



January 2009

# EDUCATION LAW WATCH

## ACT 32 MANDATES NEW GOVERNMENT ENTITY TO IMPLEMENT COUNTY-WIDE EIT COLLECTION/SCHOOL AND MUNICIPAL COOPERATION

Act 32, signed by the Governor on July 2, 2008, amends and completely restates the Local Tax Enabling Act (LTEA). D-Day for mandatory county-wide collection is January 1, 2012 – *but Act 32 requires that school districts and municipalities take many different steps, starting immediately.*

LTEA is the Pennsylvania law that authorizes school districts and municipalities to impose numerous different types of taxes, including earned income tax (EIT), local services tax (LST), per capita tax, realty transfer tax, and miscellaneous other taxes. Many of the prior LTEA provisions are merely restated in Act 32; however, Act 32 also makes major changes, particularly with respect to local income tax law and collection rules.

Although much of Act 32 is merely reorganization of prior LTEA provisions, Act 32 has two overarching purposes. The first is to establish state-wide uniformity in tax rules, procedures, and forms. The second is to provide greater tax collection efficiency by eliminating the current huge number of tax collectors and consolidating local income tax collection at the county level.

To implement these overarching purposes, Act 32 has two major categories of changes.

## INCOME TAX LAW CHANGES

The first major category imposes income tax law changes. These changes do the following: (1) restate with some differences the law applicable to EIT; (2) broaden LTEA to encompass the now-permissible personal income tax (PIT) taxing investment income in addition to earned income; (3) mandate new rules for individual and employer tax returns; (4) mandate a new independent tax appeal board; (5) provide DCED mediation as a new dispute resolution procedure for taxing authorities and tax collectors; (6) make significant changes in requirements for audit of tax collector records and accounts; and (7) make major changes in employer withholding and tax collector distribution rules.

Among the changes in employer withholding rules, the biggest change is the mandate for universal non-resident withholding – every Pennsylvania employer must determine the tax rate applicable to every employee, withhold local income tax from every employee subject to tax, and pay the tax to the tax collector for the place of employment, even if the tax is owed elsewhere. As to tax collector distribution of tax amounts, monthly reports and distributions to taxing authorities and other tax collectors are required, and distribution of taxes based on estimates is prohibited.

The tax law changes will require new steps by individual taxpayers, tax return preparers, taxing authorities, tax collector accounting firms – and most notably, school districts, municipalities, employers and tax collectors. Among other things, Act 32 imposes new investment, bonding, and tax record requirements on tax collectors.



The tax law changes will also require that school districts and municipalities adopt new tax resolutions and ordinances.

The tax law changes are generally effective January 1, 2012. However, the effective date of employer withholding rules may be accelerated, and advance planning will be required for many of the changes.

## NEW GOVERNMENT ENTITY: TAX COLLECTION COMMITTEE

The second major category of changes mandates a new government entity, called the **Tax Collection Committee** (TCC). The purpose of the TCC is to implement county-wide collection everywhere in Pennsylvania – either through creation of a tax collection bureau, or by appointing an independent third party tax collection agency to collect tax for all school districts and municipalities within each county. The TCC will have jurisdiction over a geographic area that approximates county lines, but deviates somewhat from county lines by following school district boundaries, and is called the **Tax Collection District** (TCD).

This second category provides a Lancaster County Tax Collection Bureau opt-out option.

***The TCC requires immediate school district and municipality attention.***

The TCC process first stage is 2+ years, from 2009 through 2011, involving organization of the TCC and basic tax collection decisions, culminating in collection of local income tax through a new Act 32 county-wide tax collector starting January 1, 2012. The TCC process second stage extends through all future years, involving TCC oversight of the ongoing tax collection process.

**TCC first stage.** Decisions and steps required during the TCC first stage include: (1) officer, legal counsel, and auditor appointment; (2) decisions on employees needed; (3) decisions on governance structure and bylaw adoption; (4) financial matters, including annual budget and decision on financing mechanism; (5) decisions on TCC insurance; (6) decision on single-county or multi-county TCC; (7) decision on whether TCC will have jurisdiction over LST or other taxes in addition to income taxes; (8) adoption of various mandatory and other policies; (9) appointment of the new Act 32 county-wide tax collector; (10) development of an Act 32 transition plan; (11) appointment of a new tax appeal board; and (12) various other steps.

