

## Tax Study Commissions under Act 1

August 3, 2006

### WEBCAST QUESTIONS

- 1. Should the school solicitor also serve as counsel to the Commission?** Each district will have to determine who should serve as counsel to the TSC. The first step is dialogue with the school district solicitor. There is no conflict of interest in the solicitor serving as counsel to the TSC. Accordingly, if the solicitor is comfortable in this role, the solicitor is the logical choice. The bottom line is that both the TSC and the district need legal counsel knowledgeable about Act 1. If the solicitor does not have this knowledge, special counsel should be considered.
- 2. If board declines slot money, don't we have to ask the voters whether they want us to accept or not?** Yes, section 901 specifies that if a board declines the state funding from gaming, a referendum question will be put to the voters asking if they favor the district receiving state funds to reduce property taxes on qualified residential properties. If a majority approves the referendum, the district will receive their property tax reduction allocation beginning in the following fiscal year.
- 3. There seem to be different interpretations regarding the method for calculating the homestead exclusion. Is the homestead exclusion a flat dollar amount for all taxpayers or is it based on the assessed value of the property?** Act 50 dictates that the amount of homestead exclusion and property tax reduction will be the same flat dollar amount for all approved homesteads/farmsteads. Some lawyers have questioned the constitutionality of this provision, because the Constitution authorizes a homestead exclusion "**based on** the assessed value of homestead property." The argument is that a flat dollar amount is not **based on** the assessed value. The tax reduction amount will be a flat dollar amount absent a constitutional challenge.
- 4. Do you place two questions on the May ballot if you want to raise the EIT and then convert it all to PIT?** No, the statute directs districts to place one referendum question on the ballot. Referendum question section 331.2 (e) (iii) states "Do you favor converting the school district's current earned income tax to a personal income tax at x%? The revenue generated from the personal income tax will be used to reduce taxes on qualified residential property by (insert amount of reduction) and to replace the revenue from the school district's current earned income tax. The current earned income tax rate is Z%?"
- 5. If citizens applied for the homestead exemption under Act 72 do they have to re-apply under Act 1?** An application filed and approved under Act 72 is valid for Act 1 and need not be re-submitted.
- 6. May the school board accept only a portion of the TSC's recommendation?**  
Yes

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- 7. Are school districts required to annually ask the front-end referendum questions?** No, districts are only required to place a question on next spring's primary election ballot concerning adoption of a new or increased income tax to fund homestead and farmstead tax reductions, but any future EIT or conversion to a PIT will require a new front-end referendum.
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- 8. Where would one find accurate age, income, employment and property use characteristics of tax base?** The PASBO website contains several links to good sources of data. You can access this information by going to the SS Act 1 Information and clicking on the Local Tax Study Commission resource page.
- 9. What if we can't find citizens who are interested in serving on the commission?** Act 1 provides no remedy for not being able to find individuals to serve on the TSC. It does though **require** all school boards to appoint a Local Tax Study Commission by Sept. 14, 2006, to make a nonbinding recommendation to the school board as it relates to the front-end referendum question. School boards can use advertisements, news releases, applications, and other such means to solicit potential members of the TSC.
- 10. How does the district estimate PIT? For example - How do we know what a taxpayer's income that is relative to PIT?** Data on the PIT is available from the PA Department of Education:  
[http://www.pde.state.pa.us/k12\\_finances/lib/k12\\_finances/pi\\_2004\\_web.xls](http://www.pde.state.pa.us/k12_finances/lib/k12_finances/pi_2004_web.xls) See question 20 for a detailed explanation of incomes included in the PIT. Comparative data on the EIT and PIT is available on the PASBO website.
- 11. Does the selection process for the TSC members have to be public? Must the interviews, etc., be done in a public forum?** No, neither the selection process nor the interview process in the selection of the TSC need be open to the public. The school board should though make the Commission member appointments at a public meeting.
- 12. The School board does not have to accept the TSC's recommendation, right? Then why go through all this?** The statute, in section 331, states that the recommendation of the commission is nonbinding and that "the board of school directors shall accept or reject the recommendation of the local tax study commission prior to adopting a resolution." It is statutorily required that a school district go through this process and presumably this will provide helpful analysis from one point of view to the board as they make their decision.
- 13. How do you look at assessed vs. collected EIT and PIT?** If a school board makes the decision to place a referendum question regarding an addition to the EIT or a replacement PIT tax, the amount of the indicated percent should take into account the district's anticipated collection rates for the said tax to properly fund homestead and farmstead tax reductions.

