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TAXATION MANUAL

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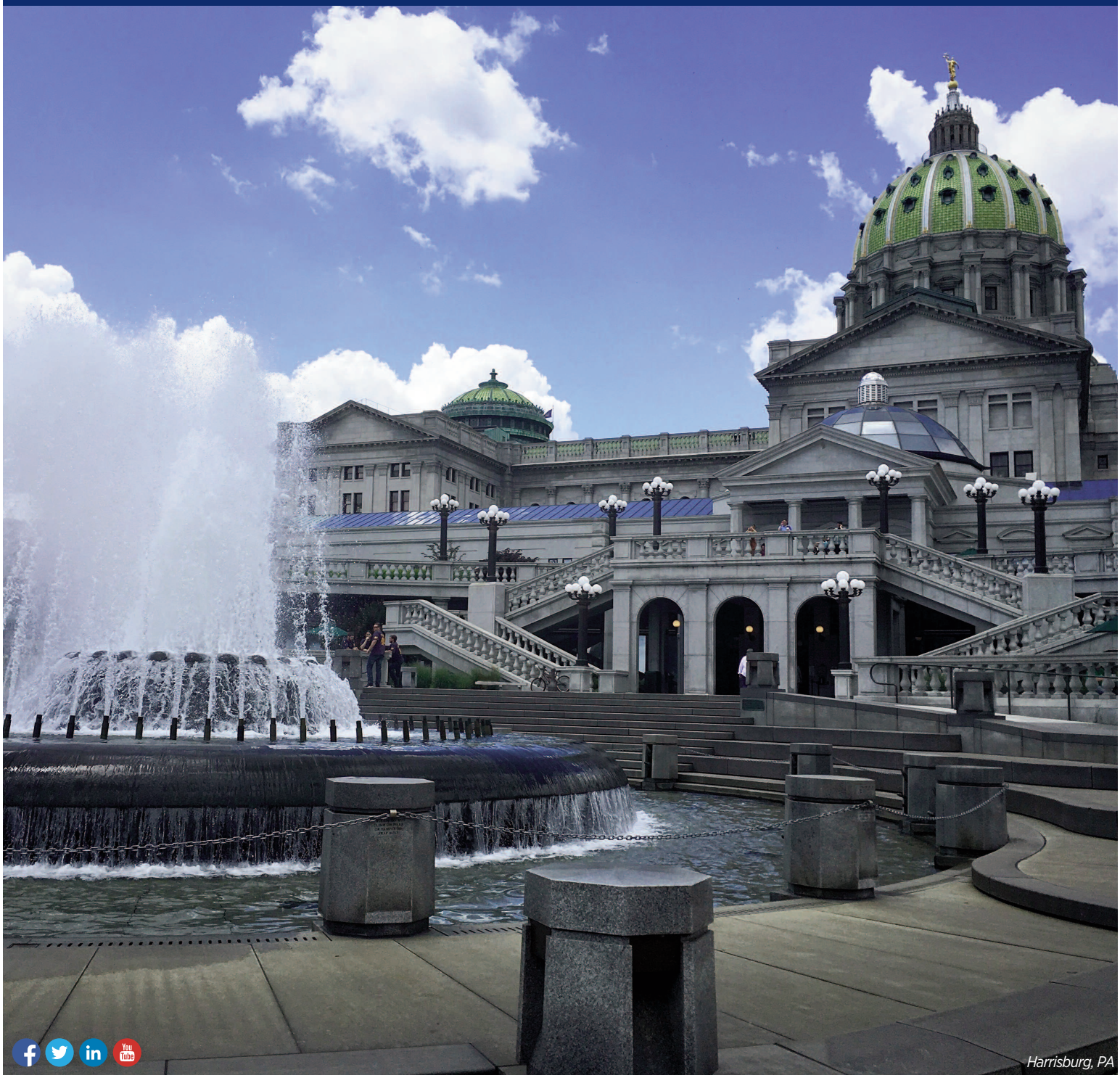

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Acknowledgments

The purpose of this *Taxation Manual* is to provide local government officials with a general guide to municipal tax revenue sources. In considering a particular tax, governing bodies are urged to consult their own solicitors for guidance. Material in this publication is offered only to inform its readers and does not constitute any statement of legal opinion nor constitute any exercise of regulatory authority by the Department of Community and Economic Development.

The *Taxation Manual* includes a discussion of taxes levied by counties, municipalities, and school districts. Because all Pennsylvania taxpayers are concurrently under the jurisdiction of a county, municipal and school taxing authority, a sound municipal tax policy must take into consideration taxes being levied by the school district and the county as well as those levied by the municipality itself.

First issued in 1979, the *Taxation Manual* is revised and updated on a periodic basis. It is intended to provide necessary background information to local elected officials who must make decisions on tax policy for their citizens.

Addendum

Acts 124 and 125 of 2002

Acts 124 and 125 of 2002 amend the General County Assessment Law and Fourth through Eighth Class Assessment Law to make a number of changes to the amusements tax and the assessment of amusement rides for property tax purposes.

Acts 124 and 125 exempt amusement rides from property tax assessments. This change applies to property valuations for taxes levied for fiscal years beginning on or after January 1, 2002. In addition, Acts 124 and 125 prohibit municipalities and school districts from levying an admissions tax on ski facilities after December 1, 2002.

Acts 124 and 125 also limit the admissions tax on automobile racing facilities to 40 percent of the cost of admission. Additionally, Acts 124 and 125 freeze the rate of the admissions tax on automobile racing facilities with a seating capacity of over 25,000 and a continuous racetrack of one mile or more. The tax rate on admissions to these racing facilities is frozen at the rate levied on January 1, 2002. These changes take effect October 4, 2002.

Disclaimer: The preceding summary is for informational purposes only, does not constitute legal advice and may not be legally relied upon by any person or organization. Local governmental organizations should consult their solicitors for legal advice concerning the effect of Act 124 and 125.

Act 166 of 2002 and Act 24 of 2004

Act 166 of 2002 and Act 24 of 2004 changed the definitions of “earned income” and “net profits” for purposes of the earned income tax imposed under the Local Tax Enabling Act, Act 511 of 1965, 53 P.S. §6901 et seq., to adopt, with certain exceptions, the definitions of “compensation” and “net profits” for state personal income tax purposes. The changes to the definitions of earned income and net profits are not optional. They apply for tax years beginning on and after January 1, 2003.

The definitions of “earned income” and “net profits” in the Local Tax Enabling Act, now reference the definitions of “compensation” and “net profits” that are used for the personal income tax in state law and regulations. (See below.) Local taxpayers are permitted to deduct from compensation the same employee business expenses that are deductible from compensation for state income tax purposes. Interest and dividends, which are taxable under the state personal income tax, are still not taxable at the local level.

> **Definitions of Earned Income and Net Profits in the Local Tax Enabling Act**
> *From Section 13 of Act 511 of 1965 (53 P.S. §6913) as amended through April 6, 2004*
>
> "*Earned income.*" Compensation as determined under section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," and regulations in 61 Pa. Code Pt. I Subpt. B Art. V (relating to personal income tax), not including, however, wages or compensation paid to individuals on active military service. Employee business expenses are allowable deductions as determined under Article III of the "Tax Reform Code of 1971." The amount of any housing allowance provided to a member of the clergy shall not be taxable as earned income.

"*Net profits.*" The net income from the operation of a business, profession, or other activity, except corporations, determined under section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," and regulations in 61 Pa. Code Pt. I Subpt. B Art. V (relating to personal income tax). The term does not include income which is not paid for services provided and which is in the nature of earnings from an investment. For taxpayers engaged in the business, profession or activity of farming, the term shall not include:

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

(2) Any gain on the sale of farm machinery;

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

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

Taxable compensation at the local level is almost identical to taxable compensation at the state level, except that housing allowances provided to a member of clergy and active- duty military pay are not taxable at the local level.

While the definition of “net profits” in the Local Tax Enabling Act includes net income from the operation of a business, profession or other activity, it does not include income from corporations. In addition, net profits do not include income that is “not paid for services provided” or that is in the nature of earnings from an investment. Most distributions passed through to a taxpayer by an S Corporation are considered investment income and not subject to the earned income tax, unless the distributions are based on services provided by the taxpayer. For taxpayers engaged in farming net profits do not include interest earned on the monetary accounts of the farming business and gains from the sale of farm machinery, most livestock and the capital assets of the farm.

Act 6 of 2016

Under the terms of the Local Tax Enabling Act signed into law under Act 32 of 2008, all active duty military pay earned within the Commonwealth became subject to local income taxes beginning in 2012. Act 6 explicitly amends the definition of "earned income" in the Local Tax Enabling Act to exempt wages paid to individuals on active duty military service, regardless of whether it is earned inside or outside the Commonwealth. The act applies to income taxes levied and collected after December 31, 2015.

Act 150 of 2016

Act 150 amends Section 502(c) of the act to do the following:

- Changes the due date for taxpayers earning net profits to file quarterly estimated payments and declarations from April 15, June 15, September 15, and December 15 of each year, to the following: April 15, July 15, October 15, January 15 of the succeeding year
- If the filing or payment date falls on a weekend or legal holiday, the taxpayer is permitted to make the payment or filing on the next business day.

For an individual having an estimated gross income from farming which is at least two-thirds of his total estimated gross income, a declaration of estimated tax may be filed at any time on or before January 15 of the succeeding year. If the farmer files a final return and pays the entire tax by March 1, however, the return may be considered as his declaration due on or before January 15. This change is consistent with estimated income tax requirements contained in Section 325 of the Tax Reform Code of 1971 with regard to state personal income tax. The local income tax amendments relating to farming as proposed by SB 356 parallel existing law as it applies to state income tax.

A political subdivision, tax collection committee, or tax officer may not do any of the following:

- Prohibit a taxpayer from filing a return in person or by first-class mail.
- Prohibit a taxpayer from filing any local income tax return form, estimated tax return form, or other related forms posted on DCED's website.
- Impose a penalty for failing to file a timely quarterly estimated tax return where no tax was due as shown in the taxpayer's annual income tax return.
- Impose a penalty on a taxpayer unless it has issued a letter that notifies the taxpayer that he/she is required to take corrective action within 30 days, and that failure to do so will result in imposition of a penalty.

Section 512 of the act is amended to do the following:

- Changes the employer due date of filing and paying local withholding tax from 30 days following the end of each quarter to the last day of the month following the end of each calendar quarter.
- If the due date falls on a weekend or legal holiday, the filing or payment may be performed on the next business day.

Act 172 of 2016

Act 172 amends Title 35 (Health and Safety) adding a chapter authorizing a governing body of a municipality to offer income and/or property tax credits for municipal volunteers of fire companies and nonprofit emergency medical services agencies. It requires the chief of a volunteer fire company or the supervisor or chief of a nonprofit emergency medical services agency or their designees to establish and maintain a service log that documents the activities of each volunteer that qualifies for credit toward active service under the volunteer service credit program and the calculation of the total credits earned for each volunteer in the volunteer fire company or nonprofit emergency medical services agency. It provides the tax credit shall not exceed 20 percent of the tax liability of the active volunteer and shall remain in effect until the governing body repeals the tax credit. An active volunteer who was injured during a response to an emergency call and can no longer serve as an active volunteer because of the injury and who would otherwise be eligible for the tax credit shall be eligible for the tax credit for the succeeding five tax years.

Disclaimer: The preceding summary is for informational purposes only, does not constitute legal advice and may not be legally relied upon by any person or organization. Local governmental organizations should consult their solicitors for legal advice concerning the effect of the amendments made to the Local Tax Enabling Act by Act 166 of 2002 and Act 24 of 2004.

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I. Introduction

All taxpayers understand that taxation is how they pay the expenses of carrying on the public business and the fundamental problem of taxation is to make it yield sufficient money to pay governmental expenses. Ideally, this will be done in the most efficient manner with the least disruption to the economic decision-making of households and businesses. Taxpayers would also agree that tax systems should be simple enough so they, as well as the tax collectors, are able to understand tax laws. Quite often these goals are not met.

From the nature of inquiries to the Department of Community and Economic Development, certain local taxes apparently cause much confusion and uncertainty. It is for this reason the Department is offering an easy-to-comprehend explanation of the complicated tax systems presently existing in counties, cities, boroughs, townships and school districts in Pennsylvania.

Origin of the Tax System

A quick look at the origins of the local tax system in Pennsylvania will help explain the wide variety of taxes currently being levied in the commonwealth.

The system of property taxes coupled with a tax on occupations, still existing, in part, for the purpose of financing local governments in Pennsylvania, has its origins in the so-called Property and Income Tax that existed in England in the seventeenth and eighteenth centuries. The English levy included taxes on real property based on its "annual value" or "what it is worth to be let," plus taxes on the inventories of merchants and on "offices." The tax on "offices" or occupations was based on a value determined by the annual income expected to be derived from the occupation.

The tax was thus general in nature, including in its scope all sources of income of importance at that time. As manufacturing developed, it became the major source of income not taxed and was soon subjected to taxation. Similarly, salaried income grew in importance. Because it was difficult to tax business income and salaries under the property taxes, the income tax, which lent itself more readily to taxing all sources of income, was adopted.

The difference between income taxes and general property taxes is important. In the former, the base of the tax is the annual yield of income of property, business or employment; in the latter, in this country at least, the tax is the value of the source of that income, its capital value. "The theory of a property tax is simple," wrote Professor Henry C. Adams. "Property is regarded as the source of income, and such value as it possesses rests upon this fact."[1] This may appear to be confusing in the case of owner-occupied residential property, because one does not ordinarily think of homeowners as deriving an income from the property they occupy. But one can, on reflection, easily consider the homeowners as paying rent to themselves, as being their own tenants, and the value of the house as bearing some relation to the enjoyment they expect from occupying it. Thus the rental value or occupancy value can be considered income.

The general nature of taxes historically is illustrated by the tax systems of the colonies very early in our history. In 1646, the Massachusetts Bay Colony imposed taxes on personal and real property and on the "returns and gains" of tradesmen in proportion to the "produce of their estates."[2] Similarly, in Pennsylvania, from earliest times, there have been real and personal property taxes, as well as taxes on offices and occupations. These taxes are now employed in Pennsylvania exclusively by local governments, including counties, municipalities and school districts.

The general property tax soon developed in most states into separate or classified taxes on real estate, tangible personal property, intangible personal property and income, with each subject to different rates. Tangible personal property, including business inventories is not taxed in Pennsylvania. Intangible personal property ceased to be taxed in Pennsylvania in 1998. Occupations and real estate are the two remaining types of property subject to tax.

Real Estate Taxes

The real estate tax is the only tax authorized by law to be levied by all classes of local government in the state. Every property owner pays real estate taxes to three independent classes: the county, the municipality and the school district. It is the leading local revenue producer in Pennsylvania, accounting for 68 percent of the taxes collected in 2013 for a total of $16.9 billion. Real estate taxes produced 82 percent of school taxes, 92 percent of county taxes and 32 percent of municipal taxes.

Nonreal Estate Taxes

Far reaching tax enabling legislation applicable to almost all political subdivisions in Pennsylvania has given the municipalities and school districts in the commonwealth a broad range of nonreal estate tax sources, greater local tax authority than is granted in most other states. The taxes commonly in use are listed below:

- Earned income or wage
- Per capita
- Occupation
- Local services tax (formerly known as occupational privilege tax)
- Real estate transfer
- Amusement/admissions
- Business gross receipts

The sales tax is potentially an important revenue sources for local governments, but so far it has only been authorized for two jurisdictions, Philadelphia and Allegheny Counties.

Statutory Authorizations

There are three types of statutory sources for local taxing authority. The first is the respective codes of law applicable to counties, municipalities and school districts. These codes contain the basic general purpose and many special purpose real estate taxes, as well as some minor nonreal estate taxes. Composing the second group of tax authorizations are the general tax enabling acts. The Sterling Act, enacted in 1932, is applicable to the city of Philadelphia and the Philadelphia school district. The Local Tax Enabling Act is applicable to other classes of political subdivisions in the commonwealth, except counties and the Pittsburgh school district. It was first enacted in 1947 and reenacted in 1965.

The final group is composed of a series of single-purpose statutes, either authorizing a particular tax, such as the Library Code, or authorizing an increased rate of an existing tax, such as the Municipalities Financial Recovery Act.

REFERENCES

1. *The Science of Public Finance*. New York: Henry Holt & Co., 1898, p.361.
2. Sidney Ratner. *American Taxation*. New York: W.W. Norton & Co., 1942, p. 52.

II. Real Estate Taxes

Historically, the real estate tax has been a chief source of financial support for local governments in the United States and remains the most important source today. In 2013, Pennsylvania real estate taxes accounted for $16.9 billion, or 38 percent of total local government revenues and 68 percent of all local government tax revenues. For all practical purposes, the property tax is an exclusive source of revenue of local governments.

Pennsylvania, real estate taxes in 2013 accounted for 82 percent of the total tax revenues of school districts, 32 percent of the total tax revenues of municipalities, and 92 percent of the total tax revenues of counties.

The total market value of taxable real estate in Pennsylvania in 2013 was $781 billion, its assessed value over $499 billion, indicating a statewide ratio of assessed value to market value of 63.9 percent. The ratios vary widely among the various assessment jurisdictions; the lowest 2013 common level ratio was in Bucks County at 10.8 percent and the highest in Adams County at 122 percent.

Total Revenues, Total Taxes and Real Estate Taxes Pennsylvania Local Governments, 2013

(amounts in millions of dollars)

	Total Revenues	Total Taxes	Real Estate Taxes	Real Estate Taxes as % of Revenues	Real Estate Taxes as % of Taxes
School Districts, Total	26,004	14,311	11,694	44.9%	81.7%
Counties Total	8,296	3,053	2,803	33.8%	91.8%
Municipalities Total	17,953	7,476	2,416	13.5%	32.3%
Philadelphia	8,056	3,304	540	6.7%	16.4%
Pittsburgh	652	397	128	19.4%	32.2%
2A & 3rd Class Cities	1,876	556	304	16.2%	54.8%
Boroughs	2,475	860	472	19.1%	54.9%
1st Class Townships	1,584	769	406	25.6%	52.8%
2nd Class Townships	3,307	1,588	564	17.1%	35.5%
Total, All Local Taxing Bodies	**52,255**	**24,840**	**16,915**	**38.1%**	**68.1%**

Note: Approximately 60 municipalities did not report revenues in 2013.
For purposes of this chart, Philadelphia is considered a municipality.

Arguments For and Against the Real Estate Tax

At various times, the real estate tax has been severely criticized on these grounds:

1. The tax is not directly related to taxpayer's ability to pay.
2. It is costly and difficult to administer.
3. Assessments often lack uniformity among different classes of property and among individual properties in the general class.
4. Assessments often lag behind evident changes in value.
5. Real estate tax revenues do not keep pace with the demands made for local government expenditures.
6. Tax rates differ among neighboring jurisdictions, affecting the location of housing and economic activities.
7. The tax affects the incentives to invest in housing and other forms of construction or improvement to property.
8. Assessments are often motivated by political considerations.

Defenders of the real estate tax have argued:

1. With existing real estate taxes, prospective purchasers buy free of the tax because taxes on land are capitalized and result in reduced prices of land. Recently, it has been argued that this is also true of taxes on urban buildings. If true, the tax is economically neutral, and the questions relating to equity and ability to pay are irrelevant; no one currently bears the burden of the tax. Those who owned property when the tax was imposed bore the entire burden in reduced land values.
2. Modern techniques have vastly improved the efficiency and economy of the administration of the tax.
3. Because the tax is economically neutral, there is little or no intergovernmental competition, and the location of housing and other real estate investment is not affected.
4. No alternative tax source for local governments has been shown to be superior.

III. Assessment

Statutory Provisions

Historically, assessments in the Commonwealth of Pennsylvania were governed by the General County Assessment Law, with each class of county subject to a special assessment law, which took precedence when in conflict with the provisions of the General Law. This is still the case for counties of the first and second class. However, the Consolidated County Assessment Law, enacted by the Pennsylvania Legislature in 2010, combined the assessment laws governing counties of the second class A through eighth class and repealed the General County Assessment Law as to all counties except counties of the first and second class.

Additionally, Section 37522 of Third Class City Code permits cities to perform their own assessments following the procedures and methodologies set forth in the assessment law or laws applicable in the county in which the city is located or to utilize the county assessment office of the county in which the city is located for valuation and assessment of property; almost all cities have elected to use the county assessment figures.

The various assessment laws described above are found in Purdon's Pennsylvania Statutes and the Pennsylvania Consolidated Statutes. The citations are listed below:

General County Assessment Law	72 P.S. §§ 5020-101 et seq.
First Class County Assessment Law	72 P.S. §§ 5341.1 et seq.
Second Class County Assessment Law	72 P.S. §§ 5452.1 et seq.
Consolidated County Assessment Law (Second Class A to Eighth Class Counties)	53 Pa.C.S. §§ 8801 et seq.
Third Class City Code – Article XXV; Taxation	11 Pa.C.S. § 12522

Assessment Organization

In each county, a board is established to supervise, equalize and revise assessments, and to hear appeals. In Philadelphia, the Board of Revision of Taxes consists of seven members appointed for terms of six years by a majority of judges of the court of common pleas. They appoint all real estate assessing officers. Under the city charter, such appointments must be made from a civil service register. The law requires land and improvements to be assessed separately, although in fact a uniform rate is levied against both. The city council has full powers to legislate with respect to compensation and organization of the Board of Revision of Taxes.[1]

The supervisory body in counties of the third class and counties of the second class A is the Board of Assessment Appeals, composed of three members appointed by the county commissioners to serve for terms of four years each. Salaries are fixed by the salary board of the county. The board may appoint a solicitor to advise it on all legal matters pertaining to its duties. Up to four temporary auxiliary appeal boards may be appointed to hear appeals during a countywide reassessment.

In counties of the fourth to eighth classes, a Board of Assessment Appeals may be established to supervise assessments. This Board is composed of three members appointed by the county commissioners to serve for terms of four years each. In counties of the fourth to eighth classes that have not created a separate Board of Assessment, the supervisory body is the Board of Assessment Revision. The Board of Assessment Revision is composed of the county commissioners. The county commissioner holding the oldest certificate of election is designated as the chairman. Salaries of the board and all personnel are fixed by the county's salary board. The board appoints the chief county assessor and such other personnel as deemed necessary.

Those few third class cities that have not elected to accept county assessments continue to have their own assessment organizations. Provision is made for the selection of a city assessor by the city council, and the council appoints as many assistant assessors as may be required. All such assessors must be certified pursuant to the Assessors Certification Act. A city, conducting its own assessments or utilizing the county assessment office, may, by ordinance, adopt an established predetermined ratio different from that used by the county. The city council acts as the Board of Revision of Taxes and Appeals in third class cities.[2]

The Home Rule Charter and Optional Plans Law contains a listing of specific prohibitions which apply to home rule counties. Counties adopting home rule charters are forbidden to change current law with respect to the assessment process.[3] However, the Commonwealth Court of Pennsylvania ruled that this restriction of a county's power to interfere with substantive rules governing valuation of property by professional assessors did not deny Allegheny County the power to establish an assessment system that was contrary to the Second Class County Assessment Law.[4]

In each home rule county, a board is established to supervise, equalize and revise assessments, and to hear and adjudicate all appeals from county real property tax assessments. The assessment organization is basically the same, with only slight variations. The charters of Delaware, Erie, Lackawanna and Lehigh counties retain the three-member Board of Tax Assessment Appeals. Northampton County, on the other hand, appoints a five-member Revenue Appeals Board. In general, these boards are limited to hearing appeals and do not participate in making assessments.

Allegheny County has a three-member Property Assessment Oversight Board to oversee the assessment process, a seven-member Board of Property Assessment Appeals and Review to hear assessment appeals, and an Office of Property Assessments to make all assessments and valuations of property.

Appointment of Assessors

In non-home rule counties in Pennsylvania, the boards in charge of the supervision of assessments appoint assessors. All assessors responsible for real estate assessments must be certified by the State Board of Certified Real Estate Appraisers.[5] Except in first class counties, all assessors must complete a 90-hour basic appraisal course and successfully pass a comprehensive examination in order to receive certification.[6] A current certification is valid for two years.[7] To be recertified, an assessor must successfully complete another 20 hours of training.[8]

The Third Class City Code provides for the appointment and employment of persons to value and assess property for taxation within the city, in accordance with the procedures and methodologies set forth in the assessment law or laws applicable in the county in which the city is located.[9] Any city in any county may elect to have its property assessed by the county assessors.[10] A city, conducting its own assessments, may subsequently elect to utilize the county assessment office to value and assess property.[11]

In counties of the second class A through eighth class, a chief assessor is appointed by the county commissioners with the advice of the board of assessment appeals or the board of assessment revision, as applicable.[12] The chief assessor, with the approval of the board, will then hire subordinate assessors subject to any applicable county personnel policy and regulations of the board, as are necessary.[13] The chief and subordinate assessors receive compensation as determined by the salary board of the county.[14]

Assessment Process

Assessors are required to value property "according to the actual value thereof and at such rates and prices for which the same would separately bona fide sell."[15] In arriving at actual value, the price at which any property may actually have been sold shall be considered but shall not be controlling.[16] Instead such selling price, estimated or actual, will be subject to revision by increase or decrease to accomplish equalization with other similar property within the taxing district.[17]

To establish actual value the county may use current year market values or it may adopt a base year for market values.[18] The base year can be the year of the most recent countywide reappraisal or it can be another designated prior year.[19] In arriving at actual value, the county may use all three accepted assessment methods, which include the cost (reproduction or replacement, as applicable less depreciation and all forms of obsolescence), comparable sales and income approaches.[20] However, all three approaches must be used in conjunction with one another.

Once the property is valued the county applies its established predetermined ratio to calculate the assessment.[21] The established predetermined ratio is the ratio of assessed to actual value set by the board of county commissioners. It may be set at up to 100 percent for first through eighth class counties.[22] The county may change the predetermined ratio without revaluing all the properties, retaining the same base year for market values. Such a change constitutes a countywide revision of assessments requiring a notice to all property owners.[23]

When the county assessment board or county assessment office receives the assessment roll, it may make additions and revisions, as appropriate, to such assessment roll.[24] The county then prepares a master duplicate of all real estate assessments in the county by district, showing the name of property owner, address, property location and assessed valuation. The assessment rolls are open to public inspection.

Counties are required by the major assessment laws to furnish assessment rolls to local taxing districts for purposes of taxing real estate and occupations. In second class A through eighth class counties, the final delivery date is November 15 of the previous year.[25] No date is specified by law for delivery of the tax duplicate to the collectors by the local district. Each taxing authority prepares its own duplicate, calculating the amount of tax due on each property and person on the basis of assessed valuations of real estate and occupations determined by the proper assessing authority.

Assessment of Mobile Homes

The General County Assessment Law provides for the taxation of "house trailers and mobile homes buildings permanently attached to land or connected with water, gas, electric or sewage facilities . . . ."[26] The Consolidated County Assessment Law contains a similar provision.[27] A mobile home or house trailer must, therefore, be assessed as real estate if permanently attached to the land or connected with water, gas, electric or sewage facilities. The question of attachment is governed both by physical facts and the intention of the owner. Evidence such as removal of wheels, absence of a license for highway use, and presence of foundations and other accessory structures is taken into consideration.

Persons who lease land to two or more persons for siting mobile homes subject to real estate taxation are required to maintain a record of all leases open for inspection at all reasonable times by the tax assessor. The law also requires mobile home court operators to forward to the tax assessor each month the record of arrivals and departures of each mobile home or house trailer on their land.[28] The assessment is required to be made in the name of the owner of the mobile home, that is, the person named in the title issued by either the Commonwealth of Pennsylvania or another state.[29]

Aids in Assessment

In counties from the second class A to eighth class, recorders of deeds are required to keep a daily record of every deed or conveyance of land entered in their office and to note its recording date, the names of the grantor and grantee, and the location of the property.[30]

In counties from the second class A to eighth class, every municipality or third-party agency responsible for the issuance of building permits is required to forward a copy of each building permit it issues to the county assessment office on or before the first day of every month.[31] If a person makes improvements to any real property, other than painting of or normal regular repairs to a building, aggregating more than $2,500 in value and a building permit is not required for the improvements, the property owner must provide the following information to the board of assessment appeals or the board of assessment revision, as applicable: (1) the name and address of the person owning the property; (2) a description of the improvements made or to be made to the property; and (3) the dollar value of the improvements.[32]

Valuation of Property

For the purpose of real estate taxation, assessment consists of placing a valuation on real property and then applying an assessment ratio. The assessment laws call for the valuing of properties at their actual value. The price at which any property may actually have been sold in the base year or the current tax year is to be considered but is not controlling. Such selling prices can be increased or decreased as part of the valuation process to accomplish equalization with other similar property within the taxing district.[33]

The courts have interpreted actual value to mean market value. Market value has been defined as the price which a purchaser is willing but not obligated to pay an owner who is willing but not obligated to sell, taking into consideration all uses to which the property is adapted.[34] The assessment laws provide for the establishment of a predetermined ratio of assessed to market value not to exceed 100 percent for first through eighth class counties.[35] The assessed value of taxable property for tax purposes has varied between 2.8 percent and 122 percent between the years 2004-2013.

