GARY ST. FLEUR, ET AL.	:	In the Court of Common Pleas
PLAINTIFFS,	:	of Lackawanna County
	:	
vs.	:	
	:	Civil Law Division
	:	
THE CITY OF SCRANTON, ET AL.	:	
DEFENDANTS.	:	2017-CV- 1403

MEMORANDUM AND ORDER

GIBBONS, J.

I. INTRODUCTION

This is a mandamus action initiated by eight individual Plaintiffs against the City of Scranton, former Mayor William L. Courtright[1] and Business Administrator David Bulzoni. There have been several legal skirmishes up to this point, including an interlocutory appeal to the Commonwealth Court.

Before us currently is Plaintiffs' renewed Motion for Peremptory Judgment.[2] Plaintiffs' renewed Motion and supporting brief were filed in January, 2019, and the opposition papers of the Defendants were filed in February, 2019. By agreement of the parties, the matter was submitted on the papers. For reasons which follow, the renewed Motion for Peremptory Judgment will be **GRANTED**.

II. FACTUAL BACKGROUND

Plaintiffs allege that they are all residents of the City and, as such, are subject to various taxes levied by the City pursuant to 53 P.S. §6924.320 (Act 511). Plaintiffs further allege that the aggregate

[1] Former Mayor Courtright resigned on July 1, 2019 as a result of federal corruption charges; Scranton City Council ultimately named Wayne Evans as Mayor pending the results of an election held on November 5, 2019 and will serve until Mayor-elect Paige Cognetti is inaugurated in January, 2020 to serve the remainder of Courtright's term.

[2] We denied Plaintiffs' initial Motion for Peremptory Judgment on September 20, 2018 without prejudice to its renewal at the completion of discovery.

amount of all taxes imposed by the City under Act 511 during any fiscal year "shall not exceed an amount equal to the product obtained by multiplying the latest total market valuation of real estate in (the City)" as determined by the appropriate board established to determine market values of real estate within the City by twelve mils. 53 P.S. §6924.320(a). In a political subdivision within a county where no such market values have been determined by the appropriate board, then the aggregate amount of taxes shall not exceed an amount "equal to the product obtained by multiplying the latest total market valuation of real estate . . . as certified by the State Tax Equalization Board, by twelve mils." *Id.* (2016). The Lackawanna County Assessor's Office, while maintaining real estate assessment valuations for real estate within Lackawanna County, does not maintain market valuation of real estate within the City. Complaint, ¶20, 21. The Complaint avers that the Pennsylvania State Tax Equalization Board maintains the total market valuation of real estate located within the City. Complaint, ¶22. Plaintiffs allege that according to the Pennsylvania State Tax Equalization Board, the total market valuation of all property in the City in 2015 was $2,273,875,550.00[3]. Complaint, ¶23. The Complaint outlines the familiar formula utilized in calculating real estate taxes that one mil is the equivalent of one dollar for every one thousand dollars in assessed value. Thus, 12 mils equates to $12 for every $1,000 in assessed value. Complaint, ¶26. Taking the 2015 market valuation for real estate in the City as certified by the Pennsylvania State Tax Equalization Board and factoring that figure by 12 mils, Plaintiffs allege that the aggregate amount of all Act 511 taxes the City imposed in fiscal years 2015 and 2016 could not exceed $27,286,506.00. Complaint, ¶¶27, 28. The Defendants have not seriously challenged these figures. Nor have the Defendants offered any substantive challenge to the standing of certain Plaintiffs. While fewer than all the named Plaintiffs were deposed,

[3] Following the filing of the Complaint in 2017, the Pennsylvania State Tax Equalization Board released new valuations for Scranton, placing the market value of real estate in the City at $2,304,080,217.00.

Defendants do not challenge the residency of those who gave deposition testimony. For those named Plaintiffs, then, standing is not an issue.

