



## BILL SUMMARY

<b><u>COMMITTEE:</u></b>	Finance	<b><u>DATE:</u></b>	6/24/08
<b><u>PRIME SPONSOR:</u></b>	Earll	<b><u>BILL NO.:</u></b>	SB 1063
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### A. **SYNOPSIS:**

Amends the Local Tax Enabling Act (LTEA) Act 511 of 1965, to provide for consolidation of the collection of the local earned income tax at the county level.

### B. **SUMMARY OF THE BILL:**

#### **PLEASE NOTE:**

*Senate Bill 1063 restructures Act 511 into the following Chapters:*

- *Chapter 1 Preliminary Provisions (Page 2)*
- *Chapter 3 Local Taxes (Pages 2-62)*
- *Chapter 5 Consolidation of Income Taxes (Pages 62-121)*
- *Chapter 7 Collection of Delinquent Taxes (Pages 121-132)*
- *Chapter 9 Miscellaneous Provisions (Pages 132-133)*

*Unless indicated in the summary below, Chapters 1, 3, 7 and 9 reflect existing language currently in Act 511. SB 1063 simply amends these sections in the form of renumbering sections to reflect appropriate chapter notations and terms.*

*SB 1063 was amended on the House floor (6/23/2008) with a technical amendment and an amendment that clarifies Section 705 (Collection of taxes by Suit) providing for all taxes deducted from employees to be held in a trust fund for the political subdivision.*

#### **Chapter 5: Consolidation of Income Taxes**

**Section 501 (Definitions)** provides for several new definitions, definitions previously located in Section 13 of Act 511 are not incorporated into this new section. The key new definitions to the statute are as follows:

- *Article XIII tax officer*—the tax officer authorized by a political sub-division to collect income taxes levied prior to January 1, 2012
- *Joint tax collection committee*—an entity formed by two or more tax collection committees for the purpose of income tax collection in more than one tax collection district.
- *Tax bureau*—a public nonprofit entity established for the administration and collection of taxes
- *Tax collection committee*—the committee established to govern each tax collection district for the purpose of income tax collection. The term shall include a joint tax collection committee
- *Tax collection district*—a tax collection district established under section 504.
- *Tax officer*—a political sub-division, public employee, tax bureau, county, except a county of the first class, or private agency which administers and collects income taxes for one or more tax collection districts. Unless otherwise specifically provided, for purposes of the obligations of an employer, the term shall mean the tax officer for the tax collection district within which the employer is located, or , if an employer maintains workplaces in more than one district, the tax officer, for each such district with respect to employees principally employed therein.

**Section 502 (Declaration and payment of income taxes)** provides for the application, declaration of payment and determination of domicile for local income taxes.

### **Section 503 (Reserved)**

**Section 504 (Tax collection districts)** provides for the new consolidated county tax collection districts.

- Tax collection districts (TCD)
  - General Rule
    - Establishes a district in each county (Except Philadelphia) for the purpose of collection income taxes
    - School districts located in more than one county shall be included in the tax collection district with the greatest share of the school district's population based on the 2000 Federal Census
    - A municipality shall be included in the tax collection district in which its school district is located.
    - A municipality that is located in more than one school district and each of which are in a different TCD, the appropriate proportions will follow the school districts.
    - DCED will generate a list by 1/16/2009 of the tax collection districts and political subdivisions in each district
  - Allegheny County Provision
    - Divided into 4 TCD

- 1 TCD will be the City of the Second Class (Pittsburgh) and the Pittsburgh City School District
- Remainder of the county will be divided into 3 TCD of equal population, taking into consideration geography of political subdivisions, school districts and the rivers.
- DCED will generate a map and list of the new TCD by 1/16/2009
- Existing consolidated collection arrangements

**Section 505 (Tax collection committees)** provides for the governing body of the TCD, formerly named the tax collection committee (TCC).