All properties within the taxing district must be uniformly assessed at a similar ratio.[36] This is necessary in order to satisfy the requirements of Article VIII, Section I of the Pennsylvania Constitution, which provides that all taxes must be uniform on the same class of subjects within the territorial limits of the authority levying the tax. The controlling principle in matters of valuation is that no one taxpayer should pay any more or less than their proportionate share of the cost of government. Equalization may require periodic reappraisals of all parcels within the county, initiated at the discretion of the county commissioners.[37]

Equalization of assessments also raises issues of federal law. In a renowned case, the United States Supreme Court held inequitable assessment practices violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.[38] In this case, the county had a policy of reassessing recently purchased property at fair market value, resulting in significantly higher tax assessments than those on comparable longer-held neighboring properties which were not reassessed. No similar legal actions have been successful in federal courts in Pennsylvania. Here, courts have held that the principle of comity and the federal Tax Injunction Act require an exhaustion of state administrative remedies before raising constitutional issues in federal courts.[39]

Land and improvements must be valued separately according to the First Class County Assessment Law, Consolidated County Assessment Law and Second and Third Class City Codes.[40] The distinction is particularly important for real estate taxation in cities and boroughs, which may tax land at a different rate than improvements, but must exclude farmland.[41]

In determining the market value of real estate, recent sales of comparable properties, that is properties of a similar nature, are persuasive but not conclusive in helping to establish the market value. The properties selected need not be identical. The sales prices, however, are useful in showing relative values by bringing out characteristic qualities, whether similar or divergent. Comparison based on sales may be made according to location, age, income, expense, use, size, type of construction and in numerous other ways.[42]

In arriving at a proper valuation of real estate for tax purposes, there is a two-step procedure involved:

1. The fair market value of the property must be established. Reproduction or replacement cost, as applicable, less depreciation and all forms of obsolescence; comparable sales; and income methods can be used together.

2. The established predetermined ratio must then be applied to determine fair assessed value.

As an example, if the determined fair market value of a parcel of land is $40,000 and the ratio is 30 percent, the fair market value is multiplied by the ratio, making the assessed value of the property $12,000. For taxing purposes, tax bills are computed by multiplying the municipality's tax rate by the assessed valuation. As a further example, the current rate is 30 mills per $1.00 of assessed valuation of taxable property, or $3.00 per every $100 value. Dividing the $100 into the assessed valuation, or $12,000 equals 120 x $3.00, or a real estate tax bill amounting to $360.00 due on that particular piece of property.

REFERENCES

1. 53 P.S. § 13132; First Class City Home Rule Act, Section 17.1.
2. 53 P.S. § 37522; Third Class City Code, Section 2522.
3. 16 P.S. § 6107-C(h)(8);
4. *Board of Property Assessment, Appeals Review and Registry of Allegheny County v. County of Allegheny,* 773 A.2d 816 (Pa. Cmwlth. 2001).
5. 63 P.S. § 458.4; Assessors Certification Act, Section 4.
6. 63 P.S. §§ 458.5 & 458.11.
7. 63 P.S. § 458.4.
8. 63 P.S. § 458.4.
9. 53 P.S. § 37522(a).
10. 53 P.S. § 37522(a).
11. 53 P.S. § 37522(a)(4).
12. 53 Pa.C.S. § 8831
13. 53 Pa.C.S. §§ 8831-32.
14. 53 Pa.C.S. §§ 8831-32.
15. 72 P.S. § 5020-402(a).
16. 72 P.S. § 5020-402(a); 53 Pa.C.S. § 8842(b).
17. 72 P.S. § 5020-402(a); 53 Pa.C.S. § 8842(b).
18. 72 P.S. § 5020-402(a); 53 Pa.C.S. § 8842(a); *but see Clifton v. Allegheny Cty*, 969 A.2d 1197 (Pa. 2009) (holding that, as applied in Allegheny County, the statutory base year system of taxation, which permits "the prolonged and potentially indefinite use of an outdated base year assessment to establish property tax liability, violates the Uniformity Clause of the Pennsylvania Constitution."); *see also* 53 Pa.C.S. § 8842(a).
19. 72 P.S. § 5020-102; 53 Pa.C.S. § 8802.
20. 72 P.S. § 5020-402(a); 53 Pa.C.S. § 8842(b).
21. 72 P.S. § 5020-402; 53 Pa.C.S. § 8842.
22. 72 P.S. § 5020-402(a); 53 Pa.C.S. § 8842(a).
23. *Appeal of Sunrise Properties, Inc.,* 28 D.&C.3d 19, 22 (Ct. Com. Pl. Clearfield Co. 1983).
24. 72 P.S. § 5020-505; 53 Pa.C.S. § 8841.
25. 53 Pa.C.S. § 8844.
26. 72 P.S. § 5020-201.
27. 53 Pa.C.S. § 8811 (a)(1).
28. 72 P.S. § 5020-407(b); 53 Pa.C.S. § 8821(b).
29. 72 P.S. § 5020-407(b); 53 Pa.C.S. § 8821(b).
30. 72 P.S. § 5020-407(a); 53 Pa.C.S. § 8862(a).
31. 53 Pa.C.S. § 8861(a).
32. 53 Pa.C.S. § 8861(b).
33. 72 P.S. § 5020-402(a); 53 Pa.C.S. § 8842(b).
34. *Beitch Co. v. Board of Property Assessment, Appeals and Review,* 209 A.2d 397, 417 Pa. 213, 217 (1965); *In re Springfield Sch. Dist.,* 101 A.3d 835, 842 (Pa. Cmwlth. 2014).
35. 72 P.S. § 5020-402(a); 53 Pa.C.S.A. § 8842(a).
36. *In re Brooks Bldg.,* 137 A.2d 273, 391 Pa. 94, 99 (1958).
37. *Carino v. Board of Commissioners, Armstrong County,* 468 A.2d 1201, 79 Pa.Cmwlth. 242, 248 (1983).
38. *Allegheny Pittsburgh Coal Company v. County Commissioner of Webster County,* 488 U.S. 336, 338, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989).
39. *Garrett v. Banford,* 582 F.2d 810 (3d Cir. 1978); *Sunderland Properties, Inc. v. County of Berks,* 750 F.Supp. 704 (E.D. Pa. 1990).
40. 72 P.S. § 5341.7 (First Class County Assessment Law); 53 Pa.C.S.A. § 8841 (Consolidated County Assessment Law); 53 P.S. § 25894 (Second Class Cities); 53 P.S. § 37531 (Third Class Cities).
41. 53 P.S. § 37531; 8 Pa.C.S. § 1302.1.
42. *McKnight Shopping Center, Inc. v. Board of Property Assessment, Appeals and Review,* 209 A.2d 389, 417 Pa. 234, 241 (1956).

IV. Assessment Appeals

The assessment laws provide procedures whereby any property owner may appeal the assessment of their property to the Board of Assessment Appeals if they feel the value was set too high or the ratio applied was not uniform.

Taxpayers contemplating filing an appeal can refer to the table below for filing dates and hearing dates of appeals by the Board in assessing jurisdictions:

County/City	Filing Date Deadline	Hearing Date Deadline
First Class Counties[1]	First Monday in October	As determined by the Board
Second Class Counties[2]	Last day of February	As determined by the Board
Second Class A to Eighth Class Counties[3]	Sept. 1 or an earlier date (but no earlier than August 1) if so designated by the county commissioners	October 31
Third Class Cities[4]	See assessment law or laws applicable in the county in which the city is located	See assessment law or laws applicable in the county in which the city is located

In hearing an appeal, the Board must determine the current market value of the property and the common level ratio of assessed to market value as established by the State Tax Equalization Board. After determining current market value, the Board is to apply the established predetermined ratio unless there is a variance of more than fifteen percent from the common level ratio. Base year valuations can be appealed without reference to the ratio.[5]

The decision of the Board may be appealed to the court of common pleas of the county. In an appeal, the court is to make similar determinations of current market value and common level ratio.[6] The law stipulates that an appeal does not prevent the collection of taxes upon the assessment. In case the assessment is reduced, the excess is to be returned to the taxpayer.[7]

Whenever an assessment is appealed, the taxing jurisdiction must introduce the assessment record into evidence at the trial. When this is done, a supposition arises in favor of the amount of the assessment. If the taxpayer fails to offer credible evidence, the taxing authority prevails and the assessment stands. If the taxpayer does produce credible evidence, the assessment record may not influence the court's determination of this correctness. It should be noted that the taxpayer always bears the final burden of convincing the court of the merits of the appeal.[8]

In the case of *Millcreek Township School District v. Erie County Board of Assessment Appeals,* the Commonwealth Court ruled that a school district had statutory authority to appeal an assessment.[9] The Commonwealth Court also has found that municipalities and school districts possess the same procedural due process rights as individual taxpayers in assessment appeals.[10]

A taxpayer is entitled to an assessment that reflects the ratio actually applied to other properties. In an appeal where the assessment to market value ratio is found facially valid, the taxpayer must respond with credible, relevant evidence to rebut the ratio.[11] Since 1983 the common level ratios for each county as determined by the State Tax Equalization Board are the definitive statement of assessment ratios in assessment appeals.[12] The same ratio must be applied to all types of land uses within the jurisdiction. Raw sales prices are not a reliable substitute for fair market values; they are only an indication of market values. Sales data must be adjusted to reflect the land use composition of property in the taxing jurisdiction.[13]

Formal assessment appeals before the board are often preceded by informal administrative appeals within the assessment office. These informal appeals often pinpoint simple errors in the assessment process. Whenever a mathematical or clerical error results in overpayment of taxes, the county assessment office must inform the appropriate taxing authorities which are required to make refunds.[14] Refunds must cover the period of the error or six years from the date of application for refund or discovery of such error by the board, whichever is less.

Until recent years, legal actions attacking the county's total assessment scheme were generally unsuccessful. Pennsylvania courts held that the various county assessment laws provide taxpayers with a plain, adequate and complete remedies to challenge the constitutionality of a taxing jurisdiction's method of property assessments.[15] One of the first exceptions resulted where taxpayers were able to show that a county was performing a de facto countywide reassessment on a piecemeal basis.[16] In *City of Lancaster v. County of Lancaster,* the county was using current market values to recalculate 1960 base year values on a district-by-district basis. The court found the resulting inequity was so pervasive that the assessment appeal procedure would no longer provide relief and ordered the county to conduct a countywide reassessment. The courts have now moved to accept overall challenges based on equity, poor assessment quality and the lapse of time since properties were assessed.[17] Court orders requiring counties to undertake countywide reassessments are no longer rarities.

In a more recent decision, the Pennsylvania Supreme Court examined the constitutionality of the base-year assessment system in Allegheny County, which system was challenged as a violation of the Uniformity Clause of the Pennsylvania Constitution.[18] The lower court found that the provisions of Pennsylvania's assessment laws that allow a county to arrive at actual value through use of a base year method violated the Uniformity Clause. The Pennsylvania Supreme Court rejected the lower court holding. In reversing, the Pennsylvania Supreme Court found that, as applied in Allegheny County, the statutory base year system of taxation at issue, which approved the prolonged and potentially indefinite use of an outdated base year assessment to establish property tax liability, violated the Uniformity Clause. However, the court held that the appropriate remedy was for the lower court to order a reassessment of all real estate in Allegheny County. This holding, requiring a reassessment, appears to be consistent with several Commonwealth Court decisions over the past 20 years, some of which are cited above.

REFERENCES

1. 72 P.S. §§ 5341.10 & 5341.14; First Class County Assessment Law, Sections 10 & 14.
2. 72 P.S. § 5452.11; Second Class County Assessment Law, Section 11.
3. 53 Pa.C.S. §§ 8844(c)&(e).
4. 53 P.S. § 37522(a)(2).
5. 72 P.S. § 5020-511 (General County Assessment Law); 53 Pa.C.S. § 8844(e) (Consolidated County Assessment Law).
6. 72 P.S. §§ 5020-518.1 & 5020-518.2 (General County Assessment Law); 53 Pa.C.S. § 8854 (Consolidated County Assessment Law).
7. 72 P.S. § 5020-518.1 (General County Assessment Law); 53 Pa.C.S. § 8854 (Consolidated County Assessment Law).
8. *Deitch Co. v. Bd. of Prop. Assessment, Appeals & Review of Allegheny Cnty.,* 209 A.2d 397, 417 Pa. 213, 221 (1965); *Herzog v. McKean Cnty. Bd. of Assessment Appeals,* 14 A.3d 193, 200 (Pa. Cmwlth. 2011).
9. *Millcreek Township School District v. Erie County Board of Assessment Appeals,* 737 A.2d 335 (Pa. Cmwlth. 1999); *In re Springfield Sch. Dist.,* 101 A.3d 835, 847 (Pa. Cmwlth. 2014); see also 53 Pa.C.S. § 8855 (stating that a taxing district, which includes a school district, has the "right to appeal any assessment within its jurisdiction in the same manner, subject to the same procedure and with like effect as if the appeal were taken by a taxable person with respect to the assessment . . . .").
10. *Richland School District v. County of Cambria Board of Assessment Appeals,* 724 A.2d 988, 990 (Pa. Cmwlth. 1999).
11. *Appeal of Chartiers Valley School District,* 447 A.2d 317, 67 Pa.Cmwlth. 121, 130 (1982).
12. 71 P.S. § 1709.1516a.
13. *Keebler Company v. Board of Revision of Taxes of Philadelphia,* 436 A.2d 583, 496 Pa. 140 (1981); I*n re Appeal of Township of South Whitehall,* 436 A.2d 589, 496 Pa 152, 158-59 (1981).
14. 72 P.S. § 5020-505.1 (General County Assessment Law); 53 Pa.C.S. § 8816 (Consolidated County Assessment Law).
15. *Murtagh v. Cnty. of Berks,* 715 A.2d 548, 551 (Pa. Cmwlth. 1998).
16. *City of Lancaster v. County of Lancaster,* 599 A.2d 289, 143 Pa. Cmwlth. 476 (1991), appeal denied 606 A.2d 903, 530 Pa. 634.
17. *Croasdale v. Dauphin County Board of Assessment Appeals (Croasdale I),* 492 A.2d 793, 89 Pa.Cmwlth. 409, 1985; *City of Lancaster v. County of Lancaster,* 599 A.2d 289, 143 Pa. Cmwlth. 476, 497 (1991) (incomplete countywide reassessment); City of Harrisburg v. Dauphin Cnty. Bd. of Assessment Appeals, 677 A.2d 350, 354 (Pa. Cmwlth. 1996) (same); *Millcreek Twp. Sch. Dist. v. Cnty. of Erie,* 714 A.2d 1095, 1108 (Pa. Cmwlth. 1998) (outdated and non-uniform assessment system); *Ackerman v. Carbon Cnty.,* 703 A.2d 82, 89 (Pa. Cmwlth. 1997) (same); *but see In re Sullivan,* 37 A.3d 1250, 1257 (Pa. Cmwlth. 2012) (evidence was insufficient to support taxpayers' claim that a countywide reassessment was the only constitutionally appropriate remedy to an alleged nonuniform tax assessment of their residential property).
18. *Clifton v. Allegheny Cnty.,* 969 A.2d 1197, 600 Pa. 662 (2009).

V. Real Estate Tax Rates

General Rate Limits

Statutory rate limitations on real estate taxes have been established for all classes of taxing jurisdiction in Pennsylvania, with certain exceptions for a few cities.[1] Jurisdictions which have adopted home rule charters under the Home Rule Charter and Optional Plans Law are no longer subject to real estate tax limits imposed by the legislature in the various local government codes.[2] Voters in individual home rule municipalities may establish their own real estate tax rate limits in their local charters.

The cities of Pittsburgh and Scranton may levy real property taxes at a lower rate on buildings than the rate levied on land.[3] Third class cities may also set different rates for land and buildings provided that such rates are uniform within each classification.[4] Boroughs may set different rates for land, except for farmland, and buildings.[5] Third class school districts coterminous with third class cities may also levy separate rates on land and buildings.[6]

Legal limits on general purpose levies for other taxing jurisdictions are as follows:

Taxing Jurisdiction	Rate Limit[7]
Counties, Second Class (Allegheny)	25 mills
Counties, Second Class A (Bucks, Delaware & Montgomery)	40 mills
Counties, Third through Eighth Class	25 mills
Institution Districts	10 mills
Cities, Third Class	30 mills
Boroughs	30 mills
Townships, First Class	30 mills
Townships, Second Class	14 mills
School Districts, First Class A (Pittsburgh)	no limit
School Districts, Second, Third and Fourth Class	25 mills

The statutory rate limits for school districts are misleading because schools can levy unlimited additional millage to pay salaries and debt service. For third through eighth class counties, cities, boroughs and townships, an additional five mills may be added to the foregoing rate limits by the applicable governing body with court approval. Court approval is to be granted if the taxing body shows the additional millage is necessary to meet the needs of an approved budget.[8]

Special Purpose Rate Limits

In addition to the general purpose rate limits permitted, municipal codes authorize taxing bodies to levy additional real estate taxes for special purposes. Listings of special purpose taxes authorized for each classification are included in the Tax Sources section of this Manual. Other state laws authorize additional real estate taxing powers for community colleges, for financially distressed municipalities,[9] for distressed municipal pension systems and open space acquisition.

For years, it was common practice for municipalities in southeastern counties to levy a special police/public safety millage. This special tax was not explicitly authorized by the municipal codes or any other state law, but appeared to be a response to the problems raised for the municipal governments by the extremely low assessment ratios in those counties. During the early 1990s, Delaware, Bucks and Montgomery counties had the three lowest ratios in the state. In the first appellate challenge to this practice, the police/public safety millage was held invalid.[10] The court ruled it could not be justified by Section 1303 of the Borough Code as a levy to pay off borough indebtedness, nor could it be justified by Act 111 of 1968,[11] since the Eddystone police were not represented by a bargaining unit and there was no arbitration award present in the case requiring legislative action to implement.

Limitation After Countywide Revision of Assessment

For taxing districts in counties of the second class A to eighth class, the Consolidated County Assessment Law limits the amount of real estate tax revenue such taxing districts may levy in the first year following a countywide revision of assessment (i.e., a countywide reappraisal or a change in the predetermined assessment ratio).[12] Specifically, each political subdivision in those counties is required to reduce its tax rate, if necessary, for the first year after a countywide revision of assessment such that the total amount of taxes levied for that year against the real properties contained in the duplicate does not exceed the total amount the political subdivision levied on the properties in the preceding year. After establishing this revenue-neutral tax rate, the taxing district may, by a separate and specific vote, establish a final tax rate for the first year in which the reassessment is implemented to levy its real estate taxes on the revised assessment, provided that the tax rate is fixed at a figure which limits the total amount of taxes levied that year against real properties contained in the duplicate for the preceding year to not more than 110 percent of the total amount levied the preceding year.

The foregoing limitation does not apply to school districts subject to Section 327 of the Taxpayer Relief Act.[13] Additionally, for purposes of determining the total amount of taxes to be levied for the first year following a countywide revision of assessment, the law excludes the amount to be levied on newly-constructed buildings or on increased valuations based on new improvements made to existing buildings.

All political subdivisions within counties of the second class A to eighth class, if good cause is shown, are authorized to increase the tax rate prescribed with court approval. This restriction also applies to third class cities bringing themselves under county assessment values for the first time after a countywide revision of assessment.[14]

The assessment laws prohibit political subdivisions within counties of the second class from levying real estate taxes on a countywide revised assessment of real property until it has been completed for the entire county.[15]

The Second Class County Code limits taxing bodies within second class counties to 105 percent of the total amount of real estate tax revenues received the prior year when the county carries out a reassessment or changes its predetermined ratio.[16] The real estate revenue limit excludes newly constructed buildings or increased valuations based on new improvements made to existing structures. However, the Allegheny County Court of Common Pleas has ruled that these "anti-windfall provisions" do not prevent tax increases in excess of the 105 percent limit as long as any increase is publicly announced and enacted.[17]

REFERENCES

1. 53 P.S. § 12553 (authorizing city to fix property tax rates which will yield sufficient receipts to meet the liabilities of the city for the ensuing year); 53 P.S. §§ 23104 & 25942(a) (same).
2. 53 Pa.C.S.§ 2962(b).
3. 53 P.S. § 25894.
4. 53 P.S. § 37531(c)(3).
5. 8 Pa.C.S. § 1302.1 ("Farmland" is "[a]ny tract of land that is actively devoted to agricultural use, including, but not limited to, the commercial production of crops, livestock and livestock products" as defined in section 3 of the Agricultural Area Security Law); Borough Code, Section 1302.1.
6. 24 P.S. § 6-672(e); Public School Code, Section 672(e).
7. 16 P.S. § 4970 (Counties, Second Class); 16 P.S. § 4970 (Counties, Second Class A); 16 P.S. § 1770 (Counties, Third through Eighth Class); 62 P.S. § 2257 (Institution Districts); 53 P.S. § 37531 (Cities, Third Class); 8 Pa.C.S. § 1302 (Boroughs); 53 P.S. § 56709 (Townships, First Class); 53 P.S. § 68205 (Townships, Second Class); 24 P.S. § 6-652 (School Districts, First Class); 24 P.S. §§ 6-652, 6-652.1(a)(1)(iv)&(3), 583.1, 583.10, 585.1, 585.5, 585.9, 585.14 & 586.1 (School Districts, First Class A); 24 P.S. § 6-672(a) (School Districts, Second, Third and Fourth Class).
8. *City of Altoona v. Central Pennsylvania Retiree's Association,* 510 A.2d 868, 97 Pa. Cmwlth. 637, 640-41 (1986).
9. 53 P.S. § 11701.123; Municipalities Financial Recovery Act, Section 123(c)(1).
10. *In re Borough of Eddystone,* 602 A.2d 464 (Pa. Cmwlth. 1992).
11. 43 P.S. § 217.7; *see also Tate v. Antosh,* 281 A.2d 192, 3 Pa. Cmwlth. 144 (1971).
12. 53 Pa.C.S. § 8823 (Consolidated County Assessment Law).
13. 53 P.S. § 6926.327.
14. 53 Pa.C.S. § 8823(e); *Harding v. City of Uniontown,* 25 Pa. D. & C.3d 368, 370 (Ct. Com. Pl. Fayette Co. 1982).
15. 72 P.S. § 5020-402(a), General County Assessment Law, Section 402(a).
16. 16 P.S. § 4980.2 (Second Class County Code, Section 1980.2).
17. *600 Grant St. Associates Ltd. P'ship v. City of Pittsburgh,* 53 Pa. D. & C.4th 18, 39 (Ct. Com. Pl. Allegheny Co. 2001).

VI. Exemptions

Constitutional Provisions

The power to determine what property shall be exempt from taxation is vested in the Pennsylvania General Assembly. With one exception, Article VIII of the Constitution does not exempt property from real estate taxation. It does, however, permit the General Assembly to grant exemptions within the guidelines authorized by Article VIII, Section 2 of the Constitution.

Only one category of tax exemption in the Constitution is mandated: residential real estate owned and occupied by paraplegic, amputee, blind or totally disabled veterans or their surviving unmarried spouses certified as needy by the State Veterans' Commission.[1] The Commission reviews new applications for veterans exemptions and certifies those found qualified to the county assessment office. Upon determining that the conditions for the exemption are met, including that the property is the principal residence of the owner, the applicable assessment board will grant the exemption. The State Veterans' Commission reviews all determinations of need at least once every five years for any changes in economic circumstances.

Statutory Provisions

Additional exemptions from real estate taxation are authorized by the Constitution and provided for by the General Assembly in the General County Assessment Law and the Consolidated County Assessment Law.[2] The exemptions are as follows:

- All churches or actual places of regularly stated religious worship.
- All burial grounds not used or held for private or corporate profit.
- All hospitals, institutions of learning or charity, including fire and rescue stations founded, endowed and maintained by public or private charity, provided that the entire revenue derived be applied to the support of the institution.
- All property of a charitable organization providing residential housing services in which the charitable nonprofit organization receives subsidies for at least 95% of the residential housing units from a low-income federal housing program.
- All schoolhouses belonging to any municipality or school district.
- All courthouses and jails.
- All public parks owned and held by trustees for the benefit of the public and used for amusements, recreation, sports and other public purposes without profit.
- All other public property used for public purposes.
- All real property used for limited access highways and maintained by public funds.
- All property owned, occupied and used by any branch, post or camp of honorably discharged servicemen or servicewomen actually and regularly used for benevolent, charitable or patriotic purposes.
- All real property owned by one or more institutions of purely public charity, used and occupied partly by the owner or owners and partly by other institutions of purely public charity and necessary for the occupancy and use of the institutions so using it.
- All playgrounds founded and maintained by public or private charity.
- All buildings owned and occupied by free public nonsectarian libraries.
- All property maintained by public or private charity and used exclusively for public libraries, museums, art galleries or concert music halls.
- All fire and rescue stations maintained by public or private charity along with their social halls.
- Silos used for processing or storing animal feed on a farm.
- Amusement park rides, regardless of whether they have become affixed to the real estate.

In applying for an exemption, the burden always falls on the taxpayers to establish their claim of exemption and to bring themselves clearly within one of the enumerated statutory exemptions.[3] The only exceptions to this rule are for property owned by the Commonwealth of Pennsylvania and the United States Government.[4] Otherwise, there is a prejudgment against any exemption from taxation.

Institutions of Purely Public Charity

The past forty years have witnessed an unprecedented amount of litigation over challenges to long-held assessment exemptions. In the leading case of *Hospitalization Utilization Project v. Commonwealth,*[5] decided in 1985. In that case, the Pennsylvania Supreme Court set forth a five-part test (the "*HUP* Test") to determine whether an entity qualified for tax exemption as a purely public charity. Under the *HUP* Test, an institution will qualify for tax-exempt status as a purely public charity if the institution:

1. Advances a charitable purpose;
2. Donates or renders gratuitously a substantial portion of its services;
3. Benefits a substantial and indefinite class of persons who are legitimate subjects of charity;
4. Relieves the government of some of its burden; and
5. Operates entirely free from private profit motive.

After this judicial test was established, what followed in counties across the state was a series of challenges to the tax-exempt status of nonprofit hospitals, nursing homes, continuing care facilities, colleges and universities. The rigidity used in applying the *HUP* Test varied from court to court. Many challenges ended in settlements where the institutions agreed to make payments in lieu of taxes in exchange for retention of their tax exempt statuses. However, over a decade after the *HUP* case, decisions by the Supreme Court on exemptions for charities appeared to be moving back to the traditional positions.[6]

Nonetheless, pressure on the legislature to clarify the tax exemption process for nonprofit institutions resulted in the enactment of the Institutions of Purely Public Charity Act in 1997.[7] The Act places the five elements for a purely public charity enumerated in the *HUP* test into statutory form and adds criteria for measuring whether an institution meets those elements. Formerly, charitable institutions had to qualify separately for real estate tax exemptions and state sales tax exemptions. The Act stipulates that any sales tax exemption determination by the Department of Revenue made after November 26, 1997 will constitute a rebuttable presumption of the applicable institution's status as a purely public charity. Political subdivisions challenging that presumed status bear the burden of proving that the institution does not comply with the standards of the Act. The Act also validates existing voluntary payments in lieu of tax agreements and authorizes future agreements between charitable institutions and political subdivisions.

However, the Pennsylvania Supreme Court, in *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike Cnty. Bd. of Assessment Appeals,* held that a property owner seeking an exemption from real property taxation as a "purely public charity," must first meet the five-prong *HUP* Test.[8] That is, before getting to the Institutions of Purely Public Charity Act requirements, an institution must satisfy the constitutional elements of the *HUP* Test in order to be deemed a purely public charity for tax exemption purposes. Notably, the *Mesivtah* decision did not alter prior case law interpretation or application of the prongs of either test.

Keystone Opportunity Zones

The General Assembly enacted the Keystone Opportunity Zone Act (the "KOZ Act") in 1998 and expanded it in 2000 and 2003.[9] The KOZ Act provides that businesses and individuals located within designated Keystone Opportunity Zones ("KOZs"), Keystone Opportunity Expansion Zones ("KOEZs") and Keystone Opportunity Improvement Zones ("KOIZs") enjoy total exemption from almost all state and local taxes, including real estate, sales, income and gross receipts. At the time of designation, the zones were required to meet specified economic distress criteria.

Tax exemptions for KOZs began January 1, 1999 for a maximum of 15 years; tax exemptions for KOEZs began January 1, 2001 for up to 13 years; and tax exemptions for KOIZs began January 1, 2003 for up to 15 years. As a result, tax benefits for KOZs, KOEZs and KOIZs began to expire in 2010. The effective date for the expiration of KOZ Act benefits is December 31st of the year in which such benefits expire. Taxpayers with a tax year end of December 31st will be entitled to credit for the entire year. Taxpayers with a tax year ending on a date other than December 31st will be entitled to a credit based on activity in the KOZs, KOEZs and KOIZs from the beginning of their tax year to December 31st.

Exemption of Municipal Property

Local taxing jurisdictions must be alert to secure exemption for their own property since they do not share in the commonwealth's tax immunity. Exempt status must be affirmatively requested by local public property owners for public uses.[10] Exemptions of public property cannot be granted on a retroactive basis.