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**14. Is there a penalty if the Tax Study Commission is appointed by the school board in September but after the 14th?** There is no penalty in the statute.

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**15. Does the school board have to appoint the commission by 9/14?** Yes, Act 1 requires that a school board appoint a Tax Study Commission by Sept. 14, 2006. This means that a school board should appoint the TSC at an August or early September board meeting.

**16. May the board appoint only 3 or 5 members to the commission by 9/14 and then appoint additional members later?** The statute explicitly directs the board to appoint 5, 7, or 9 members to the commission by September 14th. An appointment of 3 members by the 14th with an assumption of appointments to follow would not meet the requirements of the statute. The composition of the commission should be set by the 14th.

**17. May the school board mandate a recommendation in less than 90 days?** The TSC must make a recommendation to the school board **within** 90 days, but a school board may not mandate a lesser period of time than the 90 days for the TSC to make its recommendation.

**18. What if a member is appointed and does not participate or attend the meetings or is disruptive? Are there any repercussions for this member?** There are no provisions in the statute for repercussions for this type of member.

**19. Is Act 72 repealed? We are an Act 72 District. What of the .1% EIT increase that is already pending? Also, how do we deal with the median homestead exemption in multi-county districts?** Act 1 repeals Act 72. The 0.1% increase in the Earned income and Net Profits Tax that participating districts had to enact in order to opt into Act 72 is repealed and cannot be levied or collected. All districts that participated in Act 72 are now bound by all the provisions of Act 1. More information on multi-county school districts will be forthcoming.

**20. Explain the difference between EIT versus PIT.** The earned income base is made up of taxable compensation combined with net profits. Taxable compensation is income from wages, salaries, tips or any other payment received for services rendered, yet it is reduced by business expenses (thus differentiating this category from gross compensation). Net profits is income, after expenses, from a business, profession, or farm. It includes profits from unincorporated businesses but excludes subchapter S profits allocated to a shareholder (beyond the salary of the shareholder) as long as the salary reflects fair compensation for services rendered. If a larger employer in a school district were to close, this would have a significant negative impact on total earned income revenue. The current personal income base incorporates 8 classes of

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income that are taxable. These include: compensation; interest; dividends; net profits from operation of a business, profession or farm; net gains or income from disposition of tangible or intangible property; net gains or income from rents, royalties, patents and copyrights; net gains or income derived through estates or trusts; and gambling or lottery winnings with the exception of PA State Lottery winnings won on or after July 21, 1983. This is a larger and broader base than the earned income tax base. Large downward fluctuations in the stock market would have a negative impact on PIT revenue. Local PIT will match the State PIT.

- 21. When will the higher EIT or PIT rate become effective and require collection?** Any tax approved by voters in May 2007 will go into effect July 1, 2007.
- 22. What will be the impact or ramifications of an ongoing County tax reassessment?** Reassessment should not affect the TSC recommendation or ultimate homestead tax reduction amount. Reassessment does impact the calculation of the homestead exclusion. Under § 327, the homestead exclusion must be adjusted upward in the initial year of reassessment.
- 23. The additional collection costs for EIT collection - may it be considered an offset to the funds provided for real estate tax reduction? If yes, what about the cost of homestead mailings and other costs not previously assessed to districts prior to Act 1?** Yes, additional collection costs for EIT may be considered an offset if the school district employs an outside tax collector and the collection costs are deducted from the tax amounts received by the district, but the costs of homestead mailings and the like, may not be considered an offset and must be born by the district.
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- 24. What fiscal year should we use for the data needed to make the calculations for the tax study commission?** Information available from FY2005-06, should be used, however in instances where that is not available, the most up to date information from sources such as PDE or the Department of Revenue should be utilized.
- 25. Are retirees considered employees of the District for Act 1 Tax Study Commission purposes?** No, retirees are not employees of the district. Act 1 does not prohibit service by a retiree on the TSC if that retiree continues to receive benefits ( i.e. health-care benefits) paid by the district. However, if you want to be ultra conservative you might decide not to appoint such retirees (or not to appoint multiple members who are retirees) to avoid any possible perceived issues of impropriety or conflict of interest.
- 26. Who is going to monitor the data's accuracy that the Commission will be using to make their decision?** There is no provision in the statute for any sort of external monitoring for commissions, but it does specify that the district will

