

No. 2008-130

AN ACT

SB 763

Amending the act of December 31, 1965 (P.L.1257, No.511), entitled "An act empowering cities of the second class, cities of the second class A, cities of the third class, boroughs, towns, townships of the first class, townships of the second class, school districts of the second class, school districts of the third class and school districts of the fourth class including independent school districts, to levy, assess, collect or to provide for the levying, assessment and collection of certain taxes subject to maximum limitations for general revenue purposes; authorizing the establishment of bureaus and the appointment and compensation of officers, agencies and employes to assess and collect such taxes; providing for joint collection of certain taxes, prescribing certain definitions and other provisions for taxes levied and assessed upon earned income, providing for annual audits and for collection of delinquent taxes, and permitting and requiring penalties to be imposed and enforced, including penalties for disclosure of confidential information, providing an appeal from the ordinance or resolution levying such taxes to the court of quarter sessions and to the Supreme Court and Superior Court," further providing for delegation of taxing powers and restrictions; further providing for the levying of the mercantile or business privilege tax; transferring the Optional Occupation Tax Elimination Act and further providing for definitions, for earned income tax rate limits, for resolutions and for binding referendums and providing for applicability of income tax on personal income; and repealing the Optional Occupation Tax Elimination Act and provisions of the Taxpayer Relief Act.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 301.1 and 311(2) of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, amended July 2, 2008 (P.L.197, No.32), are amended to read:

Section 301.1. Delegation of Taxing Powers and Restrictions Thereon.—(a) The duly constituted authorities of the following political subdivisions, cities of the second class, cities of the second class A, cities of the third class, boroughs, towns, townships of the first class, townships of the second class, school districts of the second class, school districts of the third class, and school districts of the fourth class, in all cases including independent school districts may, in their discretion, by ordinance or resolution, for general revenue purposes, levy, assess and collect or provide for the levying, assessment and collection of such taxes as they shall determine on persons, transactions, occupations, privileges, subjects and personal property within the limits of such political subdivisions, and upon the transfer of real property, or of any interest in real property, situate within the political subdivision levying and assessing the tax, regardless of where the instruments making the transfers are made, executed or delivered or where the actual settlements on such transfer take place. The taxing authority

may provide that the transferee shall remain liable for any unpaid realty transfer taxes imposed by virtue of this chapter.

(b) Each local taxing authority may, by ordinance or resolution, exempt any person whose total income from all sources is less than twelve thousand dollars (\$12,000) per annum from the per capita or similar head tax, occupation tax or earned income tax, or any portion thereof, and may adopt regulations for the processing of claims for exemptions.

(c) (1) Each political subdivision levying the local services tax shall exempt the following persons from the local services tax:

(i) Any person who has served in any war or armed conflict in which the United States was engaged and is honorably discharged or released under honorable circumstances from active service if, as a result of military service, the person is blind, paraplegic or a double or quadruple amputee or has a service-connected disability declared by the United States Veterans' Administration or its successor to be a total one hundred percent permanent disability.

(ii) Any person who 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.

(2) For purposes of this subsection, "reserve component of the armed forces" shall mean the United States Army Reserve, United States Navy Reserve, United States Marine Corps Reserve, United States Coast Guard Reserve, United States Air Force Reserve, the Pennsylvania Army National Guard or the Pennsylvania Air National Guard.

(d) Each political subdivision levying the local services tax at a rate exceeding ten dollars (\$10) shall, and each political subdivision levying the local services tax at a rate of ten dollars (\$10) or less may, by ordinance or resolution, exempt any person from the local services tax whose total earned income and net profits from all sources within the political subdivision is less than twelve thousand dollars (\$12,000) for the calendar year in which the local services tax is levied.