- TCC duties:
  - keep records of all votes and actions taken by the TCC;
  - appoint and oversee a tax officer for the TCD;
  - set the compensation of the tax officer;
  - require, hold, set and review the tax officer's bond;
  - establish the manner of financing of the TCC; and
  - adopt, amend and repeal policies and procedures consistent with the regulations for the administration of income taxes within the TCD.
- Powers:
  - adopt, amend and repeal resolutions to carry out its duties;
  - create a tax bureau and provide for its operation and administration;
  - enter into contracts as necessary;
  - appoint a director for the TCC;
  - retain counsel, auditors and other consultants or advisors to provide professional services;
  - acquire, lease, rent or dispose of real or personal property;
  - enter into agreements with one or more other TCC to form a joint TCC;
  - ability to sue and to be sued, complain and defend in all courts; and
  - the ability to borrow money, accept grants, incur debt and issue notes up to 50% of the total revenues anticipated in the following fiscal year.
- Delegates:
  - By 9/15/2009, each political subdivision that imposes an income tax prior to 7/1/2009 will have one voting delegate and one or more alternates to represent them on the TCC.
  - Each political subdivision that does not impose an income tax prior to 7/1/2009 may appoint one non-voting delegate and one or more alternates to represent them on the TCC.
  - If a political subdivision imposes an income tax after 6/30/2009 for the first time the non-voting delegate will become a voting delegate.
- Quorum
  - Unless otherwise expressed in the bylaws of the TCC, a majority of the delegates of the TCC appointed constitutes a quorum. Quorum must be present to take official action.
- Lack of quorum

- @ 1<sup>st</sup> meeting- If a quorum is not present at the first meeting of the TCC the governing body of the county will reschedule the meeting within 3 weeks. Notice will be given to all parties involved.
- Voting rights
  - Only delegates appointed by the governing body of the political sub-division may represent a political subdivision at a TCC meeting.
  - For the first meeting, actions of the TCC will be determined by a majority vote of those delegates present.
  - Votes will be weighted among the governing bodies by 50% population and 50% of income revenues collected.
  - Subsequent meetings, votes will be taken in accordance to the TCC bylaws
  - DCED will calculate the weighted votes by 9/1/2009
  - By July 1 of each year thereafter, the TCC will recalculate the weighted vote, unless the adopted bylaws provide for a more frequent recalculation.
- First meeting schedule:
  - On or before 11/15/2009;
  - Scheduled by the chair of the county; and
  - Public notice will be released at least 21 days before the meeting
  - Notice by 9/15/2009
- First meeting agenda
  - The chair of the county (i.e. County Commissioners Chairperson or the Chief Executive Officer of the County) will conduct the first meeting and record all votes until a chairperson; vice-chair and secretary are elected by the TCC.
  - The voting delegates of the TCC will elect a chairperson and vice chair person (who must be voting delegates); as well as, a secretary (who may be a non-voting delegate).
  - Chair's responsibilities:
    - schedule meetings;
    - set agenda;
    - conduct meetings; and
    - record votes.
  - Secretaries responsibilities:
    - maintain the minutes and record of the TCC; and
    - provide public notice and all notices to each delegate and alternate.
- Bylaws
  - DCED will provide sample bylaws to TCC.
  - 4/15/2010 TCC will adopt bylaws to govern the TCC and notify DCED within 30 days of adoption.
  - Written notice will be given to each delegate and alternate delegate regarding adoption or amendment of bylaws, including a copy of the proposed bylaws or amendments prior to the meeting.
  - Bylaws of each TCC shall provide for the following:
    - rules of procedure, quorum requirements, voting rights and provisions for managing the affairs of the TCC;
    - list of officers, including the terms, powers and process of election;

