

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 245 Session of 2015

INTRODUCED BY DUNBAR, BARRAR, COHEN, EVANKOVICH, GODSHALL, A. HARRIS, LAWRENCE, MILLARD, MURT, PICKETT, SACCONI, GABLER, REESE AND MACKENZIE, JANUARY 28, 2015

AS REPORTED FROM COMMITTEE ON FINANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 12, 2016

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 employees 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," in
22 local taxes, further providing for definitions, for payroll
23 tax and, for payment of tax to other political subdivisions <--
24 or states as credit or deduction and withholding tax AND FOR <--
25 TAX LIMITATIONS; in consolidated collection of local income
26 taxes, further providing for definitions, for declaration and
27 payment of income taxes, for tax collection committees, for
28 powers and duties of Department of Community and Economic
29 Development, for powers and duties of tax officer and for
30 withholding and remittance; and, in collection of delinquent
31 taxes, further providing for penalties and for costs of
32 collection of delinquent per capita, occupation, occupational

1 privilege, emergency and municipal services, local services
2 and income taxes.

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

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

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

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

15 * * *

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

18 * * *

19 Section 2. Sections 303(g) and 317 of the act, amended July
20 2, 2008 (P.L.197, No.32), are amended to read:

21 Section 303. Payroll Tax.--* * *

22 (g) A city of the second class may bring suit for the
23 recovery of taxes due and unpaid under this section. Any suit
24 brought to recover the tax imposed by this section shall be
25 commenced within three years after such tax is due or within
26 three years after the declaration or return has been filed,
27 whichever is later: Provided, however, That this limitation
28 shall not prevent the institution of a suit for the collection
29 of any tax due or determined to be due in the following cases:

30 (1) Where no declaration or return was filed by any person
31 although a declaration or return was required to be filed by him

1 under provisions of this section, there shall be no limitation.

2 (2) Where an examination of the declaration or return filed
3 by any person or of other evidence relating to such declaration
4 or return in the possession of the city of the second class
5 reveals a fraudulent evasion of taxes, there shall be no
6 limitation.

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

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

15 * * *

16 Section 317. Payment of Tax to Other Political Subdivisions
17 or States as Credit or Deduction; Withholding Tax.--(a) Payment
18 of any tax to any political subdivision pursuant to an ordinance
19 or resolution passed or adopted prior to the effective date of
20 this act shall be credited to and allowed as a deduction from
21 the liability of taxpayers for any like tax respectively on
22 salaries, wages, commissions, other compensation or on net
23 profits of businesses, professions or other activities and for
24 any income tax imposed by any other political subdivision of
25 this Commonwealth under the authority of this [chapter] ACT. <--

26 (b) Payment of any tax on salaries, wages, commissions,
27 other compensation or on net profits of business, professions or
28 other activities to a political subdivision by residents thereof
29 pursuant to an ordinance or resolution passed or adopted under
30 the authority of this [chapter] ACT, including any change in <--

1 rates thereto made by any other State law or any other earned
2 income or net profits tax assessed under any other State law,
3 shall be credited to and allowed as a deduction from the
4 liability of such persons for any other like tax respectively on
5 salaries, wages, commissions, other compensation or on net
6 profits of businesses, professions or other activities imposed
7 by any other political subdivision of this Commonwealth under
8 the authority of this [chapter] ACT. <--

9 (c) Payment of any tax on income to any political
10 subdivision by residents thereof pursuant to an ordinance or
11 resolution passed or adopted under the authority of this
12 [chapter] ACT, including any change in rates thereto made by any <--
13 other State law or any other earned income or net profits tax
14 assessed under any other State law, shall, to the extent that
15 such income includes salaries, wages, commissions, other
16 compensation or net profits of businesses, professions or other
17 activities, but in such proportion as hereinafter set forth, be
18 credited to and allowed as a deduction from the liability of
19 such persons for any other tax on salaries, wages, commissions,
20 other compensation or on net profits of businesses, professions,
21 or other activities imposed by any other political subdivision
22 of this Commonwealth under the authority of this chapter.

23 (d) Payment of any tax on income to any state or to any
24 political subdivision thereof by residents thereof, pursuant to
25 any State or local law, [may, at the discretion of the <--
26 Pennsylvania political subdivision imposing such tax] SHALL, to <--
27 the extent that such income includes salaries, wages,
28 commissions, or other compensation or net profits of businesses,
29 professions or other activities but in such proportions as
30 hereinafter set forth, be credited to and allowed as a deduction

1 from the liability of such person for any other tax on salaries,
2 wages, commissions, other compensation or net profits of
3 businesses, professions or other activities imposed by any
4 political subdivision of this Commonwealth under the authority
5 of this [chapter,] ACT, including any change in rates thereto <--
6 made by any other State law or any other earned income or net
7 profits tax assessed under any other State law, if residents of
8 the political subdivision in Pennsylvania receive credits and
9 deductions of a similar kind to a like degree from the tax on
10 income imposed by the other state or political subdivision
11 thereof.

