

<h2 style="margin: 0;">Regulatory Analysis Form</h2> <p style="margin: 0;">(Completed by Promulgating Agency)</p> <p style="margin: 0; font-size: small;">(All Comments submitted on this regulation will appear on IRRC's website)</p>	<p style="margin: 0;"><b>INDEPENDENT REGULATORY REVIEW COMMISSION</b></p> <div style="display: flex; justify-content: center; align-items: center;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold; margin-right: 10px;">RECEIVED</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold;">IRRC</div> </div> <p style="margin: 0; font-weight: bold;">2018 JUN - 1 P 1:58</p>
<p>(1) Agency Department of Community and Economic Development ("DCED")</p>	<p>IRRC Number: 3156</p>
<p>(2) Agency Number:        4-97 Identification Number:</p>	
<p>(3) PA Code Cite: 12 Pa Code Chapter 151</p>	
<p>(4) Short Title: Local Earned Income Tax (Act 32-2008 Regulations)</p>	
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p><b>Primary Contact: Lori Irwin, <a href="mailto:lirwin@pa.gov">lirwin@pa.gov</a>, 717-720-7311</b>  <b>Secondary Contact: Sean Sanderson, <a href="mailto:ssanderson@pa.gov">ssanderson@pa.gov</a>, 717-720-7384</b></p>	
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation  <input checked="" type="checkbox"/> Final Regulation  <input type="checkbox"/> Final Omitted Regulation</p>	<p><input type="checkbox"/> Emergency Certification Regulation;  <input type="checkbox"/> Certification by the Governor  <input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p><b>The regulations address the following areas:</b></p> <ul style="list-style-type: none"> <li>• The filing of adjusted declarations of estimated net profits;</li> <li>• The criteria under which the tax officer may waive the quarterly return and payment of income tax;</li> <li>• The procedures for mandatory and voluntary mediation;</li> <li>• The establishment of new county tax collection committees in situations in which political subdivisions have withdrawn from an established tax collection committee;</li> <li>• The establishment of tax officer qualifications and requirements, including continuing education; and</li> <li>• The creation of standardized forms, reports, notices, returns and schedules, in consultation with the Department of Revenue.</li> </ul>	
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p><b>The statutory authority is Chapter 5 of the act of Dec. 31, 1965 (P.L. 1257, No. 511) (53 P.S. §§6924.501-6924.517) as amended, known as The Local Tax Enabling Act (the "Act"). In particular, the following sections give the Department the authority to promulgate regulations: Section 502 (c)(2)(iv) (adjusted declaration of net profits); Section 505(k)(1) (mediation); Section 505(m)(3)(iii)(establishment of new tax collection committees); Section 508(a) (regulations as necessary to carry out the provisions of the act); Section 508(e)(mandatory education of tax officers); and Section 508(f) (qualification of tax officers).</b></p>	

Chapter 5 was added to the Act by the passage of the act of July 2, 2008 (P.L. 197, No 32) ("Act 32"). Amendments to Chapter 5 were also added to the act by the passage of Act 150 of 2016 (Act of Nov. 4, 2016, P.L. 1154, No 150).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is mandated by Chapter 5 (53 P.S. § 6924.501 et. seq.) of the Local Tax Enabling Act (53 P.S. § 6924.101 et. seq.), in particular, the following sections: Section 502 (c)(2)(iv), Section 505 (k)(1), Section 505(m)(3)(iii), Section 508(a),(e) and (f). There are no relevant state or federal court decisions.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Chapter 5 of the Act ("Chapter 5") requires the promulgation of regulations to further interpret and to make specific the following topics discussed in Chapter 5: adjusted declarations of estimated net profits, mediation, establishment of new county tax collection committees, and establishment of tax officer qualifications including mandatory education of tax officers.

Local tax officers, county tax collection committees, businesses operating in Pennsylvania, and taxpayers throughout Pennsylvania will benefit from these regulations because the regulations facilitate the implementation of Chapter 5. Chapter 5 streamlines the collection of local taxes and promotes administrative efficiencies by creating 69 tax collection districts to replace 560 tax collectors.

The Legislative Budget and Finance Committee ("LBFC"), a joint committee of the General Assembly, was tasked with evaluating the implementation of Chapter 5 and making recommendations. The LBFC issued a report dated October of 2016 entitled "The Impact of Act 32 on the Collection of Local Earned Income Taxes ("LBFC Report"). A link to the report is as follows: <http://lbfc.legis.state.pa.us/Resources/Documents/Reports/568.pdf>. The LBFC Report evaluates the effectiveness of the implementation of Chapter 5 using the period from 2005 through 2014. It finds that Chapter 5 has increased efficiencies, estimating that earned income tax collections increased by about \$173 million dollars annually since 2012 (the first full year of implementation of Chapter 5). (LBFC Report, pages S-1, 5-8)

The LBFC Report notes the following to show the broad support for Chapter 5 implementation: "Virtually everyone we spoke to, including municipalities, school districts, employer groups, CPAs, and others involved in EIT collections, reports that, after experiencing some initial implementation challenges, Act 32 has been successful in improving timeliness, and simplifying and increasing the amount of earned income taxes collected. While some offered suggestions for the General Assembly to consider to improve the act, the most common recommendation was to use Act 32 as a model to modernize the collection of other local taxes, such as property taxes, local services taxes, and business privilege taxes." (LBFC Report, page S-1)

Furthermore, the LBFC notes the importance of the regulations. One of the recommendations outlined in the LBFC Report is the continuation of the DCED's efforts to promulgate regulations. The LBFC

noted that the regulations address several areas of concern highlighted in its report, namely: auditing of tax officers; bonding requirements; and the development and updating by DCED of a policy and procedure manual. (LBFC Report, pages S-2, S-3)

The LBFC Report also notes that the regulations are important in implementing the audit requirements of the Act because the regulations require tax officers to undergo an SSAE (Standards for Attestation Engagements) 16 audit at least once every two years (LBFC Report, page S-3). Additionally, the LBFC Report notes that such strong internal auditing controls are of the utmost importance because (1) tax officers collect and disburse approximately \$3 billion in local earned income taxes and (2) tax officers maintain confidential taxpayer information such as taxpayer social security numbers. (LBFC Report, pages S-2, S-3, 17-19)

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

**There are no federal standards for local earned income tax collection. Because of this, there are no provisions that are more stringent than federal standards.**

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

**These regulations establish a local structure for the efficient collection, administration, and governance of the local earned income tax. The creation of a limited number of local tax collection districts throughout Pennsylvania with such districts utilizing standard forms and procedures distinguishes the tax collection structure set forth in the regulations from the local tax collection structure of those other states which have local income taxes. The regulations will not affect Pennsylvania's ability to compete with other states; the regulations make Pennsylvania more competitive by improving the efficiency with which the local earned income tax (enacted in 1965) is collected. The increased efficiency in collection will help to fund local governments and improve business operations without raising taxes.**

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

**The regulation will not affect any other regulations of the promulgating agency or other state agencies.**

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

**Since 2008, DCED has worked with an Advisory Committee, composed of certified public accountants, tax collectors, local government officials, and business groups to implement Chapter 5 and to promulgate the regulations. The Advisory Committee includes the Pennsylvania Institute of Certified**

**Public Accountants, Berkheimer Tax Administrator, Keystone Collections, York-Adams Tax Bureau, Lancaster County Tax Collection Bureau, Pennsylvania State Association of Township Supervisors, Pennsylvania Municipal League, and the Pennsylvania State Association of Boroughs.**

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

**All businesses that operate in Pennsylvania, all Pennsylvania local governments, and all Pennsylvania taxpayers will be affected by the regulations. Chapter 5 and its regulations provide for a uniform system for withholding and remitting local taxes. The standardization should lower administrative costs for businesses and local governments and make compliance easier for businesses and taxpayers. Promulgation of the regulation should further advance the implementation of Chapter 5 which implementation, as noted in question 10 above, has increased earned income tax collection revenues easing budget issues for local governments and taxpayers.**

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

**All businesses and their employees and local governments that operate in Pennsylvania will be required to comply with the regulations.**

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

**The regulations will codify the rules under which local taxes are withheld and remitted. The benefit will be that all parties will follow the same rules to withhold and remit local taxes, thus lowering complication and costs.**

**By reducing the number of collectors from 560 collectors to 69 tax collection districts, Chapter 5 streamlines the local tax collection system by reducing overhead and transferring tax revenues more efficiently and expediently. Chapter 5 also makes collection forms and procedures uniform. Finally, standardization of tracking, auditing and oversight procedures provide accountability and added financial safeguards needed to restore integrity and transparency to the system.**

**Chapter 5 requires employees to complete a Residency Certification Form, but this is an easy to complete, one-page form. As noted in the LBFC Report, because employers are more often collecting the correct amount of local earned income tax, employees no longer owe additional taxes at the end of the year. (LBFC Report, page 10). This benefits employees and local governments which are now getting that tax money sooner and more efficiently.**

**Employers have certain additional administrative functions such as (1) keeping track of residency and work code locations for employees, (2) maintaining a certification of residency for employees and (3) comparing local earned income tax rates for the employee's work and home addresses to withhold the larger of the two amounts. However, these are statutory requirements of Chapter 5 regardless of the regulation. As noted in the LBFC Report, employer groups have reported that the process has been simplified. (LBFC Report, page 4 and 9). Please see the answer to question #18 for a further discussion about costs and benefits of Chapter 5 implementation with respect to employers.**

As noted in a prior response, the implementation of Chapter 5 has increased efficiencies with an estimated \$173 million dollars annually in increased local earned income tax collection. The regulations will further support the implementation of Chapter 5. As noted earlier, one of the recommendations of the LBFC Report was continuation by the DCED of its efforts to promulgate the regulations. The LBFC noted that the regulations address areas of concern raised in the Report. (LBFC Report, page S-3) In particular, the SSAE 16 audit requirement set forth in the regulations will safeguard the local earned income taxes collected and the confidential taxpayer information collected resulting in greater transparency and public confidence in the system. (LBFC Report, pages S-2 and S-3, generally pages 17-19)

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulations will codify the standard rules of withholding and collecting local earned income taxes. Applying the same rules to all businesses and employees lowers costs and increases collections without raising taxes. During the initial phase of implementation of Chapter 5, employers had certain additional administrative tasks (keeping track of employees' residency and work codes, maintaining a certification of residency form for employees, and comparing employee work and home addresses to determine the correct withholding amount). However, employers have reported to DCED that they have adopted internal procedures to comply with Chapter 5 and that the additional administrative tasks were heaviest during the initial implementation. Similarly, the LBFC Report notes that although there were certain initial challenges when Chapter 5 was implemented, the majority of the stakeholders (including employers) contacted by LBFC were pleased with the changes made by the Act and would like to see similar changes made to the collection of other local taxes. (LBFC Report, page S-1)

Employers with more than one location in the Commonwealth may remit collected local earned income taxes to one tax collection district under Section 512 of the Act but if this option is chosen, the collected taxes are remitted monthly rather than quarterly. This accelerates the collection and distribution of collected taxes while simplifying the procedure for the multi-location employer. (LBFC Report, page 11)

The consolidated collection overall reduces the burden on all employers of withholding, remitting, and distributing local income tax because uniformity of procedures and forms promotes efficiencies and the reduction in the number of tax collectors has reduced confusion and misfiling.

