

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, MACKENZIE AND MICCARELLI, JANUARY 28, 2015

SENATOR EICHELBERGER, FINANCE, IN SENATE, AS AMENDED, SEPTEMBER
27, 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 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," in
22 local taxes, further providing for definitions, for payroll
23 tax, for payment of tax to other political subdivisions or
24 states as credit or deduction and withholding tax and for tax
25 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

1 collection of delinquent per capita, occupation, occupational
2 privilege, emergency and municipal services, local services
3 and income taxes.

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

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

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

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

16 * * *

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

19 * * *

20 Section 2. Sections 303(g) and 317 of the act, amended July
21 2, 2008 (P.L.197, No.32), are amended to read:

22 Section 303. Payroll Tax.--* * *

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

31 (1) Where no declaration or return was filed by any person

1 although a declaration or return was required to be filed by him
2 under provisions of this section, there shall be no limitation.

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

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

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

16 * * *

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

27 (b) Payment of any tax on salaries, wages, commissions,
28 other compensation or on net profits of business, professions or
29 other activities to a political subdivision by residents thereof
30 pursuant to an ordinance or resolution passed or adopted under

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

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

24 (d) Payment of any tax on income to any state or to any
25 political subdivision thereof by residents thereof, pursuant to
26 any State or local law, [may, at the discretion of the
27 Pennsylvania political subdivision imposing such tax] shall, to
28 the extent that such income includes salaries, wages,
29 commissions, or other compensation or net profits of businesses,
30 professions or other activities but in such proportions as

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

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

28 (f) Where a credit or a deduction is allowable in any of the
29 several cases hereinabove provided, it shall be allowed in
30 proportion to the concurrent periods for which taxes are imposed

1 by the other state or respective political subdivisions, but not
2 in excess of the amount previously paid for a concurrent period.

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

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

13 Section 320. Tax Limitations.--* * *

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

19 Section 4. The definitions of "nonresident," "nonresident
20 tax" and "taxpayer" in section 501 of the act, added July 2,
21 2008 (P.L.197, No.32), are amended AND THE DEFINITION OF "EARNED <--
22 INCOME" IS AMENDED BY ADDING A PARAGRAPH to read:

23 Section 501. Definitions.

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

27 * * *

28 "EARNED INCOME." THE COMPENSATION AS REQUIRED TO BE REPORTED <--
29 TO OR AS DETERMINED BY THE DEPARTMENT OF REVENUE UNDER SECTION
30 303 OF THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), KNOWN AS THE TAX

1 REFORM CODE OF 1971, AND RULES AND REGULATIONS PROMULGATED UNDER
2 THAT SECTION SUBJECT TO THE FOLLOWING:

3 * * *

4 (3) FOR PURPOSES OF COLLECTION OF EARNED INCOME AND NET
5 PROFITS TAXES UNDER THIS CHAPTER, AND FOR CREDITING PURPOSES
6 UNDER SECTION 317, THE TERM SHALL INCLUDE ALL TAXES ON EARNED
7 INCOME OR NET PROFITS WHETHER AUTHORIZED BY THIS ACT OR ANY
8 OTHER LAW OF THIS COMMONWEALTH, UNLESS THE LAW EXPRESSLY
9 PROVIDES OTHERWISE.

10 * * *

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

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

19 * * *

20 "Taxpayer." A person or business required under this act to
21 file a return of an income tax or to pay an income tax. The term
22 does not include a person or business with no taxable income;
23 such person or business shall not be required to file a return
24 of income or to pay an income tax under this act.

25 * * *

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

28 Section 502. Declaration and payment of income taxes.

29 * * *

30 (c) Declaration and payment.--Except as provided in

1 subsection (a) (2), taxpayers shall declare and pay income taxes
2 as follows:

3 * * *

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

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

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

15 Section 6. Section 505(a.1) (7) and (h) (1) and (2) of the
16 act, added July 2, 2008 (P.L.197, No.32), are amended AND THE <--
17 SECTION IS AMENDED BY ADDING A SUBSECTION to read:

18 Section 505. Tax collection committees.

19 * * *

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

22 * * *

23 (7) To adopt, amend and repeal policies and procedures
24 consistent with the regulations under section 508 for the
25 administration of income taxes within the tax collection
26 district. The procedures shall supersede any contrary
27 resolutions or ordinances adopted by a political subdivision
28 and no additional forms, policies or procedures may be
29 adopted other than those promulgated by the department. This
30 authority shall not be construed to permit a tax collection

1 committee to change the rate or subject of any tax.

2 * * *

3 (A.3) FORM.--BEGINNING JANUARY 1, 2020, IN ADMINISTERING <--
4 THIS ACT, NO POLITICAL SUBDIVISION, TAX COLLECTION COMMITTEE OR
5 TAX OFFICER MAY USE ANY FORM OTHER THAN THAT WHICH IS
6 PROMULGATED BY THE DEPARTMENT.

