
 THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

 No. 1458 Session of 2007

INTRODUCED BY MANN, DENLINGER, BOYD, CALTAGIRONE, CAPPELLI, COX,
 FABRIZIO, GEIST, GERGELY, GINGRICH, GRUCELA, HALUSKA,
 HARKINS, HENNESSEY, HERSHEY, KORTZ, NICKOL, RAYMOND, RUBLEY,
 SANTONI, SCAVELLO, SCHRODER, K. SMITH, STEIL AND STURLA,
 JUNE 5, 2007

REFERRED TO COMMITTEE ON FINANCE, JUNE 5, 2007
 AN ACT

1 Amending the act of December 31, 1965 (P.L.1257, No.511),
 2 entitled "An act empowering cities of the second class,
 3 cities of the second class A, cities of the third class,
 4 boroughs, towns, townships of the first class, townships of
 5 the second class, school districts of the second class,
 6 school districts of the third class and school districts of
 7 the fourth class including independent school districts, to
 8 levy, assess, collect or to provide for the levying,
 9 assessment and collection of certain taxes subject to maximum
 10 limitations for general revenue purposes; authorizing the
 11 establishment of bureaus and the appointment and compensation
 12 of officers, agencies and employes to assess and collect such
 13 taxes; providing for joint collection of certain taxes,
 14 prescribing certain definitions and other provisions for
 15 taxes levied and assessed upon earned income, providing for
 16 annual audits and for collection of delinquent taxes, and
 17 permitting and requiring penalties to be imposed and
 18 enforced, including penalties for disclosure of confidential
 19 information, providing an appeal from the ordinance or
 20 resolution levying such taxes to the court of quarter
 21 sessions and to the Supreme Court and Superior Court,"
 22 further providing for collection of taxes, for audits of
 23 earned income taxes, for earned income taxes, for suits for
 24 tax collection, for penalties and for delinquent tax
 25 collection costs.

26 The General Assembly of the Commonwealth of Pennsylvania
 27 hereby enacts as follows:
 28 Section 1. Section 10 of the act of December 31, 1965
 1 (P.L.1257, No.511), known as The Local Tax Enabling Act, amended
 2 November 30, 2004 (P.L.1520, No.192) and December 1, 2004
 3 (P.L.1729, No.222), is amended to read:
 4 Section 10. Collection of Taxes.--(a) Administrative
 5 Personnel; Joint Agreements.--Except as provided in subsections
 6 (b) and (c), [any such] a political subdivision is hereby

7 authorized to provide by ordinance or resolution for the
 8 creation of bureaus or the designation [of such bureaus or the],
 9 appointment and compensation of [such] officers, [clerks,
 10 collectors,] public employes, private agencies or other [person
 11 and other assistants] persons, and their employes[, either under
 12 existing departments, or otherwise] as [may be deemed]
 13 necessary, for the assessment and collection of taxes imposed
 14 under authority of this act. Each ordinance or resolution under
 15 this section authorizing a person, public employe or private
 16 agency to act [in the capacity and with the authority of] as a
 17 tax collector for the political subdivision shall continue in
 18 force without annual reauthorization unless otherwise repealed
 19 or revoked by the political subdivision. A political subdivision
 20 must enter into a written contract with an officer, private
 21 agency or other person, appointed or designated to collect the
 22 earned income tax.

23 Except as provided in subsections (b) and (c), any political
 24 subdivisions imposing taxes under authority of this act are
 25 authorized to make joint agreements for the collection of such
 26 taxes or any of them. The same person or agency may be employed
 27 by two or more political subdivisions to collect any taxes
 28 imposed by them under authority of this act.

29 (b) Single Collector for Earned Income Taxes [When Certain
 30 School Districts Impose Such Taxes] Imposed by a School
 20070H1458B1805 - 2 -