As noted above, Chapter 5 requires employees to complete a Residency Certification Form, but this is an easy to complete, one-page form. Because employers are more often collecting the correct amount of local earned income tax, employees no longer owe additional taxes at the end of the year. (LBFC Report, page 10). This benefits employees and local governments which are now getting that tax money sooner and more efficiently.

Although there will likely be an increase in auditing costs associated with SSAE 16 audits, the Department believes that any increase is justified by the safeguards provided by such audits. Please see response to question 19 and question 22 for further discussion of the SSAE 16 audit costs and benefits.

As noted in prior answers, implementation of Chapter 5 has had the significant benefit of a \$173 million average annual increase in the collection of local earned income tax. This represents an 8.6 percent increase in earned income tax collections over the average annual collections for the three-year period prior to implementation of Chapter 5. (LBFC Report, page 8)

**For the above reasons, the savings and efficiencies created by implementation of Chapter 5 and of the regulations outweigh the relatively minor administrative burden experienced at the outset of implementation.**

**(19) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.**

**Audits have been required since the original passage of the Act in 1965. Chapter 5 and the regulations add some additional administrative, accounting, and record keeping burden for the regulated community. SSAE 16 audits are required at least once every two years under the regulation. This is a higher standard of audit than what is currently required under the Act. A SSAE 16 audit requires an examination of a tax collector's internal controls including the safeguarding of confidential information. This will likely increase auditing costs to some extent. The Pennsylvania Institute of Certified Public Accountants provided DCED with a cost range of \$15,000-\$25,000 for SSAE16 (SOC1 Type 1) audits and a cost range of \$30,000- \$50,000 for SSAE 16 (SOC1 Type 2) audits. The LBFC Report notes that SOC Type 2 audits range from \$30,000 to upwards of \$200,000 for highly complex audits. Nevertheless, tax collectors have contacted DCED to express support for this heightened auditing requirement and none of the public comments received expressed reservations about the SSAE 16 audit. The LBFC Report notes that of the 16 tax collectors who responded to the questionnaire distributed by the LBFC as due diligence for its report, ten of these tax collectors indicated that they had already undergone an SSAE 16 audit. Furthermore, the two largest tax collectors which are responsible for the collection of local earned income taxes for 48 of the 69 tax collections districts, have undergone an SSAE 16 (SOC 1 Type 2) audit. (LBFC Report, pages 17-19) As noted in the LBFC Report, private sector companies often require an SSAE 16 (SOC 1 Type 2) audit prior to contracting with service organizations because of the greater assurances provided by such audit. (LBFC Report, page 18)**

**As noted in the prior responses, to comply with Chapter 5, employers have adopted certain internal procedures (1) to track employees' residency and work codes, (2) to maintain certifications of residency forms for employees, and (3) to compare employee work and home addresses to determine the correct withholding amount. Employers have reported that initial implementation was challenging but that systems are now developed and in place. No data concerning specific dollar estimates for implementing internal employer procedures is available to DCED.**

**As noted in the LBFC Report, there is no comparative information for pre-Chapter 5 collection costs but tax collection committees and tax officers both reported that the implementation of Chapter 5 created efficiencies. (See LBFC Report, page 11)**

**A more specific estimate as to costs and/or savings is not available because the regulated community is not required to track or report that information and the DCED does not have a means of acquiring that information.**

**(20) Provide a specific estimate of the costs and/or savings to the local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.**

**If a local government or political subdivision serves as a tax officer, the SSAE 16 auditing requirements as outlined in the immediately preceding question would be an additional cost to be borne. However,**

that cost would be incurred in its capacity as a tax officer rather than in its capacity as a local government.

If the local government or political subdivision does not serve as a tax officer, there are no additional costs to local governments by implementation of Chapter 5 and the regulations.

As noted in the LBFC Report, there is no comparative information for pre-Chapter 5 collection costs but tax collection committees and tax officers both reported that the implementation of Chapter 5 created efficiencies. (See LBFC Report, page 11)

The local governments have already seen savings from an increase in earned income tax collection because of the efficiencies and streamlining created by Chapter 5. Employer withholding and remittance requirements set forth in Chapter 5 have contributed to municipalities obtaining revenues on a consistent and more even basis. (LBFC Report, page 9). This is supported by the findings of the LBFC Report. As noted above in prior responses, the LBFC Report estimated that an additional \$173 million dollars annually in earned income tax collections can be attributable to the implementation of Chapter 5 (an 8.6 percent increase over the average annual collections for the three-year period prior to implementation). (See LBFC Report, page 8) The LBFC in estimating the savings to local government from implementation of Chapter 5 relied upon DCED's municipal statistics and school district financial reports from the Pennsylvania Department of Education. If data for a particular year was missing, the LBFC filled in the missing year using the average of the most recent prior year and the most recent subsequent year. If there was no subsequent year, the LBFC filled in the missing year using the data from the most recent year available. The LBFC did this to minimize the impact of EITC collections resulting from missing data. The LBFC's estimate of the local earned income tax revenues collected included only municipalities and school districts that maintained the same local earned income tax rate throughout the period analyzed (2005-2014). Because of this, four percent of municipalities and six percent of school districts were excluded from the LBFC calculations. The LBFC did this to minimize the impact of a local earned income tax rate change on collections. (See pages 2 and 3 of the LBFC Report.)

Furthermore, the Pennsylvania Association of School Business Officials has confirmed that school districts are receiving earned income tax revenues more-timely since the implementation of Chapter 5. Chapter 5 permits employers with multiple Pennsylvania locations to remit all local earned income tax to the tax collection district where the employers are headquartered. However, employers choosing this option must remit withholdings monthly rather than quarterly to the district's tax collector, resulting in a more expedient transfer of revenues to taxing bodies. (LBFC Report, page 11)

(21) Provide a specific estimate of the costs and/or savings to the state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no savings to state government because the implementation of the regulations only affects local tax collection. The Department does not expect any additional costs to state government as a result of this regulation. No additional staff has been hired to implement Chapter 5 and there has been no additional budget expenditure.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork,

including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

As noted above, tax officers are required to undergo SSAE 16 audits at least once every two years under the regulation. This is a higher standard of audit than what is currently required under the Act. A SSAE 16 audit requires an examination of a tax collector's internal controls including the safeguarding of confidential information. This will likely increase auditing costs to some extent. Nevertheless, tax collectors have contacted DCED to express support for this heightened auditing requirement and none of the public comments received expressed reservations about the SSAE 16 audit. The LBFC Report notes that of the 16 tax collectors who responded to the questionnaire distributed by the LBFC as due diligence for its report, ten of these tax collectors indicated that they had already undergone an SSAE 16 audit. Furthermore, the two largest tax collectors which are responsible for the collection of local earned income taxes for 48 of the 69 tax collections districts, have undergone an SSAE 16 (SOC 1 Type 2) audit. (LBFC Report, pages 17-19) As noted in the LBFC Report, private sector companies often require an SSAE 16 (SOC 1 Type 2) audit prior to contracting with service organizations because of the greater assurances provided by such audit. (LBFC Report, page 18) The LBFC Report further notes that such strong internal auditing controls are of the utmost importance because (1) tax officers collect and disburse approximately \$3 billion in local earned income taxes and (2) tax officers maintain confidential taxpayer information such as taxpayer social security numbers. (LBFC Report, page S-2).

The Department views this auditing requirement as a necessary safeguard and notes that two large tax officers responsible for the majority of the tax collections districts (48 of the 69) are already voluntarily undergoing a SSAE 16 audit so there is no additional burden to these tax officers. However, to minimize the burden of this auditing requirement, the regulation requires an SSAE 16 audit but gives latitude for the tax officer and the community served to determine which level of SSAE16 audit is appropriate (SOC1 Type 1 or the costlier SOC1 Type 2).

Local governments have no additional procedures. There are simply standardized reports and forms to use rather than locally developed forms. However, in the event political subdivisions serve as a tax officer, SSAE 16 auditing requirements would be required as discussed directly above.

As noted above in prior answers, employers have certain additional administrative functions such as (1) keeping track of residency and work code locations for employees, (2) maintaining a certification of residency for employees and (3) comparing local earned income tax rates for the employee's work and home addresses to withhold the larger of the two amounts. However, these are statutory requirements of Chapter 5 regardless of the regulation. As noted in the LBFC Report, employer groups have reported that the process has been simplified. (LBFC Report, page 4 and 9)

Taxpayers are required to complete a one-page certificate of residency form for their employers but, as noted in the LBFC Report, "this form is not difficult to complete." Taxpayers should find remittance of the local earned income tax owed to be "simpler, easier, fairer and less time consuming." (See Page 10 of the LBFC Report) As further noted in the LBFC Report, employers are more often collecting the correct amount of earned income tax from their employees because compliance is simpler under Chapter 5. Because employers are correctly withholding, taxpayers are no longer faced with owing large amounts of earned income tax at year's end. (LBFC Report, page 10)

Copies of the standardized reports and forms can be found at the following link:  
<http://dced.pa.gov/local-government/local-income-tax-information>.

(22a) Are forms required for implementation of the regulation?

Yes, there are uniform, standardized forms which replace the various local forms. The LBFC noted the importance of standardized forms and supports promulgation of the regulations because the regulations further “greater standardization of municipal forms, schedules and reports.” (LBFC Report, page S-3)

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

The following is a link to copies of forms developed with the implementation of Chapter 5 and the regulations: <http://dced.pa.gov/local-government/local-income-tax-information>. These forms replace the various local forms which were being used. By having uniform forms state-wide, efficiencies and costs savings are created for local governments and businesses operating in Pennsylvania

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 2017-18	FY +1 2018-19	FY +2 2019-20	FY +3 2020-21	FY +4 2021-22	FY +5 2022-2023
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	Not Available; cannot be precisely determined					
<b>Local Government</b>	Not Available; cannot be precisely determined*					
<b>State Government</b>	0	0	0	0	0	0
<b>Total Savings</b>	0 for state government. Not available for all others.	0 for state government. Not available for all others.	0 for state government. Not available for all others.	0 for state government. Not available for all others.	0 for state government. Not available for all others.	0 for state government. Not available for all others.
<b>COSTS:</b>						
<b>Regulated Community</b>	Not Available; cannot be precisely determined					
<b>Local Government</b>	Not Available; cannot be precisely determined					
<b>State Government</b>	0	0	0	0	0	0
<b>Total Costs</b>	0 for state government. Not available for all others.	0 for state government. Not available for all others.	0 for state government. Not available for all others.	0 for state government. Not available for all others.	0 for state government. Not available for all others.	0 for state government. Not available for all others.
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Revenue Losses</b>	0	0	0	0	0	0

\*The LBFC Report estimates an annual increase of \$173 million of additional local earned income tax collections as a result of greater efficiencies from the implementation of Chapter 5. (LBFC Report, page 8). Given that the first full year of implementation of Chapter 5 was 2012, it can be anticipated that savings from implementation would level off as suggested by the EIT Collections (Actual and Adjusted for Wage Growth) charts of the LBFC Report. (LBFC Report, pages 6 (Table 1) and 7 (Exhibit 1))

(23a) Provide the past three-year expenditure history for programs affected by the regulation. There are no programs affected by the regulation. The regulation addresses the collection of local earned income tax. As such, there is no three-year expenditure history.

