdivision [or political subdivisions] employing the  
8 accountant. If there are findings of noncompliance, a copy of  
9 the report shall be filed with the Office of Attorney General  
10 and the Department of Community and Economic Development. No  
11 further or additional audit shall be performed by elected or  
12 appointed auditors.

13 Section 3. Division I, Subdivision A of Division III, ←  
14 DIVISION IV and Division V of section 13 of the act, amended or  
15 added July 15, 1976 (P.L.1047, No.210), October 4, 1978  
16 (P.L.930, No.177), December 9, 2002 (P.L.1364, No.166), April 5,  
17 2004 (P.L.208, No.24), and November 30, 2004 (P.L.1520, No.192),  
18 are amended and the section is amended by adding a division to  
19 read:

20 Section 13. Earned Income Taxes.--On and after the effective  
21 date of this act the remaining provisions of this section shall  
22 be included in or construed to be a part of each tax levied and  
23 assessed upon earned income by [any] a political subdivision  
24 [levying and assessing such tax pursuant to this act]. The  
25 definitions contained in this section shall be exclusive for any  
26 tax upon earned income and net profits levied and assessed  
27 pursuant to this act, and shall not be altered or changed by  
28 [any] a political subdivision [levying and assessing such tax].

29 I. Definitions

30 "Association." A partnership, limited partnership, or any

1 other unincorporated group of two or more persons.

2 "Business." An enterprise, activity, profession or any other  
3 undertaking of an unincorporated nature conducted for profit or  
4 ordinarily conducted for profit whether by a person,  
5 partnership, association, or any other entity.

6 "Corporation." A corporation [or] joint stock association or  
7 limited liability company organized under the laws of the United  
8 States, the Commonwealth of Pennsylvania, or any other state,  
9 territory, foreign country or dependency.

10 "Current year." The calendar year for which the tax is  
11 levied.

12 "Department." The Department of Community and Economic  
13 Development of the Commonwealth.

14 "Domicile." The place where one lives and has his permanent  
15 home and to which he has the intention of returning whenever he  
16 is absent. Actual residence is not necessarily domicile, for  
17 domicile is the fixed place of abode which, in the intention of  
18 the taxpayer, is permanent rather than transitory. Domicile is  
19 the voluntarily fixed place of habitation of a person, not for a  
20 mere special or limited purpose, but with the present intention  
21 of making a permanent home, until some event occurs to induce  
22 him to adopt some other permanent home. In the case of  
23 businesses, or associations, the domicile is that place  
24 considered as the center of business affairs and the place where  
25 its functions are discharged.

26 "Earned income." Compensation as determined under section 303  
27 of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax  
28 Reform Code of 1971," and regulations in 61 Pa. Code Pt. I  
29 Subpt. B Art. V (relating to personal income tax), not  
30 including, however, wages or compensation paid to individuals on

1 active military service. Employe business expenses are allowable  
2 deductions as determined under Article III of the "Tax Reform  
3 Code of 1971." The amount of any housing allowance provided to a  
4 member of the clergy shall not be taxable as earned income. IN ←  
5 DETERMINING EARNED INCOME, THE TAXPAYER MAY NOT OFFSET BUSINESS  
6 LOSSES.

7 "Income tax officer or officer." [Person] A bureau, person,  
8 public employe or private agency designated by [governing body]  
9 a political subdivision to collect and administer the tax on  
10 earned income and net profits authorized under this act.

11 "Employer." A person, partnership, association, business,  
12 corporation, limited liability company, institution,  
13 governmental body or unit or agency, or any other entity  
14 employing one or more persons for a salary, wage, commission or  
15 other compensation.