The most fundamental TCC decision is whether to create a tax bureau, or instead simply use an independent third party tax collector as the new Act 32 county-wide tax collector.

The TCC Chairperson is a very important individual. In order to ensure an efficient and effective TCC process, careful selection of the Chairperson will be important. TCC legal counsel selection is another important decision.

In addition to a Chairperson to conduct TCC meetings and generally guide the TCC, every TCC must have someone to lead and make sure all required steps occur and responsibilities are fulfilled. The TCC will need to decide who will be the leader/chief operating officer – to fulfill this function. Is the Chairperson willing and able to do so? Is an employee required? If not, how will this function be fulfilled?

Unless a modified structure is provided through TCC-adopted bylaws, the TCC will be controlled by a governing body comprised of different individual delegates appointed by each school district and municipality within the TCD.



Voting at the initial TCC meeting is weighted. Instead of one person/one vote, each delegate has a weighted vote, with weighting based 50% on income tax revenues and 50% based on population. The weighted voting methodology may be changed or eliminated by a TCC-adopted bylaw.

The TCC will be a large body in most TCDs. This fact alone will make conduct of meetings and decisionmaking difficult. With the statutory mandate for weighted voting rather than one person/one vote, the challenge will be even greater.

The challenges to conducting effective meetings presented by the large number of delegates and weighted voting strongly suggest the TCC should consider strategies and adopt bylaws to simplify the governance process. Possible strategies include bylaws that provide for a smaller number of delegates, and for delegation of TCC functions to TCC committees.

Whether or not the governance process is simplified, careful thought and advance planning will be required for the initial and each subsequent TCC meeting.

Although there will be many implementation challenges and possibly a few unexpected negative impacts in some geographic areas, the overall impact of Act 32 when viewed on a state-wide basis will be to provide significant improvement in Pennsylvania local income tax collection. To effectively address the challenges, including the complexity of the weighted voting process with many delegates and the complicated issues to be addressed, KKAG strongly recommends formation – starting January 1, 2009, or as soon thereafter as possible – of an advance planning group within each TCD. The planning group charter should be to develop strategies and plans in advance of the October or November 2009 first mandatory TCC meeting. Of course, an advance planning

group will need school district and municipal representatives. KKAG recommends that schools and municipalities appoint their TCC delegates in February or March of 2009 in order to facilitate the advance planning process. This advance planning will be helpful everywhere, but seems especially important where county-wide collection already exists.

**TCC second stage.** It is important to note that the TCC business does not stop after the initial 2+ year process. Act 32 places responsibility on the TCC to continue to operate in 2012 and future years in order to address ongoing items of business. This includes annual officer appointments, annual budget and related financial steps, tax appeal board operation, and most importantly ongoing oversight of the tax bureau or independent third party collector appointed to serve as the new Act 32 county-wide tax collector.

## DCED/PASBO

DCED developed and promoted Act 32. DCED deserves substantial credit for the fulfillment of these two important Act 32 overarching purposes. DCED will also play a central role in Act 32 implementation.

PASBO will also play a central role. PASBO has formed an Earned Income Tax Consolidated Collection Task Force that began meeting in 2008. The PASBO Task Force has developed a work plan that will supplement DCED and provide essential resources for all TCCs. The work plan incorporates many different aspects, including providing forms that will be needed by all TCCs and collaboration with DCED and municipal government organizations to coordinate implementation. The PASBO task force is a major first step in the TCC advance planning process essential for Pennsylvania school districts and municipalities.



