

**ALLEGHENY TAX SOCIETY
LOCAL TAX UPDATE**

- I. LOCAL TAXPAYERS BILL OF RIGHTS ("LTBR") -53 Pa. C.S.A. § 8421 et seq., effective January 1, 1999.
- A. Covers all political subdivisions levying eligible taxes.
 - B. Eligible taxes are all taxes except real property taxes.
 - C. Requires all political subdivisions to adopt disclosure statements informing taxpayers of rights and obligations under LTBR.
 - 1. Must provide notice of where/how to obtain disclosure statements.
 - D. Local Taxpayer Bill of Rights will apply to Act 32 of 2008.
 - E. Summary of LTBR
 - 1. Requests for information-limits type of information, look back period, provides time limits for responses.
 - 2. Requires written notice of basis for underpayment ("Assessment Notice").
 - 3. Sets appeal periods for appeals from assessments (90 days).
 - 4. Requires an appeals process
 - a. Hearing Board – Note Act 32 of 2008 creates a separate board to hear income tax appeals.
 - b. Formal Hearing – The Court of Common Pleas of Lehigh County has held that the record must be made at this hearing and that the appeal to court is not de novo. This was affirmed by Commonwealth Court in an unpublished opinion. Rothrock Motor Sales, Inc. v. South Whitehill Township, 886 A.2d 339 (2005).
 - c. Written /decision within sixty (60) days of hearing
 - d. Briggs v. East Goshen Township (Commonwealth Court May 13, 2003).

A three-judge panel of the Commonwealth Court ordered refund of Earned Income Tax not otherwise due, because the Township failed to respond timely to three taxpayers' petitions for refund of Earned Income Taxes. The Township responded approximately one month beyond the sixty-day response period provided for in the Local Taxpayers' Bill of Rights. Although the taxpayers were

not entitled to relief on the merits of their position, the Township's substantial delay precluded the Township from denying the refunds.

5. Sets Limits Period for Refunds
 - a. Three years from due date of return (with extension) or one year after actual payment, whichever is later.
 - b. Can be requested in writing or by formal petition.
 - c. Interest must be paid on refunds at Pennsylvania rate.
6. Adverse decisions must be appealed to the Court of Common Pleas within thirty (30) days.

II. ACT 32 OF 2008 (ACT 32)

A. HISTORY

The Center for Local Government Services within the Department of Community and Economic Development ("DCED") formed a work group in 2001 to study earned income tax ("EIT") collection and released a report in September 2004 (Pennsylvania Earned Income Tax Collection System, An Analysis with Recommendations – August 2004 Report). That report concluded the existing system of 560 collectors was fragmented and inefficient. While tax collectors processed about \$2 billion dollar annually in local taxes, the 2004 report estimated approximately \$100 million in school district and municipal EIT revenues went uncollected on an annual basis (based on FY 2000-01 data). The Pennsylvania Economy League of Southwestern PA ("PELSW") subsequently developed its own updated estimate based on DCED's methodology using F 2004-05 data, and its analysis estimated that \$237 goes uncollected annually. One major problem was that under the Local Tax Enabling Act (the "LTEA" or "Act 511"), there was no mandatory state wide withholding of local taxes, except for residents of the taxing districts where the employer was located. Act 32, signed on July 2, 2008, was enacted in response to these issues.

B. OBJECTIVE IS UNIFORMITY

1. Substantive uniformity for EIT was achieved in large part in 2003 when the Local Tax Enabling Act ("LTEA") definitions of earned income/net profits were amended.
 - a. H.B. 1700 redefined earned income as compensation as determined for Pennsylvania personal income tax purposes. The amended definition also provided;

- (1) Employee business expenses would be allowable in the same manner as for personal income tax purposes.
 - (2) All active duty military pay would be excluded from earned income. Note that Act 32 changes this definition.
 - (3) Housing allowances for clergy would be excluded from earned income.
 - (4) The 2003 amendment was silent on the O'Reilly case which allowed business losses to be offset against earned income under the old definition. Most collectors continued to allow this offset, but it will be disallowed under Act 32.
- b. H.B. 1700 redefined net profits as income from operation of a business, except corporations, as determined for personal income tax purposes. Note, that the "except corporations" language preserved the case of Scott v. Hempfield Township, 643 A.2d 1140 (1994), which exempted S corporation earnings from being taxed as net profits for local income taxes purpose. The amended definition also provided;
- (1) The term does not include income which is not paid for services provided and which is in the nature of earnings from an investment.
 - (2) The 2003 amendment was silent on the Aronson case which prohibited the offset of business losses against business income under the old definition. Most collectors refused to allow this offset, but it will be allowed under Act 32.
2. Substantive uniformity is further achieved by Act 32 amendments to the definition.
- a. Personal income tax (PIT) rules are incorporated into the LTEA definitions.
 - b. Military pay will be taxable in the same manner as PIT.
 - c. The O'Reilly offset will be disallowed. No comment on Aronson, but the consensus is that the offset will be allowed.
 - d. Eliminates exclusion for interest earnings generated by a farming business.
 - e. Any entity classified as a corporation for federal tax purposes will be a corporation for local tax purposes.