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provide necessary and reasonable support staff to the commission so district administration could reasonably be involved in providing accurate data and analysis.

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- 27. Did your 1999 Act 50 commission ask you for what they wanted or did you provide most based on what you thought they would want?** Since Act 1 requires a focus on 4 mandatory study items (historic and present district revenue from current taxes; the percentage of total district revenues provided by current taxes; the age, income, employment and property use characteristics of the existing district tax base; and projected district revenue from current taxes, and from the possible new of additional Act 1 EIT or PIT), it would be wise if district employees acting as resource participants in the TSC would provide, review, and answer related questions on these referenced materials.
- 28. When will we get clarification about the 1% open issue in order to inform our tax commission about what they will be deciding?** On August 18, 2006, Secretary of Education, Gerald L. Zahorchak, issued a written opinion in which he stated that, "The existing EIT rate does not count toward that 1% increase." "For example, a school district that currently levies and collects 0.5% earned income tax may ask voters to increase the EIT by 1% (or perhaps more ....), to a total of 1.5%. In this case, 0.5% will continue to be used for school district operations and the additional 1% will be used to annually fund homestead and farmstead exclusions."
- 29. Can the TSC recommend a 0% EIT** The TSC can recommend implementing a PIT instead of an EIT, and, that, in effect, would result in a 0% EIT, but the referendum question placed on the ballot by a school board must concern the adoption of a new or an increased income tax to fund homestead and farmstead tax reductions.
- 30. What if voters vote down the May 2007 referendum?** If less than a majority of the electors voting on the question approve the referendum, then the new tax rates will not take effect and there will be no tax shift from local property tax to the EIT or PIT.
- 31. Can the Board opt not to put the question of increasing the EIT or enact a PIT on the ballot?** Every school board must submit at the May 2007 primary election a "front-end" voter referendum question concerning adoption of a new or increased income tax to fund homestead and farmstead tax reductions. There is an open legal issue concerning whether a district that already has an EIT rate of 1% or more may opt not to put a question on the ballot.
- 32. When appointing the Local Tax Study Commission, may the board appoint members as chair, secretary, etc. or is the board required to rely upon the Commission to elect their own members to those positions? The**

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**indication during the presentation was that it may not. Why not?** The board can not appoint the officers of the Commission because the Commission is an independent entity with the right to conduct its affairs as it deems appropriate as long as it is not violating the statute. However, nothing prevents a school board from recommending action, and this may help jump start commission action if the board, either formally or informally, suggests someone to serve as chairperson.

**33. All this still applies even if you do not currently have an EIT or PIT?** Yes, Act 1 requires either an EIT or a PIT be proposed in those 38 districts that currently do not impose any income tax in order to fund homestead and farmstead tax reductions.

**34. Will we use our estimated millage for 07-08 for our calculations?** Yes

**35. Would a district who has not enacted Act 24, still have the option of Act 24 available?** In section 303, Act 1 explicitly retains the Act 24 option. Act 24 allows boards to eliminate the Occupational Assessment Tax and replace it with an increase in the Earned Income Tax (EIT) rate with voter approval. Act 24 does not allow for a shift from the Occupational Assessment Tax to the Personal Income Tax (PIT) and section 303 of Act 1 states "If a school district converts its earned income and net profits tax to a personal income tax under this chapter, the school district may not utilize the Optional Occupation Tax Elimination Act." However, with voter approval, a district can increase either the PIT or the EIT for any reason.