**ACT 32 MAJOR STEPS TIMELINE**

<p><b>PRE-TCC STAGE – 2008/2009</b></p>	<p><b>ADVANCE PLANNING FOR TCC PROCESS/PLANNING GROUP</b></p>
<p><i>January 1, 2009</i></p>	<p><i>Taxing authorities should begin advance planning for TCC governance/first meeting/chairperson selection/other initial decisions</i> (Advance planning is necessary to simplify what will otherwise be a cumbersome TCC process. One or more individuals will need to form a planning group and assume a leadership role in each geographic area in order to facilitate advance planning. In addition, PASBO and other organizations representing school districts and municipalities should identify steps that can be taken to save TCC expense and facilitate the TCC process. In this regard, PASBO is already in the process of planning advance preparation of standard documents that will be needed by all TCCs. Consideration should also be given to sponsorship of joint purchase programs to satisfy common TCC needs such as insurance. Collaboration between school districts and municipalities will be important on all of these points.)</p>
<p><b>February/March 2009</b></p>	<p>Taxing authorities should appoint TCC voting delegates and alternates (Although the deadline is 9/15/09, earlier appointment will provide a contact person within each school district and municipality and is recommended to facilitate TCC advance planning.)</p>
<p><b>TCC FIRST STAGE – YEAR #1 – 2009/2010</b></p>	<p><b>TCC MANDATED STEPS AND TAX COLLECTION DECISION</b></p>
<p><i>November 15, 2009</i></p>	<p><i>TCC first meeting deadline</i></p> <ul style="list-style-type: none"> <li>➤ <i>County Commissioner Chair or designee convene meeting</i></li> <li>➤ <i>Must elect chairperson, vice chairperson, secretary</i> (and possibly other officers)</li> <li>➤ <i>Should elect legal counsel</i></li> <li>➤ <i>Should adopt bylaws</i> – if possible based on advance planning (In the absence of advance planning, bylaw adoption will need to be deferred to a later meeting, but should be done ASAP.)</li> </ul>
<p><b>After officer election and bylaw adoption/ before tax collector appointment</b></p>	<p>TCC takes the following steps:</p> <ul style="list-style-type: none"> <li>➤ TCC management structure decisions             <ul style="list-style-type: none"> <li>○ Who will be the leader/chief operating officer to lead and make sure all required TCC steps occur and all TCC responsibilities are fulfilled?</li> <li>○ Is an employee required?</li> </ul> </li> <li>➤ TCC finance decisions             <ul style="list-style-type: none"> <li>○ TCC budget</li> <li>○ TCC financing mechanism</li> <li>○ TCC auditor</li> <li>○ TCC bank</li> <li>○ Tax collection cost allocation plan</li> </ul> </li> <li>➤ TCC insurance decisions</li> </ul>



<p><b>June 1, 2010 deadline to appoint tax appeal board</b></p> <p><b>September 15, 2010 deadline to appoint new Act 32 tax collector</b></p>	<ul style="list-style-type: none"> <li>➤ Decision on TCC jurisdiction over LST and other taxes</li> <li>➤ Decision on single-county or multi-county TCC</li> <li>➤ Study income tax collection options</li> <li>➤ Decision on tax bureau vs. third party collector</li> <li>➤ Appoint new tax appeal board</li> <li>➤ Adopt mandatory and other policies               <ul style="list-style-type: none"> <li>○ Right-to-Know records policy/appoint Open Records Officer (priority – 2009)</li> <li>○ Investment policy</li> <li>○ Tax records policy</li> <li>○ Tax collector investment income distribution policy</li> <li>○ Tax collector unidentified funds rules</li> <li>○ Regulations, policies, and procedures for tax administration</li> </ul> </li> <li>➤ If tax will be collected by independent third party tax collector, prepare tax collector RFP and conduct RFP process (As part of this process, the TCC must develop the formal written Act 32 Tax Collection Agreement and address the many important issues to be addressed therein, including bonding rules.)</li> <li>➤ Decision on whether to accelerate universal non-resident withholding requirement to date earlier than January 1, 2012</li> <li>➤ Department of Revenue information exchange agreement</li> </ul>
<p><b>TCC FIRST STAGE – YEAR #2 – 2010/2011</b></p>	<p style="text-align: center;"><b>TRANSITION TO NEW ACT 32 TAX COLLECTOR</b></p>
<p><i>May/June 2011</i></p>	<p><i>School districts adopt new EIT or PIT resolutions effective January 1, 2012</i></p>
<p><b>July 1, 2011</b></p>	<p>TCC deadline to adopt and begin implementing transition plan for transferring responsibilities to new Act 32 tax collector and implementing Act 32 tax law changes</p>
<p><i>November/ December 2011</i></p>	<p><i>Municipalities adopt new EIT or PIT ordinances effective January 1, 2012 (might want to accelerate to earlier date)</i></p>
<p><b>TCC SECOND STAGE – 2012 AND FUTURE YEARS</b></p>	<p style="text-align: center;"><b>NEW TAX LAW/TCC TAX COLLECTION OVERSIGHT</b></p>
<p><b>January 1, 2012</b></p>	<p><i>Act 32 county-wide collection begins</i>  <i>Act 32 income tax law changes effective, including:</i></p> <ul style="list-style-type: none"> <li>➤ Change in law on business losses/military service</li> <li>➤ Mandatory quarterly estimated returns for individuals</li> <li>➤ New tax return and other forms</li> <li>➤ Universal non-resident withholding</li> <li>➤ Multi-site employer option to pay in one county</li> <li>➤ Tax collector monthly distributions; prohibition on estimated distributions</li> <li>➤ Tax collector claim/interest payment rules</li> <li>➤ New tax appeal board</li> <li>➤ Second stage of TCC responsibilities begins, involving oversight of county-wide tax collection arrangements and periodic decisionmaking on continuing or changing arrangements</li> </ul>