1 District.--Except as provided in subsection (c), whenever a
 2 school district of the second, third or fourth class shall be
 3 established pursuant to section 296[,] of the act of March 10,
 4 1949 (P.L.30), known as the "Public School Code of 1949," added
 5 August 8, 1963 (P.L. 564), and [such school district shall levy,
 6 assess and collect or provide for the levying, assessment and
 7 collection of] the school district levies a tax upon earned
 8 income, such school district and all cities, boroughs, towns and
 9 townships within its geographical limits which levy, assess and
 10 collect [or provide for the levying, assessment and collection
 11 of] a tax upon earned income[, may on January 1, 1967, or] shall
 12 as soon [thereafter] as the school district [shall provide for
 13 the levying, assessment and collection of taxes upon earned
 14 income, select one person or agency] has levied, assessed or
 15 collected an earned income tax, designate or appoint an officer,
 16 public employe or private agency to collect the taxes upon
 17 earned income imposed by all [such] political subdivisions
 18 within the geographic limits of the school district. In
 19 [selecting such person] order to designate or appoint the
 20 officer, public employe or private agency, each political
 21 subdivision shall share in the [selection] designation or
 22 appointment upon a basis agreed upon by each political
 23 subdivision, [or in] including the school district. In the
 24 absence of any agreement [on the basis of voting] at least
 25 ninety days prior to the end of the appointment or the
 26 expiration of a contract for earned income tax collection of all
 27 political subdivisions within the school district and including
 28 the school district, the board of school directors shall convene
 29 a meeting with at least ten days' notice by first class mail.
 30 The meeting shall be convened no less than sixty days prior to

20070H1458B1805 - 3 -
 1 the end of the appointment or the expiration of a contract for
 2 earned income tax collection of all political subdivisions.
 3 Voting shall be conducted according to the proportion that the
 4 population of each bears to the entire population of the
 5 combined collection district, according to the latest official

6 Federal census, and the majority of such votes cast shall
 7 determine the [person or agency selected] bureau, officer,
 8 public employe or private agency designated to collect the
 9 [taxes] earned income tax. The provisions of this paragraph
 10 shall not prohibit school districts and other political
 11 subdivisions which levy, assess and collect [or provide for the
 12 levying, assessment and collection of] taxes upon earned income,
 13 under authority of this act, from [selecting] designating or
 14 appointing the same [person] officer, public employe or private
 15 agency to collect such tax upon earned income in an area larger
 16 than the geographical limits of a school district established
 17 pursuant to section 296 of the "Public School Code of 1949."

18 (c) Single Tax Collector in Certain Home Rule
 19 Municipality.--In a municipality having a population under the
 20 2000 Federal decennial census of at least forty thousand and
 21 less than ninety thousand located in a second class county which
 22 municipality has adopted a home rule charter under 53 Pa.C.S.
 23 Pt. III Subpt. E (relating to home rule and optional plan
 24 government), the person or persons appointed by the board of
 25 school directors for the school district in which the
 26 municipality is located as collector or collectors of taxes
 27 levied by the school district under this act shall also serve as
 28 the collector or collectors of taxes levied by the municipality
 29 under this act.

30 (d) Records.--

20070H1458B1805

- 4 -

1 (1) All tax collection records shall be a property of the
 2 political subdivision in which the taxes were collected. The
 3 political subdivision or its tax collector shall retain all
 4 records for at least seven years. Unclaimed tax records shall be
 5 retained for fifteen years.

6 (2) This subsection shall not be construed to preclude a tax
 7 collector from retaining copies of tax collection records.

8 Section 2. Section 11 of the act is amended to read:
 9 Section 11. Audits of Earned Income Taxes.--Except in cities
 10 of the second class, [the governing body of] each political
 11 subdivision which levies, assesses and collects [or provides for
 12 the levying, assessment and collection of] a tax upon earned
 13 income, shall provide for not less than one examination each
 14 year of the books, accounts, financial statements, compliance
 15 reports and records of the income tax collector, by a certified
 16 public accountant, a firm of certified public accountants, a
 17 competent independent public accountant, or a firm of
 18 independent public accountants appointed by the [governing body]
 19 political subdivision. Whenever one person or agency is selected
 20 to collect earned income taxes for more than one political
 21 subdivision, the books, accounts and records of such person or
 22 agency shall be examined as provided above in the case of a tax
 23 collector for each political subdivision, except that the
 24 accountant shall be selected in the manner provided for
 25 selection of one person or agency to collect earned income taxes
 26 for the school district established under section 296 of the
 27 "Public School Code of 1949," and the cities, boroughs, towns
 28 and townships within the geographical limits of such school
 29 district. The examination shall be conducted according to
 30 generally accepted governmental auditing standards and shall

20070H1458B1805

- 5 -

1 include a financial statement, a report on the income tax
 2 officer's compliance with this act, a list of any findings of
 3 noncompliance with this act and a copy of a management letter if
 4 one is issued by the auditor. The reports of the audit shall be

5 sent to the governing body [or bodies] of the political
 6 subdivision [or political subdivisions] employing the
 7 accountant. If there are findings of noncompliance, a copy of
 8 the report shall be filed with the Office of Attorney General
 9 and the Department of Community and Economic Development. No
 10 further or additional audit shall be performed by elected or
 11 appointed auditors.