16 "Net profits." The net income from the operation of a  
17 business, profession, or other activity, except corporations,  
18 determined under section 303 of the act of March 4, 1971 (P.L.6,  
19 No.2), known as the "Tax Reform Code of 1971," and regulations  
20 in 61 Pa. Code Pt. I Subpt. B Art. V (relating to personal  
21 income tax). IN DETERMINING NET PROFITS, THE TAXPAYER MAY OFFSET ←  
22 BUSINESS LOSSES FROM ONE BUSINESS, PROFESSION OR ACTIVITY  
23 AGAINST PROFITS FROM ANOTHER BUSINESS, PROFESSION OR ACTIVITY.

24 The term does not include income which is not paid for services  
25 provided and which is in the nature of earnings from an  
26 investment. For taxpayers engaged in the business, profession or  
27 activity of farming, the term shall not include:

28 (1) any interest earnings generated from any monetary  
29 accounts or investment instruments of the farming business;

30 (2) any gain on the sale of farm machinery;



1 (3) any gain on the sale of livestock held twelve months or  
2 more for draft, breeding or dairy purposes; and

3 (4) any gain on the sale of other capital assets of the  
4 farm.

5 "Nonresident." A person, partnership, association, business,  
6 corporation, limited liability company or ANY other entity ←  
7 domiciled outside the taxing district.

8 "Person or individual." A natural person.

9 "Political subdivision." A city of the second class, city of  
10 the second class A, city of the third class, borough, town,  
11 township of the first class, township of the second class,  
12 school district of the second class, school district of the  
13 third class or school district of the fourth class.

14 "Preceding year." The calendar year before the current year.

15 "Private agency." Any person, partnership, association,  
16 business corporation or limited liability company, engaged in  
17 the business of collecting or administering a tax under this  
18 act.

19 "Resident." A person, partnership, association, ~~business,~~ ←  
20 ~~corporation, limited liability company~~ or OR ANY other entity ←  
21 domiciled in the taxing district.

22 "Succeeding year." The calendar year following the current  
23 year.

24 "Taxpayer." A person, partnership, association, ~~business,~~ ←  
25 ~~corporation~~ or any other entity, required hereunder to file a  
26 return of earned income or net profits, or to pay a tax thereon.

27 "Tax records." Tax returns, supporting schedules,  
28 correspondence with auditors or taxpayers, account books and  
29 other documents obtained or created by the officer to implement  
30 the collection of a tax under this act. The officer may submit

1 computerized summaries of tax returns and other documents in  
2 lieu of the actual documents.

3 \* \* \*

4 III. Declaration and Payment of Tax

5 A. Net Profits.

6 (1) Every taxpayer making net profits shall, as the  
7 [governing body] political subdivision elects, (i) pay to the  
8 officer an annual payment of tax due on or before April 15[, ] of  
9 the succeeding year for the period beginning January 1[, ] and  
10 ending December 31[, ] of the current year, or (ii) on or before  
11 April 15[, ] of the current year, make and file with the officer  
12 on a form prescribed [or approved by the officer] by the  
13 department, a declaration of his estimated net profits during  
14 the period beginning January 1[, ] and ending December 31[, ] of  
15 the current year, and pay to the officer in four equal quarterly  
16 installments the tax due thereon as follows: the first  
17 installment at the time of filing the declaration, and the other  
18 installments on or before June 15[, ] of the current year,  
19 September 15[, ] of the current year, and January 15[, ] of the  
20 succeeding year, respectively.

21 (2) Where the [governing body] political subdivision elects  
22 to require the filing of a declaration and quarterly payments,  
23 any taxpayer who first anticipates any net profit after April  
24 15[, ] of the current year, shall make and file the declaration  
25 hereinabove required on or before June 15[, ] of the current  
26 year, September 15[, ] of the current year, or December 31[, ] of  
27 the current year, whichever of these dates next follows the date  
28 on which the taxpayer first anticipates such net profit, and pay  
29 to the officer in equal installments the tax due thereon on or  
30 before the quarterly payment dates which remain after the filing

1 of the declaration.

