

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 866 Session of 2017

INTRODUCED BY DUNBAR, O'NEILL, ENGLISH, GROVE, A. HARRIS, HELM,
LAWRENCE, MILLARD, ORTITAY, PEIFER, PICKETT, REESE AND RYAN,
MARCH 16, 2017

REFERRED TO COMMITTEE ON FINANCE, MARCH 16, 2017

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, for
25 limitation on assessment and for tax limitations; in
26 consolidated collection of local income taxes, further
27 providing for definitions, for declaration and payment of
28 income taxes, for tax collection committees, for powers and
29 duties of Department of Community and Economic Development,
30 for powers and duties of tax officer and for withholding and
31 remittance; and, in collection of delinquent taxes, further
32 providing for penalties and for costs of collection of
33 delinquent per capita, occupation, occupational privilege,

1 emergency and municipal services, local services and income
2 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), 317 and 319 of the act are
20 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 shall be credited to and

1 allowed as a deduction from the liability of such persons for
2 any other like tax respectively on salaries, wages, commissions,
3 other compensation or on net profits of businesses, professions
4 or other activities imposed by any other political subdivision
5 of this Commonwealth under the authority of this [chapter] act.

6 (c) Payment of any tax on income to any political
7 subdivision by residents thereof pursuant to an ordinance or
8 resolution passed or adopted under the authority of this
9 [chapter] act shall, to the extent that such income includes
10 salaries, wages, commissions, other compensation or net profits
11 of businesses, professions or other activities, but in such
12 proportion as hereinafter set forth, be credited to and allowed
13 as a deduction from the liability of such persons for any other
14 tax on salaries, wages, commissions, other compensation or on
15 net profits of businesses, professions, or other activities
16 imposed by any other political subdivision of this Commonwealth
17 under the authority of this chapter.

18 (d) Payment of any tax on income to any state or to any
19 political subdivision thereof by residents thereof, pursuant to
20 any State or local law, [may, at the discretion of the
21 Pennsylvania political subdivision imposing such tax] shall, to
22 the extent that such income includes salaries, wages,
23 commissions, or other compensation or net profits of businesses,
24 professions or other activities but in such proportions as
25 hereinafter set forth, be credited to and allowed as a deduction
26 from the liability of such person for any other tax on salaries,
27 wages, commissions, other compensation or net profits of
28 businesses, professions or other activities imposed by any
29 political subdivision of this Commonwealth under the authority
30 of this [chapter,] act if residents of the political subdivision

1 in Pennsylvania receive credits and deductions of a similar kind
2 to a like degree from the tax on income imposed by the other
3 state or political subdivision thereof.

4 (e) Payment of any tax on income to any State other than
5 Pennsylvania or to any political subdivision located outside the
6 boundaries of this Commonwealth, by residents of a political
7 subdivision located in Pennsylvania shall, to the extent that
8 such income includes salaries, wages, commissions, or other
9 compensation or net profits of businesses, professions or other
10 activities but in such proportions as hereinafter set forth, be
11 credited to and allowed as a deduction from the liability of
12 such person for any other tax on salaries, wages, commissions,
13 other compensation or net profits of businesses, professions or
14 other activities imposed by any political subdivision of this
15 Commonwealth under the authority of this [chapter.] act.

16 (f) Where a credit or a deduction is allowable in any of the
17 several cases hereinabove provided, it shall be allowed in
18 proportion to the concurrent periods for which taxes are imposed
19 by the other state or respective political subdivisions, but not
20 in excess of the amount previously paid for a concurrent period.

21 (g) No credit or deduction shall be allowed against any tax
22 on earned income imposed under authority of this [chapter] act
23 to the extent of the amount of credit or deduction taken for the
24 same period by the taxpayer against any income tax imposed by
25 the Commonwealth of Pennsylvania under section 314 of the act of
26 March 4, 1971 (P.L.6, No.2) known as the "Tax Reform Code of
27 1971," on account of taxes imposed on income by other states or
28 by their political subdivisions.

29 Section 319. Limitation on Assessment.--No assessment may be
30 made of any earned income tax imposed under this [chapter] act

1 more than five years after the date on which such tax should
2 have been [paid] filed, including extended due dates, except
3 where a fraudulent return [or no return] has been filed.

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

6 Section 320. Tax Limitations.--* * *

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

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

16 Section 501. Definitions.

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

20 * * *

21 "Earned income." The compensation as required to be reported
22 to or as determined by the Department of Revenue under section
23 303 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax
24 Reform Code of 1971, and rules and regulations promulgated under
25 that section subject to the following:

26 * * *

27 (3) For purposes of collection of earned income and net
28 profits taxes under this chapter and for crediting purposes
29 under section 317, the term shall include all taxes on earned
30 income or net profits whether authorized by this act or any

1 other law of this Commonwealth unless the law expressly
2 provides otherwise.

3 * * *

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

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

12 * * *

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

23 * * *

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

26 Section 502. Declaration and payment of income taxes.

27 * * *

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

1 * * *

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

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

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

13 * * *

14 Section 6. Section 505(a.1)(7) and (h)(1) and (2) of the act
15 are amended and the section is amended by adding a subsection to
16 read:

17 Section 505. Tax collection committees.

18 * * *

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

21 * * *

22 (7) To adopt, amend and repeal policies and procedures
23 consistent with the regulations under section 508 for the
24 administration of income taxes within the tax collection
25 district. The procedures shall supersede any contrary
26 resolutions or ordinances adopted by a political subdivision
27 and no additional forms, policies or procedures may be
28 adopted other than those promulgated by the department unless
29 permitted by the department under subsection (a.3). 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 unless, for religious reasons, the
7 department expressly grants an exception to this requirement.

8 * * *

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

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

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

26 * * *

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

29 Section 508. Powers and duties of the department.

30 * * *

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

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

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

9 Section 8. Section 509(b) of the act is amended to read:

10 Section 509. Powers and duties of tax officer.

11 * * *

12 (b) Monthly reports.--

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

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

25 (3) The report shall also include a calendar year-to-
26 date total column of all the items enumerated in paragraph
27 (2).

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

1 * * *

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

4 Section 512. Withholding and remittance.

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

9 * * *

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

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

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

30 (iii) Employees working in the City of Philadelphia

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

5 * * *

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

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

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

1 paragraph (5) to file with a single tax officer, the two-
2 digit code representing the tax collection district to
3 whose tax officer the withheld taxes were remitted in the
4 format of xxxxxx-xx and any other information required by
5 the department. Every employer shall furnish one copy of
6 the individual withholding statement to the employee for
7 whom it is filed.

8 * * *

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

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

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

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

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

29 Section 707. Costs of Collection of Delinquent Per Capita,
30 Occupation, Occupational Privilege, Emergency and Municipal

1 Services, Local Services and Income Taxes.--* * *

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

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