12 Section 3. Division I, Subdivision A of Division III,
 13 Division IV and Division V of section 13 of the act, amended
 14 October 4, 1978 (P.L.930, No.177), December 9, 2002 (P.L.1364,
 15 No.166), April 5, 2004 (P.L.208, No.24), and November 30, 2004
 16 (P.L.1520, No.192), are amended and the section is amended by
 17 adding a division to read:

18 Section 13. Earned Income Taxes.--On and after the effective
 19 date of this act the remaining provisions of this section shall
 20 be included in or construed to be a part of each tax levied and
 21 assessed upon earned income by [any] a political subdivision
 22 [levying and assessing such tax pursuant to this act]. The
 23 definitions contained in this section shall be exclusive for any
 24 tax upon earned income and net profits levied and assessed
 25 pursuant to this act, and shall not be altered or changed by
 26 [any] a political subdivision [levying and assessing such tax].

27 I. Definitions

28 "Association." A partnership, limited partnership, or any
 29 other unincorporated group of two or more persons.

30 "Business." An enterprise, activity, profession or any other
 20070H1458B1805 - 6 -

1 undertaking of an unincorporated nature conducted for profit or
 2 ordinarily conducted for profit whether by a person,
 3 partnership, association, or any other entity.

4 "Corporation." A corporation [or] a joint stock association or
 5 limited liability company organized under the laws of the United
 6 States, the Commonwealth of Pennsylvania, or any other state,
 7 territory, foreign country or dependency.

8 "Current year." The calendar year for which the tax is
 9 levied.

10 "Department." The Department of Community and Economic
 11 Development of the Commonwealth.

12 "Domicile." The place where one lives and has his permanent
 13 home and to which he has the intention of returning whenever he
 14 is absent. Actual residence is not necessarily domicile, for
 15 domicile is the fixed place of abode which, in the intention of
 16 the taxpayer, is permanent rather than transitory. Domicile is
 17 the voluntarily fixed place of habitation of a person, not for a
 18 mere special or limited purpose, but with the present intention
 19 of making a permanent home, until some event occurs to induce
 20 him to adopt some other permanent home. In the case of
 21 businesses, or associations, the domicile is that place
 22 considered as the center of business affairs and the place where
 23 its functions are discharged.

24 "Earned income." Compensation as determined under section 303
 25 of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax
 26 Reform Code of 1971," and regulations in 61 Pa. Code Pt. I
 27 Subpt. B Art. V (relating to personal income tax), not
 28 including, however, wages or compensation paid to individuals on
 29 active military service. Employee business expenses are allowable
 30 deductions as determined under Article III of the "Tax Reform
 20070H1458B1805 - 7 -

1 Code of 1971." The amount of any housing allowance provided to a
 2 member of the clergy shall not be taxable as earned income. In
 3 determining earned income, the taxpayer may not offset business

4 losses.

5 "Income tax officer or officer." [Person] A bureau, person,
 6 public employe or private agency designated by [governing body]
 7 a political subdivision to collect and administer the tax on
 8 earned income and net profits authorized under this act.

9 "Employer." A person, partnership, association, business,
 10 corporation, limited liability company, institution,
 11 governmental body or unit or agency, or any other entity
 12 employing one or more persons for a salary, wage, commission or
 13 other compensation.

14 "Net profits." The net income from the operation of a
 15 business, profession, or other activity, except corporations,
 16 determined under section 303 of the act of March 4, 1971 (P.L. 6,
 17 No.2), known as the "Tax Reform Code of 1971," and regulations
 18 in 61 Pa. Code Pt. I Subpt. B Art. V (relating to personal
 19 income tax). In determining net profits, the taxpayer may offset
 20 business losses from one business, profession or activity
 21 against profits from another business, profession or activity.

22 The term does not include income which is not paid for services
 23 provided and which is in the nature of earnings from an
 24 investment. For taxpayers engaged in the business, profession or
 25 activity of farming, the term shall not include:

- 26 (1) any interest earnings generated from any monetary
- 27 accounts or investment instruments of the farming business;
- 28 (2) any gain on the sale of farm machinery;
- 29 (3) any gain on the sale of livestock held twelve months or
- 30 more for draft, breeding or dairy purposes; and

20070H1458B1805

- 8 -

- 1 (4) any gain on the sale of other capital assets of the
- 2 farm.