2 (3) Where the [governing body] political subdivision  
3 requires a declaration of estimated net profits and quarterly  
4 payments of tax due on such profits, every taxpayer shall, on or  
5 before April 15[, ] of the succeeding year, make and file with  
6 the officer on a form prescribed or approved by the officer a  
7 final return showing the amount of net profits earned during the  
8 period beginning January 1[, ] of the current year, and ending  
9 December 31[, ] of the current year, the total amount of tax due  
10 thereon and the total amount of tax paid thereon. At the time of  
11 filing the final return, the taxpayer shall pay to the officer  
12 the balance of tax due or shall make demand for refund or credit  
13 in the case of overpayment.

14 Any taxpayer may, in lieu of paying the fourth quarterly  
15 installment of his estimated tax, elect to make and file with  
16 the officer on or before January 31, of the succeeding year, the  
17 final return as hereinabove required.

18 (4) [The officer may be authorized to provide by regulation  
19 for the making and filing of] The department may adopt a  
20 regulation authorizing the officer to make and file adjusted  
21 declarations of estimated net profits, and for the payments of  
22 the estimated tax in cases where a taxpayer who has filed [the  
23 declaration hereinabove required] under paragraphs (1), (2) or  
24 (3) anticipates additional net profits not previously declared  
25 or finds that he has overestimated his anticipated net profits.

26 (5) Every taxpayer who discontinues business prior to  
27 December 31[, ] of the current year[, ] shall, within thirty days  
28 after the discontinuance of business, file his final return as  
29 [hereinabove] required under this division and pay the tax due.

30

\* \* \*

IV. COLLECTION AT SOURCE

←

1 (A) EVERY EMPLOYER HAVING AN OFFICE, FACTORY, WORKSHOP,  
2 BRANCH, WAREHOUSE, OR OTHER PLACE OF BUSINESS WITHIN THE TAXING  
3 JURISDICTION IMPOSING A TAX ON EARNED INCOME OR NET PROFITS  
4 WITHIN THE TAXING DISTRICT WHO EMPLOYS ONE OR MORE PERSONS,  
5 OTHER THAN DOMESTIC SERVANTS, FOR A SALARY, WAGE, COMMISSION OR  
6 OTHER COMPENSATION, WHO HAS NOT PREVIOUSLY REGISTERED, SHALL,  
7 WITHIN FIFTEEN DAYS AFTER BECOMING AN EMPLOYER, REGISTER WITH  
8 THE OFFICER HIS NAME AND ADDRESS AND SUCH OTHER INFORMATION AS  
9 THE OFFICER MAY REQUIRE.  
10

11 (B) EVERY EMPLOYER HAVING AN OFFICE, FACTORY, WORKSHOP,  
12 BRANCH, WAREHOUSE, OR OTHER PLACE OF BUSINESS WITHIN THE TAXING  
13 JURISDICTION IMPOSING A TAX ON EARNED INCOME OR NET PROFITS  
14 WITHIN THE TAXING DISTRICT WHO EMPLOYS ONE OR MORE PERSONS,  
15 OTHER THAN DOMESTIC SERVANTS, FOR A SALARY, WAGE, COMMISSION, OR  
16 OTHER COMPENSATION, SHALL DEDUCT AT THE TIME OF PAYMENT THEREOF,  
17 THE TAX IMPOSED BY ORDINANCE OR RESOLUTION ON THE EARNED INCOME  
18 DUE TO HIS EMPLOYEE OR EMPLOYEES, AND SHALL, ON OR BEFORE APRIL  
19 30, OF THE CURRENT YEAR, JULY 31, OF THE CURRENT YEAR, OCTOBER  
20 31, OF THE CURRENT YEAR, AND JANUARY 31, OF THE SUCCEEDING YEAR,  
21 FILE A RETURN AND PAY TO THE OFFICER THE AMOUNT OF TAXES  
22 DEDUCTED DURING THE PRECEDING THREE-MONTH PERIODS ENDING MARCH  
23 31, OF THE CURRENT YEAR, JUNE 30, OF THE CURRENT YEAR, SEPTEMBER  
24 30, OF THE CURRENT YEAR, AND DECEMBER 31, OF THE CURRENT YEAR,  
25 RESPECTIVELY. SUCH RETURN UNLESS OTHERWISE AGREED UPON BETWEEN  
26 THE OFFICER AND EMPLOYER SHALL SHOW THE NAME AND SOCIAL SECURITY  
27 NUMBER OF EACH SUCH EMPLOYEE, THE EARNED INCOME OF SUCH EMPLOYEE  
28 DURING SUCH PRECEDING THREE-MONTH PERIOD, THE TAX DEDUCTED  
29 THEREFROM, THE POLITICAL SUBDIVISIONS IMPOSING THE TAX UPON SUCH  
30 EMPLOYEE, THE TOTAL EARNED INCOME OF ALL SUCH EMPLOYEES DURING

