

Article V — Powers, Duties, and Compensation of Tax Officer

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Article V — Powers, Duties, and Compensation of Tax Officer

§ 80-501 Tax Collection.

In addition to any other power and duty conferred upon a tax officer in this Chapter, it shall be the duty of the tax officer:

(a) To collect, reconcile, administer and enforce income taxes imposed on residents and nonresidents in the Borough included in the tax collection district.

(b) To receive and distribute income taxes and to enforce withholding by employers located in the tax collection district.

- (c) To receive income taxes distributed by tax officers for other tax collection districts.
- (d) To distribute income taxes to the Borough as required by section 513 of the LTEA, 53 PA. STAT. ANN. § 6924.513.
- (e) To comply with all regulations adopted by the Borough under this Chapter and all resolutions, policies and procedures adopted by the tax collection committee.
- (f) To invest all income taxes in the custody of the tax officer in authorized investments, subject to the approval of the tax collection committee. The tax officer shall observe the standard of care that would be observed by a prudent person dealing with property of another. For the purposes of this paragraph, the term “authorized investment” shall include all of the following:
 - (1) Short-term obligations of the United States Government or its agencies or instrumentalities which are backed by the full faith and credit of the United States or are rated in the highest category by a nationally recognized statistical rating organization.
 - (2) Deposits in savings accounts, time deposits, share accounts or certificates of deposit of institutions, insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, or their successor agencies, to the extent that the accounts are insured and, for the amount above the insured maximum, that collateral, free from other liens, for the amount is pledged by the depository institution.
 - (3) Deposits in investment pools established by the State Treasurer or established by local governments pursuant to 53 PA. CONS. STAT. ch. 23, subch. A (relating to intergovernmental cooperation) and related statutes, *provided* that the investment pools are rated in the highest category by a nationally recognized statistical rating organization.
 - (4) Repurchase agreements which are fully collateralized by obligations of the United States Government or its agencies or instrumentalities, which are free from other liens and backed by the full faith and credit of the United States or are rated in the highest category by a nationally recognized statistical rating organization.
- (g) To distribute income generated from investments authorized under subsection (f) as determined by the tax collection committee.

§ 80-502 Monthly Reports.

The tax officer shall, within 20 days after the end of each month, provide a written report, on forms prescribed by the department, to the secretary of the tax collection committee and to the Borough Manager for which taxes were collected during the previous month. The report shall include a breakdown of all income taxes, income generated from investments under § 80-501(f), penalties, costs, and other money received, collected, expended, and distributed for each political subdivision served by the tax officer and of all money distributed to tax officers for other tax collection districts.

§ 80-503 Overpayments.

A tax officer shall refund, under 53 PA. CONS. STAT. § 8425 (relating to refunds of overpayments) and § 8426 (relating to interest on overpayment), on petition of and proof by the taxpayer, income taxes paid in excess of income taxes rightfully due.

§ 80-504 Bonds.

Prior to initiating any official duties, each tax officer shall give and acknowledge a bond to the appointing tax collection committee as follows:

(a) The tax collection committee shall fix the amount of the bond in an amount equal to the maximum amount of taxes that may be in the possession of the tax officer at any given time or an amount sufficient, in combination with fiscal controls, insurance, and other risk management and loss prevention measures used by the tax collection district, to secure the financial responsibility of the tax officer in accordance with guidelines adopted by the department. The amount of the bond shall be revised annually by the tax collection committee based upon the annual examination required under section 505(h) of the LTEA, 53 PA. STAT. ANN. § 6924.505(h).

(b) Each bond shall be joint and several, with one or more corporate sureties, which shall be surety companies authorized to do business in this Commonwealth and licensed by the Insurance Department.

(c) Each bond shall be conditioned upon the completion of all of the following by the tax officer's employees and appointees:

(1) The faithful execution of all duties required of the tax officer.

(2) The just and faithful accounting or payment over of all moneys and balances paid to, received, or held by the tax officer by virtue of the office in accordance with law.

(3) The delivery of all tax records or other official items held in right as the tax officer to the tax officer's successor in office.

(d) Each bond shall be taken in the name of the tax collection district and shall be for the use of the tax collection district appointing the tax officer, and for the use of any other political subdivision or tax collection district for which income taxes shall be collected or distributed in case of a breach of any conditions of the bond by the acts or neglect of the principal on the bond.

(e) The tax collection committee or any political subdivision may sue upon the bond for the payment or distribution of income taxes.

(f) Each bond shall contain the name of the surety company bound on the bond.

(g) The tax collection committee may, upon cause shown and due notice to the tax officer and the tax officer's sureties, require or allow the substitution or the addition of a surety company acceptable to the tax collection committee for the purpose of making the bond sufficient in amount, without releasing the sureties first approved from any accrued liability or previous action on the bond.