**IMPORTANT NEW ACT 32 TERMS AND STEPS**

- **Tax collection district (TCD)** – the county-wide region designated for consolidated local income tax collection.
- **Tax collection committee (TCC)** – new government entity, which controls and oversees tax collection within the TCD.
- **Tax officer** – the term used in Act 32 to refer to the person or entity appointed to collect taxes on a county-wide basis. In this outline, KKAG uses the more common term “tax collector.” It is important to note that the tax collector may be a tax bureau created and controlled by taxing authorities, a private company tax collector, a county, another taxing authority, or an individual.
- **Tax distributions** – monthly reports and tax distributions by tax collectors are required; distributions based on estimates are prohibited.
- **Tax appeal board** – a new, independent 3-person board to hear taxpayer appeals from tax collector rulings.
- **Universal non-resident withholding** – every employer must withhold tax from every employee subject to tax and remit to the tax collector for the employment place.
- **Multi-site employer option** – multi-site employers may elect to pay tax in only one Pennsylvania county (the Wal-Mart Amendment).
- **DCED mediation** – a dispute resolution procedure for taxing authorities and tax collectors.
- **New tax resolutions and ordinances** – must be adopted by school districts and municipalities.

\*\*\*\*\*

KKAG hopes you find this KKAG Education Law Watch helpful. Please understand it is designed to provide information about current developments and required actions. It does not constitute legal advice – schools and municipalities should consult a lawyer knowledgeable in this area of the law prior to taking specific action.

If you have any questions regarding any education law matter, including the issues discussed in this Law Watch, please do not hesitate to contact us at 717/392-1100, or e-mail us at the following addresses:

**KEGEL KELIN ALMY & GRIMM LLP**  
**Education Law Group**  
**(717) 392-1100**

Clarence C. Kegel, Jr.	<a href="mailto:kegel@kkaglaw.com">kegel@kkaglaw.com</a>
Howard L. Kelin	<a href="mailto:kelin@kkaglaw.com">kelin@kkaglaw.com</a>
Jeffrey D. Litts	<a href="mailto:litts@kkaglaw.com">litts@kkaglaw.com</a>
Eric N. Athey	<a href="mailto:athey@kkaglaw.com">athey@kkaglaw.com</a>
Rhonda F. Lord	<a href="mailto:lord@kkaglaw.com">lord@kkaglaw.com</a>
Amy G. Macinanti	<a href="mailto:macinanti@kkaglaw.com">macinanti@kkaglaw.com</a>
Denise E. Elliott	<a href="mailto:elliott@kkaglaw.com">elliott@kkaglaw.com</a>
Jason T. Confair	<a href="mailto:confair@kkaglaw.com">confair@kkaglaw.com</a>