- f. Technical Issue. When will the new definitions take effect?
3. Procedural Uniformity. The reports discussed above in Section I, History concluded that omissions, ambiguities, and inconsistencies in the LTEA resulted in different withholding, remittance, distribution and reporting on taxes by tax collectors. These different practices were considered largely responsible for the alleged loss in local tax revenues annually. ACT 32 provides for uniform rules on withholding, remittance and distribution, which are expected to capture the loss of local income tax revenues and to ease the burden of local withholding on employers in Pennsylvania. These rules will take effect on January 1, 2012. For the first time there will be mandatory withholding by all employers for all employees regardless of the employee's residence.
- a. Withholding: Every employer having "an office, factory, workshop, branch, warehouse or other place of business" in a tax collection district must register with the tax collector and require each employee to complete a residency certificate. Such employers will be required to withhold the entire local tax owed by each employee, and to remit those taxes to the tax collector for the tax collection district "for the place of employment for each employee." The phrase entire tax owed by an employee includes the tax levied by the school district and municipality where an employee lives, and any nonresident tax levied by the municipality where an employee works. That term also includes any local personal income tax that either has been or may be enacted.
- (1) Where is the employee's residence?
- (a) Domicile determines residence.
- (b) Physical location controls (not P.O. address).
- (c) What happens when employee fails to complete residency certificate?
- (2) Where is the employee's place of employment?
- (a) mobile employees
- (3) Nonresident Tax.
- (a) can only be levied by municipalities
- (b) credit must be allowed for tax paid at residence
- (c) non Pennsylvania residents

(4) Pennsylvania residents working outside Pennsylvania.

- b. Remittance: Employers will be subject to the same basic quarterly remittance requirement as currently exists under Act 511, 30 days after the end of each quarter. Remittance will be made to the tax collector for the Tax Collection District (“TCD”) where the employer’s facility is located.
- c. Optional Remittance: Act 32 permits employers with workplaces in more than one county to remit local taxes for all their employees to one district’s collector. If employers elect this option, they must remit monthly and electronically. Employers should give notice to other tax collectors that optional remittance has been elected.
- d. Distribution: Act 32 requires uniform distribution, based on quarterly detail. The Act requires that prior to April 1, 2013 tax collectors must distribute taxes within 60 days of receipt of the quarterly employer remittance or the remittance deadline, whichever is later. After April 1, 2013 the time between receipt by the tax collector and distribution is reduced to 30 days. A Tax Collection Committee (“TCC”) may require its collector to distribute more frequently or negotiate with other districts for more frequent distribution. Under the optional remittance provision that applies to employers with locations in more than one TCD, taxes for jurisdictions outside the district where the taxes are remitted must be distributed within thirty (30) days. Tax monies that remain unidentified for more than two years must be paid to the municipality where the tax was collected. In addition to any other information required by DCED, tax collectors must keep records of the amount, date and destination of all taxes distributed. These records must be provided to the collector or taxing jurisdiction to which the taxes are distributed.

C. TIMELINE

- 1. Key effective/implementation dates are as follows.

<u>Date</u>	<u>Action</u>
July 2, 2008	LTEA Sections Renumbered - 53 P.S. § 6924.301 et. seq. - Old LTEA as revised - 53 P.S. § 6924.501, et. seq. - New procedure - 53 P.S. § 6924.701, et. seq. - Enforcement
January 16, 2009	DCED released list and map of each TCD (See, Section V)

Date

Action

December 31, 2016

Legislative Budget and Finance Committee
completes audit and evaluation

D. TAX COLLECTION DISTRICTS AND COMMITTEES

Under Act 32, 69 TCDs are created for the purpose of local income tax collection. There is no indication of what type of legal entity a TCD might be, nor is there any list of powers or duties of a TCD. Allegheny County is divided into four (4) TCDs and the remaining TCDs are generally congruent with county lines. Philadelphia County is not included. School districts are included in the TCD where the majority of the school district population is located. Municipalities are included in the TCD where their school districts are located. The TCC is created to appoint a tax collector and oversee tax collection in each district. There is no indication of what type of legal entity a TCC might be. The committee is composed of a delegate and an alternate delegate from each taxing jurisdiction located in the district that imposes a local income tax. The governing body of each taxing jurisdiction appointed a delegate and alternate, who must be residents of the taxing jurisdiction they represent. Only delegates appointed by a taxing jurisdiction or their alternate are entitled to vote on actions taken by a TCC. TCCs are provided flexibility in appointing a tax collector. An existing collector such as a municipality, school district, private company, or non-profit bureau could be chosen to collect the tax. Alternatively, a new non-profit tax bureau could be created for a TCD, similar to the bureaus that already exist in 13 counties.

The duties of the TCC include:

- Adopt an annual budget
- Appoint and oversee the tax officer.
- Create an appeals board of at least three (3) delegates to hear income tax appeals.
- Set the compensation of the tax officer.
- Require, set, hold and review the tax officer's bond.
- Establish the method of financing for the TCC.
- Adopt, amend, and repeal bylaws for the management of its affairs.
- Adopt, amend, and repeal policies and procedure consistent with regulations under the Act.
- Maintain a record of all votes and actions taken by the TCC.

The TCC has the authority to:

- Create a tax bureau and provide for its operation and administration.
- Authorize the tax officer to collect other LTEA taxes, taxes levied under the Taxpayer Relief Act or any other statutory law.
- Appoint a director and other employees as necessary and set their compensation.
- Enter into contracts as necessary.
- Retain counsel, auditors and consultants to provide professional services.
- Acquire, rent, lease or dispose of real or personal property.
- Enter into agreements with other tax collection committees to form a joint tax collection committee.
- Accept grants, borrow money, and incur indebtedness, for the purpose for which they are organized. The indebtedness may not exceed 50% of total anticipated revenues in the next fiscal year. (Is this tax exempt?)
- Sue and be sued in all courts.
- Adopt, amend and repeal resolutions to carry out its powers and duties as provided for in the Act.

