Dear Representative,

On behalf of the 22,000 members of the Pennsylvania Institute of Certified Public Accountants (PICPA), I am writing to respectfully request your support for House Bill 245, Printer’s Number 4110, as amended by the Senate. HB 245, which is sponsored by Rep. George Dunbar, amends Act 32 of 2008 to address inconsistencies in the local tax collection system identified by taxpayers and tax practitioners from across the state, including members of the PICPA. The bill clarifies certain provisions related to the consolidated collection of local income taxes and delinquent taxes, while also making the system more consistent and uniform.

The Senate’s amendments address four areas: 1) strengthens the auditing language under the Local Tax Enabling Act; provides for a religious exemption for the use of forms; allows for a “close out” final return by the taxpayer; and allows a school district or municipality that currently imposes an occupation tax to eliminate the occupation tax and instead enact an earned income tax that is revenue neutral (Rep. Kurt Masser’s House Bill 1256, which passed the House unanimously on June 16, 2015).

In an effort to avoid double taxation, House Bill 245 provides clarity and consistency to the local earned income tax crediting provisions for all taxpayers. Some tax collectors have used Act 32 as an opportunity to limit the local earned income tax crediting provisions historically available to Pennsylvania taxpayers. House Bill 245 simply reverts back to the long-standing terminology used before the 2008 changes went into effect, and strengthens the crediting language to ensure that no taxpayer is subjected to double taxation at the earned income tax level. Moreover, the Local Tax Enabling Act (LTEA), which Act 32 amended, does not limit tax credits to only 1 percent of taxes paid. Section 317 of the LTEA allows Pennsylvania taxpayers to take a credit against their local earned income tax in the amount of any income tax paid to another state or political subdivision to the extent those out-of-state taxes apply to salaries, wages, commissions, or other compensation on net profits. This position, which was adopted by the Montgomery County Tax Collection Committee in a resolution in March 2016, is held by the vast majority of tax collection districts in the state. It has only been since Act 32 went into statewide effect on Jan. 1, 2012, that some tax collection districts have attempted to limit the credit to 1 percent. Please note the chart below that shows in clear terms that more than 90 percent of the local tax collection districts (Green) in Pennsylvania will have little to no fiscal impact with the adoption of HB 245.
Other taxpayer protection provisions in HB 245 include a safe harbor provision that is consistent with federal language in the Internal Revenue Code, limited oversight of the system by the Department of Community and Economic Development, a prohibition against charging taxpayers with no income a fee when they do not file a return, clarification of the withholding tax rates for employees who are on a temporary assignment, prohibition of the collection of delinquent taxes through contingent fee audits, and, authorization for the local tax collector to abate any penalty imposed under Act 511.

Regarding the temporary assignment provision in HB 245, it is intended to codify current practice, which most tax collection districts are already following. Under current law, an aggressive tax collector may attempt to collect a multitude of earned income tax rates on employees who spend any amount of time in taxing jurisdictions outside of their home jurisdiction. For example, if a taxpayer spends an hour in four different local taxing jurisdictions in one day on temporary job assignments, there is nothing in the law to prevent the tax collector from enforcing the collection of four different tax rates for one day of work.

This situation creates confusion and places an unnecessary burden on employers and small business. HB 245 puts into place rules for employer withholding of taxes for taxpayers on temporary job assignments in taxing jurisdictions outside of their home jurisdiction and establishes a 90-day threshold. Employees on temporary job assignments in Philadelphia will still be subject to the Sterling Act. (Note: HB 245 amends Act 32, the Local Tax Enabling Act, not the Sterling Act. There is no impact – fiscal or otherwise – on the City of Philadelphia). HB 245 makes the administration of tax collection easier and less confusing.

Fairness and certainty are two principles of PICPA’s Guiding Principles of Good Tax Policy. The fairness principle simply states that similarly situated taxpayers should be taxed similarly. Under current varying interpretations of the crediting provisions under Act 32, that is not the case. Taxpayers are being treated differently, but more importantly unfairly. Certainty provides that tax rules should be specific when the tax is to be paid, how it is to be paid, and how the amount to be paid is determined. A person’s tax liability should be certain rather than ambiguous. Certainty is important to a tax system because it helps improve compliance with the rules. HB 245’s contractor rule provides certainty for taxpayers, businesses, and the local taxing districts.

HB 245 is an effort to protect taxpayers from double taxation, and make the law more uniform and consistent across taxing jurisdictions.

On behalf of the PICPA and our 22,000 members we urge your support for HB 245. Thank you for your attention regarding this important matter.

Sincerely,

Peter Calcara

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