Program	FY -3	FY -2	FY -1	Current FY
There are no programs affected by the regulation.	Not available	Not available	Not available	Not available

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

**These regulations will not have an adverse impact on small businesses. Small businesses were collecting local taxes prior to passage of the Act. The regulations will help small businesses collect local earned income taxes at the lowest cost possible with the least amount of administrative burden. The consolidated collection and the standardized withholding and remittance of local income taxes will reduce fragmentation and reduce the burden on all employers (including small businesses) of withholding, remitting, and distributing local earned income tax. As noted in the LBFC Report, employer groups (as well as other stakeholders contacted by the LBFC) have expressed support for implementation because of the simplification and efficiencies achieved. (LFC Report, page S-1). Rather than remitting taxes to multiple tax officers which can be confusing and time-consuming, small businesses remit the collected earned income taxes to the tax collection district and the tax collection**

**district has the responsibility to remit taxes to the various counties where the small business' employees reside. Although there was an initial administrative burden on employers (small businesses) from the implementation of Chapter 5, such burden was minimal and, at this point in implementation, the administrative procedures have been established. Additionally, the regulation is not imposing any additional burden on small businesses which is not imposed by the Act.**

**(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.**

**No special provisions have been developed to meet the particular needs of affected groups or persons because the regulations do not affect special groups or persons.**

**(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.**

**No alternative regulatory provisions have been considered or rejected. DCED believes that these regulations are not burdensome. The regulations do require a SSAE-16 audit of a tax officer once every two years and this is a higher auditing standard than previously required under the Act. However, this auditing standard is the industry standard and the Department views this auditing requirement as a necessary safeguard (i) of monies collected and (ii) of confidential taxpayer information. As noted on the LBFC Report, the two tax officers responsible for the majority of the tax collections districts (48 of the 69) are already voluntarily undergoing a SSAE 16 audit so there is no additional burden to these tax officers. However, to minimize the burden of this auditing requirement, the regulation requires an SSAE 16 audit but gives latitude for the tax officer and the community served to determine which level of SSAE16 audit is appropriate (SOC1 Type 1 or the more-costly SOC1 Type 2).**

**Additionally, the regulations are required under the Act. Other than the requirement for the SSAE-16 audit, there is no alternative to the regulation because the regulation is addressing what is required to be addressed by regulation under the Act.**

**(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:**

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

**There will be no material adverse impact on small businesses. Although there was an initial administrative burden on employers (small businesses) from the implementation of Chapter 5, such burden was minimal and, at this point in implementation, the administrative procedures have been**

**established. Small businesses will now benefit from a standardized, uniform approach to local tax collection.**

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

**Data is not the basis for these regulations.**

(29) Include a schedule for review of the regulation including:

- |                                                                                               |                                                                   |
|-----------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| A. The date by which the agency must receive public comments:                                 | <b>August 29, 2016</b>                                            |
| B. The date or dates on which any public meetings or hearings will be held:                   | <b>N/A</b>                                                        |
| C. The expected date of delivery of the final-form regulation:                                | <b>Second Quarter of 2018</b>                                     |
| D. The expected effective date of the final-form regulation:                                  | <b>Immediately upon publication in the Pennsylvania Bulletin.</b> |
| E. The expected date by which compliance with the final-form regulation will be required:     | <b>Immediately upon publication in the Pennsylvania Bulletin.</b> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <b>N/A</b>                                                        |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

**Section 517 of Chapter 5 of the Act requires the LBFC to study the implementation and effect of Chapter 5. As noted above, the LBFC Report was issued in October of 2016. DCED has reviewed the LBFC Report, agrees with the recommendations proposed therein, and is working towards implementation of the recommendations. Finalization of the regulations is one of the LBFC Report's recommendations. Once promulgates, the Department will continue to monitor the effectiveness of these regulations.**

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU**

**(Pursuant to Commonwealth Documents Law)**

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: _____ (Deputy Attorney General)</p> <p>_____</p> <p>Date of Approval</p> <p><input type="checkbox"/> Check if applicable. Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>Department of Community and Economic Development (Agency)</p> <p>Document/Fiscal Note No. 4-97</p> <p>Date of Adoption: _____</p> <p>By: _____ Name: Dennis M. Davin Title: Secretary</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>By: <u>Marisa H. Z. Lehr</u></p> <p>_____</p> <p>MAY 30 2018 Date of Approval</p> <p>(Deputy General Counsel) (<del>Chief Counsel, Independent Agency</del>) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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**FINAL- FORM RULEMAKING**

**TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT**

**Part V. COMMUNITY AFFAIRS AND DEVELOPMENT**

**SUBPART D. LOCAL EARNED INCOME TAX**

**CHAPTER 151. LOCAL EARNED INCOME TAX**

## PREAMBLE

By this order, the Department of Community and Economic Development (Department), under the authority of Chapter 5 of The Local Tax Enabling Act (act) (53 P.S. §§ 6924.501- 6924.517) hereby amends Title 12 of the Pennsylvania Code by adding Chapter 151 (relating to local earned income tax.) The purpose of Chapter 151 is to interpret and make specific the provisions in Chapter 5 of the act. Chapter 5 of the act provides for the consolidated collection of local earned income taxes. Chapter 5 of the act provides that the Department shall address the following areas by regulations:

- The filing of adjusted declarations of estimated net profits.
- The criteria under which the tax officer may waive the quarterly return and payment of income tax.
- The procedures for mandatory and voluntary mediation.
- The establishment of new county tax collection committees when political subdivisions have withdrawn from an established tax collection committee.
- The establishment of tax officer qualifications and requirements, including continuing education.
- The creation of standardized forms, reports, notices, returns and schedules in consultation with the Department of Revenue.

The proposed rulemaking was published in the Pennsylvania Bulletin at 46 Pa.B. 4179 (July 30, 2016). The public comment period closed on August 29, 2016. Public comments were received from three commentators. The Independent Regulatory Review Commission (IRRC) also provided comments. IRRC's sixth and seventh comments to the proposed regulations encompassed those of the public to the proposed regulations and thus responses to all comments are included in the responses to IRRC's comments as follows:

### Comments

Comments were received from the Independent Regulatory Review Commission (IRRC), the Pennsylvania State Association of Boroughs (PSAB), the Pennsylvania Institute of CPAs (PICPA), and the Pennsylvania State Association of Township Supervisors (PSATS). A comment was also received outside the comment period from Keystone Collections Group. All comments, including the late comment, are addressed below.

#### **COMMENT #1: Section 151.1. Definitions. – Clarity.**

##### *Out-of-state employer*

The term is defined as “an employer that does not have a place of business in this Commonwealth.” Does the regulation need to also address an out-of-state employer that does have a place of business in Pennsylvania? Do the definition and regulation adequately address Pennsylvania residents who work for an out-of-state employer at a place of business outside of Pennsylvania? We ask the Department to review this definition and explain how the regulation adequately covers all possible employment circumstances.

#### **RESPONSE #1:**

The Department has revised the definition of out-of-state employer in Section 151.1 to make clear that an employer is not an out-of-state employer if such employer has a place of business in Pennsylvania even if such employer's primary business operations occur out of state. Additionally, the Department has revised Section 151.12 of the regulation to make the following clear:

- a. An out-of-state employer (an employer that does not have a place of business in the Commonwealth) does not need to withhold earned income tax for Pennsylvania residents working at such employer's out-of-state place of business.
- b. An employer having a place of business in the Commonwealth and employing one or more persons (other than domestic servants) must withhold the greater of an employee's resident tax or the employee's nonresident tax.

**COMMENT #2: Section 151.5. Publication of a Policy and Procedure Manual. – Clarity.**

This section discusses material that will be placed on the Department's website. We suggest including the website address so that the reader can easily locate the documents.

**RESPONSE #2:**

The Department agrees that a link to the DCED website would be easier for readers and has included a link.

**COMMENT #3: Section 151.11. Registration of employers. – Clarity.**

*Subsection (a)*

This subsection references and reflects the statute at 53 P.S. § 6924.512(1). We note the statute includes a time limit of "...within 15 days after becoming an employer..." The regulation should include the 15-day time limit.

*Subsection (b)*

The second sentence of this subsection states "On or after January 1, 2012..." We question whether the date of January 1, 2012 is still needed today. The Department should review this subsection and consider deleting this date.

**RESPONSE #3:**

The Department agrees with this comment. The fifteen-day time limit has been added to the regulation. Additionally, the Department agrees that the January 1, 2012 date is no longer needed in the regulation and has removed it.

**COMMENT #4: Section 151.21. Mandatory education for tax officers. – Clarity.**

Both Subsections (a) and (b) require the person to "achieve a passing grade" on the respective certification exams. The regulation is not clear on what constitutes a passing grade. We recommend including in the regulation the specific grade required to pass the certification exams in both subsections.

**RESPONSE #4:**

The Department agrees that a passing grade should be specified and has amended Section 151.21(a) and (b) of the regulation to indicate that a passing grade of seventy percent (70%) or higher is required on the certification exams.

**COMMENT #5: Section 151.22. Minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers. – Clarity.**

*Minimum number of persons.*

This section requires a tax officer to designate at least one person for every five counties to satisfy the mandatory education requirements. Can the tax officer designate itself so that the minimum would be one or is the tax officer required to designate a second person?

*Example.*

The beginning of this section requires the tax officer to designate at least one person for every five counties to satisfy certain education requirements whereas the example requires at least 4 employees. Could there be a circumstance where the tax officer itself and three employees could satisfy this requirement in the example? We recommend reviewing the example to be sure it accurately reflects the stated requirement.

**RESPONSE #5:**

A tax officer can designate itself so that the minimum number of persons needed to be designated for mandatory education requirements would be one person which could be the tax officer. The regulation has been revised to clarify this. The regulation has also been revised to clarify that, if the tax officer is an entity rather than a natural person, the tax officer shall appoint one natural person employed by such tax officer for every five counties served by the tax officer. The natural person so appointed would be required to satisfy the mandatory education requirements on behalf of the appointing tax officer. There could be a circumstance where the tax officer itself and three employees could satisfy the requirement in the example. The Department agrees that the example could cause confusion and has removed the example from the regulation.