Plaintiffs allege that the City collected $34,477,500 in Act 511 taxes for fiscal year 2015. Complaint, ¶29. Further, Plaintiffs allege that the City budgeted $36,792,500.00 in Act 511 taxes for fiscal year 2016 and $38,045,091.99 in Act 511 taxes for fiscal year 2017. Complaint, ¶¶30, 31. The thrust of Plaintiffs' claims, then, is that the City has exceeded the statutory cap placed upon the amount of Act 511 taxes it can levy and collect. Plaintiffs seek a directive from this Court mandating that the Defendants, in the language of Act 511, "forthwith reduce the rate or rates of such tax or taxes to stay within such limitations as nearly as may be." 53 P.S. §6924.320(b). Plaintiffs further seek a mandate that any "Tax monies levied and collected in any fiscal year in excess of the limitations imposed by this chapter . . . be deposited in a separate account in the Treasury of (the City) for expenditure in the following fiscal year." *Id.*

Defendants argue that the City is a Home Rule Charter municipality and, under the Home Rule Charter Law, 53 Pa.C.S. §2901, *et seq.*, it is not subject to the statutory cap of Act 511. Defendants maintain that the City is not subject to "any limitation on rates of taxation imposed upon residents." 53 Pa.C.S.A. §2962(b). The City argues that "No provision of this subpart or any other statute shall limit a municipality which adopts a home rule charter from establishing its own rates of taxation upon all authorized subjects of taxation except those specified in subsection (a)(7)." 53 Pa.C.S. §2962(i). Defendants argue that Act 511 seeks to limit the rates of taxation imposed by municipalities to which it applies because of its direction that, in the event aggregate revenues materially exceed the Act 511 limitations, "the political subdivision shall forthwith reduce the rate or rates of such tax or taxes to stay within such limitations as nearly as may be." 53 P.S. §6924.320(b).

III. STANDARD OF REVIEW

We addressed the applicable standard of review in our Memorandum and Order of September 20, 2018. We see no need to repeat ourselves.

IV. DISCUSSION

Initially, we note that Defendants reiterate that the City is not subject to Act 511's limits imposed on the City's collection of its taxes because it is a Home Rule Charter municipality under 52 Pa.C.S. §2901, *et seq.* We addressed this argument in our Memorandum and Order of October 18, 2017. We found the City's argument wanting then and we find it wanting now. Nothing has changed in the interim which would cause us to alter our view.

Indeed, the City's submissions belie its arguments. The City has submitted the Affidavit of Rebecca McMullen, Finance Manager, in support of its position. Attached to the Affidavit is an assessment of local taxes collected by the City which appears to have been prepared by the City and marked as Exhibit A. Exhibit A identifies the various local taxes imposed and collected by the city for the years 2015, 2016 and 2017. It then identifies the taxes collected as: (1) Earned Income Tax, (2) Real Estate Transfer Tax, (3) Local Services Tax, (4) Business Privilege Tax, (5) Mercantile Tax and (6) Amusement Tax. Each tax is then broken down to reflect amounts collected pursuant to Act 511, the Home Rule Charter (HRC) and the Municipalities Recovery Act (Act 47). Exhibit A then identifies the aggregate market value of the city real estate published by the Pennsylvania State Tax Equalization Board (STEB), the total taxes collected for each year and, finally, the amount identified by the City as being under the cap established by Act 511.

Additionally, the City has submitted nineteen (19) ordinances enacted between the years 2014 and 2017 which purport to provide the legislative basis for the imposition of the taxes identified above in each of the years 2014, 2015, 2016 and 2017. Virtually every single ordinance submitted cites Act 511 in one form or another. Exhibit B amended an ordinance which established an Emergency and Municipal Services Tax and renamed that tax to a Local Service Tax. The ordinance repeatedly acknowledges that Act 511 authorized municipalities such as Scranton to impose what had originally been referred to as an Occupation Privilege Tax. Section 5 of the ordinance recites that it was being enacted by Scranton City Council under the Home Rule Charter and Optional Plans law and *any other applicable law arising under the laws of the State of Pennsylvania.* Exhibit C, an ordinance enacted in 2014, imposed a wage tax on earned income for both residents and non-residents of the City. Section 5 of the ordinance recites that it was enacted by the Scranton City Council under the Home Rule Charter and *any other applicable law arising under the laws of the State of Pennsylvania.* Exhibit D represents a 2014 real estate transfer tax ordinance. Section 3 of the ordinance provides that the tax shall be "administered, collected and enforced" under Act 511. Section 6, as its predecessors, recites that the ordinance was enacted by the Scranton City Council under the authority of its Home Rule Charter and Optional Plans Law and *any other applicable law arising under the laws of the State of Pennsylvania.* Exhibit E is a 2014 ordinance continuing the imposition of a mercantile tax. Section 5 of Exhibits E and F recites that the ordinances are enacted by Scranton City Council under the authority of the Home Rule Charter and Optional Plans Law and *any other applicable law arising under the laws of the State of Pennsylvania.* Exhibit G and Exhibit I specifically cite to Act 511 as the source of authority for those ordinances.

