

Pennsylvania's Act 92 – Keystone Opportunity Zones

Local Tax Provisions

Background

On October 6, 1998, Governor Tom Ridge signed House Bill 2328 into law (Act 92 of 1998) which provided for the creation of twelve (12) *Keystone Opportunity Zones* (“KOZ”) within the Commonwealth. The legislative goal of the KOZ is to revive economically-distressed urban and rural areas by using substantial state and local tax incentives designed to encourage new capital investment and job growth. The KOZ program is patterned after a similar program in Michigan (i.e. Renaissance Zones), that within 16 months of its implementation, generated 4,000 new jobs and \$320 million in private investment.

In order to qualify for a KOZ designation, the area must be under utilized, abandoned, or not used, where revenues received by state and local government is already at a minimum. An individual KOZ cannot exceed 5,000 acres. An individual KOZ can be comprised of up to 12 clearly defined subzones containing a minimum of 20 contiguous acres. The subzones may or may not be contiguous to each other. An individual KOZ may include one or more political subdivisions. Only 12 KOZs are allowed within the Commonwealth.

Under the program, local taxing authorities are required to pass ordinances or resolutions to issue credits, exemptions, abatements or deductions to reduce and/or eliminate taxes within the KOZ. The KOZ designation will last for twelve (12) years - January 1, 1999 through December 31, 2010. The Pennsylvania Department of Community and Economic Development (“DCED”) is responsible for administering the program at the state level.

Local Taxes Impacted by the KOZ Designation

Act 511

1. Real property
2. Business privilege
3. Mercantile
4. Earned income
5. Net profits
6. Local sales & use

Philadelphia

1. Real property
2. Business Privilege Tax
3. Wage Tax
4. Net Profits Tax
5. Business Use & Occupancy Tax
6. Philadelphia Sales & Use Tax

Real Property Taxes

1. For years beginning on or after January 1, 1999, each political subdivision must abate 100% of the real property tax on *deteriorated property* within their area designated as a KOZ.
 - A political subdivision *may* require a **resident** owner of deteriorated property to invest up to 25% of all real property taxes, which would have been due if the property was not located in a KOZ, in improvements to the property in order to receive the abatement.
 - A **nonresident** owner of deteriorated real property who leases the property to a person for residential use *shall* (i.e. must) invest 50% of all real property taxes, which would have been due if the property was not located in a KOZ in improvements to the property.
2. Any person requesting a real property tax abatement must notify each county or other designated assessment office in writing on a form provided by that office within 30 days of the designation as a KOZ or within 30 days of the transfer of ownership of the real property. A copy of the abatement request must be forwarded by the designated assessment office to the political subdivision.
3. If DCED or a political subdivision finds that a person claimed an abatement of real property tax to which the person was not entitled, the person shall be liable for the abated taxes as well as all applicable interest and penalties.

Qualified Business

Qualifications

1. In order to qualify for any abatement, credit or exemption, a business must own or lease real property in the KOZ from which the business actively conducts a trade, business or profession.

2. The qualified business must receive certification from DCED that the business is located and actively conducting a trade, business or profession in the KOZ. The business must obtain annual renewal of its certification in order to continue to qualify for any tax abatement, credit or exemption.

Relocation

1. Any business that relocates from outside a KOZ into a KOZ will *not* receive any abatement, credit or exemption unless that business either:
 - Increases full-time employment by at least 20% in the first full year of operation within the KOZ; or
 - Makes a capital investment in the property within the KOZ equivalent to 10% of the gross revenues of that business in the immediate preceding calendar or fiscal year.

Business Privilege / Mercantile / Net Profits Taxes

1. Where a *qualified political subdivision* (i.e. one that has been designated a KOZ) has enacted any tax on the privilege of engaging in any trade, business or profession, there will be an exemption, deduction, abatement or credit from the tax for a qualified business to the extent the tax is attributable to the business's location within the KOZ.
 - Though the act is specific as to the method of apportioning net income for Pennsylvania Corporate Net Income Tax ("CNI") purposes, it is silent as to the method of net income allocation and apportionment for business privilege tax and net profits tax purposes.
2. The net profits of a qualified business (received by a resident or non resident of a KOZ) will not be subject to tax to the extent the business activity is conducted within the KOZ.
3. ***Note on Philadelphia*** – City Council Bill 980788-A (passed December 30, 1998) added a new chapter to the Philadelphia Code (i.e. § 19-3200) entitled *Keystone Opportunity Zone*. This legislation was required pursuant to Act 92 to provide for the various tax abatements, credits, exemptions or deductions. The methodology to be employed for the Philadelphia Business Privilege Tax ("BPT") is to ***require*** a qualified business to file a BPT return in accordance with Philadelphia Code § 19-2600 (i.e. calculate the tax due as if the KOZ designation did not exist) and then calculate a KOZ ***credit***. The use of a "*credit*" as opposed to "*exemptions*" or "*abatements*" will require a KOZ business to implement accounting systems that facilitate the preparation of the return (for a time when the tax calculated will be due)

as well as allow the business to see the tax saved by the KOZ designation. It also provides the Philadelphia Department of Revenue with a measure of foregone revenues for City budget purposes. The credit methodology will be employed for Net Profits Tax as well.