(e) (1) A person seeking to claim an exemption from the local services tax may annually file an exemption certificate with the political subdivision levying the tax and with the person's employer affirming that the person reasonably expects to receive earned income and net profits from all sources within the political subdivision of less than twelve thousand dollars (\$12,000) in the calendar year for which the exemption certificate is filed. In the event the political subdivision utilizes a tax collection officer pursuant to section 10 of this act, the political subdivision shall provide a copy of the exemption certificate to that officer. The exemption certificate shall have attached to it a copy of all the employe's last pay stubs or W-2 forms from employment within the political subdivision for the year prior to the fiscal year for which the employe is requesting to be exempted from the local services tax. Upon receipt of the exemption certificate and until otherwise instructed by the political subdivision levying the tax or except as required by clause (2), the employer shall not withhold the tax from the person during the

calendar year or the remainder of the calendar year for which the exemption certificate applies. Employers shall ensure that the exemption certificate forms are readily available to employees at all times and shall furnish each new employee with a form at the time of hiring. The Department of Community and Economic Development shall develop and make available to political subdivisions and employers uniform exemption certificates required by this clause.

(2) With respect to a person who claimed an exemption for a given calendar year from the local services tax, upon notification to an employer by the person or by the political subdivision that the person has received earned income and net profits from all sources within that political subdivision equal to or in excess of twelve thousand dollars (\$12,000) in that calendar year or that the person is otherwise ineligible for the tax exemption for that calendar year, or upon an employer's payment to the person of earned income within that political subdivision in an amount equal to or in excess of twelve thousand dollars (\$12,000) in that calendar year, an employer shall withhold the local services tax from the person under clause (3).

(3) If a person who claimed an exemption for a given calendar year from the local services tax becomes subject to the tax for the calendar year under clause (2), the employer shall withhold the tax for the remainder of that calendar year. The employer shall withhold from the person, for the first payroll period after receipt of the notification under clause (2), a lump sum equal to the amount of tax that was not withheld from the person due to the exemption claimed by the person under this subsection, plus the per payroll amount due for that first payroll period. The amount of tax withheld per payroll period for the remaining payroll periods in that calendar year shall be the same amount withheld for other employees. In the event the employment of a person subject to withholding of the tax under this clause is subsequently severed in that calendar year, the person shall be liable for any outstanding balance of tax due, and the political subdivision levying the tax may pursue collection under this act.

(4) Except as provided in clause (2), it is the intent of this subsection that employers shall not be responsible for investigating exemption certificates, monitoring tax exemption eligibility or exempting any employee from a local services tax.

(f) Such local authorities shall not have authority by virtue of this act:

(1) To levy, assess and collect or provide for the levying, assessment and collection of any tax on the transfer of real property when the transfer is by will or mortgage or the intestate laws of this Commonwealth or on a transfer by the owner of previously occupied residential premises to a builder of new residential premises when such previously occupied residential premises is taken in trade by such builder as part of the consideration from the purchaser of a new previously unoccupied single family residential premises or on a transfer between corporations operating housing projects pursuant to the housing and redevelopment assistance law and the shareholders thereof, or on