1 SUCH PRECEDING THREE-MONTH PERIOD, AND THE TOTAL TAX DEDUCTED  
2 THEREFROM AND PAID WITH THE RETURN.

3 ANY EMPLOYER WHO FOR TWO OF THE PRECEDING FOUR QUARTERLY  
4 PERIODS HAS FAILED TO DEDUCT THE PROPER TAX, OR ANY PART  
5 THEREOF, OR HAS FAILED TO PAY OVER THE PROPER AMOUNT OF TAX TO  
6 THE TAXING AUTHORITY, MAY BE REQUIRED BY THE OFFICER TO FILE HIS  
7 RETURN AND PAY THE TAX MONTHLY. IN SUCH CASES, PAYMENTS OF TAX  
8 SHALL BE MADE TO THE OFFICER ON OR BEFORE THE LAST DAY OF THE  
9 MONTH SUCCEEDING THE MONTH FOR WHICH THE TAX WAS WITHHELD.

10 (C) ON OR BEFORE FEBRUARY 28, OF THE SUCCEEDING YEAR, EVERY  
11 EMPLOYER SHALL FILE WITH THE OFFICER:

12 (1) AN ANNUAL RETURN SHOWING THE TOTAL AMOUNT OF EARNED  
13 INCOME PAID, THE TOTAL AMOUNT OF TAX DEDUCTED, AND THE TOTAL  
14 AMOUNT OF TAX PAID TO THE OFFICER FOR THE PERIOD BEGINNING  
15 JANUARY 1, OF THE CURRENT YEAR, AND ENDING DECEMBER 31, OF THE  
16 CURRENT YEAR.

17 (2) A RETURN WITHHOLDING STATEMENT FOR EACH EMPLOYEE EMPLOYED  
18 DURING ALL OR ANY PART OF THE PERIOD BEGINNING JANUARY 1, OF THE  
19 CURRENT YEAR, AND ENDING DECEMBER 31, OF THE CURRENT YEAR,  
20 SETTING FORTH THE EMPLOYEE'S NAME, ADDRESS AND SOCIAL SECURITY  
21 NUMBER, THE AMOUNT OF EARNED INCOME PAID TO THE EMPLOYEE DURING  
22 SAID PERIOD, THE AMOUNT OF TAX DEDUCTED, [THE POLITICAL  
23 SUBDIVISIONS IMPOSING THE TAX UPON SUCH EMPLOYEE,] EACH POLITICAL  
24 SUBDIVISION TO WHICH THE WITHHELD TAX IS REMITTED AND THE AMOUNT  
25 OF TAX PAID TO THE OFFICER. EVERY EMPLOYER SHALL FURNISH TWO  
26 COPIES OF THE INDIVIDUAL RETURN TO THE EMPLOYEE FOR WHOM IT IS  
27 FILED.

