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LOCAL TAX REFORM

Local Tax Reform Act (Act 50 of 1998)

General Overview. Act 50 of 1998, known as the Local Tax Reform Act or Homestead Act, amended Title 53 of the Pennsylvania Consolidated Statutes [53 Pa.C.S.A. §§ 8401-8916] (1998 Pa. ALS 50; 1998 Pa. Laws 50; 1997 Pa. SB 669). Act 50 includes the Local Taxpayers Bill of Rights, an optional tax deferral program, and implementation procedures for homestead exclusion program. Provisions of Act 50 may apply to local taxing bodies, counties, municipalities, and school districts. [[53 Pa.C.S.A. §§ 8402, 8405](#)]. Act 50 prohibits any additional school districts from enacting amusement tax after June 30, 1997. Further, after December 31, 1997, any municipal amusement tax is limited to 5 percent. Act 50 continues the freeze on the gross receipts tax. Except for three sign privilege taxes put in place prior to December 31, 1997, sign privilege and motor vehicle transfer taxes are prohibited.

Act 50 shifts school districts' reliance upon property taxes to taxes on earned income and net profits defined in § 13 of the Local Tax Enabling Act, but not stocks and bonds. School districts can move to an earned income tax up to 1.5% with offsetting elimination of per capita, occupation, occupational privilege taxes, and redaction of the real estate rate. Real estate reductions must be implemented through adoption of the homestead exclusion. Changes in the tax system under Act 50 must be approved by the voters in a referendum.

Act 50 does not apply to Philadelphia. [[53 Pa.C.S.A. § 8405](#)]. However, residents of a school district who work in Philadelphia and pay the earned income/net profits tax enacted under Act 50 may take a credit against their state personal income tax equal to 0.2756 percent of their salaries, wages or other compensation [[53 Pa.C.S.A. § 8713](#)].

Note: The credit does not apply to earned income/net profits taxes enacted under Act 511.

Implementation. The taxing powers of Act 50 are optional for school districts [[53 Pa.C.S.A. § 8402](#)]. School boards may appoint a local tax study commission to recommend changes in a school district's tax structure. Within 90 days of its appointment, the commission then makes a nonbinding recommendation (which must be made public) to the school board. Voters then give their consent through a front-end referendum: they decide in the municipal election before the fiscal year in which the new system will be initiated. A ballot question is required to provide statutorily specified information [[53 Pa.C.S.A. § 8703](#)].

School district taxing powers. If voters approve, the school district can implement a new earned income/net profits tax of 1.0 percent; 1.25 percent; or 1.5 percent, whichever was specified on the ballot. [[53 Pa.C.S.A. § 8711](#)]. The school district can retain amusement, realty transfer and business privilege/mercantile taxes, but it must repeal:

- Occupation tax;
- Occupational privilege tax;
- Per capita tax; and
- Other taxes under the Local Tax Enabling Act (including any existing earned income tax). [Local Tax Enabling Act Sec. 2]

A school district may employ the new tax system, but Act 50 imposes certain limitations to existing taxing powers.

For instance, amusement or admissions taxes charged as of June 30, 1997 may continue to be levied if there is no increase in the rate or the amount collected. School districts that did not impose the tax before June 30, 1997 may not do so. Similarly, districts that levied sign privilege or motor vehicle transfer taxes before January 1, 1998 may continue to collect them; others may not impose those taxes in the future.

Tax offsets. If a school district adopts the new system, it must apply the new earned income tax revenues:

- First, to replace all the prohibited "nuisance" taxes previously levied by the district;
- Second, to provide an increase in budgeted revenues over the preceding fiscal year, as specified in the ballot question in the front-end referendum; and
- Third, to reduce property taxes in the following order: (1) through the use of a homestead exclusion; (2) by means of a millage reduction after the limit on the homestead exclusion has been reached [[53 Pa.C.S.A. § 8717](#)].

Back-end referendum. When a school board adopts the new tax system, it may not raise property taxes until a back-end referendum is held, ensuring the approval of the school district's voters. This referendum must be held during the primary election immediately following the fiscal year for the tax increase. If the voters reject the higher millage rate, the school board must not exceed the existing rate.

A property tax rate increase does *not* require voter approval if the change causes total local revenues to rise by less than the increase in the Statewide Average Weekly Wage percentage (calculated by the Department of Labor and Industry) for the preceding year. That figure reflects typical personal earnings growth.

See Act 50 for more details about exceptions to the general requirement that voters approve future increases in property taxes previously reduced by the earned income tax.

Initiative process. Voters may initiate efforts to implement the new tax system if a school board has not placed the referendum question on the ballot within two years of the effective date of the legislation. First, voters circulate a petition. A petition signed by two percent of the number of voters in the most recent election for governor compels the school board to appoint a local tax study commission, organized as described above.