3 "Nonresident." A person, partnership, association, business,
 4 corporation, limited liability company or any other entity
 5 domiciled outside the taxing district.

6 "Person or individual." A natural person.

7 "Political subdivision." A city of the second class, city of
 8 the second class A, city of the third class, borough, town,
 9 township of the first class, township of the second class,
 10 school district of the second class, school district of the
 11 third class or school district of the fourth class.

12 "Preceding year." The calendar year before the current year.

13 "Private agency." Any person, partnership, association,
 14 business corporation or limited liability company, engaged in
 15 the business of collecting or administering a tax under this
 16 act.

17 "Resident." A person, partnership, association or any other
 18 entity domiciled in the taxing district.

19 "Succeeding year." The calendar year following the current
 20 year.

21 "Taxpayer." A person, partnership, association[,] or any
 22 other entity, required hereunder to file a return of earned
 23 income or net profits, or to pay a tax thereon.

24 "Tax records." Tax returns, supporting schedules,
 25 correspondence with auditors or taxpayers, account books and
 26 other documents obtained or created by the officer to implement
 27 the collection of a tax under this act. The officer may submit
 28 computerized summaries of tax returns and other documents in
 29 lieu of the actual documents.

20070H1458B1805

- 9 -

1 III. Declaration and Payment of Tax
 2 A. Net Profits.

3 (1) Every taxpayer making net profits shall, as the
 4 [governing body] political subdivision elects, (i) pay to the
 5 officer an annual payment of tax due on or before April 15[,] of
 6 the succeeding year for the period beginning January 1[,] and
 7 ending December 31[,] of the current year, or (ii) on or before
 8 April 15[,] of the current year, make and file with the officer
 9 on a form prescribed [or approved by the officer] by the
 10 department, a declaration of his estimated net profits during
 11 the period beginning January 1[,] and ending December 31[,] of
 12 the current year, and pay to the officer in four equal quarterly
 13 installments the tax due thereon as follows: the first
 14 installment at the time of filing the declaration, and the other
 15 installments on or before June 15[,] of the current year,
 16 September 15[,] of the current year, and January 15[,] of the
 17 succeeding year, respectively.

18 (2) Where the [governing body] political subdivision elects
 19 to require the filing of a declaration and quarterly payments,
 20 any taxpayer who first anticipates any net profit after April
 21 15[,] of the current year, shall make and file the declaration
 22 hereinabove required on or before June 15[,] of the current
 23 year, September 15[,] of the current year, or December 31[,] of
 24 the current year, whichever of these dates next follows the date
 25 on which the taxpayer first anticipates such net profit, and pay
 26 to the officer in equal installments the tax due thereon on or
 27 before the quarterly payment dates which remain after the filing
 28 of the declaration.

29 (3) Where the [governing body] political subdivision
 30 requires a declaration of estimated net profits and quarterly
 20070H1458B1805 - 10 -

1 payments of tax due on such profits, every taxpayer shall, on or
 2 before April 15[,] of the succeeding year, make and file with
 3 the officer on a form prescribed or approved by the officer a
 4 final return showing the amount of net profits earned during the
 5 period beginning January 1[,] of the current year, and ending
 6 December 31[,] of the current year, the total amount of tax due
 7 thereon and the total amount of tax paid thereon. At the time of
 8 filing the final return, the taxpayer shall pay to the officer
 9 the balance of tax due or shall make demand for refund or credit
 10 in the case of overpayment.

11 Any taxpayer may, in lieu of paying the fourth quarterly
 12 installment of his estimated tax, elect to make and file with
 13 the officer on or before January 31, of the succeeding year, the
 14 final return as hereinabove required.

15 (4) [The officer may be authorized to provide by regulation
 16 for the making and filing of] The department may adopt a
 17 regulation authorizing the officer to make and file adjusted
 18 declarations of estimated net profits, and for the payments of
 19 the estimated tax in cases where a taxpayer who has filed [the
 20 declaration hereinabove required] under paragraph (1), (2) or
 21 (3) anticipates additional net profits not previously declared
 22 or finds that he has overestimated his anticipated net profits.