a transfer between nonprofit industrial development agencies and industrial corporations purchasing from them, or on transfer to or from nonprofit industrial development agencies, or on a transfer between husband and wife, or on a transfer between persons who were previously husband and wife but who have since been divorced; provided such transfer is made within three months of the date of the granting of the final decree in divorce, or the decree of equitable distribution of marital property, whichever is later, and the property or interest therein, subject to such transfer, was acquired by the husband and wife, or husband or wife, prior to the granting of the final decree in divorce, or on a transfer between parent and child or the spouse of such a child, or between parent and trustee for the benefit of a child or the spouse of such child, or on a transfer between a grandparent and grandchild or the spouse of such grandchild, or on a transfer between brother and sister or brother and brother or sister and sister or the spouse of such brother or sister, or on a transfer to a conservancy which possesses a tax-exempt status pursuant to section 501(c)(3) of the Internal Revenue Code, and which has as its primary purpose the preservation of land for historic, recreational, scenic, agricultural or open space opportunities, by and between a principal and straw party for the purpose of placing a mortgage or ground rent upon the premises, or on a correctional deed without consideration, or on a transfer to the United States, the Commonwealth of Pennsylvania, or to any of their instrumentalities, agencies or political subdivisions, by gift, dedication or deed in lieu of condemnation, or deed of confirmation in connection with condemnation proceedings, or reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation which reconveyance may include property line adjustments provided said reconveyance is made within one year from the date of condemnation[, leases,]; *or leases or lease transactions*; or on a conveyance to a trustee under a recorded trust agreement for the express purpose of holding title in trust as security for a debt contracted at the time of the conveyance under which the trustee is not the lender and requiring the trustee to make reconveyance to the grantor-borrower upon the repayment of the debt, or a transfer within a family from a sole proprietor family member to a family farm corporation, or in any sheriff sale instituted by a mortgagee in which the purchaser of said sheriff sale is the mortgagee who instituted said sale, or on a privilege, transaction, subject, occupation or personal property which is now or does hereafter become subject to a State tax or license fee;

(2) To levy, assess or collect a tax on the gross receipts from utility service of any person or company whose rates and services are fixed and regulated by the Pennsylvania Public Utility Commission or on any public utility services rendered by any such person or company or on any privilege or transaction involving the rendering of any such public utility service;

(3) Except on sales of admission to places of amusement, other than on sales of admission to professional baseball events in a city of the third class with a population of not less than one hundred six thousand and not more

than one hundred seven thousand based on the 2000 Federal decennial census, or on sales or other transfers of title or possession of property, to levy, assess or collect a tax on the privilege of employing such tangible property as is now or does hereafter become subject to a State tax; and for the purposes of this clause, real property rented for camping purposes shall not be considered a place of amusement;

(4) To levy, assess and collect a tax on goods and articles manufactured in such political subdivision or on the by-products of manufacture, or on minerals, timber, natural resources and farm products produced in such political subdivision or on the preparation or processing thereof for use or market, or on any privilege, act or transaction related to the business of manufacturing, the production, preparation or processing of minerals, timber and natural resources, or farm products, by manufacturers, by producers and by farmers with respect to the goods, articles and products of their own manufacture, production or growth, or on any privilege, act or transaction relating to the business of processing by-products of manufacture, or on the transportation, loading, unloading or dumping or storage of such goods, articles, products or by-products; except that local authorities may levy, assess and collect a local services tax and taxes on the occupation, per capita and earned income or net profits of natural persons engaged in the above activities whether doing business as individual proprietorship or as members of partnerships or other associations;

(5) To levy, assess or collect a tax on salaries, wages, commissions, compensation and earned income of nonresidents of the political subdivisions: Provided, That this limitation (5) shall apply only to school districts of the second, third and fourth classes;

(6) To levy, assess or collect a tax on personal property subject to taxation by counties or on personal property owned by persons, associations and corporations specifically exempted by law from taxation under the county personal property tax law: Provided, That this limitation (6) shall not apply to cities of the second class;

(7) To levy, assess or collect a tax on membership in or membership dues, fees or assessment of charitable, religious, beneficial or nonprofit organizations including but not limited to sportsmens, recreational, golf and tennis clubs, girl and boy scout troops and councils;

(8) To levy, assess or collect any tax on a mobilehome or house trailer subject to a real property tax unless the same tax is levied, assessed and collected on other real property in the political subdivision.

(9) To levy, assess or collect any tax on individuals for the privilege of engaging in an occupation except that such a tax, to be known as the local services tax, may be levied, assessed and collected only by the political subdivision of the taxpayer's place of employment. The following apply:

(i) If a local services tax is levied at a combined rate exceeding ten dollars (\$10) in a calendar year, a person subject to the local services tax shall be assessed a pro rata share of the tax for each payroll period in which

the person is engaging in an occupation. The pro rata share of the tax assessed on the person for a payroll period shall be determined by dividing the combined rate of the local services tax levied for the calendar year by the number of payroll periods established by the employer for the calendar year. For purposes of determining the pro rata share, an employer shall round down the amount of the tax collected each payroll period to the nearest one-hundredth of a dollar. Collection of the local services tax levied under this subclause shall be made on a payroll period basis for each payroll period in which the person is engaging in an occupation, except as provided in subclause (v).