**COMMENT #6: Section 151.23. Duties of a tax collection committee in selecting a tax officer. – Consistency with statute; Need; Economic impact; – Clarity.**

*Subparagraph (1)(i)*

The statute at 53 P.S. § 6924.508(f)(1) states, “The Department shall, by regulation, establish the **qualifications and requirements a tax officer must meet** prior to being appointed and must meet for continuing appointment.” (Emphasis added.) We recommend deleting Subparagraph (1)(i) of the regulation because it relies on the Department’s Policy and Procedure Manual to set qualifications for tax officers. To be consistent with the statute, the Department should establish the qualifications and requirements a tax officer must meet in the regulation.

*Subparagraph (1)(ii)*

There are two concerns with this subparagraph. First, this subparagraph requires a written statement prepared by an “accountant professional.” The Pennsylvania Institute of Certified Public Accountants

(PICPA) commented that the phrase “accountant professional” should be replaced by the phrase “Certified Public Accountant or Public Accountant.” We agree.

Second, PICPA believes that the phrase “exists as a solvent entity” is inconsistent with the statute and the American Institute of Certified Public Accountants Code of Professional Conduct. We recommend that the Department review this phrase in consultation with PICPA to establish an acceptable standard.

*Subparagraph (1)(iii)*

This subparagraph requires a Statement on Standards for Attestation Engagements (SSAE) 16 audit “or other fiscal control audit.” It is not clear what would meet the alternative of the “other fiscal control audit.” We recommend deleting this phrase or, if needed, replacing it with a clear alternative standard.

*Reappointment of a tax officer*

The Pennsylvania State Association of Boroughs (PSAB) commented that Paragraph (2), requiring at least five references, and (3), requiring an onsite visit, are not needed if the same tax officer is being reappointed by the tax collection committee. PSAB recommends bifurcating the appointing and reappointing requirements. The Department should consider amending the requirements in the circumstance that the tax committee reappoints the same tax officer.

**RESPONSE #6:**

**Subparagraph (1)(i) :** The Department agrees that the tax officer qualifications are to be set by regulation. The Department has removed the reference to the Department’s Policy and Procedure Manual from Section 151.23 of the regulation. Qualifications for tax officers are set forth in Section 151.23(1) (i)-(viii) of the regulation.

**Subparagraph (1)(ii):** The Department spoke with representatives from PICPA and discussed the prohibition against a public accountant attesting as to the solvency of an entity. After this discussion and independent research, the Department agrees that a public accountant is ethically prohibited under the AICPA Code of Professional Conduct from attesting to solvency. As such, the Department has revised the regulation to remove this requirement. After further discussion, the Department and the PICPA representative reached the conclusion that, although there was a substitution for the attestation (“an agreed upon procedures engagement letter”), such substitute would not add much, if anything, more than a site visit combined with a fiscal audit (both of which are required by the regulation when choosing a tax officer). Because a substitution would increase costs without providing a benefit, the Department has chosen to simply remove the attestation requirement. Although the Department agrees with IRRC and PICPA that the reference in subparagraph (1)(ii) to “accountant professional” should be replaced by the phrase “Certified Public Accountant or Public Accountant,” the Department is removing subparagraph (1)(ii) so this comment is addressed by the removal.

**Subparagraph (1)(iii):** The Department added that parenthetical language to add flexibility in the event that there is a new industry auditing standard or more than one standard is widely used and accepted. The Department did confirm with a PICPA representative that the SSAE 16 audit is the current industry standard. In response to this comment and in an effort to preserve flexibility, the Department has revised the language to be “or other fiscal control audit meeting or exceeding SSAE 16 audit standards and approved by the Department in writing.”

**Reappointment of a tax officer:** The Department considered bifurcating the appointing and reappointing requirements for tax officers and considered amending the requirements in the circumstance that the tax committee reappoints the same tax officer. However, the Department chose not to bifurcate the appointing and reappointing requirements. The Department believes that site visits and references are necessary, even for reappointment, given the elimination of solvency verification of the tax officer. Site visits, in particular, are an important means of verifying the existence of continuing operations of the tax officer. Additionally, as the membership of a tax collection committee changes, the Department believes that site visits and references are valuable tools for the new members of the tax collection committee who may be unfamiliar with the tax officer seeking reappointment. Similarly, references are important for reappointment to ensure that the tax officer seeking reappointment is still recommended to continue in the position.

**COMMENT #7: Section 151.41. Rules for mediation. – Statutory authority, Legislative intent; Reasonableness.**

*\$500 filing fee for mediation*

Under Subparagraph (1)(iv), the Department proposes to charge a \$500 filing fee for mediation. The \$500 filing fee is also mentioned in Subparagraph (3)(i). The PSAB “adamantly opposes” the fee and questions the statutory authority for the fee. The Pennsylvania State Association of Township Supervisors also expressed concerns with the fee.

The statute provides that “Costs incurred by the department for mandatory mediation under this section shall be equitably assessed by the department against the parties to the mediation.” 53 P.S. § 6924.505(k)(2)(viii). While the statute provides a mechanism for the Department to recover costs incurred, the Department has not established how a flat fee would meet the statute. Additionally, the Department has not established how a flat fee meets the statutory requirement to equitably assess its costs against the parties to the mediation. We recommend deleting the \$500 flat fee from Subparagraphs (1)(iv) and (3)(i). The Department should also explain in the Preamble how it will otherwise equitably assess the costs against the parties.

*Timeline*

The statute at 53 P.S. § 6924.505(2)(iii) states, in part, that the “mediation efforts shall be completed no later than 30 days following the notice that the dispute has met the threshold requirement...**unless the time period is extended by mutual agreement** of the parties to the mediation.” Emphasis added. Paragraphs (4) and (5) establish a timeline to complete the mediation “within 20 days but no later than 30 days following the Department’s determination” and rely on a mediator appointed by the Office of General Counsel. We have three concerns.

First, the statute provides the ability to extend the time period by mutual agreement, but this is not included in Paragraphs (4) and (5). We recommend adding the option to extend the time period to Paragraphs (4) and (5).

Second, the Department provides written notice of its determination to all parties under Subparagraph (3)(iii), which by statute begins the 30-day period. However, Paragraphs (4) and (5) differ from the statute by stating “no later than 30 days following the Department’s determination.” To be consistent with the statute, Paragraphs (4) and (5) should state no longer than 30 days following the Department’s written notice provided in Subparagraph (3)(iii).

Third, the Department should explain how the regulation will accomplish the statutory requirement to complete the mediation in 30 days, unless the time period is extended by mutual agreement.

#### **RESPONSE #7:**

##### **\$500 filing fee for mediation**

In response to these comments, the Department has eliminated the \$500 filing fee. In its place, the Department will assess a fee for the costs it incurs in reviewing the notice of mediation and the written statements filed in response to the notice. The Department will equitably apportion the costs among the affected parties by assessing an affected party only for the costs incurred by the Department when reviewing that particular affected party's notice and written statements. If two or more affected parties file a joint statement or notice, the costs incurred by the Department will be equally divided among those jointly-filing affected parties. The Department will notify each party of its assessed amount. The parties would be responsible for paying the assessed fee within thirty days of notification of the fee from the Department. The fee would be non-appealable. The regulation has been revised to reflect this change.

##### **Timeline**

The Department agrees that Paragraphs (4) and (5) should be amended to add the option of extending the time period. The regulation has been revised accordingly.

The Department also agrees that to be consistent with the statute, Paragraph (4) should state "no longer than 30 days following the Department's written notice provided in Subparagraph (3)(iii)" rather than "no longer than 30 days following the Department's determination." The regulation has been revised accordingly.

The Department disagrees that voluntary mediation must be completed no later than thirty days following the Department's written notice provided in Subparagraph (3)(iii). The statute at 53 P.S. § 6924.505(k)(2)(iii) states, in part, that the "mediation efforts shall be completed no later than 30 days following the notice that the dispute has met the threshold requirement...unless the time period is extended by mutual agreement of the parties to the mediation." Disputes requiring mandatory mediation are those meeting the threshold requirement while disputes falling short of that threshold may be subject to voluntary mediation as set forth in the statute at 53 P.S. § 6924.505(k)(1). As such, only those disputes meeting the threshold for mandatory mediation are subject to the thirty-day timeline. However, recognizing the legislative intent for a speedy mediation process, the Department has retained the thirty-day timeline for disputes subject to voluntary mediation but has the thirty days starting from the point the parties agree to voluntary mediation rather than from the Department's written notice provided in Subparagraph (3)(iii). If the thirty-day timeline started upon notification by the Department that the dispute did not meet the threshold, up to five days of those thirty days could be used by the parties, not for the mediation process itself, but for deciding whether to mediate. To preserve the full thirty days for the mediation process, the Department believes the timeline should begin when the parties agree to mediate. The Department did consult with the Office of General Counsel Dispute Resolution Program Office and that Office agreed with the Department's proposed approach noting that the mediation timeline is tight even with this approach.

The Department recognizes that the statutorily-mandated thirty-day timeline for completion of the mediation is an aggressive timeframe. Given this timeframe, the Department has revised the regulation to require the Department to turn disputes subject to mandatory mediation over to the Pennsylvania Office of General Counsel Dispute Resolution Coordinator on the same day the Department provides written

notice rather than within five days of such notification. This revision results in the full thirty-day period being used for the mediation process. Additionally, the mediator will seek the parties' mutual agreement to extend the time period for mediation if the mediator and the Department believe that such extension may be necessary. However, in adherence with the statutory timeline, the mediator will complete the mandatory mediation within thirty days of the Department's written notice provided in Subparagraph (3)(iii) unless the parties agree to extend the time. If a settlement is not reached within the thirty-day period and the parties have not agreed to an extension, the mediation will be considered to be complete and unsuccessful.

For disputes subject to voluntary mediation, the parties have thirty days beginning from the time the parties agreed to mediate. Although thirty days is aggressive, it correlates with the timeframe established by the legislature for mandatory mediation and incentivizes the parties to resolve the dispute quickly. However, the parties may mutually agree to extend the thirty-day deadline and parties who have agreed to voluntarily mediate are likely to agree to an extension if necessary.

The Department chose to mediate disputes through the Pennsylvania Office of General Counsel Dispute Resolution Program because the Program, established in June of 2002, has a proven track record of efficiently resolving disputes resulting in savings of time and costs. A variety of agencies have utilized the Program successfully. The following link gives a representative sample of the Program's many success stories:<http://www.ogc.pa.gov/Services%20to%20Agencies/Mediation/Pages/SuccessStories.aspx>.

**COMMENT #8: Section 151.61. Withdrawal and establishment of a new tax collection committee. – Clarity.**

The second sentence of Subsection (d) discusses election of the chairperson, vice chairperson, and secretary and also discusses duly appointed voting delegates. The regulation is not clear regarding whether the Secretary is a duly appointed voting delegate. The Department should amend this subsection to clarify whether the secretary is a voting delegate, or not.

**RESPONSE #8:**

The Department agrees that the regulation is not clear and has amended the regulation to permit but not require the secretary to serve as a voting delegate. In adopting this approach, the Department consulted with tax collection servicers and found that some tax collection committees had their secretaries serve as voting delegates while others did not. In order to provide flexibility to the tax collection committees, the Department settled on this approach.

