

SUMMARY OF PENNSYLVANIA SB 76 AND HB 76 PROPERTY TAX INDEPENDENCE ACT

Highlights:

- Both bills would eliminate property taxes in Pennsylvania (however per Chapter 11 of both bills, Philadelphia would be allowed to use property taxes, not for their schools, but for municipal purposes).
- Schools would be funded through revenue raised by the state income tax and the sales and use tax.
- Exclusions to sales and use tax: Rental of real property and many business to business transactions for services would not be taxed, per Chapter 7, § 704.
- School districts' authority to levy, assess and collect real property taxes would expire Jan 1, 2014 – except as necessary to service its outstanding debt in existence before December 31, 2012, per Chapter 11, §1102. School districts would still be able to collect any property taxes that were owed before these changes go into effect.
- Philadelphia would be allowed to continue to collect property taxes that were in existence on July 31, 2013 at the rates in effect on that date for the use in their school district for fiscal year 2013-2014. Their overall authority to levy assess and collect property taxes for use in their school district (except to service their outstanding debt in existence on December 31, 2012) would expire December 31, 2013, per Chapter 11 §1102 (b).
- If School boards first obtain approval in a public referendum, they would be allowed to enact a local tax on personal income or a tax on earned income and net profits “for general revenue purposes”, per Chapter 3, §305 (a).

Chapter Summaries:

Chapter 3: Taxation by School Districts (school districts could ask their electorate for authority to create a personal income tax or an earned income and net profits tax)

1. **§ 301, Scope:** Authorizes school districts to levy, assess and collect a tax on personal income or a tax on earned income and net profits as a means of abolishing property taxation by the school district.
2. **§302, Definitions:** Both bills use the same definitions for key terms as they are used in the Tax Reform Code of 1971 or Local Tax Enabling Act
3. **§303: Limitation:** Taxes imposed under this chapter would be subject to limitations set forth in the bills' Chapter 11 for limiting school district taxation, which deals with the limitations on school district taxation.
4. **§ 305: General tax authorization:**
 - a. General rule- school boards may levy, assess and collect a tax on personal income or a tax on earned income and net profits for general revenue purposes. Must obtain approval via a public referendum.
 - b. **Personal income tax or earned income**
 - i. At a rate determined by the school board.
 - ii. Must be by a public referendum.

- iii. If electorate approves personal income tax by referendum, school board cannot impose an earned income tax.

c. Earned income and net profits tax:

- i. At a rate determined by the school board.
- ii. Must be by a public referendum.
- iii. If electorate approves personal earned income and net profits tax by referendum, school board cannot impose a personal income tax.

5. § 306: Referendum requirement and procedures for holding a referendum.

Before imposing a personal income tax or earned income and net profits tax, the governing body must get approval from the electorate. The referendum language must include the initial rate, the purpose of the tax, its duration, and the amount of revenue to be generated. ---Proponents of SB 76 and HB 76 note these provisions are provided so school boards can fund major projects such as new school construction.

6. §307: Continuity of tax. The tax will continue each fiscal year without annual reenactment unless the rate changes or the duration placed on the referendum expires.

7. §308: Collections. Collections would be subject to the provisions for collection and delinquency in the PA Local Tax Enabling Act.

8. §309: Credits and limitations. The provisions of the PA Local Tax Enabling Act must be applied by the school district to determine any credits applicable imposed under this chapter– but residents of school districts in PA who pay income taxes to other states or political subdivisions outside Pennsylvania cannot take a credit or deduction to the taxes owed to the PA school district in which they reside.

9. § 310: Exemption and special provisions. For earned income and net profits tax-- school districts can exempt persons with a total income of less than \$12,000.

10. §311 Regulations. Earned income and net profits taxes would be subject to provisions of the PA Local Tax Enabling Act. Personal income tax subject to regulations of Department of Revenue.

Chapter 4: Education Tax (increases the PA income tax).

1. **General rule**—Adds 1.27% to the PA income tax rate, increasing it from 3.07% to 4.34%.
2. The additional money would be deposited in a separate Education Stabilization Fund-- the new fund established in this act (see Chapter 13) to fund school districts.

Chapter 7: Sales and Use Tax for the Stabilization of Education Funding

Subchapter A Preliminary Provisions.

1. Scope: This would replace the sales and use tax authorized in Article II of the Tax Code. It broadens the base of purchases that are taxed. It adds items to be taxed such as candy, gum, newspapers, magazines, dry cleaning and laundry services, haircuts, admissions to spectator sports.
2. Definitions: Specific items and services are defined. For example “Maintaining a place of business in this Commonwealth”, “manufacturer” , “processing”, “person (includes

partnerships, corporations), “purchase at retail”, “sale at retail”, “tangible personal property”, and “use” are among the definitions provided.

Subchapter B Sales and Use Tax:

§702 Imposition of the tax: - 7% on each separate sale at retail of tangible personal property or services in Pennsylvania; And 7% on the use in Pennsylvania of tangible personal property purchased at retail and services purchased at retail. Except no tax has to be paid by the person if he/she paid the sales tax at retail or has paid the tax imposed by this subsection to the vendor with respect to the use.

Subchapter C Exclusions from Sales and Use Tax

§704: Exclusions from tax.

Section 704 contains approximately 80 to 90 exclusions from the sales and use tax.

