

CITY OF GREENSBURG

RULES AND REGULATIONS

AMENDED LOCAL TAX ENABLING ACT

BASED ON ACT 166 OF 2002

FOR 2003 AND SUBSEQUENT TAX YEARS

**EARNED INCOME/COMPENSATION AND
NET PROFITS TAX**

NOTICE

All taxpayers are subject to these Rules and Regulations and to the Earned Income Tax Resolutions/Ordinances of the City of Greensburg, levying a tax on earned income and net profits and requiring resident employers to withhold the tax from their employees.

The Tax Resolutions/Ordinances and these Rules and Regulations are continuing ones, applicable until changed by the City of Greensburg.

Copies of the original Tax Resolutions/Ordinances may be examined during normal business hours at City Hall, 416 S. Main Street, Greensburg PA 15601.

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ARTICLE I
GENERAL PROVISIONS

SECTION 101. DEFINITIONS

The following words and phrases used in the Tax Ordinances and Resolutions and in these Rules and Regulations have the following meanings unless the context clearly indicates a different meaning:

"Assessment"	The determination by a local taxing authority of the amount of underpayment by a taxpayer.
"Association."	A partnership, limited partnership, or any other unincorporated group of two or more persons.
"Business."	An enterprise, activity, profession or any other undertaking of an unincorporated nature conducted for profit or ordinarily conducted for profit whether by a person, partnership, association or any other entity.
"Compensation"	See "Earned Income."
"Corporation."	A corporation or joint stock association organized under the laws of the United States, the Commonwealth of Pennsylvania, or any other state, territory, foreign country or dependency.
"Covenant Not to Compete:	An agreement whereby one party promises to compensate another to refrain from working in a certain profession or business, within a limited geographical region, for a certain period of time. It is a positive absence of activity in the form of an affirmative restraint and is therefore taxable. It is not comparable to income from the sale of good will, nor can the compensation received be considered investment income, for the payments are directly dependant upon the conduct of the person receiving the compensation.
"Current Year."	The calendar year for which the tax is being levied.
"Domicile."	The place where one lives and has his or her permanent home and to which he or she has the intention of returning whenever he or she is absent. Actual residence is not necessarily domicile, for domicile is the fixed place of abode which, in the intention of the taxpayer, is permanent rather than transitory. Domicile is the voluntarily fixed place of habitation of a person, not for a mere

special or limited purpose, but with the present intention of making a permanent home, until some event occurs to induce him or her to adopt some other permanent home. In the case of businesses or associations, the domicile is that place considered as the center of business affairs and the place where its functions are discharged.

"Earned Income."

"Compensation" as determined under Section 303 of the Act of March 4, 1971 (P.L. 6, No. 2), known as the "Tax Reform Code of 1971," and regulations contained in 61 Pa. Code Pt. I Subpt. B Art. V (relating to personal income tax). Employee business expenses are allowable deductions as determined under Article III of the "Tax Reform Code of 1971". The amount of any housing allowance provided to a member of the clergy shall not be taxable as earned income/compensation.

"Employee."

A person employed by an "employer" on a salary, wage, commission or other compensation basis. Any person who renders services to another for financial consideration or its equivalent, under an express or implied contract, and who is under the control and direction of the latter and shall include temporary, provisional, casual, or part-time employment.

"Employer."

A person, partnership, association, corporation, institution, governmental body or unit or agency, or any other entity employing one or more persons for a salary, wage, commission, or other compensation.

"Income Tax Officer"
or "Officer"

Person, public employee, or private agency designated by the governing body to collect and administer the tax on earned income, compensation and net profits.

"Independent Contractor"

A person who, while performing, services for another person, is not subject to the direction and control of the other as to the details, methods and means by which a result directed by the other is accomplished. Where the independent contractor is in the permanent or part-time employment of an employer, however, that contractor will be considered an employee of said employer for the purpose the tax due under the Ordinances ,and Resolutions.

"Local taxing authority"

A political subdivision levying an eligible tax. The term shall include any officer, agent, agency, clerk, income tax officer, collector, employee or other person to whom the governing body has assigned responsibility for the audit, assessment, determination or administration of an eligible tax. The term shall not include a tax collector or collection agency who has no authority to audit a

taxpayer or determine the amount of eligible tax or whose only responsibility is to collect an eligible tax on behalf of the governing body.