**COMMENT #9: Miscellaneous. – Clarity.**

- Paragraph 151.41(3) refers to “the threshold conditions for mandatory mediation.” We recommend adding a cross-reference in Paragraph (3) to Subparagraph (1)(iii) to clarify the threshold conditions to be met.
- Subsection 151.51 consists of a single paragraph, but includes the phrase “unless otherwise specified in this section.” We recommend deleting this phrase.

**RESPONSE #9:**

The Department agrees with these comments and has added a cross-reference in Paragraph (3) to Subparagraph (1)(iii) to clarify the threshold conditions to be met and has deleted “unless otherwise specified in this section” from Subsection 151.51.

**COMMENT #10: Section 151.23(5) Contract Termination**

Keystone Collection Group suggested the deletion of subparagraph (5) of Section 151.23 for the following reasons:

- a. It is contrary to general contract law.
- b. It nullifies the terms of fair negotiation because many tax collection services costs, rates and commissions are calculated upon a term of years.
- c. Many professional services, including bonding and insurance, are tied to the length of the tax collection service contract and are based on a multi-year guaranteed contract term.
- d. The commission rate offered by tax collectors is usually closely tied to the length of the contract.

**RESPONSE #10:**

The Department agrees with this comment and has deleted subparagraph (5) of Section 151.23. The Department believes that subparagraph (4) of this Section sufficiently protects the public by requiring termination of the contract, after a thirty-day cure period, if the tax officer fails to meet the requirements of Section 151.23.

**Overview**

The Department made certain changes to the filing dates in Section 151.2 and Section 151.3 to reflect changes made to the filing dates of Section 502(c)(2)(i), Section 502(c)(2)(ii) and Section 502(c)(3) of the act with the passage of Act 150 of 2016 (Act of Nov. 4, 2016, P.L. 1154, No 150). Similarly, Section 151.4 (Filing of Estimated Tax by Taxpayers whose Major Source of Gross Income is From Farming) was added to reflect the addition of this provision in Section 502(d) of the act pursuant to Act 150 of 2016. Also, a change in the filing deadline was made in Section 151.3 to reflect the same change made to Section 512 (a)(5) of the act pursuant to Act 150 of 2016.

With respect to Section 151.23(2), the Department also changed the language regarding references to permit tax officers to provide the tax collection committee with a list of references for the tax officer although the tax collection committee is still tasked with independently verifying the references. The Department made this change because applicants for positions are generally permitted to provide their own list of references. Additionally, this approach is more efficient than the tax collection committee attempting to determine on its own who should serve as a reference for the tax officer. Because the tax collection committee must independently verify the references, the integrity of the references (although the references are provided by the tax officer) is not materially comprised.

With respect to Section 151.26, the Department removed the reference to the Department's Policy and Procedure Manual. The Department wants it to be clear that the requirements for the bond amount for tax officers is set by regulation and not set by the Department's Policy and Procedure Manual. The Department believes that this change is similar to the change requested by IRRRC in comment #6 (deletion of the reference to the Department's Policy and Procedure Manual with respect to the duties of a tax collection committee in selecting a tax officer under Section 151.23).

With respect to Section 151.11 and Section 151.13, the Department corrected citation references. In Section 151.61 (b) (1) and (2), the Department added “as” to correct an inadvertent omission. In Section 151.61 (d), the Department deleted “his” and added “chief executive” to keep the gender neutrality of the subsection.

With respect to section 151.61(g), the Department added “30” after September to clarify the date by which a new tax collection committee shall establish an appeals board under section 505(j) of the act.

Section 151.1 (relating to definitions) sets forth definitions for words used in Chapter 151.

Section 151.2 (relating to procedures for filing adjusted declarations of estimated net profits) sets forth the procedures and deadlines for taxpayers to file adjusted declarations of estimated net profits.

Section 151.3 (relating to procedures for filing taxable income not subject to withholding) sets forth the procedures and deadlines for taxpayers to file returns for taxable income not subject to withholding.

Section 151.4 (relating to the filing of estimated tax by taxpayers whose major source of gross income is from farming) sets forth the procedures and deadlines for taxpayers whose major source of gross income is from farming to file a declaration of estimated tax.

Section 151.5 (relating to refunds) addresses the refunding of tax overpayments.

Section 151.6 (relating to publication of a Policy and Procedure Manual) requires the Department to develop and annually update a Policy and Procedure Manual to be posted on the Department’s web site. The Department’s web site includes a library of standardized forms, reports, notices, returns and schedules developed in consultation with the Department of Revenue.

Section 151.11 (relating to registration of employers) outlines which employers shall withhold taxes and file returns for their employees and specifies that employers shall require new employees to complete a Local Earned Income Taxpayer Residency Certification form. It also requires employers to keep the Local Earned Income Taxpayer Residency Certification form on file and identifies who has access to this information.

Section 151.12 (relating to voluntary withholding for resident employees employed outside of a tax collection district) indicates that out-of-State employers are not required to withhold income taxes for employees residing in this Commonwealth but employed outside this Commonwealth. It also provides for voluntary withholding.

Section 151.13 (relating to elective filing and remittance by multi-work location employers) deals with the elective filing and remittance of taxes withheld by multiwork location employers. Under this section, an employer with more than one place of business in more than one tax collection district may elect to file one single combined return for all of its employees at all of its work locations in this Commonwealth.

Section 151.21 (relating to mandatory education for tax officers) establishes the mandatory education requirement for initial certification and continuing certification of tax officers.

Section 151.22 (relating to minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers) establishes the minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers.

Section 151.23 (relating to duties of a tax collection committee in selecting a tax officer) delineates the

requirements a tax officer shall meet and establishes that it is a duty of a tax collection committee to verify that the proposed tax officer meets those requirements.

Section 151.24 (relating to duties of an appointed tax officer) lists the duties of an appointed tax officer.

Section 151.25 (relating to point of contact for a tax collection committee) establishes that each tax collection committee shall provide a point of contact to the Department.

Section 151.26 (relating to bond amount for tax officers) addresses the bond amount for tax officers.

Section 151.41 (relating to rules for mediation) explains the mediation process under the act.

Section 151.51 (relating to procurement of goods and services—general rule) addresses the method of procurement for goods and services needed by tax collection committees.

Section 151.61 (relating to withdrawal and establishment of a new tax collection committee) sets forth the timing and procedures to follow if a political subdivision desires to withdraw from governance by a specific tax collection committee.

### **Fiscal Impact**

(a) Commonwealth. The Department has incurred additional administrative costs in the implementation and operation of the act; however, these costs have been absorbed into the normal operating budget. The Department does not anticipate additional costs as a result of implementation of this regulation.

(b) Political Subdivisions and the Public. A report from the Legislative Budget and Finance Committee dated October of 2016 estimates that revenue collections have increased by about \$173 million annually since 2012, the first full year of implementation of Chapter 5. This report entitled, "The Impact of Act 32 on the Collection of Local Earned Income Taxes," notes that implementation has simplified and increased the amount of earned income taxes collected. Municipalities, school districts and taxpayers have all benefitted from the increased revenue generated by the enhanced collection efficiencies. The report recommends that the Department continue with its efforts to promulgate the regulation because the regulation addresses certain areas of concerns noted in the report, namely: auditing of tax officers, bonding requirements, and development of a policy and procedures manual by the Department.

### **Paperwork**

New statewide forms have been created to replace the forms created by each tax collector. These new forms are not more burdensome than the previous forms. Due to the uniformity and standardization of the forms, the paperwork burden has been reduced.

### **Regulatory Review**

Under Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19), (71 P.S. §§745.1- 745.15), on July 20, 2016 the Department submitted a copy of the Notice of Proposed Rulemaking, published in the Pennsylvania Bulletin at 46 Pa.B. 4179 (published July 30, 2016) to the Independent Regulatory Review Commission, the Chairperson of the House Commerce Committee, and the Chairperson of the Senate Community, Economic and Recreational Development Committee. In

compliance with Section 5(c), the Department also provided the Commission and the Committees with copies of all comments received, as well as other documentation.

In preparing this final form regulation the agency has considered all comments received from the Commission and the public. No comments were received from the Committees. The modifications that were made to this regulation in response to the comments received do not enlarge the purpose of the regulation as first proposed.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. §745.5a (j.2), on (date), this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on (date) and approved this final-form rulemaking.

#### **Effective Date/Sunset Date**

(a) The regulation will take effect immediately upon final-form publication in the Pennsylvania Bulletin.

(b) A sunset date is not applicable as the Local Tax Enabling Act, as amended, (53 P.S. § 6924.101 et. seq.) under which the regulations are authorized does not specify a sunset date.

#### **Contact Person**

For an explanation of this regulation, contact Sean Sanderson, Local Government Policy Manager as follows:

Sean Sanderson, Local Government Policy Manager  
Department of Community and Economic Development  
Governor's Center for Local Government Services  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120.

#### **Findings and Order**

The Department of Community and Economic Development finds:

(1) That public notice of intention to adopt the regulations has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202).

(2) That the regulation is necessary and appropriate for the implementation of Chapter 5 of The Local Tax Enabling Act (act) (53 P.S. §§ 6924.501- 6924.517).

The Department of Community and Economic Development, acting under the authorizing statute, orders:

(1) That the regulation of the Department of Community and Economic Development is added to Title 12 of the Pennsylvania Code as Chapter 151 to read as set forth at Annex A.

(2) That the Department of Community and Economic Development shall submit this order, Annex A, and the Regulatory Analysis Form to the Independent Regulatory Review Commission, the House

Commerce Committee, the Senate Community, Economic and Recreational Development Committee, Office of Attorney General and the Office of General Counsel as required by law.

(3) That this order shall take effect upon publication in the Pennsylvania Bulletin.

Dennis M. Davin, Secretary

THE DEPARTMENT OF COMMUNITY AND  
ECONOMIC DEVELOPMENT

Annex A  
**TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT**  
**PART V. COMMUNITY AFFAIRS AND DEVELOPMENT**  
**Subpart D. LOCAL EARNED INCOME TAX**

**Chap.**

**151. LOCAL EARNED INCOME TAX**

**CHAPTER 151. LOCAL EARNED INCOME TAX**

**GENERAL PROVISIONS**

- 151.1. Definitions.
- 151.2. Procedures for filing adjusted declarations of estimated net profits.
- 151.3. Procedures for filing taxable income not subject to withholding.
- 151.4. Filing of estimated tax by taxpayers whose major source of gross income is from farming**
- 151.[4]5. Refunds.
- 151.[5]6. Publication of a Policy and Procedure Manual.

**WITHHOLDING**

- 151.11. Registration of employers.
- 151.12. Voluntary withholding for resident employees employed outside of a tax collection district.
- 151.13. Elective filing and remittance by multiwork location employers.

**TAX OFFICER**

- 151.21. Mandatory education for tax officers.
- 151.22. Minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers.
- 151.23. Duties of a tax collection committee in selecting a tax officer.
- 151.24. Duties of an appointed tax officer.
- 151.25. Point of contact for a tax collection committee.
- 151.26. Bond amount for tax officers.