If the commission recommends charging an earned income/net profits tax, and the school board does not place the recommendation on the ballot, voters may circulate another petition. This second petition -- signed by the equivalent of five percent of the voters in the last gubernatorial election and filed at least 90 days prior to the next municipal election -- causes the question to be placed on the ballot. If approved by a majority of voters, the new tax system can be implemented.

Provisions Applicable to Municipalities. Act 50 limits existing municipal taxing powers. If an overlapping school district adopts the new taxing structure, the municipal tax is capped at shared rates established by an existing agreement of the Local Tax Enabling Act for earned income or net profits taxes. This provision of Act 50 does not apply to Philadelphia [[53 Pa.C.S.A. § 8404](#)].

Amusement or admissions tax. Municipalities that did not levy amusement or admissions taxes before January 1, 1998 may charge them at five percent. Municipalities that charged these taxes under the Local Tax Enabling Act prior to January 1, 1998 may continue to charge the existing rate or five percent, whichever is greater [[53 Pa.C.S.A. § 8402\(c\)](#)].

Sign privilege or motor vehicle transfer tax. Sign privilege or motor vehicle transfer taxes charged before January 1, 1998 may remain. Municipalities that have never levied a sign privilege or motor vehicle transfer tax may not impose them in the future [[53 Pa.C.S.A. § 8402\(e, f\)](#)].

Local Taxpayers Bill of Rights

The Local Taxpayers Bill of Rights is set out in Subchapter C of Act 50, [53 Pa.C.S.A. §§ 8421-8438] and provides for the confidentiality of tax information (for more details of the Local Taxpayers Bill of Rights, see Act 50). The Subchapter C provisions generally do not apply to real property taxes, aside from the section addressing interest on overpayments.

Eligible taxes. The following taxes, including applicable interest and ***penalties***, are authorized under Act 50:

- Any tax permitted under or authorized by the Local Tax Enabling Act.
- Any per capita taxes levied under any act.
- Occupation, occupation assessment, or occupational privilege taxes levied under any act.
- Any tax on income levied under any act.
- Any tax measured by gross receipts levied under any act.
- Any tax on a privilege levied under any act.
- Any tax on amusements or admissions levied under any act.
- Any tax on earned income and net profits.

Disclosure requirements. Local taxing authorities must satisfy several requirements [[53 Pa.C.S.A. § 8423](#)].

- Notification of any taxpayer that has been contacted regarding an assessment, audit, determination, review or collection of an eligible tax with respect to:
 - (1) the availability of the required disclosure statements, as noted above; and
 - (2) making copies of the statements available, if the taxpayer requests (free of charge to the taxpayer, including mailing costs).

The notification must be worded as follows:

- You are entitled to receive a written explanation of your rights with regard to the audit, appeal, enforcement, refund and collection of local taxes by calling (name of local taxing authority) at (telephone number) during the hours of (hours of operation).

Simple disclosure language required. Political subdivisions have a mandatory duty to disclose, in simple and non-technical terms, the following:

- During an audit or an administrative review of the taxpayer's books or records:
 - (1) the rights of the taxpayer, and
 - (2) the obligation of the local taxing authority.
- In the event of any adverse decision by the local taxing authority:
 - (1) the administrative procedures a taxpayer has available either to appeal or to seek a review, and
 - (2) the judicial procedures a taxpayer has available either to appeal or to seek a review.
- The procedures for various tax-related matters, including:
 - (1) filing and processing refund claims,
 - (2) submitting taxpayer complaints, and
 - (3) all available enforcement procedures.

Taxpayer response. Once the local taxing authority requests information, the taxpayer has a minimum of 30 calendar days from the mailing date to respond [[53 Pa.C.S.A. § 8424](#)].

That local authority must, in its initial request, apprise the taxpayer of the procedures needed to obtain an extension. That authority cannot take any lawful action against the taxpayer for the tax year in question until the applicable response period, including all extensions, has expired.

Refunds. A taxpayer who has paid an eligible tax to a local taxing authority may file a written request with that authority for a refund or a credit of the eligible tax [[53 Pa.C.S.A. § 8425](#)]. This request must be received within the later of three years of the due date for filing the report as extended, or one year after actual payment of the eligible tax. For this purpose, the written request requirement is deemed satisfied by filing a tax return with the local taxing authority showing an overpayment of tax, unless otherwise indicated on the return. For amounts paid as the result of a notice asserting or informing a taxpayer of an underpayment, the taxpayer must file a written refund request within one year of the payment (the later of the date paid or the date deemed to have been overpaid).

Interest. Taxpayers are entitled to interest on overpayments at the same rate as the Commonwealth pays [[53 Pa.C.S.A. § 8426](#)].

