

XIV. Local Services Tax

(Formerly known as Occupational Privilege Tax)

A tax levied on the privilege of engaging in an occupation within a particular taxing district was previously known as the occupational privilege tax. Act 222 of 2004, however, amended the Local Tax Enabling Act (“Act”) to change the name of the occupational tax to the emergency and municipal services tax (“EMST”) and to permit municipalities and school districts (except the Pittsburgh School District) deriving taxing authority from the Act, to impose on persons employed within the jurisdiction an EMST of up to a maximum of \$52 per year beginning on and after January 1, 2005.¹ Act 7 of 2007 amended the Act to change the name of the EMST to the local services tax.²

Statutory Authorization

The local services tax may be levied only by the political subdivision where the taxpayer is employed and the tax becomes effective as of January 1 in the first year as specified in an ordinance or resolution.³ The Act currently authorizes political subdivisions to levy the local services tax at the maximum annual rate of \$52 per person, regardless of whether the taxpayer is subject to multiple taxing localities.⁴ Thus, where both municipality and school district levy the tax, they must share the maximum rate of \$52.⁵ If the tax exceeds a combined rate of \$10 then it must be assessed and collected in pro rata installments based on payroll period withholdings by the employer.⁶

If a school district levied an EMST on June 21, 2007, the school district is permitted to levy the local services tax in the same amount the school district collected on that date.⁷ However, if a municipality located in whole or in part within the school district subsequently levies the local services tax, the school district is only permitted to collect five dollars (\$5) on persons employed within the municipality each calendar year.⁸ A school district that did not levy an EMST on June 21, 2007 is prohibited from levying the local services tax.⁹

Municipalities which have been declared distressed under the Municipalities Financial Recovery Act (Act 47) may be able to increase their Local Services Tax above the limit set in the Local Tax Enabling Act to a maximum rate of \$156.¹⁰ The increase must be part of the recovery plan adopted for the municipality. The municipality must petition the court of common pleas for approval to increase the tax rate above the limit for a period of one year. Subsequent increases may be granted by the court upon annual petition of the municipality until the termination date of the recovery plan.¹¹

A distressed municipality that levies the local services tax at a rate in excess of \$52 must, by ordinance, exempt any person from the local services tax whose total earned income and net profits from all sources within the municipality is less than \$15,600 for the calendar year in which the local services tax is levied (instead of \$12,000 for those municipalities levying the local services tax at no more than \$52).¹² Additionally, a municipality is prohibited from increasing its local services tax rate under Act 47 if it instead increases its earned income tax rate (resident or nonresident) under Act 47.¹³

Distressed municipalities that are also determined to have a level II or level III financially distressed pension system under the Municipal Pension Plan Funding Standard and Recovery Act (Act 205) and that are imposing an increased earned income tax under Act 205,¹⁴ may not increase their Local Services Tax rate above \$104.¹⁵

The local services tax is separate and distinct from the occupation tax. In contrast to the occupation tax, the local services tax is levied on both residents and nonresidents employed within the taxing body’s jurisdiction.¹⁶ It is also distinct from per capita taxes. Per capita taxes are a fixed amount levied on all persons living within the jurisdiction without regard to the amount of property they own or whether they are engaged in an occupation or business. Local services taxes do not have to vary with the particular mode of employment to be valid.¹⁷

Situs and Exemptions

The local services tax is assessed and collected by the political subdivision in which an individual is employed. Because the situs of the tax is the place of employment, no taxing district may levy this tax as though it were another kind of per capita tax. It is intended to be a tax only on persons gainfully employed. If the taxpayer is subject to more than one taxing locality, due to, for example, working in more than one political subdivision during a payroll period, the Act establishes a priority to collect the tax as follows¹⁸:

1. the political subdivision in which the person maintains the principal office or is principally employed;
2. the political subdivision in which the person resides and works if, of course, the political subdivision of residence imposes the tax;
3. the political subdivision in which a person is employed imposing the tax which is nearest the person's home.

All employers with work sites within the taxing jurisdiction are required to deduct the local services tax from their employees at the site of employment. However, when two or more employers employ a taxpayer in a payroll period, an employer is not required to withhold the local services tax if the taxpayer provides a pay stub from his or her principal employer accompanied by an employee statement of principal employment that the pay stub is from the taxpayer's principal employer and that the taxpayer will notify the employer of any change in employment.¹⁹

If a work site straddles the boundary between two townships, then the proper allocation will be based on the percentage of the property within each township.²⁰

If the local taxing authority's local services tax exceeds \$10, Section 301 of the Act requires such taxing authority, by ordinance or resolution, to exempt from its local services tax any person whose earned income and net profits from all sources is less than \$12,000.²¹ If the local taxing authority's local services tax does not exceed \$10, Section 301 of the Act permits, but does not require, such taxing authority, by ordinance or resolution, to exempt from its local services tax any person whose earned income and net profits from all sources is less than \$12,000.²² Additionally, Section 301 of the Act exempts from the local services tax Any person who (i) serves as a member of a reserve component of the armed forces and is called to active duty at any time during the taxable year and (ii) has served in any war or armed conflict and is honorably discharged or released so long as such person is blind, paraplegic or a double or quadruple amputee as a result of military services or is 100 percent disabled from a service connected disability.²³

