

# Taxation Manual

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This document only includes the pages of this manual that reference the Local Tax Enabling Act, The Local Tax Reform Act and Act 50 of 1998. If you wish to view the entire manual, click on the "Tax Manual of PA - Full" link.

# **Addendum to**

## *Taxation Manual Eighth Edition*

### *July 2004*



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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.

The definitions of earned income and net profits in the Local Tax Enabling Act reference the definitions of compensation and net profits in 61 Pa. Code Pt. I Subpt. B Art. Art. V. The regulations can be found on the Internet at:

[http://www.pacode.com/secure/data/061/articleIBV\\_toc.html](http://www.pacode.com/secure/data/061/articleIBV_toc.html).

In addition, the Department of Revenue produces a Personal Income Tax Guide that provides more information than the regulations on what is considered compensation and net profits for state personal income tax purposes. The Guide can be found on the Internet at: <http://www.revenue.state.pa.us/revenue/cwp/browse.asp>.

**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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Preparation of the publication was financed from appropriations of the General Assembly of the Commonwealth of Pennsylvania.

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## **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, occupational privilege 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 13 contains standard definitions for the earned income tax, superseding any contrary definitions in local earned income tax ordinances.

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.<sup>4</sup> 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.<sup>5</sup>

## **Local Tax Reform Act**

In 1988, the legislature enacted the Local Tax Reform Act.<sup>6</sup> 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.<sup>7</sup>

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.

## References

1. 53 P.S. 15971; 1932(Ex.Sess.) P.L. 45.
2. 72 P.S. 7359; Tax Reform Code, Section 359(b); *Leonard v. Thornburgh*, 489 A.2d 1349, 507 Pa. 317, 1985.
3. 53 P.S. 16101(a); 1963 P.L. 640.
4. 53 P.S. 6917(a) Local Tax Enabling Act, Section 17(a); *Prior v. Borough of Eddystone*, 374 A.2d 981, 30 Pa.Cmwlth.
5. *Thompson v. West Branch Area School District*, 505 A.2d 386, 95 Pa.Cmwlth. 288, 1986.
6. 72 P.S. 4750.101; 1988 P.L. 1121, No. 145.
7. 53 Pa.C.S. 8401 et seq.

## **X. Earned Income Taxes**

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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. While school districts continue to be heavily reliant on real estate taxes, in 1997, 59 percent of all municipalities received more revenues from earned income than property taxes. In 2000, either municipal or school earned income taxes were levied everywhere in Pennsylvania except in 158 municipalities, or 6 percent of all municipalities. These municipalities are located primarily in Potter County, the northeastern counties of Pike, Susquehanna and Wayne, and the suburban counties of Bucks, Chester, Delaware and Montgomery.

### **Statutory Authorization**

Local income taxes were first authorized by the Sterling Act for Philadelphia.<sup>1</sup> 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.<sup>2</sup> 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 \$5,000 per year from the earned income tax. 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.

Act 24 of 2001 permits school districts and municipalities to replace the occupation tax, millage or flat rate, with an increase in the rate of the earned income tax, if approved by referendum.<sup>6</sup> 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.<sup>7</sup>

### **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.<sup>8</sup>

The Pittsburgh School District tax is limited to two percent.<sup>9</sup> 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.<sup>10</sup>

In general, all other jurisdictions adopting income taxes under the Local Tax Enabling Act are limited to one 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.<sup>11</sup> 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.<sup>12</sup> The sharing provisions automatically halve the taxes of overlapping jurisdictions as they apply to residents. But since 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.<sup>13</sup> 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 17 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 to “suggest arbitrary and capricious action indicative of a wanton disregard of public duty.”<sup>14</sup>

State 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.<sup>15</sup> 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.<sup>16</sup>

Municipalities which have been declared distressed under the Municipalities Financial Recovery Act may be able to increase their earned income taxes above the limit set in the Local Tax Enabling Act.<sup>17</sup> 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 does not prohibit extension of the earned income tax increase to nonresidents.

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.<sup>18</sup> 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. 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.<sup>19</sup> 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.<sup>20</sup> 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 July 2002, only four Act 50 referenda have been approved.

Act 24 of 2001 permits school districts to replace the occupation tax with an increase in the rate of the earned income tax, if approved by referendum.<sup>21</sup> The increase in the earned income tax is calculated by adding the earned income rate that would equal the amount of revenue brought in by the occupation tax in the prior fiscal year to the current earned income rate. After approval of the referendum, the school district must eliminate the occupation tax. In the November 2001 election, 36 school districts approved Act 24 referendum. In June 2002, Act 24 was amended to allow municipalities to replace the occupation tax with an increase in the rate of the earned income tax. This legislation also restricted the rate of the increased earned income tax to what was necessary to replace occupation tax returns collected in 2001.