12 (e) Payment of any tax on income to any State other than
13 Pennsylvania or to any political subdivision located outside the
14 boundaries of this Commonwealth, by residents of a political
15 subdivision located in Pennsylvania shall, to the extent that
16 such income includes salaries, wages, commissions, or other
17 compensation or net profits of businesses, professions or other
18 activities but in such proportions as hereinafter set forth, be
19 credited to and allowed as a deduction from the liability of
20 such person for any other tax on salaries, wages, commissions,
21 other compensation or net profits of businesses, professions or
22 other activities imposed by any political subdivision of this
23 Commonwealth under the authority of this [chapter,] ACT, <--
24 including any change in rates thereto made by any other State
25 law or any other earned income or net profits tax assessed under
26 any other State law.

27 (f) Where a credit or a deduction is allowable in any of the
28 several cases hereinabove provided, it shall be allowed in
29 proportion to the concurrent periods for which taxes are imposed
30 by the other state or respective political subdivisions, but not

1 in excess of the amount previously paid for a concurrent period.

2 (g) No credit or deduction shall be allowed against any tax
3 on earned income imposed under authority of this [chapter] ACT <--
4 to the extent of the amount of credit or deduction taken for the
5 same period by the taxpayer against any income tax imposed by
6 the Commonwealth of Pennsylvania under section 314 of the act of
7 March 4, 1971 (P.L.6, No.2) known as the "Tax Reform Code of
8 1971," on account of taxes imposed on income by other states or
9 by their political subdivisions.

10 SECTION 3. SECTION 320 OF THE ACT IS AMENDED BY ADDING A <--
11 SUBSECTION TO READ:

12 SECTION 320. TAX LIMITATIONS.--* * *

13 (C) DOMICILE.--AN INDIVIDUAL WHO DOES NOT MEET THE DOMICILE
14 REQUIREMENTS FOR THE PURPOSE OF DETERMINING AND PAYING THE TAX
15 PROVIDED UNDER ARTICLE III OF THE ACT OF MARCH 4, 1971 (P.L.6,
16 NO.2), KNOWN AS THE TAX REFORM CODE OF 1971, SHALL BE DEEMED TO
17 NOT MEET THE DOMICILE REQUIREMENTS FOR LOCAL TAX PURPOSES.

18 Section 3 4. The definitions of "nonresident," "nonresident <--
19 tax" and "taxpayer" in section 501 of the act, added July 2,
20 2008 (P.L.197, No.32), are amended to read:

21 Section 501. Definitions.

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

25 * * *

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

30 "Nonresident tax." An income tax levied by a municipality on

1 a nonresident who has performed services within the political
2 subdivision levying the tax for at least 90 or more consecutive
3 days.

4 * * *

5 "Taxpayer." A person or business required under this act to
6 file a return of an income tax or to pay an income tax. The term
7 does not include a person or business with no taxable income;
8 such person or business ~~may~~ SHALL not be required to file a <--
9 return of income or to pay an income tax under this act.

10 * * *

11 Section ~~4~~ 5. Section 502(c) of the act is amended by adding <--
12 a paragraph to read:

13 Section 502. Declaration and payment of income taxes.

14 * * *

15 (c) Declaration and payment.--Except as provided in
16 subsection (a) (2), taxpayers shall declare and pay income taxes
17 as follows:

18 * * *

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

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

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

30 Section ~~5~~ 6. Section 505(a.1) (7) and (h) (1) and (2) of the <--

1 act, added July 2, 2008 (P.L.197, No.32), are amended to read:
2 Section 505. Tax collection committees.

3 * * *

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

6 * * *

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

16 * * *

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

18 (1) By the end of each calendar year, the tax collection
19 committee shall provide for at least one examination for each
20 calendar year of the books, accounts, financial statements,
21 compliance reports and records of the tax officer by a
22 certified public accountant or public accountant approved by
23 the tax collection committee. The examination shall be
24 conducted on a calendar year basis. An examination conducted
25 on any other basis shall not be accepted by the department
26 and failure to comply with this requirement shall be
27 considered noncompliance with the act resulting in the
28 imposition of penalties under section 510. The examination
29 shall include an audit of all records relating to the cash
30 basis receipt and disbursement of all public money by the tax

1 officer, a reconciliation of the monthly reports required by
2 section 509(b), an analysis of the bond amount under section
3 509(d) and an analysis of the collection fees charged to the
4 tax collection committee. In the case of a private agency,
5 the examination shall not include payroll and other
6 proprietary information. The examination shall be conducted
7 according to generally accepted governmental auditing
8 standards.