E. VOTING

At the first meeting of the TCC, all TCC actions were determined by a majority vote of those delegates present. For the first meeting, delegate votes were weighted as follows: 50% is allocated according to the proportional population of each municipality and school district and 50% is weighted in direct proportion to income tax revenues collected in each municipality and school district. For subsequent meetings, the votes are weighted as stated above or as otherwise provided in the TCC's bylaws. At the TCC's first meeting, the delegates elected a chairperson, vice chairperson and secretary. No later than April 15, 2010, the TCC must have adopted bylaws.

F. APPEALS

Each TCC is required to create an appeals board consisting of at least three delegates to hear appeals of determinations by its tax collector concerning the assessment, collection, refund, withholding, remittance or distribution of the income tax. Appeals from other local taxes would presumably continue to be heard by existing appeals boards, even if collected by the same tax collector. Appeals will be conducted pursuant to the procedures set forth in Sections 8430-8435 of the previously existing Local Taxpayer Bill of Rights ("LTBR"). (Presumably, all of the LTBR provisions will

apply). Appeals could be brought by taxing jurisdictions, taxpayers, employers and tax collectors affected by the determinations of the tax collector. See LTBR (Section I) for rules governing appeals.

G. MEDIATION

Act 32 establishes a mediation process to resolve disputes among the "affected parties." Since this is not a defined term, it is not clear whether taxpayers can submit disputes to mediation. It appears that this may be limited to disputes among political subdivisions, tax collectors and TCC's. The DCED will develop regulations and guidelines for the mediation process. Disputes involving a 10% or greater deviation from taxes received in the previous tax year will be subject to mandatory mediation. Disputes involving less than the 10% threshold may be subject to voluntary mediation.

H. TAX COLLECTOR REQUIREMENTS

A TCC cannot appoint a Tax Officer who:

- Has been convicted of a felony involving fraud, extortion or dishonesty.
- Has engaged in conduct that adversely reflects on a person's credibility, honesty, or integrity.
- Is unable to attain the bonding requirements.
- Has not met the mandatory education requirements established by DCED.
- Has not met any additional requirements established by either the TCC or DCED.

I. ENFORCEMENT

Under Act 32, tax collectors will continue to utilize existing enforcement tools, and be provided with new tools to prosecute non-filers. Penalties and fines are increased for employers and taxpayers who do not file required reports of who underpay or fail to pay the tax. The penalty on unpaid taxes is increased from 0.5% per month to 1% per month, with a maximum of 15%. Maximum fines for violation of the law are increased from \$500 to \$2,500 for each offense, except that employers who do not remit or cannot account for withheld taxes could be fined up to \$25,000. Tax collectors are given specific authority to request and examine a taxpayer's state or federal returns and schedules, but such examination is limited to information pertaining to the local income tax. Employers who do not keep or supply required quarterly and annual records and returns can be penalized. Maximum imprisonment time for violations is increased from 30 days to six months. In addition, the Department of Revenue will be required to enter into an agreement with each tax collection district for the exchange of tax information and provide relevant state personal income data within one year of the filing date.

J. CORPORATE OFFICER LIABILITY

For the first time, corporate officers may be held liable for penalties. For purposes of Chapters 3 (in substance the renumbered LTEA Sections) and 5 (the new LTEA provisions on consolidated collection) of Act 32, the definition of employer is amended to include corporate officers for purposes of imposing penalties authorized under Chapter 5. There are, however, no clarifying and confirming references in the penalty provisions, or even a clear indication of which provisions are penalty provisions. Further, there is no distinction among corporate officers, so a corporate officer with no responsibility for tax withholding might be assessed for penalties. Finally, Chapter 3 took effect July 2, 2008 while Chapter 5 generally takes effect on January 1, 2012, so it is not entirely clear when corporate officers might first be liable for these penalties.

Chapter 7 of Act 32, dealing with collection of delinquent taxes, has its own definition of employer, which ironically does not include corporate officers. Later in Chapter 7, however, a provision was added authorizing suit for tax withheld against an "employer, his representative or any other person receiving any such fund! That provision also authorizes suit for penalties and interest on withheld taxes. Chapter 7 took effect July 2, 2008, so a "representative" might now be liable for withheld tax plus interest and penalty.

K. ACCOUNTABILITY

Tax collectors must keep records of every dollar received and distributed and respond to claims for undistributed taxes from other tax collectors or face daily fines. In addition, collectors must submit monthly reports accounting for each dollar or face additional fines. The TCC must provide for an annual audit by the end of each calendar year of the Tax Officer. The audit is to include all the books, accounts, financial statements, compliance reports and records. The audit shall be conducted by a certified public accountant or public accountant approved by the TCC. The CPA or public accountant must issue their report in a standardized format developed by DCED. This report must include an auditor's opinion letter, a financial statement, a reconciliation of the monthly report with the receipts and disbursements, a summary of collection fees charged, a report of the tax officer's compliance with the act, a management letter if one is issued by the auditor, and a list of any findings of noncompliance with the act. If there are any noncompliance findings, a copy of the report will be sent to DCED and the Pennsylvania Auditor General. On or before September 1st of the following year, a copy of the report must be filed with every political subdivision in the tax collection district and DCED.

L. DCED OVERVIEW

DCED has plenary power under Act 32 to prescribe standardized forms, reports, notices, returns and schedules and shall promulgate regulations as necessary to carry out the provisions of this act.

M. WITHDRAWAL OPTIONS

As a practical matter, it is virtually impossible for a municipality or school district to withdraw from the TCD. The Act provides two options. Under the first option, the political subdivision must prove in court; that it has suffered a loss in income tax revenues that are directly and primarily attributable to the willful and continued failure of the tax officer or TCC to comply with the provisions of the act; that the TCC has failed to take reasonable steps to correct the deficiencies; and that the political subdivision and the tax collection committee have engaged in good faith negotiations. The second option is available 90 days after November 15, 2013 and every 4 years thereafter. If a majority of the governing bodies vote to withdraw from the TCC a new tax collection committee will be created. DCED will promulgate appropriate regulations governing the new TCC.