Below are selected items from this section that would apply to our industry:

- a. Item # 74-“the rental of real property” - excluded from sales and use tax.
 - b. Item 76 – “The sale at retail of any of the following business, professional or technical services performed by a business and rendered to another business:”...
Among the list of services excluded from the sales and use tax:
 - i. Legal services, architectural, engineering and related services, accounting services, advertising services, services to a building and dwellings, scientific, environmental and technical consulting services, information services, administrative services, custom programming, design and data processing services, parking lot and garage services.
 - c. Item # 80 “the sale at retail to or use by a person of the services rendered by or under the supervision of a licensed real estate broker, associate broker or salesperson in connection with any aspect of the sale, lease or acquisition of any interest in real property.
 - d. Also not taxed are sale of water, food items purchased with food stamps or under the WIC (Women Infants and Children) program or clothing and footwear valued below \$50, prescription medicines or medical supplies.
2. **§705 Alternate imposition of tax.** Applies to car dealers and aircraft operators.
 3. **§ 706 Credit against tax-**
 - a. **For tax paid to another state.** Creates a credit for the sales and use tax for tangible personal property or services purchased for use outside PA equal to the tax paid to another state- as long as the other state grants a similar credit.
 - b. **Provisions for telecommunications services.** Creates a credit for call centers for their gross receipts tax on incoming and outgoing interstate telecommunications services to the call center under the PA Tax Reform Code of 1971.

Subchapter D deals with licenses: Every person with a place of business in PA selling or leasing services or tangible personal property that are subject to this tax must obtain a license from the Department of Revenue.

Subchapter E Hotel Occupancy Tax - 7% on every occupancy.

Subchapter F Procedure and Administration: Includes provision for who is required to file returns, time for filing, annual reporting, time of payment, review by Revenue, etc.

1. **§737 Collection of tax:** Persons maintaining a place of business in PA and selling or leasing tangible personal property or services subject to the tax must collect the tax. Includes procedures for certifying when a sale is not legally subject to the tax.
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2. **§738 Collection of tax on motor vehicles, trailers and semi-trailers...**
3. **§739 Pre-collection of tax-** authorization under certain circumstances...
4. **§742. Lien for taxes:** If any person liable to pay any tax neglects or refuses the amount including interest, penalties and costs shall be a lien on the real and personal property of the person after it has been entered and docketed by the pertinent prothonotary. Lien has priority status....
5. **§ 743-** Department of Revenue may sue within three years for taxes finally due and payable.
6. **§745-Service of Process-** any person who maintains a place of business in PA is deemed to have appointed the Secretary of the Commonwealth as the person's agent for acceptance of service of process or notice.

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Subchapter G. Funding Provisions.....

§782 Transfers to Education Stabilization Fund – of taxes raised through the sales and use.

- (a) Legislative intent- “to increase the rate of the current sales and use tax and broaden the sales and use tax base in order to provide funds for operating expenses of school districts and as a means to abolish the school property tax.”
- (b) Deposit of sales and use tax collected-into the Education Stabilization Fund.

Chapter 11 Limitations on School District Taxation:

§1101 – Authority of school districts to tax real property expires on January 1, 2014.

§1102 -Districts can collect for fiscal year 2013 -2014. § 1102 (2) -For fiscal years beginning after June 30, 2014, no school district would have any power or authority to levy, assess and collect any real property tax, except as necessary to fund the annual debt service payments for its outstanding debt in existence on December 31, 2012.

§1102 Transitional taxes for cities of the first class (that is, Philadelphia). Philadelphia would be allowed to collect property and other taxes in existence on July 31, 2013 for its school district at the rates in effect on that date for the 2013 – 2014 fiscal year. Their authority to levy, assess and collect such taxes for the use of their school district expires

December 31 2013. But they can still collect taxes as necessary to fund the annual debt service payments for its outstanding debt in existence on December 31, 2012.

§ 1104 -Cities of first class (Philadelphia) can continue to collect property taxes and other taxes for municipal purposes. The bill states: "...nothing in this act shall be construed to limit or impair a city of the first class from levying, assessing or collecting any tax for municipal purposes or from increasing the millage for real estate taxes or revenues if the revenues derived from the real property tax are used solely for municipal purposes."

Chapter 12 – Indebtedness: School districts cannot incur any electoral debt, lease rental debt or non-electoral debt after the effective date of this section unless it is authorized under Chapter 3 or any other law.

Chapter 13 Funding Provisions: Would establish The Education Stabilization Fund as a separate fund in the State Treasury.

School districts will receive disbursements of funds as follows:

For 2014-2015:

Their base revenue will be the amount they receive in school property taxes in the 2013-2014 fiscal year, minus the amount necessary to fund the annual debt service payments for its debt in existence on December 31, 2012.

1. Multiply the base revenue by the cost of living factor (which is the lesser of the average annual percentage increase in the Consumer Price Index (CPI) for PA NJ and MD area in the preceding year or the percentage increase in sales and use tax collected in the previous year.
2. Divide the product in # 2 above by four.
3. Disburse the amount in # 3 each quarter.

For 2015 -2016 and thereafter:

1. Take the amount received in the prior fiscal year
2. Multiply that amount by the cost of living factor.
3. Divide that product by four, and disburse that amount each quarter.

Chapter 15- Miscellaneous Provisions:--Sets out the authority of the Department of Revenue, and statutory construction.