Property owned by one political subdivision may be leased to another and still qualify as public property used for a public purpose.[11] Real property owned by a borough and leased to the county for a district justice office qualified as public property used for a public purpose. However, property owned by an authority and leased to commercial tenants is not exempt from taxation.[12]

REFERENCES

1. Pennsylvania Constitution, Article VIII, Section 2(c); 51 Pa.C.S. § 8902.
2. 72 P.S. §§ 5020-201 & 5020-204 (General County Assessment Law, Section 204); 53 Pa.C.S. §§ 8811 & 8812 (Consolidated County Assessment Law, Section 8812).
3. *Four Freedoms House of Philadelphia, Inc. v. City of Philadelphia,* 279 A.2d 155, 443 Pa. 215, 218 (1971).
4. *Appeal of Bd. of Sch. Directors of Owen J. Roberts Sch. Dist.,* 457 A.2d 1264, 500 Pa. 465, 468 (1983); *City of Philadelphia v. Cumberland Cnty. Bd. of Assessment Appeals,* 81 A.3d 24, 622 Pa. 581, 623 (2013); *M'Culloch v. State,* 17 U.S. 316, 4 L. Ed. 579 (1819).
5. *Hosp. Utilization Project v. Com.,* 487 A.2d 1306, 507 Pa. 1, 21 (1985).
6. *Wilson Area School District v. Easton Hospital,* 747 A.2d 877 (Pa. 2000); *Unionville-Chadds Ford School District v. Chester County Board of Assessment Appeals,* 714 A.2d 397 (Pa. 1998); *City of Washington v. Board of Assessment Appeals,* 704 A.2d 120 (Pa. 1997).
7. 10 P.S. §§ 371 et seq.
8. *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike Cnty. Bd. of Assessment Appeals,* 44 A.3d 3, 615 Pa. 463, 473 (2012).
9. 73 P.S. §§ 820.101 et seq.
10. *City of Pittsburgh v. Board of Property Assessment Appeals and Review of Allegheny County,* 412 A.2d 655, 49 Pa. Cmwlth. 442 (1980).
11. *Wesleyville Borough v. Erie County Board of Assessment Appeals,* 676 A.2d 298 (Pa. Cmwlth. 1996).
12. *Southeastern Pennsylvania Transportation Authority v. Board of Revision of Taxes,* 777 A.2d 1234, 1240 (Pa. Cmwlth. 2001) aff'd, 833 A.2d 710, 574 Pa. 707 (2003).

VII. Special Tax Provisions

Constitutional Provisions

In 1968, amendments to the Pennsylvania Constitution authorized the General Assembly to make special tax provisions for certain classes of taxpayers and certain subjects of taxation, including to establish special provisions for forest and farmland, for persons in need because of age, disability, infirmity or poverty, for improvements to deteriorated property and for residential construction.[1] Various special provisions were enacted by the General Assembly subsequent to the effective date of those amendments.

Another amendment to the Pennsylvania Constitution, approved by the voters in November 1997, added an additional exemption from the uniformity of taxation clause. As a result of that amendment, local taxing districts are authorized to exclude from taxation a portion of the assessed value of homestead property. The exclusion level cannot exceed one half the median assessed value of all homestead property within the taxing jurisdiction.

Homestead Exclusions

The law that implements the above-mentioned amendment and thereby authorizes local taxing bodies to implement homestead exclusions is the Homestead Property Exclusion Program Act.[2] Under the Act, a "homestead" is generally defined as the primary residence of the owner, including the dwelling, the land on which the dwelling is located and all improvements to the dwelling and land.[3] Local governing bodies, such as boards of county commissioners, city councils, school districts and boards of township commissioners, may grant a homestead exclusion from local real property taxes for a portion of the assessed value of owner-occupied residences. If the local governing body authorizes a homestead exclusion, it also must authorize a farmstead exclusion in the political subdivision for all for all "farmsteads" (i.e., buildings and structures on commercial farms at least 10 acres in size that are used for storing products, raising or maintaining animals, or storing agricultural supplies, machinery or equipment).

The exclusions are a fixed dollar amount, which cannot exceed 50% of the median value of all homestead property within the taxing jurisdiction, which median value is certified by the county assessment office. The county assessment office calculates this figure from homestead exclusion applications, which property owners must file before March 1 of each year. The assessment office then certifies the median value when it certifies the tax duplicate for the coming year. The county may adopt a schedule for the review or reapplication of properties previously approved.

Local governments implementing homestead exclusions may not increase the millage rate on real estate to offset the revenue lost by the reduction in the tax base. Where voters in a school district approve a higher earned income tax, the first-year gain in revenues must be offset first, by elimination of any occupation, per capita or occupational privilege tax; second, by any increase in budgeted revenues over the preceding fiscal year in accordance with an amount specified in a referendum question approved by voters; and third, by implementation of a homestead exclusion.[4] Counties and municipalities were given no new additional taxing powers with which to fund homestead exclusions. However, implementation is still possible for these units. For instance, where a municipality is consistently posting budget surpluses, it may choose to return a portion of the excess to its taxpayers through implementing the homestead exclusion. Other units may offset revenue losses from homestead exclusions through increases in user fees or service charges.

Unlike homestead exemptions in other states, the homestead exclusion amounts in Pennsylvania will vary from year to year as properties gain or lose qualification or as more owners apply for the exclusion. Once adopted, the taxing body may lower or raise the amount of the exclusion from year to year to meet its revenue needs. Additionally, the homestead exclusion may be adopted by some, but not all, of the taxing jurisdictions levying real estate taxes on a particular parcel, and where adopted, the exclusion will be at a different amount for each taxing district using it. For example, a homeowner may receive a homestead exclusion of $8,000 from the parcel's assessed value for municipal tax purposes, $0 for county tax purposes and $20,000 for school tax purposes. Such exclusion amounts will likely change from year to year.

It is entirely likely that in many places homeowners' applications for homestead exclusions will be processed for a number of years before a homestead exclusion is actually implemented by the homeowners' taxing jurisdictions. Moreover, once implemented, there is no guarantee such exclusion will be continued in future years.

Senior Citizens

The Pennsylvania Taxpayer Relief Act, signed on June 27, 2006, and modified in June 2011 by Act 25 of 2011,[5] expanded the Senior Citizens Property Tax and Rent Rebate Program. The Program was originally established by the Senior Citizens Rebate and Assistance Act (Act 3 of 1971), which was repealed by the Taxpayer Relief Act. The Taxpayer Relief Act provides senior citizens with assistance in the form of property tax and rent rebates. Rebates are granted to Pennsylvanians age 65 and older, widows and widowers age 50 and older, and people with disabilities age 18 and over. The maximum eligible incomes for rebates are $35,000 a year for a homeowner and $15,000 a year for a renter, with a maximum standard rebate of $650, annually. Claims for rebates must be filed on or before June 30 of the end of the year in which the tax or rent was due. Thus, rebates are for taxes paid during the claimant's prior calendar year.

Philadelphia is authorized to rebate or forgive that portion of real estate taxes due by low-income senior citizens caused by any increase in the real estate tax rate or an increase in the assessed value of their homestead.[6] The maximum amount of the benefit may be limited by the city. Allegheny County, Pittsburgh and other municipalities within Allegheny County are authorized to provide tax relief to qualified property owners through their own rebate programs.[7] Any such program must be modeled on the Taxpayer Relief Act program, but benefits may vary from taxing jurisdiction to taxing jurisdiction.

Additionally, Allegheny County and its political subdivisions may use a tax-neutral assessment for homesteads of qualified owner-occupants following a mandated county-wide reassessment. Individuals who qualified under the Senior Citizens Rebate and Assistance Act, which has since been repealed by the Taxpayer Relief Act, automatically qualified for the tax-neutral assessment. This tax-neutral assessment would continue until the owner fails to meet the requirements for a rebate or the owner's property is sold.[8]

Real Estate Tax Deferral

Under the Real Estate Tax Deferment Program Act, all political subdivisions are authorized to establish a real estate tax deferral program for low-income homeowners.[9] The program is limited to persons with incomes not exceeding the eligibility limit of the Senior Citizens Rebate and Assistance Act (currently $15,000), but a 2015 proposal to amend the Real Estate Tax Deferment Program Act would increase the income eligibility cap to $50,000.[10] Currently, the deferrals apply to all increases in property taxes on the homestead over the amount paid in the year prior to application.

Once enrolled, claimants receive deferrals for subsequent years if they continue to meet the program's eligibility requirements. As part of the program, deferred property taxes become a lien against the value of the taxpayer's home and must be paid when the house is sold or the property is transferred on the death of the owner or spouse. There are limitations on the total amount of taxes that can be deferred based on the market value of the property. The deferral program is optional for local taxing bodies (although the proposed amendment mentioned above would require all political subdivisions to offer deferrals).

Forest and Farmland

The Covenant Preserving Land Uses Act of 1966, as amended, authorizes all counties to enter into covenants with owners of land designated as farm, forest, water supply, or open space land on an adopted municipal, county or regional plan, for the purpose of preserving the land as open space.[11] The landowner may voluntarily agree that the land will remain in open space use as designated on the plan for a period of ten years commencing with the date of the covenant. Covenants are automatically renewed on a yearly basis unless the landowner or county gives advance notice of termination. The applicable real property tax assessment will then reflect the fair market value of the land as restricted by the covenant. The law also requires the applicable assessment appeals board to take the restriction into consideration in fixing the property's assessment.

Under the Pennsylvania Farmland and Forestland Assessment Act of 1974 (commonly referred to as the "Clean and Green Act"), preferential tax assessments are provided on tracts of land containing ten or more contiguous acres in agricultural use, agricultural reserve or forest reserve.[12] Tracts of land that are less than ten acres may qualify under agricultural use if the land has an anticipated yearly gross income of at least $2,000. All agricultural use lands, however, must have been devoted to agricultural use for a three-year period prior to obtaining preferential treatment. Once approved for preferential treatment, the land is assessed on its value for agricultural or forest use (i.e., "use value") and not on its potential market value. Subsequently, if any land is "split-off" and the resulting parcels do not meet the Act's requirements to qualify for preferential assessment (e.g., the split-off parcel is less than 10 acres), the landowner will be required to pay roll-back taxes. For example, the Commonwealth Court of Pennsylvania has held that a landowner's conveyance of a 3.56-acre tract of land to her son qualified as a "split-off" under the Act and as a result, the conveying landowner was subject to roll-back taxes.[13]

Landowners may apply for preferential use assessments by applying to the county board of assessment appeals in the county in which the land is located. Landowners must submit such application on or before June 1 of the year immediately preceding the tax year and on the appropriate form provided by the Department of Agriculture. When affording preferential tax treatment to farmland and forestland, counties must follow the procedures set forth in the Farmland and Forestland Assessment Act. County assessment boards have no authority to devise their own informal program of preferential tax treatment for farmland.[14]

Pennsylvania's Open Space Lands Act provides that for any land where open space interests in real property have been acquired by the state or local government units, the assessment of the remaining private interests in the property must be reduced to reflect the change in the market value of that land.[15] Additionally, where agricultural conservation easements on land have been purchased by the state, local governments or nonprofit conservation entities, the land must be assessed at a restricted farmland market value, defined as market value solely for agricultural use.[16] After development rights have been purchased by state or local governments under the Open Space Lands Act or the Agricultural Area Security Law, local taxing authorities, including school districts, are authorized to exempt the parcels from any further increase in millage.[17]

Deteriorated Property or Areas

The Improvement of Deteriorating Real Property or Areas Tax Exemption Act, permits each taxing authority, by ordinance or resolution, to exempt from real property taxation the assessed valuation of improvements to deteriorated residential properties within deteriorated neighborhoods, according to certain enumerated exemption schedules.[18] Prior to adopting such an ordinance or resolution, the taxing authority, or two or more taxing authorities acting jointly, must determine the boundaries of a deteriorated neighborhood or neighborhoods to which the tax exemption provisions will apply.

The Act provides that local taxing authorities may grant tax exemptions on the assessment attributable to the actual cost of construction of the new dwelling units or improvements up to an enumerated maximum cost per dwelling unit or up to any lesser multiple of $1,000, as specified in the applicable ordinance or resolution. Whether or not the assessment eligible for exemption is based upon a maximum cost or a lesser cost, the actual amount of taxes exempted must be in accordance with one of the following exemption schedules: (1) a ten-year schedule with 100 percent exemption the first year and reductions by 10 percent each subsequent year; (2) a five-year schedule with annual 20 percent reductions; (3) a three-year schedule with 100 percent exemption in each year; (4) ten years of 100 percent exemption; or (5) an exemption schedule adopted by the local taxing authority, provided that such schedule does not exceed a period of ten years. The exemption from taxes is limited to the additional assessment valuation attributable to the actual costs of improvements to deteriorated property. The exemption may not terminate upon the transfer of the property.

An exemption request must be submitted on a form provided by the taxing authority at the time the owner secures a building permit, or if no building permit or other notification of improvement is required, at the commencement of construction. The assessment agency is required to assess the improvement separately and notify the owner and the taxing authority of the reassessment and the amounts eligible for exemption. The notice must include the amount of the assessment eligible for exemption and include the exact schedule of assessments over the abatement period.[19]

Pennsylvania's Local Economic Revitalization Tax Assistance Act (LERTA) authorizes each local taxing authority, by ordinance or resolution, to exempt from real property taxation the assessed valuation of new construction in deteriorated areas or improvements to deteriorated industrial, commercial or other business property.[20] Prior to the adoption of an ordinance or resolution, the municipal governing body must affix the boundaries of a deteriorated area or areas, wholly or partially located within its jurisdiction. Two or more municipal governments may jointly determine such boundaries and establish the uniform maximum cost per unit to be exempted and the schedule of taxes exempted.

The tax exemption schedule must not exceed ten years in duration, must stipulate the portion of new construction or improvement to be exempted each year and must limit the exemption to the additional assessment valuation attributable to the actual costs of new construction or improvements to deteriorated property or an amount not in excess of the maximum cost per unit established by a municipal governing body. Improvements and new construction are assessed after completion.

The exemption period begins in the year following the completion of the improvement, not the year following the application for a building permit and the application for an exemption.[21] However, the Pennsylvania Supreme Court has held that taxpayers who did not seek to challenge the commencement date of exemptions granted under LERTA when the exemptions were awarded could not do so after the exemptions expired.[22] The exemption may not terminate upon the sale or exchange of the property.

Taxpayers apply for an exemption on a form provided by the local taxing authority at the time they secure a building permit, or if no building permit or other notification of new construction or improvement is required, at the time they commence construction. Failure to meet the notification requirement can disqualify a taxpayer from an exemption. For example, the Commonwealth Court has upheld a Philadelphia LERTA ordinance requiring notice of an intention to seek an exemption within 60 days of securing a building permit.[23] After completion of the new construction or improvement, the assessment agency must assess the new construction or improvement separately and notify the taxpayer and the local taxing authorities of the amounts of the assessment eligible for exemption.

New Residential Construction

The New Home Construction Local Tax Abatement Act, which implements Section 2(b)(iv) of Article VIII of the Constitution of Pennsylvania, authorizes local taxing bodies to exempt improvements to certain unimproved residential property.[24] Specifically, local taxing authorities may, by ordinance or resolution, exempt from real property taxation the assessed valuation of residences built upon unimproved land within designated boundaries. The exemptions are limited to a maximum duration of two years.

Special Tax Relief to Long-term Owner-Occupants

An amendment to the Pennsylvania Constitution adopted by voters in 1984 authorizes local taxing authorities in counties of the first and second class to adopt special tax provisions for long-term homeowners who are adversely affected by sudden increases in property values due to extensive renovation in their neighborhoods. This provision was implemented by the First and Second Class County Property Tax Relief Act in 1988.[25] The governing bodies in Philadelphia and Allegheny Counties are authorized to, by ordinance or resolution, grant longtime owner-occupants tax deferrals, exemptions or a combination of both for that portion of an increase of real property taxes caused by any increase in the market value of their property resulting from widespread renovation of property in their neighborhood. These deferrals and/or exemptions are limited to areas designated by the applicable governing bodies. Additionally, school districts and municipalities within Allegheny County have the option to participate in this program.

REFERENCES

1. Pennsylvania Constitution, Article VIII, Section 2(b).
2. 53 Pa.C.S. §§ 8581 et seq., Homestead Property Exclusion Program Act.
3. 53 Pa.C.S. § 8401.
4. 53 Pa.C.S. § 8717.
5. 53 P.S. §§ 6926.1301 et seq.
6. 72 P.S. §§ 4751-21 et seq.
7. 16 P.S. § 6171-B.
8. 16 P.S. §§ 4901-A et seq.
9. 53 Pa.C.S. §§ 8571 et seq., Real Estate Tax Deferment Program Act.
10. S.B. No. 31, 199th Gen. Assemb., Reg. Sess. (Pa. 2015).
11. 16 P.S. §§ 11941 et seq.; Covenant Preserving Land Uses Act.
12. 72 P.S. §§ 5490. 1 et seq., Pennsylvania Farmland and Forestland Assessment Act; 7 Pa. Code §§ 137b.1 et seq.
13. *Saenger v. Berks County Bd. of Assessment Appeals,* 732 A.2d 681, (Pa. Cmwlth. 1999).
14. Appeal of Sidorek, 621 A.2d 1149, 153 Pa. Cmwlth. 476, 480 (1993).
15. 32 P.S. § 5009.
16. 72 P.S. § 5491.3, Preserved Farmland Tax Stabilization Act.
17. 32 P.S. § 5007.1(b).
18. 72 P.S. § 4711-202, Improvement of Deteriorating Real Property or Areas Tax Exemption Act.
19. *Banzhoff v. Dauphin County Board of Assessment Appeals,* 575 A.2d 164, 133 Pa. Cmwlth. 165, 170 (1990).
20. 72 P.S. §§ 4722 et seq., Local Economic Revitalization Tax Assistance Act.
21. *MacDonald, Illig, Jones and Britton v. Erie County Board of Assessment Appeals,* 604 A.2d 306, 145 Pa. Cmwlth. 521 (1992).
22. *Lincoln Philadelphia Realty Associates I v. Board of Revision of Taxes of City and County of Philadelphia,* 758 A.2d 1178, 563 Pa. 189 (2000).
23. *Northwood Nursing Care and Convalescent Home, Inc. v. City of Philadelphia, Board of Revision of Taxes,* 511 A.2d 281, 98 Pa. Cmwlth. 401 (1986).
24. 72 P.S. §§ 4754-1 et seq., New Home Construction Local Tax Abatement Act.
25. Pennsylvania Constitution, Article VIII, Section 2(b)(v).

VIII. Payments In Lieu of Taxes

One means of compensating taxing jurisdictions for taxes not received from tax-exempt properties is the making of payments in lieu of taxes. These payments are intended to cover the cost of governmental services provided by local governments or to offset the revenues lost when a property is removed from the tax rolls.

State Payments In Lieu of Taxes

The Commonwealth of Pennsylvania makes annual payments to local subdivisions for state-owned land used for forest, water conservation, flood control and game purposes.[1] Currently, under the Forest Reserves Municipal Relief Law, the state pays $1.20 per acre to each of the county, municipality and school district (i.e., a total of $3.60 per acre) in which the tax-exempt land is located.[2] However, a 2015 proposal to amend the law would increase that amount to $2.00 per acre to each of the county, municipality and school district (i.e., a total of $6.00 per acre).[3]

Under the Public Utility Realty Tax Act (PURTA), lands and structures owned by public utilities and used in providing their services are subject to a state realty tax in lieu of local taxes on utility realty. The commonwealth redistributes PURTA tax funds it receives to the local taxing bodies on a formula basis.[4] Local taxing bodies must file an annual report with the Department of Revenue to qualify for this distribution.

Act 4 of 1999 changed the definition of "utility realty" to remove "land and improvement to land that are indispensable to the generation of electricity" from the PURTA tax after December 31, 1999. Act 4 was in response to the deregulation of electricity generators and has led to a substantial reduction in amount of money that is redistributed to political subdivisions from the PURTA tax beginning with the 2000 distribution. However, in July 2001, the Commonwealth Court held that Act 4 of 1999 authorized political subdivisions to impose real estate taxes on electric generating facilities beginning January 1, 2000. The court also held that the addition of electric generation realty to the tax rolls did not constitute an unconstitutional spot assessment and that school districts may revise their assessment rolls at any time during the fiscal year.[5]

Federal Payments In Lieu of Taxes

Under the federal Payments-in-Lieu of Taxes Act, the Federal government makes payments to local governments to help offset losses in property taxes for those local governments due to the location of certain non-taxable Federal lands, referred to as entitlement lands, within their boundaries.[6] Payments are made on a fiscal year basis to each unit of local government and are based on the amount of entitlement acreage of federally owned lands within a county and limited by a per capita population factor. Subject to a maximum limit based on population, the amount of a payment under the Act to a county will be equal to the greater of either $1.65 per acre of entitlement lands reduced by amounts the county received in the prior fiscal year under a different "payment law" (e.g., payments for timber, minerals or grazing), or $0.22 per acre in addition to current payments. States may adopt legislation requiring that payments made under the Act be reallocated and redistributed, in whole or in part, to other smaller local subdivisions. In Pennsylvania, the funds are divided between municipalities and school districts.

Authority Payments In Lieu of Taxes

Public housing authorities, with housing assistance funds received by the federal government, may make annual contributions in lieu of taxes to certain municipalities. However, public housing authorities may not make such payments unless the governing body of the municipality involved has entered into a cooperation agreement with the public housing authority, which agreement must include certain provisions. Specifically, the cooperation agreement must provide an exemption for the project from real and personal property taxes levied or imposed by any city, county or other political subdivision. The agreement also must require that the public housing authority make payments in lieu of taxes equal to ten percent of the annual rents collected from the project.[7]

As public instrumentalities of the commonwealth performing essential governmental functions, industrial development authorities are not required to pay any taxes upon property they acquire or use.[8] In those rare instances where title to real estate is transferred to an industrial development authority, the authority may choose to make payments in lieu of taxes to applicable taxing jurisdictions in amounts equal to those that would have been levied on the properties if they were not tax exempt.

Private Payments In Lieu of Taxes

Some institutions, such as churches and nonprofit housing agencies, have historically made voluntary payments in lieu of taxes toward the cost of services received from local units of government. The payments are made as a gesture of good will and require no written or oral agreements.

A long series of legal challenges to the tax-exempt status of hospitals and other nonprofit institutions that began after 1985 often resulted in written settlements in which an institution would retain its exemption, but agree to pay a negotiated amount in lieu of taxes. The use of these agreements was approved by the Commonwealth Court of Pennsylvania.[9] Subsequently, the Institutions of Purely Public Charity Act explicitly authorized such agreements by statute.[10] In those cases where institutions opt to make payments in lieu of taxes, such payments may be made directly to political subdivisions or to a public service foundation that distributes funds to participating subdivisions to ensure continued provision of public services.

REFERENCES

1. 72 P.S. § 4303; 34 Pa.C.S. § 708.
2. 72 P.S. § 4303.
3. H.B. No. 344, 199th Gen. Assemb., Reg. Sess. (Pa. 2015).
4. 72 P.S. §§ 8101-A et seq., Public Utility Realty Tax Act.
5. *Atlantic City Electric Company v. United School District,* 780 A.2d 766 (Pa. Cmwlth., 2001).
6. 31 U.S.C. § 6903.
7. 42 U.S.C. §§ 1437c(e)(2) & 1437d(d).
8. 73 P.S. § 385; Industrial and Commercial Development Authority Law, Section 15.
9. *Lee Hosp. v. Cambria Cnty. Bd. of Assessment Appeals,* 638 A.2d 344, 162 Pa. Cmwlth. 38, 53 (1994).
10. 10 P.S. § 377.

IX. Nonreal Estate Taxes

Pennsylvania is unusual among the states in providing a wide range of subjects for local government taxation. It is even more unusual in authorizing local jurisdictions to invent new taxes in areas not prohibited or already occupied by state tax levies. Receipts from nonreal estate taxes constitute 15 percent of local revenues, ranging from three percent for counties to 41 percent for Pittsburgh. Tax revenues from nonreal estate taxes comprise 32 percent of all local government tax revenues, ranging from eight percent in counties to 84 percent in Philadelphia.

The adequacy of revenues from nonreal estate taxes and other sources allowed 51 Pennsylvania municipalities to operate without levying a real estate tax in 2013.

Total Revenues, Total Taxes and Nonreal Estate Taxes Pennsylvania Local Governments, 2013

(amounts in millions of dollars)

	Total Revenues	Total Taxes	Nonreal Estate Taxes	Nonreal Estate Taxes as % of Revenues	Nonreal Estate Taxes as of % Taxes
School Districts Total	26,004	14,311	2,616	10.0%	18.3%
Counties Total	8,296	3,053	249	3.0%	8.2%
Municipalities Total	17,953	7,476	5,059	28.2%	67.7%
Philadelphia	8,056	3,304	2,763	34.3%	83.6%
Pittsburgh	652	397	269	41.3%	67.8%
2A & 3rd Class Cities	1,876	556	251	13.4%	45.2%
Boroughs	2,475	860	387	15.7%	45.1%
1st Class Townships	1,584	769	363	22.9%	47.2%
2nd Class Townships	3,307	1,588	1,023	30.9%	64.5%
Total, All Local Taxing Bodies	**52,255**	**24,840**	**7,925**	**15.2%**	**31.9%**

Note: Approximately 60 municipalities did not report revenues in 2013. For purposes of this chart, Philadelphia is considered a municipality.

Tax sources other than real estate are authorized by several sources. The codes governing local taxing units authorize limited types of nonreal estate taxes. These include the Public School Code, County Code, Second Class County Code, Third Class County Code, Borough Code, First Class Township Code, Second Class Township Code and special laws for Philadelphia, Pittsburgh and their school districts. General enabling legislation allows municipalities and school districts to tax subjects not prohibited or already taxed by the state.

Local Government Nonreal Estate Tax Revenues 2013

(amounts in thousands of dollars)

Tax	Counties	School Districts	Municipalities	Total
Earned Income		1,326,758	3,102,626	4,429,385
Sales	44,550			44,550
Hotel Room Rental	60,298			60,298
Business Gross Receipts		53,689	797,458	838,119
Occupation	48.4	33,680	6,458	40,187
Per Capita	4,019	11,727	11,431	27,178
Realty Transfer		176,701	373,780	550,481
Occupational Privilege		15,245	196,251	207,763
Amusement/Admission		4,264	49,407	47,449
Mechanical Devices		74.1	2,949	3,023
Other	140,839	129,661	519,503	790,004
Total	**249,756**	**2,616,166**	**5,059,866**	**7,038,443**

Note: Approximately 60 municipalities did not report revenues in 2013. For purposes of this chart, Philadelphia is considered a municipality.

On a statewide basis, the earned income tax is the most significant of these taxes, producing 64 percent of all receipts from nonreal estate taxes. The next most significant are business gross receipts taxes generating 12 percent and other taxes seven percent of receipts from nonreal estate taxes.

Nonreal Estate Taxes Levied by Local Government Units, 2013

Tax	Counties	Municipalities	School Districts	Total
Earned Income		2,356	466	2,822
Realty Transfer		2,390	490	2,880
Per Capita	26	1,350	274	1,650
Occupational Privilege		1,473	262	1,735
Occupation - Flat Rate			61	61
Occupation - Mills	2	256	50	308
Business Gross Receipts		264	48	312
Amusement/Admission		158	37	195
Mechanical Devices		331	14	345
Hotel Room Rental	63			63
Sales	1			1

Sterling Act

By far the most extensive grant of nonreal estate taxing power to any political subdivision in Pennsylvania, and the earliest of this type, was conveyed to Philadelphia by the Sterling Act of 1932. This act gives the "city the authority . . . to levy, assess and collect . . . such taxes on persons, transactions, occupations, privileges, subjects and personal property . . . as it shall determine. . . ."[1] The city may not levy or collect a tax on any subject preempted by a state tax or license fee, but otherwise there are no limits on the kinds of taxes Philadelphia can impose, no limits on the rates of those taxes, and no limit on the aggregate amount of revenue that can be raised.

Under the broad authority of the Sterling Act, Philadelphia has enacted taxes on wages, earnings and net profits, admissions to amusements, real estate transfers, parking lot receipts, mechanical devices, bowling alleys and sound reproduction. The income tax imposed by the city applies not only to residents of the city wherever they may work, but also to nonresidents earning income within the city. A 1977 law limited increases in the rate levied on nonresidents.[2] The split rate has been upheld by the Pennsylvania Supreme Court.

A 1963 law, dubbed the Little Sterling Act, allows Philadelphia city council to authorize the levy of any tax authorized by the Sterling Act for the Philadelphia School District.[3] The only limitation is the prohibition against levying an earned income tax on nonresidents.

Local Tax Enabling Act

Comprehensive taxing authority similar to the Sterling Act was extended to other political subdivisions by Act 481 of 1947. Because of its uniqueness in granting this measure of taxing authority to so many political subdivisions, it quickly became known as the "Tax Anything" law. The original act applied to all school districts, except Philadelphia and Pittsburgh, to all cities except Philadelphia, and to all boroughs and first class townships. The act was extended to second class townships several years later. The original act excluded from local taxing power subjects of taxation preempted by state taxation, but otherwise had few restrictions. It contained no limits on the rates of specific taxes, but limited the overall yield to the equivalent of the maximum permissible real estate tax yield for that class of subdivision. Act 481 was repealed and reenacted by Act 511 of 1965, the Local Tax Enabling Act.

When originally enacted in 1947, it was conceived as an emergency measure to help solve the financial problems of local governments. Both of the original elements of the Act - its temporary nature and its broad delegation of taxing power - have been lost. The taxes authorized by the Act have become permanent sources of revenue for local governments, in some cases exceeding the return from real estate taxes. The broad general taxing power of the original law has been increasingly circumscribed by legislative amendments and court decisions to the point where the Act is now primarily an express grant of power to levy certain taxes with maximum rates set by the legislature. The enabling language is still there, and from time to time new tax sources are identified and used. For example the General Assembly prohibited the residential construction tax in 1981. Constraints continue to be added to the law, such as prohibiting the levy of amusement taxes on memberships to fitness clubs in 1987.