Earned Income / Wage Taxes

1. The earned income (i.e. wages, salaries, commissions, compensation or other income) for services rendered or work performed by a **resident** of a KOZ will not be subject to tax.
 - The language of the act gives the tax exemption to the resident of a KOZ. It does not stipulate that the resident's services must be performed within the KOZ. Therefore, residents of a KOZ employed outside a KOZ are entitled to the exemption and their employers would need to claim the withholding exemption or tax credit.
 - Nonresidents of a KOZ will be subject to tax even if employed within a KOZ.
2. **Residency** – In order to qualify each year for a tax exemption, deduction, abatement or credit, a person must be ***domiciled*** and must reside in the KOZ for 184 consecutive days to begin on the date DCED designates the KOZ or on the date the person first resides within the KOZ.
3. **Limitation on withholding** – Every employer required to withhold any local tax on earned income, wages or compensation of one or more persons within the particular political subdivision will not have to withhold the tax where the political subdivision has enacted the tax exemption legislation required under this act and the person is a resident of a KOZ.
4. **Information for employer** - Every resident of a KOZ must furnish to his or her employer the information (as prescribed by the political subdivision) necessary for the employer to withhold the correct amount of tax. An employee must furnish notification to his or her employer within 20 days after the change in residency status.
5. **Duty of employer** – Within 20 days after an employer receives information from an employee, the employer must forward a copy of that information to the political subdivision or other agency designated by the political subdivision.
 - The information shall ***not*** be given retroactive effect for withholding purposes.
 - If an employee fails or refuses to furnish the information or furnishes information that the employer reasonably and in good faith believes to be inaccurate, the employer must withhold the full rate of tax from the employees total wages, earned income or compensation.

Local Sales & Use Tax

1. The political subdivision must exempt sales at retail of services or tangible personal property (except motor vehicles) to a qualified business for the exclusive use, consumption and utilization of the tangible personal property or service at the business's facility located within a KOZ.
2. Real property – An exemption will apply to the sale at retail of building machinery and equipment to a qualified business, or to a construction contractor pursuant to a construction contract with a qualified business, for the exclusive use, consumption and utilization by the business at its facility in the KOZ.
3. Sales at retail of tangible personal property and services will be defined in accordance with Article II of the *Tax Reform Code of 1971*.

Administrative Provisions

Transferability

1. Any exemption, deduction, abatement or credit provided to any person or qualified business is nontransferable and cannot be applied, used or assigned to any other person or qualified business.

Recapture

1. General rule – If any qualified business located within a KOZ has received an exemption, deduction, abatement or credit under this act and subsequently relocates outside the KOZ, that business must refund to the political subdivision granting the exemption, deduction, abatement or credit in accordance with the following:
 - 66% of all exemptions, deductions, abatements or credits previously received if the relocation is within 3 years from the date of any claim;
 - 33% of all exemptions, deductions, abatements or credits previously received if the relocation is within 3 to 5 years from the date of claim.
2. An exemption, deduction, abatement or credit is deemed to be claimed on the latter of:
 - The date the return or other report for the tax or fee is due;
 - The date the return is filed; or
 - The date the tax or fee would be paid.

3. If the qualified business was located within a facility operated by a nonprofit organization to assist in the creation and development of a start-up business, no exemption, deduction, abatement or credit shall be refunded.
4. Waiver – DCED, in consultation with the political subdivision, may waive or modify the recapture requirements if it is determined that the relocation was due to circumstances beyond the control of the business including, but not limited to:
 - Natural disaster
 - Unforeseen industry trends
 - Loss of major supplier or market

Delinquent or Deficient State or Local Taxes

1. No person or qualified business may claim or receive an exemption, deduction, abatement or credit unless the person or qualified business is in full compliance with all State and local tax laws, and related ordinances and resolutions.
2. No qualified business may claim or receive an exemption, deduction, abatement or credit if any person or business with a 20% or greater interest in that qualified business is not in full compliance with all State and local tax laws and ordinances.
3. Any person or qualified business that is not eligible to claim an exemption, deduction, abatement or credit due to noncompliance with any State or local tax ordinance may become eligible if they subsequently come into full compliance with all State or local tax laws to the satisfaction of the Pennsylvania Department of Revenue or the political subdivision within the calendar year in which the noncompliance first occurred. If full compliance is not obtained by December 31 of the calendar year in which noncompliance first occurred, then that person or qualified business is precluded from claiming any exemption, deduction, abatement or credit for that calendar year, whether or not full compliance is achieved in the subsequent calendar years.

Other Code Compliance

1. A person or qualified business will be precluded from claiming any exemption, deduction, abatement or credit if the real property owned by such person or qualified business within a KOZ is not in full compliance with all applicable State and local zoning, building and housing laws, ordinances and codes.
2. The real property owner must file an affidavit with the political subdivision attesting to compliance for that calendar year before December 31.

3. The political subdivision may extend the time period in which a person or qualified business must come into compliance for a period not to exceed 1 year if the political subdivision determines that the person or qualified business has made and shall continue to make a good faith effort to come into compliance.
4. Qualified political subdivisions are required to notify the Pennsylvania Department of Revenue in writing of all persons or qualified businesses not in compliance within 30 days following the end of each calendar year.