All the subject ordinances recite that they are enacted by Scranton City Council under the authority of the Home Rule Charter law, and *any other applicable law arising under the laws of the State of Pennsylvania.* A number of the ordinances, in addition to citing Act 511 and the Home Rule Charter law, further provide that the tax shall remain in full force and effect annually without the need for

annual reenactment "unless and until there is a change in the rate of taxation, pursuant to [Act 511]." *See*, Exhibit H, Section 5; Exhibit J, Section 6; Exhibit K, Section 6; Exhibit M, Section 6; Exhibit O, Section 6; Exhibit P, Section 6; Exhibit R, Section 6; Exhibit T, Section 6 and Exhibit U, Section 6.

Clearly, all of these taxes are subject to Act 511. The City's argument that it is not subject to Act 511 has no merit because Act 511 is an applicable law arising under the laws of the State of Pennsylvania. *Moreover, the City expressly relies on Act 511 in the very language in many of the ordinances it presents.* The City cannot consider Act 511 applicable in one breath and inapplicable in the next.

The City places much weight on the 1975 decision of our Supreme Court in *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh.* However, our review of the Supreme Court's decision discloses little, if any, relevance to the issues before us. The Supreme Court outlined the issues it addressed succinctly:

> Part I of the opinion will consider the contentions of the City relating to the trial court's refusal to allow amendments, a question which assumes peculiar importance in the procedural setting of this litigation. Part II will resolve the dispute over standing of the plaintiffs to maintain this statutory appeal. Part III will deal with the claim that the Act has unconstitutionally delegated legislative power to the judiciary.

Wm. Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 182-83, 346 A.2d 269, 277 (1975). While the case concerned Pittsburgh's adoption of an ordinance imposing a tax on parking places, the substance of the decision never ventures near the subject of the instant case.

The City also relies on the 1989 decision of our Commonwealth Court in *Penn Hills School District v. Municipality of Penn Hills*, 555 A.2d 302 (Pa.Cmwlth. 1989). We do not read this decision the same way the City does. There, both the municipality of Penn Hills as well as the Penn Hills School District enacted respective mercantile taxes on the same citizenry. In 1987, the school district enacted its mercantile tax pursuant to the Local Tax Enabling Act, 53 P.S. §6901, 6924 (Act 511) while the municipality of Penn Hills enacted its own mercantile tax pursuant to the Home Rule Law and its

Home Rule Charter in 1979. Importantly, Act 511, in Section 8, addresses situations where two political subdivisions impose taxes on the same "person, subject, business, transaction or privilege" in both political subdivisions during the same year or part of the same year. 52 P.S. §6908. In essence, the purpose is to avoid duplication of a tax by halving the rate of tax for each political subdivision. *Id.* There is also a notice provision. *Id.*

The Commonwealth Court in *Penn Hills* concluded that the halving and notice requirements of the LETA were not applicable to the Penn Hills School District "[b]ecause the case at bar does not involve two political subdivisions imposing the same tax during the same year under the authority of the LETA." 555 A.2d at 305; 124 Pa.Cmwlth. at 120. Importantly, the municipality of Penn Hills "enacted its mercantile tax ordinance pursuant to the Home Rule Law and its Home Rule Charter." 555 A.2d at 304, 124 Pa.Cmwlth. at 119. As noted *supra*, virtually every single tax at issue here specifically mentions Act 511 (the LETA) as being either the source of the authority for the tax's enactment or governing any rate changes in that specific tax; those few that do not specifically mention Act 511 cite not only the Home Rule Charter as the source of the authority but also *any other applicable laws of the Commonwealth* as well.