Taxes commonly levied under the Act are the earned income, per capita, realty transfer, business gross receipts, amusement, local services tax (formerly known as occupational privilege tax) and occupation taxes. The Act also authorizes an intangible personal property tax for the city of Pittsburgh. These taxes are defined somewhat through listing of rate limits found in the Act, through similar taxes authorized by other laws, and through the widespread practice of using other units' ordinances as models in enacting the taxes. Section 501 of the Act contains standard definitions for the earned income tax, superseding any contrary definitions in local earned income tax ordinances.[4]

Numerous restrictions on taxing power have been written into the Local Tax Enabling Act. These include prohibitions against taxation of natural resources and farm products, taxation of manufacturing, taxation of public utilities or their services, taxation of nonresidents' income by school districts and taxation of the same subjects levied under state taxes. The issues of state preemption and the manufacturing exclusion have generated the most legal controversy, mainly in delineating the scope of business gross receipts taxes. Increasingly, limitations on Act 511 taxes are enacted into other laws. The Second Class City Law prohibits Pittsburgh from levying the business gross receipts tax on financial services businesses; Act 50 of 1998 freezes amusement taxes for school districts and reduces the maximum rate for amusement taxes newly enacted by municipalities.

The aggregate of all local taxes levied under the Local Tax Enabling Act may not exceed the equivalent of twelve mills times the market value of real estate within the taxing district.[5] The original Act in 1947 set a limit based on the maximum permissible real estate levy. The limit was later changed to a uniform ten mills of market value, then raised to fifteen mills, then set at twelve mills of market value. This aggregate limit has never been a serious constraint on local taxing bodies levying taxes within the limits set in the Act.[6]

Local Tax Reform Act

In 1988, the legislature enacted the Local Tax Reform Act.[7] This legislation would have made comprehensive changes in Pennsylvania's local tax structure. The new system focused on an increase in income taxing powers by school districts and municipalities accompanied by a reduction in residential real estate taxes. Most other personal taxes would have been abolished. Counties would have been given an optional sales tax.

The effective date of the Local Tax Reform Act was made dependent upon approval by the voters of a constitutional amendment to permit differential tax rates for residential real estate taxes. The amendment was placed on the ballot for the May 16, 1989 primary election, but was defeated by the voters. Except for a few provisions not made dependent on the passage of the constitutional amendment, the Local Tax Reform Act did not go into effect. Except for two sections freezing business gross receipts taxes and authorizing Philadelphia to use the state realty transfer tax base, the remainder of the Act was repealed by Act 50 of 1998.

Act 50 of 1998

The defeat of the 1989 referendum resulted in increasing pressure on the real estate tax, particularly by school districts needing additional revenues. Public pressure moved legislators to reopen the issue of restructuring the local tax system as early as 1993. A constitutional exemption authorizing homestead exclusions was passed by two successive legislatures and approved by the voters in November 1997. Legislation to implement the amendment was enacted by the General Assembly and signed by the Governor in May of 1998. Act 50 of 1998 enacts various local tax provisions into Title 53 of the Pennsylvania Consolidated Statutes.[8]

The Act includes peripheral matters of tax administration, including a local taxpayer bill of rights, an optional tax deferral program and implementing procedures for the homestead exclusion program. All local taxing bodies, counties, municipalities and school districts are subject to these sections.

General provisions at the beginning of the Act prohibit any additional school districts from enacting an amusement tax after June 30, 1997 and any municipal amusement tax levied after December 31, 1997 is limited to five percent. The gross receipts tax freeze is continued. Sign privilege taxes are prohibited as are motor vehicle transfer taxes, except for the three sign privilege taxes in place before December 31, 1997.

The bulk of the Act is composed of procedures that can be used by school districts to move to an earned income tax of up to 1.5% with offsetting elimination of per capita, occupation and occupational privilege taxes and reduction of the real estate tax rate. Any real estate reductions must be implemented first through adoption of the homestead exclusion. Any change in the tax system under the Act must be approved by the voters in a referendum, as must any future increases in real estate taxes reduced by the proposal.

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3. 53 P.S. § 16101(a); 1963 P.L. 640.
4. 53 P.S. § 6924.501.
5. 53 P.S. § 6924.320; Local Tax Enabling Act, Section 320(a), *as amended; Prior v. Borough of Eddystone,* 374 A.2d 981, 30 Pa.Cmwlth. 536 (1977).
6. *See, e.g., Thompson v. West Branch Area School District,* 505 A.2d 386, 95 Pa.Cmwlth. 288 (1986).
7. 72 P.S. §§ 4750.101 et seq.; 1988 P.L. 1121, No. 145.
8. 53 Pa.C.S. 8401 et seq.

X. Earned Income Taxes

Local income taxes in Pennsylvania are variously termed earned income taxes, wage taxes or net profits taxes or a combination of these terms. They are authorized for use by municipalities and school districts and are their principal source of nonproperty taxation. In 2013, either municipal or school earned income taxes were levied everywhere in Pennsylvania except for 145 municipalities, or 5 percent of all municipalities.

Statutory Authorization

Local income taxes were first authorized by the Sterling Act for Philadelphia.[1] Philadelphia's tax, adopted in 1939, made it the first municipality in the United States with a local income tax. The tax now constitutes the chief tax source for the city government.

The Local Tax Enabling Act authorizes local earned income taxes for other municipalities and school districts.[2] The tax is levied on the wages, salaries, commissions, net profits or other compensation of persons subject to the jurisdiction of the taxing body. Municipalities and school districts levying earned income taxes may exempt persons whose income from all sources is less than $12,000 per year from the earned income tax.[3] The exemption must be adopted as part of or an amendment to the tax-levying ordinance or resolution. Local taxing bodies have the authority to adopt regulations for processing exemption claims.

An earned income and net profits tax for the Pittsburgh School District is authorized by the Public School Code.[4] This authorization also gives the school district access to certain tax subjects authorized by the Local Tax Enabling Act, but the district may not use this authority to increase its earned income tax above the limit established in the School Code.[5]

Act 50 of 1998 authorizes school districts to impose earned income taxes of up to 1.5% following approval by the voters in a referendum, beginning in the November 1999 election.[6] School districts would be required to offset increased earned income tax revenues by repealing occupation, occupational privilege and per capita taxes and reducing real estate taxes by implementing a homestead exclusion. They may exempt persons with incomes less than $7,500 per year.[7]

Act 30 of 2008 permits political subdivisions that levy an occupation tax to replace the revenue provided by the occupation tax by increasing the rate of the earned income tax, within specified limits and subject to approval of a referendum.[8] After approval of the referendum, the taxing jurisdiction must eliminate the occupation tax.

When the state personal income tax was enacted in 1971, a saving clause was included to protect local income taxes from preemption by the state tax.[9]

Tax Rates

There is no statutory limit on the Philadelphia wage and net profits tax. In 1977, a restriction was placed on Philadelphia's power to tax nonresidents. The tax rate applied to nonresidents was restricted to 4 and 5/16 percent until such time as the tax rate for residents exceeds 5 and 3/4 percent. After that point the rate for nonresidents may be increased at a rate of 75 percent of that for residents.[10]

The Pittsburgh School District tax is limited to two percent.[11] A special provision of the Local Tax Enabling Act allows the Scranton School District to levy the tax at one percent without the sharing requirement mandated for other school districts under the Act.[12]

In general, all other jurisdictions adopting income taxes under the Local Tax Enabling Act are limited to one and one-half percent. Where both municipality and school district levy the tax, the one percent limit must be shared on a 50/50 basis, unless otherwise agreed to by the taxing bodies.[13] The sharing requirement, plus the crediting provisions of the Act, were intended by the legislature to limit the cumulative effect of wage taxes where a

taxpayer might be subject to more than one tax.[14] The sharing provisions automatically halve the taxes of overlapping jurisdictions as they apply to residents. But because school districts may not levy earned income taxes on nonresidents, the sharing provisions will not affect the municipal tax rate applied against nonresidents working within the municipal limits.[15] Of course, if the nonresidents are liable for an earned income tax at their place of residence, this will provide a credit against any nonresident levy in their place of employment.

Earned income taxes are also subject to the overall limits on taxes enacted under the Local Tax Enabling Act found in Section 320 of the Act. Courts have been reluctant to question the actions of governing bodies enacting earned income taxes for the first time and producing large revenues without evidence that "suggests arbitrary and capricious action indicative of a wanton disregard of public duty."[16]

As discussed in detail below, Pennsylvania law allows the Act 511 limit for earned income taxes to be exceeded under six circumstances:

1. Home rule municipalities.
2. Municipalities declared financially distressed.
3. Municipalities with financially distressed municipal pension systems.
4. Municipalities where voters approve an additional tax for open space purposes.
5. School districts where voters approve increased earned income taxes under Act 50.
6. School districts and municipalities where voters approve increased earned income taxes under Act 24.

Municipalities which have adopted home rule charters under the Home Rule Charter and Optional Plans Law are no longer limited to statutory limits for personal taxes levied on residents, including the earned income tax.[17] Earned income tax rate limits are often placed in the charters themselves. Some home rule municipalities have moved to increase their rates. Nonresidents employed in a home rule municipality are liable for only one percent earned income tax, since home rule municipalities may not exceed the statutory limit for nonresidents.[18]

Municipalities which have been declared distressed under the Municipalities Financial Recovery Act (Act 47) may be able to increase their earned income taxes above the limit set in the Local Tax Enabling Act.[19] The increase must be part of the recovery plan adopted for the municipality. The municipality must petition the court of common pleas for approval to increase tax rates above the limit for a period of one year. Subsequent increases may be granted by the court upon annual petition of the municipality until the termination date of the recovery plan. Unlike the Home Rule Law, Act 47 allows the extension of the earned income tax increase to nonresidents, subject to certain requirements, when there is an "equal or greater increase in the rate of taxation on resident income over the highest rate levied in the previous fiscal year."[20] However, if a municipality increases its nonresident earned income tax rate, then it must also increase its resident earned income tax rate by at least as much as the increase in nonresident earned income tax. Additionally, a municipality is prohibited from increasing its earned income tax rate (resident or nonresident) under Act 47 if it instead increases its local services tax rate under Act 47.[21]

In similar fashion, municipalities which are certified as having financially distressed municipal pension systems under Act 205 of 1984 have access to earned income tax power above the limit set in the Local Tax Enabling Act as one of the remedies of their pension recovery program.[22] Determination of municipal pension system financial distress must be made by the Public Employee Retirement Study Commission. After determination is made, the municipal governing body may elect to use any of the available remedies in the Act. To use the special taxing powers of Act 205, the municipality must already be at the maximum rate of earned income tax set by law. The proceeds from the tax levied above the limit must be used solely to defray additional pension funding costs which are "directly related to the pension plans of the municipality and which are included in the calculation of the financial requirements of the pension plan and the minimum municipal obligation."[23] Previous levels of pension funding must be maintained. Act 205 does not prohibit extension of the earned income tax increase to nonresidents as well as residents.

Act 153 of 1996 authorizes levy of an earned income tax in addition to the tax levied under Act 511 for the purposes of financing purchases of open space lands.[24] The tax rate is set by the voters in the referendum. Any increase is limited to residents only. In the first referendum under this act, the voters of East Bradford Township, Chester County approved an additional .125% open space tax in November 1998. A similar open space tax was approved by East Rockhill Township, Bucks County voters in May 1999.

Act 50 of 1998 authorizes school districts to levy earned income taxes up to 1.5% with the approval of the voters.[25] The question presented to the voters must include the initial new rate. The increase in earned income tax revenues must be offset by repealing occupation, occupational privilege and per capita taxes and reducing real estate taxes. School boards began initiating proposals in 1999 and voters could initiate the process by petition beginning in 2001. As of 2015, only four referenda have been approved; Central Dauphin, Hazelton, Williamsport, and Southern Columbia.

Act 130 of 2008 permits a political subdivision that levies an occupation tax to replace the occupation tax with an increase in the rate of the earned income tax, if approved by referendum.[26] The increase in the earned income tax is calculated by adding (i) the earned income rate that would equal the amount of revenue brought in by the occupation tax in 2002, for a school district, or in 2001, for a municipality, to (ii) the earned income rate in 2002, for a school district, or in 2001, for a municipality.[27]

Taxable Income

Section 501 of the Local Tax Enabling Act establishes uniform definitions for earned income, net profits, domicile and other terms.[28] These definitions supersede any omission or contrary definitions in any local tax ordinance or resolution adopted under the Act.

Act 32 of 2008 consolidated the collection of the local earned income tax and restated that the terms "earned income" and "net profits" as used in the Local Tax Enabling Act mean, with certain exceptions, "compensation" and "net profits" as such terms are used for Pennsylvania personal income tax purposes, effective for 2003.[29] Employee business expenses as reported to or determined by the Department of Revenue for purposes of personal income tax are allowable deductions in determining earned income.[30] Under Act 32, business losses cannot be used to offset earned income.[31] Net Profits includes the net income from the operation of a business, but does not include the net income from a corporation.[32] Additionally, net profits do not include income that is not paid for services provided or that is in the nature of earnings from an investment.[33] For taxpayers engaged in farming net profits do not include income which represents the gain on the sale of farm machinery, most livestock and the capital assets of a farm.[34]

Where a taxpayer deliberately acquires rental property, it can be considered a business and subject to the local earned income tax.[35] Net profits passed through to a taxpayer by a Chapter S corporation are investment income and not subject to the local earned income tax.[36]

Income from interest and dividends is not taxable under the earned income tax, including interest and capital appreciation earned through an employer's incentive plan.[37] However, the Pennsylvania Supreme Court recently held that stock options constituted a form of "incentive payments" or "other compensation" under the Local Tax Enabling Act and are subject to a township's earned income tax when an employee exercises this option.[38] Additionally, *Confair v. Municipal and School Income Tax Board of Appeals* (No. 00-00,464, Lycoming County) ruled that noncompete agreements are taxable.

Despite a prior Pennsylvania Supreme Court Ruling to the contrary, under Act 32 of 2008 business losses cannot be used to offset earned income.[39] However, despite earlier court rulings to the contrary, under Act 32 liability for earned income taxes on net profits is to be calculated in light of total net profits from all businesses combined, as is the case under the personal income tax.[40]

State law provides for sharing of income tax information between the Internal Revenue Service and the state Department of Revenue. The Department of Revenue also shares tax information with school districts. The school districts are authorized to share this information with their contiguous municipalities.[41]

Residency

Determination of residency is a critical element for earned income taxes. School districts may only tax residents of the district.[42] Municipalities taxing nonresidents must credit liability for their taxes against taxes paid at the place of residence.

A resident is a person or business domiciled within the taxing district.[43] For wage earners domicile is defined as the place where one lives and has one's permanent home and to which one has the intention of returning whenever absent. Actual residence for a special or limited purpose does not constitute domicile, rather domicile is the voluntarily fixed place of habitation of a person with the intention of making a permanent home. For business net profits taxpayers, domicile is defined as the center of business affairs and the place where its functions are discharged.[44]

As provided in a recent Commonwealth Court case, in cases where residence cannot be clearly determined by applying the definition of domicile in the Local Tax Enabling Act, the rules for determining residence for voting and election purposes can be looked to for guidance.[45]

An individual whose spouse and children lived in the district, who owned property there, had a Pennsylvania driver's license and filed personal income tax returns in Pennsylvania was found to be a resident of the district, even though employed in Ohio.[46] Establishment of taxpayer's residence by opinion testimony of two witnesses was upheld on appeal.[47] The Commonwealth Court held the weight and credibility of evidence on residence was up to the trial judge sitting as a fact finder. Additionally, an individual who owned homes in Pennsylvania and Florida, held a Florida driver's license, was registered to vote in Florida, was active in many Florida organizations and spent the majority of the year in Florida was found to be domiciled in Florida and not subject to local income tax in Pennsylvania.[48]

Businesses or other associations are considered to be domiciled at the center of business affairs and the place where functions are discharged. The only cases on business domicile have involved Philadelphia's wage and net profits tax that lacks the statutory definition of business domicile found in the Local Tax Enabling Act. The Court held partnerships are not entities having a domicile distinct from the individuals who compose them.[49] Liability of partners for the Philadelphia tax was restricted to net profits earned within the city in the case of nonresident individuals.

Crediting

Municipalities are authorized to levy the earned income tax on nonresidents earning income within their jurisdiction. However, the Local Tax Enabling Act requires the place of employment to grant a credit for any earned income tax levied at the place of residence.[50] In most cases, there will be a tax at the place of residence, so the ability to tax nonresidents does not constitute a significant source of revenue.

Taxes withheld by employers from nonresidents in municipalities with ordinances taxing nonresidents should be paid over promptly to the jurisdictions entitled to the taxpayers' funds. In a case where a township proceeded against the taxpayer for taxes withheld, but not paid over by the place of employment, the county court indicated the township should proceed against the municipality holding the money. "It is indeed difficult for a layman to understand why he should be sued and required to pay a tax twice when his tax payment is available to … [the township] in an action against the city which holds his tax payment."[51] By failing to properly account for and pay over tax withholdings, taxing bodies are endangering the spirit of voluntary taxpayer compliance that makes the local tax system work with minimal enforcement. There is no statutory authority for a collecting municipality to unilaterally charge a fee for remitting nonresident withholdings to the municipalities to which they are due.[52] Outlying municipalities may negotiate a fee for prompt remittal of their funds.

The exception to the priority given to the place of residence is persons subject to the Philadelphia wage tax. The Local Tax Enabling Act requires municipalities to credit their residents for taxes paid to Philadelphia on income earned within the city. This credit, like the other credits provided in Section 317, is a direct reduction against the liability for tax owed by the taxpayer. In a case where Norristown attorneys claimed a credit against liability for local taxes for taxes paid to Philadelphia on net profits earned within the city, the court upheld the taxpayers'

interpretation. The Norristown tax collector had attempted to calculate local tax liability as one percent on income earned locally, but the court held the credit meant a direct reduction from liability for the tax owed. "Here, however, the Legislature said plainly that a tax paid to one taxing authority should be credited to the tax liability to the other taxing authority."[53] The correct method of calculating the tax due was to take one percent of total taxable income then subtract the amount of tax paid to Philadelphia. The Commonwealth Court recently upheld this type of credit, known as the "super credit," in holding that county tax collectors could not merely apply a apportioned credit for the earned income tax paid to Philadelphia; rather, the tax collectors were required to apply the super credit for income tax previously paid to Philadelphia.[54] For school districts levying higher earned income taxes under Act 50, taxpayers can claim a credit of 0.2756% of their nonresident Philadelphia taxable income as a credit against the state income tax.[55] Depending on the wording of the proposal approved by the voters of the school district, this tax credit either goes directly to the taxpayer or to the school district of residence.

Where Pennsylvania residents are employed in another state and subject to a state or local income tax at their place of employment, the local taxing body must credit against their liability for any local taxes the amount of tax paid out of state. The same dollar of the out-of-state tax cannot be claimed as credit against liability for both state and local taxes in Pennsylvania, but the credit can be divided and apportioned against Pennsylvania state and local tax liability.[56] Tax payments made voluntarily to another state do not qualify for the credit; there must be evidence the taxpayer was legally liable for the out-of-state taxes.[57] This credit does not extend to taxes paid to foreign countries.[58] Credit for taxes paid to other states is limited to the amount payable to the Pennsylvania political subdivision on that portion of the taxpayer's income which was subject to taxation by the other state.[59]

The Local Tax Enabling Act authorizes, but does not require, local taxing bodies to grant credits to out-of-state residents for liability for nonresident earned income taxes on income earned in Pennsylvania for taxes paid in their home state. Refusal of municipal officials in southern Pennsylvania communities to grant credits to Maryland workers led to a tax war in the late 1970s with Pennsylvania residents working in Maryland being subjected to harsh retaliatory taxation. Exercise of fair play in granting credits in these cases seems to be the prudent course for Pennsylvania local officials.

Withholding

The Act requires every employer having a factory, workshop, branch, warehouse or other place of business within the taxing jurisdiction to register with the earned income tax officer.[60] All employers with work sites within the taxing jurisdiction are mandated by law to deduct the earned income tax from their employees at that site if the tax is listed in the Earned Income Tax Register of the Department of Community and Economic Development. If the ordinance or resolution is not listed in the Register, employers are not required to withhold taxes levied under the Local Tax Enabling Act from employee wages. Except for Philadelphia and the Pittsburgh School District, employers have no legal responsibility to withhold taxes levied by jurisdictions where they have no worksites.

If an ordinance contains a provision imposing the earned income tax on nonresidents, the employer is required to withhold from all employees regardless of their place of residence and remit the money to the tax officer. Responsibility for transmitting withheld taxes of nonresidents to the employees' place of residence rests with the tax officer, not with the employer.

Where the ordinance taxes residents of the taxing district only, the employer is required to withhold only from resident employees. Any other withholding under a resident-only taxing ordinance is voluntary on the part of the employer, usually done for the convenience of the employee. If the ordinance levies taxes on residents only, the municipal earned income tax officer may and often does refuse to accept withholdings for any nonresidents. In such a case the employer is left with the choice of refunding the withholdings or transmitting them directly to the nonresident's tax officer. Some employers with work locations in resident only jurisdictions withhold from all employees as a matter of company policy, deciding to shoulder the additional filing costs as a benefit to their employees.

The exception to this rule is the earned income tax levied by the Pittsburgh School District. The district may require withholding of its tax from any nonresident employer who is believed to employ any resident of the district.[61] Beginning in 1994, state law has required all Pennsylvania employers to withhold the Philadelphia wage tax from all employees who are Philadelphia residents regardless of where they work.[62]

Register of Earned Income Taxes

The Register of Earned Income Taxes is prepared and issued by the Department of Community and Economic Development. In order to have employers withhold taxes, the taxing district must have its tax listed in the Register.

Information must be supplied to the Governor's Center for Local Government Services on their forms prior to December 1 to be effective for December 15 and prior to June 1 to be effective for June 15 of each year in order to ensure the information appears in the Register for the next reporting period. Tax information forms are mailed to municipalities in November and to school districts in May to update and verify data on file for the Register for their forthcoming fiscal years. Failure to receive the information on taxes continued without change is construed by the department to mean the information contained in the previous Register remains in force.

The Register lists the municipalities and school districts levying the tax, their effective tax rates, and the name and address and telephone number of the tax officer responsible for collection of the earned income tax. Stated rates are shown for information purposes only. Copies of the Register can be purchased from the department. Information can be obtained by contacting:

Pennsylvania Department of Community and Economic Development
Governor's Center for Local Government Services
400 North Street, 4th Floor
Commonwealth Keystone Building
Harrisburg, Pennsylvania 17120-0225

866-466-3972
dced.pa.gov

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XI. Intangible Personal Property Taxes

Statutory Authorizations

Counties and the city of Philadelphia are authorized to levy a tax on intangible personal property at the statutory rate of four mills by a 1913 law.[1] The tax applies to mortgages, other interest bearing obligations and accounts, public loans, except those of the United States, Pennsylvania or Pennsylvania political subdivisions, corporate loans not subject to the corporate loans tax, and shares of stock other than those subject to the capital stock or bank shares taxes.

In 1978 this law was amended to authorize county commissioners to determine whether or not to impose and collect the tax, for the first time making this tax optional at the county level.[2] By 1992, the number of counties levying the tax had dropped to 40 and by 1995 to 27. In 1995, the law was further amended to permit rates less than 4 mills as some counties sought a gradual phase-out of their taxes.

The intangible personal property taxes of Allegheny County, Pittsburgh and the Pittsburgh School District were repealed in 1994 as required by the law authorizing the Allegheny County sales tax.[3] The Philadelphia School District had special statutory authority but dropped the tax in 1968 in favor of a tax on unearned income.[4]

Legal Challenges to the Tax

On February 21, 1996, the United States Supreme Court struck down as unconstitutional a similar North Carolina intangibles tax.[5] Like, the Pennsylvania tax, the North Carolina tax exempted securities whose companies were paying North Carolina corporate taxes. The Supreme Court found that the North Carolina tax discriminated against interstate commerce. Almost immediately, a flurry of class action lawsuits and requests for refunds were filed in the 24 counties still levying the tax in 1996.

Concerned with limiting their potential liability for tax refunds, 22 counties dropped the tax in 1997, leaving only Clarion County and the City of Philadelphia levying the tax. These two dropped the personal property tax in 1998. An effort in the legislature to limit county's liability for refunds was halted when Governor Ridge vetoed a bill which would have limited refunds to those taxes levied in 1996 and subsequent years.[6]

In June 2001, the Pennsylvania Supreme Court ruled that the provision in the personal property statute that exempts stock held in Pennsylvania corporations from taxation violates the uniformity mandate of the Pennsylvania Constitution. The Court held that the constitutional violation could be remedied by carrying out either a retroactive collection of the tax on Pennsylvania corporation stock, granting a refund of the tax, giving a tax credit, or any combination of these three options.[7]

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7. *Annenberg v. Commonwealth,* 757 A.2d 338, (Pa. 2000); *Stranahan v. County of Mercer,* 697 A.2d 1049 (Pa.Cmwlth. 1997); *Israelit v. Montgomery County*, 703 A.2d 722 (Pa.Cmwlth. 1997).

XII. Per Capita Taxes

A per capita tax is a flat rate tax levied upon each adult within the taxing district. The tax has no connection with employment, income, voting rights or any other factor except residence within the community. Commonly referred to as a "head tax," it is derived from the Latin words, "per," meaning "by," and "capita," meaning "heads." It is sometimes called a residence or poll tax and is levied equally on all adult residents or inhabitants of the taxing jurisdiction.

The tax is authorized in the respective codes of law for second through fourth class school districts,[1] for third class cities (referred to as a residence tax),[2] and for fourth to eighth class counties as an alternative to the occupation tax;[3] all of the foregoing at a maximum rate of $5. Those political subdivisions under the authority of the Local Tax Enabling Act may levy an additional per capita tax at a maximum rate of $10.[4] Where a coterminous municipality and school district wish to levy the tax, the maximum rate must be shared between them. School districts where voters have approved an earned income tax under Act 50 of 1998 are prohibited from levying per capita taxes.[5]

Municipalities and school districts levying the per capita tax under authority of these acts are permitted to exempt any person whose income from all sources is less than $12,000.[6] Counties may exempt persons whose income is less than $10,000.[7] The exemption must be adopted by ordinance or resolution of the governing body. The governing body has authority to adopt regulations for processing claims for the exemption. In determining whether or not a married person qualifies for the exemption, the income of the spouse cannot be taken into consideration.[8] The court held the General Assembly had defined those in poverty as persons whose income is below the limit, and local jurisdictions cannot distinguish between members of this class based on additional criteria of need or family relationships.[9]

However, the Commonwealth Court did uphold a municipal per capita tax ordinance limiting the exemption to low income persons over 62 years of age as a reasonable classification.[10] This case upheld application of the per capita tax to indigents, and stipulated the granting of exemptions under the Local Tax Enabling Act or exonerations under the Local Tax Collection Law is a matter of discretion with each individual taxing district.

Per capita taxes can be levied on the per capita tax duplicate furnished by the county assessment office, or they may be levied on a list prepared for the taxing body by its own employees.[11] Preparation of the list is often one of the functions discharged by periodic school censuses. Collection of per capita taxes is difficult. They can be billed with real estate taxes. Delinquent per capita taxes are often assigned to a special delinquent collector. However, there is no statutory authority for a taxing district to recover the costs of the delinquent tax collector from taxpayers.[12] The per capita tax has a high collection cost in relation to its yield in revenues. A growing number of municipalities are eliminating the tax.

REFERENCES

1. 24 P.S. § 6-679; Public School Code, Section 679.
2. 53 P.S. § 37531; Third Class City Code, Section 2531.
3. 16 P.S. § 1770; County Code, Section 1770.
4. 53 P.S. § 624.3118(l); Local Tax Enabling Act, Section 311(l).
5. 53 Pa.C.S. § 8701(b).
6. 53 P.S. § 3924.301.1(b).
7. 16 P.S. § 1770.
8. *Keenan v. Penn Hills School District,* 65 D.&C.2d 767 (Ct. Com. Pl. Allegheny Co. 1974).
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10. Borough of Rochester v. Geary, 373 A.2d 1380, 30 Pa. Cmwlth. 493 (1977).
11. 72 P.S. 5505; 1951 P.L. 1026, No. 216; *Seely v. Ridgway Area Sch. Dist.,* No. 1645 C.D. 2010 (Pa. Cmwlth. 2011).
12. *Selinsgrove Area School District v. Krebs,* 507 A.2d 906, 96 Pa. Cmwlth. 303 (1986).

XIII. Occupation Taxes

Origin of Occupation Tax

The 17th century English system of general property and income taxes was adopted for colonial Pennsylvania in the days of William Penn and continues to form the basis for much of the system of local government taxes still existing today. England taxed real estate, personal property and offices, the currently existing sources of income and wealth in the country. Together they were considered a system of general classified property taxation.