9 (2) The certified public accountant or public accountant
10 shall issue a report, on a calendar year basis and in a
11 format prescribed by the department, to the tax collection
12 committee, which shall include an auditor's opinion letter, a
13 financial statement for the year ending December 31, a
14 reconciliation of the monthly reports required by section
15 509(b) with the receipts and disbursements on a calendar year
16 basis, a summary of collection fees charged to the tax
17 collection committee on a calendar year basis, a report on
18 the tax officer's compliance with this act, a list of any
19 findings of noncompliance with this act and a copy of a
20 management letter if one is issued by the auditor. If there
21 are findings of noncompliance, a copy of the report shall be
22 filed with the Department of the Auditor General and the
23 department. A copy of the report shall be filed with all
24 political subdivisions within the tax collection district and
25 the department on or before September 1 of the succeeding
26 year. The department may make available on its Internet
27 website summary data from the reports filed under this
28 subsection. The department may reject any report which is not
29 in the proper format and does not meet the requirements of
30 this paragraph. Failure to correct the submission within 30

1 days of the rejection shall constitute noncompliance with the
2 act and result in the imposition of penalties under section
3 510.

4 * * *

5 Section 6 7. Section 508 of the act is amended by adding a <--
6 subsection to read:

7 Section 508. Powers and duties of the department.

8 * * *

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

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

14 (2) Enforce the fines and penalties promulgated under
15 section 510.

16 (3) Ensure that all ordinances, rules, regulations and
17 forms adopted in the collection of the earned income and net
18 profits taxes are consistent with those promulgated by the
19 department.

20 Section 7 8. Sections 509(b), 512(3) and (7) and 706 of the <--
21 act, amended or added July 2, 2008 (P.L.197, No.32), are amended
22 to read:

23 Section 509. Powers and duties of tax officer.

24 * * *

25 (b) Monthly reports.--

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

1 during the previous month.

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

8 (3) The report shall also include a calendar year-to-
9 date total column of all the items enumerated in paragraph
10 (2).

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

14 * * *

15 Section 512. Withholding and remittance.

16 For taxable years commencing on and after January 1, 2012, or
17 earlier taxable years if specified by a tax collection district,
18 income taxes shall be withheld, remitted and reported as
19 follows:

20 * * *

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

1 remit the following taxes:

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

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

11 (iii) Employees working in the City of Philadelphia
12 shall be exempt from the provisions of this section and <--
13 TO THE EXTENT THEY ARE SUBJECT TO the act of August 5, <--
14 1932 (Sp.Sess., P.L.45, No.45), referred to as the
15 Sterling Act.

16 * * *

17 (7) On or before February 28 of the succeeding year,
18 every employer shall file with the tax officer where income
19 taxes have been deducted and remitted pursuant to paragraph
20 (3):

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

28 (ii) An individual withholding statement, which may
29 be integrated with the Federal Wage and Tax Statement
30 (Form W-2), for each employee employed during all or any

1 part of the period beginning January 1 of the current
2 year and ending December 31 of the current year, setting
3 forth the address and Social Security number, the amount
4 of compensation paid to the employee during the period,
5 the amount of income tax deducted, [the amount of income
6 tax paid to the tax officer,] the numerical code
7 prescribed by the department representing the [tax
8 collection district where the payments required by
9 paragraphs (4) and (5) were remitted] political
10 subdivision of the employee's work location, and, in the
11 case where an employer has made an election under
12 paragraph (5) to file with a single tax collector, the
13 two-digit code representing the tax collection district
14 to whose tax collector the withheld taxes were remitted
15 in the format of xxxxxx-xx and any other information
16 required by the department. Every employer shall furnish
17 one copy of the individual withholding statement to the
18 employee for whom it is filed.

19 * * *

20 Section 706. Penalties.--(a) Except as otherwise provided
21 in the case of any tax levied and assessed upon income, any such
22 political subdivision shall have power to prescribe and enforce
23 reasonable penalties for the nonpayment, within the time fixed
24 for their payment, of taxes imposed under authority of this act
25 [and for the violations of the provisions of ordinances or
26 resolutions passed under authority of this act].

27 (b) If for any reason any tax levied and assessed upon
28 income by any such political subdivision is not paid when due,
29 interest and penalties as provided in section 509(i) shall be
30 added and collected. When suit is brought for the recovery of

1 any such tax, the person liable therefor shall, in addition, be
2 liable for the costs of collection and the interest and
3 penalties herein imposed.

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

7 Section 8 9. Section 707 of the act is amended by adding a <--
8 subsection to read:

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

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

14 Section 9 10. This act shall take effect in 60 days. <--