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Municipal Newsletter

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Amendment to 'Earned Income' Definition

As of February 23, 2016, the definition of "earned income" was amended in the Local Tax Enabling Act, 53 P.S. Section 6924.101 *et seq.* (the "Act"). Prior to this, the definition for "earned income" was:

The compensation required to be reported to or as determined by the Department of Revenue under [Section 7303] of... the Tax Reform Code of 1971 [72 P.S. Section 7101 *et seq.*], and rules and regulations promulgated under that section. Employee business expenses as reported to or determined by the Department of Revenue under Article III of the Tax Reform Code of 1971 shall constitute allowable deductions in determining earned income. The term does not include offsets for business losses. The amount of any housing allowance provided to a member of the clergy shall not be taxable as earned income.

Now, in addition to what has been stated, the definition also exempts "wages or compensation paid to individuals on active military service, regardless of whether it is earned for active military service inside or outside this Commonwealth."

As with the rest of the Act, this amendment affects the following:

1. Cities of the second class, second class A and third class;
2. Boroughs and towns;
3. Townships of the first class and second class; and
3. School districts of the second class, third class and fourth class, including independent school districts.

Representative Rob W. Kauffman of the 89th Legislative District of Pennsylvania in his House Co-Sponsorship Memoranda dated December 5, 2014 pointed out:

[The Act] was [initially] enacted with the intent of streamlining the manner in which the earned income... is collected at the local level. However, when [the Act] was enacted, the definition of 'earned income' was modified in order to mirror language that currently exists within the Tax Reform Code. As a result of this definitional change, the scope of the [earned income tax] was increased to include active duty military pay that is earned **within the boundaries of the Commonwealth.**

Prior to [the Act], active duty military pay was exempt from the [earned income tax] regardless of where it was earned.

With this modification, the military service compensation is exempt.

As Mr. Kauffman explained:

In many cases, active duty military operations in Pennsylvania involve National Guard members that are called to service when a natural disaster strikes or another significant event occurs. When these brave National Guard members provide assistance relating to these matters, they are often forced to leave their families, take a leave of absence from their employment, and place their lives on the line all while being paid at a lower wage. By exempting this pay from the [earned income tax], I believe it is the least we can do to show appreciation for our brave service men and women.

This amendment went into effect immediately after it was signed by Governor Tom Wolf.

Local Governments and Adverse Possession

Although a person may not acquire title to real property owned by the federal and state governments through adverse possession, title to real property owned by political subdivisions may be acquired in such a manner. Only school districts

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are exempted from this possibility, because they are considered to be agents of the state. This is affirmed in Lysicki v. Montour School Dist., ___ Pa. Cmwlth. ___, 701 A.2d 630, 632 (1997).

As declared by the Pennsylvania Superior Court in Flannery v. Stump, 2001 PA Super 307, 786 A.2d 255 (2001), which involved a dispute between two private individuals over whether title to a parcel of land was conferred by adverse possession, in order for title to land to be acquired by adverse possession, the person must prove actual, continuous, exclusive, visible, notorious, distinct and hostile possession of the real property for twenty-one (21) years. If any of these elements is absent, then adverse possession does not exist.

For example, if a local government owns land but does not devote the real property to public use during the twenty-one (21) year period, the property is susceptible to adverse possession. Similarly, real property dedicated to a municipality for use as a public street may be lost if the municipality fails to open or accept the street within twenty-one (21) years. Otherwise, the municipality will need to obtain the approval of a majority of abutting owners, as decided by the Pennsylvania Supreme Court in Estojak v. Mazsa, 522 Pa. 353, 562 A.2d 271 (1989). The exception to this is if the local government obtains property through a tax sale. In Torch v. Con-

stantino, 227 Pa. Super. 427, 323 A.2d 278 (1974), the Pennsylvania Superior Court concluded:

The time has come for the courts to recognize and respect the intention of the legislature in this field and to realize that ‘changing conceptions of the scope and functions of government’, clearly call for a determination that adverse possession does not run against the political subdivisions holding land for tax sales for nonpayment of taxes, as trustee, and to hold that this function is a governmental one.

Therefore, local governments should be mindful of the property they own or the interest they have in such property and whether such property is being employed for public use. Otherwise, the possibility of losing title to the property by adverse possession could happen.