Historically, the occupation tax was considered to be a tax on property, in this case the property consisting of the office or occupation. It is difficult for modern people to think of an occupation as a form of property. It is less difficult if one observes that when the first taxes on occupations were levied, many offices were created by a grant or letter of appointment, often with a stipulated annual revenue. Offices could sometimes be sold or transferred, sometimes inherited and the practice of certain occupations required authorization and/or memberships in guilds or professional associations. Nor does it require too much of the imagination to recognize many occupations require licensing (doctors, lawyers, engineers, electrical and plumbing contractors, and many others), that membership in a union is often a prerequisite to the practice of certain trades as a practical matter, and that many professions require certain prerequisites even where the law is silent (teachers and professors). Unlike earlier centuries, modern occupations are not transferable by the occupant, and some may choose to call the practice of the occupation or profession a privilege rather than a property right. In Pennsylvania, the practice of selling liquor licenses is a rare example of occupational transferability.

However, Pennsylvania courts distinguish between occupation and privilege taxes. Occupation taxes are not based on income. "An occupation tax must be identical for all members of a particular occupation whereas a privilege tax is based on some other criterion such as net income or volume of sales."[1] Because they sound alike, occupation taxes are sometimes confused with occupational privilege taxes. The Commonwealth Court has clearly distinguished these two taxes.[2] An occupation tax may only be levied on residents and must be measured by the assessed value of a particular occupation. The occupation tax is levied on residents of a taxing jurisdiction regardless of where their occupation is practiced.[3] An occupational privilege tax must be levied on residents and nonresidents alike and may only be levied by the jurisdictions in which the occupation is pursued.

Statutory Authorization

The occupation tax is authorized in the respective codes of law for fourth through eighth class counties,[4] cities,[5] boroughs,[6] and first class townships.[7] Counties which levy a per capita tax cannot also levy the occupation tax. Under the municipal codes, the maximum rate for the occupation tax is the same as the maximum rate for the real estate tax. In some cases, if an occupation tax is levied it must be at the same rate as the real estate tax for that year.

The occupation tax is also authorized by the Local Tax Enabling Act (the "Act").[8] Municipalities and school districts may either levy the tax at a flat rate, with a maximum $10 limit, or on a millage rate applied against the assessed value of occupations. The $10 maximum flat rate tax is subject to sharing when both municipality and school district levy it, but there is no limit on occupation taxes levied on a millage basis under the Act. Any change in the rate requires reenactment of the tax following the mandatory publication requirements of Section 306 of the Act.[9] School districts where voters have approved an increased earned income tax under Act 50 of 1998 are prohibited from levying occupation taxes.[10] Philadelphia[11] and Philadelphia School District[12] have authority to levy an occupation tax, but do not use it.

The unlimited millage authority under the Local Tax Enabling Act has been used, particularly by school districts, to impose taxes with rates set extremely high in order to produce significant tax yields. The highest occupational tax rate in 2015 was 1,900 mills (190 percent) levied by the Shamokin Area School District in Northumberland County.

Act 130 of 2008 permits a political subdivision that levies an occupation tax to replace the revenue provided by the occupation tax, millage or flat rate, with an increase in the rate of the earned income tax if approved by referendum.[13] After approval of the referendum, the taxing jurisdiction must eliminate the occupation tax.

For school districts extending into more than one county, the occupation tax must be levied uniformly on each occupational category. If valuations of occupations differ between counties, the district must levy the lowest valuation of any county uniformly throughout the school district.[14] School districts and municipalities cannot set their own occupational valuations; they must use the figures established by the county assessment board.[15]

Jurisdictions levying the occupation tax are authorized to exempt from the tax persons whose income from all sources is less than $12,000.[16] The exemption must be adopted as part of or as an amendment to the tax levying ordinance. The governing body has authority to adopt regulations for processing claims for the exemption.

Assessment of Occupations

Whether or not the county levies an occupation tax, the county assessors are required to list all inhabitants over eighteen years of age and value their occupations.[17] Taxing bodies levying occupation or per capita taxes are authorized to provide for preparation of a list of taxpayers by their own employees.[18] Jurisdictions not satisfied county assessors have located all taxables may use this authority; however, valuations of occupations set by the county assessment board must be used.

Occupations are usually classified into groups. There are no statutory guidelines as to the number of classifications, or how they are to be made. These range from as few as four to more than 500. In some counties all occupations are valued at the same rate. One county court upheld assessment of all occupations at $250, stating there is no requirement that occupations be classified and valued by category.[19] However, another county court invalidated a single uniform assessment as creating a flat rate tax above the statutory $10 limit.[20] The Commonwealth Court held that a county board of assessment appeals could not assign a zero value to all professional trades and occupations subject to an occupation assessment tax.[21]

Usually categories do reflect to some extent the differential in earning power among occupations, but they do not bear any direct relationship to the income of any particular individual within the category. But economic return is not the sole measure of the value of an occupation. Pennsylvania courts have held "It is apparent that other factors than income affect the value which may be attributed to an occupation. These may include social status, historical attributes, type, kind and quantity of work required, degree of education and training demanded and many other such real or fancied social and economic distinctions."[22]

Values do not have to reflect changes in earnings over a period of time; the occupation tax is clearly not an income tax. Neither do classifications have to reflect differences among job types and descriptions within classifications. Clumping related job types in a single classification meets the constitutional test of uniformity unless the classification is unreasonable.[23]

The *Haberman* court held a separate classification for retired persons over age 65 was not unreasonable and upheld Montgomery County's practice of assessing the value of the occupations of full-time students and retired persons as "none." Earlier the Supreme Court upheld exclusion of minors from the occupational assessment rolls as reasonable.[24] In a more recent case, the Commonwealth Court ruled retired persons and homemakers do not have taxable occupations and are excluded from the scope of the occupation tax.[25] Occupation taxes cannot be levied upon clergy; to do so would violate First Amendment rights to free exercise of religion.[26] Likewise, an ordained clergyperson administering a religious school was held to be exercising a religious activity and thus exempt from the occupation tax.[27]

An example of a simplified occupational assessment schedule is shown below to give readers an idea of how it is done.

- Corporation executives, contractors, county judges, surgeons, superintendents, physicians - $1000.
- Accountants, attorneys, architects, bank executives, engineers, executives, stockbrokers, county and city officials - $700.
- Bank cashiers, chefs, draftsmen, electricians, foremen, government employees (unclassified), skilled laborer - $500.

- Weavers, welders, tinners, painters, masons - $400.
- Auctioneers, bank clerks, barbers, bartenders, beauticians, bookkeepers, butchers, office clerks - $300.
- Restaurant servers, township supervisors, laborers, factory workers - $200.
- Homemakers, students, disabled persons, retired persons - $0.

Although the values assigned to occupations are clearly artificial numbers, courts will uphold occupation assessments unless they are clearly unreasonable. In *Haberman*, the assessments were upheld even though one assessment board member lacked knowledge of the proper basis to be used in valuation. The board had arrived at present values by adopting the values shown in the previous assessment records and used from 1962 through 1972.

Challenges to Occupation Tax

With heavier use of occupation taxes by school districts under the Local Tax Enabling Act at rates producing large one-time tax bills, taxpayer discontent and resentment has grown. As yet, none of the legal challenges to the tax have been successful. Occupation taxes have been upheld as valid and constitutional in the absence of a proper challenge showing them to be unreasonable.[28] The burden is on the taxpayer to show improper classification. Most challenges do not even receive a hearing because they are improperly brought before the courts. Any challenge to an occupation tax must follow the proper statutory remedies, either appeal of the tax under Section 309 of the Local Tax Enabling Act, or appeal of the assessment under the assessment laws.[29] Attempts to use the supersession clause of the Local Tax Enabling Act to gain exemption for particular classes of occupation have not been successful.[30]

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3. *Reizes v. Weller*, 504 A.2d 971, 95 Pa. Cmwlth. 120 (1986).
4. 16 P.S. § 1770; County Code, Section 1770.
5. 53 P.S. § 37531; Third Class City Code, Section 2531.
6. 8 Pa.C.S. § 1302; Borough Code, Section 1302.
7. 53 P.S. § 56709; First Class Township Code, Section 1709.
8. 53 P.S § 6924.311(7); Local Tax Enabling Act, Section 311(7).
9. 53 P.S § 6924.306; *Bradshaw v. Southern Fulton School District*, 494 A.2d 76, 90 Pa. Cmwlth. 162 (1985).
10. 53 Pa.C.S. § 8701(b).
11. 53 P.S. § 15971; 1932 (Ex.Sess.) P.L. 45, Section 1.
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13. 53 P.S. §§ 6924.401 et seq.; Optional Occupation Tax Elimination Act, Section 1.
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20. *Mifflin County School District v. Mifflin County Board of Assessment Appeals*, Ct. Com. Pl. Mifflin Co, Civil Action No. 1110, 1979.
21. *Bald Eagle Area School District v. County of Centre, Board of Assessment Appeals*, 745 A.2d 689 (Pa. Cmwlth. 1999).
22. *Haberman Appeal*, 388 A.2d 1159, 37 Pa.Cmwlth. 97, (1978) (citing *Crosson v. Downingtown Area School District*, 270 A.2d 377, 440 Pa. 468 (1970).
23. *Haberman*, supra.
24. *Crosson,* supra.
25. *Lower Dauphin School District v. Kutler*, 463 A.2d 499, 76 Pa. Cmwlth. 87 (1983).
26. *Stajkowski v. Carbon County Board of Assessment and Revision of Taxes*, 541 A.2d 1384, 518 Pa. 150 (1988).
27. *Baylor v. Centre County Board of Assessment Appeals,* 623 A.2d 882, Pa. Cmwlth. (1993).
28. *Dowlin v. Coatesville Area School District*, 350 A.2d 190, 22 Pa. Cmwlth. 433 (1975); *Taylor,* supra; *Campbell v. Coatesville Area School District*, 270 A.2d 385, 440 Pa. 496 (1970).
29. *Scott v. Palmerton Area School District,* 439 A.2d 859, 63 Pa.Cmwlth. 528 (1981); *Lashe v. Northern York County School District*, 417 A.2d 260, 52 Pa. Cmwlth. 541 (1980); *Hudson v. Union County,* 413 A.2d 1148, 50 Pa. Cmwlth. 378 (1980).
30. *Gold v. Northampton Township*, 41 D.&C.3d 298, (Ct. Com. Pl. Bucks Co. 1985)

XIV. Local Services Tax
(Formerly known as Occupational Privilege Tax)

A tax levied on the privilege of engaging in an occupation within a particular taxing district was previously known as the occupational privilege tax. Act 222 of 2004, however, amended the Local Tax Enabling Act ("Act") to change the name of the occupational tax to the emergency and municipal services tax ("EMST") and to permit municipalities and school districts (except the Pittsburgh School District) deriving taxing authority from the Act, to impose on persons employed within the jurisdiction an EMST of up to a maximum of $52 per year beginning on and after January 1, 2005.[1] Act 7 of 2007 amended the Act to change the name of the EMST to the local services tax.[2]

Statutory Authorization

The local services tax may be levied only by the political subdivision where the taxpayer is employed and the tax becomes effective as of January 1 in the first year as specified in an ordinance or resolution.[3] The Act currently authorizes political subdivisions to levy the local services tax at the maximum annual rate of $52 per person, regardless of whether the taxpayer is subject to multiple taxing localities.[4] Thus, where both municipality and school district levy the tax, they must share the maximum rate of $52.[5] If the tax exceeds a combined rate of $10 then it must be assessed and collected in pro rata installments based on payroll period withholdings by the employer.[6]

If a school district levied an EMST on June 21, 2007, the school district is permitted to levy the local services tax in the same amount the school district collected on that date.[7] However, if a municipality located in whole or in part within the school district subsequently levies the local services tax, the school district is only permitted to collect five dollars ($5) on persons employed within the municipality each calendar year.[8] A school district that did not levy an EMST on June 21, 2007 is prohibited from levying the local services tax.[9]

Municipalities which have been declared distressed under the Municipalities Financial Recovery Act (Act 47) may be able to increase their Local Services Tax above the limit set in the Local Tax Enabling Act to a maximum rate of $156.[10] The increase must be part of the recovery plan adopted for the municipality. The municipality must petition the court of common pleas for approval to increase the tax rate above the limit for a period of one year. Subsequent increases may be granted by the court upon annual petition of the municipality until the termination date of the recovery plan.[11]

A distressed municipality that levies the local services tax at a rate in excess of $52 must, by ordinance, exempt any person from the local services tax whose total earned income and net profits from all sources within the municipality is less than $15,600 for the calendar year in which the local services tax is levied (instead of $12,000 for those municipalities levying the local services tax at no more than $52).[12] Additionally, a municipality is prohibited from increasing its local services tax rate under Act 47 if it instead increases its earned income tax rate (resident or nonresident) under Act 47.[13]

Distressed municipalities that are also determined to have a level II or level III financially distressed pension system under the Municipal Pension Plan Funding Standard and Recovery Act (Act 205) and that are imposing an increased earned income tax under Act 205,[14] may not increase their Local Services Tax rate above $104.[15]

The local services tax is separate and distinct from the occupation tax. In contrast to the occupation tax, the local services tax is levied on both residents and nonresidents employed within the taxing body's jurisdiction.[16] It is also distinct from per capita taxes. Per capita taxes are a fixed amount levied on all persons living within the jurisdiction without regard to the amount of property they own or whether they are engaged in an occupation or business. Local services taxes do not have to vary with the particular mode of employment to be valid.[17]

Situs and Exemptions

The local services tax is assessed and collected by the political subdivision in which an individual is employed. Because the situs of the tax is the place of employment, no taxing district may levy this tax as though it were another kind of per capita tax. It is intended to be a tax only on persons gainfully employed. If the taxpayer is subject to more than one taxing locality, due to, for example, working in more than one political subdivision during a payroll period, the Act establishes a priority to collect the tax as follows[18]:

1. the political subdivision in which the person maintains the principal office or is principally employed;
2. the political subdivision in which the person resides and works if, of course, the political subdivision of residence imposes the tax;
3. the political subdivision in which a person is employed imposing the tax which is nearest the person's home.

All employers with work sites within the taxing jurisdiction are required to deduct the local services tax from their employees at the site of employment. However, when two or more employers employ a taxpayer in a payroll period, an employer is not required to withhold the local services tax if the taxpayer provides a pay stub from his or her principal employer accompanied by an employee statement of principal employment that the pay stub is from the taxpayer's principal employer and that the taxpayer will notify the employer of any change in employment.[19]

If a work site straddles the boundary between two townships, then the proper allocation will be based on the percentage of the property within each township.[20]

If the local taxing authority's local services tax exceeds $10, Section 301 of the Act requires such taxing authority, by ordinance or resolution, to exempt from its local services tax any person whose earned income and net profits from all sources is less than $12,000.[21] If the local taxing authority's local services tax does not exceed $10, Section 301 of the Act permits, but does not require, such taxing authority, by ordinance or resolution, to exempt from its local services tax any person whose earned income and net profits from all sources is less than $12,000.[22] Additionally, Section 301 of the Act exempts from the local services tax Any person who (i) serves as a member of a reserve component of the armed forces and is called to active duty at any time during the taxable year and (ii) has served in any war or armed conflict and is honorably discharged or released so long as such person is blind, paraplegic or a double or quadruple amputee as a result of military services or is 100 percent disabled from a service connected disability.[23]

An employee who reasonably expects to receive earned income and net profits less than $12,000 from all sources within the political subdivision may file an annual upfront exemption form (available through the Department of Economic Development) with the political subdivision levying the local services tax and the employee's employer.[24] A copy of the employee's last pay stubs or W-2 forms from the prior year's employment within the political subdivision where the employee is seeking exemption must be attached to the exemption certificate. Upon receipt of an upfront exemption form and until otherwise instructed by the political subdivsion imposing the tax, employers must stop withholding the local services tax for the specific calendar year from employees for whom the exemption applies.[25] Employer's must "re-start" withholding the local services tax from an exempt taxpayer if (i) instructed to do so by the political subdivision levying the LST; (ii) notified by the employee that they are on longer eligible for the exemption; or (iii) the employer pays the employee more than $12,000 for the calendar year.[26]

Other than monitoring whether an exempt employee has received in excess of $12,000 in earned income and net profits, the intent of the Act is that employers are not be responsible for investigating exemption certificates, monitoring tax exemption eligibility or exempting any employee from a local services tax.[27]

Withholding

Taxing jurisdictions may require employers to withhold local services taxes if the tax is listed on the *Register for Local Services Taxes* prepared and issued by the Department of Community and Economic Development.[28] In order to have employers withhold taxes, the taxing district must have its tax listed in the *Register.* Employers are required to remit the tax thirty (30) days after each calendar quarter.[29]

Information must be supplied to the Department of Community and Economic Development on their forms prior to May 31 of each year in order to ensure the information appears in the *Register* for the next reporting period. Tax information forms are mailed to municipalities in November and to school districts in May to update and verify data on file for the *Register* for their forthcoming fiscal years. Failure to receive the information on taxes continued without change is construed by the department to mean the information contained in the previous *Register* remains in force.

The *Register* lists the political subdivisions levying the tax, their effective tax rates, and the name, address and telephone number of the tax officer responsible for collection of the local services tax and from whom information, rules and regulations are available. Stated rates are shown for information purposes only. Copies of the *Register* can be purchased from the department. Information can be obtained by contacting:

Pennsylvania Department of Community and Economic Development
Governor's Center for Local Government Services
400 North Street, 4th Floor
Commonwealth Keystone Building
Harrisburg, Pennsylvania 17120-0225
866-466-3972
dced.pa.gov

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4. 53 P.S. § 6924.311(8), Local Tax Enabling Act, Section 311(8); 53 P.S. 6924.301.1(f)(9).
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16. *Danyluk v. Johnstown,* 178 A.2d 609, 406 Pa. 27 (1962).
17. *Gaugler v. City of Allentown*, 410 Pa. 315, 317, 189 A.2d 264, 265 (1963).
18. 53 P.S. § 6924.301.1(f)(9).
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XV. Realty Transfer Taxes

Statutory Authorization

The Local Tax Enabling Act and the Tax Reform Code jointly authorize the levy of a realty transfer tax at the maximum rate of one percent on the transfer price of real property within the taxing jurisdiction.[1] Pursuant to Act 40 of 2005, the local realty transfer tax parallels that of the state realty transfer tax, but is administered, collected and enforced under the provisions of the Local Tax Enabling Act.[2] If both municipality and school district levy the tax, they must share the one percent maximum. Home rule municipalities may levy the tax at rates above the maximum established in the Act.[3] Under the Sterling Act, Philadelphia may levy a realty transfer tax.[4] No limit is imposed. The tax is usually paid by the purchase and affixing of deed transfer stamps to the transfer documents.

Local governments were already levying the realty transfer tax when the commonwealth imposed its tax in 1951 at a rate of one percent. To override the supersession clause in Act 511, the act levying the state tax contained a specific provision stating it would not invalidate any similar taxes then or subsequently imposed by local governments under existing legislation.[5] State regulation of the insurance industry is not so pervasive as to preempt application of a local realty transfer tax to stock transfers of real estate corporations.[6]

The county recorder of deeds is mandated by law to be the collection agent for both state and local realty transfer taxes.[7] The local political subdivisions for whom the tax is collected do not compensate the recorder of deeds; two percent of the amount collected is withheld to reimburse the county for the cost of collection.[8] The state tax is collected from the purchaser of the property. Thus, although the Local Tax Enabling Act says nothing as to which party should be liable for the tax, most local ordinances make it payable by the seller.

Taxable Transactions

The tax is imposed only on transactions where there is a real transfer of beneficial interest. Because the state tax base was broader in some areas than the local tax base, the Tax Reform Code was amended in 1986 to authorize local taxing bodies to levy realty transfer taxes on the same transactions taxed by the state. This provision preserved the right of local taxing bodies to levy the tax upon any additional transactions already taxed before 1986 under the authority of the Local Tax Enabling Act. A court upheld imposition of the Pittsburgh realty transfer tax on a stock purchase when over 50 percent of the corporate assets were in the form of real estate, even though the state tax is not triggered until more than 90 percent of a corporation's assets are real estate.[9] Philadelphia was extended similar authority to tax realty transfers on the state base by the Local Tax Reform Act.[10] This authorization became effective immediately and remains effective in spite of the failure of the remainder of the Act to be implemented following defeat of the constitutional amendment. The retained local tax authorization from Act 511 has been interpreted as somewhat broader than the state tax.[11]

Transfers exempt from the tax are listed in Section 301.1 of the Act.[12] They include transfers:

1. By will, mortgage or interstate laws.
2. Trading in residences for newly built residences.
3. To nonprofit housing and industrial development corporations.[13]
4. Between specified family members and family farm corporations.
5. To nonprofit historic, recreational, scenic, agricultural or open space conservancies.
6. For making mortgages or ground rents.
7. For correctional deeds.
8. To the United States or the commonwealth, or any of their instrumentalities, agencies or political subdivisions, by gift, deed or condemnation.[14]

9. To trustees for debt security.
10. In sheriff sales to mortgage holders.

In 2000, Commonwealth Court held that Philadelphia had authority under the Local Tax Reform Act to impose realty transfer tax on a corporate taxpayer who acquired properties by way of a deed in lieu of foreclosure when the transaction would not be subject to a state tax or license fee.[15]

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XVI. Business Gross Receipts Taxes

Business gross receipts taxes are levied on the privilege of doing business within a jurisdiction. These taxes are known as mercantile or business privilege taxes, but are now collectively referred to as business gross receipts taxes. Despite the different names, they are essentially the same tax. Mercantile taxes on wholesale and retail trade were generally levied first because they are defined somewhat by the rate limits imposed on wholesale dealers, retail dealers and restaurants under Section 311(2) of the Local Tax Enabling Act. Mercantile taxes are generally understood as limited to these classes of business. Business privilege taxes are also levied on the privilege of doing business within a jurisdiction. They are generally of two types: The first applies to all business except those subject to a mercantile tax; the second is a universal business privilege tax covering all businesses where the jurisdiction has no separate mercantile tax. The differences between mercantile and business privilege taxes have become more semantic than real. Much depends on the wording of the local ordinances.

The pattern for a mercantile tax on wholesale and retail transactions and a separate business privilege tax on all other businesses was established by Pittsburgh. The city first levied a mercantile tax, then enacted a business privilege tax on all other businesses. The Pennsylvania Supreme Court outlines the difference between the two Pittsburgh taxes: "While the ordinance here involved does tax the privilege of engaging in business, it is no way limited, as the mercantile tax, to the transactions of merchants who sell at wholesale or retail; its scope, subject to the exclusions, reaches all persons engaged in any business in the city of Pittsburgh."[1] Beginning in the 1970s, municipalities and school districts first levying the tax did so with a single universal business privilege tax covering all businesses, including those covered by older mercantile tax ordinances in other jurisdictions.

Business gross receipts taxes are measured by the gross receipts of the person doing business. To be valid, tax liability must be measured by the actual gross receipts.[2] The tax is imposed on the taxpayer, or the person engaged in business without regard to the number of establishments maintained. It is not a tax on separate places of business.[3] Business gross receipts tax ordinances usually exclude political subdivisions, employment for a wage or salary and businesses where power to tax is withheld by law.

Business gross receipts taxes are distinct from earned income taxes and occupational privilege taxes. Each is levied on a different tax base with a different group of taxpayers. The privilege of engaging in an occupation is different than the privilege of engaging in a business.[4] For instance an attorney employed by a company is engaging in an occupation, while an attorney in private practice is engaging in a business as well as an occupation.

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Statutory Authorization

Business gross receipts taxes are levied under the general power to tax persons, transactions, occupations or privileges under the authority of the Local Tax Enabling Act.[1] The Local Tax Enabling Act authorizes levy of business gross receipts taxes subject to a limit of one mill on wholesale vendors and one and one-half mills on retail dealers and restaurants, except in Pittsburgh where the authorized limit is one mill on wholesale dealers and two mills on retail vendors and restaurants.[2] Gross receipts taxes on wholesale and retail businesses and restaurants are subject to sharing provisions when levied by both municipality and school district under the Local Tax Enabling Act. Taxes on other types of businesses, such as services, are not limited by the Act and are not subject to the sharing provisions.[3]

The Public School Code authorizes the Pittsburgh School District to levy a mercantile tax, but also includes amusement and recreation businesses and is subject to a rate limit of one-half mill on wholesale business and one mill on retail business.[4] In addition, although the district is authorized to levy a gross receipts tax under the provisions of the Local Tax Enabling Act,[5] other than imposing the aforementioned mercantile tax on wholesale and retail businesses, the Pittsburgh School District may not impose a tax on the gross receipts of other types of businesses.[6] Additionally, beginning with 2010 the business privilege tax was repealed in the city of Pittsburgh.[7]

Philadelphia repealed its mercantile license tax levied under the authority of the Sterling Act. It now levies a business privilege tax on all business within the city measured by gross receipts and net income under special statutory authorization.[8]

Second, second class A and third class cities are authorized to levy business license taxes on a flat rate basis.[9] There is no limit on second and second class A cities. Third class cities may levy the tax at a maximum rate of $100. These taxes may be levied in addition to business privilege taxes levied under the Local Tax Enabling Act.[10]

The imposition of any new business gross receipts tax is prohibited after November 30, 1988 under the terms of the Local Tax Reform Act.[11] Even though most of the Act never became effective because of the defeat of the constitutional amendment in 1989, the court found this prohibition to be in effect. The Act also prohibits rates of business gross receipts taxes from being increased above levels in effect on November 30, 1988, or extended to subjects not taxed as of that date. The only exception to this freeze during the past 10 years came in 1997 when Upper Darby Township was authorized to reenact its business gross receipts tax to extend it to all businesses.[12]

The freeze established in the Local Tax Reform Act does not prohibit new flat rate business privilege taxes. In an appeal to a $100 flat rate business privilege tax enacted by Newtown Borough in 1990, the Commonwealth Court ruled the Local Tax Reform Act does not prohibit flat rate taxes, only those measured by gross receipts.[13]

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8. 53 P.S. §§ 16181 et seq.; First Class City Business Tax Reform Act.
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Imposition of Tax

Under the Local Tax Enabling Act, business is defined an enterprise, activity, profession or any other undertaking of an unincorporated nature conducted for profit or ordinarily conducted for profit whether by a person, partnership, association or any other entity.[1] All businesses, trades and professions where any service is offered to the public are generally liable for payment of this tax. Two broad areas of enterprise are excluded under the terms of the Local Tax Enabling Act, those qualifying for the manufacturing exclusion and those subject to preempting state taxes or license fees.

Many of the business gross receipts taxing schemes of Pennsylvania local governments impose taxes only on the sale of goods by wholesale and retail merchants and restaurants. The validity of such an arrangement was challenged by the owner of a restaurant in Uniontown, asserting that by not taxing service businesses, the city was

applying the gross receipts tax to only 237 of the approximately 800 businesses operating there. The Commonwealth Court agreed and held that the city's tax was unconstitutional as violating the uniformity clause of the Pennsylvania Constitution and the equal treatment clause of the 14th Amendment to the United States Constitution.[2] However, the Commonwealth Court subsequently upheld a business privilege tax levied by the City of Allentown at one rate on services and another on sales at retail or wholesale.[3] The Pennsylvania Supreme Court dismissed the appeal from *City of Allentown v. MSG Associates, Inc.,* effectively affirming the Commonwealth Court's decision.[4]

Activities Taxable. In an early case, the Pennsylvania Supreme Court ruled so-called passive income earned from rents on property and dividends from stock was not exempt from business privilege taxes. The court said the test was neither the character of the receipt nor the size of business, but the nature of the activity producing the receipt.[5] Critical differences occur in how property was acquired or the circumstances under which it was retained, how it is used, the services performed by way of management and the overall objectives of the owner. In this case, although the company did not manage its properties, it actively engaged in acquisition and leasing of properties after its formation. Subsequent cases have upheld application of business privilege taxes to companies active in acquiring and renting commercial properties, even where they did not actively engage in managing their properties.[6] Corporation income from stock dividends and capital gains from sale of stock have also been held to be business income taxable under gross receipts taxes.[7] Taxpayer's gross media receipts arising from television broadcast of football games were "copyright royalties" and subject to the business privilege tax.[8]

Services held to be taxable under business gross receipts taxes have been defined to include school and educational services conducted by corporations organized for profit.[9]

The Pennsylvania Supreme Court upheld inclusion of revenues from sale of admissions tickets in calculating the gross receipts of a movie theater business.[10] The Court held the prohibition in the Local Tax Enabling Act against taxing movie admissions was limited to a direct tax on admissions and did not apply to a tax on the privilege to do business as measured by gross receipts.

The Supreme Court also held that a business privilege tax assessed against a general building contractor, who constructed new residential dwellings, was imposed upon the privilege of conducting business within the city and school district as determined by the gross receipts of the business, and was not a tax on the construction of a residential dwelling or the issuance of a building permit. The tax could be calculated from amounts listed on the residential building permits and did not duplicate the realty transfer tax.[11]

The assessment of a township's business privilege tax on gross receipts from rental commercial property was upheld by the Pennsylvania Commonwealth Court.[12] In that case, the taxpayer was assessed a business privilege tax for 15 years of gross receipts tax attributable to a rental commercial property. The court ultimately found that the rental of the commercial property was a performance of services that was carried on for profit and was thus subject to the township's ordinance which imposed tax on gross receipts from any activity carried on or exercised for gain or profit in the township.[13]

A corporation that provided financial and management services to other companies in an affiliated group was subject to a township's business privilege tax even though the corporation claimed that it did not offer services to the general public or a limited group thereof.[14] The Commonwealth Court reasoned that the taxpayer was a separate legal entity from the affiliated companies, but the affiliated companies which the corporation provided services to were members of the public and corporation's services were normal business services subject to the tax.[15]

Additionally, the courts have also found that jurisdictions are precluded from imposing business privilege taxes on leases or rental income since the Local Tax Enabling Act specifically prohibits tax on lease or lease transactions.[16]

Tax Base Exemptions. Section 301.1(f)(12) of the Act now excludes certain transactions from the tax base.[17] These include the following items:

1. Cash discounts to purchasers for prompt payment of bills.
2. Freight delivery or transportation charges paid by the seller for the purchaser.
3. Sales of trade-ins up to the amount given the prior owner as a trade-in allowance.
4. Refunds or credits given customers for defective goods returned.
5. Pennsylvania sales tax.
6. Trades between sellers of identical goods, but the exemption does not extend to any additional cash payment accompanying the trade.
7. Sales to other sellers at the same price the first seller acquired the merchandise.
8. Transfers between one department, branch or division of a business entity and another recorded on the books as interdepartmental transfers.