(ii) If a school district levied an emergency and municipal services tax on the effective date of this subclause, the school district may continue to levy the local services tax in the same amount the school district collected on the effective date of this subclause. However, if a municipality located in whole or in part within the school district subsequently levies the local services tax, the school district may only collect five dollars (\$5) on persons employed within the municipality each calendar year. A school district that did not levy an emergency and municipal services tax on the effective date of this subclause shall be prohibited from levying the local services tax. If a school district and a municipality located in whole or in part within the school district both levy a local services tax at a combined rate exceeding ten dollars (\$10), the school district's pro rata share of the aggregate local services taxes levied on persons employed within the municipality shall be collected by the municipality or its tax officer based on payroll periods as provided under subclause (i) and shall be paid to the school district on a quarterly basis within sixty days of receipt by the municipality or its tax officer.

(iii) Except as provided in subclause (ii), no person shall be subject to the payment of the local services tax by more than one political subdivision during each payroll period as established by subclause (iv).

(iv) With respect to a person subject to the local services tax at a combined rate exceeding ten dollars (\$10), the situs of the tax shall be the place of employment on the first day the person becomes subject to the tax during each payroll period. With respect to a person subject to the local services tax at a combined rate of not more than ten dollars (\$10), the situs of the tax shall be the place of employment determined as of the day the person first becomes subject to the tax during the calendar year. In the event a person is engaged in more than one occupation, that is, concurrent employment, or an occupation which requires the person working in more than one political subdivision during a payroll period, the priority of claim to collect the local services tax shall be in the following order: first, the political subdivision in which a person maintains the person's principal office or is principally employed; second, the political subdivision in which the person resides and works, if the tax is levied by that political subdivision; and third, the political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home.

(v) In the case of concurrent employment, an employer shall refrain from withholding the local services tax if the employe provides a recent pay statement from a principal employer that includes the name of the employer, the length of the payroll period and the amount of the local services tax withheld and a statement from the employe that the pay statement is from the employe's principal employer and the employe will notify other employers of a change in principal place of employment within two weeks of its occurrence. The Department of Community and Economic Development shall develop a uniform employe statement form.

(vi) The local services tax shall be no more than fifty-two dollars (\$52) on each person for each calendar year, irrespective of the number of political subdivisions within which a person may be employed. A political subdivision shall provide a taxpayer a receipt of payment upon request by the taxpayer.

(vii) Political subdivisions shall adopt regulations for the processing of refund claims for overpaid local services taxes for any calendar year. The regulations shall be consistent with 53 Pa.C.S. §§ 8425 (relating to refunds of overpayments) and 8426 (relating to interest on overpayment). Refunds made within seventy-five days of a refund request or seventy-five days after the last day the employer is required to remit the local services tax for the last quarter of the calendar year under section 312 of this act, whichever is later, shall not be subject to interest imposed under 53 Pa.C.S. § 8426. Political subdivisions shall only provide refunds for amounts overpaid in a calendar year that exceed one dollar (\$1).

(viii) The Department of Community and Economic Development shall provide suggested forms and technical assistance to facilitate the administration of the local services tax for political subdivisions and reduce the burden of implementation, accounting and compliance for employers and taxpayers.

(ix) For purposes of this clause, "combined rate" shall mean the aggregate annual rate of the local services tax levied by a school district and a municipality located in whole or in part within the school district.

(10) To levy, assess or collect a tax on admissions to motion picture theatres: Provided, That this limitation (10) shall not apply to cities of the second class.