**MEDIATION**

- 151.41. Rules for mediation.

**PROCUREMENT**

- 151.51. Procurement of goods and services—general rule.

## WITHDRAWAL AND ESTABLISHMENT OF A NEW TAX COLLECTION COMMITTEE

151.61. Withdrawal and establishment of a new tax collection committee.

### GENERAL PROVISIONS

#### § 151.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Local Tax Enabling Act (53 P.S. §§ 6924.101—6924.901).

*Out-of-State employer*—An employer that does not have a place of business in this Commonwealth. **An employer is not an out-of-state employer if such employer has a place of business in Pennsylvania even if such employer's primary business operations occur out of state.**

#### § 151.2. Procedures for filing adjusted declarations of estimated net profits.

Under section 502(c)(2)(iv) of the act (53 P.S. § 6924.502(c)(2)(iv)), every taxpayer who has filed the declaration of taxpayer's estimated net profits required under section 502(c) of the act and who anticipates additional net profits not previously declared or has overestimated anticipated net profits shall file, on or before April 15 of the current year, [June] **July 15** of the current year, [September] **October 15** of the current year or **January 15 of the succeeding year** [December 31 of the current year], whichever date next follows the date on which the taxpayer first anticipates the change in anticipated net profits, an adjusted declaration of estimated net profits and pay to the resident tax officer on or before the quarterly payment dates that remain after the filing of the adjusted declaration, beginning with the quarterly payment date in which the adjusted declaration is filed, equal installments of the tax due as reported on the adjusted declaration of estimated net profits.

#### § 151.3. Procedures for filing taxable income not subject to withholding.

Under section 502(c)(3) of the act (53 P.S. § 6924.502(c)(3)), every taxpayer who receives other taxable income not subject to withholding under section 512(3) of the act (53 P.S. § 6924.512(3)) shall make and file with the resident tax officer a quarterly return on or before April 15 of the current year, [June] **July 15** of the current year, [September] **October 15** of the current year and January 15 of the succeeding year setting forth the aggregate amount of actual or estimated taxable income not subject to withholding attributable to the taxpayer during the 3-month periods ending March 31 of the current year, June 30 of the current year, September 30 of the current year and December 31 of the current year, respectively, and subject to income tax, together with the source, nature, anticipated frequency and location of the taxable income. Every taxpayer filing a return shall, at the time of filing the return, pay to the resident tax officer the amount of income tax due or estimated to be due. The tax officer may waive the requirement to file a

quarterly return and payment of income tax when the taxable income is received on less than a quarterly frequency or is anticipated to be an aggregate amount of less than \$12,000 annually.

**§ 151.4. Filing of Estimated Tax by Taxpayers whose Major Source of Gross Income is from Farming.**

**Pursuant to Section 502(d) of the act (53 P.S. § 6924.502(d)), a declaration of estimated tax of an individual having an estimated gross income from farming for the taxable year which is at least two-thirds of the individual's total estimated gross income for the taxable year may be filed at any time on or before January 15 of the succeeding year, but if such individual files a final return and pays the entire tax by March 1, the return may be considered as the individual's declaration due on or before January 15.**

**[§ 151.4.] § 151.5 Refunds.**

A tax officer shall refund overpayment of taxes to the taxpayer in accordance with 53 Pa.C.S. §§ 8421—8438 (relating to Local Taxpayers Bill of Rights Act).

**[§ 151.6.] § 151.6 Publication of a Policy and Procedure Manual.**

The Department will develop and post on its web site a Policy and Procedure Manual. The Department will update the Policy and Procedure Manual on an annual basis. The Department's web site includes a library of standardized forms, reports, notices, returns and schedules developed in consultation with the Department of Revenue to be utilized by the local governments and the regulated community. **The following is a link to the Department's web site: <http://dced.pa.gov/local-government/local-income-tax-information>.**

## WITHHOLDING

**§ 151.11. Registration of employers.**

(a) Under section 512(a)(1) of the act (53 P.S. § 6924.512(a)(1)), if an employer has a place of business within a tax collection district and employs one or more persons, other than domestic servants, for compensation, the employer shall register with the tax officer for that tax collection district **within fifteen days after becoming an employer.**

(b) An employer shall collect and maintain the information as required under section 512 of the act. [On or after January 1, 2012, a] **An employer shall require each new employee to complete a Local Earned Income Taxpayer Residency Certification form as provided by the Department to help identify the political subdivision where an employee is domiciled and employed. Additionally, an employer shall require each current employee who establishes a new address or domicile to complete the Local Earned Income Taxpayer Residency Certification form. The employer shall retain residency information provided by the employee and, upon request, provide this information to the tax officer to reconcile, correct or otherwise confirm the political subdivision information for the employee.**

**§ 151.12. Voluntary withholding for resident employees employed outside of a tax collection district.**

Under section 512 of the act (53 P.S. § 6924.512), an out-of-State employer who employs a resident of this Commonwealth at a work location outside of this Commonwealth is not required to withhold the local earned income tax. An out-of-State employer may voluntarily agree with the employee to withhold and remit the tax along with the appropriate forms to the tax officer of the tax collection district in which the employee resides. **Every employer having a place of business within a tax collection district and employing one or more persons, other than domestic servants, shall withhold the greater of the employee's resident tax or the employee's nonresident tax.**

**§ 151.13. Elective filing and remittance by multi-work location employers.**

Under section 512(a)(5) of the act (53 P.S. § 6924.512(a)(5)), an employer with more than one place of business in more than one tax collection district may elect to remit the tax withheld from all of its employees in all of its work locations in this Commonwealth for the preceding month and file, [within 30 days following the end of each month] **on or before the last day of the month succeeding the month for which the return under section 512(a)(4) of the act (53 P.S. §6924.512(a)(4)) is due,** one single combined monthly return as follows:

(1) To be eligible to file combined returns and make combined payments, the employer shall file:

(i) A notice of its intention to file combined returns and make combined payments with the tax officer for each place of employment at least 1 month prior to filing its first combined return or making its first combined payment.

(ii) Its combined return and remit its combined payment electronically on a monthly, rather than quarterly, basis.

(2) An employer with payroll operations located within one tax collection district shall file the combined return and remittance of earned income taxes withheld to the tax officer in that tax collection district. An employer with payroll operations located within more than one tax collection district shall file the combined return and remittance of earned income taxes withheld to the tax officer of any tax collection district in which any of the employer's payroll operations are located. If the tax officer declines in writing to receive the combined filing, the employer may choose to file a combined return with any tax officer in a tax collection district where the employer maintains a place of business employing one or more employees.

(3) An eligible employer's election to file combined returns and make combined payments does not alter an employee's workplace for purposes of nonresident tax liability.

(4) An employer may not select a tax officer to receive combined tax returns and remittances more frequently than on a tax year basis. The selection of a tax officer shall be made at the time of filing the tax return.

(5) If an employer outsources payroll functions to a payroll processing company, the employer's place of business that forwards payroll data to the company is deemed the employer's payroll operations location. The location of the payroll processing company is not the employer's payroll operations location.

## **TAX OFFICER**

### **§ 151.21. Mandatory education for tax officers.**

(a) *Initial certification.* Persons and entities seeking appointment as tax officers shall take and achieve a passing grade of seventy percent (70%) or above on the initial certification exam given by or on behalf of the Department.

(b) *Continuing certification.* Persons and entities seeking to maintain appointments as tax officers shall take and achieve a passing grade of seventy percent (70%) or above on the annual continuing certification exam given by or on behalf of the Department.

### **§ 151.22. Minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers.**

A tax officer or a person or entity seeking appointment as a tax officer shall designate at least one person for every five counties for which the tax officer has been named a tax officer to satisfy the mandatory education requirements under section 508(e) of the act (53 P.S. § 6924.508(e)) and meet the qualifications and requirements for tax officers under this chapter. [For example, if a tax officer has been named tax officer for 20 tax collection districts, the tax officer shall have at least 4 employees who satisfy § 151.21 (relating to mandatory education for tax officers).] A tax officer may designate itself to satisfy this requirement. If the tax officer is an entity rather than a natural person, the tax officer shall appoint one natural person employed by the tax officer for every five counties served by the tax officer.

### **§ 151.23. Duties of a tax collection committee in selecting a tax officer.**

Before appointing or reappointing a tax officer for any tax collection district, a tax collection committee shall:

(1) Verify that the proposed tax officer meets the following requirements:

[(i) Meets or exceeds the qualifications for tax officers in the Department's Policy and Procedure Manual.]

[(ii) Has provided to the tax collection committee a written statement prepared by an accountant professional verifying that the tax officer operates and exists as a solvent entity.]

[(iii)] **(i)** Has undergone a SSAE 16 audit (or other fiscal control audit meeting or exceeding SSAE 16 audit standards and approved by the Department in writing) at least once in the last 2 years.

[(iv)] **(ii)** Has certified with the tax collection committee that it does not use a third party to process employer or individual taxpayer tax returns.

[(v)] **(iii)** Has demonstrated timely earned income tax distributions if the tax officer already serves as a tax officer for another tax collection committee.

[(vi)] **(iv)** Has disclosed in writing any claim, including, but not limited to, litigation filed in either state or Federal court, brought by a municipality, school district, tax collection committee or other tax officer against the tax officer or its insurer regarding the collection or distribution of earned income taxes.

[(vii)] **(v)** Meets the requirements of §§ 151.21 and 151.22 (relating to mandatory education for tax officers; and minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers).

[(viii)] **(vi)** Has not been convicted of a felony involving fraud, extortion or dishonesty in any jurisdiction.

[(ix)] **(vii)** Has not engaged in conduct which significantly adversely reflects [of] on the proposed tax officer's credibility, honesty or integrity.

[(x)] **(viii)** Is able to attain the bond required under section 509(d) of the act (53 P.S. § 6924.509(d)).

(2) Receive a minimum of five positive references for the tax officer. The references shall be contacted independently by the tax collection committee and may [not] be provided by the tax officer.

(3) Conduct at least one onsite visit to the office of the tax officer prior to selecting the tax officer. A minimum of three tax collection committee delegates shall attend the onsite visit.

(4) Include in the agreement between the tax collection committee and the tax officer a termination clause that allows the tax collection committee to terminate the agreement if the tax officer fails to meet the requirements of this section. The termination clause must provide that the tax collection committee shall terminate the agreement no later than 30 days after it provides written notice to the tax officer that the tax officer has failed to comply with the requirements of this section and the tax officer has failed to cure the noncompliance within the 30-day notice period.

[(5)] Include in the agreement between the tax collection committee and the tax officer a termination for convenience clause that allows the tax collection committee to terminate the agreement for any reason or for no reason. The clause shall provide that the tax collection

committee may terminate the agreement within 60 days of providing written notice to the tax officer.]

**§ 151.24. Duties of an appointed tax officer.**

A tax officer shall notify the Department and all the tax collection committees for which it collects taxes if it fails to continually meet the requirements of §§ 151.21—151.23 (relating to mandatory education for tax officers; minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers; and duties of a tax collection committee in selecting a tax officer). Failure of the tax officer to comply with this section may result in the tax officer losing its certification.