28 (D) EVERY EMPLOYER WHO DISCONTINUES BUSINESS PRIOR TO  
29 DECEMBER 31, OF THE CURRENT YEAR, SHALL, WITHIN THIRTY DAYS  
30 AFTER THE DISCONTINUANCE OF BUSINESS, FILE THE RETURNS AND

1 WITHHOLDING STATEMENTS HEREINABOVE REQUIRED AND PAY THE TAX DUE.

2 (E) EXCEPT AS OTHERWISE PROVIDED IN SECTION 9, EVERY  
3 EMPLOYER WHO WILFULLY OR NEGLIGENTLY FAILS OR OMITTS TO MAKE THE  
4 DEDUCTIONS REQUIRED BY THIS SECTION SHALL BE LIABLE FOR PAYMENT  
5 OF THE TAXES WHICH HE WAS REQUIRED TO WITHHOLD TO THE EXTENT  
6 THAT SUCH TAXES HAVE NOT BEEN RECOVERED FROM THE EMPLOYEE.

7 (F) THE FAILURE OR OMISSION OF ANY EMPLOYER TO MAKE THE  
8 DEDUCTIONS REQUIRED BY THIS SECTION SHALL NOT RELIEVE ANY  
9 EMPLOYEE FROM THE PAYMENT OF THE TAX OR FROM COMPLYING WITH THE  
10 REQUIREMENTS OF THE ORDINANCE OR RESOLUTION RELATING TO THE  
11 FILING OF DECLARATIONS AND RETURNS.

12 V. Powers and Duties of Officer

13 (a) It shall be the duty of the income tax officer to  
14 collect and receive [the] resident and nonresident taxes, fines  
15 and penalties imposed by the ordinance or resolution. It shall  
16 also be [his duty] the duty of the officer to keep a record  
17 showing the amount received [by him] from each person or  
18 business paying the tax and the date of such receipt. The ←  
19 ~~information shall be included in the report submitted under~~  
20 ~~subsection (i).~~

21 (b) Each officer, before entering upon his official duties  
22 shall give and acknowledge a bond to the political subdivision  
23 [or political subdivisions] appointing him. If such political  
24 subdivision [or political subdivisions] shall by resolution  
25 designate any bond previously given by the officer as adequate,  
26 such bond shall be sufficient to satisfy the requirements of the  
27 subsection. The bond shall be renewed annually.

28 Each such bond shall be joint and several, with one or more  
29 corporate sureties which shall be surety companies authorized to  
30 do business in this Commonwealth and duly licensed by the

1 Insurance Commissioner of this Commonwealth.

2 Each bond shall be conditioned upon the faithful discharge by  
3 the officer, his clerks, assistants and appointees of all trusts  
4 confided in him by virtue of his office, upon the faithful  
5 execution of all duties required of him by virtue of his office,  
6 upon the just and faithful accounting or payment over, according  
7 to law, of all moneys and all balances thereof paid to, received  
8 or held by him by virtue of his office and upon the delivery to  
9 his successor [or successors] in office of all books, papers,  
10 documents or other official things held in right of his office.

11 Each such bond shall be taken in the name of the appointing  
12 authority [or authorities], and shall be for the use of the  
13 political subdivision [or political subdivisions] appointing the  
14 officer, and for the use of such other person [or persons] for  
15 whom money shall be collected or received, or as his or her  
16 interest shall otherwise appear, in case of a breach of any of  
17 the conditions thereof by the acts or neglect of the principal  
18 on the bond.

19 The political subdivision [or political subdivisions]  
20 appointing the officer, or any person may sue upon the [said]  
21 bond in its or his own name for its or his own use.