(h) The tax collection committee shall designate the custodian of the bond.

(i) The tax officer shall file copies of all bonds in effect with the Borough.

(j) A copy of all bonds in effect shall be made available upon request and at no cost to the department or to a tax collection district or political subdivision seeking payment or distribution of income taxes authorized by this Chapter.

§ 80-505 Records.

It shall be the duty of the tax officer to keep a record showing the amount of income taxes received from each taxpayer or other tax officer, the date of receipt, the amount and date of all other moneys received or distributed, and any other information required by the department. All tax records shall be the property of the Borough and the tax collection district in which the taxes were collected. The tax collection district and tax officer shall retain all tax records as directed by the tax collection committee and, when applicable, in accordance with retention and disposition schedules established by the Local Government Records Committee of the Pennsylvania Historical and Museum Commission under 53 PA. CONS. STAT. ch. 13, subch. F (relating to records). Tax records under this section may be retained electronically as permitted by law.

§ 80-506 Employer and Taxpayer Audits.

(a) In order to verify the accuracy of any income tax declaration or return or, if no declaration or return was filed, to ascertain the income tax due, the tax officer and the tax officer's designated employees may examine or audit the records pertaining to income taxes due of any of the following:

(1) An employer;

(2) A taxpayer; and/or

(3) A person whom the tax officer reasonably believes to be an employer or taxpayer.

(b) The examination or audit conducted by the tax officer and the tax officer's designated employees shall conform to the requirements set forth in 53 PA. CONS. STAT. ch. 84, subch. C (relating to local taxpayers bill of rights).

(c) Every employer and taxpayer or other person whom the tax officer reasonably believes to be an employer or taxpayer shall provide to the tax officer and the tax officer's designated employees the means, facilities and opportunity for the examination and investigation authorized under subsection (a).

(d) For purposes of this section, the term "records" shall include any books, papers, and relevant Federal or State tax returns and accompanying schedules, or supporting documentation for any income taxable under this Chapter.

§ 80-507 Exchange of Information.

(a) The tax officer shall ensure that the tax collection district enters into an agreement with the Department of Revenue for the exchange of information as necessary for the collection of income taxes.

(b) The Department of Revenue may enter into agreements with each tax collection district and shall establish procedures under which tax collection, filing and other taxpayer and locality information in its custody will be made available to tax officers for purposes of collection, reconciliation and enforcement no later than one year after the deadline for filing returns for the tax year in question.

§ 80-508 Actions for Collection of Income Taxes.

The tax officer may file an action in the name of the Borough for the recovery of income taxes due to the Borough and unpaid. Nothing in this section shall affect the authority of the Borough to file an action in its own name for collection of income taxes under this Chapter. This section shall not be construed to limit a tax officer, a tax collection district, or the Borough from recovering delinquent income taxes by any other means provided by this Chapter. Actions for collection of income taxes shall be subject to the following:

(a) Except as set forth in subsections (b) or (d), an action brought to recover income taxes must be commenced within three years of the *later* of the date:

- (1) the income taxes are due;
- (2) the declaration or return has been filed; or
- (3) of a redetermination of compensation or net profits by the Department of Revenue.

(b) If there is substantial understatement of income tax liability of 25% or more and there is no fraud, an action must be commenced within six years.

(c) Except as set forth in subsection (d)(2), (d)(3), or (d)(4), an action by a tax officer for recovery of an erroneous refund must be commenced as follows:

- (1) Except as set forth in paragraph (2), within two years after making the refund.
- (2) If it appears that any part of the refund was induced by fraud or misrepresentation of material fact, within five years after making the refund.

(d) There is no limitation of action if any of the following apply:

- (1) A taxpayer fails to file a declaration or return required under this Chapter.
- (2) An examination of a declaration or return or of other evidence in the possession of the tax officer relating to the declaration or return reveals a fraudulent evasion of income taxes.

(3) An employer has deducted income taxes under section 512 of the LTEA, 53 PA. STAT. ANN. § 6924.512, and has failed to pay the amount deducted to the tax officer.

(4) An employer has intentionally failed to make deductions required by this Chapter.

§ 80-509 Interest and Penalties.

(a) Except as provided in subsection (b), if the income tax is not paid when due, interest at the rate the taxpayer is required to pay to the Commonwealth under section 806 of the act of April 9, 1929 (P.L. 343, No. 176), known as The Fiscal Code, 72 PA. STAT. ANN. § 806, on the amount of the income tax, and an additional penalty of 1% of the amount of the unpaid income tax for each month or fraction of a month during which the income tax remains unpaid shall be added and collected, but the amount shall not exceed 15% in the aggregate. Where an action is brought for the recovery of the income tax, the taxpayer liable for the income tax shall, in addition, be liable for the costs of collection, interest, and penalties.