**§ 151.25. Point of contact for a tax collection committee.**

Each tax collection committee shall identify to the Department a point of contact who is available during normal business hours. The point of contact does not need to be a delegate of the tax collection committee. Each tax collection committee shall provide the point of contact's phone number, e-mail address and physical address. The tax collection committee shall notify the Department if the point of contact changes.

**§ 151.26. Bond amount for tax officers.**

(a) Section 509(d) of the act (53 P.S. § 6924.509(d)) requires that tax collection committee shall fix the amount of the bond in an amount equal to the maximum amount of taxes that may be held 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 and the Policy and Procedures Manual adopted by the Department].

(b) When a tax collection committee agrees to a bond amount less than the maximum amount of taxes that may be held in the possession of the tax officer at any given time, the tax collection committee shall do so by resolution. The tax collection committee shall expressly indicate in the resolution the reasons why it has agreed to a lesser bond amount.

## **MEDIATION**

**§ 151.41. Rules for mediation.**

The following practices and procedures for mediation apply.

(1) One or more affected political subdivisions shall give written notice to the tax collection committee and the Department of the desire to submit the disputed matter to mediation by the Department. Thereafter, the political subdivision, tax collection committee and tax officer shall mediate in accordance with this section.

(i) Only a political subdivision may initiate a mediation request.

(ii) A political subdivision shall send the notice by regular mail.

(iii) The notice must include a statement indicating whether or not the dispute is subject to mandatory mediation. If a dispute involves a 10% or greater deviation from taxes received in the previous tax year, the parties are subject to mandatory mediation. If a dispute involves less than the 10% threshold, the parties may agree to undergo voluntary mediation in accordance with this section.

[(iv) The Department will charge a \$500 filing fee for mediation. The fee is not refundable and not subject to appeal. The political subdivision shall pay the fee by check and submit it together with the notice to the Department.]

(2) Upon receipt of the notice, the Department will provide a copy of the notice to the tax officer. Within 20 days of the submission of the notice, the political subdivision, tax collection committee and tax officer shall each submit a written statement, not exceeding five pages, to the Department and the affected parties stating their positions as to the disputed and undisputed facts and issues in the case and whether prior settlement negotiations have occurred. The Department may decline to consider any information within a statement filed after the 20-day deadline.

(3) Within 30 days of the Department's receipt of the notice, the Department will determine whether the dispute meets the threshold conditions for mandatory mediation **set forth in subsection (1)(iii).**

(i) If the issue being mediated is the same for more than one political subdivision, the political subdivisions shall combine their notices into one notice, which may not exceed five pages. [The \$500 filing fee may be shared by the political subdivisions at their discretion.]

(ii) The Department's determination is final and not subject to appeal.

(iii) The Department will provide written notice of its determination to all affected parties within 5 days of its determination. The Department may provide the notice by e-mail, if available.

**(iv) The Department shall assess a fee to cover costs incurred by the Department in reviewing the mediation notice submitted by the political subdivision and the responses thereto. The Department will equitably apportion the costs among the affected parties by assessing each affected party only for the costs incurred by the Department when reviewing that particular affected party's notice and written statements. If two or more affected parties file a joint statement or notice, the costs incurred by the Department for reviewing the joint filing will be equally divided among those jointly-filing affected parties. The Department shall notify the parties in writing of the fee assessment. The fee is not refundable and not subject to appeal. The parties shall pay their assessed portion of the fee by check within 30 days of notification of assessment by the Department.**

(4) If the Department determines that the dispute requires mandatory mediation, the Department will [turn] **refer** the matter [over] to the Pennsylvania Office of General Counsel Dispute

Resolution Coordinator [within 5 days of the Department's determination] **simultaneously with the written notice provided under subparagraph 3(iii)**. The coordinator will appoint an Office of General Counsel mediator to mediate the dispute. The selection of the mediator is final and not subject to appeal. **The mediator will seek the parties' mutual agreement to extend the time period for mediation if the mediator and the Department believe that such extension may be necessary**. The mediator will [attempt to] complete the mediation [within 20 days of the appointment, but] no later than 30 days following the Department's [determination] **written notice provided in subparagraph (3)(iii) unless the time period is extended by the mutual agreement of the parties to the mediation**. Except as otherwise provided in this section, the mediation will be conducted under the rules in the Office of General Counsel Mediation Handbook. If the mediator incurs costs or imposes other mediation fees upon the parties, the costs or fees, or both, will be equitably assessed. The assessment is final and not subject to appeal.

(i) The parties shall participate in the mediation in good faith. The parties shall have an official authorized to settle the matter on their behalf available at the mediation. The mediator may require a party that fails to participate in good faith to pay all the costs of the mediation.

(ii) The mediator may request that Department personnel be present for all or a portion of the mediation.

(5) If the Department determines that the dispute involves voluntary mediation, all parties involved in the mediation, including the Department, **may** [shall] agree to mediate the issue through [the coordinator within 5 days of the Department's determination.] **the Pennsylvania Office of General Counsel Dispute Resolution Program. The agreement to voluntarily mediate must be made within five days of the Department's written notice provided in subparagraph (3)(iii). Upon agreement by the parties to voluntary mediation, the Department will immediately refer the matter to the Office of General Counsel Dispute Resolution Coordinator.** The coordinator will appoint a mediator to mediate the matter. The selection of the mediator is final and not subject to appeal. **The mediator will seek the parties' mutual agreement to extend the time period for mediation if the mediator and the Department believe that such extension may be necessary**. The mediator will [attempt to] complete the mediation [within 20 days of the appointment but] no later than 30 days following the [Department's determination] **agreement by the parties to mediate the issue [Department's determination] unless the time period is extended by the mutual agreement of the parties to the mediation**. Except as otherwise provided in this section, the mediation will be conducted under the rules in the Office of General Counsel Mediation Handbook. If the mediator incurs costs or imposes other mediation fees upon the affected parties, the costs or fees, or both, will be equitably assessed. The cost assessment is final and not subject to appeal.

(i) The parties shall participate in the mediation in good faith. The parties shall have an official authorized to settle the matter on their behalf available at the mediation. The mediator may require a party that fails to participate in good faith to pay all the costs of the mediation.

(ii) The mediator may request that Department personnel be present for all or a portion of the mediation.

(6) Mediation sessions are closed to the public and are not subject to the requirements of 65 Pa.C.S. Chapter 7 (relating to Sunshine Act).

(7) Offers or settlements made in a mediation session, excluding the final written settlement agreement, are not admissible as evidence in subsequent judicial or administrative proceedings in accordance with 42 Pa.C.S. § 5949 (relating to confidential mediation communications and documents).

(8) If a settlement is reached during the mediation, the Department will prepare a written settlement agreement and obtain all necessary signatures within 30 days of the agreement of the parties to settle the issue. The settlement agreement is binding upon the parties to the agreement. The settlement agreement is subject to the Right-to-Know Law (65 P.S. §§ 67.101—67.3104). The agreement is admissible as evidence in subsequent judicial or administrative proceedings in accordance with the Pennsylvania Rules of Court, the Pennsylvania Rules of Evidence and 42 Pa.C.S. § 5949.

(9) If the mediation does not result in a written agreement signed by the parties as provided in paragraph (8), the mediation is deemed unsuccessful unless all parties and the Department agree in writing to extend the mediation. The mediator may determine that the mediation is unsuccessful and terminate the mediation if the parties have not executed a settlement agreement by the ending date of the extension or of any further extension agreed upon by the affected parties and the mediator.

## PROCUREMENT

### § 151.51. Procurement of goods and services—general rule.

Tax collection committees shall procure goods and services in accordance with section 1802 of The County Code (16 P.S. § 1802) through competitive sealed bids [unless otherwise specified in this section]. References in section 1802 of The County Code to county officials shall be deemed to refer to a designated procurement officer of the tax collection committee.

## WITHDRAWAL AND ESTABLISHMENT OF A NEW TAX COLLECTION COMMITTEE

### § 151.61. Withdrawal and establishment of a new tax collection committee.

(a) *Resolution to withdraw.* Under section 505(m) of the act (53 P.S. § 6924.505(m)), a political subdivision governed by a tax collection committee established under section 505(m) of the act may, within the 90-day period ending November 15, 2013, and November 15 every fourth year thereafter, adopt and file with the Department and the tax collection committee a resolution evidencing its desire to withdraw from governance by the tax collection committee as of January 1 of the second succeeding calendar year. If a majority of the governing bodies of the political subdivisions adopt resolutions evidencing a desire to withdraw, a new tax collection committee shall be established in accordance with the following:

(1) The establishment of a new tax collection committee may not alter the geographic boundaries or the political subdivisions of the tax collection district.

(2) The old tax collection committee shall stay in effect through December 31 of the first succeeding calendar year after the November 15 date to adopt resolutions evidencing a desire to withdraw.

(3) The new tax collection committee shall become effective as of January 1 of the second succeeding calendar year after the November 15 date to adopt resolutions evidencing a desire to withdraw.

(4) Other than the timing requirements as provided for in this section, the new tax collection committee shall have all the obligations, duties and powers and be subject to the quorum and voting rights provisions provided for in Chapter 5 of the act (53 P.S. §§ 6924.501—6924.517) and this chapter.

*(b) Delegates.*

(1) The governing body of each political subdivision within the tax collection district that imposed an income tax prior to July 1 of the same year the November 15 date to adopt resolutions evidencing a desire to withdraw occurs shall appoint one voting delegate and one or more alternates to represent the political subdivision on the new tax collection committee by September 15 of the succeeding calendar year after the November 15 date to adopt resolutions evidencing a desire to withdraw. The governing body of each political subdivision that after June 30 of the same year as the November 15 date to adopt resolutions evidencing a desire to withdraw occurs imposes an income tax for the first time shall appoint one voting delegate and one or more alternates to represent the political subdivision on the tax collection committee. A voting delegate or alternate shall serve at the pleasure of the governing body of the political subdivision.

(2) The governing body of each political subdivision within the tax collection district that prior to July 1 of the same year as the November 15 date to adopt resolutions evidencing a desire to withdraw occurs does not impose an income tax may appoint one nonvoting delegate and one or more alternates to represent the political subdivision on the tax collection committee. If after June 30 of the same year as the November 15 date to adopt resolutions evidencing a desire to withdraw occurs the political subdivision imposes an income tax, the nonvoting delegate shall become a voting delegate to represent the political subdivision on the tax collection committee.

*(c) First meeting.* The first meeting of the tax collection committee in the tax collection district shall be on or before May 15 of the year subsequent to the November 15 date to adopt resolutions evidencing a desire to withdraw. The chair of the county commissioners or the chief executive of the county in which the tax collection district is primarily located or the chair's designee shall schedule the first meeting of the tax collection committee and provide, at least 21 days before the meeting, public notice, as required under 65 Pa.C.S. § 703 (relating to definitions), and notice by first class mail by March 15 of the year subsequent to the November

15 date to adopt resolutions evidencing a desire to withdraw to the Department and to the governing body of each political subdivision located in the tax collection district.

