

ALLEGHENY TAX SOCIETY

Program Topic:

UPDATE ON THE IMPLEMENTATION OF ACT 32

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HYP Club

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UPDATE ON IMPLEMENTATION OF ACT 32 (November 2012)

- I. LOCAL TAX ENABLING ACT (LTEA) 53 PS Section 6924.101 et. seq., (AKA – Act 511 of 1965), effective January 1, 1966:
 - A. Local Earned Income Tax

- II. Act 32 of 2008 – 53 PS 6924.501 et. seq. ; Amendment to Act 511 establishing consolidated EIT collection system district-wide, among other requirements, effective January 1, 2012.
 - A. Uniformity
 1. Employer Withholding – Resident/Non-Resident; Rate: Section 512 (3)
Deduct the greater of the employee's resident rate or the employee's non-resident tax as released in the DCED official register; Single Work Location; Withholding for Multiple Work Locations
 - If an employee is working temporarily at a PA work location for period of time that encompasses a "reporting quarter," then the work location would be the **work location address** used to determine the EIT rate and corresponding PSD code in the Address Search
 - If an individual works for an employer who has a central location in PA, but the employee "floats" or is transferred daily, weekly or monthly between other business sites, then the **central or main employer** business location would be the work location address to determine the EIT rate and corresponding PSD code in the Address Search
 - If an employee is hired by an employer and receives work orders or instructions at home in PA but physically reports to other business sites on a daily, weekly or monthly basis, then the **employee's home address** should be used as both the home and work location address used to determine the EIT rates and corresponding PSD codes in the Address Search

 - COMBINED FILING & REMITTANCE OPTION: Section 512 (5):
 - Employers with worksites in multiple tax collection districts may file return with 1 Tax officer
 - Required to remit monthly (within 30 days of the end of each month) and electronically

- Employer files "Notice of Intention to File Combined Returns and Make Combined Payments" with the tax officer for each place of employment at least one month before filing the first combined return and making the first combined payment
 - Employers who choose this option must determine which TCD is to receive the combined filings and payments
 - Act 32 states as a first requirement that combined filings and payments must be made to the tax officer of the TCD where employer's headquarters are located
 - If employer's headquarters are located outside PA or in Philadelphia, the employer may choose to file in any TCD where it has a worksite as long as the tax officer for that county agrees to it
 - Employer is required to opt into the combined filing and payment process with that tax officer for the full tax year
2. Remittance to Tax Officer - Each employee's taxable income earned or received; sent by employer to tax officer within 30 days of end of quarter; on standardized DCED form; withholding data includes:
- Name, address and social security number of each employee
 - Compensation of employee during preceding 3 month period
 - Income tax deducted from employee
 - Political subdivision imposing income tax upon employee
 - Total compensation of all employees during preceding calendar quarter and paid with return
 - Employee Resident Political Subdivision (PSD) Code
- ANNUAL RETURN: Section 512 (7):
 - On or before February 28 of the succeeding year, every employer shall file with the tax officer where income taxes have been deducted and remitted for the period of January 1 – December 31:
 - Total amount of income tax deducted
 - Total amount of income tax paid to the tax officer
 - W2-R ANNUAL RECONCILIATION Form

AND

- INDIVIDUAL WITHHOLDING STATEMENT OR W-2:
- Attach W-2 to W2-R ANNUAL RECONCILIATION Form
- STATEMENT & W-2 FORM SHALL INCLUDE:
- Name, address and social security number of employee
- Total compensation received for tax year
- Total income tax withheld during tax year
- Amount of income tax paid to tax officer
- Two digit numerical code representing the tax collection district where tax is paid

- Every employer shall furnish 1 copy of individual withholding statement to the employee for whom it is filed
3. Distribution to PSDs – Tax officer turns over money received from employers to respective PSDs within TCD within 60 days of receipt or deadline for quarterly payments prior to 4/1/2013; After 4/1/2013, within 30 days
 4. Forms – Standardized for business and taxpayers to use to report local income and remit payment of taxes
 5. Regulations – Earned Income Tax Draft Proposed Regulations currently in effect; Temporary; Interim; and Final Adopted all pending

III. Act 32 of 2008 – Implementation Process

A. Tax Collection District – Section 6924.504

1. 69 statewide – for the purpose of collecting EIT

B. Tax Collection Committee – Section 6924.505

1. TCD governed by TCC; chair, vice-chair and secretary; treasurer optional – appointed by delegates of PSDs making up TCC
2. Duties include:
 - To keep record of all votes and other actions taken by TCC
 - To appoint and oversee a tax officer for TCD
 - Set compensation of tax officer
 - To require, hold, set and review tax officers bond
 - To establish the manner and extent of financing the TCC
 - To adopt, amend and repeal bylaws for the management of TCC affairs
 - To adopt, amend and repeal policies and procedures consistent with regulations under Section 508 (powers and duties of DCED) for the administration of income taxes within the TCD
3. Powers include:
 - To adopt, amend and repeal resolutions to carry out its powers and duties
 - To create a tax bureau and to provide for its operation and administration
 - To enter into contracts as necessary
 - To appoint a director for the TCC and other employees as necessary and to fix their compensation
 - To retain counsel, auditors and other consultants or advisors to render professional services as necessary
 - To acquire, lease, rent or dispose of real and personal property