23 (5) Every taxpayer who discontinues business prior to
 24 December 31[,] of the current year[,] shall, within thirty days
 25 after the discontinuance of business, file his final return as
 26 [hereinabove] required under this division and pay the tax due.
 27 * * *

28 IV. Collection at Source

29 (a) Every employer having an office, factory, workshop,
 30 branch, warehouse, or other place of business within the taxing
 20070H1458B1805 - 11 -
 1 jurisdiction imposing a tax on earned income or net profits

2 within the taxing district who employs one or more persons,
 3 other than domestic servants, for a salary, wage, commission or
 4 other compensation, who has not previously registered, shall,
 5 within fifteen days after becoming an employer, register with
 6 the officer his name and address and such other information as
 7 the officer may require.

8 (b) Every employer having an office, factory, workshop,
 9 branch, warehouse, or other place of business within the taxing
 10 jurisdiction imposing a tax on earned income or net profits
 11 within the taxing district who employs one or more persons,
 12 other than domestic servants, for a salary, wage, commission, or
 13 other compensation, shall deduct at the time of payment thereof,
 14 the tax imposed by ordinance or resolution on the earned income
 15 due to his employe or employes, and shall, on or before April
 16 30, of the current year, July 31, of the current year, October
 17 31, of the current year, and January 31, of the succeeding year,
 18 file a return and pay to the officer the amount of taxes
 19 deducted during the preceding three-month periods ending March
 20 31, of the current year, June 30, of the current year, September
 21 30, of the current year, and December 31, of the current year,
 22 respectively. Such return unless otherwise agreed upon between
 23 the officer and employer shall show the name and social security
 24 number of each such employe, the earned income of such employe
 25 during such preceding three-month period, the tax deducted
 26 therefrom, the political subdivisions imposing the tax upon such
 27 employe, the total earned income of all such employes during
 28 such preceding three-month period, and the total tax deducted
 29 therefrom and paid with the return.

30 Any employer who for two of the preceding four quarterly
 20070H1458B1805 - 12 -

1 periods has failed to deduct the proper tax, or any part
 2 thereof, or has failed to pay over the proper amount of tax to
 3 the taxing authority, may be required by the officer to file his
 4 return and pay the tax monthly. In such cases, payments of tax
 5 shall be made to the officer on or before the last day of the
 6 month succeeding the month for which the tax was withheld.

7 (c) On or before February 28, of the succeeding year, every
 8 employer shall file with the officer:

9 (1) An annual return showing the total amount of earned
 10 income paid, the total amount of tax deducted, and the total
 11 amount of tax paid to the officer for the period beginning
 12 January 1, of the current year, and ending December 31, of the
 13 current year.

14 (2) A return withholding statement for each employe employed
 15 during all or any part of the period beginning January 1, of the
 16 current year, and ending December 31, of the current year,
 17 setting forth the employe's name, address and social security
 18 number, the amount of earned income paid to the employe during
 19 said period, the amount of tax deducted, [the political
 20 subdivisions imposing the tax upon such employe,] each political
 21 subdivision to which the withheld tax is remitted and the amount
 22 of tax paid to the officer. Every employer shall furnish two
 23 copies of the individual return to the employe for whom it is
 24 filed.

25 (d) Every employer who discontinues business prior to
 26 December 31, of the current year, shall, within thirty days
 27 after the discontinuance of business, file the returns and
 28 withholding statements hereinabove required and pay the tax due.

29 (e) Except as otherwise provided in section 9, every
 30 employer who wilfully or negligently fails or omits to make the
 20070H1458B1805 - 13 -

1 deductions required by this section shall be liable for payment
2 of the taxes which he was required to withhold to the extent
3 that such taxes have not been recovered from the employe.

4 (f) The failure or omission of any employer to make the
5 deductions required by this section shall not relieve any
6 employe from the payment of the tax or from complying with the
7 requirements of the ordinance or resolution relating to the
8 filing of declarations and returns.

9 V. Powers and Duties of Officer

10 (a) It shall be the duty of the income tax officer to
11 collect and receive [the] resident and nonresident taxes, fines
12 and penalties imposed by the ordinance or resolution. It shall
13 also be [his duty] the duty of the officer to keep a record
14 showing the amount received [by him] from each person or
15 business paying the tax and the date of such receipt.