- meetings;
  - process for adopting and amending bylaws; and
  - the procedure for the addition of new political subdivisions to the TCC.
- Officers
  - Election of new officers requires update of information within 30 days to DCED.
- Audits of taxes received and disbursed
  - An audit will occur at the end of each calendar year by a CPA or a public accountant appointed by the TCC.
  - The examination shall include the following:
    - an audit of all records relating to the cash basis receipt and disbursement of all public money;
    - reconciliation of the monthly reports;
    - analysis of the bond amount;
    - an analysis of the collection fees charged to the TCC; and
    - in the case of a private agency- examination shall NOT include payroll and other proprietary information.
  - The report will include the following:
    - auditor's opinion letter;
    - financial statement;
    - reconciliation of monthly reports, with receipts and disbursements;
    - a summary of collection fees charged to the TCC;
    - a report on the tax officer's compliance;
    - list of findings of noncompliance;
    - copy of management letter if issued; and
    - report will be filed by 9/1 of the succeeding year.
- Applicability of statutes
  - Each TCC shall be subject to the following laws:
    - Right-to-Know Law;
    - State Adverse Interest Act; and
    - Title 65 (Public Officers), Chapter 7 (Open Meetings) and Chapter 11 (Ethics, standards and financial disclosure)
- Appeals
  - By 6/1/2010 each TCC will establish an appeals board consisting of 3 delegates.
  - All appeals, with the exception of those brought forth through mediation will be conducted in accordance with provisions set forth in Title 53 (Municipalities).
  - A joint appeals board may be established with another TCC
  - No member of the appeals board may be a tax officer employee, agency or attorney for a tax officer
- Mediation and appeals of tax collector actions.
  - Any dispute involving 10% or greater variation from taxes received in the previous tax year will be subject to mandatory mediation.
  - Any dispute involving less than 10% variation from taxes received in the previous tax year will be subject to voluntary mediation.
  - One or more affected political subdivisions will give written notice to the TCC and department of its desire is to mediate the dispute.

- Mediation Process as follows:
  - within 20 days of written notice each party will submit a mediation statement outlining the specifics in the case;
  - within 30 days of written notice the department will determine if the case meets the threshold for mandatory mediation and give notice;
  - department will establish guidelines for mediation;
  - mediation will commence no later than 30 days of notice from department that the threshold for mandatory mediation has been met;
  - mediation will be closed to the public;
  - if settlement is reached the department will prepare a written statement; and
  - if settlement has not reached agreement, extension may be granted.
- Annual Budget
  - Each TCC will adopt a budget.
  - The expenses for operating the TCD will be shared by all political subdivisions within the TCD that are represented by voting delegates on the TCC and will be weighted in direct proportion to the income tax revenues collected in each participating political subdivision.
- Committee establishment in counties with existing consolidated collection arrangements.

**Section 506 (Tax officer)** provides for the collection, administration and standards of the appointed tax officer.

**Section 507 (Appointment of tax officer)** provides for the appointment of the tax officer by the TCC.

- Appointment
  - By 9/15/2010 each TCC will appoint a tax officer by resolution.
  - The department will add information to official tax register.
  - Effective for taxes assessed, collected and administration based on income for on and after 1/1/2012
- Court Selection
  - Occurs if the TCC has not appointed a tax officer or if a successor has not been appointed within 30 days of vacancy.
  - TCC will submit 2 names for nomination to the court of common pleas for the court to select the tax officer.
  - If the TCC fails to submit nominees, any political sub-division within the TCD may petition the court to submit nominations.
- Compensation will be reasonable for services and expenses as determined by the TCC.
- All appointments of tax officers will be in the form of a written agreement between the tax officer and the TCC.
- Eligibility of existing tax collection entities, clarifying the issue of conflict of interest as it applies to delegates.

**Section 508 (Powers and duties of the department)** provides for the powers and duties of DCED.

- Powers
  - DCED will work with Dept. of Revenue (DOR) to develop forms, notices, returns and schedules in order to carry out this act.
- Temporary Regulations
  - DCED may establish temporary regulations for a period of two years in order to carry out the provisions of this act.
- Interim regulations
  - Until temporary or permanent regulations are adopted, the tax officer under previous law remains valid.
- Departmental Study
  - DCED will conduct a study evaluating existing cooperative collection bureaus and evaluate best practices.
  - No later than 12/31/2009 the TCC will be given a report of the findings and recommendations as a result of the DCED study.
  - Part of the study shall include a feasibility examination of contracting on a statewide basis for the development of appropriate collection software systems.
- Mandatory education for tax officers
  - Annual mandatory education training
  - DCED will adopt regulations and guidelines
- Establishment of qualifications and requirements
  - DCED will adopt regulations
  - TCC may establish additional qualifications

**Section 509 (Powers and duties of the tax officer)** provides for the powers and duties of the appointed tax officer to the TCC. Those duties are as follows:

- Duties:
  - collect, reconcile, administer and enforce income taxes on residents and nonresidents;
  - enforce withholding by employers located in TCD;
  - distribute income to other TCD and political subdivisions;
  - comply with all regulations adopted by the TCC and DCED;
  - invest all income taxes as authorized investments; and
  - distribute income from authorized investments.
- Monthly reports
- Overpayments
- Secure bonds
- Records
- Employer and taxpayer audits
- Exchange of information
- Actions for collection of income taxes
- Interest and penalties
- Fines and penalties for violation

- Collection

**Section 510 (Fines and penalties against tax officers)** provides for the distribution of nonresident taxes, monthly reports and audits on income taxes and outlines the violations and actions that can be taken against the tax officer.

**Section 511 (Tax registers)** provides for the local tax register available on the DCED website.

**Section 512 (Withholding and remittance)** provides for the withholding procedures for employers.

- For taxable years commencing on or after 1/1/2012, income taxes will be withheld, remitted and reported as follows:
  - every employer shall register with the appropriate tax officer;
  - each new employee will be required to complete appropriate paperwork and a certificate of residency form;
  - every employer within the TCD will withhold the greater of the employee's resident tax or the employee's nonresident tax as posted on the tax register;
  - within 30 days from the end of each calendar quarter, employer will file a quarterly return and pay the amount of income taxes due to the tax officer for the place of employment of each employee;
  - employers with more than one place of employment in more than one TCD, within 30 days following the last day of each month may file the return and pay the total amount of income taxes deducted from employees in all work locations during the preceding month to the tax officer where their payroll operations are located;
  - employers that have failed to file quarterly may be required to file monthly.
  - on or before February 28 of the succeeding year, every employer shall file an annual return, an individual withholding statement for each employee employed; and
  - any employer who discontinues business will file returns within 30 days of discontinuance.

**Section 513 (Distribution of income taxes) provides for the distribution within the TCD and other TCD and fee schedules of income taxes**

- Unless otherwise agreed to by the tax collection committee, distribution of income taxes shall be as follows:
  - Income taxes received from employers prior to 4/1/2013- distributed within 60 days
  - Income taxes received from employers on or after 4/1/2013 shall be distributed 30 days
- Income taxes received from employers, taxpayers or other TCDs will be distributed based on the information submitted by the employers, taxpayers or TCD.
- Records of distribution will be maintained by the tax officer.

- Within 2 years if a tax officer cannot identify the political subdivision entitled to the income tax payment, payment will be sent back to the municipality in which it was collected.
- Codes will be established by DCED to identify political subdivisions.

**Section 514 (Confidentiality)** provides for the prohibited conduct of the tax officer and its employees; as well as penalties for breach of confidentiality.

**Section 515 (Transition)** provides for the fines and penalties imposed as a result of actions brought forth against a tax officer in the transitional period prior to consolidation.

**Section 516 (Regulatory conflict)** provides that this act shall supersede any regulation from SS ACT 1 that may be in conflict.

**Section 517 (Audit and evaluation)** provides that the Legislative Budget & Finance Committee (LB&FC) will conduct an audit and evaluation of the impact of this chapter and consolidated collection of local income taxes.

**Effective date:** Due to transition to local income tax collection consolidation of this bill, there are several effective provisions that apply to certain provisions.

### **C. SUMMARY OF RELEVANT EXISTING LAW:**

The Local Tax Enabling Act, (Act 511 of 1965) was conceived as a measure to help solve the financial problems of local governments. The taxes authorized by the Act have become permanent sources of revenue for local governments, in some cases exceeding the return from real estate taxes. The broad general taxing power of the original law has been increasingly restricted by legislative amendments and court decisions to the point where the Act is now primarily an express grant of power to levy certain taxes with maximum rates set by the legislature. The enabling language is still there, and from time to time new tax sources are identified and used.

Taxes commonly levied under the Act are the earned income, per capita, realty transfer, business gross receipts, amusement, occupational privilege and occupation taxes. These taxes are defined somewhat through listing of rate limits found in the Act, through similar taxes authorized by other laws, and through the widespread practice of using other units' ordinances as models in enacting the taxes. Section 13 contains standard definitions for the earned income tax, superseding any contrary definitions in local earned income tax ordinances.

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