## **Taxable Income**

Section 13 of the Local Tax Enabling Act establishes uniform definitions for earned income, net profits, domicile and other terms.<sup>22</sup> These definitions supersede any omission or contrary definitions in any local tax ordinance or resolution adopted under the Act. The definitions are designated as exclusive and political subdivisions are prohibited from altering or changing the definitions.

Often questions arise as to the inclusion of certain classes of income not directly covered by the definitions in Section 13. Some tax officers have used the regulations issued for the state personal income tax to answer such questions.<sup>23</sup> These regulations have no legal status for local earned income taxes. Local taxing bodies may use the state regulations as a guideline in formulating their own regulations, but they must be careful to exclude classes of income taxable under the state personal income tax, but not under the earned income tax, such as interest and dividends. Earned income tax regulations must exempt unreimbursed ordinary and necessary business expenses from the tax base.<sup>24</sup> Where a taxpayer deliberately acquires rental property, it can be considered a business and subject to the local earned income tax.<sup>25</sup> Net profits passed through to a taxpayer by a Chapter S corporation are investment income and not subject to the local earned income tax.<sup>26</sup>

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.<sup>27</sup> 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.<sup>28</sup> *Confair v. Municipal and School Income Tax Board of Appeals (Lycoming County)* ruled that noncompete agreements are taxable.

The Pennsylvania Supreme Court has ruled that the tax is levied on total earned income. Taxpayers may deduct business losses from wage and salary income.<sup>29</sup> However, the Court let stand a prior Commonwealth Court ruling that taxpayers could not apply net losses from one business against net profits from another. Liability for earned income taxes on net profits is to be calculated for each business separately.<sup>30</sup>

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.<sup>31</sup>

## Residency

Determination of residency is a critical element for earned income taxes. School districts may only tax residents of the district.<sup>32</sup> Municipalities taxing nonresidents must credit liability for their taxes against taxes paid at the place of residence.

A resident is a taxpayer domiciled within the taxing district. 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 it is the voluntarily fixed place of permanent habitation of a person. For business net profits taxpayers, domicile is defined as the center of business affairs.

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 purposes can be looked to for guidance.<sup>33</sup> Although there is no direct legal connection, the definition of domicile in the Election Code is similar to that in the Local Tax Enabling Act, so legislative intent can be implied.

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.<sup>34</sup> Establishment of taxpayer's residence by opinion testimony of two witnesses was upheld on appeal.<sup>35</sup> The Commonwealth Court held the weight and credibility of evidence on residence was up to the trial judge sitting as a fact finder.

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.<sup>36</sup> 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.<sup>37</sup> 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."<sup>38</sup> 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.<sup>39</sup> Outlying municipalities may negotiate a fee for prompt remittance 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 14, 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."<sup>40</sup> 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. 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.<sup>41</sup> 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.<sup>42</sup> 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.<sup>43</sup> This credit does not extend to taxes paid to foreign countries.<sup>44</sup> 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.<sup>45</sup>

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.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup>

## 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 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 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  
888-223-6837  
[www.inventpa.com](http://www.inventpa.com)

## References

1. 53 P.S. 15971; 1932(Ex. Sess.) P.L. 45; Pennsylvania Economy League, *Philadelphia Government*, Seventh Edition, p.132.
2. 53 P.S. 6902; Local Tax Enabling Act, Section 2.
3. 24 P.S. 6-652.1(a)(2), 24 P.S. 588.2; Public School Code, Section 652.1, 1961 P.L. 1135, No. 508.
4. *School District of Pittsburgh v. City of Pittsburgh*, 443 A. 2d 1206, 66 Pa.Cmwlth. 238, at 244, 1982.
5. 53 Pa.C.S. 8711.
6. 53 P.S. 6927.1; Optional Occupation Tax Elimination Act, Section 1.
7. 72 P.S. 7359(a); Tax Reform Code, Section 359(a); *Dakoski v. Urda*, 358 A.2d 438, 25 Pa.Cmwlth. 77, 1976.
8. 72 P.S. 7359(b); Tax Reform Code, Section 359(b); *Leonard v. Thornburg*, 489 A.2d 1349, 507 Pa 317,1985.
9. 24 P.S. 6-652.1(1)(a)(2); Public School Code, Section 652.1.
10. 53 P.S. 6908; Local Tax Enabling Act, Section 8.
11. 53 P.S. 6908; Local Tax Enabling Act, Section 8.
12. *Hanek v. City of Clairton*, 354 A.2d 35, 24 Pa.Cmwlth 69, at 81, 1976.
13. *Minich v. Sharon City*, 77 A.2d 347, 366 Pa. 267, at 273, 1951; *Hanek*, supra, at 79.