16 (b) Each officer, before entering upon his official duties
17 shall give and acknowledge a bond to the political subdivision
18 [or political subdivisions] appointing him. If such political
19 subdivision [or political subdivisions] shall by resolution
20 designate any bond previously given by the officer as adequate,
21 such bond shall be sufficient to satisfy the requirements of the
22 subsection. The bond shall be renewed annually.

23 Each such bond shall be joint and several, with one or more
24 corporate sureties which shall be surety companies authorized to
25 do business in this Commonwealth and duly licensed by the
26 Insurance Commissioner of this Commonwealth.

27 Each bond shall be conditioned upon the faithful discharge by
28 the officer, his clerks, assistants and appointees of all trusts
29 confided in him by virtue of his office, upon the faithful
30 execution of all duties required of him by virtue of his office,

20070H1458B1805 - 14 -

1 upon the just and faithful accounting or payment over, according
2 to law, of all moneys and all balances thereof paid to, received
3 or held by him by virtue of his office and upon the delivery to
4 his successor [or successors] in office of all books, papers,
5 documents or other official things held in right of his office.

6 Each such bond shall be taken in the name of the appointing
7 authority [or authorities], and shall be for the use of the
8 political subdivision [or political subdivisions] appointing the
9 officer, and for the use of such other person [or persons] for
10 whom money shall be collected or received, or as his or her
11 interest shall otherwise appear, in case of a breach of any of
12 the conditions thereof by the acts or neglect of the principal
13 on the bond.

14 The political subdivision [or political subdivisions]
15 appointing the officer, or any person may sue upon the [said]
16 bond in its or his own name for its or his own use.

17 Each such bond shall contain the name [or names] of the
18 surety company [or companies] bound thereon. The political
19 subdivision [or political subdivisions] appointing the officer
20 shall fix the amount of the bond at an amount [equal to the
21 maximum amount of taxes which may be in the possession]
22 sufficient to secure the financial responsibility of the officer
23 [at any given time.] in accordance with guidelines relating to
24 the amount of the bond adopted by the department. Copies of the
25 bond shall be filed with the political subdivision appointing
26 the officer.

27 The political subdivision [or political subdivisions]
28 appointing the officer may, at any time, upon cause shown and
29 due notice to the officer, and his surety [or sureties], require
30 or allow the substitution or the addition of a surety company

20070H1458B1805

- 15 -

1 acceptable to such political subdivision [or political
2 subdivisions] for the purpose of making the bond sufficient in
3 amount, without releasing the surety [or sureties] first
4 approved from any accrued liability or previous action on such
5 bond.

6 The political subdivision [or political subdivisions]
7 appointing the officer shall designate the custodian of the bond
8 required to be given by the officer. A copy of the bond shall be
9 made available upon request to a political subdivision, or the
10 officer collector appointed by the political subdivision,
11 seeking payment or distribution of a tax authorized by this act.

12 (b.1) The department shall promulgate regulations relating
13 to the administration, collection, enforcement, removal of
14 officers from office and appeal process under this act. The
15 regulations shall include required forms, including a
16 certificate of residency form, returns and declarations.

17 (c) The officer charged with the administration and
18 enforcement of the [provisions of the] ordinance or resolution
19 [is hereby empowered to prescribe, adopt, promulgate and
20 enforce, rules and regulations relating to any matter pertaining
21 to the administration and enforcement of the ordinance or
22 resolution, including provisions for the re-examination and
23 correction of declarations and returns, and of payments alleged
24 or found to be incorrect, or as to which an overpayment is
25 claimed or found to have occurred, and to make refunds in case
26 of overpayment, for any period of time not to exceed six years
27 subsequent to the date of payment of the sum involved, and to
28 prescribe forms necessary for the administration of the
29 ordinance or resolution. No rule or regulation of any kind shall
30 be enforceable unless it has been approved by resolution by the

20070H1458B1805

- 16 -

1 governing body. A copy of such rules and regulations currently
2 in force shall be available for public inspection.] shall comply
3 with all regulations adopted by the department under this act.
4 The officer may use rules and regulations previously adopted by
5 the officer or the political subdivision in accordance with this
6 act until the adoption of regulations by the department.

7 (c.1) An officer shall make refunds for overpayment of taxes
8 under this act for a period not to exceed three years subsequent
9 to the date of payment.

10 (d) The officer shall refund, on petition of, and proof by
11 the taxpayer, earned income tax paid on the taxpayer's ordinary
12 and necessary business expenses, to the extent that such
13 expenses are not paid by the taxpayer's employer.