(11) To levy, assess or collect a tax on the construction of or improvement to residential dwellings or upon the application for or issuance of permits for the construction of or improvements to residential dwellings.

(12) To levy, assess and collect a mercantile or business privilege tax on gross receipts or part thereof which are: (i) discounts allowed to purchasers as cash discounts for prompt payment of their bills; (ii) charges advanced by a seller for freight, delivery or other transportation for the purchaser in accordance with the terms of a contract of sale; (iii) received upon the sale of an article of personal property which was acquired by the seller as a trade-in to the extent that the gross receipts in the sale of the article taken in trade does not exceed the amount of trade-in allowance made in acquiring such

article; (iv) refunds, credits or allowances given to a purchaser on account of defects in goods sold or merchandise returned; (v) Pennsylvania sales tax; (vi) based on the value of exchanges or transfers between one seller and another seller who transfers property with the understanding that property of an identical description will be returned at a subsequent date; however, when sellers engaged in similar lines of business exchange property and one of them makes payment to the other in addition to the property exchanged, the additional payment received may be included in the gross receipts of the seller receiving such additional cash payments; (vii) of sellers from sales to other sellers in the same line where the seller transfers the title or possession at the same price for which the seller acquired the merchandise; or (viii) transfers between one department, branch or division of a corporation or other business entity of goods, wares and merchandise to another department, branch or division of the same corporation or business entity and which are recorded on the books to reflect such interdepartmental transactions.

(13) To levy, assess or collect an amusement or admissions tax on membership, membership dues, fees or assessments, donations, contributions or monetary charges of any character whatsoever paid by the general public, or a limited or selected number thereof, for such persons to enter into any place, indoors or outdoors, to engage in any activities, the predominant purpose or nature of which is exercise, fitness, health maintenance, improvement or rehabilitation, health or nutrition education, or weight control.

(14) Except by cities of the second class, to levy, assess or collect a tax on payroll amounts generated as a result of business activity.

(15) Except by cities of the second class in which a sports stadium or arena that has received public funds in connection with its construction or maintenance is located, to levy, assess and collect a publicly funded facility usage fee upon those nonresident individuals who use such facility to engage in an athletic event or otherwise render a performance for which they receive remuneration.

(16) To levy, assess or collect an amusement or admissions tax on the charge imposed upon a patron for the sale of admission to or for the privilege of admission to a bowling alley or bowling lane to engage in one or more games of bowling.

Section 311. Limitations on Rates of Specific Taxes.—No taxes levied under the provisions of this chapter shall be levied by any political subdivision on the following subjects exceeding the rates specified in this section:

* * *

(2) On each dollar of the whole volume of business transacted by wholesale dealers in goods, wares and merchandise, one mill, by retail dealers in goods, wares and merchandise and by proprietors of restaurants or other places where food, drink and refreshments are served, one and one-half mills; except in cities of the second class, where rates shall not exceed one

mill on wholesale dealers and two mills on retail dealers and proprietors. No such tax shall be levied on the dollar volume of business transacted by wholesale and retail dealers derived from the resale of goods, wares and merchandise, taken by any dealer as a trade-in or as part payment for other goods, wares and merchandise, except to the extent that the resale price exceeds the trade-in allowance. *When a political subdivision which currently levies, assesses or collects a mercantile or business privilege tax on gross receipts under section 533 of the act of December 13, 1988 (P.L.1121, No.145), known as the "Local Tax Reform Act," merges with one or more political subdivisions to form a new political subdivision on or after August 1, 2008, the new political subdivision may levy that mercantile or business privilege tax, but not at a rate greater than the rate necessary to generate the same revenues generated in the last fiscal year that the merging political subdivision generated before the merger. If the merging political subdivision had previously shared the rate of taxation with another political subdivision, the nonmerging political subdivision which had shared the rate is capped at the rate it was previously levying.*

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Section 2. The act is amended by adding a chapter to read:

CHAPTER 4 OPTIONAL OCCUPATION TAX ELIMINATION

Section 401. Scope of chapter.