An employee who reasonably expects to receive earned income and net profits less than \$12,000 from all sources within the political subdivision may file an annual upfront exemption form (available through the Department of Economic Development) with the political subdivision levying the local services tax and the employee's employer.²⁴ A copy of the employee's last pay stubs or W-2 forms from the prior year's employment within the political subdivision where the employee is seeking exemption must be attached to the exemption certificate. Upon receipt of an upfront exemption form and until otherwise instructed by the political subdivision imposing the tax, employers must stop withholding the local services tax for the specific calendar year from employees for whom the exemption applies.²⁵ Employer's must "re-start" withholding the local services tax from an exempt taxpayer if (i) instructed to do so by the political subdivision levying the LST; (ii) notified by the employee that they are no longer eligible for the exemption; or (iii) the employer pays the employee more than \$12,000 for the calendar year.²⁶

Other than monitoring whether an exempt employee has received in excess of \$12,000 in earned income and net profits, the intent of the Act is that employers are not be responsible for investigating exemption certificates, monitoring tax exemption eligibility or exempting any employee from a local services tax.²⁷

Withholding

Taxing jurisdictions may require employers to withhold local services taxes if the tax is listed on the *Register for Local Services Taxes* prepared and issued by the Department of Community and Economic Development.²⁸ In order to have employers withhold taxes, the taxing district must have its tax listed in the *Register*. Employers are required to remit the tax thirty (30) days after each calendar quarter.²⁹

Information must be supplied to the Department of Community and Economic Development on their forms prior to May 31 of each year in order to ensure the information appears in the *Register* for the next reporting period. Tax information forms are mailed to municipalities in November and to school districts in May to update and verify data on file for the *Register* for their forthcoming fiscal years. Failure to receive the information on taxes continued without change is construed by the department to mean the information contained in the previous *Register* remains in force.

The *Register* lists the political subdivisions levying the tax, their effective tax rates, and the name, address and telephone number of the tax officer responsible for collection of the local services tax and from whom information, rules and regulations are available. Stated rates are shown for information purposes only. Copies of the *Register* can be purchased from the department. Information can be obtained by contacting:

Pennsylvania Department of Community and Economic Development
Governor's Center for Local Government Services
400 North Street, 4th Floor
Commonwealth Keystone Building
Harrisburg, Pennsylvania 17120-0225
866-466-3972
dced.pa.gov

REFERENCES

1. Act 222 of 2004, 2004 P.L. 1729, No. 222.
2. Act 7 of 2007, 2007 P.L. 13, No. 7.
3. 53 P.S. §§ 3924.301.1(f)(9), 3924.312.
4. 53 P.S. § 6924.311(8), Local Tax Enabling Act, Section 311(8); 53 P.S. 6924.301.1(f)(9).
5. 53 P.S. § 6924.301.1(f)(9).
6. 53 P.S. § 6924.301.1(f)(9)
7. 53 P.S. § 6924.301.1(f)(9).
8. 53 P.S. § 6924.301.1(f)(9).
9. 53 P.S. § 6924.301.1(f)(9).
10. 53 P.S. § 11701.123(d)(1); Municipalities Financial Recovery Act, Section 123(d)(1)).
11. 53 P.S. § 11701.123; Municipalities Financial Recovery Act, Section 123.
12. 53 P.S. § 11701.123(d)(1); Municipalities Financial Recovery Act, Section 123(d)(1)).
13. 53 P.S. § 11701.123(d)(1); Municipalities Financial Recovery Act, Section 123(d)(1)).
14. 53 P.S. § 895.604-607(f))
15. 53 P.S. § 11701.123; Municipalities Financial Recovery Act, Section 123(d)(1.1)).
16. *Danyluk v. Johnstown*, 178 A.2d 609, 406 Pa. 27 (1962).
17. *Gaugler v. City of Allentown*, 410 Pa. 315, 317, 189 A.2d 264, 265 (1963).
18. 53 P.S. § 6924.301.1(f)(9).
19. 53 P.S. § 6924.301.1(f)(9).
20. *Township of Washington v. Township of Upper Burrell*, 184 A.3d 1083 (Pa. Cmwlth. April 11, 2018).
21. 53 P.S. § 6924.301.1(d).
22. 53 P.S. § 6924.301.1(c).
23. 53 P.S. § 6924.301.1(c).
24. 53 P.S. § 6924.301.1(e).
25. 53 P.S. § 6924.301.1(e).
26. 53 P.S. § 6924.301.1(e).
27. 53 P.S. § 6924.301.1(e).
28. 53 P.S. § 6924.312.
29. 53 P.S. § 6924.312.