

TO: Lester K. Fryer, Chairman, Local Government Committee

FROM: John H. Broujos, Counsel

SUBJECT: Senate Bill 3, Printer's No. 10, First Special Session of 1972 - Abatement of real estate taxes - flood

REF: 72 PS 5577.1, .2; abatement of taxes for 1969 flood.

MUNICIPALITY AND LAW AFFECTED: New Law, covering taxing bodies of counties, cities, boroughs, towns, townships, and school districts

PROVISIONS:

Purpose: To abate real estate taxes for tax year 1972 where property destroyed or damaged by flood.

Section 1: Provides that the taxing bodies of various counties, cities, boroughs, towns, townships, and school districts may abate real estate taxes for 1972 if the real property was destroyed by flood or suffered damage in the amount of 10% or more of assessed value.

COMMENT: Where different counties assess property at different percentages of market value, is a property owner with an assessment at 1/3 of market value denied equal protection of the laws since the tax on a property owner assessed at 1/4 of market value is abated at a lower damage figure?

The discrepancy is outlined as follows:

	<u>Market Value</u>	<u>% of Market Value</u>	<u>Assessed Value</u>	<u>10%</u>	<u>Amount of Damage</u>	<u>Abatement</u>
Owner A (County X)	\$12,000	1/4	\$3,000	\$300	\$300	Yes
Owner B (County Y)	12,000	1/3	4,000	400	300	No

The result is that a person with damages of \$300 may realize an abatement, whereas a property owner with \$300 of damages in another county may not realize an abatement.

This constitutes a violation of Article XIV of the United States Constitution, Section 1, which states that "No state shall make or enforce any law which . . . shall . . . deny to any person within its jurisdiction the equal protection of the laws." In addition under Article VIII of the Constitution of Pennsylvania, Section 1, "All taxes shall be uniform, upon the same class of subjects . . ." Although Senate Bill 3 does not impose a tax, it has the effect of refunding a tax or permitting a credit against future taxes, which in effect lessens the tax or returns the tax. This results in an unequal distribution of the tax burden according to an arbitrary standard which is not uniform.

The distinction should be drawn between a tax which has exemption provisions or special tax provisions for persons of a special class because of age, disability, infirmity, or poverty, as set forth in Section 2 of Article 8, and a tax or abatement of a tax which treats one class differently within that class.

RECOMMENDATION: Relate tax abatement to damage suffered. For example, ". . . where the value of damage suffered during the calendar year as a result of flood is equal to or greater than the total real estate tax for county, municipal and school taxes levied for the same calendar year and the fiscal year beginning July 1 of the calendar year."

COMMENT: Section 1 provides that abatement may be granted "if the real property upon which the tax was imposed was destroyed by flood . . ." A question arises as to definition of real property. The intent is apparently that improvements and buildings upon the real property are the subject of destruction or damage. Real property in a broad sense involves the land and fixtures thereon which become part of the land. A specific amount of damage can be ascertained more easily than the question of destruction of real property. The destruction of real property raises the question as to whether any damage to the land itself is necessary.

RECOMMENDATION: Define specifically the nature of property which is subject of destruction or damage.

COMMENT: The period for which taxes are abated is tax year 1972. Where municipalities are on a calendar year, this is clear. Where municipalities are on a fiscal year such as school districts, the question arises whether the tax year 1972 means the tax year 1971-1972, or the tax year 1972-1973, running from July 1 to June 30. This involves the further question whether the destruction of damage occurs as a result of the flood during the taxing year. This apparently is the intention, but it is not clear. For instance, the recent flood in June of 1972 raises the question of whether the taxes abated are those imposed for the school district on August of 1971-72 year. This should be clarified.

COMMENT: Indecision and litigation are promoted by a question of whether action may be taken by resolution or by ordinance.

RECOMMENDATION: Amend Section 1, page 1, line 8 by adding after "may," "by ordinance" (resolution for school district).

COMMENT: A municipality which has sustained such substantial loss that it cannot afford an abatement in full may desire to have a partial abatement.

RECOMMENDATION: Amend Section 1, page 1, line 9 to insert after "abate," "all or part of."

INFORMATION ON REAL ESTATE TAX ABATEMENT
AS A RESULT OF FLOOD DAMAGE

The House and Senate passed and the Governor signed Senate Bill No. 3 of the 1st Special Session (Act 5), which provides for abatement of real estate taxes when flood damage has occurred.

Part 1 (Sections 1 & 2). This part provides for abatement (refund or credit) by municipalities to property owners of part of 1972 taxes where flood damage has occurred.

Part 2 (Section 3). This part provides for reimbursement by the state to municipalities for taxes lost in 1972, 1973 and 1974 from revision downward of assessments from flood damage.

Here are some questions and answers.

WHAT GOVERNING BODIES ARE AUTHORIZED TO ABATE TAXES? Counties, cities, boroughs, towns, townships, and school districts. (Called municipalities herein.)

WHAT HAS TO BE DONE TO QUALIFY FOR ABATEMENT?

1. The municipality must pass an ordinance (or resolution for schools) authorizing the amount of abatement and procedure for petitioning.
2. The property must have been damaged by the flood and reassessed by county assessing authorities to reflect flood damage.

HOW DO I APPLY FOR ABATEMENT: If your municipality passes an ordinance, it should contain provisions on how and where to apply for abatement. Call your municipal secretary for this information.

HOW MUCH TAX IS ABATED? The amount will be in direct proportion to the damage as measured by a reduction in assessed valuation. (Assessing authorities will reassess retroactive to January 1, 1972.) Here is an example:

	<u>Prior to Flood</u>	<u>After Flood</u>	<u>Abatement</u>
Assessment	\$12,000	\$6,000	
Tax	200	100	\$100

DO I RECEIVE ABATEMENT IF MY PROPERTY IS DAMAGED AND UNREPAIRED? Yes, if the assessor reassesses downward to show reduction in property value. However, if your property has not been assessed in recent years, it may have appreciated in value and the reassessment upward for appreciation may equal or exceed the reassessment downward for damage.

DO I RECEIVE ABATEMENT IF MY PROPERTY WAS DAMAGED AND I REPAIRED THE DAMAGE? Under a liberal interpretation of the Act, the assessor should be authorized to reassess your property to show reduction of value (as a result of flood damage in June 1972) for the year 1972, even though you repaired. The Act is unclear on this point and reassessment may run into problems as to how you can show damage after it is repaired. You should keep all bills and photos.

WHAT IF I PAID MY FULL TAX FOR 1972? The municipality may refund or allow a credit for future years.

IS THERE A MAXIMUM AMOUNT OF ABATEMENT? \$25,000 for a single property.

WHEN MUST I APPLY? If your municipality passes an ordinance, the deadline for application for abatement is April 1, 1973.

WHAT EFFECT DOES THE "REIMBURSEMENT TO MUNICIPALITIES" PROVISION HAVE ON 1972 TAX ABATEMENT? The Commonwealth may, but is not required to, partially or fully reimburse municipalities for annual real estate taxes lost in 1972, 1973, 1974. Payments would be made from the State Disaster Relief Fund. There is no guarantee of reimbursement. For 1972 a municipality would not lose revenue unless it chooses to abate taxes. In 1973 and 1974 it would lose revenue because for these years the county would have assessed downward the flood damaged property not repaired. Thus, for 1973 and 74, there will be a loss from reassessment; and the state reimbursement is designed to make this up. In 1972 there may be a loss from abatement and state reimbursement is designed to make this up.

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