This chapter relates to optional occupation tax elimination.

Section 402. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Earned income tax." *A tax on earned income and net profits levied under this act or a tax on earned income and net profits levied under the act of June 27, 2006 (1st Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act.*

"Election officials." *The county board of elections of a county.*

"Governing body." *A city council, borough council, incorporated town council, board of township commissioners, board of township supervisors, a governing council of a home rule municipality or optional plan municipality, a governing council of any similar general purpose unit of government which may hereafter be created by statute or a board of school directors of a school district.*

"Income tax." *An earned income tax or a personal income tax imposed under this chapter.*

"Occupation tax." *A tax based upon an assessed valuation of a particular trade, occupation or profession. The term includes a tax imposed on a flat rate on all trades, occupations or professions. The term*

does not include a tax upon persons employed in a taxing district, commonly known as an occupational privilege tax.

"Personal income tax." A tax on income enumerated under section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, as determined by the Department of Revenue, subject to any correction or fraud, evasion or error as finally determined by the Commonwealth and levied pursuant to the act of June 27, 2006 (1st Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act.

"Political subdivision." Any city, borough, incorporated town, township or school district.

"Taxpayer Relief Act." The act of June 27, 2006 (1st Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act.

Section 403. Occupation tax replacement generally.

A political subdivision that levies an occupation tax may replace the revenues provided by the occupation tax by increasing the rate of the income tax as provided in this chapter.

Section 404. Income tax rate limits.

(a) **Income tax rate limits.**—For the first fiscal year beginning after approval of the referendum under section 407, and each fiscal year thereafter, the governing body of a political subdivision using the procedures authorized by this chapter shall be authorized to impose an income tax at a rate not exceeding the maximum income tax rate as calculated under subsection (b) or (b.1).

(b) **Calculation of maximum earned income tax rate.**—The maximum earned income tax rate shall be determined by taking the sum of the rates calculated under paragraphs (1) and (2) and limited by paragraph (3):

(1) The rate of the earned income tax that would have resulted in the collection by the political subdivision of an amount equal to the amount collected from the occupation tax. The calculation by a school district under this paragraph shall be made using actual revenue collections for the fiscal year ending in 2002. The calculation by a municipality under this paragraph shall be made using actual revenue collections for the calendar year ending December 31, 2001.

(2) The rate at which the earned income tax was collected by a school district for the fiscal year ending in 2002 or the rate at which the earned income tax was collected by a municipality for the calendar year ending December 31, 2001.

(3) The tax rate determined under paragraphs (1) and (2) shall be rounded off to the nearest increment of ten hundredths of one percent. The maximum rate of the earned income tax calculated under this subsection shall not be subject to the limits on the earned income tax specified under section 311(3).

(b.1) **Calculation of maximum income tax rate.**—The maximum income tax rate for a school district that levied an occupation tax for the fiscal year ending in 2009, or a municipality that levied an occupation tax

for the calendar year ending December 31, 2008, shall be determined by taking the sum of the rates calculated under paragraphs (1) and (2) and limited by paragraph (3):

(1) *The rate of the income tax that would have resulted in the collection by the political subdivision of an amount equal to the amount collected from the occupation tax. The calculation by a school district under this paragraph shall be made using actual revenue collections for the fiscal year ending in 2009. The calculation by a municipality under this paragraph shall be made using actual revenue collections for the calendar year ending December 31, 2008.*

(2) *The rate at which the income tax was collected by a school district for the fiscal year ending in 2009 or the rate at which an earned income tax was collected by a municipality for the calendar year ending December 31, 2008.*

(3) *The tax rate determined under paragraphs (1) and (2) shall be rounded off to the nearest increment of ten hundredths of one percent. The maximum rate of the income tax calculated under this subsection shall not be subject to the limits on the earned income tax specified under section 311(3).*

(c) *Other rates of taxation.—If a municipality or school district, both of which impose an earned income tax on the same individual under this act or the Taxpayer Relief Act and both of which are limited to or have agreed upon a division of the tax rate in accordance with section 311 or 304 of the Taxpayer Relief Act, and the municipality or school district receives voter approval under section 407 and opts to increase the rate of income tax in excess of that limit or agreement, then the municipality or school district which does not receive voter approval shall remain subject to that limit or agreement.*

Section 405. Occupation tax prohibited.