22 Each such bond shall contain the name [or names] of the  
23 surety company [or companies] bound thereon. The political  
24 subdivision [or political subdivisions] appointing the officer  
25 shall fix the amount of the bond at an amount [equal to the  
26 maximum amount of taxes which may be in the possession]  
27 sufficient to secure the financial responsibility of the officer  
28 [at any given time.] in accordance with guidelines relating to  
29 the amount of the bond adopted by the department. Copies of the  
30 bond shall be filed with the political subdivision APPOINTING

<—

1 THE OFFICER.

2 The political subdivision [or political subdivisions]  
3 appointing the officer may, at any time, upon cause shown and  
4 due notice to the officer, and his surety [or sureties], require  
5 or allow the substitution or the addition of a surety company  
6 acceptable to such political subdivision [or political  
7 subdivisions] for the purpose of making the bond sufficient in  
8 amount, without releasing the surety [or sureties] first  
9 approved from any accrued liability or previous action on such  
10 bond.

11 The political subdivision [or political subdivisions]  
12 appointing the officer shall designate the custodian of the bond  
13 required to be given by the officer. A copy of the bond shall be  
14 made available upon request to a political subdivision, or the  
15 officer collector appointed by the political subdivision,  
16 seeking payment or distribution of a tax authorized by this act.

17 (b.1) The department shall promulgate regulations relating  
18 to the administration, collection, enforcement, removal of  
19 officers from office and appeal process under this act. The  
20 regulations shall include required forms, including a  
21 certificate of residency form, returns and declarations.

22 (c) The officer charged with the administration and  
23 enforcement of the [provisions of the] ordinance or resolution  
24 [is hereby empowered to prescribe, adopt, promulgate and  
25 enforce, rules and regulations relating to any matter pertaining  
26 to the administration and enforcement of the ordinance or  
27 resolution, including provisions for the re-examination and  
28 correction of declarations and returns, and of payments alleged  
29 or found to be incorrect, or as to which an overpayment is  
30 claimed or found to have occurred, and to make refunds in case



1 of overpayment, for any period of time not to exceed six years  
2 subsequent to the date of payment of the sum involved, and to  
3 prescribe forms necessary for the administration of the  
4 ordinance or resolution. No rule or regulation of any kind shall  
5 be enforceable unless it has been approved by resolution by the  
6 governing body. A copy of such rules and regulations currently  
7 in force shall be available for public inspection.] shall comply  
8 with all regulations adopted by the department under this act.  
9 The officer may use rules and regulations previously adopted by  
10 the officer or the political subdivision in accordance with this  
11 act until the adoption of regulations by the department.

12 (c.1) An officer shall make refunds for overpayment of taxes  
13 under this act for a period not to exceed ~~six~~ THREE years ←  
14 subsequent to the date of payment.

15 (d) The officer shall refund, on petition of, and proof by  
16 the taxpayer, earned income tax paid on the taxpayer's ordinary  
17 and necessary business expenses, to the extent that such  
18 expenses are not paid by the taxpayer's employer.

19 (e) The officer and agents designated by him are hereby  
20 authorized to examine the books, papers, and records of any  
21 employer [or of any taxpayer or of any], taxpayer or other  
22 person whom the officer reasonably believes to be an employer or  
23 taxpayer, in order to verify the accuracy of any declaration or  
24 return, or if no declaration or return was filed, to ascertain  
25 the tax due. Every employer [and every taxpayer and every  
26 person], taxpayer or other person whom the officer reasonably  
27 believes to be an employer or taxpayer, is hereby directed and  
28 required to give to the officer, or to any agent designated by  
29 [him] the officer, the means, facilities and opportunity for  
30 such examination and investigations[, as are hereby] authorized

1 under this act.

2 (f) Any information gained by the officer, his agents, or by  
3 any other official or agent of the [taxing district] political  
4 subdivision, as a result of any declarations, returns,  
5 investigations, hearings or verifications required or authorized  
6 by the ordinance or resolution, shall be confidential, except  
7 for official purposes and except in accordance with a proper  
8 judicial order, or as otherwise provided by law.

9 (g) The officer is authorized to establish different filing,  
10 reporting and payment dates for taxpayers whose fiscal years do  
11 not coincide with the calendar year.