(d) *Establishment of tax collection committee.* The chair of the county commissioners or the chair's designee or the chief executive of the county or **the chief executive's** [his] designee shall convene the first meeting of the tax collection committee, conduct the meeting and record all votes until a chairperson, vice chairperson and secretary are elected by the tax collection committee. The voting delegates of the tax collection committee shall elect a chairperson and a vice chairperson, each of whom shall be duly appointed voting delegates, and a secretary **who may be a duly appointed voting delegate. If the secretary is a duly appointed voting delegate, this shall be noted on the record at all meetings.** The chairperson shall schedule meetings, set the agenda, conduct meetings, record votes and perform other duties as determined by the tax collection committee. The secretary shall maintain the minutes and records of the tax collection committee and provide notices to each delegate and alternate appointed to the tax collection committee.

(e) *Bylaws.* Before July 16 of the year subsequent to the November 15 date to adopt resolutions evidencing a desire to withdraw, the delegates of the new tax collection committee shall adopt bylaws to govern the tax collection committee and notify the Department within 30 days of adoption. The Department will provide sample bylaws to the tax collection committee. The tax collection committee shall provide written notice to each delegate and alternate delegate informing each delegate and alternate delegate that the adoption or amendment of bylaws will be considered at a meeting. The written notice must include copies of the proposed bylaws or amendments. The bylaws for each tax collection committee must include:

- (1) Rules of procedure, quorum requirements, voting rights and provisions for managing the affairs of the tax collection committee.
- (2) A list of officers, their terms and powers, and a process for their election.
- (3) Meetings, including special meetings.
- (4) The process for adopting and amending bylaws.
- (5) The procedure for the addition of new political subdivisions to the tax collection committee.

(f) *Election of officers.* Upon the election of any new officers, the tax collection committee shall notify the Department within 30 days and shall provide the Department with the name and address of each officer.

(g) *Appeals board.* By September **30** of the year subsequent to the November 15 date to adopt resolutions evidencing a desire to withdraw, the new tax collection committee shall establish an appeals board under section 505(j) of the act and this chapter.



**COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL**

June 1, 2018

Independent Regulatory Review Commission  
c/o George D. Bedwick, Chairman  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

**Re: IRRC # 3156 (Local Earned Income Tax)**

Dear Mr. Bedwick:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your review is final regulation (4-97) (Local Earned Income Tax). The regulation submitted would amend Subpart D, Chapter 151 of Title 12 of the Pennsylvania Code.

Also enclosed is a regulatory analysis form pertaining to the regulation.

Concurrently with delivery of the regulation to you, the regulation has also been submitted to the House Commerce Committee and the Senate Community, Economic and Recreational Development Committee for their respective review in accordance with the Regulatory Review Act.

Sincerely,

A handwritten signature in cursive script that reads "Lori K. Irwin".

Lori K. Irwin  
Counsel

Enclosures

cc: Barry Wickes, Legislative Liaison, DCED



**COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL**

June 1, 2018

Honorable W. Curtis Thomas  
Minority Chair  
Commerce Committee  
Pennsylvania House of Representatives  
Room 214 Irvis Office Building  
Harrisburg, PA 17120

Dear Representative Thomas:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your review is final regulation (4-97) (Local Earned Income Tax). The regulation submitted would amend Subpart D, Chapter 151 of Title 12 of the Pennsylvania Code.

Also enclosed is a regulatory analysis form pertaining to the regulation.

Concurrently with delivery of the regulation to you, the regulation has also been submitted to the Independent Regulatory Review Commission for its review in accordance with the Regulatory Review Act.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lori K. Irwin".

Lori K. Irwin  
Counsel

Enclosures

cc: Barry Wickes, Legislative Liaison, DCED  
George D. Bedwick, Chairman, IRRC



**COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL**

June 1, 2018

Honorable Brian Ellis, Chair  
Commerce Committee  
Pennsylvania House of Representatives  
Room 115 Ryan Office Building  
Harrisburg, PA 17120

Dear Representative Ellis:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your review is final regulation (4-97) (Local Earned Income Tax). The regulation submitted would amend Subpart D, Chapter 151 of Title 12 of the Pennsylvania Code.

Also enclosed is a regulatory analysis form pertaining to the regulation.

Concurrently with delivery of the regulation to you, the regulation has also been submitted to the Independent Regulatory Review Commission for its review in accordance with the Regulatory Review Act.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lori K. Irwin".

Lori K. Irwin  
Counsel

Enclosures

cc: Barry Wickes, Legislative Liaison, DCED  
George D. Bedwick, Chairman, IRRC



**COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL**

June 1, 2018

Honorable Mario Scavello, Chair  
Community, Economic and Recreational Development Committee  
Senate of Pennsylvania  
Room 168 Main Capitol Building  
Harrisburg, PA 17120

Dear Senator Scavello:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your review is final regulation (4-97) (Local Earned Income Tax). The regulation submitted would amend Subpart D, Chapter 151 of Title 12 of the Pennsylvania Code.

Also enclosed is a regulatory analysis form pertaining to the regulation.

Concurrently with delivery of the regulation to you, the regulation has also been submitted to the Independent Regulatory Review Commission for its review in accordance with the Regulatory Review Act.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lori K. Irwin".

Lori K. Irwin  
Counsel

Enclosures

cc: Barry Wickes, Legislative Liaison, DCED  
George D. Bedwick, Chairman, IRRC



**COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL**

June 1, 2018

Honorable Lawrence M. Farnese, Jr., Minority Chair  
Community, Economic and Recreational Development Committee  
Senate of Pennsylvania  
Room 543 Main Capitol Building  
Harrisburg, PA 17120

Dear Senator Farnese:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your review is final regulation (4-97) (Local Earned Income Tax). The regulation submitted would amend Subpart D, Chapter 151 of Title 12 of the Pennsylvania Code.

Also enclosed is a regulatory analysis form pertaining to the regulation.

Concurrently with delivery of the regulation to you, the regulation has also been submitted to the Independent Regulatory Review Commission for its review in accordance with the Regulatory Review Act.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lori K. Irwin".

Lori K. Irwin  
Counsel

Enclosures

cc: Barry Wickes, Legislative Liaison, DCED  
**George D. Bedwick, Chairman, IRRC**



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

June 1, 2018

Elam M. Herr, Assistant Executive Director of Government Affairs  
Pennsylvania State Association of Township Supervisors  
4855 Woodland Drive  
Enola, PA 17025

RE: Final Regulation 4-97 – Local Earned Income Tax

Dear Mr. Herr:

You had provided comments to Proposed Regulation 4-97 (Local Earned Income Tax). Pursuant to Section 5.1 (b) of the Regulatory Review Act, I am writing to notify you, as a commentator, that the enclosed final-form regulation was delivered today to the Independent Regulatory Review Commission.

Sincerely,

Lori Irwin  
Counsel

cc: Hon. W. Curtis Thomas, Minority Chair Commerce Committee  
Hon. Brian Ellis, Chair, Commerce Committee  
Hon. Lawrence M. Farnese, Jr., Minority Chair, Community, Economic & Recreational Dev. Committee  
Hon. Mario Scavello, Chair, Community, Economic & Recreational Dev. Committee  
**George D. Bedwick, IRRC Chairman**  
Stephen D'Ettore, DCED Policy Office  
Barry Wickes, DCED Legislative Liaison  
Sean Sanderson, DCED Center for Local Government Services



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

June 1, 2018

Peter N. Calcara, CAE, Vice President of Government Relations  
Pennsylvania Institute of CPAs  
500 North 3<sup>rd</sup> Street, Suite 600A  
Harrisburg, PA 17101

RE: Final Regulation 4-97 – Local Earned Income Tax

Dear Mr. Calcara:

You had provided comments to Proposed Regulation 4-97 (Local Earned Income Tax). Pursuant to Section 5.1 (b) of the Regulatory Review Act, I am writing to notify you, as a commentator, that the enclosed final-form regulation was delivered today to the Independent Regulatory Review Commission.

Sincerely,

Lori Irwin  
Counsel

cc: Hon. W. Curtis Thomas, Minority Chair Commerce Committee  
Hon. Brian Ellis, Chair, Commerce Committee  
Hon. Lawrence M. Farnese, Jr., Minority Chair, Community, Economic & Recreational Dev. Committee  
Hon. Mario Scavello, Chair, Community, Economic & Recreational Dev. Committee  
**George D. Bedwick, IRRC Chairman**  
Stephen D'Ettore, DCED Policy Office  
Barry Wickes, DCED Legislative Liaison  
Sean Sanderson, DCED Center for Local Government Services



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

June 1, 2018

Ronald J. Grutza, Regulatory Affairs Coordinator  
Pennsylvania State Association of Boroughs  
2941 North Front Street  
Harrisburg, PA 17110

RE: Final Regulation 4-97 – Local Earned Income Tax

Dear Mr. Grutza:

You had provided comments to Proposed Regulation 4-97 (Local Earned Income Tax). Pursuant to Section 5.1 (b) of the Regulatory Review Act, I am writing to notify you, as a commentator, that the enclosed final-form regulation was delivered today to the Independent Regulatory Review Commission.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lori Irwin".

Lori Irwin  
Counsel

cc: Hon. W. Curtis Thomas, Minority Chair Commerce Committee  
Hon. Brian Ellis, Chair, Commerce Committee  
Hon. Lawrence M. Farnese, Jr., Minority Chair, Community, Economic & Recreational Dev. Committee  
Hon. Mario Scavello, Chair, Community, Economic & Recreational Dev. Committee  
**George D. Bedwick, IRRC Chairman**  
Stephen D'Ettore, DCED Policy Office  
Barry Wickes, DCED Legislative Liaison  
Sean Sanderson, DCED Center for Local Government Services



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

June 1, 2018

Joseph W. Lazzaro, Vice President/General Counsel  
Keystone Collections Group  
456 Wendel Road  
Irwin, Pennsylvania 15642

RE: Final Regulation 4-97 – Local Earned Income Tax

Dear Mr. Lazzaro:

You had provided comments to Proposed Regulation 4-97 (Local Earned Income Tax). Pursuant to Section 5.1 (b) of the Regulatory Review Act, I am writing to notify you, as a commentator, that the enclosed final-form regulation was delivered today to the Independent Regulatory Review Commission.

Sincerely,

Lori Irwin  
Counsel

cc: Hon. W. Curtis Thomas, Minority Chair Commerce Committee  
Hon. Brian Ellis, Chair, Commerce Committee  
Hon. Lawrence M. Farnese, Jr., Minority Chair, Community, Economic & Recreational Dev. Committee  
Hon. Mario Scavello, Chair, Community, Economic & Recreational Dev. Committee  
George D. Bedwick, IRRC Chairman  
Stephen D'Ettore, DCED Policy Office  
Barry Wickes, DCED Legislative Liaison  
Sean Sanderson, DCED Center for Local Government Services