Moreover, there is no issue before us concerning the authority of the City to tax under the Home Rule Charter; nor do we read Plaintiffs' claims to limit the *rate* of tax imposed by the City under its Home Rule Charter. Rather, if the City is going to utilize the authority granted under Act 511 to enact taxes, then the City is subjecting itself to the requirements and limitations of Act 511. Act 511 seeks to address the *aggregate* of taxes collected by the City. Simply using the Home Rule Charter does not allow the City to pick and choose which taxes comprise that aggregate. Changing the label on a tax does not change the nature or character of the tax.

We have determined that Act 511 applies to the City of Scranton. Therefore, it is an applicable law that is either expressly or impliedly applicable to all these taxes. To conclude as the City argues that because many of these taxes are enacted only under the authority of the City's Home Rule Charter, even while being subject to Act 511, improperly employs selective application of a law. Moreover, taken to its logical extension, this means that the City can tax its citizens to whatever degree it wishes so long as the taxes are considered to emanate exclusively from the Home Rule Charter. This brings about the absurd result of essentially placing no limits on the taxing authority of the City. This undermines the purpose of Act 511's cap on the allowable aggregate of taxes. In our view, such cannot be. Additionally, as noted, the City's own ordinances specifically include any applicable laws of the State of Pennsylvania as authority to enact its taxes.

The City attempts to argue that its tax collections are "not all collected solely pursuant to Act 511. The local services tax is levied and collection pursuant to [Act 511] *in part* and the Municipality's Financial Recoveries Act, 53 P.S. 11701.123(c)(1) and (d)(1) *in part.*" *See, e.g.,* Defendant's Response to Plaintiffs' Renewed Motion for Peremptory Judgment, ¶36 (emphasis supplied). The answer is the same with respect to the real estate transfer tax. *See also*, Defendant's Response to Plaintiffs' Renewed Motion for Peremptory Judgment, ¶¶38, 39, 40, 41, 42, 44. In essence, then, the City is arguing that only *part* of each of these taxes is subject to Act 511. This description is creative, but not persuasive. Labeling something in this fashion does not make it so. The Home Rule Charter cannot be used to limit the amount of Act 511 taxes collected when the tax is authorized and subject to Act 511. To the contrary, it is the other way around.

Moreover, the City cannot have it both ways. The taxes collected cannot simply be labeled "Act 511" in one instance, but not considered so in another. These are labels of consequence, not of convenience.

And now, we turn to the numbers. They are what they are and there is no real dispute about that. The dispute lies in the *characterization* or, better, *classification* of the numbers. For the most part, the City's own documents and figures confirm the figures propounded by the Plaintiffs. Indeed, the Plaintiffs derive their figures from the City's publications. *See*, Plaintiffs' Renewed Motion for Peremptory Judgment, Exhibits B, C, E and G.[4] As noted, the City does not disagree with the actual figures contained in its records. Rather, the City seeks to classify certain tax collections for the years in question as being levied and collected pursuant to Act 511 *in part* and other portions of that same number pursuant to either the Home Rule Charter or another taxing scheme. The City makes no such distinctions in its own financial analyses governing the years in question. *See*, Plaintiffs' Renewed Motion for Peremptory Judgment, Exhibit B (2015), Exhibit E (2016), Exhibit G (2017). In all of these exhibits, the local taxes are referred to collectively as Act 511 taxes. Nowhere in any of the City's official budgetary documents or financial statements are these local taxes referenced as anything beyond "Act 511" taxes. Indeed, even for the City's 2018 projected budget, the local taxes are listed as "Act 511" taxes. To now carve out a certain percentage of these local taxes long described as Act 511 taxes and now classify them as being a different type of tax does not make it so. It simply places a new label over the previous one. This does not wash.

Plaintiffs seem to suggest in their papers an urgency to file for returns or file for refunds of their taxes. However, Act 511 contains no provision allowing for claims for refunds.[5] The only relief provided in the statute is a declaration that the City set aside the amounts which exceed the statutory cap each year for use in future years.

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[4] As noted, Defendants do not seem to challenge the accuracy of the figures contained in Plaintiffs' exhibits; indeed, Defendants' response to the specific references to the figures contained in the exhibits recite either that the documents "speak for themselves" or that certain identified taxes are levied and collected pursuant to Act 511 only "in part." Defendants' response to Plaintiffs' Renewed Motion for Peremptory Judgment, ¶¶32, 35, 36, 37, 38, 39, 40, 41, 42, 44.

