Re: Please Support House Bill 245

Dear Senator,

On behalf of the 22,000 members of the Pennsylvania Institute of Certified Public Accountants (PICPA), we are compelled to respond to the inaccurate and misleading information being disseminated by some groups regarding House Bill 245, specifically the unsubstantiated claim that passage of the bill will result in the “substantial” loss of revenues for school districts. As we noted in an earlier e-mail to you, HB 245, which amends Act 32 of 2008, addresses 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 earned income taxes, while also making the system more consistent and uniform for all taxpayers. The intent of Act 32 was never to impose a tax increase on taxpayers, but that is exactly what has transpired in certain tax collection districts. If left unchecked, this aggressive enforcement posture could spread into other local taxing jurisdictions.

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, as some are erroneously claiming. In fact, 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.

In response to claims that HB 245 creates a loophole, the PICPA rejects this argument. The contractor provision in HB 245 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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