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The Fair Share Tax Proposal is "Uniform" Under the Pennsylvania Constitution

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The Fair Share Tax Proposal fits comfortably in a long tradition of Pennsylvania taxes that classify different objects of taxation for different tax treatments. Thus, the Fair Share Tax Proposal readily satisfies the Uniformity requirement of the Pennsylvania Constitution.

I. How the Fair Share Tax Proposal Works

Under the Fair Share Tax Proposal, income subject to Pennsylvania income tax (PIT) would be split into two buckets, each subject to a separate tax. The first bucket would generally include labor, and the tax would be imposed on wages; self-employment income earned by sole proprietors, *i.e.*, self-employment income that is not passed through a corporate or other entity in which the recipient is an owner, member, or partner; and interest income. The second bucket would generally include wealth, and this tax would be imposed on capital gains; dividends; income from rents, royalties, patents, and copyrights; gambling and lottery winnings; income from estates or trusts; and self-employment income that is passed through a corporation, partnership, or other artificial entity. The tax rate on labor would be lower than the current PIT rate; the rate for the tax on wealth would be higher than the current PIT rate.

II. The Law of Uniformity

Article VIII, Section 1, of the Pennsylvania Constitution, the Uniformity Clause, provides: "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." What this means is that (a) within any "class," tax treatment of similarly situated subjects cannot differ; but (b) the Legislature has broad discretion to recognize or establish different classes or subjects of taxation, and to impose different tax treatment on each different class.

In essence, the Uniformity Clause is a particularized application, in the tax context, of the more general and very familiar non-discrimination principle set forth in the federal Equal Protection Clause — the Government must treat similarly situated people or subjects similarly; Government may treat people or subjects differently from one another when there are real differences between the people or subjects. And the Government has broad discretion to draw classifications and to make distinctions between and among people or subjects, so long as those classifications and distinctions are rational, that is, not entirely arbitrary. Finally, in the Uniformity Clause context, as in the more general Equal Protection context, courts are very hesitant to second-guess a legislative judgment that a classification or distinction is rational.

The Pennsylvania courts have reiterated these principles time and again in upholding numerous and varied legislative classifications for tax purposes. One classic formulation of the principle is set forth in *Appeal of Borough of Aliquippa*, 175 A.2d 856, 862-63 (Pa. 1961): "[F]or purposes of taxation, [the Legislature] may select any reasonable basis upon which to make [a] classification, and may create as many classes as it may in its discretion decide upon, subject always to the limitation that it must exercise good faith and must not make arbitrary and unjust distinctions" (internal quote marks and citations omitted).

And the Legislature's *reason* for selecting any particular classification is subject to broad discretion:

> Classification for the purpose of taxation may be based on the existence of differences recognized in the business world, [or] on the want of adaptability of the subjects to the same method of taxation, [or] upon the impracticability of applying to them the same methods so as to produce justice and reasonably uniform results, or upon well-grounded considerations of public policy.

Id. This broad set of possible justifications for drawing classifications has been reiterated by the courts on multiple occasions. *See, e.g., Nextel Communications of Mid–Atlantic, Inc. v. Commonwealth*, 171 A.3d 682, 695-96 (Pa. 2017); *Equitable Life Assurance Society of U.S. v. Murphy*, 621 A.2d 1078, 1087 (Pa. Cmwlth. 1993).

The classifications drawn by the Fair Share Tax Proposal readily satisfy these broad and generous criteria and are no different in kind than numerous classifications that have been upheld by the Pennsylvania courts. Nor are they different in kind than the even more numerous classifications that have never been challenged but are well-entrenched in Pennsylvania law. Any judge who might even be slightly inclined to question the classifications set forth in the Fair Share Tax Proposal would find it impossible to reconcile that questioning with the long and varied history and precedent of tax classification in Pennsylvania.

In the *Aliquippa* case, the Pennsylvania Supreme Court cited approvingly cases that had upheld the Legislature's differential tax treatment of the following classifications: natural ice v. artificial ice; natural gas v. manufactured gas; anthracite coal v. bituminous coal; strip mining of coal v. deep mining of coal; mutual life insurance companies v. stock life insurance companies; retail businesses v. wholesale businesses; corporate owners of taxicabs v. individual owners of taxicabs; foreign insurance companies v. domestic insurance companies; and gross receipts of open parking lots v. closed parking places. *Id.*

In more recent years, the Pennsylvania courts have continued to be just as willing to uphold any reasonable classification for tax purposes. Notably, *in most of these cases, the courts do not even attempt to search for a policy basis for the classification; so long as the classification is recognized in the business world, or obviously describes different "things," the courts uphold as constitutional the different tax treatments*.