III. BUSINESS PRIVILEGE TAX

A. Northwood Construction Company, Inc. v. Township of Upper Moreland (Supreme Court 2004). The Commonwealth Court held that jurisdiction where headquarters is located can impose a business privilege tax on receipts from activities performed outside Pennsylvania and outside the taxing jurisdiction. Northwood's only place of business was located in taxing jurisdiction. Northwood did not pay any similar gross receipts tax in the jurisdictions outside Pennsylvania. In January 2003, the Supreme Court agreed to hear the appeal but limited it to one issue; whether the Commonwealth Court erred in deciding that a municipality may impose a business privilege tax or 100% of gross receipts of a business located in that subdivision but performs a substantial amount of work outside that subdivision. The Supreme Court affirmed that tax could be imposed on receipts from Pennsylvania projects outside the taxing jurisdiction, but held that it was unconstitutional to tax the interstate receipts.

B. School Dist. of City of Scranton v. R.R. Valvano Const. Co., Inc., (Commonwealth Court 2003). The trial court held that a business is only obligated to pay local business privilege tax on its gross receipts to the borough where it maintains its "base of operations" and business office. These gross receipts include receipts from work inside the township where the taxpayer is based as well as from work performed elsewhere in Pennsylvania that is directed from the taxpayer's base operations. However, contrary to the position asserted by Scranton, the court ruled on summary judgment that a taxpayer is not liable to pay duplicate business privilege tax to a taxing jurisdiction other than where its base of operations is located since the taxpayer does not have a permanent base of operations there and there and the city may not use a business privilege tax to tax individual transaction by an out-of-city contractor. This case was remanded due to a procedural deficiency in the record before the Commonwealth Court. After a resubmission by the court of common pleas the Commonwealth Court affirmed the decision of the lower court. (863 A.2d 48, Pa. Commw. 2004). Scrantons petition for reargument was rejected by the Commonwealth Court in January, 2005.

C. J&K Trash Removal v. City of Chester, (Commonwealth Court 2004). A local ordinance of the City of Chester provided for a business privilege tax (BPT) on the gross volume of business "transacted within the territorial limits of the City [Chester]." Thus, a taxpayer (a trash removal service) was not subject to the city's BPT on gross receipts from business

transactions outside the city limits because the city ordinance imposed territorial limitations on its BPT.

D. John Deklewa & Sons, Inc. v. Township of Collier, (Commonwealth Court, May 20, 2005). Deklewa is a construction company that maintains an office in the Township of Collier and conducts business both inside and outside the township. Centax, the tax administrator, conducted an audit of Deklewa and the township subsequently assessed the company for unpaid business privilege taxes for the years 1997 through 2001 on income from business outside the township. On appeal to the court of common pleas the two parties stipulated that the Supreme Court decision regarding Northwood Construction would be controlling and put the taxpayer's appeal on hold pending a decision in Northwood. After the Supreme Court stated that Upper Moreland could tax the intrastate receipts of Northwood, the court of common pleas denied the taxpayer's appeal. On appeal, the Commonwealth held that the J&K Trash Removal case was controlling. Thus, like the City of Chester's ordinance per the J&K decision, the township of Collier's Business Privilege Tax ordinance was specifically limited by its own language to receipts generated from business operations within the Township of Collier. Consequently, the Township's efforts to tax receipts from business transacted outside the Township, while potentially permissible under *Gilberti*, is denied to the Township of Collier.

E. Rusmur Floors, Inc. v. Borough of Bridgeville, (Commonwealth Court 2006 – not reported). The taxpayer operated a retail store in Bridgeville where all of its business was managed, controlled and directed. The taxpayer also maintained a warehouse in Cecil Township which was associated with one of its lines of business. The taxpayer argued that the Cecil Township location was a base of operations and that Bridgeville was not entitled to tax the gross receipts from that line of business. The Court concluded that the warehouse was not a base of operations because it was not used to solicit business, conduct meetings, store supplies other than inventory, or perform office work other than that related to the single line of business.

F. Rendina, Inc. v. City of Harrisburg, (Commonwealth Court 2004). A company (Redina) that was engaged in a construction project in Harrisburg and maintained a job trailer to use as an office at the construction site was held not subject to Harrisburg's business privilege tax because it did not maintain a "place of business" in the city. The company's general office was located in Lancaster County, not in Harrisburg. The trailer was not used to solicit business, conduct meetings, store supplies, or perform office work other than communications limited to performance on the project. All general management, accounting, estimating, and other administrative functions were completed at Rendina's principal place of business (Lancaster). Rendina's superintendent on the project did not receive mail at the trailer or use the trailer for project-related meetings. Rendina contended that it did not have a "place of business" in Harrisburg, even though the project lasted three years. The city of Harrisburg responded that Rendina maintained a field office in the city that provided it with a base of operations from which to manage, direct, and control its business activities necessary to complete the project. The Commonwealth Court ruled that it was clear that the job site trailer was not a "place of business" (i.e., a base of operations from which Rendina could manage, direct, and control business activities occurring both inside and outside city limits within the meaning of *Gilberti*). Thus, Redina was not subject to Harrisburg's business privilege tax.

On December 27, 2007, the Pennsylvania Supreme Court reversed the finding of the

Commonwealth Court that the contractor was not subject to a city's BPT because it did not maintain a permanent office within the city limits. With this decision, the Supreme Court muddied the waters by eviscerating the distinction it had consistently recognized before this decision. Namely, that for a municipality to tax an entity, that entity needed a permanent base of operations within the municipality's borders.

