

No. 1984-170

AN ACT

HB 1175

Amending the act of April 13, 1972 (P.L.184, No.62), entitled "An act giving municipalities the right and power to adopt home rule charters or one of several optional plans of government and to exercise the powers and authority of local self-government subject to certain restrictions and limitations; providing procedures for such adoption and defining the effect thereof," clarifying the taxing authority of home rule municipalities.

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

Section 1. Section 102 of the act of April 13, 1972 (P.L.184, No.62), known as the Home Rule Charter and Optional Plans Law, is amended by adding definitions to read:

Section 102. As used in this act:

* * *

"Nonresident" means any person or entity not a resident within the meaning of this act.

* * *

"Rate of taxation" means the amount of tax levied by a municipality on a permissible subject of taxation.

"Resident" means any person, or any corporation, partnership, association, joint stock association or other entity:

(1) living in or maintaining a permanent or fixed place of abode in a municipality; or

(2) conducting or engaging in a business for profit within a municipality.

"Subject of taxation" means any person, business, corporation, partnership, entity, real property, tangible or intangible personal property, property interest, transaction, occurrence, privilege, transfer, occupation or any other levy which is determined to be taxable by the General Assembly. The term shall not be construed to mean the rate of tax which may be imposed on a permissible subject of taxation.

Section 2. Section 302 of the act, amended July 3, 1974 (P.L.421, No.149), is amended to read:

Section 302. (a) **[The] With respect to the following subjects, the** home rule charter adopted in accordance with the provisions of this act shall not give any power or authority to the municipality contrary to, or in limitation or enlargement of powers granted by acts of the General Assembly which are applicable to a class or classes of municipalities **[on the following subjects]:**

(1) The filing and collection of municipal tax claims or liens and the sale of real or personal property in satisfaction thereof.

(2) The procedures in the exercise of the powers of eminent domain, and the assessment of damages and benefits for property taken, injured or destroyed.

- (3) Boundary changes of municipalities.
- (4) Regulation of public schools.
- (5) The registration of electors and the conduct of elections.
- (6) The fixing of subjects of taxation.
- (7) The fixing of the rates of nonproperty or personal taxes levied upon nonresidents.
- (8) The assessment of real or personal property and persons for taxation purposes.
- (9) Defining or providing for the punishment of any felony or misdemeanor.
- (10) Municipal planning under the provisions of the act of July 31, 1968 (P.L.805, No.247), known as the "Pennsylvania Municipalities Planning Code."

(a.1) Unless prohibited by the Constitution of Pennsylvania, the provisions of any other act of the General Assembly, the provisions of this act or its home rule charter, a municipality which has adopted a home rule charter shall have the power and authority to enact and enforce local tax ordinances upon any subject of taxation granted by the General Assembly to the class of municipality of which it would be a member but for the adoption of a home rule charter at any rate of taxation determined by the governing body. No home rule municipality shall establish or levy a rate of taxation upon nonresidents which is greater than the rate which such municipality would have been authorized to levy on nonresidents but for the adoption of a home rule charter. The governing body of a home rule municipality shall not be subject to any limitation on the rates of taxation imposed upon residents.

(b) No municipality shall (i) engage in any proprietary or private business except as authorized by the General Assembly, (ii) exercise powers contrary to, or in limitation or enlargement of powers granted by acts of the General Assembly which are applicable in every part of the Commonwealth, (iii) be given the power to diminish the rights or privileges of any former municipal employe entitled to benefits or any present municipal employe in his pension or retirement system, (iv) enact or promulgate any ordinance or regulation with respect to definitions, sanitation, safety, health, standards of identity or labeling pertaining to the manufacture, processing, storage, distribution and sale of any foods, goods or services subject to any Commonwealth laws or regulations unless such municipal ordinance or regulation is uniform in all respects with such Commonwealth laws and regulations. Nothing herein contained shall be construed to in any way affect the power of any municipality to enact and enforce ordinances relating to building codes or any other safety, sanitation or health regulation pertaining thereto, nor (v) enact any provision inconsistent with any statute heretofore enacted by the General Assembly affecting the rights, benefits or working conditions of any employe of a political subdivision of the Commonwealth.

(c) Acts of the General Assembly in effect on the effective date of this act that are uniform and applicable **[throughout]** *in every part of* the Commonwealth shall remain in effect and shall not be changed or modified by this act. Acts of the General Assembly enacted after the effective date of this act

that are uniform and applicable **[throughout] in every part of** the Commonwealth shall supersede any municipal ordinance or resolution on the same subject.

(d) No municipality which adopts a home rule charter shall at any time thereunder determine duties, responsibilities or requirements placed upon businesses, occupations and employers, including the duty to withhold, remit or report taxes or penalties levied or imposed upon them or upon persons in their employment, except as expressly provided by acts of the General Assembly, which are applicable in every part of the Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities: ***Provided, however, That this subsection shall not be construed as a limitation in fixing rates of taxation on permissible subjects of taxation.***

(e) No municipality shall enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.

(f) Nothing contained herein shall limit or take away any right of a municipality which adopts a home rule charter from levying any tax which it had the power to levy had it not adopted a home rule charter.

(g) No provision of this or any other act of the General Assembly shall limit a municipality which adopts a home rule charter from establishing its own rates of taxation upon all authorized subjects of taxation except those specified in subsection (a)(7) herein.

Section 3. Section 8 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, is repealed insofar as it relates to limitations on rates of taxes imposed on residents of home rule municipalities.

Section 4. This act shall be retroactive to April 13, 1972.

Section 5. This act shall take effect immediately.

APPROVED—The 11th day of October, A. D. 1984.

DICK THORNBURGH