14 (e) The officer and agents designated by him are hereby
15 authorized to examine the books, papers, and records of any
16 employer [or of any taxpayer or of any], taxpayer or other
17 person whom the officer reasonably believes to be an employer or
18 taxpayer, in order to verify the accuracy of any declaration or
19 return, or if no declaration or return was filed, to ascertain
20 the tax due. Every employer [and every taxpayer and every
21 person], taxpayer or other person whom the officer reasonably
22 believes to be an employer or taxpayer, is hereby directed and
23 required to give to the officer, or to any agent designated by
24 [him] the officer, the means, facilities and opportunity for
25 such examination and investigations[, as are hereby] authorized
26 under this act.

27 (f) Any information gained by the officer, his agents, or by
28 any other official or agent of the [taxing district] political
29 subdivision, as a result of any declarations, returns,

30 investigations, hearings or verifications required or authorized
20070H1458B1805 - 17 -

1 by the ordinance or resolution, shall be confidential, except
2 for official purposes and except in accordance with a proper
3 judicial order, or as otherwise provided by law.

4 (g) The officer is authorized to establish different filing,
5 reporting and payment dates for taxpayers whose fiscal years do
6 not coincide with the calendar year.

7 (h) The officer shall distribute earned income taxes to the
8 appropriate political subdivisions within sixty days of the
9 deadline for payment by an employer as set forth in Division
10 IV(b). [The political subdivisions] A political subdivision
11 shall not be required to request the officer to distribute the
12 funds collected but shall at least annually reconcile their
13 receipts with the records of the officer and return to or credit
14 the officer with any overpayment. A political subdivision shall
15 not be required to pay a fee or commission to the other
16 political subdivision or its tax officer for tax revenue
17 distributed under this subsection. If the officer, within one
18 year after receiving a tax payment, cannot identify the taxing
19 jurisdiction entitled to a tax payment, he shall make payment to
20 the municipality in which the tax was collected. If earned
21 income taxes are not distributed to the appropriate political
22 subdivision within one year of receipt, the political
23 subdivision may make a written demand on a tax officer or
24 political subdivision for tax revenues collected and
25 attributable to residents of the political subdivision making
26 the demand. If the taxes attributable to the residents of the
27 political subdivision making the demand are not paid within
28 thirty days from the date of the demand, the political
29 subdivision, person, public employe or private agency designated
30 by the political subdivision may enter into an arbitration
20070H1458B1805 - 18 -

1 agreement with the officer under 42 Pa.C.S. Ch. 73 Subch. A
2 (relating to statutory arbitration) or bring an action in [an
3 appropriate] the court of common pleas where the officer is a
4 resident or where the political subdivision is located in the
5 name of the taxing district for the recovery of taxes not
6 distributed in accordance with this subsection. The action must
7 be brought within seven years of the collection of the taxes.

8 (i) The officer shall, on or before the tenth day of each
9 month, provide a written report, on a form adopted by the
10 department, to the appropriate official of each political
11 subdivision for which taxes were collected during the previous
12 month and to the department. The report shall include the names
13 of taxpayers and employers, the date of collection, penalties
14 and interest on collections, costs of collection, amounts owed
15 to other political subdivisions, refunds, recoveries and
16 overpayments.

17 (j) An income tax officer shall file an annual report with
18 the political subdivision and the department. The report shall
19 include all tax collection information for the most recently
20 completed tax year as required by the department. The report
21 shall be filed by June 15 of the year following the close of the
22 reporting year.

23 * * *

24 X. Fines and Penalties Against Income Tax Officers

25 (a) A political subdivision which brings an action under
26 Division V(h) may seek equitable relief, including an accounting
27 of all undistributed taxes and monetary damages in the form of
28 recovery of the taxes not previously distributed plus interest

29 calculated from the date that the taxes should have been
 30 distributed. In addition, the court may impose a civil penalty
 20070H1458B1805 - 19 -
 1 not to exceed two thousand five hundred dollars (\$2,500) for
 2 each tax quarter for which taxes were not distributed in
 3 accordance with Division V(h), plus reasonable costs and
 4 attorney fees. If an officer fails to distribute earned income
 5 taxes to the appropriate political subdivision as required under
 6 Division V(h), for four consecutive tax quarters, the court may
 7 impose a civil penalty not to exceed five thousand dollars
 8 (\$5,000).