12 (h) The officer shall distribute earned income taxes to the  
13 appropriate political subdivisions within sixty days of the  
14 deadline for payment by an employer as set forth in Division  
15 IV(b). [The political subdivisions] A political subdivision  
16 shall not be required to request the officer to distribute the  
17 funds collected but shall at least annually reconcile their  
18 receipts with the records of the officer and return to or credit  
19 the officer with any overpayment. A political subdivision shall  
20 not be required to pay a fee or commission to the other  
21 political subdivision or its tax officer for tax revenue  
22 distributed under this subsection. If the officer, within one  
23 year after receiving a tax payment, cannot identify the taxing  
24 jurisdiction entitled to a tax payment, he shall make payment to  
25 the municipality in which the tax was collected. If earned  
26 income taxes are not distributed to the appropriate political  
27 subdivision within one year of receipt, the political  
28 subdivision may make a written demand on a tax officer or  
29 political subdivision for tax revenues collected and  
30 attributable to residents of the political subdivision making

1 the demand. If the taxes attributable to the residents of the  
2 political subdivision making the demand are not paid within  
3 thirty days from the date of the demand, the political  
4 subdivision, person, public employe or private agency designated  
5 by the political subdivision may enter into an arbitration  
6 agreement with the officer under 42 Pa.C.S. Ch. 73 Subch. A  
7 (relating to statutory arbitration) or bring an action in [an  
8 appropriate] the court of common pleas where the officer is a  
9 resident or where the political subdivision is located in the  
10 name of the taxing district for the recovery of taxes not  
11 distributed in accordance with this subsection. The action must  
12 be brought within seven years of the collection of the taxes.

13 (i) The officer shall, on or before the tenth day of each  
14 month, provide a written report, on a form adopted by the  
15 department, to the appropriate official of each political  
16 subdivision for which taxes were collected during the previous  
17 month and to the department. The report shall include the names  
18 of taxpayers and employers, the amount collected from each <—  
19 taxpayer or employer DATE OF COLLECTION, penalties and interest <—  
20 on collections, costs of collection, amounts owed to other  
21 political subdivisions, refunds, recoveries and overpayments.

22 (j) An income tax officer shall file an annual report with  
23 the political subdivision and the department. The report shall  
24 include all tax collection information for the most recently  
25 completed tax year as required by the department. The report  
26 shall be filed by June 15 of the year following the close of the  
27 reporting year.

28 \* \* \*

29 X. Fines and Penalties Against Income

30 Tax Officers

1       (a) A political subdivision which brings an action under  
2 Division V(h) may seek equitable relief, including an accounting  
3 of all undistributed taxes and monetary damages in the form of  
4 recovery of the taxes not previously distributed plus interest  
5 calculated from the date that the taxes should have been  
6 distributed. In addition, the court may impose a civil penalty  
7 not to exceed two thousand five hundred dollars (\$2,500) for  
8 each tax quarter for which taxes were not distributed in  
9 accordance with Division V(h), plus reasonable costs and  
10 attorney fees. If an officer fails to distribute earned income  
11 taxes to the appropriate political subdivision as required under  
12 Division V(h), for four consecutive tax quarters, the court may  
13 impose a civil penalty not to exceed five thousand dollars  
14 (\$5,000).

15       (b) If an officer fails to submit the report required under  
16 Division V(i) or (j), a political subdivision entitled to  
17 receive the report may bring an action in the court of common  
18 pleas of that political subdivision and the court may impose a  
19 penalty of twenty dollars (\$20) a day for each day that the  
20 report is overdue, not to exceed five hundred dollars (\$500). If  
21 a report submitted under Division V(j) includes any findings of  
22 noncompliance, the officer is responsible for a civil penalty of  
23 not less than five hundred dollars (\$500) but not more than two  
24 thousand five hundred dollars (\$2,500).

25       (c) An officer who violates any other provision of this act  
26 shall be subject to a civil penalty of up to two thousand five  
27 hundred dollars (\$2,500) for each violation.

