

No. 2001-24

AN ACT

HB 550

Providing for optional occupation tax replacement; and making a repeal.

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

Section 1. Short title.

This act shall be known and may be cited as the Optional Occupation Tax Elimination Act.

Section 2. Definitions.

The following words and phrases when used in this act 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 section 13 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

“Election officials.” The county board of elections of a county.

“Governing body.” A board of school directors of a school district.

“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.

“Political subdivision.” Any school district.

“The Local Tax Enabling Act.” The act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

Section 3. 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 earned income tax as provided in this act.

Section 4. Earned income tax rate limits.

(a) **Earned income tax rate limits.**—For the first fiscal year beginning after approval of the referendum under section 7 and each fiscal year thereafter, the governing body of a political subdivision using the procedures authorized by this act shall be authorized to impose the earned income tax at a rate not exceeding the maximum earned income tax rate as calculated under subsection (b).

(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. This calculation shall be made using actual revenue collections for the fiscal year ending immediately prior to the date of the referendum under section 7.

(2) The rate at which the earned income tax was collected by the political subdivision for the fiscal year ending immediately prior to the date of the referendum under section 7.

(3) The tax rate determined under paragraphs (1) and (2) shall be rounded off to the nearest increment of five 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 in section 8(3) of The Local Tax Enabling Act.

(c) Other rates of taxation.—If a municipality or school district, both of which impose an earned income tax on the same individual under The Local Tax Enabling Act and both of which are limited to or have agreed upon a division of the tax rate in accordance with section 8(3) of The Local Tax Enabling Act, and the school district receives voter approval under section 7 and opts to increase the rate of earned income tax in excess of that limit or agreement, then the municipality shall remain subject to that limit or agreement.

Section 5. Occupation tax prohibited.

For the first fiscal year beginning after approval of the referendum required under section 7 and each fiscal year thereafter, a political subdivision is prohibited from levying, assessing or collecting an occupation tax. This section shall not apply to the collection of delinquent occupation taxes.

Section 6. Resolution required.

The governing body may seek authority to increase the maximum limits of the earned income tax by adopting a resolution to place a referendum on the ballot pursuant to section 7. 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 by section 4 of The Local Tax Enabling Act.

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

Section 7. Binding referendum.

(a) Referendum to be held.—A political subdivision may increase the maximum rate of the earned 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 earned 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 in section 6.

(b) *Contents of question.*—The referendum question must state the maximum rate of the earned income tax calculated under section 4 and that the additional revenue generated by an increase in the earned 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 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 earned income tax pursuant to section 4 and shall be required to eliminate the occupation tax as required by section 5. 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 earned 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 8. Applicability.

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

Section 9. Effective date.

This act shall take effect immediately.

APPROVED—The 22nd day of June, A.D. 2001.

THOMAS J. RIDGE