7 * * *

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

9 (1) By the end of each calendar year, the tax collection
10 committee shall provide for at least one examination for each
11 calendar year of the books, accounts, financial statements,
12 compliance reports and records of the tax officer by a
13 certified public accountant or public accountant approved by
14 the tax collection committee. The examination shall be
15 conducted on a calendar year basis. An examination conducted
16 on any other basis shall not be accepted by the department
17 and failure to comply with this requirement shall be
18 considered noncompliance with the act resulting in the
19 imposition of penalties under section 510. The examination
20 shall include an audit of all records relating to the cash
21 basis receipt and disbursement of all public money by the tax
22 officer, a reconciliation of the monthly reports required by
23 section 509(b), an analysis of the bond amount under section
24 509(d) and an analysis of the collection fees charged to the
25 tax collection committee. In the case of a private agency,
26 the examination shall not include payroll and other
27 proprietary information. The examination shall be conducted
28 according to generally accepted governmental auditing
29 standards.

30 (2) The certified public accountant or public accountant

1 shall issue a report, on a calendar year basis and in a
2 format prescribed by the department, to the tax collection
3 committee, which shall include an auditor's opinion letter, a
4 financial statement for the year ending December 31, a
5 reconciliation of the monthly reports required by section
6 509(b) with the receipts and disbursements on a calendar year
7 basis, a summary of collection fees charged to the tax
8 collection committee on a calendar year basis, a report on
9 the tax officer's compliance with this act, a list of any
10 findings of noncompliance with this act and a copy of a
11 management letter if one is issued by the auditor. If there
12 are findings of noncompliance, a copy of the report shall be
13 filed with the Department of the Auditor General and the
14 department. A copy of the report shall be filed with all
15 political subdivisions within the tax collection district and
16 the department on or before September 1 of the succeeding
17 year. The department may make available on its Internet
18 website summary data from the reports filed under this
19 subsection. The department may reject any report which is not
20 in the proper format and does not meet the requirements of
21 this paragraph. Failure to correct the submission within 30
22 days of the rejection shall constitute noncompliance with the
23 act and result in the imposition of penalties under section
24 510.

25 * * *

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

28 Section 508. Powers and duties of the department.

29 * * *

30 (g) Oversight.--The department shall oversee all tax

1 collection committees, tax collectors and tax collection
2 offices. In exercising this duty the department shall:

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

5 ~~(2) Enforce the fines and penalties promulgated under~~ <--
6 ~~section 510.~~

7 ~~(3) (2) Ensure that all ordinances, rules, regulations~~ <--
8 ~~and forms adopted in the collection of the earned income and~~
9 ~~net profits taxes are consistent with those promulgated by~~ <--
10 ~~the department.~~

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

14 Section 509. Powers and duties of tax officer.

15 * * *

16 (b) Monthly reports.--

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

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

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

1 (2).

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

5 * * *

6 Section 512. Withholding and remittance.

7 For taxable years commencing on and after January 1, 2012, or
8 earlier taxable years if specified by a tax collection district,
9 income taxes shall be withheld, remitted and reported as
10 follows:

11 * * *

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

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

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

1 the job location.

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

7 * * *

8 (7) On or before February 28 of the succeeding year,
9 every employer shall file with the tax officer where income
10 taxes have been deducted and remitted pursuant to paragraph
11 (3):

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

19 (ii) An individual withholding statement, which may
20 be integrated with the Federal Wage and Tax Statement
21 (Form W-2), for each employee employed during all or any
22 part of the period beginning January 1 of the current
23 year and ending December 31 of the current year, setting
24 forth the address and Social Security number, the amount
25 of compensation paid to the employee during the period,
26 the amount of income tax deducted, [the amount of income
27 tax paid to the tax officer,] the numerical code
28 prescribed by the department representing the [tax
29 collection district where the payments required by
30 paragraphs (4) and (5) were remitted] political

1 subdivision of the employee's work location, and, in the
2 case where an employer has made an election under
3 paragraph (5) to file with a single tax collector <--
4 OFFICER, the two-digit code representing the tax <--
5 collection district to whose tax collector OFFICER the <--
6 withheld taxes were remitted in the format of xxxxxx-xx
7 and any other information required by the department.
8 Every employer shall furnish one copy of the individual
9 withholding statement to the employee for whom it is
10 filed.

11 * * *

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

19 (b) If for any reason any tax levied and assessed upon
20 income by any such political subdivision is not paid when due,
21 interest and penalties as provided in section 509(i) shall be
22 added and collected. When suit is brought for the recovery of
23 any such tax, the person liable therefor shall, in addition, be
24 liable for the costs of collection and the interest and
25 penalties herein imposed.

26 (c) In addition to any other power provided by this act, a
27 tax collector OR OFFICER may abate any penalty imposed under any <--
28 provision of this act.

29 Section 9. Section 707 of the act is amended by adding a
30 subsection to read:

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

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

6 Section 10. This act shall take effect in 60 days.