A 1996 amendment to the Second Class City Law prohibits Pittsburgh from levying its business gross receipts tax on brokers or dealers of securities and investment fund management companies or other regulated financial services institutions.[18]

Rate Limits. Business gross receipts taxes are subject to the limits found in Section 311(2) of the Local Tax Enabling Act when they apply to wholesale vendors, retail dealers and proprietors of restaurants.[19] Where business privilege or mercantile taxes are levied by both school district and municipality, the maximum limit is subject to the sharing provisions of the Act. This will also occur if one jurisdiction is levying a mercantile tax and the other is levying a business privilege tax. However, in a case where a home rule municipality levied its mercantile tax under authority of the Home Rule Law, the Commonwealth Court ruled that the school district was not subject to the tax sharing provisions of the Local Tax Enabling Act.[20] Where taxpayers challenged a business privilege tax as excessive and unreasonable, the court held they had to prove it was entirely disproportionate to a tax rate controlled by the limits in Section 311 of the Act for a comparable tax.[21]

This limitation had earlier been applied to Pittsburgh's institution and service privilege tax levied against nonprofit organizations.[22] The court upheld the tax as applied to a private club, but stated the tax, otherwise six mills, was limited to two mills on receipts from food and beverage sales to members under the terms of Section 311(2) of the Act.

In ruling on the validity of Pittsburgh's business privilege tax in general, the Supreme Court upheld different tax rates on various classes in the taxing ordinance. Although the general tax rate was six mills, it was reduced to one mill when applied against wholesalers. The rate of taxation need be equal only with respect to taxpayers that are within the same class. In this case several of the variations were based on specific limitations set by the Local Tax Enabling Act or other state laws.[23]

The rate limits and sharing provisions apply only to wholesale vendors, retail dealers and restaurants. There are no limits and no sharing provisions for business gross receipts taxes levied on service businesses.[24]

Classification. The Act sets separate rates for wholesale dealers and retail vendors and restaurants. Differing tax rates for these classifications have been upheld by the courts; the difference between a wholesale dealer and retail vendor is a genuine distinction recognized in the business world.[25]

Determination of whether a business is wholesale or retail lies in the activities of the buyer. If the buyer buys to sell again, then the business is a wholesaler. If the business's customers buy to consume the materials in producing different products, then they are not vendors of the specific goods they buy and the business is a retail dealer. In the case of prefinished kitchen and bathroom cabinets sold to building contractors, the court held they were purchased for resale. The cabinets were not altered. By being affixed to walls, they did not lose their essential identity and were not subsumed into the housing unit, but remained separately recognizable units.[26]

If the company's customers buy materials to consume in the production of different products, they are not vendors of the specific goods they buy and the taxpayer is a retail dealer. Craftspeople are not dealers because they do not buy to sell again in the sense a merchant buys to sell.[27] In the case of building materials sold to contractors where the contractors changed and used the parts to create a new product, the sale of the building materials was a retail sale, rather than wholesale.[28] Likewise paint sold to painting contractors is a retail sale, since it is sold for the use of the painters in performing their task. Sales of products like plumbing fixtures and oil burners are held to be wholesale, since they are installed in the same form and character in which they were purchased and they remain readily identifiable.[29]

Brokers are neither wholesale dealers nor retail vendors, since their business is to bring buyer and seller together. They negotiate contracts of sale between merchants who are parties to the transactions, but they are not party to the sale themselves.[30] Distributors who buy from suppliers and then sell to customers on their own terms qualify as dealers, since they are a party to two separate transactions, even where some direct shipments are made from the manufacturer to the distributor's customer.[31]

A deduction that the city's business privilege tax ordinance provided for real estate brokers, which excluded from gross receipts the commissions paid from one broker to another, violated the uniformity clause of the Pennsylvania Constitution because no constitutionally valid distinction existed between brokers and other taxpayers that paid for work performed.[32]

A dealer or vendor does not have to maintain inventories to fall within the classification under the business gross receipts taxes. A person can buy and sell without inventories.33 Neither does a specific charge have to be made for the individual product when the cost of the product is included in the price of other products sold with it.[33]

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Manufacturing Exclusion

The Local Tax Enabling Act prohibits any local gross receipts tax on any privilege, act or transaction relating to the business of manufacturing from being levied on manufacturers.[1] Manufacturing generally consists of giving new shapes, new qualities or new combinations to matter which has already gone through some other artificial process. A thing is a manufactured article when the product is a new and different article with a distinctive name, character and use. The process of manufacturing brings about the production of some new article by applying skill and labor to the original substances or material out of which the new product emerges.

In a case involving the application of business gross receipts taxes to television and radio broadcasting companies, the Supreme Court defined manufacturing for the purpose of the exclusion from the Local Tax Enabling Act authority.

"Manufacturing," as used in a legislative enactment, is given its ordinary and general meaning. It consists in the application of labor or skill to material whereby the original article is changed into a new, different and useful article. Whether or not an article is a manufactured product depends upon whether or not it has gone through a substantial transformation in form, qualities and adaptability in use from the original material, so that a new article or creation has emerged. If there is merely a superficial change in the original materials without any substantial and well signalized transformation in form, qualities and adaptability in use, it is not a new article or new production.[2]

Manufacturers selling their own products are excluded from business gross receipts taxes. Because the manufacturing exclusion is not an exemption, any doubt is resolved in favor of the taxpayer.[3] Although manufacturers sell their wares, they are not dealers because they do not sell what they buy.[4]

The manufacturing exclusion applies no matter where manufacturers sell their products. By selling its own products at a place other than the factory where they were produced, the manufacturer has not abandoned the role so as to become a dealer subject to the tax.[5] The exclusion for processing byproducts of manufacturing was applicable to slag processing by a company other than the original manufacturer.[6]

Metal Products. Courts have found a maker of custom aluminum awnings[7] and a custom steel fabricator and engineering firm[8] to be manufacturers. A company selling automotive and industrial parts who rebuilt engines and other heavy equipment,[9] and a scrap dealer[10] did not constitute manufacturers and were held liable for local mercantile taxes. The process of annealing and galvanizing rolled steel does not qualify as manufacturing.[11]

Textiles, Garments. Likewise, a company engaged in dyeing and finishing cloth was held not to be engaged in manufacturing.[12] Even though the finished cloth was different from the original in color, dimension, stretch, stain, heat and water resistance, texture and bulk, the product remained cloth, not a new and different article. Likewise the business of treating unfinished cloth is not manufacturing.[13] Production of apparel is considered manufacturing.[14] But printing designs on ready-made clothing (T-shirts and sweatshirts) is not manufacturing because there is no substantial change in the product.[15]

Food Products. Preparation of certain food products by cooling does not constitute manufacturing.[16] Preparing fruit drinks by adding water to slurry or powered mix is not manufacturing.[17] A wholesale meatpacking and processing facility cannot qualify as manufacturing.[18]

Television. The court held broadcasting was essentially transmission rather than manufacturing and the company was subject to the business privilege tax.[19] The same conclusion was reached in the case of a cable television business.[20]

Publishing. As opposed to broadcasting, printing has always been considered manufacturing. In a case where Pittsburgh exempted newspaper circulation receipts, but attempted to levy its tax on advertising revenues, the court held printing and circulating of advertising content is manufacturing as well as printing of news content.[21] Preprinted advertising supplements inserted in a newspaper were considered component parts of the newspaper and excluded from the tax under the manufacturing exemption.[22] Where a newspaper sold advertising and conducted substantial photographic, graphic and typesetting activities it qualified as manufacturing even though the actual printing was done elsewhere.[23] But a publisher who contracted out all printing and binding was found not to be a manufacturer,[24] nor did a business which prepared a newsletter but did not actually print it.[25] Bookbinding qualifies as manufacturing[26] but commercial illustration[27] and photocopying do not.[28]

Paper Products. A processor of scrap cardboard used to create packaging was found to be a manufacturer.[29] The manufactured article does not have to be sold separately to qualify for the exclusion. Where a heavy construction company operated an asphalt plant, it was entitled to the manufacturing exclusion both for asphalt sold to others and asphalt used in its own paving contracts.[30] Income from manufactured articles does not have to come from sales to qualify for the manufacturing exclusion. Profits from leasing manufacturing equipment were held to fall within the manufacturing exclusion.[31] The exclusion applies to out-of-state manufacturers doing business in Pennsylvania, as well as Pennsylvania manufacturers.

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State Preemption

Both the Local Tax Enabling Act and the Sterling Act contain a preemption clause prohibiting local taxation of a privilege, transaction, subject, occupation or personal property subject to a state tax or license fee.[1] The First Class City Business Tax Reform Act under which Philadelphia's business privilege tax is levied does not contain such a

preemption clause. For other jurisdictions levying business gross receipts taxes, a series of court cases sets forth criteria to determine when preemption of a local tax by a state measure has occurred.

In *Philadelphia Tax Review Board v. Smith, Kline and French Laboratories,* a pharmaceutical company asked for a refund of mercantile license taxes on the grounds payment of registration fees to the state under the Drug, Devices and Cosmetic Act preempted Philadelphia's prior mercantile license tax.[2] The court's opinion reviewed recent precedents establishing the interpretation of "license fee" to mean a measure adopted to pay for the cost of regulating the industry under the state's police powers. A previous case had drawn a distinction between a "license fee" where the charge was sufficient to pay for the cost of regulation and a "registration fee" where a nominal charge merely covered clerical costs of issuing licenses.[3] In that case, the court held that true license fees based on the costs of regulation preempted local taxation while mere registration fees did not, and outlined four criteria for distinguishing between license and registration fees.[4] This distinction was overruled in *Smith*. The *Smith* court set the critical distinction for preemption purposes between license fees levied for regulatory purposes and those levied for general revenue purposes. The court overturned its previous decision by holding that local powers of taxation are preempted "only when the legislature has enacted a revenue producing measure covering the same person, transaction, occupation, activity, privilege, subjects or personal property."[5] Payment of a license fee intended merely to cover the cost of regulation and inspection will not act to preempt local taxing power.

The *Smith* court set forth two criteria to determine whether a particular fee is a state revenue measure: (1) whether a large monetary income is derived to the state and (2) whether the income is large compared to the cost of collection and supervision. The court proceeded to determine the fee paid by the company was a regulatory license fee and not a revenue producing measure, thus the mercantile license tax was not preempted.

Preemption by State Tax. In the following year, the Supreme Court invalidated a ten percent tax on retail liquor sales by the Philadelphia School District. The court held two state taxes levied on the sale of liquor preempted the school district's tax. In this case the court found the local tax was imposed directly on the specific transaction on which the state is dependent for revenues.[6] But the court carefully distinguished a prior case upholding the application of the gross receipts tax on holders of state liquor licenses.[7] In the prior case, the gross receipts tax was levied against the business generally, rather than specifically levied on liquor sales.

Another important test was implemented in a case where the court held that preemption occurs only where the local tax duplicates a state tax.[8] The test of duplication is if the tax falls on the same subject matter and is measured by the same tax base. The court held that local mercantile or business privilege taxes did not duplicate the state corporate franchise tax.[9] Also a local tax was not preempted by the state realty transfer tax paid by construction contractors.[10] In a 1977, the Commonwealth Court found a local gross receipts tax was not superseded by the state gross premiums tax on insurance premiums paid by insurance agents,[11] but 20 years later, without expressly overruling its prior decision in *Man*, the court held that a township's business privilege tax was preempted by the State's gross premium tax.[12]

Preemption by State License Fee. Application of these judicial doctrines has validated local business privilege taxes levied on persons paying some sort of state license fee in a number of instances. The Commonwealth Court held local business privilege taxes were not superseded by the state registration fee for used car dealers,[13] by the state license fee paid by nursing homes,[14] or by the state license fee paid by realtors.[15] Common pleas courts have held local business gross receipts taxes were not superseded by state license fees paid under the Securities Act by stockbrokers,[16] or by fees paid to the Disciplinary Board of the Supreme Court by attorneys.[17]

Preemption by Pervasive State Regulation. The Supreme Court created a new doctrine of preemption when it held that nontraditional businesses of banks were not taxable under Pittsburgh's business privilege tax. The court held that state banking legislation shows the legislature's intention to exclusively occupy the banking field. The tax was held invalid as it applies to banks because it impermissibly impinges on this regulated area in contravention of the legislative preemption for the commonwealth.[18]This doctrine of preemption by exclusive control by the state was followed and applied to malt and brewed beverage distributors.[19] The court held the legislature's scheme of regulation was so pervasive that it had preempted any local legislative control by regulation or taxation. But since the *Wilsbach* decision, the Commonwealth Court has pulled away from any further application of the preemption

by pervasive regulation doctrine. The legal profession,[20] insurance business,[21] the dairy industry,[22] nursing homes[23] and securities dealers[24] were found to be subject to local business gross receipts taxes. The registration fees they paid to the state and the state's control of their activities were not pervasive enough to preempt the imposition of local taxes.

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18. *City of Pittsburgh v. Allegheny Valley Bank of Pittsburgh,* 412 A.2d 1366, 488 Pa. 544, 549 (1980). *But see City of Philadelphia v. Clement & Muller, Inc.,* 552 Pa. 317, 715 A.2d 397 (1998) (holding that the First Class City Business Tax Reform Act apparently overruled *Allegheny Valley* insofar as it applies to first class cities).
19. *Commonwealth v. Wilsbach Distributors, Inc.,* 519 A.2d 397, 513 Pa. 215 (1986). *But see City of Philadelphia v. Clement & Muller, Inc.,* 552 Pa. 317, 715 A.2d 397 (1998) (Distinguishing Wilsbach and finding that first class cities could collect business privilege tax from beer distributor due to the express language of the First Class City Business Tax Reform Act).
20. *Reiders, Travis, Mussina, Humphrey & Harris v. City of Williamsport,* 578 A.2d 618, 134 Pa. Cmwlth. 298 (1990).
21. *Yorkco Agency, Inc. v. Casaletto,* 488 A.2d 1206, 88 Pa. Cmwlth. 243 (1985); *Industrial Valley Title Insurance Co. v. School District of Philadelphia,* 661 A.2d 497 (Pa. Cmwlth. 1995).
22. *Township of Muhlenberg v. Clover Farms Dairy Co.,* 665 A.2d 544 (Pa. Cmwlth. 1995).
23. *Rose View Manor, Inc. v. City of Williamsport,* 630 A.2d. 474, 157 Pa. Cmwlth. 410 (1993).
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Situs

Because the tax is levied on the privilege of doing business within the taxing jurisdiction, the situs of the tax depends on the definition of "doing business."[1] Because of the widespread and complex nature of commercial transactions, there is considerable confusion as to where transactions are taxable. There generally must be a minimal nexus between the taxing district and a business before the business can be subjected to taxation. Over the last several decades, Pennsylvania courts have decided a multitude of cases in determining whether a taxpayer is subject to a jurisdiction's business privilege tax. The cases can generally be split into two categories: mercantile taxes on sales and gross receipts taxes on services.

Situs of Sales. Within the purview of mercantile license taxes, "doing business" has been defined by the "solicitation plus" doctrine, meaning that there must be other activities in addition to the solicitation of business.[2] The Supreme Court has held that "[d]oing business requires proof that the taxpayer was actually affecting sales of its products and performing acts regularly and continuously which, in a direct as opposed to an incidental manner, effect the taxpayer's objectives."[3] One court noted that the test is "not whether a company is 'doing business' within the artful meaning of those words, but more narrowly, whether the company is a 'vendor or dealer.'"[4] Often only a small part of a complete sale will occur within a jurisdiction. "The mercantile tax is not laid on a completed piece of business, but only on so much of it as, occurring locally, is more than solicitation and constitutes one a vendor or dealer."[5]

The taxable event for mercantile license taxes has been held to be the effecting of the order.[6] A sale is effected when a salesman or the district office receives an order and instructs a distribution center to ship goods to the customer. Mere solicitation will not make a person be categorized as a dealer or vendor. The situs of the tax is where the decision to accept the customer's order is made and shipment of the goods is ordered. The place where the shipment is made cannot determine the situs of the sale.

In one case a company with no office, facility or plant in Philadelphia was found to be outside the jurisdiction of the school district's tax because its promotion personnel active in the city were simply goodwill agents and could not bind the company.[7] In another case a company with personnel promoting products on a regular basis was found to be engaging only in solicitation.[8] Even though Philadelphia customers ordered and purchased the company's products in substantial quantities, it did not constitute doing business since all sales were effected outside Philadelphia.

The fact that a mercantile transaction involves interstate commerce does not prohibit taxation locally. The tax is exacted on the privilege of doing business in the jurisdiction. In one case, all business dealings between the seller and buyer - placing purchase orders, their acceptance and payment - occurred in Pittsburgh and even though delivery was made outside the state, the tax was held valid.[9] Even where a transaction as a whole may be in interstate commerce, there may be local activities that permit imposition of a local tax, since sales are considered consummated where accepted at the level of the company with discretion to order shipment of goods.[10]

Situs of Services. Determining where services are taxable has been more difficult than for sales of merchandise. Often a company with a place of business in one municipality will provide services to customers in many surrounding jurisdictions.

Historical Background. In 1986 the Supreme Court decided the Gilberti case, which initially became solidified as precedent for how Pennsylvania courts would address the situs of the business privilege tax. In Gilberti, an architect maintaining his sole office in Pittsburgh excluded from his calculation of gross receipts such income as he maintained was derived from on-site supervision of a construction project outside the city limits.[11] The taxpayer did not maintain a place of business outside the city. The Court held that maintaining a business office in the city was an exercise of a taxable privilege within the limits of the taxing district. Further, the Court held that the city could determine the amount of tax based on gross receipts of the business, including income derived from services provided outside city limits, because having a place of business inside the city enabled the taxpayer to manage, direct and control business activities occurring both inside and outside city limits. The Court held that the city's taxing power was broad enough to encompass the contribution to out-of-city activities provided by the taxpayer maintaining a base of operations within the city.

Following *Gilberti,* the Commonwealth Court ruled that the entire intrastate gross receipts of a highway construction company were subject to the business privilege tax of the township where the company had its sole permanent office.[12] The township ordinance excluded receipts attributable to interstate or foreign commerce or to an office or place of business regularly maintained outside the township limits. The Court found that all intrastate receipts could be taxed by the township even though almost all services were performed outside the township, because the root of all of the company's business was at its sole permanent business headquarters.

The *Gilberti* base of operations test was similarly applied to the entire gross receipts of an automobile leasing company, even for transactions enacted outside township limits, because the company operated from its headquarters within the township[13] The Court reached the same result in a case dealing with an engineering firm with a large amount of interstate business.[14] In that case, the fact that a portion of the firm's revenues were derived from interstate commerce did not alter the benefit it enjoyed from conducting its activities from its established base of operations within the township. The Commonwealth Court subsequently held that a taxpayer was not subject to the business privilege tax of Lower Merion Township because the taxpayer's base of operations was in Radnor, not Lower Merion.[15] In another case, although *Gilberti* would have otherwise allowed the imposition of tax on receipts from business activities outside the taxing jurisdiction, the Commonwealth Court held that a taxpayer was not liable for city business privilege tax on the gross receipts earned outside the city's territorial limits because the tax ordinance only provided for tax on gross volume of business "transacted within the territorial limits of the city."[16]

In 2007, the Pennsylvania Supreme Court decided the *V.L. Rendina* case, which imparted a substantial change to how prior courts had interpreted *Gilberti.*[17] In *V.L. Rendina* the Court found that a taxpayer may be subject to the a jurisdiction's business privilege tax regardless of whether the taxpayer had a base of operations within the jurisdiction.[18] In that case, a contractor with headquarters outside the City of Harrisburg was working on an office building in the City of Harrisburg and maintained a jobsite trailer in the City to run the project. The Court held that the maintenance of an in-city base of operations from which the taxpayer conducted business *may have* been a condition which would allow the City's taxation of such business, but it was not a strict requirement. Rather, the Court held that the presence of business activities within the jurisdiction was the main focus of whether the Local Tax Enabling Act permitted the imposition of the tax.[19] Thus, the contractor's presence in the City at the construction jobsite was the appropriate nexus for taxing the contractor's gross receipts.

Shortly after *V.L. Rendina*, an unreported case in the Commonwealth Court (A&L, Inc.) found that the jurisdiction containing a taxpayer's base of operations could tax the gross receipts earned at any business location in the Commonwealth.[20] When combined with the Court's prior ruling in *V.L. Rendina*, a taxpayer's non-home jurisdiction could tax receipts earned within its jurisdiction through application of *V.L. Rendina* and a taxpayer's home-jurisdiction could tax receipts earned in any in-state location through application of A&L and former base of operation cases. Thus, double taxation could result from such rulings.

Statutory Authority. In order to address the aforementioned conflicting case law as well as ambiguity in the law, the General Assembly enacted Act 42 of 2014. Act 42 amended Section 301.1 of the Local Tax Enabling Act to specify that the business privilege tax may be levied on a business if it conducts transactions in the levying jurisdiction for all or part of fifteen (15) or more calendar days within a year or if the business is operated through a base of operations in the levying jurisdiction.[20] Act 42 defines a base of operations as "an actual, physical and permanent place of business from which a taxpayer manages, directs and controls its business activities at that location."[21] Additionally, Act 42 provides that a taxpayer can be credited in its home jurisdiction (i.e., the location of the base of operations) for the gross receipts tax paid to a jurisdiction pursuant to the 15 day rule.[22]

Thus, the question as to whether a business privilege tax may be levied on a business will now be resolved under the statutory authority of Act 42.

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4. *Standard Brands, Inc. v. Pittsburgh,* 170 A.2d 568, 403 Pa. 590, 593 (1961).
5. *Rath Packing Company v. Pittsburgh,* 171 A.2d 42, 404 Pa. 36, 41 (1961).
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23. 53 P.S. § 6924.301.1(a.1)(1).

Nonprofit Organizations

It is possible to tax gross receipts of nonprofit organizations, as long as the organization does not qualify for exemption from taxation as a purely public charity. The fact that an organization is a nonprofit corporation does not mandate that it should be exempt from taxation. Exemption from federal income taxes does not qualify an organization for exemption from Pennsylvania taxes. The organization must meet the tests to qualify as a purely public charity.[1]

Early cases involved the application of Pittsburgh's mercantile tax to nonprofit operations. These ran afoul of the wording of the mercantile tax ordinance. The mercantile tax was held to be "a levy on the privilege of conducting a commercial enterprise for profit."[2] Where a manufacturing company operated a cafeteria for its employees at a loss, sales of food in the cafeteria were not subject to the mercantile tax.[3] Similarly, private clubs selling food, liquor, and tobacco to their members at a loss were not subject to the mercantile tax.[4] The clubs were found to be providing services, not for profit, but for the convenience and comfort of their members. Losses incurred on meals were absorbed by income from membership dues.

Where a profit making company sells novelty items to nonprofit organizations for resale, such sales were to be considered retail.[5] Because nonprofit organizations are excluded from the definition of retail vendors, the supplier could not be considered a wholesaler.

Beginning in 1969, Pittsburgh levied a privilege tax on nonprofit institutions at a rate of six mills on gross receipts. The tax is limited to taxpayers not subject to the city's mercantile and business privilege taxes.[6] In a challenge to the validity of the tax, the Supreme Court held the tax could not be applied against hospitals and other institutions of purely public charity.[7] The court relied on the exemption from "all taxes" for charities in the General County Assessment Law. Further, the court noted the longstanding rule that broad taxing statutes do not cover charities unless the legislature specifically states they are to be included.

The tax has been upheld as applied against private clubs organized as nonprofit corporations. The common pleas court found charges for meals, rooms and other services to members do not constitute membership dues or fees exempted under Section 301.1(f)(7) of the Local Tax Enabling Act.[8] The tax was upheld even though it applies to only a limited number of taxpayers after charitable institutions were declared exempt.

Since 1982, Lower Merion Township has levied an Institution and Service Privilege Tax.[9] The ordinance levies a one mill tax against the gross receipts of social or recreational nonprofit organizations regularly providing food, beverage or tobacco services to the public or any limited group of the public, or renting space for social events. All governments, schools, nursing homes, colleges or universities are exempted, as are membership dues or member assessments. The ordinance specifically includes country clubs and veterans organizations within the meaning of institution.

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8. *University Club,* 59 D&C.2d 165, 169 (Ct. Com. Pl. Allegheny Co. 1972).
9. Lower Merion Twp. Code, ch. 138, art. 138-58.

Payroll Preparation Tax

In Pittsburgh, the Business Gross Receipts Taxes have been replaced with Payroll Tax, not to exceed 0.55% on payroll amounts generated as a result of an employer conducting business activity within Pittsburgh.[1] This is a tax levied on an employer's total payroll amounts. Similar to Business Gross Receipts Taxes, entities that are acting as a purely public charity can be exempt from the Payroll Tax.[2]

Additionally, distressed municipalities that currently impose Business Gross Receipts Taxes may, through the Coordinator's plan and court approval, impose a Payroll Tax to replace their existing Business Gross Receipts Taxes.[3] This Payroll Tax is identical to the one imposed by Pittsburgh, except that the rate is based on current revenues generated by the Business Gross Receipts Taxes. That is, the rate of the Payroll Tax may not exceed a rate that is sufficient to produce revenues equal to revenues collected as a result of the Business Gross Receipts Taxes in the preceding fiscal year.[4] After approval by the court of that tax rate, the distressed municipality may levy the tax in any subsequent year without additional court approval, including any year after the termination of the municipality's distressed status, at a rate not to exceed that initially approved by the court.

REFERENCES

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2. 53 P.S. § 6924.303(a.1).
3. 53 P.S. § 11701.123(d)(2); Municipalities Financial Recovery Act, Section 123(d)(2).
4. 53 P.S. § 11701.123(d)(2).

XVII. Amusement/Admissions Taxes

Statutory Authorization

Amusement taxes are levied on the privilege of engaging in an amusement and are measured by admission prices to places of amusement, entertainment or recreation. Admissions taxes are somewhat more general being levied on admissions to all places or events whether or not they constitute amusements. The Local Tax Enabling Act restricts these taxes to a maximum rate of ten percent.[1] When both municipality and school district levy the tax, it is subject to sharing provisions. Under the Sterling Act, Philadelphia levies an amusement tax at the current rate of five percent.[2]

Pursuant to Act 50 of 1998, school districts that did not levy an amusement or admissions tax as of June 30, 1997 are prohibited from levying such a tax in the future. School districts which did have the tax on that date cannot increase the rate above the rate levied for the 1996-97 fiscal year, nor collect revenues in excess of those collected in 1996-97.[3] For districts where the revenues are growing, the rate will have to be reduced in future years to keep revenues below the cap. Any municipality first levying an amusement or admissions tax after December 31, 1997 is limited to a maximum rate of 5%.[4] The maximum rate for Pittsburgh's amusement tax was reduced to 5% when the Allegheny County sales tax was adopted.[5]

The Local Tax Enabling Act establishes the tax base for admissions to ski facilities as forty percent of the cost of the lift ticket and for admissions to golf courses as forty percent of the greens fees.[6] This effectively creates a maximum tax rate of 4% on these classes of amusement where the overall rate is 10%, and an effective rate of 2% where the overall rate is 5%. A miniature golf course does not qualify as a golf course for this special rate.[7]

Regardless of the authority under the Local Tax Enabling Act, Act 124 of 2002, prohibits municipalities and school districts from levying an admissions tax on ski facilities after December 1, 2002[8] and limits the admissions tax on automobile racing facilities with a seating capacity of over 25,000 and a continuous reacetrack of one mile or more to the rate that was levied on January 1, 2002, but not to exceed 40% of the cost of admission.[9]

Tax Administration

A series of court cases have upheld the validity of the amusement tax as a tax on the privilege of engaging in an amusement levied on the patron, as opposed to a tax on the operator of an amusement facility.[10] This was held to be the interpretation of a tax-levying ordinance even where the ordinance required the operator to obtain a permit, maintain certain records of admissions and pay over money collected to the municipality.[11]

An amusement tax can be considered general in nature, even if it falls only on one enterprise within the taxing jurisdiction.[12] However unequal enforcement of the tax, such as treating a single amusement to more intense collection efforts, violates the uniformity clause of the state constitution.[13]

Public Property. The Supreme Court has held that the Local Tax Enabling Act gives taxing bodies the authority to require amusement operators to collect and pay over the tax. However, a municipal taxing ordinance could not require a school district to collect an amusement tax on admissions to football games absent express statutory consent.[14] A private enterprise operating an amusement under a license from the state is a licensee and not an agent of the Commonwealth and can be required to collect the tax from its patrons.[15] Location of the amusement on public property does not exempt its patrons from another jurisdiction's tax.[16]

Tax Base

Admissions to motion picture theaters may not be taxed, except in second class cities.[17] Real property used for camping purposes may not be considered a place of amusement;[18] but admissions to campgrounds have been held taxable where the ordinance levies an admissions tax on all places and events, not just amusements.[19] Amusement or admissions taxes may not be levied on memberships or charges for health, fitness or weight control facilities.[20]

A local admissions tax cannot be applied against a racetrack. The Commonwealth Court held the state had preempted the field by virtue of its fifteen percent tax imposed on all admission fees paid by patrons at a thoroughbred racing track.[21] A prostitution enterprise was held to be a taxable amusement under a local ordinance.[22] An amusement tax can be applied against cover charges levied at the door of restaurants and night clubs.[23] The Commonwealth Court has held that a township's collection of an amusement tax from public golf courses, while exempting membership fees charged by private, non-profit clubs from the tax, did not violate equal protection uniformity principles.[24] A woman's professional golf tournament and its related charitable corporation were not institutions of purely public charity exempt from the local amusement tax.[25]

Defining Amusements. The nature of the amusement to be taxed is not defined in the Local Tax Enabling Act. This definition usually is placed in the tax ordinances. An admission tax was upheld as applied to a county fair. The Superior Court found the tax fell upon the privilege of attending a fair, not upon the fairground itself.[26] In this case, the ordinance levied an admissions tax on a variety of activities not necessarily considered amusements and specifically included admissions to fairgrounds. The court noted agricultural and horticultural exhibits had less draw for people than the various types of amusements and entertainments offered at the fair.