- To enter into agreements with one or more TCC to form a joint TCC
- To sue and be sued, and complain and defend in all courts
- To borrow money, accept grants, incur indebtedness and issue notes, debentures and other obligations to evidence borrowing for the purpose for which it is organized in an amount not to exceed 50% of the total revenues anticipated in the following fiscal year

C. Tax Officer – Section 6924.509 (a)

1. Powers and duties include:

- To collect, reconcile, administer and enforce income taxes on residents/non-residents of each PSD included in each TCD
- To receive and distribute income taxes and to enforce withholding by employers located in the TCD
- To receive income taxes distributed by tax officers for other TCDs
- To distribute income taxes to PSDs
- To comply with all regulations adopted by DCED and all formal actions of the TCC
- To invest all income taxes in authorized investments
- To distribute income generated from investments as determined by the TCC

D. Board Selection – Section 6924.505 (e), (g)

1. Governing body of each PSD that levies an EIT/PIT appoint delegate and alternate to TCC; delegates appoint board officers from membership of TCC; DCED notification required of new appointments

E. Annual Budget – Section 6924.505 (l)

1. Provides for compensation of tax officer and other expenses of operating TCD
2. Operating expenses shall be shared among and paid by all PSDs within TCD which levy EIT/PIT and shall be weighted in direct proportion to income tax revenues collected in each participating PSD based upon most recent audit report

F. Administrator – Section 6924.505 (a.2) (4)

1. To provide administrative services for the operation and administration of TCC; appointed by TCC

G. Bylaws – Section 6924.505 (f)

1. To govern TCC operation and organizational matters
2. Minimum provisions include:
 - Rules of procedure; quorum requirements; voting rights and provisions for managing affairs of TCC
 - List of officers, their terms and powers and process for their election

- Process for adopting/amending bylaws
- Procedure for addition of new PSD to TCC

H. Tax Appeals Board – Section 6924.505 (j)

1. TCC appoints minimum of 3 delegates to hear determinations of tax officer relative to assessment, collection, refund, withholding, remittance or distribution of EIT
2. All appeals except for mediation related proceedings shall be conducted consistent with 53 Pa. C.S. Section 8431, also known as the Local Taxpayers Bill of Rights
3. Party with standing to appeal tax officer determination is taxpayer, employer, PSD or another TCD

I. Mediation Guidelines – Section 6924.505 (k)

1. Act 32 Mediation Guidelines are in place
2. PSD, TCC and tax officer may request mediation
3. Mandatory – Any dispute involving 10% or greater deviation from taxes received in the previous tax year
4. Voluntary – Any dispute involving less than 10% threshold
5. Decision is not appealable; Mediator assesses cost against parties involved

J. Procedures Manual – 6924.508 (a)

1. Contents of manual is listed consistently with the section numbers of Act 32 (e.g., Sections 501 – 517)

2. Contents include:

- Section 501 – Definitions
- Section 502 – Declaration and Payment of Tax
- Section 503 – Reserved
- Section 504 – Tax Collection Districts
- Section 505 – Tax Collection Committees
- Section 506 – Tax Officer
- Section 507 – Appointment of Tax Officer
- Section 508 – Powers and Duties of DCED
- Section 509 - Powers and Duties of Tax Officer
- Section 510 – Fines & Penalties Against Tax Officer
- Section 511 – Tax Register
- Section 512 – Withholding & Remittance
- Section 513 – Distribution of Income Taxes
- Section 514 – Confidentiality
- Section 515 – Transition
- Section 516 – Regulatory

- Section 517 – Audit & Evaluation

IV. Act 32 Implementation Tools

A. Forms – Various – 6924.508 (a)

1. Residency Certification Form (Addendum to W-4)
2. Employer Registration for Local Earned Income Tax Withheld
3. Employer's Quarterly Earned Income Tax Return
4. WR-2 Annual Reconciliation of Earned Income Tax Withheld From Wages/Salaries
5. Taxpayer's Annual Local Earned Income Tax Return
6. Taxpayer's Quarterly Estimated Earned Income Tax
7. Notice of Intent to file Combined Returns and Make Combined Payments
8. Monthly Report for Tax Officers