(b) The Department may establish conditions under which a tax officer, with the concurrence of the tax collection committee, may abate interest or penalties that would otherwise be imposed for the nonreporting or underreporting of income tax liabilities or for the nonpayment of income taxes previously imposed and due if the taxpayer voluntarily files delinquent returns and pays the income taxes in full.

(c) The provisions of subsection (b) shall not affect or terminate any petitions, investigations, prosecutions, or other proceedings pending under this Chapter, or prevent the commencement or further prosecution of any proceedings by the proper authorities for violations of this Chapter. No proceedings shall, however, be commenced on the basis of delinquent returns filed pursuant to § 80-508 if the returns are determined to be substantially true and correct and the income taxes are paid in full within the prescribed time.

§ 80-510 Fines and Penalties for Violations.

(a) Any taxpayer who fails, neglects or refuses to make any declaration or return required by this Chapter, any employer who fails, neglects, or refuses to register, keep or supply records or returns required by section 512 of the LTEA, 53 PA. STAT. ANN. § 6924.512, or to pay the income tax deducted from employees, or fails, neglects, or refuses to deduct or withhold the income tax from employees, any taxpayer or employer who refuses to permit the tax officer appointed by a tax collection committee or an employee or agent of the tax officer to examine books, records, and papers, and any taxpayer or employer who knowingly makes any incomplete, false, or fraudulent return, or attempts to do anything whatsoever to avoid the full disclosure of the amount of income in order to avoid the payment of income taxes shall, upon conviction thereof, be sentenced to pay a fine of not more than \$2,500 for each offense and reasonable costs, and in default of payment of said fine and costs, to imprisonment for not more than six months.

(b) Any employer required under this Chapter to collect, account for, and distribute income taxes who willfully fails to collect or truthfully account for and distribute income taxes, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding \$25,000 or to imprisonment not exceeding two years, or both.

(c) The penalties imposed under this section shall be in addition to any other costs and penalties imposed by this Chapter.

(d) The failure of any person to obtain forms required for making the declaration or returns required by this Chapter shall not excuse the person from making the declaration or return.

§ 80-511 Costs.

The tax officer shall be entitled to impose and collect the reasonable costs incurred to provide notices of delinquency or to implement similar procedures utilized to collect delinquent taxes from a taxpayer as approved by the tax collection committee. Reasonable costs collected may be retained by the tax officer. An itemized accounting of all costs collected shall be remitted to the tax collection committee on an annual basis.

§ 80-512 Appeals and Tax Officer Actions.

A determination of the tax officer relating to the assessment, collection, refund, withholding, remittance, or distribution of income taxes may be appealed to the appeals board established by the tax collection committee by a taxpayer, employer, political subdivision, or another tax collection district pursuant to the provisions of section 505(j) of the LTEA, 53 PA. STAT. ANN. § 6924.505(j). Pursuant to section 505(k) of the LTEA, 53 Pa. Stat. Ann. § 6924.505(k), any dispute among the affected parties involving a 10% or greater deviation from taxes received in the previous tax year shall be subject to mandatory mediation in accordance with regulations and guidelines adopted by the Department. A dispute involving less than a 10% threshold may be the subject of voluntary mediation in accordance with regulations and guidelines adopted by the Department.

§ 80-513 Confidentiality

(a) **General Rule.** Any information gained by a tax officer or any employee or agent of a tax officer or of the tax collection committee as a result of any declarations, returns, investigations, hearings, or verifications shall be confidential tax information.

(b) **Prohibited Conduct.** It shall be unlawful, except for official purposes or as provided by law, for the Commonwealth, the Borough, tax collection committee member, tax officer or employee or agent of a tax officer, or tax collection committee to do any of the following:

(1) Divulge or make known confidential tax information.

(2) Permit confidential tax information or a book containing an abstract or particulars of the abstract to be seen or examined by any person.

(3) Print, publish or otherwise make known any confidential tax information.

(c) **Penalties.** A person who violates subsection (b) commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$2,500 or to imprisonment for not more than one year, or both. If the offender is a member of the tax collection

committee, the member shall be removed from the tax collection committee. If the offender is an employee of a tax collection committee or the Borough, the employee shall be discharged from employment. The offender shall pay the costs of prosecution.

§ 80-514 Compensation of Tax Officer.

The tax officer shall receive such compensation for his services and expenses as determined by the tax collection committee. At the discretion of the tax collection committee, the tax officer may be permitted to withhold the amount of the tax officer's compensation from income taxes collected if the monthly reports required by section 509(b) of the LTEA, 53 PA. STAT. ANN. § 6924.509(b), submitted by the tax officer include an accounting for all compensation withheld.