> The test of uniformity is whether there is a reasonable distinction and difference between the classes of taxpayers sufficient to justify different tax treatment. *So long as the classification imposed is based upon some standard capable of reasonable comprehension*, be that standard based upon ability to produce revenue or some other legitimate distinction, [*the Uniformity Clause is satisfied*].

City of Allentown v. MSG Associates, 747 A.2d 1275, 1278 (Pa. Cmwlth. 2000) (emphasis added).

Thus, for example:

In *City of Allentown*, the Court rejected a Uniformity challenge to a business privilege tax that imposed a different rate on service businesses than on sales businesses. The Court relied entirely on the fact that both the business world and the General Assembly have each long recognized the distinction between service and sales and that these are well-established classifications, citing the North American Industry Classification system, public and media references to the "service economy," and various State statutes that relied on similar classifications. *Id.* at 1280. The Court did not feel the need to offer a policy basis for the different tax treatment. "The only standard is that the classification is generally recognized and it is up to the taxpayer to prove that it was not." *Id.*; *accord Hanover Borough Professional Ass'n v. Borough of Hanover*, 401 A.2d 856 (Pa. Cmwlth. 1979) (sales and service businesses are different from one another, and, thus, can be subjected to different tax rates).

In *CRH Catering Co., Inc. v. Commonwealth*, 521 A.2d 497 (1987), *aff'd in relevant part on reh'g*, 539 A.2d 38 (Pa. Cmwlth. 1988), the Court approved differential tax treatment of sales from vending machines relative to sales of the same products but from convenience stores. "We reject the taxpayer's argument that merely because vending machines and convenience stores sell some of the same products, they are necessarily members of the same class for taxation purposes." 521 A.2d at 501. The different "method of merchandising" was a sufficient basis to justify different tax treatment. *Id.*

In *D/K Beauty Supply, Inc. v. North Huntingdon Township*, 446 A.2d 986 (Pa. Cmwlth. 1982), the Court upheld a gross receipts tax which was imposed on retail businesses but not on wholesale businesses. The Court's reasoning was simple and straightforward: "The difference between a wholesale dealer, who sells commodities in quantity for resale, and a retail vendor, who sells goods to the ultimate consumer, is a genuine distinction recognized in the business world. We cannot say that the separate classification of wholesalers and retailers . . . is arbitrary or unreasonable." *Id.* at 990.

In *Equitable Life Assurance, supra,* Commonwealth Court upheld Philadelphia's different realty transfer tax calculation methodology for the transfer of real estate versus the transfer of a corporation that owned virtually nothing but real estate, finding "legitimate business and policy reasons" for the distinction, but not feeling the need to discuss or assess what those reasons might be. 621 A.2d at 1090.

On occasion, the courts do discuss the legislative policy behind the challenged classification, but those discussions are almost always cursory and so deferential as to evince a willingness to uphold virtually any reason proffered. Thus, for example, in *Mandl v. Commonwealth*, 637 A.2d 703 (Pa. Cmwlth. 1994), *aff'd per curiam*, 652 A.2d 297 (Pa. 1995), the Court upheld the imposition of sales tax on purchases of baking ingredients by *retail* bakers, even though the Legislature exempted from the tax purchases of those same ingredients for purposes of baking the same products, when purchased by *wholesale* bakeries. The Court explained that "[t]he difference between a wholesale dealer and a retail vendor has been recognized as a genuine distinction acknowledged in the business world" and accepted as a justification for the policy the Legislature's motivation to provide an incentive for wholesale bakeries to locate within the Commonwealth, as wholesale bakeries tend to employ more workers than retail bakeries. 637 A.2d at 706.

On several occasions, the courts have pointed out that a tax classification matches up with a regulatory classification; and the fact that the Legislature treats different classes differently for regulatory purposes lends strong support for the authority of the Legislature to treat those classes differently for tax purposes. In *Commonwealth v. Life Assurance Company of Pennsylvania*, 214 A.2d 209, 216 (Pa. 1965), the Supreme Court upheld the different tax treatment of life insurance companies relative to casualty insurance companies, noting the differing regulatory treatments of life insurance companies and casualty insurance companies. More recently, the Commonwealth Court held: "No violation of the Uniformity Clause is evident where applications of tax follow different regulatory treatment." *Concentric Network Corp. v. Com.*, 897 A.2d 6, 11 (Pa. Cmwlth. 2006) (upholding different tax treatment of cable companies relative to internet service providers).