According to the Supreme Court, the Gilberti case did not mandate that a base of operations was necessary to impose BPT. Rather, because the taxpayer in Gilberti had its sole base of operations within the city of Pittsburgh, receipts earned outside Pittsburgh could be attributed to Pittsburgh. Such a result was due to the fact that the office within Pittsburgh contributed to the company's earnings. The court distinguished Gilberti because Rendina's activities at issue took place only within the city of Harrisburg.

The Court indicated that what was necessary for taxation under the LTEA was that the business activities sought to be taxed are of the type authorized under the LTEA and the BPT. The Court noted that the LTEA granted broad overlapping authority to impose tax on various persons, privileges, transactions, and activities within a taxing jurisdiction. The Court reasoned that such authority is broad enough to encompass Rendina's construction activities in Harrisburg, regardless of whether it retained an office there. The Court concluded that because the Harrisburg ordinance imposed BPT on such activities, the BPT was properly imposed, and Rendina was denied relief. In rendering its decision, the Court also took pains to distinguish Gilberti, and concluded that Gilberti harmonized with this present decision. The Court also noted the city's argument distinguishing the QED decision on the basis that QED never maintained any office whatsoever within the township and that its activities within the township were limited to an initial visit to the job site.

As a result of this decision by the Supreme Court, a number of previously clear lines have been blurred or eliminated completely. First, the longstanding rule of a "base of operations," which was construed as place of business, is apparently no longer needed for BPT taxation under the LTEA. That rule has effectively been eliminated so long as the municipal ordinance is drafted in a similar fashion to the Harrisburg ordinance, so that any activity conducted within the municipality is taxable. Second, if the ordinance is drafted as broadly as possible, carrying on any trade, profession, or other commercial activity within a municipality seems to be enough to subject an entity to BPT there. Third, when a taxpayer without a place of business within a municipality is being taxed, it would appear that the municipality could only tax that income earned within its borders. However, if a taxpayer has specifically located in a municipality which has no local BPT, it will now incur increase costs of BPT potentially wherever it conducts business. Additionally, if the taxpayer's home municipality taxes its residents differently, potential double taxation could occur unless apportionment rules are laid out in a uniform manner.

There has been some discussion of legislation to reverse the Supreme Court decision.

G. Applied Tech Products Corp. v. Radnor Township, (Commonwealth Court 2005 – not reported). Taxpayer provided management services to a group of affiliated corporations. The Court held that the management fees received from the affiliated corporations were subject to business privilege tax.



H. Legislative Fix. Senate Bill 601 (SB 601) was introduced in 2009 and has been pending with the Senate Appropriations Committee. SB 601 would retroactively reverse Rendina.

I. Refund/Audit Issues. The court in Rendina did not address the issue of two jurisdictions taxing the same receipts. The limitations period for assessments is five (5) years and the limitations for refunds is three (3) years. Taxpayers that pay tax on transactions, then exclude these receipts from the headquarters jurisdiction could be at risk.

J. Prohibition against new gross receipts tax. Section 533 of the Local Tax Reform Act prohibits new gross receipts taxes after November 30, 1988. Flat taxes are permitted. See, *Smith and McMaster, P.C. v. Newton Borough*, 669 A.2d 452 (1995). What about a flat tax that only applies to businesses with more than one million dollars in receipts? See, *Shelly Funeral Home v. Warrington Township*, 87 MAP 210.

K. City of Pittsburgh business privilege tax repealed. Last return due April 15, 2009.


IV.

Click on the  to see more detail and the  to hide detail


Earned Income Tax/Personal Income Tax Rate Collectors

Official Rates as of June 15, 2011



PITTSBURGH CITY, ALLEGHENY COUNTY / BALDWIN-WHITEHALL (PSD Code: 730105, ALLEGHENY SOUTHWEST TAX COLLECTION DISTRICT)

	Municipal Nonresident EIT (percent)	Municipal Resident EIT (percent)	School District Resident EIT (percent)	School District Resident PIT (percent)	Total Resident Income Tax (percent)	Municipal Tax Collector
Tax Rate	1.000	1.000	.500	0	1.500	 TREASURER, CITY OF PITTSBU
Effective Date	01/01/2011	Not available	Not available	Not available		

PITTSBURGH CITY, ALLEGHENY COUNTY / PITTSBURGH S D (PSD Code: 700102, ALLEGHENY CENTRAL TAX COLLECTION DISTRICT)

	Municipal Nonresident EIT (percent)	Municipal Resident EIT (percent)	School District Resident EIT (percent)	School District Resident PIT (percent)	Total Resident Income Tax (percent)	Municipal Tax Collector
Tax Rate	1.000	1.000	2.000	0	3.000	 TREASURER, CITY OF PITTSBU
Effective Date	01/01/2011	Not available	07/01/2006	Not available		


** A portion of this municipality is also located within another Tax Collection District.

Click on the  to see more detail and the  to hide detail

Earned Income Tax/Personal Income Tax Rate Collectors

Official Rates as of June 15, 2011

**CECIL TWP, WASHINGTON COUNTY / CANON-MCMILLAN S D
(PSD Code: 630602, WASHINGTON TAX COLLECTION DISTRICT)**

	Municipal Nonresident EIT (percent)	Municipal Resident EIT (percent)	School District Resident EIT (percent)	School District Resident PIT (percent)	Total Resident Income Tax (percent)	Municipal Tax Collector
Tax Rate	0	.500	.500	0	1.000	 Jordan Tax Service
Effective Date	Not available	Not available	Not available	Not available		