[5] 53 P.S. §6924.301.1 allows for refund of overpayments in certain instances, none of which pertain here.

> **(b) Reduction of Rates Where Taxes Exceed Limitations; Use of Excess Moneys.**—If, during any fiscal year, it shall appear that the aggregate revenues from taxes levied and collected under the authority of this chapter will materially exceed the limitations imposed by this chapter, the political subdivision shall forthwith reduce the rate or rates of such tax or taxes to stay within such limitations as nearly as may be. Any one or more persons liable for the payment of taxes levied and collected under the authority of this chapter shall have the right to complain to the court of common pleas of the county in an action of mandamus to compel compliance with the preceding provision of this subsection. Tax moneys levied and collected in any fiscal year in excess of the limitations imposed by this chapter shall not be expended during such year, but shall be deposited in a separate account in the treasury of the political subdivision for expenditure in the following fiscal year. The rates of taxes imposed under this chapter for the following fiscal year shall be so fixed that the revenues thereby produced, together with the excess tax moneys on deposit as aforesaid, shall not exceed the limitations imposed by this chapter.

53 P.S. §6924.320(b).

We see no other relief available to the Plaintiffs. Of course, the additional relief is a declaration that the City reduce its rates prospectively in order to come within the cap. Thus, Plaintiffs will essentially receive a tax reduction over time.

X. CONCLUSION

The taxes at issue here were all issued pursuant and subject to Act 511. The collections by the City of Scranton of these taxes exceeded the market valuation for real property in the City of Scranton for each of the years 2015, 2016, 2017 and, just as likely, 2018. The aggregate amount of these taxes collected during the years 2015, 2016 and 2017[6] exceeded in the aggregate the limitation imposed by Act 511. In 2015, the City exceeded its Act 511 cap by $8,441,940.00. In 2016, the City exceeded its Act 511 cap in the amount of $10,242,735.00. In 2017, the City exceeded its Act 511 cap in the amount of $10,820,461.00. Under the explicit language of the statute, those amounts in excess of the Act 511 statutory cap must be set aside going forward and the City must reduce its applicable rates in

[6] At the time of the submissions of the parties, the exact figures for 2018 were not available.

order that its collections more closely approximate the statutorily imposed cap. We do not reach this conclusion lightly or cavalierly. In enacting Act 511, the legislature determined that local taxes bear some reasonable relation to the value of the real estate in a given community. To suggest, as the City does, that enacting taxes pursuant to a Home Rule Charter as well as Act 511 may facilitate creative bookkeeping but it does not obviate the City's obligations under applicable law. As we have determined that Act 511 is a law applicable to these taxes, and as the City has enacted these taxes pursuant to its Home Rule Charter, Act 511 and "any other applicable law," the City cannot ignore or pervert such applicable law. An appropriate Order follows.

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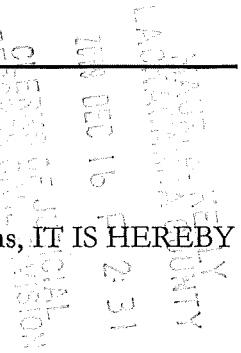

ORDER

AND NOW, this 16th day of December, 2019, for the foregoing reasons, IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. Plaintiffs' Renewed Motion for Peremptory Judgment is hereby **GRANTED;**

2. The Defendant City of Scranton is hereby directed to set aside and sequester the excess Act 511 taxes for tax years 2015, 2016, 2017 in the amounts specified in the accompanying Memorandum;

3. The Defendant City of Scranton shall determine the excess Act 511 taxes for the fiscal year 2018 forthwith and likewise set aside and sequester said excess as required by 53 P.S. §6924.320;

4. Defendants shall take the necessary steps to reduce the rates of their Act 511 taxes pursuant to 53 P.S. §6924.320(b) so that the revenues of its Act 511 taxes going forward more closely approximate the statutory cap as more fully described in the within Memorandum.

BY THE COURT:

_____ J.
James A. Gibbons

cc: *Written notice of the entry of the foregoing Order has been provided to each party by mailing time-stamped copies to:*

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