The one type of classification that the Pennsylvania courts routinely reject is a quantitative classification. According to the Pennsylvania Supreme Court, "classifications based solely upon the quantity or value of the property being taxed are arbitrary and unreasonable, and, hence, forbidden." *Nextel*, 171 A.3d at 696; *accord Mount Airy # 1, LLC v. Pennsylvania Department of Revenue*, 154 A.3d 268 (Pa. 2016) ("quantitative distinctions lack uniformity because any classification that is based solely on a difference in quantity of precisely the same kind of property is necessarily unjust, arbitrary, and illegal") (internal quote marks and citations omitted). This is why a graduated income tax is impermissible under Pennsylvania law. *See Kelley v. Kalodner*, 181 A. 598 (Pa. 1935).

But when the Legislature's classification is *qualitative*, the Pennsylvania courts are extraordinarily deferential in their review, *see, e.g.*, *Concentric Network*, *supra*, 897 A.2d at 11 ("The legislature has wide discretion in matters of taxation, and a taxpayer pursuing a Uniformity Clause challenge has the burden of demonstrating that a classification made for purposes of taxation is unreasonable and clearly, palpably and plainly violates the Constitution") (internal quotes and citations omitted), striking down such classifications only in the rarest of instances. *See, e.g.*, *Devlin v. City of Philadelphia*, 862 A.2d 1234 (Pa. 2004) (exemption from transfer tax for transfers between same-sex couples violates Uniformity because the City did not offer exemption to other financially interdependent couples who were prohibited from marrying, like cousins, or aunts and nephews).[1]

III. The Classifications Drawn by the Fair Share Tax Proposal Easily Satisfy the Courts' Deferential Uniformity Standard.

A. The Classifications Drawn by the Fair Share Tax Proposal

For uniformity purposes, the Fair Share Tax Proposal can be characterized as drawing two broad classifications — active (or earned) income taxed at a lower rate; passive (or unearned) income taxed at a higher rate. Each of those two classifications is then further subdivided into two subclassifications. Active/earned income is divided into income derived from payments directly to the taxpayer (to be taxed at the lower rate); and income derived from payments to an artificial entity, the income of which is then "passed through" to the taxpayer (to be taxed at the higher rate). Passive/unearned income is divided into interest income (taxed at the lower rate); and all other income (taxed at the higher rate).

B. The Uniformity Test: Are the Classifications Recognizable and Understandable?

Each of these classifications and subclassifications is a readily recognizable, well-established class or category, regularly subject to differential treatment in the business world, the financial world, and/or the regulatory world. The classifications, therefore, are fully authorized in the world of taxation. Indeed, the classifications drawn by the Fair Share Tax Proposal are likely even *more* distinct than those upheld time and again by the caselaw.

Critically, although each of the classifications drawn by the proposal can be justified by thoughtful, rational policy goals, *a policy justification is not even required by the caselaw*. Time and again, the courts have upheld tax classifications on the simple basis that the distinctions are recognized in the business or financial world. *See, e.g.*, *supra*: *Allentown*, *CRH Catering*, *D/K Beauty Supply*, *Equitable Life Assurance*. If they are not artificial or arbitrary constructs invented

[1] Philadelphia subsequently amended its transfer tax exemption so that transfers between any financially interdependent couples are now exempt, *see* Phila. Code § 19-1405(28), and that revised exemption has not been challenged.

by the tax legislation, but, rather, they exist and are readily understood and accepted outside of and apart from the tax legislation, the classification system is constitutional.

Thus, among the many bases to uphold a tax against a uniformity challenge, two, in particular, demonstrate the ease with which the test can be met. Is the classification "based upon some standard capable of reasonable comprehension"? *Allentown*. Is the classification based on "the existence of differences recognized in the business world"? *Aliquippa*. If the answer to either of these questions is "yes," the tax will be upheld as uniform.

The Fair Share Tax Proposal easily passes this test. Each of the classifications is "based upon some standard capable of reasonable comprehension," *Allentown*, and each is based on "the existence of differences recognized in the business world," *Aliquippa*.

C. Active versus Passive Income is a Well-Supported Classification

1. The Classification is Well-Established and Readily Understood

Income derived from active work, commonly referred to as earned income, is readily understood as a different category from income derived from passive activity, commonly referred to as unearned income. The *former* category includes wages for employment (and there are well-established tests for when payments constitute wages and when work constitutes employment); and payments to the taxpayer by customers for active work performed by the taxpayer. The *latter* category — passive income — includes income derived from ownership of property or wealth, as opposed to that from active work. This common understanding of the distinction is more than enough to satisfy uniformity.