** A portion of this municipality is also located within another Tax Collection District.

ALLEGHENY TAX SOCIETY
STATE TAX UPDATE
GOVERNOR RENDELL'S AGENDA

- I. Amending Act 72 (Local Tax Reform)
 - A. Governor Rendell called a special session of the legislature for property tax reform
 - B. Only 111 school districts had opted into Act 72
 - C. Act 1 of 2006 (Special Session) mandated that school districts offer local tax reform by referendum on May 2007 ballot. Act 72 repealed.
 - 1. Overwhelmingly rejected by voters
- II. Business Tax Reform
 - A. Business Tax Reform Commission
 - 1. 12-member, bipartisan commission recommended changes that would:
 - a. Lower Corporate Net Income (CNI) Tax rate
 - b. Create a fairer business tax climate
 - c. Broaden business tax base
 - d. Level the playing field
 - 2. Unanimous final report issued November 30, 2004
 - B. Commission Findings
 - 1. Pennsylvania's 9.99 percent CNI Tax rate eliminates it from consideration at first glance
 - 2. Tax burden is not shared
 - a. 73% of businesses subject to CNI Tax have \$0 liability
 - b. 95% have \$10,000 or less of CNI Tax liability
 - 3. Some business structures gain a competitive edge

- a. Separate entity reporting creates tax planning opportunities

C. Recommendations

- 1. Lower CNI rate to 7.90 percent
 - a. Nothing enacted
- 2. Mandatory Combined Reporting
 - a. Pennsylvania is separate company reporting state
 - b. Combined with high rate, separate reporting encourages aggressive tax planning (DIHC's)
 - (1) Commission was not in favor of disallowing deductions for payments to DIHC's
 - c. Combined Reporting Would:
 - (1) Provide more accurate measure of net income
 - (2) Substantially broaden tax base
 - (3) Be less subject to manipulation
 - (4) Help pay for a lower CNI Tax rate
 - d. Nothing enacted
- 3. Maintain Capital Stock/Franchise Tax Phase-Out
 - a. Reduce by 1 mill annually
 - b. Originally scheduled to be eliminated December 31, 2010
 - c. Phase out altered on three occasions
 - d. Millage increased to 2.89 for 2009 and will remain the same for 2010, 2011. The rate will drop to 1.89 mills for 2012, 0.89 mills for 2013 and be eliminated in 2014.
- 4. Uncap Post Combination NOL Deductions
 - a. Cap discourages economic development
 - b. Pa. one of few states with a dollar limit on NOL carry forwards/carry backs

- c. Benefits bio-technology, start-up companies and cyclical businesses
 - d. NOL cap increased from \$2 million to the greater of \$3 million or 12.5% of income for 2007 and 2008
 - e. For 2009 the percentage of income is increased to 15% and further increased to 20% for 2010 and subsequent years.
5. Change Apportionment to 100% Sales Factor
- a. Encourage employers, especially manufacturers, to locate or expand in Pennsylvania
 - b. Sales factor weighting increased to 60% for 2006
 - c. Sales factor weighting increased to 70% for 2007, 2008
 - d. For 2009 the sales factor weighting is increased to 83% and further increased to 90% for 2010 and thereafter.
6. Revamp Appeals Process
- a. Make the Board of Finance and Revenue into a formal administrative tribunal
 - b. Eliminate the corporation tax settlement process and make administrative changes
 - c. Settlement process eliminated and certain administrative changes made

III. Severance Tax

- A. Senate Bill 1155 (SB 1155) passed by House of Representatives, but died in the Senate.
- B. SB 1155 would have imposed a tax of \$.39 per thousand cubic fee (MCF) measured at wellhead.
- C. Senate wanted tax of 1.5% of selling price with slight increases thereafter.
- D. Rendell Administration proposed 3% tax in the first year, 4% tax in the second and 5% tax thereafter.
- E. Corbett Administration pledged no new taxes. However, proposed legislation would impose an impact fee at the county level. Counties could charge up to \$40,000 for a well's first year, \$30,000 for the second, \$20,000 in the third and \$10,000 in years four through ten. The counties would retain 75 percent to split

among county government and municipalities, and the state would get the remainder.

STATE TAX OVERVIEW

- I. SB300 signed July 6, 2006 included the following changes
 - A. Increased the capital stock/franchise tax exemption to \$150,000, effective January 1, 2007
 - B. Reduced the capital stock/franchise tax rate for 2006 by .1 mill to 4.89 mills, with a one mill per year reduction maintained
 - C. Eliminated single member restricted professional corporations from the definition of corporation for capital stock tax purposes, effective January 1, 2006
 - D. Eliminated Pennsylvania's separate S corporation election requirement, retroactive to January 1, 2006
 - E. Increased maximum number of S corporation shareholders to 100, retroactive to January 1, 2006
 - F. Exempted contributions to health savings accounts, effective January 1, 2006
 - G. Exempted contributions, rollovers, earnings and distributions on all qualified tuition programs (529 plans) from tax, effective January 1, 2006
 - H. Excluded the sale of investment metal bullion or investment coins (but not commemorative medallions) from sales and use tax, effective September 6, 2006
- II. SB859 signed July 7, 2006 included the following changes
 - A. Increased the NOL cap from \$2,000,000 to the greater of \$3,000,000 or 12.5% of taxable income, effective January 1, 2007
 - B. Increased the sales factor weight to 70% for corporate net income tax purposes, effective January 1, 2007
 - C. Increased the research and development tax credit to \$40,000,000 with \$8,000,000 allocated to small businesses. Also increased the credit for small businesses from 10% to 20% of the excess of the taxpayer's qualified research and development expense.
 - D. Codified the practice of allowing exemption for clean rooms needed for purified work environments

III. SB993 signed October 9, 2006 included the following changes to the tax administration process, effective January 1, 2008.