A taxing body has the right to provide its own set of operative definitions in the tax ordinance. The Commonwealth Court upheld application of an amusement tax against admissions to a builders' show in a case where the taxpayer argued it was not commonly understood as an amusement, but the tax ordinance did include trade shows, craft shows and similar exhibitions in the definition of amusement.[27] Such definitions can vary from traditional or customary usage, but not to such an extreme as to render the language senseless. Similarly the court upheld a school tax resolution defining the amusement of skiing to include use of ski lifts, rental of ski equipment and ski lessons applicable for the years before the Act was amended to limit the amusement tax base for ski facilities to forty percent of the lift ticket.[28] In this case the court found the taxing district's definition was reasonable.

Educational Experiences. However, the Commonwealth Court found that caverns were not a place of amusement within the meaning of the Local Tax Enabling Act or the local ordinance.[29] The caverns were classified as an educational experience of historical, natural and geological dimensions. As opposed to the local ordinance in Cambria Township where admissions to fairgrounds were specifically taxed, in this case the local ordinances were restricted to admissions to amusements. The operator of the caverns had places of amusement associated with the caverns, but these had been discontinued before the ordinance was passed. Also, a museum and fort operated by a foundation for historical and educational purposes was held not to be an amusement within the meaning of the Act.[30]

Mechanical Devices Taxes

Amusement taxes levied against coin-operated mechanical devices have been upheld by the courts.[31] The admission taxed was defined as the amount of money required to operate the machine. The tax is restricted to machines providing amusements, including jukeboxes, pinball machines, video games and coin operated pool tables. The tax can be measured by the gross receipts from such machines, however, it cannot exceed the sum of ten percent of each individual price to activate the machine.[32]

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9. 72 Pa.C.S. § 5020-203.2.
10. *Plymouth Lanes, Inc. v. Plymouth Township,* 202 A.2d 811, 415 Pa. 206, 1964; *Bensalem Township School District v. Rose Bowl, Inc.,* 209 A.2d 23, 205 Pa.Super. 265 (1965).
11. *Swatara Township v. Automatic Bowling Centre, Inc.,* 214 A.2d 725, 419 Pa. 482 (1965); *Clearview Bowling Centre, Inc. v. Hanover Borough,* 244 A.2d 20, 430 Pa. 579 (1968).
12. *Country Paradise, Inc. v. Sugarcreek Township,* 441 A. 2d 821, 65 Pa. Cmwlth. 93 (1982).
13. *Tredyffrin-Easttown School District v. Valley Forge Music Fair, Inc.,* 627 A.2d 814, 156 Pa. Cmwlth. 178 (1993).
14. *Wilkinsburg Borough v. Wilkinsburg School District,* 74 A.2d 138, 365 Pa. 254 (1950).
15. *Weatherly Area School District v. Whitewater Challengers, Inc.,* 616 A.2d 620, 532 Pa. 504 (1992).
16. *Township of South Park v. County of Allegheny,* 641 A.2d 20, 163 Pa. Cmwlth. 273 (1994).
17. 53 P.S. § 6924.301.1(f)(10); Local Tax Enabling Act, Section 301.1(f)(10).
18. 53 P.S. § 6924.301.1(f)(3); Local Tax Enabling Act, Section 301.1(f)(3).
19. *Timberline Recreational Enterprises, Inc. v. Highland Township,* 473 A.2d 1130, 81 Pa. Cmwlth. 290, 295 (1984).
20. 53 P.S. § 6924.301.1(f)(13); Local Tax Enabling Act, Section 301.1(f)(13).
21. *Lakeland Racing Association, Inc. v. Fairview Township,* 320 A.2d 391, 13 Pa. Cmwlth. 561 (1974); *Liberty Bell Racing Association v. City of Philadelphia,* 483 A.2d 1063, 86 Pa. Cmwlth. 83 (1984).
22. *Spartacus, Inc. v. Borough of McKees Rocks,* 470 A.2d 1134, 80 Pa. Cmwlth. 191 (1984).
23. *Gettysburg Borough v. The Retreat, Inc.,* 27 D.&C.3d 567, 572 (Ct. Com. Pl. Adams Co. 1983).
24. *Conley Motor Inns, Inc. v. Township of Penn,* 728 A.2d 1012 (Pa. Cmwlth. 1999) appeal denied, 745 A.2d 1225.
25. *Betsy King LPGA Classic, Inc. V. Township of Richmond,* 739 A.2d 612 (Pa. Cmwlth. 1999).
26. *Cambria Twp. School District v. Cambria County Legion Recreation Assoc.,* 192 A.2d 149, 201 Pa. Super. 163 (1963).
27. *City of Harrisburg v. Homebuilders Association of Metropolitan Harrisburg,* 507 A.2d 1307, 96 Pa. Cmwlth. 549 (1986).
28. *Ski Roundtop, Inc. v. Fairfield Area School District,* 533 A.2d 828, 111 Pa.Cmwlth. 256 (1987).
29. *Derry Township v. Swartz,* 346 A.2d 853, 21 Pa. Cmwlth. 587 (1975) (citing *Cambria Twp. School District v. Cambria County Legion Recreation Assoc.,* 192 A.2d 149, 201 Pa. Super. 163 (1963)).
30. *Ligonier Valley School District v. Fort Ligonier Memorial Foundation,* 62 D.&C.2d 210 (Ct. Com. Pl. Westmoreland Co. 1962).
31. *Fierro v. Williamsport,* 120 A.2d 889, 384 Pa. 568 (1968).
32. *Moon Union School District v. Tiglio,* 128 A.2d 150, 183 Pa.Super. 67 (1956).

XVIII. Other Taxes

The taxes discussed in the previous sections are the principal nonreal estate taxes levied by Pennsylvania local governments, either under the general enabling laws or under special laws. They have been widely applied across the state. In addition to these more common taxes, there are a number of current local taxes not widely applied in Pennsylvania. Some have direct statutory authorization limited to one or a few subdivisions. Others are levied under general enabling legislation, but have been adopted by only a few jurisdictions.

Sales Taxes

General Sales Taxes. Although common in other states, local option sales taxes had never been authorized for Pennsylvania local governments until the enactment of the Pennsylvania Intergovernmental Cooperation Authority Act in 1991. This Act establishes a state oversight board to issue bonds and assist Philadelphia in recovery from the financial emergency caused by the inability of the city to sell its bonds on the open financial market during 1990-91.

Section 503 of the Act authorizes Philadelphia to levy a sales tax at the rate of either 0.5 percent or one percent.[1] The city levies the tax at the rate of one percent.[2] The tax is levied on the same tax base as the state sales tax and is collected by the vendor from the purchaser and is paid over to the commonwealth. Situs for sales of vehicles, aircraft and motorboats is the address of the purchaser; situs of sales of steam, gas, electric, telephone and telegraph utilities is the address to which service is delivered.[3] The local sales tax may be levied directly by the city for its uses or may, along with an additional realty transfer tax and/or a wage tax, be levied for purposes of the Pennsylvania Intergovernmental Cooperation Authority.[4]

A local one percent sales tax was authorized by the General Assembly for Allegheny County in 1993 and was first levied by the county commissioners in 1994.[5] Like the Philadelphia tax, it is collected by the vendor from the purchaser and paid over to the commonwealth with the same situs provisions. But the county government only receives 25% of the sales tax revenues. The revenues are distributed out of a special fund by the State Treasurer as follows: 50% to the Allegheny Regional Asset District, 25% to Allegheny County and 25% to the county's municipalities on a formula basis.[6] The act requires repeal of the intangible personal property taxes previously levied by the county, Pittsburgh and the Pittsburgh School District and reduction of Pittsburgh's amusement tax to 5%.[7] The act also makes tax relief available for qualified property owners. The Asset District funds civic, recreational, library, sports and cultural activities with regional impact.

Liquor Sales Tax. A ten percent liquor sales tax levied for the Philadelphia School District by the city under the Sterling Act was found unconstitutional in 1971 as being preempted by state liquor taxes.[8] Subsequently the General Assembly enacted a special law specifically authorizing the tax.[9] The tax was levied in 1994 at the maximum 10% rate and upheld in a court challenge.[10] This tax is collected directly by the school revenue commissioner.

REFERENCES

1. 53 P.S. § 12720.503; Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, Section 503.
2. Phila. Code § 19-2701,-02.
3. 53 P.S. § 12720.504.
4. 53 P.S. § 12720.601(a).
5. 16 P.S. § 6152-B; Second Class County Code, Section 3152-B.
6. 53 P.S. § 6157-B.
7. 53 P.S. § 6171-B.
8. *United Tavern Owners of Philadelphia v. Philadelphia School District,* 272 A.2d 868, 441 Pa. 274 (1971).
9. 53 P.S. 16133; First Class School District Liquor Sales Tax Act, Section 3.
10. *Licensed Beverage Association of Philadelphia v. Board of Education of School District of Philadelphia,* 669 A.2d 447 (Pa. Cmwlth. 1995), abrogated on other grounds by *Buffalo Twp. v. Jones,* 571 Pa. 637, 813 A.2d 659 (2002).

Hotel Room Rental Taxes

A 1977 amendment to the Second Class County Code authorized Allegheny County to levy a one percent tax on hotel room rentals within the county with the tax to expire in 1983. Some of the features of this tax fell afoul of the uniformity clause of the state constitution.[1] As amended in 1997 and 2008, the tax was extended to second class A counties at a rate of three percent, and the rate for second class counties was raised to seven percent.[2] The revenue from this tax is to be used for tourist promotion activities and to subsidize operation of convention centers or exhibition halls. Numerous counties have levied hotel room taxes under this authority since 1998.

A hotel room rental tax for Philadelphia was first authorized in 1982 at a maximum rate of three percent. This tax was replaced by the Pennsylvania Convention Center Authority Act which implemented a hotel room rental tax whose revenues are to be used for tourist promotion activities and to subsidize the Pennsylvania Convention Center.[3] Philadelphia currently levies the tax at a rate of eight and one-half percent.[4]

In 1994 a hotel room rental tax was authorized for those counties where a convention center was constructed by an authority formed under the Third Class County Convention Center Authority Act.[5] The maximum rate is five percent. In certain circumstances the county commissioners can restrict the tax to hotels located within a market area defined as located within 15 miles of the convention center.[6]

In 1997 an amendment to the County Code added two additional authorizations for hotel room rental taxes. Certain third, fourth and fifth class counties are authorized to levy the tax at a rate of up to three percent.[7] A separate authorization permits Lackawanna County to levy a hotel room rental tax of up to seven percent.[8]

A series of amendments to the County Code in 1999 and 2000 extended the authority to levy a hotel tax of up to 3% to all third to eighth class counties that did not already have this authority.[9] Additionally between 1999 and 2008 several amendments were made to the County Code authorizing certain third class counties to levy the tax at five percent[10] or four percent[11] and certain fifth class counties to levy the tax at five percent.[12]

A municipal ordinance levying a two percent tax on hotel room rentals under the general enabling authority of the Local Tax Enabling Act was invalidated by the courts.[13] The Superior Court held the township tax was preempted by the state sales tax already charged on hotel room rentals. The preemption clause in the Local Tax Enabling Act forbids a municipal tax on a subject already taxed by the state.

REFERENCES

1. *Allegheny County v. Monzo,* 500 A.2d 1096, 509 Pa. 26 (1985).
2. 53 Pa.C.S § 8721; 16 P.S. 3000.3061.
3. 64 Pa.C.S. § 6025.
4. Phila. Code § 19-2400 et seq.
5. 16 P.S. 2399.1; County Code, Section 2399.1; Appeal of Torbik, 696 A.2d 1141 (Pa. 1997).
6. *Eways v. Board of Commissioners of Berks County,* 717 A.2d 8 (Pa. Cmwlth. 1998).
7. 16 P.S. § 1770.2; County Code, Section 1770.2.
8. 16 P.S. § 1770.4; County Code, Section 1770.4.
9. 16 P.S. § 1770.6; County Code, Section 1770.6
10. 16 P.S. §1770.5; County Code, Section 1770.5
11. 16 P.S. §1770.8; County Code, Section 1770.8
12. 16 P.S. §1770.7; County Code, Section 1770.7
13. *Shanken v. Upper Moreland Township,* 201 A.2d 249, 203 Pa.Super. 323 (1964).

Parking Lot Taxes

Under the authority of the Sterling Act, Philadelphia levies a tax on the gross receipts of parking lots at the current rate of twenty percent.[1] This tax was upheld by the Pennsylvania Supreme Court, holding it was not superseded by state corporate taxes. "What the ordinance taxes is the 'transaction,' the activity specified in the enabling act; it is the transaction that results when one parks one's car in an open parking place."[2] The court held the separation of open parking lots and closed garages was not an unreasonable classification.

This parking lot tax was upheld in a later case.[3] However, the Superior Court excluded from taxable gross receipts the credits on rent the operator received from his landlord bank for parking bank customers in a reserved area of the lot. No fee was involved. The court held the landlord had reserved the right of occupancy to part of the premises.

Taxes on the gross receipts of commercial parking lots enacted under the authority of the Local Tax Enabling Act have been upheld. In reviewing Johnstown's ten percent parking lot tax the Supreme Court stated: "There can be no doubt of the city's power to enact a tax such as is here under consideration. The Local Tax Enabling Act clearly confers authority for the enactment of such a tax."[4] A 15 percent parking tax levied by the Moon Area School District fell only on parking facilities close to Greater Pittsburgh International Airport, but the Supreme Court upheld the tax, saying it did not impinge on interstate commerce and the tax was justified because taxpayers benefitted from the existence of a civilized society of which education was a part.[5] However, in a later case the court ruled the district has no power to compel the collection of the tax by an agent of the county under contract to manage county-owned airport parking lots.[6] In a similar case, a school parking tax imposed on the patrons of parking facilities was upheld as applied to transactions conducted on public property. However, the school district does not have the authority to impose on other governmental bodies, such as a parking authority, the duty of collecting the tax.[7]

Pittsburgh adopted a tax on the gross receipts of commercial nonresidential parking operations at the rate of ten percent in 1962. The rate was increased to fifteen percent in 1968 and 20 percent in 1969. The United States Supreme Court upheld the tax, holding it did not violate the Due Process clause of the Fifth Amendment nor the Fourteenth Amendment, even though the city parking authority competed directly with the taxpayers.[8] The court held a tax cannot be declared unconstitutional because it renders a business unprofitable. It found the Pittsburgh tax a valid revenue measure.

In 1973 the tax on parking lot operators was replaced by a 20 percent tax on patrons of nonresidential parking places. This tax was upheld by the Pennsylvania Supreme Court.[9] In construing the Pittsburgh tax, the court held the definition of commercial parking lot in the ordinance extended to a private club which charged its members a parking fee, holding "It is the imposition of a charge for parking that makes a parking lot 'commercial' under the clear language of the ordinance."[10] Pittsburgh's tax was levied at a rate of 37.5% in 2015.[11]

The Commonwealth Court has ruled that parking taxes enacted under the Local Tax Enabling Act are not subject to any limit, which was upheld by a divided Pennsylvania Supreme Court.[12] Nor are they subject to the sharing provisions. This decision came out of a challenge to a 6% parking tax levied by the Interboro School District by a parking operator already paying a 6% parking tax to Tinicum Township for the same facility at the Philadelphia airport. In 2013, parking taxes were levied by 254 municipalities.

REFERENCES

1. 53 P.S. 15971; 1932 (Ex.Sess.) P.L. 45; Phila. Code § 19-1202.
2. *Philadelphia v. Samuels,* 12 A.2d 79, 338 Pa. 321, 326 (1940).
3. *Philadelphia v. Broomall,* 130 A.2d 713, 183 Pa. Super. 296 (1957).
4. *Chwatek v. Parks,* 299 A.2d 631, 450 Pa. 62, 66 (1972).
5. *Airway Arms, Inc. v. Moon Area School District,* 446 A.2d 234, 498 Pa. 286 (1982).
6. *Moon Area School District v. Garzony,* 560 A.2d 1361, 522 Pa. 178 (1989).
7. *Capitol Associates v. School District of the City of Harrisburg,* 684 A.2d 1119 (Pa. Cmwlth. 1996).
8. *City of Pittsburgh v. Alco Parking Corp.,* 94 S.Ct. 2291, 417 U.S. 369 (1974).
9. *William Penn Parking Garage, Inc. v. City of Pittsburgh,* 346 A.2d 269, 464 Pa. 168 (1975).
10. *University Club v. Pittsburgh,* 271 A.2d 221, 440 Pa. 562, 566 (1970).
11. Pitt. Code tit. 2, art. VII, ch. 253 § .02(a).
12. *Airpark International I v. Interboro School District,* 677 A.2d 388 (Pa. Cmwlth. 1996) *aff'd,* 735 A.2d 646 (Pa. 1999).

Vehicle Rental Tax

In 1999, the General Assembly gave Philadelphia the authority to levy an excise tax of up to 2% on the rental of vehicles.[1] The situs is where the renter takes possession of the car. All funds from the vehicle rental tax must be dedicated to capital to fund the costs of capital projects.

REFERENCE

1. 16 P.S. § 2398; County Code, Section 2398.

Flat Rate Business Privilege Taxes

New business privilege taxes measured by the gross receipts of the business were prohibited after November 30, 1988.[1] However, this prohibition does not extend to flat rate business privilege taxes. In 1990 Newtown Borough enacted a $100 per year business privilege tax on all businesses maintaining a place of business within the borough. This tax was upheld as not subject to the freeze on gross receipts taxes.[2] The court also found it was not an illegal licensing fee. In 2012, the Pennsylvania Supreme Court acknowledged the rule implemented in Newtown, but created an exception to the permissibility of flat rate business privilege taxes.[3] In that case, the Court held that a flat rate business privilege tax of $2,600 on all businesses in the township with gross receipts over $1 million was in violation of the Local Tax Enabling Act as a tax on business gross receipts or parts thereof. The Court distinguished Newtown on the basis that the tax in Newtown applied to all businesses and did not condition the tax to a threshold of gross receipts at which the tax would be triggered. In 2013, three school districts levied flat rate business privilege taxes.

REFERENCE

1. 72 P.S. § 4750.533; Local Tax Reform Act, Section 533.
2. *Smith and McMaster, P.C. v. Newtown Borough,* 669 A.2d 452 (Pa. Cmwlth. 1995).
3. *Shelly Funeral Home, Inc. v. Warrington Twp.,* 618 Pa. 469, 476, 57 A.3d 1136, 1140 (2012).

Trailer Tax

Section 2, subsection (8) of the Local Tax Enabling Act prohibits levy of a tax on mobilehomes or house trailers subject to real estate taxes unless the same tax is levied on all other real estate within the taxing jurisdiction.[1] A number of school districts had levied house trailer taxes on mobilehomes not carried on the assessment roll. These taxes were levied at a flat rate of $2 to $8 monthly and terminated when the mobilehome was put on the assessment roll. The tax was principally an interim tax between the time the mobilehome was moved into the district and the time it was assessed for real estate taxes.

However, lower court cases invalidated house trailer taxes as levied on mobilehomes permanently attached to the land or connected with water, gas, electric or sewage facilities.[2] The courts ruled such mobilehomes are subject to real estate taxes, whether or not they are actually on the tax rolls, and are not liable to be taxed under a house trailer tax. These decisions essentially removed the tax base for trailer taxes. By 1998, only four school districts and two townships retained a trailer tax.

REFERENCE

1. 53 P.S. § 6924.301.1(f)(8).
2. *In re North East School District Resolution,* 68 D.&C.2d 622 (Ct. Com. Pl. Erie Co. 1974); *Lewistown Borough v. Mannino,* 38 D.&C.2d 33 (Ct. Com. Pl. Mifflin Co. 1965).

Business Use and Occupancy Tax

A 1963 law known as the Little Sterling Act authorizes Philadelphia City Council to levy any tax authorized under the Sterling Act for school district purposes.[1] The city has imposed a business use and occupancy tax for school purposes.[2] The tax is imposed on the use of real estate for commercial or industrial activity. Effective July 1, 2013, it is levied at the rate of 1.13% on assessed value of real estate, with factors for the amount of space occupied and the number of days of occupancy.[3]

When challenged, the tax was upheld by the Pennsylvania Supreme Court as a valid privilege tax on the use of real estate.[4] The court found the use and ownership of property are distinct and separate, with the right of use just one of the several rights incident to ownership. The tax was upheld as applied to insurance companies, not being preempted by state insurance licensing fees.[5]

Recreational Use Tax. A number of small townships in northern Pennsylvania had enacted recreational use taxes. The tax is usually a flat rate charge levied against structures used for seasonal or recreational purposes. The main burden of the tax falls on owners of hunting and fishing camps in forested areas. In 2013, 800 municipalities collect revenues from culture and recreation.

References

1. 53 P.S. § 16101(a); 1963 P.L. 640.
2. Phila. Code § 19-1806.
3. Phila. Code § 19-1806(c).
4. *Wanamaker v. Philadelphia School District,* 274 A.2d 524, 441 Pa. 567, at 569 (1971).
5. *Industrial Valley Title Insurance Co. v. School District of Philadelphia,* 661 A.2d 497 (Pa. Cmwlth. 1995).

Unearned Income Tax

A 1967 amendment to the Little Sterling Act authorizes Philadelphia to impose a tax on unearned income of residents for school purposes.[1] The tax is levied on income from the ownership, lease or sale of tangible and intangible real and personal property. Excluded from the tax are interest from federal, state or Pennsylvania local government debt obligations, interest on savings deposits and certificates from banks and thrift institutions and capital gains from property owned more than six months. The unearned income tax was imposed in 1967, replacing the intangible personal property tax then in effect.

The tax must be levied at the same rate as the city net profits and wage tax. Classes of income subject to the wage tax and net profits tax are excluded from the unearned income tax, also called the nonbusiness income tax.

REFERENCE

1. 53 P.S. § 16101(b); 1967 P.L. 500.

Video Programming Tax

In 1995, the legislature authorized municipalities to levy a five percent tax on the gross receipts of companies providing video programming to consumers.[1] This tax applies only to businesses who are not subject to cable television franchise fees enacted by the municipality under FCC regulations. Advancing technology has enabled video programmers to offer services to customers through telephone wires. This tax puts video programmers on the same basis as cable TV providers subject to the franchise fee.

REFERENCE

1. 72 P.S. §§ 6171 et seq.; Video Programming Municipal Tax Authorization Act.

Frozen Tax Sources

In addition to the business gross receipts tax (for all jurisdictions) and the amusement/admissions tax (for school districts), two other taxes can continue to be levied where they already exist, but cannot be levied by any additional jurisdictions.

Landfill Taxes. Before 1988 a few townships and school districts levied taxes on the operators of landfills under the authority of the Local Tax Enabling Act. In 1981 Smith Township, Washington County, levied a ten percent tax on the gross receipts of the operators of sanitary landfills and chemical, liquid waste or other refuse disposal facilities. Williams Township, Northampton County, adopted a sanitary landfill business privilege tax in 1982 at the rate of three percent of gross receipts. This tax was limited to receipts from landfill operations. In 1983, Carroll Township,

Washington County, levied a ten percent landfill business privilege tax. The tax does not appear to be limited to sanitary landfills, but extends to every place fill is dumped. Montgomery Area School District, Lycoming County, levied a landfill dumping privilege tax in 1984 at the rate of 30 cents per tire per vehicle delivering refuse to landfills within the district.

The first judicial review of these taxes came when a landfill operator challenged the waste disposal privilege tax of Union Township, Adams County.[1] The township's ordinance taxed waste disposal businesses at a rate of seven percent of gross receipts. The Commonwealth Court found the tax was unreasonable because the benefit received was palpably disproportionate to the burden imposed by the tax. In this case the township had not budgeted the revenues from the tax and could not establish a need for them.

To the contrary, another township landfill tax was upheld.[2] Plainfield Township, Northampton County had a plan for spending the revenues from the tax on needed public benefits and it had not run a revenue surplus. The Court found the township's tax was not excessive at three percent of gross revenues, even though it generated greater revenues than the host municipality fee under the Recycling Act.

Any further imposition of landfill privilege taxes has been terminated by the enactment of the Municipal Waste Planning, Recycling and Waste Reduction Act.[3] This Act establishes a host municipality benefit fee of one dollar per ton to be paid by operators of landfills or resource recovery facilities. The Act preempts and supersedes any tax on landfills or resource recovery facilities above the rate in effect on December 31, 1987. No new landfill privilege taxes may be enacted.

Sign Tax. Emmaus Borough levied a tax on signs under the authority of the Local Tax Enabling Act beginning in 1948. The tax was levied on signs of any nature attached to any building, pole or post or exterior of any structure for purposes of display or advertisement. For signs of less than twenty square feet, the tax rate was $5 per year. For larger signs, the rate was $5 per year for every fifty square feet or fraction thereof. Similar taxes were later enacted in Stroudsburg and Pottstown. The Stroudsburg ordinance was upheld in a court challenge.[4] Act 50 of 1998 allows these three jurisdictions to continue to collect their sign taxes at the rate levied as of December 31, 1997, but no additional jurisdictions may levy this tax.[5]

REFERENCES

1. *Keystone Sanitation Co., Inc. v. Union Township,* 522 A.2d 691, 104 Pa. Cmwlth. 521 (1987).
2. *Grand Central Sanitary Landfill v. Township of Plainfield,* 589 A.2d 767, 138 Pa. Cmwlth. 640 (1991).
3. 53 P.S. § 4000.1301; 1988 P.L 556, No. 101, Section 1301(d).
4. *Adams Outdoor Advertising v. Stroudsburg,* 667 A.2d 21 (Pa. Cmwlth. 1995).
5. 53 Pa.C.S. § 8402(e).

Prohibited Taxes

Occupancy Taxes. A number of Allegheny County municipalities had levied occupancy taxes under the authority of the Local Tax Enabling Act. For example, in 1971 Forest Hills Borough levied an occupancy tax on all occupants of buildings at the rate of $40 per year. The tax was levied on both owners and renters of residential, commercial and other buildings suitable for human occupancy. In 1978 the rate was raised to $50 per year, payable on a quarterly basis. A similar tax at a rate of $40 per year was levied by Swissvale Borough in 1978. Other taxes ranged from $25 to $50 per year.

These real estate occupancy taxes were struck down by the Commonwealth Court in a challenge to the $25 annual tax levied by Crafton in 1987.[1] The court found that such taxes were indistinguishable from per capita taxes. As such, the Crafton tax was invalid because it violated the ten dollar limit on per capita taxes found in Section 311 of the Local Tax Enabling Act.

Residential Construction Taxes. In the late 1970s school districts began levying taxes on residential construction. The tax was usually imposed on applicants for building permits to construct a residence or convert a building into a residence. The tax was usually imposed at a flat rate ranging from $150 to $2,500 or at a percentage of the cost of construction.

The first challenge to this tax was upheld by the Commonwealth Court. The court upheld an $875 residential construction tax as a valid privilege tax on the owner's privilege of using realty as a location for a residence.[2] The distinction between newly constructed and already existing residences was upheld as a reasonable classification.

In a second challenge the Commonwealth Court invalidated a tax on the privilege of obtaining a building permit and engaging in building construction. The tax was levied at the rate of one percent of the cost of construction, repair or renovation of any type of building. The court found the tax to be unreasonable and operated with an exclusionary impact against newcomers. The effect of the tax "is to exempt most of the present residents from an added tax, while collecting it mostly from families coming into the community."[3] On appeal, the Pennsylvania Supreme Court disagreed with the Commonwealth Court's reasoning and instead held that the tax was invalid based on a legislative amendment enacted in 1981 which prohibited such tax after July 1, 1982.[4]

Protests from the building industry, construction union and financial institutions led the General Assembly to prohibit this tax in 1981.[5] All residential construction taxes were prohibited after June 30, 1982. That section was held to allow application of general business privilege taxes against contractors engaged in the business of constructing dwellings.[6] Two townships have levied nonresidential construction taxes, Bensalem at a flat rate of $1000 per unit and Middletown at $2 per square foot. These have not been tested in court.