Moreover, the regulatory landscape for income from labor differs substantially from the regulatory landscape for investment income. Reporting requirements, both to the government and to the income recipient, differ dramatically, depending on the source of the income. Different regulatory agencies are responsible for providing very different types of protections for income recipients, depending upon the source of the income. Finally, although the General Assembly is prohibited from mirroring the federal income tax structure line by line, *see Amidon v. Kane*, 279 A.2d 53 (Pa. 1971), the distinctions drawn by the federal system between active income and passive income — or income from labor and income from investments — is so well-entrenched in our legal system that it would be odd indeed to deny these very real differences.

There can be little doubt that the differences are "capable of reasonable comprehension," and are "recognized in the business world."

2. The Classification is Supported by Rational Policy Considerations

There also are many rational policy bases for the classification, and the courts will defer to those policy determinations. Notably, none of these policy bases is a requirement to uphold the tax; each independently provides an additional constitutional support.

Taxes on labor tend to reduce the economic incentive to seek employment or to work longer hours. The General Assembly would be acting with a strong policy basis to keep taxes on income from labor as low as possible, thereby incentivizing Pennsylvanians to work and to work more, and rewarding Pennsylvanians who do so.

Moreover, most Pennsylvanians need to produce active income in order to meet their daily living expenses; the Legislature has very good reasons to ease the burdens on workers, as the tax burden simply takes money off the table from people who really could use the money. In contrast, passive income, or income from property or wealth, generally inures to those with greater means, who can more easily afford a higher tax burden.

Income from owned property also involves some measure of speculative activity; the taxpayer must take a risk to purchase and maintain the property that produces the income. The Legislature could conclude rationally that those who can afford to take such risks can also afford to absorb a slightly higher tax burden.

There is much economic literature that suggests that taxes on labor tend to reduce work effort and encourage people to allocate more of their time to leisure rather than work. By reducing the tax rate on earned income, the Legislature will encourage longer work hours.[2] In addition, economists sometimes claim that tax rates on labor are relevant to multi-state employers, who can choose among multiple locations to site their businesses. Although the PA Budget and Policy Center has long cast doubt on how strong the impact of tax policy is on business location, others have held that if an increase in the post-tax income of workers would encourage a large supply of labor, a lower tax rate on labor would provide some additional incentive for a business to locate its operations in Pennsylvania.

[2] The literature on the impact of taxes on labor on work effort and the allocation of time between work and labor is voluminous. An example that includes a large list of additional examples is Steven J. Davis and Magnus Henrekson, Tax Effects on Work Activity, Industry Mix and Shadow Economy Size: Evidence from Rich-Country Comparisons, NBER Working Paper 10509, May 2004.

Finally, as wages have stagnated in recent decades, the return on labor has decreased substantially, particularly in relation to the return on capital or wealth.[3] The Legislature would be well within its rational authority to try to offset this disparity through the tax system. Similarly, the Legislature rationally could conclude that accumulation of wealth in the hands of the few has been increasing at troubling rates, which, in turn, has major negative consequences for our democracy. It is entirely rational for the Legislature to use the tax system to attempt to stem this trend.

Thus, it should come as no surprise that the Pennsylvania courts have expressly held that it is constitutional to tax earned and unearned income at different rates. In *Boguslavsky v. North Pocono School District*, 11 A.3d 582 (Pa. Cmwlth. 2010), the Commonwealth Court upheld a local income tax that applied only to earned income. As the Court explained, "the taxpayer with earned income 'is engaged in performing services and actively managing property in the conduct of business thereon' while the taxpayer with unearned income 'is merely receiving unearned income from the passive ownership of property.'" *Id.* at 585 (quoting *Pennsylvania Co. for Insurances on Lives & Granting Annuities v. Philadelphia*, 31 A.2d 137, 141–42 (Pa. 1943)).

The subclassifications proposed by the Fair Share Tax Proposal are equally as "uniform."

D. <u>Interest Income is Different From Other Passive Income</u>

1. <u>The Classification is Well-Established and Readily Understood</u>

One does not need to be a sophisticated businessperson to understand the difference between interest income on the one hand and dividends, capital gains, and other investment or passive income on the other hand. Interest is paid out in return for a loan; dividends and other passive income typically represents a reward for the risk taken by the investor. Money deposited in a bank, loaned to a corporation, or used to purchase a government bond all return interest to the saver or investor. The concept is well-established in the worlds of business and finance and is well-understood by the average citizen. Taxing interest differently thus easily satisfies the uniformity test.