28       (d) An action against an officer for a violation of this act  
29 may be brought by a political subdivision in which the officer  
30 collects taxes, a political subdivision owed taxes by the

1 officer, by a surety or by the department.

2 (e) A political subdivision shall remove or rescind the  
3 appointment of an income tax official who has been penalized  
4 under subsection (c) more than three times.

5 Section 4. Section 21 of the act, amended November 30, 2004  
6 (P.L.1520, No.192), is amended to read:

7 Section 21. Collection of Taxes by Suit.--Each [taxing  
8 district or person,] political subdivision, bureau, officer,  
9 public employe [or], private agency or other person designated  
10 by the taxing district shall have power to collect unpaid taxes  
11 from the persons owing such taxes by suit in assumpsit or other  
12 appropriate remedy. Upon each such judgment, execution may be  
13 issued without any stay or benefit of any exemption law. The  
14 right of each [such taxing district] political subdivision to  
15 collect unpaid taxes under [the provisions of] this section  
16 shall not be affected by the fact that such taxes have been  
17 entered as liens in the office of the prothonotary, or the fact  
18 that the property against which they were levied has been  
19 returned to the county commissioners for taxes for prior years.

20 Section 5. Section 22 of the act is amended to read:

21 Section 22. Penalties.--Except as otherwise provided in the  
22 case of any tax levied and assessed upon earned income, any such  
23 political subdivision shall have power to prescribe and enforce  
24 reasonable penalties for the nonpayment, within the time fixed  
25 for their payment, of taxes imposed under authority of this act  
26 and for the violations of the provisions of ordinances or  
27 resolutions passed under authority of this act.

28 If for any reason any tax levied and assessed upon earned  
29 income by any such political subdivision is not paid when due,  
30 interest at the rate of six percent per annum on the amount of

1 said tax, and an additional penalty of one-half of one percent  
2 of the amount of the unpaid tax or, if more than 25% of the  
3 amount reported is underreported, an additional penalty of 25%  
4 of the amount of the unreported tax for each month or fraction  
5 thereof during which the tax remains unpaid, shall be added and  
6 collected. When suit is brought for the recovery of any such  
7 tax, the person liable therefor shall, in addition, be liable  
8 for the costs of collection and the interest and penalties  
9 herein imposed.

10 Section 6. Section 22.1 of the act, added November 30, 2004  
11 (P.L.1520, NO.192), is amended to read:

12 Section 22.1. Costs of Collection of Delinquent Per Capita,  
13 Occupation, Occupational Privilege and Earned Income Taxes.--(a)  
14 A person, public employe or private agency designated by [a  
15 governing body of] a political subdivision to collect and  
16 administer a [per capita, occupation, occupational privilege or  
17 earned income] tax under this act may impose and collect the  
18 reasonable costs incurred to provide notices of delinquency or  
19 to implement [similar] other procedures utilized to collect  
20 delinquent taxes from a taxpayer, as approved by [the governing  
21 body of] the political subdivision. Reasonable costs collected  
22 may be retained by the officer, person, public employe or  
23 private agency designated to collect the tax, as agreed to by  
24 [the governing body of] the political subdivision. An itemized  
25 accounting of all costs collected shall be remitted to the  
26 political subdivision on an annual basis.

27 (b) Costs related to the collection of unpaid per capita,  
28 occupation or occupational privilege taxes may only be assessed,  
29 levied and collected for five years from the last day of the  
30 calendar year in which the tax was due.

1 (c) A delinquent taxpayer may not bring an action for  
2 reimbursement, refund or elimination of reasonable costs of  
3 collection assessed or imposed prior to the effective date of  
4 this section. Additional costs may not be assessed on delinquent  
5 taxes collected prior to the effective date of this section.

6 Section 7. This act shall take effect ~~in 60 days~~ JANUARY 1, ←  
7 2007.