Lease Rental Taxes. Middletown Area School District levied a tax on the privilege of renting tax-exempt real estate under the authority of the Local Tax Enabling Act. The tax was levied at the rate of five percent of the rental paid by companies and persons leasing real estate not appearing on the tax rolls, excluding residential dwellings. In the first challenge to this tax, the county court held a company leasing a service station from the Pennsylvania Turnpike Commission was exempt from the tax.[7] The tax would eventually be a burden on the Commission, which is exempted by state law from all local taxes. The court raised the question of whether the privilege of leasing tax exempt realty is a proper subject of taxation, but did not address this issue.

Lower Swatara Township adopted a similar tax in 1972 at a rate of five percent, but exempted leases from the Turnpike Commission. The tax was raised to ten percent in 1974. The tax fell chiefly upon private firms leasing facilities at Harrisburg International Airport. Benner Township, Centre County also levied a lease rental tax at the rate of five percent. It fell chiefly on individuals and private firms renting tiedowns and hangars at an airfield owned by Penn State University, a tax-exempt entity. These taxes were not further challenged. But when the Harrisburg School District attempted to levy a tax of 10% on the privilege of leasing tax-exempt realty, the issue reached the Pennsylvania Supreme Court.[8] The court held the tax unconstitutional as violating the uniformity clause of the Pennsylvania Constitution.

Off-Track Wager Tax. The Catasauqua Area School District attempted to levy a 1% tax on all wagers made at an off-track betting facility located within the commonwealth. The court found the tax illegal, being preempted by the state tax on wagers.[9]

Motor Vehicle Transfer Tax. The Manheim Township School District intended to levy a $10 privilege tax on all transfers of motor vehicles at a used auto auction facility within the district. The business started the process of moving to a new site in another county and the tax was never enacted. However, Act 50 of 1998 now prohibits such taxes.[10]

REFERENCES

1. *Borough of Crafton v. Gaitens,* 534 A.2d 1149,112 Pa. Cmwlth. 147 (1987).
2. *Smith v. Southern York County School District,* 403 A.2d 1034, 44 Pa. Cmwlth. 227 (1979).
3. *Heisey v. Elizabethtown Area School District,* 445 A.2d 1344, 67 Pa. Cmwlth. 27, 35 (1982).
4. *Heisey v. Elizabethtown Area School District,* 467 A.2d 818,502 Pa. 571 (1983).
5. Formerly 53 P.S. § 6902; Local Tax Enabling Act, Section 2(11); see now 53 P.S. § 6924.301.1(f)(11).
6. *Middletown Township v. Alverno Valley Farms,* 524 A.2d 1039, 105 Pa. Cmwlth. 311 (1987).
7. *Gulf Oil Corporation v. Middletown Area School District,* 50 Pa. D.&C.2d 247, at 254, (Ct. Com. Plea. Dauphin Co. 1970).
8. *City of Harrisburg v. School District of the City of Harrisburg,* 710 A.2d 49, 551 Pa. 295 (1998).
9. *Pocono Downs, Inc. v. Catasauqua Area School District,* 669 A.2d 500 (Pa. Cmwlth. 1996).
10. 53 Pa.C.S. § 8402(f).

Appendix I. Tax Sources

A. Counties

Potential Tax Sources	Legal Limit[1]	Citation
General Purpose Tax Levies		
Real Estate		
Second Class Counties	25 mills	16 P.S. § 4970
Second Class A Counties	40 mills	16 P.S. § 4970
Third-Eighth Class Counties	25 mills[2]	16 P.S. § 1770
Personal Property		
Second Class A to Eighth Class Counties	4 mills	72 P.S. § 4821
Sales		
Second Class Counties	1 percent	16 P.S. § 6152-B
Per Capita		
Fourth-Eighth Class Counties	$5	16 P.S. § 1770
Occupation		
Fourth-Eighth Class Counties	20 Mills	16 P.S. § 1770
Special Purpose Taxes		
Debt Service	unlimited	16 P.S. §§ 1770 & 4970
Lease Rental Payments to Authorities		
Third-Eighth Class Counties	10 mills	16 P.S. § 1770
Institution Districts		
Second Class Counties	10 mills	62 P.S. § 2257
Second Class A Counties	15 mills	16 P.S. § 4970.1
Third Class Counties	10 mills	62 P.S. § 2257
Parks and Playgrounds		
Second and Second Class A Counties	2 mills	16 P.S. §§ 6007 & 6035[3]
Third-Eighth Class Counties	no limit	16 P.S. § 2507
Libraries	no limit	24 Pa.C.S. § 9351
Roads	2 mills	16 P.S. §§ 2707, 2724, 2733, 5901, 5902 & 5903
Memorial Hall	no limit	16 P.S. §§ 2366 & 5571
Tuberculosis Hospital	no limit	16 P.S. §§ 2118 & 5324
Bridges	no limit	16 P.S. §§ 2675, 5734 & 5778
Community Colleges	([4])	24 P.S. § 19-1909-A
Municipalities Financial Recovery Program[5]	no limit	53 P.S. § 11701.123(c)

Hotel Room Rental		
Second Class Counties	5 percent (7 percent)	53 Pa.C.S. § 8721; (16 P.S. § 3000.3061)
Second Class A Counties	3 percent	53 Pa.C.S. § 8721
Lackawanna County	7 percent	16 P.S. § 1770.4
Certain Third Class Counties	5 percent	16 P.S. §§ 1770.5 & 2399.23
Certain Third Class Counties	4 percent	16 P.S. § 1770.8
Certain Fifth Class Counties	5 percent	16 P.S. §§ 1770.6 & 1770.7
Third to Eighth Class Counties	3 percent	16 P.S. §§ 1770.2, 1770.6, 1770.7
Taxation for Public Transportation	7 percent	53 Pa. C.S.A. § 8602

1. Counties adopting home rule charters may set rates higher than the limits provided in state law for property taxes and for personal taxes levied on residents. They may not create new subjects of taxation
2. Five additional mills available with court appeal.
3. Limit of 1 mill for purpose of establishing, making, enlarging, extending and maintaining parks and playgrounds.
4. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed five mills of the market value of real estate, except for first class cities and first class school districts where it cannot exceed one mill of the market value of real estate.
5. Levied only with court approval.

B. First Class Cities

Potential Tax Sources	**Legal Limit[1]**	**Citation**
General Purpose Tax Levies		
Real Estate	no limit	53 P.S. § 12553
Personal Property	4 mills	72 P.S. § 4821
Business Privilege	no limit	53 P.S. § 16184
Sales	1 percent	53 P.S. § 12720.503
Sterling Act Taxes[1]		53 P.S. § 15971
Wage, Earnings and Net Profits		
Realty Transfer		
Amusement		
Parking Lot		
Special Purpose Taxes		
Community Colleges	([2])	24 P.S. § 19-1909-A
Hotel Room Rental	6 percent	53 P.S. § 16223
Distressed Pension System Recovery Program	no limit[3]	53 P.S. § 895.607(f)
Open Space (real estate or earned income)[4]	set by voters	32 P.S. § 5007.1

1. The Sterling Act gives Philadelphia the power to levy taxes on any privilege, transaction, subject or personal property not subject to a state tax or license. There are no limits on the rate of taxation under the Act. Taxes listed are those currently levied.
2. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed one mill of the market value of real estate for first class cities.
3. May only be assessed or used to defray the additional costs required to be paid under Municipal Pension Plan Funding Standard and Recovery Act (and which are directly related to the pension plans of the municipality and which are included in the calculation of the financial requirements of the pension plan and the minimum municipal obligation.
4. Requires approval of voters in referendum.

C. Second Class Cities

Potential Tax Sources	Legal Limit[1]	Citation
General Purpose Tax Levies		
Real Estate	no limit	53 P.S. §§ 23104 & 25942
License Taxes	no limit	53 P.S. §§ 23107, 23126, 23127 & 23136
Dog Owners	no limit	53 P.S. § 23144
Act 511 Taxes		53 P.S. §§ 6924.311; 16 P.S. § 6171-B
Per Capita	$10	
Occupation (Flat Rate)[2]	$10	
Occupation (Millage)[2]	no limit	
Local Services Tax	$52	
Earned Income/Net Profits	1 percent	
Realty Transfer	1 percent	
Mechanical Devices	5 percent	
Parking	no limit	
Amusement & Movie Theaters	5 percent	
Business Gross Receipts	1 mill wholesale 2 mills retail	
Institution/Service Privilege	no limit[8]	
Act 130 Earned Income[3]	set by referendum	53 P.S. § 6924.407
Special Purpose Taxes		
Public Parks	no limit	53 P.S. § 23140
Sinking Fund	3 mills	53 P.S. § 25851
Community Colleges	([4])	24 P.S. § 19-1909-A
Open Space (real estate or earned income)[5]	set by voters	32 P.S. § 5007.1
Distressed Pension System Recovery Program[6]	no limit	53 P.S. § 895.607(f)
Municipalities Financial Recovery Program[7]	no limit	53 P.S. § 11701.123(c)

1. As a home rule municipality, Pittsburgh may set rates higher than the limits provided in state law for property taxes and for personal taxes levied on residents. It may not create new subjects of taxation.
2. If a municipality raises the rate of its income tax through a referendum authorized under 53 P.S. §§ 6924.401 et seq., it must eliminate its occupation tax.
3. Act 130 of 2008, 53 P.S. §§ 6924.401 et seq., provides that a political subdivision that levies an occupation tax may, by referendum, replace the revenues provided from the occupation tax by increasing the rate, within specified limits, of the earned income tax.
4. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed 5 mills of the market value of real estate
5. Requires approval of voters in referendum.
6. May only be assessed or used to defray the additional costs required to be paid under Municipal Pension Plan Funding Standard and Recovery Act (and which are directly related to the pension plans of the municipality and which are included in the calculation of the financial requirements of the pension plan and the minimum municipal obligation.
7. Levied only with court approval.
8. As of 2015, Pittsburgh levied the tax at 6 mills. Pitt. City Code, tit. 2, art. VII § 247.

D. Second Class A Cities

Potential Tax Sources	Legal Limit[1]	Citation
General Purpose Tax Levies		
Real Estate	no limit	53 P.S. §§ 23104 & 25942
Act 511 Taxes		53 P.S. § 6924.311
Per Capita	$10[2]	
Occupation (Flat Rate)[3]	$10[2]	
Occupation (Millage)[3]	no limit	
Local Services Tax	$52[2]	
Earned Income	1 percent	
Realty Transfer	1 percent[2]	
Mechanical Devices	10 percent[2]	
Amusement[4]	10 percent[2]	
Business Gross Receipts[5]	1 mill wholesale[2] 1 1/2 mills retail[2]	
Act 130 Earned Income[6]	set by referendum	53 P.S. § 6924.407
Special Purpose Taxes		
Community Colleges	([7])	24 P.S. § 19-1909-A
Open Space (real estate or earned income)[8]	set by voters	32 P.S. § 5007.1
Distressed Pension System Recovery Program[9]	no limit	53 P.S. § 895.607(f)
Municipalities Financial Recovery Program[10]	no limit	53 P.S. § 11701.123(c)

1. As a home rule municipality, Scranton may set rates higher than the limits provided in state law for property taxes and for personal taxes levied on residents. It may not create new subjects of taxation.
2. Maximum rate subject to sharing with school district.
3. If a municipality raises the rate of its income tax through a referendum authorized under 53 P.S. §§ 6924.401 et seq., it must eliminate its occupation tax.
4. For taxes first levied after December 31, 1997, maximum rate is 5 percent. See 53 Pa.C.S. § 8402(c)(2).
5. Only if enacted before December 1, 1988. See 72 P.S. § 4750.533.
6. Act 130 of 2008, 53 P.S. §§ 6924.401 et seq., provides that a political subdivision that levies an occupation tax may, by referendum, replace the revenues provided from the occupation tax by increasing the rate, within specified limits, of the earned income tax.
7. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed 5 mills of the market value of real estate.
8. Requires approval of voters in referendum.
9. May only be assessed or used to defray the additional costs required to be paid under Municipal Pension Plan Funding Standard and Recovery Act (and which are directly related to the pension plans of the municipality and which are included in the calculation of the financial requirements of the pension plan and the minimum municipal obligation.
10. Levied only with court approval.

E. Third Class Cities

Potential Tax Sources	Legal Limit[1]	Citation
General Purpose Tax Levies		
Real Estate	30 mills[2]	53 P.S. § 37531
Residence	$5	53 P.S. § 37531
Business License	$100	53 P.S. § 37601.1
Act 511 Taxes		53 P.S. § 6924.311
Per Capita	$10[3]	
Occupation (Flat Rate)[4]	$10[3]	
Occupation (Millage)[4]	no limit	
Local Services Tax	$52[3]	
Earned Income	1 percent[3]	
Realty Transfer	1 percent[3]	
Mechanical Devices	10 percent[3]	
Amusement[5]	10 percent[3]	
Business Gross Receipts[6]	1 mill wholesale[3] 1 1/2 mills retail[3]	
Act 130 Earned Income[7]	set by referendum	53 P.S. § 6924.407
Special Purpose Taxes		
Bonded Debt and Sinking Fund	no limit	53 P.S. § 37531
Recreation	no limit	53 P.S. §§ 37531(a)(4) & 38709
Library	no limit	24 Pa.C.S. § 9351
Shade Trees		53 P.S. §§ 37416; 39501-A et seq.
Community Colleges	([8])	24 P.S. § 19-1909-A
Open Space (real estate or earned income)[9]	set by voters	32 P.S. § 5007.1
Distressed Pension System Recovery Program[10]	no limit	53 P.S. § 895.607(f)
Municipalities Financial Recovery Program[11]	no limit	53 P.S. § 11701.123(c)

1. Home rule municipalities may set rates higher than the limits provided in state law for property taxes and for personal taxes levied on residents. They may not create new subjects for taxation
2. Five additional mills available with court approval.
3. Maximum rate subject to sharing with school district.
4. If a municipality raises the rate of its income tax through a referendum authorized under 53 P.S. §§ 6924.401 et seq., it must eliminate its occupation tax.
5. For taxes first levied after December 31, 1997, maximum rate is 5 percent. See 53 Pa.C.S. § 8402(c)(2).
6. Only if enacted before December 1, 1988. See 72 P.S. § 4750.533.
7. Act 130 of 2008, 53 P.S. §§ 6924.401 et seq., provides that a political subdivision that levies an occupation tax may, by referendum, replace the revenues provided from the occupation tax by increasing the rate, within specified limits, of the earned income tax.
8. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed 5 mills of the market value of real estate.
9. Requires approval of voters in referendum.
10. May only be assessed or used to defray the additional costs required to be paid under Municipal Pension Plan Funding Standard and Recovery Act (and which are directly related to the pension plans of the municipality and which are included in the calculation of the financial requirements of the pension plan and the minimum municipal obligation.
11. Levied only with court approval.

F. Boroughs

Potential Tax Sources	Legal Limit[1]	Citation
General Purpose Tax Levies		
Real Estate*	30 mills[2]	8 Pa.C.S. § 1302
Occupation	30 mills[2]	8 Pa.C.S. § 1302
Local Tax Enabling Act Taxes		53 P.S. § 6924.311
Per Capita	$10[3]	
Occupation (Flat Rate)[4]	$10[3]	
Occupation (Millage)[4]	no limit	
Local Services Tax	$52[3]	
Earned Income	1 percent[3]	
Realty Transfer	1 percent[3]	
Mechanical Devices	10 percent[3]	
Amusement[5]	10 percent[3]	
Business Gross Receipts[6]	1 mill wholesale[3] 1 1/2 mill retail[3]	
Act 130 Earned Income[7]	set by referendum	53 P.S. § 6924.407
Special Purpose Taxes		
Debt Service*	no limit	8 Pa.C.S. § 1302(a)(1)
Pensions and Retirement*	1/2 mill	8 Pa.C.S. § 1302(a)(2)
Shade Trees*	1/10 mills	8 Pa.C.S. § 1302(a)(3)
Street Lighting*	8 mills	8 Pa.C.S. § 1302(a)(4)
Library*	no limit	8 Pa.C.S. § 1302(a)(8); 24 Pa.C.S. § 9351
Special Road Fund	5 mills	8 Pa.C.S. § 1304
Recreation*	no limit	8 Pa.C.S. § 1302(a)(10)
Gas, Water, Electric[8]	8 mills	8 Pa.C.S. § 1302(a)(5)
Fire Engines, Fire Apparatus, Fire Hose	3 mills[9]	8 Pa.C.S. § 1302(a)(6)
Firehouse, Lockup or Municipal Building[6]	2 mills	8 Pa.C.S. § 1302(a)(7)
Community College*	([10])	24 P.S. § 19-1909-A
Debt Payment[11]	no limit	8 Pa.C.S. § 1303
Ambulance, Rescue & Other Emergency Services	1/2 mill	8 Pa.C.S. § 1302(a)(9)
Open Space (real estate or earned income)[8]*	set by voters	32 P.S. § 5007.1
Distressed Pension System Recovery Program[12]*	no limit	53 P.S. § 895.607(f)
Municipalities Financial Recovery Program[11]*	no limit	53 P.S. § 11701.123(c)

1. Home rule boroughs may set rates higher than the limits provided in state law for property taxes and for personal taxes levied on residents. They may not create new subjects of taxation.
2. Five additional mills available with court approval.
3. Maximum rate subject to sharing with school district.
4. If a municipality raises the rate of its income tax through a referendum authorized under 53 P.S. §§ 6924.401 et seq., it must eliminate its occupation tax.
5. For taxes first levied after December 31, 1997, maximum rate is 5 percent. See 53 Pa.C.S. § 8402(c)(2).
6. Only if enacted before December 1, 1988. See 72 P.S. § 4750.533.
7. Act 130 of 2008, 53 P.S. §§ 6924.401 et seq., provides that a political subdivision that levies an occupation tax may, by referendum, replace the revenues provided from the occupation tax by increasing the rate, within specified limits, of the earned income tax.

8. Additional millage permitted only following a favorable referendum on the matter.
9. Higher rate may be approved by voters in referendum.
10. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed 5 mills of the market value of real estate.
11. Levied only with court approval.
12. May only be assessed or used to defray the additional costs required to be paid under Municipal Pension Plan Funding Standard and Recovery Act (and which are directly related to the pension plans of the municipality and which are included in the calculation of the financial requirements of the pension plan and the minimum municipal obligation.

*These taxes are also authorized for the incorporated town of Bloomsburg, 1972, P.L. 1441, No. 320.

G. First Class Townships

Potential Tax Sources	Legal Limit[1]	Citation
General Purpose Tax Levies		
Real Estate	30 mills[2]	53 P.S. § 56709
Occupation	30 mills[2]	53 P.S. § 56709
Local Tax Enabling Act Taxes		53 P.S. § 6924.311
Per Capita	$10[3]	
Occupation (Flat Rate)[4]	$10[3]	
Occupation (Millage)[4]	no limit	
Local Services Tax	$52[3]	
Earned Income	1 percent[3]	
Realty Transfer	1 percent[3]	
Mechanical Devices	10 percent[3]	
Amusement[5]	10 percent[3]	
Business Gross Receipts[6]	1 mill wholesale[3] 1 1/2 mill retail[3]	
Act 130 Earned Income[7]	set by referendum	53 P.S. § 6924.407
Special Purpose Taxes		
Firehouses and Equipment	3 mills[8]	53 P.S. § 56709(a)(2)
Shade Trees	1/10 mill	53 P.S. § 56709(a)(3)
Municipal Building	no limit	53 P.S. § 56709(a)(4)
Debt Service	no limit	53 P.S. § 56709(a)(5)
Pensions and Retirement	1/2 mill	53 P.S. § 56709(a)(6)
Fire Districts	2 mills	53 P.S. § 56515
Permanent Improvement Fund	5 mills	53 P.S. § 57601
Recreation	no limit	53 P.S. § 58012
Library	no limit	24 Pa.C.S. § 9351
Open Space (real estate or earned income)	set by voters	32 P.S. § 5007.1
Community Colleges	([9])	24 P.S. § 19-1909-A
Ambulance, Rescue & Other Emergency Services	1/2 mill[8]	53 P.S. § 56709(a)(7)
Distressed Pension System Recovery Program[10]	no limit	53 P.S. 895.607(f)
Municipalities Financial Recovery Program[11]	no limit	53 P.S. 11701.123(c)

1. Home rule townships may set rates higher than the limits provided in state law for property taxes and for personal taxes levied on residents. They may not create new subjects of taxation.
2. Five additional mills available with court approval.
3. Maximum rate subject to sharing with school district.
4. If a municipality raises the rate of its income tax through a referendum authorized under 53 P.S. §§ 6924.401 et seq., it must eliminate its occupation tax.
5. For taxes first levied after December 31, 1997, maximum rate is 5 percent. See 53 Pa.C.S. § 8402(c)(2).
6. Only if enacted before December 1, 1988. See 72 P.S. § 4750.533.
7. Act 130 of 2008, 53 P.S. §§ 6924.401 et seq., provides that a political subdivision that levies an occupation tax may, by referendum, replace the revenues provided from the occupation tax by increasing the rate, within specified limits, of the earned income tax.
8. Higher rate may be approved by voters in referendum.
9. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed 5 mills of the market value of real estate.
10. May only be assessed or used to defray the additional costs required to be paid under Municipal Pension Plan Funding Standard and Recovery Act (and which are directly related to the pension plans of the municipality and which are included in the calculation of the financial requirements of the pension plan and the minimum municipal obligation.
11. Levied only on court order.

H. Second Class Townships

Potential Tax Sources	Legal Limit[1]	Citation
General Purpose Tax Levies		
Real Estate	14 mills[2]	53 P.S. § 68205
Local Tax Enabling Act Taxes		53 P.S. § 6924.311
Per Capita	$10[3]	
Occupation (Flat Rate)[4]	$10[3]	
Occupation (Millage)[4]	no limit	
Local Services Tax	$52[3]	
Earned Income	1 percent[3]	
Realty Transfer	1 percent[3]	
Mechanical Devices	10 percent[3]	
Amusement[5]	10 percent[3]	
Business Gross Receipts[6]	1 mill wholesale[3] 1 1/2 mill retail[3]	
Act 130 Earned Income[7]	set by referendum	53 P.S. § 6924.407
Special Purpose Taxes		
Municipal Building	1/2 general rate	53 P.S. § 68205(a)(3)
Firehouses and Equipment	3 mills[8]	53 P.S. § 68205(a)(4)
Recreation	no limit	53 P.S. § 68205(a)(6)
Debt Service	no limit	53 P.S. § 68205(a)(7)
Permanent Improvement Fund	5 mills	53 P.S. § 68205(a)(9)
Road Machinery Fund	2 mills	53 P.S. § 68205(a)(10)
Library	no limit	24 Pa.C.S. § 9351
Ambulance, Rescue & Other Emergency Services	1/2 mill[8]	53 P.S. § 68205(a)(8)
Fire Hydrants for Township	2 mills	53 P.S. § 68205(a)(5)
Street Lights for Township	5 mills	53 P.S. § 68205(a)(2)
Debt Payment[9]	no limit	53 P.S. § 68205(b)
Open Space (real estate or earned income)	set by voters	32 P.S. § 5007.1
Community Colleges	(10)	24 P.S. § 19-1909-A
Distressed Pension System Recovery Program[11]	no limit	53 P.S. § 895.607(f)
Municipalities Financial Recovery Program[9]	no limit	53 P.S. § 11701.123(c)

1. Home rule townships may set rates higher than the limits provided in state law for property taxes and for personal taxes levied on residents. They may not create new subjects of taxation
2. Five additional mills available with court approval.
3. Maximum rate subject to sharing with school district.
4. If a municipality raises the rate of its income tax through a referendum authorized under 53 P.S. §§ 6924.401 et seq., it must eliminate its occupation tax.
5. For taxes first levied after December 31, 1997, maximum rate is 5 percent. See 53 Pa.C.S. § 8402(c)(2).
6. Only if enacted before December 1, 1988. See 72 P.S. § 4750.533.
7. Act 130 of 2008, 53 P.S. §§ 6924.401 et seq., provides that a political subdivision that levies an occupation tax may, by referendum, replace the revenues provided from the occupation tax by increasing the rate, within specified limits, of the earned income tax.
8. Higher rate may be approved by voters in referendum.
9. Levied only on court order.
10. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed 5 mills of the market value of real estate.
11. May only be assessed or used to defray the additional costs required to be paid under Municipal Pension Plan Funding Standard and Recovery Act (and which are directly related to the pension plans of the municipality and which are included in the calculation of the financial requirements of the pension plan and the minimum municipal obligation.

I. First Class School Districts

Potential Tax Sources	Legal Limit	Citation
General Education Purposes		
Real Estate	no limit	24 P.S. §§ 6-652, 583.1, 583.6, 583.10 & 583.14; 53 P.S. § 16101
Unearned Income or Non-Business Income	([1])	53 P.S. § 16101(b)
Business Occupancy	no limit	53 P.S. § 16101(a)
Liquor Sales	10 percent	53 P.S. § 16134
Special Purpose Tax		
Community Colleges	([2])	24 P.S. § 19-1909-A

1. The tax must be levied at the same rate as the city net profits and wage tax.
2. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed one mill of the market value of real estate for first class school districts.

J. First Class A School Districts

Potential Tax Sources	Legal Limit	Citation
General Education Purposes		
Real Estate	no limit	24 P.S. §§ 6-652, 6-652.1(a)(1)(iv)&(3), 583.1,583.10, 585.1, 585.5, 585.9, 585.14 & 586.1
Earned Income	2 percent	24 P.S. §§ 588.2 & 6-652.1(a)(2)
Mercantile	1/2 mill wholesale 1 mill retail	24 P.S. § 582.4
Act 511 Taxes		24 P.S. § 6-652.1(4); 53 P.S. § 6924.311
Per Capita	$10[1]	
Earned Income	1 percent[1]	
Realty Transfer	1 percent[1]	
Business Gross Receipts[2]	1 mill wholesale[1] 1 1/2 mill retail[1]	
Act 50 Earned Income Tax[3]	1.5 percent	53 Pa.C.S. §§ 8701 & 8711
Act 130 Earned Income[8]	set by referendum	53 P.S. § 6924.407
Special Purpose Taxes		
Parks and Playgrounds	2 mills	24 P.S. § 7-706
Capital Reserve Fund	3 mills	24 P.S. § 6-690
Community Colleges	([4])	24 P.S. § 19-1909-A

1. Maximum rate subject to sharing with municipality.
2. Only if enacted before December 1, 1988. See 72 P.S. § 4750.533.
3. Must be approved by the voters in referendum.
4. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed 5 mills of the market value of real estate.

K. Second, Third and Fourth Class School Districts

Potential Tax Sources	Legal Limit	Citation
General Education Purposes		
Real Estate	25 mills[1]	24 P.S. § 6-672
Per Capita	$5	24 P.S. § 6-679
Local Tax Enabling Act Taxes		53 P.S. § 6924.311
Per Capita	$10[2]	
Occupation (Flat Rate)[3]	$10[2]	
Occupation (Millage)[3]	no limit	
Local Services Tax[4]	$52[2]	
Earned Income	1 percent[2]	
Realty Transfer	1 percent[2]	
Mechanical Devices	10 percent[2]	
Amusement[5]	10 percent[2]	
Business Gross Receipts[6]	1 mill wholesale[2] 1 1/2 mill retail[2]	
Act 50 Earned Income[7]	1.5 percent	53 Pa.C.S. §§ 8701 & 8711
Act 130 Earned Income[8]	set by referendum	53 P.S. § 6924.407
Special Purpose Taxes		
Debt Service[9]	no limit	24 P.S. § 2-232
Parks and Playgrounds	2 mills	24 P.S. § 7-706
Capital Reserve Fund	3 mills	24 P.S. § 6-690
Community Colleges	([10])	24 P.S. § 19-1909-A

1. Additional unlimited millage may be levied to pay salaries and debt service charges for school buildings.
2. Maximum rate subject to sharing with municipality.
3. If a school district raises the rate of its income tax through a referendum authorized under 53 P.S. §§ 6924.401 et seq., it must eliminate its occupation tax.
4. If a school district levied an emergency and municipal services tax (EMST) on June 21, 2007, the school district is permitted to levy the local services tax in the same amount the school district collected on that date. However, if a municipality located in whole or in part within the school district subsequently levies the local services tax, the school district is only permitted to collect five dollars ($5) on persons employed within the municipality each calendar year. A school district that did not levy an EMST on June 21, 2007 is prohibited from levying the local services tax.
5. Only if enacted before July 1, 1997. See 53 Pa.C.S. § 8402(c)(1).
6. Only if enacted before December 1, 1988. See 72 P.S. § 4750.533.
7. Requires approval by voters in referendum.
8. Act 130 of 2008, 53 P.S. §§ 6924.401 et seq., provides that a school district that levies an occupation tax may, by referendum, replace the revenues provided from the occupation tax by increasing the rate, within specified limits, of the earned income tax.
9. Levied only by court order.
10. Local sponsors may levy any tax permitted by law to support a community college. Revenues from the tax cannot exceed 5 mills of the market value of real estate.

Appendix II. Local Tax Enabling Act

Find the Local Tax Enabling Act at: www.lgc.state.pa.us/frequentlyCitedLaws.cfm and other local government laws at: dced.pa.gov/local-government/local-government-laws/

Pennsylvania Department of Community & Economic Development
Governor's Center for Local Government Services
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

USPS 100
APPROVED POLY

pennsylvania
DEPARTMENT OF COMMUNITY
& ECONOMIC DEVELOPMENT