2. <u>The Classification is Supported by Rational Policy Considerations</u>

But there are important policy justifications, as well, to further support the classification's constitutionality. The Legislature certainly could conclude that it wants to encourage better savings habits among Pennsylvania residents, particularly those for whom long-term planning

[3] James Manyika, Jan Mischke, Jacques Bughin, Jonathan Woetzel, Mekala Krishnan, and Samuel Cudre, A new look at the declining labor share of income in the United States, Discussion Paper, McKinsey Global Institute, May 22, 2019.

does not come naturally. Lowering the tax burden on the savings vehicles that are most appropriate for those with little wealth, *i.e.*, vehicles that carry less risk, constitutes rational policy. Likewise, those who choose to make riskier investments that carry greater rewards do not need "help" from the government, and the Legislature might rationally choose not to subsidize those who likely have more substantial wealth to invest. Finally, interest income on savings deposits is often a major source of income for seniors who are no longer able to earn income from their labor; a legislative policy to reduce the tax burden on this population would be highly rational.

Moreover, for most Pennsylvanians, interest-bearing accounts are a money-management tool, a safe place to park their money while it isn't being used. In contrast, most other forms of passive income arise from investment activity with the investor seeking to maximize income, growth, or wealth. The Legislature has strong policy justifications for wishing to ease the tax burden on the former — "regular" people just trying to make ends meet — while being willing to impose a higher tax burden on the latter, those fortunate enough to have excess capital which they can use to improve their fortunes.

Of course, these generalizations are not universally true; there are some upper-income taxpayers who take in substantial interest income or who use interest-bearing vehicles as part of their investment strategy, and there are some lower-income taxpayers who have dividend or other forms of passive income. But the law of uniformity is clear and consistent that perfect or absolute uniformity is not required. *Mandl*, 637 A.2d at 706; *CRH Catering*, 521 A.2d at 501.

> Taxation . . . is not a matter of exact science; hence, absolute equality and perfect uniformity are not required to satisfy the constitutional uniformity requirement. * * * Some practical inequalities are obviously anticipated, and so long as the taxing scheme does not impose substantially unequal tax burdens, rough uniformity with a limited amount of variation is permitted.

Lebanon Valley Farmers Bank v. Com., 83 A.3d 107, 113 (Pa. 2013) (internal citations and quote marks omitted). "Lines must be drawn in making tax classifications." *CRH Catering*, 521 A.2d at 502 (recognizing that those lines might not draw a perfect fit).

E. <u>Pass-Through Income is Different From Other Active Earned Income</u>

1. <u>The Classification is Well-Established and Readily Understood</u>

Finally, the proposal to tax wage and sole proprietorship income at a lower rate than pass-through income from artificial entities easily satisfies uniformity. As an initial matter, the categories are well-defined, distinct, and not artificially established for tax purposes. The differences are clear, well-established, and well-understood. Pass-through income — whether from a limited liability partnership, Subchapter S corporation, or a traditional partnership — is easily identifiable and distinct from income paid directly to an individual, whether in the form of wages or independent contracting.

2. The Classification is Supported by Rational Policy Considerations

And the policy justification is straightforward and powerful. There are distinct advantages that pass-through entities offer to their owners or members, advantages to which sole proprietors do not have access. The Legislature rationally could choose to "charge" for these advantages as the owners/members reap substantial offsetting benefits such that they more readily can afford the increased tax burden.

For limited liability entities, such as Subchapter S corporations, LLPs, and LLCs, the primary advantage of establishing the artificial entity is obvious: limited liability. For more traditional partnerships, the structural form allows members to raise capital more readily and more extensively than when operating as individuals. They are able to pool their talents and resources more efficiently, share and spread out costs, and provide for business continuity upon departure of a member. A partnership allows several persons with different but related areas of expertise to form an enterprise that can provide customers or clients with one-stop-shopping, thus allowing a businessperson to retain more customers or clients and avoid sending them elsewhere. The Legislature can rationally conclude that members of businesses that reap these advantages from their formal structure can and should more readily absorb a greater tax burden.