- A. Standardized assessment terminology to use "assessment" throughout
- B. Required all assessments to be prominently labeled and sent via certified mail
- C. No more notice of intent to appeal or extensions for sales and use tax. Basis will be sent with assessment and appeal is due in ninety (90) days.
- D. Changed the settlement of corporate taxes to an assessment process used in other taxes
- E. Standardized all administrative appeal periods to 90 days, while maintaining the appeal period to Commonwealth Court at 30 days
- F. Required the Department of Revenue to provide the taxpayer with an explanation of the basis for any assessment.
- G. One standard for penalty abatement; good faith, no negligence, no intent to defraud.

IV. SB97 signed _____, 2007 included the following changes:

- A. Exempted the remanufacture of locomotive parts from sales and use tax.
- B. Provided for lenders and affiliates to apply for refund of sales tax attributed to bad debt.
- C. Repealed the sales and use tax exemption for commercial feature-length motion picture production.
- D. Provided capital stock tax exemption for companies that only lease dies, mold, tooling and other items used by an unaffiliated manufacturer of powdered metal products.
- E. Limited the requirement that the Department of Revenue must send tax assessments by certified mail to those assessments over \$300. The provision applies to assessments issued after December 31 2007.
- F. Removed the sunset dates for the Personal Income Tax check-off for Breast and Cervical Cancer Research. The sunset dates for the Wild Resources check-off and the organ Donation check-off were also extended to 2010.
- G. The phase-out of the Capital Stock and Franchise Tax was not changed by this budget.
- H. Bank Shares Tax: Provides that for the value of shares reported on tax returns due on March 15, 2008, and thereafter, any goodwill recorded as a result of the

use of purchase accounting for an acquisition or combination occurring after June 30, 2001, may be subtracted from the book value of total equity capital and disregarded in determining the deduction provided for obligation for the United States for the six-year moving average.

- I. **Film Tax Credit.** A new \$75 million tax credit for the film industry was included in this budget. The credits available to a film production company would be up to 25 percent of its qualified production expenses, meaning those expenses purchased from Pennsylvania residents or companies subject to Pennsylvania taxation.
 - J. **Resource Enhancement and Protection Tax Credit.** This is a new tax credit for businesses or individuals implementing eligible conservation practices. The credit is capped at \$10 million.
 - K. **Neighborhood Assistance Tax Credit.** Provided that at least \$2,000,000 of the total \$18,000,000 in available tax credits in this program shall be allocated exclusively for small businesses.
- V. **HB 377 enacted July 3, 2008, included the following changes:**
- A. Provided for a PIT credit of \$100 for active volunteers (\$4,500,00 cap).
 - B. Provided for a comprehensive study on alternative forms of special tax provisions for poverty.
 - C. Made no change to the capital stock/franchise tax phase-out.
- VI. **SB1412, enacted July 10, 2008. Expanded sales and use tax exemptions for qualified businesses located in Keystone Opportunity Zones ("KOZ's"), and changed apportionment calculations.**
- A. Qualified KOZ entities and contractors are now entitled to sales and use tax exemptions for all tangible personal property or services used in a construction contract in a KOZ. The exemption was previously limited to building machinery and equipment used in a KOZ construction contract.
 - B. Exempted from sales and use tax under the new law are all services, construction materials, and tangible personal property purchased by qualified businesses or construction contractors for use in a KOZ or KOZ construction contracts.
 - C. Services and tangible personal property, excluding motor vehicles, remain exempt from Pennsylvania sales and use tax when they are sold to, used, or consumed by a qualified business, landowner, or lessee exclusively at its facility in a KOZ.
 - D. The new KOZ law applies to purchases made pursuant to a general contract or subcontract dated on or after September 8, 2008. For contracts and subcontracts

signed prior to that date, only building machinery and equipment for use in a construction contract with a qualified business are exempt from sales and use tax.

- E. Effective for years beginning after December 31, 2008, apportionment of income/gross receipts inside and outside a KOZ will be done by considering property and payroll only. The sales factor has been eliminated.

VII. HB1531, signed October 9, 2009 made the following changes

A. Personal Income Tax (PIT)

- 1. Accelerated remittance of tax withholding - Effective with returns due after May 31, 2010, employees expecting to withhold \$20,000 or more for a calendar year must remit weekly rather than semi-monthly. Employers withholding between \$4,000 and \$19,999 will be required to remit semi-monthly. Employers withholding between \$1,200 and \$3,999 will be required to remit monthly. Employers withholding less than \$1,200 will be required to remit quarterly.
- 2. Check-offs - Extended the sunset of the check-offs on the PIT form for contributions to Wild Resources Conservation, Organ and Tissue Donation Awareness and Military Family Relief Assistance to January 1, 2014 and clarifies that the check-offs for Breast and Cervical Cancer Research and Juvenile Diabetes Cure Research do not expire.

B. Corporate Net Income Tax

- 1. Sales factor weighting - Increased the weighting of the sales factor from 70% to 83% for taxable years beginning after December 31, 2008. For taxable years beginning after December 31, 2009, the sales factor weighting is increased to 90%.
- 2. Net operating loss (NOL) deduction - Expanded the NOL cap from \$3 million or 12.5% of taxable income to \$3 million or 15% of taxable income for taxable years beginning after December 31, 2008. The NOL cap is further expanded for taxable years beginning after December 31, 2009 to \$3 million or 20% of taxable income.