Underpayments. A local taxing authority must provide the taxpayer with written notification of the basis for any determined underpayment. The notification must contain certain information [[53 Pa.C.S.A. § 8427](#)].

- The tax period(s) for which understatement is asserted;
- Amount of underpayment detailed by tax period;
- Legal basis of determination of underpayment; and
- Itemization of revisions made that resulted in determination of underpayment.

Abatement of penalties and interest. A taxpayer may be entitled to an **abatement of penalties** or interest [[53 Pa.C.S.A. § 8428](#)]. **Penalties** or excess interest *must be* abated when a taxpayer relies on mistaken written advice by a taxing body. Taxing bodies may abate all or part of the interest on any underpaid taxes if the taxing jurisdiction was in error.

Note: In an unreported decision, the Commonwealth Court has held that there was no authority in the Local Taxpayers Bill of Rights to abate interest and **penalties**. In practice, a local taxing jurisdiction may abate **penalties** if a taxpayer agrees to pay the assessment and interest. In addition, if a taxpayer appeals an assessment, including interest and **penalties**, a local taxing jurisdiction may include an **abatement of penalties** as part of the settlement.

Installment payments. The taxing authority and the taxpayer may enter into a written agreement for an installment payment plan of taxes owed. See the statute for more detail [[53 Pa.C.S.A. § 8436](#)].

Appeal boards. Under Act 50, all political subdivisions must appoint local tax appeals boards. Taxpayers asking for reassessment must file a petition with this local board within 90 days of the assessment in question. The mailbox rules apply. The local board also hears petitions for refund. If the local board of appeals does make a decision within 60 days of the filing of a complete and accurate petition, the petition is considered approved. Any person aggrieved by a decision may appeal to the court vested with jurisdiction of local tax appeals [[53 Pa.C.S.A. § 8430](#)]. In *Briggs, et al. v. East Goshen Township*, 823 A.2d 290, No. 1754 CD, 2002 (Pa. Cmwlth., 2003), the court held that letters sent by East Goshen Township to individuals denying petitions for refund were sent beyond the sixty-day time limit. Therefore, the court held the petitions should be considered approved. In the case, it was important the individuals' letters to the township claiming a refund for taxes were deemed to be petitions rather than mere requests.

The Optional Occupation Tax Elimination Act (Act 24 of 2001)

The Optional Occupation Tax Elimination Act (Act 24 of 2001) [53 Pa.C.S.A. § 6927.1 *et seq.* *repealed, replaced with* 53 Pa.C.S.A. § 6924.401 *et seq.*, as discussed below), which gave school districts and municipal corporations an option to abolish their occupational assessment tax or flat rate occupation tax and replace lost revenues with an earned income tax levied at a rate above the current limits prescribed by the Local Tax Enabling Act, has been repealed and replaced. Unlike Act 50, Act 24 applied only to the elimination of the occupation taxes.

The new legislation is very similar to Act 50 and generally 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. With the exception of collecting delinquent taxes, once the referendum is approved, the subdivision is prohibited from levying, assessing, or collecting occupation taxes [Act No. 130 (S.B. 763) Laws 2008, effective October 15, 2008] (53 Pa.C.S.A. § 6924.401 *et seq.*) See Act 130 for further details.

The Taxpayer Relief Act (Act 1 of 2006)

The Taxpayer Relief Act of 2006 [Act of June 27, 2006, No. 1 (H.B. 39), Special Session 1, effective June 27, 2006] (53 Pa.C.S.A. § 6926.101 *et seq.*), was intended to ease the financial burden of homeownership by providing school districts the means to lower property taxes to homeowners, especially senior citizens. It required school districts to propose a referendum question asking voters to authorize the imposition of, or an increase in, the earned income tax, or to authorize a personal income tax. It also anticipated that partial funding of property tax reductions should be provided by gaming revenue.

Public referendum requirements. Act 1, Section 333, Public Referendum Requirements for increasing certain taxes, prohibited school districts from increasing their tax rate by more than a calculated index unless voters approved the increase through a referendum. A school district needed to submit its tax rate to the Pennsylvania Department of Education (PDE) to verify that the rate of increase was less than the index. Only under certain circumstances, which are specified in the legislation, may the rate of a school district's tax increase exceed the calculated index. [53 Pa.C.S.A. § 6926.333.]

During the May 2007 primary election, each school district had the option of proposing a referendum question asking voters to authorize the imposition of, or an increase in, the EIT or authorize a PIT in order to provide property tax reductions through the homestead and farmstead exclusion. Each school district had to adopt a resolution authorizing a referendum question by March 13, 2007. Prior to a school district proposing a referendum question to voters to authorize an income tax, the school district had to appoint a local tax study commission to make a non-binding recommendation. Currently, eight localities have passed the referendum.

The Legal Intelligencer

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