Finally, and not insignificantly, the Legislature allows all of these artificial entities to pass through their income to the members, owners, or partners of the entity; and the Legislature does not subject the entity and its members to double taxation. The Legislature rationally could choose to "charge" for this substantial benefit with a slightly higher individual tax rate. *Cf. Commonwealth v. Life Assurance Company of Pennsylvania*, *supra* (differing regulatory treatment is a significant factor in allowing for different taxation treatment); *Concentric Network Corp. v. Com.*, *supra* (same).

IV. The Classifications Drawn by the Fair Share Tax Proposal Are Not Materially Different From Dozens of Other Classifications Drawn by the General Assembly.

Pennsylvania tax statutes regularly draw fine distinctions between different sources and types of income, taxing differently classified subjects differently. These longstanding and well-established classifications are not materially different in kind from the classifications drawn by the Fair Share Tax Proposal. If they are constitutional, so too is the Fair Share Tax Proposal.

Put differently, any argument that the Fair Share Tax Proposal does *not* satisfy constitutional uniformity necessarily would imply that dozens of existing classifications, currently on the books and established by the General Assembly, are also unconstitutional. No court is going to take such a radical step, as to do so would not only ignore extensive, binding, Pennsylvania caselaw, it would effectively rewrite Pennsylvania tax law, upending the financial affairs of hundreds of thousands of taxpaying individuals and businesses. No coherent rationale can be developed to question the validity of the Fair Share Tax Proposal without also questioning the validity of, by way of examples only, the following existing classifications:

Pennsylvania taxes capital gains, except on the sale of a primary residence, 72 P.S. § 7303(a)(3)(vii), or on sales of property located within certain opportunity zones, *id.*, § 7303(a)(5).

- Employee compensation is taxable, unless it is paid directly into a qualified deferred compensation plan that meets certain complex IRS rules, 72 P.S. § 7303(a)(1)(iii), (iv).

- Real estate is taxed at a rate set by the local taxing jurisdiction, unless the real estate is being used for public utility purposes, in which case it is taxed according to an entirely different statutory scheme. 72 P.S. § 8102-A.

- The transfer of real estate from A to B is generally a taxable transaction, unless the transfer is between certain family members, 72 P.S. § 8102-C.3(6); or is an intra-family transfer of a family farm business, 72 P.S. § 8102-C.3(19); or one of the parties is a volunteer fire or EMS company, 72 P.S. § 8102-C.3(23); or the real estate interest is a conservation easement or historic preservation easement, 72 P.S. § 8102-C.3(18)(iv), (v); or the transfer is covered by 20 or more other exclusions from transfer tax, 72 P.S. § 8102-C.3.

- The transfer upon death of certain family-owned businesses is exempt from inheritance tax. 72 P.S. § 9111(t).

- Income from the business of insurance is generally subject to a tax of 2% on gross premiums, 72 P.S. § 7902, unless the business is *marine* insurance, in which case the tax is set at 5% of underwriting profits, *id.* § 2282.

- Corporations pay tax on their net income, except for banks, thrift associations, insurance companies, and title insurance companies, which pay taxes pursuant to an entirely different taxation scheme. 72 Pa. C.S. § 7402(c).

- Cities of the first class are authorized to impose a tax on business income and receipts, unless the income derives from utilities or insurance, 53 P.S. § 16182; and income from the securities business is taxed differently from income from other investment businesses, *id.*, § 16184(a).

- School districts of the first class are authorized to impose a tax on investment income, but not on interest paid by banks. 53 P.S. § 16101(b)(2).

- And the Pennsylvania sales tax is so riddled with exclusions that it is clear that virtually any recognizable category established by the General Assembly can be subject to a unique tax classification. By way of example only:

    - Sale of clothing is exempt from sales tax, except for formal wear, certain garments made from fur, and clothing used primarily for sports. 72 P.S. § 7204(26).

    - Sale of food and beverages is generally exempt, *id.*, § 7204(29), the sale of candy and gum is exempt, *id.*, § 7204(53), but the sale of soft drinks is not exempt. *id.*, § 7204(29)(i). However, the sale of food and beverages by certain prepared food establishments, such as restaurants, is not exempt, except for sales of certain foods by bakeries, donut shops, and delis. *Id.*, § 7204(29)(iii).

    - Sales of caskets and grave markers are exempt. *Id.*, § 7204(31).

    - Sales of Pennsylvania flags, but not the flags of other states, are exempt. *Id.*, § 7204(32).

    - Sales of food by nonprofits associations that support youth sports, though only certain designated sports. *Id.*, § 7204(49).

    - Sales of special-order vessels for commercial use, but only if the vessel weighs more than 50 tons. *Id.*, § 7204(14).