(a) *General rule.—For the first fiscal year beginning after approval of the referendum required under section 407 and each fiscal year thereafter, a political subdivision is prohibited from levying, assessing or collecting an occupation tax.*

(b) *Occupation assessment tax roll.—In a county where no political subdivision levies the tax, the county shall not be required under the provisions of this or another statute to maintain the occupation assessment tax roll.*

(c) *Applicability.—This section shall not apply to the collection of delinquent occupation taxes.*

Section 406. Resolution required.

The governing body may seek authority to increase the maximum limits of the income tax by adopting a resolution to place a referendum on the ballot pursuant to section 407. The governing body shall transmit a copy of the resolution to the appropriate election officials. Prior to approving the resolution, the governing body shall:

(1) Give public notice of its intent to adopt the resolution in the manner provided under section 306.

(2) Conduct at least one public hearing regarding eliminating the occupation tax and increasing the maximum rate of the income tax.

Section 407. Binding referendum.

(a) *Referendum to be held.*—A political subdivision may increase the maximum rate of the income tax only by obtaining the approval of the electorate of the affected political subdivision in a public referendum at the general or municipal election preceding the fiscal year when the maximum rate of the income tax will be increased. The election officials shall cause a question to be placed on the ballot at the first general or municipal election occurring at least 90 days after their receipt of the resolution required under section 406.

(b) *Contents of question.*—The referendum question must state the maximum rate of the income tax calculated under section 404 and that the additional revenue generated by an increase in the income tax will be used to eliminate the occupation tax. The question shall be in clear language that is readily understandable by a layperson. For the purpose of illustration, a referendum question may be framed as follows:

Do you favor increasing the rate of the (earned or personal) income tax to a maximum of X%, with the requirement that the increase be used to eliminate the occupation tax?

(c) *Vote.*—If a majority of the electors voting on the question vote “yes,” then the governing body shall be authorized to implement an increase in the income tax pursuant to section 404 and shall be required to eliminate the occupation tax as required under section 405. If a majority of the electors voting on the question vote “no,” the governing body shall have no authority to increase the rate of the income tax above the maximum rate otherwise provided by law.

(d) *Voting proceedings.*—Proceedings under this section shall be in accordance with the provisions of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code.

Section 408. Applicability.

This chapter shall apply to political subdivisions which levy an occupation tax on the date of enactment of this section.

Section 409. Applicability of personal income tax.

Nothing in this chapter shall be construed to authorize a municipality to levy, assess or collect a personal income tax. The authority to levy, assess or collect a personal income tax shall only apply to a school district in which a board of school directors sought to impose a personal income tax under section 321(c) of the Taxpayer Relief Act and the referendum under section 331.2 or 332 of the Taxpayer Relief Act is approved by the electorate under the Taxpayer Relief Act.

Section 3. Repeals are as follows:

(1) The General Assembly declares that the repeals under paragraphs (2) and (3) are necessary to effectuate the provisions of this act.

(2) The act of June 22, 2001 (P.L.374, No.24), known as the Optional Occupation Tax Elimination Act, is repealed.

(3) The last sentence of section 303(1) of the act of June 27, 2006 (1st Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act, is repealed.

Section 4. The amendment of section 301.1(f)(1) of the act shall not apply to municipalities imposing a tax on leases or lease transactions prior to July 1, 2008.

Section 5. This act shall take effect immediately.

APPROVED—The 15th day of October, A.D. 2008.

EDWARD G. RENDELL