14. *Donnelly v. Borough of Media*, 351 A.2d 299, 23 Pa.Cmwlth. 115, at 119, 1976.
15. 53 Pa.C.S. 2962(a.1); Home Rule Charter and Optional Plans Law, Section 2962(a.1); *Reilly v. City of Pittsburgh*, 484A.2d 736, 506 Pa. 165, 1984.
16. *City of Pittsburgh v. Commonwealth of Pennsylvania*, 559 A.2d 513, Pa.Cmwlth., 1989, affirmed 559 A.2d 513.
17. 53 P.S. 11701.123; Municipalities Financial Recovery Act, Section 123(c); *Petition of City of Clairton for Court Approval of Additional One-Half Percent General Purpose Earned Income Tax*, 590 A.2d 838, Pa.Cmwlth., 1991; *In re City of Scranton*, 638 A.2d 379, Pa.Cmwlth., 1994.
18. 53 P.S. 895.607(f); Municipal Pension Plan Funding Standard and Recovery Act, Section 607(f).
19. 32 P.S. 5007.1; Open Space Act, Section 7.1.
20. 53 Pa.C.S. 8711.
21. 53 P.S. 6927.1; Optional Occupation Tax Elimination Act, Section 1.
22. 53 P.S. 6913; Local Tax Enabling Act, Section 13.
23. 61 Pa. Code, Chapter 101.
24. 53 P.S. 6913; Local Tax Enabling Act, Section 13.V.(d).
25. *Oseroff v. City of Pittsburgh*, 453 A.2d 40, Pa.Cmwlth., 1982.
26. *Scott v. Hempfield Area School District*, 643 A.2d 1140, Pa.Cmwlth., 1994.
27. *Pugliese v. Township of Upper St. Clair*, 660 A.2d 416, Pa.Cmwlth., 1995.
28. *Marchlen v. Township of Mount Lebanon*, 746 A.2d 566, Pa., 2001.
29. *O'Reilly v. Fox Chapel Area School District*, 555 A.2d 1288, 521 Pa. 471, 1989.
30. *Aronson v. City of Pittsburgh*, 485 A.2d 890, 86 Pa.Cmwlth. 591, 1985.
31. 72 P.S. 7356; Tax Reform Code, Section 356; 24 P.S. 2514.1; Public School Code, Section 2514.1.
32. 53 P.S. 6902(5); Local Tax Enabling Act, Section 2(5).
33. 25 P.S. 2814, Pennsylvania Election Code, Section 704.
34. *Commonwealth ex rel. Southwest Butler County School District v. Smith*, 424 A.2d 1001, 56 Pa.Cmwlth 320, 1981.
35. *Boyer v. Commonwealth*, 426 A.2d 1302, 58 Pa.Cmwlth. 34, 1981.
36. *Tax Review Board v. Belmont Laboratories Company*, 141 A.2d 234, 392 Pa. 473, 1958; *Tax Review Board v. D. H. Shapiro Company*, 185 A.2d 529, 409 Pa. 253, 1962.
37. 53 P.S. 6914; Local Tax Enabling Act, Section 14; *Neshannock Township School District v. City of New Castle*, 13 D.&C.2d 255, at 262, 1957, C.P. Lawrence Co.
38. *Patterson Township v. Daniel*, 21 D.&C.2d 248, at 250, 1959, C.P. Beaver Co.
39. *Somerset Area Tax Collection Bureau v. Berlin Brothersvalley School District*, 23 D.&C.3d 606, at 612 1982, C.P. Somerset Co.; *Harbor Creek School District v. City of Erie*, No. 3763-A-1988, Civil Division C.P. Erie Co., 1989.
40. *Dunmire v. Applied Business Controls, Inc.*, 440 A.2d 638, 63 Pa.Cmwlth. 479, at 484, 1981.
41. 53 Pa.C.S. 8713(b).
42. *Stahl v. Township of Forks*, 65 D.&C.2d 398, 1974, C.P. Northampton Co.
43. Southwest Butler County, *supra*, at 328.
44. O'Reilly, *supra*.
45. *Towle v. Bethel Park Borough*, 45 D.&C.3d 18, 1986, C.P. Allegheny Co.
46. 53 P.S. 6913; Local Tax Enabling Act, Section 13.IV.(a).
47. 24 P.S. 588.4(f); 1961 P.L. 1135, No. 508, Section 4; *School District of Pittsburgh v. Sgro Brothers Restaurant, Inc.*, 433 A.2d 589, 61 Pa.Cmwlth. 236, at 238, 1981.
48. 72 P.S. 7359(c); Tax Reform Code, Section 359(c).