C. Capital Stock/Franchise Tax

- 1. Valuation deduction - Increased the fixed formula valuation deduction from \$150,000 to \$160,000 for taxable years beginning after December 31, 2009.
- 2. Tax rate - Modified the phase-out of the tax. For taxable years beginning January 1, 2009 the tax rate will be 2.89 mills rather than 1.89 mills, and the 2.89 mills rate will apply for 2010 and 2011 as well. The tax rate will

drop to 1.89 mills in 2012, 0.89 mills in 2013, and be completely eliminated for 2014.

3. Estimated tax payments - Provided that estimated payments due prior to January 1, 2010 will not be subject to an underpayment penalty if those payments were made assuming a rate of 1.89 mills instead of 2.89 mills.

D. Sales and Use Tax

1. Exemption - provided a sales and use tax exemption for helicopters and similar rotorcraft sold, leased or used in Pennsylvania, including repair or replacement parts, installation of parts, and overhauling or rebuilding of helicopters or similar rotorcraft.
2. Accelerated tax remittance - Requires businesses with quarterly liabilities of \$25,000 or more to report semi-monthly, beginning with returns filed after May 31, 2011.

E. Gross Receipts Tax

1. Managed care organizations - Imposed gross receipts tax at the rate of 59 mills on managed care organizations for gross receipts received from payments pursuant to a Medicaid managed care contract with DPW through its Medical Assistance program. The tax applies to receipts received after September 30, 2009

F. Cigarette Tax

1. Tax rate - Increased the cigarette tax by 25 cents per pack from \$1.35 per pack to \$1.60 per pack (\$0.0675 per stick to \$0.08 per stick), effective November 1, 2009.
2. Little Cigars - Added "little cigars" to the definition of cigarettes for tax purposes and imposes an excise tax on little cigars at the same rate of tax that is imposed on cigarettes, effective November 1, 2009.
3. Floor tax - Imposed an additional cigarette tax at the rate of \$0.025 per cigarette on persons who possess cigarettes as of November 1, 2009 on which the old rate of \$0.0675 has been paid. The floor tax for little cigars previously not taxed will be 8 cents per stick.

G. Credits

1. Research and development credit - removed the provision that the credit must be held for more than one year before it can be sold or assigned.
2. Research and development credit - Reduced the amounts available to be awarded to 50% of the amounts otherwise available for the fiscal year

2009 – 2010 and to 45% of the amounts otherwise available for the fiscal year 2010 - 2011.

3. Educational improvement tax credit (EITC) - Moved the EITC credit provisions from the Public School Code to the Tax Reform Code.
4. EITC - Income limits - Increased the allowable household income for students to \$60,000, subject to an income allowance of \$12,000 for each dependent. On July 1, 2012 and thereafter, the Department of Community and Economic Development (“DCED”) will annually adjust the income limits to reflect upward changes in the Consumer Price Index (“CPI”) for the mid-Atlantic region.
5. EITC – Disability - Provided for a definition of “eligible student with a disability” as a student who either is enrolled in a special education school or has otherwise been identified as such, needs special education and related services, and is enrolled in a Pre-K program or in a school. The maximum allowable household income for students with a disability is calculated at 1.5 times the standard income limits for Support Level 1 and 2.993 times the standard income limits for Support Level 2. Support Level 1 refers to a student who is not enrolled in a special education school. These limits are also subject to annual adjustments for CPI.
6. EITC – Pass-through - Amended the definition of “pass-through entity” to include a single-member limited liability company classified as a disregarded entity for federal income tax purposes.
7. EITC – Pass-through - provided that a pass-through entity which does not intend to use the tax credit may transfer all or a portion of the credit to a shareholder, member or partner for their use in the taxable year in which the contribution is made or in the taxable year immediately following the year in which the contribution is made.
8. Reduction in EITC Credits - reduced the limit for the amount of credits that may be awarded for the fiscal year 2009 - 2010 from \$75 million to \$60 million per year and to \$50 million for the fiscal year 2010 - 2011.
9. Reduction in Film Production Tax Credit - Reduced the limit for the amount of credits that may be awarded for the fiscal year 2009 - 2010 from \$75 million per year to \$42 million and then increases that limit to \$60 million for the fiscal year 2010 – 2011.
10. General reduction in tax credits - For the fiscal year 2009 – 2010 tax credits have generally been reduced to 50% of the amounts otherwise available to each eligible taxpayer and to 45% of the amounts otherwise available for 2010 – 2011. The following tax credits are affected:

Neighborhood Assistance Program.

Employment Incentive Payments.
Job Creation Tax Credit.
Resource Enhancement and Protection Tax Credit.
First Class Cities Economic Development District Tax Credit.
Call Center Tax Credit.

11. Suspension - The Alternative Energy Production Tax Credit Program, which has not commenced, was suspended for the next two fiscal years.

H. Administrative

1. Tax amnesty - implemented a tax amnesty program for taxpayers who are delinquent for an eligible tax as of June 30, 2009. The amnesty program ran from April 26, 2010 through June 18, 2010.
2. Corporate officer penalties - provided that corporate officers who intentionally fail to file returns for any two successive tax years may be subject to a fine of not less than \$2,500 and not more than \$5,000.
3. Statistical or test audits - authorized reasonable statistical test audits by the Department of Revenue and provides that the burden of proof for challenging such an audit is clear and convincing evidence.

I. Local Taxes

1. Allegheny County alcoholic beverage tax - Effective January 1, 2009 Allegheny County Council reduced the rate of tax from 10% to 7%.
2. City of Philadelphia sales and use tax - Increased the City of Philadelphia sales and use tax rate from 1% to 2%, effective from October 8, 2009 to June 30, 2014. The hotel occupancy tax rate remains at 1%.