9 (b) If an officer fails to submit the report required under
 10 Division V(i) or (j), a political subdivision entitled to
 11 receive the report may bring an action in the court of common
 12 pleas of that political subdivision and the court may impose a
 13 penalty of twenty dollars (\$20) a day for each day that the
 14 report is overdue, not to exceed five hundred dollars (\$500). If
 15 a report submitted under Division V(j) includes any findings of
 16 noncompliance, the officer is responsible for a civil penalty of
 17 not less than five hundred dollars (\$500) but not more than two
 18 thousand five hundred dollars (\$2,500).

19 (c) An officer who violates any other provision of this act
 20 shall be subject to a civil penalty of up to two thousand five
 21 hundred dollars (\$2,500) for each violation.

22 (d) An action against an officer for a violation of this act
 23 may be brought by a political subdivision in which the officer
 24 collects taxes, a political subdivision owed taxes by the
 25 officer, by a surety or by the department.

26 (e) A political subdivision shall remove or rescind the
 27 appointment of an income tax official who has been penalized
 28 under subsection (c) more than three times.

29 Section 4. Section 21 of the act, amended November 30, 2004
 30 (P.L.1520, No.192), is amended to read:

20070H1458B1805 - 20 -

1 Section 21. Collection of Taxes by Suit.--Each [taxing
 2 district or person,] political subdivision, bureau, officer,
 3 public employe [or], private agency or other person designated
 4 by the taxing district shall have power to collect unpaid taxes
 5 from the persons owing such taxes by suit in assumpsit or other
 6 appropriate remedy. Upon each such judgment, execution may be
 7 issued without any stay or benefit of any exemption law. The
 8 right of each [such taxing district] political subdivision to
 9 collect unpaid taxes under [the provisions of] this section
 10 shall not be affected by the fact that such taxes have been
 11 entered as liens in the office of the prothonotary, or the fact
 12 that the property against which they were levied has been
 13 returned to the county commissioners for taxes for prior years.

14 Section 5. Section 22 of the act is amended to read:

15 Section 22. Penalties.--Except as otherwise provided in the
 16 case of any tax levied and assessed upon earned income, any such
 17 political subdivision shall have power to prescribe and enforce
 18 reasonable penalties for the nonpayment, within the time fixed
 19 for their payment, of taxes imposed under authority of this act
 20 and for the violations of the provisions of ordinances or
 21 resolutions passed under authority of this act.

22 If for any reason any tax levied and assessed upon earned
 23 income by any such political subdivision is not paid when due,
 24 interest at the rate of six percent per annum on the amount of
 25 said tax, and an additional penalty of one-half of one percent
 26 of the amount of the unpaid tax or, if more than twenty-five
 27 percent of the amount reported is underreported, an additional

28 penalty of twenty-five percent of the amount of the unreported
29 tax for each month or fraction thereof during which the tax
30 remains unpaid, shall be added and collected. When suit is
20070H1458B1805 - 21 -

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

4 Section 6. Section 22.1 of the act, added November 30, 2004
5 (P.L.1520, No.192), is amended to read:

6 Section 22.1. Costs of Collection of Delinquent Per Capita,
7 Occupation, Occupational Privilege and Earned Income Taxes.--(a)
8 A person, public employe or private agency designated by [a
9 governing body of] a political subdivision to collect and
10 administer a [per capita, occupation, occupational privilege or
11 earned income] tax under this act may impose and collect the
12 reasonable costs incurred to provide notices of delinquency or
13 to implement [similar] other procedures utilized to collect
14 delinquent taxes from a taxpayer, as approved by [the governing
15 body of] the political subdivision. Reasonable costs collected
16 may be retained by the officer, person, public employe or
17 private agency designated to collect the tax, as agreed to by
18 [the governing body of] the political subdivision. An itemized
19 accounting of all costs collected shall be remitted to the
20 political subdivision on an annual basis.

21 (b) Costs related to the collection of unpaid per capita,
22 occupation or occupational privilege taxes may only be assessed,
23 levied and collected for five years from the last day of the
24 calendar year in which the tax was due.

25 (c) A delinquent taxpayer may not bring an action for
26 reimbursement, refund or elimination of reasonable costs of
27 collection assessed or imposed prior to the effective date of
28 this section. Additional costs may not be assessed on delinquent
29 taxes collected prior to the effective date of this section.

30 Section 7. This act shall take effect in 60 days.

C13L53DMS/20070H1458B1805 - 22 -