B. Regulations – Section 6924.508 (b), (c)

1. Proposed regulations in place until Temporary, Interim and Final Adopted are approved respectively
2. DCED Legal Office & Independent Regulatory Review Commission (IRRC) approval required first
3. Proposed Regulations for the Local Earned Income Tax include:
 - GENERAL PROVISIONS:
 - Purpose
 - Procedure for filing adjusted declarations of estimated net profits
 - Procedure for filing taxable income not subject to withholding
 - Penalty and interest
 - Refunds
 - Publication of Procedures Manual for Tax Collection Officers
 - WITHHOLDING
 - Registration of employees
 - Employers required to withhold
 - Voluntary withholding for resident employees employed outside of TCD
 - Filing and remittance
 - Elective filing and remittance by multi-work location employers
 - TAX OFFICER
 - Mandatory training for tax officers
 - Satisfaction of mandatory education requirement
 - Minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers

- BONDING
 - Bonding of tax officers
 - MEDIATION
 - Appointment of mediator
 - Rules for mediation
 - PROCUREMENT
 - Procurement of goods and services – general rule
 - WITHDRAWAL AND ESTABLISHMENT OF NEW TAX COLLECTION COMMITTEE
- C. Monthly Report – Section 6924.509 (b); 6924.510 (b)
1. DCED Report/Form submitted to TCC secretary and each PSD within 20 days after end of each month for taxes collected in TCD
 2. Monthly Report/Form includes:
 - Breakdown of all income taxes
 - Income generated from investments
 - Penalties, costs and other money received, collected, expended and distributed for each PSD
 - All money distributed to tax officers for other TCDs
- D. Annual Audit (Tax Officer) – Section 6924.505 (h)
1. Filed with TCC, PSDs and DCED by September 1 for prior year
 2. TCC shall provide for annual CPA audit and examination of tax officer books, accounts, financial statements, compliance reports and records
 3. Examination shall include:
 - Audit of all records relating to cash basis receipt of funds
 - Disbursement of all public money by the tax officer
 - Reconciliation of monthly reports
 - Analysis of bond amount
 - Analysis of collection fees charged to the TCC
 - Management opinion letter
 - List of findings of noncompliance with Act 32 (file with Auditor General)
- E. Enforcement – Section 6924.510 (a), (b), (c), (d), (e), (f)
1. Tax officer failure to perform duty brings sanctions that include:
 - Distribution of non-resident taxes – penalty not to exceed \$2,500
 - Monthly reports and audits of income taxes – penalty of \$20/day not to exceed \$500 plus civil penalty of \$500-\$2,500 (monthly report)
 - Failure of duty – to compel performance to collect and distribute taxes (for each quarter income taxes were not distributed – penalty

not to exceed \$2,500) as well as deliver records, etc. – penalty not to exceed \$5,000 for failing to distribute income taxes for 4 consecutive tax quarters

- Other violations of the tax officer of Act 32 subject to civil penalty not to exceed \$2,500 per violation
- Actions against a tax officer for a violation may be brought by a TCD, TCC, PSD or surety in common pleas court
- Rescinded appointment – criminal action, breach of confidentiality, penalized 3 times under above violations, failure to qualify to obtain a bond nor satisfy mandatory education requirements

F. Continuing Education – Section 6924.508 (e)

1. Mandatory education for tax officers - prerequisite for continued appointment; annually
2. DCED Online Continuing Education course – December

V. Tax Officer Issues

A. Conversion of Records – Section 6924.509 (e)

1. Former tax collector if not current one turns over EIT records to Act 32 tax officer to convert to new collection system/database
2. Duty of tax officer to keep records showing:
 - Amount of income taxes received from each taxpayer or other tax officer
 - Date of receipt
 - Amount and date of all other monies received and distributed
 - Any other information required by DCED
 - Property of PSD and TCD in which taxes are collected
 - TCD and tax officer shall retain all tax records as directed by the TCC

B. Distribution Timeline – Section 6924.513 (a), (b)

1. Distribution timeline of EIT from tax officer to PSDs within respective TCD or to other TCDs shall be as follows:
 - Prior to 4/1/2013, EIT received from employers shall be distributed within 60 days of the later of: a) receipt; or b) deadline for payment within 30 days of the end of each quarter
 - After 4/1/2013, EIT received from employers shall be distributed within 30 days of the later of: a) receipt; or b) deadline for payment within 30 days of the end of each quarter
 - Unless other arrangement negotiated between TCC and tax officer as part of EIT distribution process

C. Collection of other taxes – Section 6924.509 (k)

1. When authorized by PSD and TCC – Other Act 511 taxes collected by Act 32 tax officer (e.g., LST, Per Capita, Business Privilege/Mercantile)

D. Central Tax Bureau (Centax)