"Net Losses"	When the costs and expenses incurred in the operation of a business, profession or other activity (except corporations) are greater than its income or profits, as hereinafter defined.
"Net Profits."	The net income from the operation of a business, profession, or other activity, except corporations, as determined under section 303 of the Act of March 4, 1971 (P.L. 6, No 2), known as the "Tax Reform Code of 1971 and regulations contained in 61 Pa. Code Pt. I Subpt. B Art. V (relating to personal income tax).
"Nonresident."	A person, partnership, association or other entity domiciled outside the taxing district.
"Overpayment"	Any payment of tax which is determined in the manner provided by law not to be legally due.
"Person" or "Individual."	A natural person.
"Preceding Year."	The calendar year before the current year.
"Resident."	A person, partnership, association, or other entity domiciled in the taxing district.
"Resolution or Ordinance"	Legislation adopted by the taxing district levying and or assessing an earned income/compensation and net profits tax.
"Succeeding Year."	The calendar year following the current year.
"Taxing District"	The political subdivisions, including school districts, levying and assessing an earned income/compensation and net profits tax, which have appointed or commissioned the Officer to collect and administer the tax on earned income/compensation and net profits.
"Taxpayer."	A person, partnership, association, or any other entity, required hereunder to file a return of earned income/compensation or net profits, or to pay a tax thereon.
"Tax"	The earned income/compensation tax and/or net profits tax enacted under Act 511, P.L. 1257 known as "The Local Tax Enabling Act " as amended by Act 166 of 2002. Tax shall include interest,

penalties and additions to tax, and shall further include the tax required to be withheld by an employer on earned income/compensation paid, unless a more limited meaning is disclosed by the context.

- “Underpayment” The amount or portion of any tax determined to be legally due in the manner provided by law for which payment or remittance has not been made.
- “Voluntary payment” A payment of an eligible tax made pursuant to the free will of the taxpayer. The term does not include a payment made as a result of distraint or levy or pursuant to a legal proceeding in which the local taxing authority is seeking to collect its delinquent taxes or file a claim therefor.

ARTICLE II

IMPOSITION OF TAX

SECTION 201. PERSONS SUBJECT TO TAX:

All persons who are:

- (a) residents of the Taxing District, who are employed or engaged in the operation of a business, profession, or other activity for income or profit;
- (b) non-residents of the Taxing District, who are employed in the Taxing District, or engaged in the operation of a business, profession, or other activity for income or profit in the Taxing District, are subject to this tax when authorized by ordinance or resolution of the Taxing District.

A "resident" is an individual who is domiciled in the Taxing District, as evidenced, among other things, by one or more of the following:

- a. By customarily being physically present, sleeping, and eating there.
- b. By holding him or herself out as residing there, i.e. giving address in registration for licenses, voting and payment of personal or property taxes.
- c. By his or her spouse and minor children living there.
- d. By maintaining religious, civic, and club affiliations there.
- e. By the center of his or her affairs appearing to be there.

Normally it is not difficult to determine the domicile of a person because most of the determining factors point to one conclusion. Obviously, if a person has all of the foregoing factors occurring in one district, he or she is a resident of that district. Of more difficulty is the situation concerning persons for whom some of the factors occur in one district and others take place elsewhere. In such cases the residence or domicile of an individual shall be determined by the Officer based on all of the legally relevant factors which affect the issue. Each case shall be determined solely on its own facts.

SECTION 202. WHAT IS TAXED:

- A. The tax is imposed on earned income/compensation and net profits as defined in Section 101 of these Rules and Regulations. These items are subject to the tax whether a taxpayer received them directly or through an agent.
- B. The earned income/compensation and net profits tax shall be applicable to earned income/compensation received and net profits earned in the period beginning January 1 and ending December 31 of each year. The tax shall continue in force on a calendar year basis, without annual reenactment, unless the rate of tax is subsequently changed. Changes in the rate shall become effective on the date specified in the Ordinances or Resolutions.
- C. Trusts or Estates. Every estate or trust must pay the tax:
(1) on net profits resulting from its engagement in any business, trade or other activity which would require the filing of a return by an individual or partnership, and (2) on income/compensation which would be subject to the tax if received by an individual or partnership.

SECTION 203. WHAT IS INCLUDED IN EARNED INCOME/COMPENSATION:

The statutory definitions of "Earned Income" and "Compensation" are found in Section 101 of these Rules and Regulations. The purpose of this section is to provide additional clarification of these definitions using various examples and explanations. These examples are not exhaustive nor are they intended to either modify the definitions or to limit what constitutes taxable income.

Examples of earned income/compensation are:

- A. Gross Salaries.
- B. Gross Wages, including Clergy pay.
- C. Commissions.
- D. Bonuses.

- E. Drawing Accounts. (if amounts received as a drawing, account exceed the salary or commissions earned, the tax is payable on the amounts received. If the employee subsequently repays to the employer any amounts not in fact earned, the tax shall be adjusted accordingly).
- F. Incentive Payments. Payments received from employers or on behalf of employers, other than the usual compensation, for the purpose of inducing the employee to make a decision such as buying out an agreement or contract or moving to another location or accepting an early retirement or “Golden Parachute Settlements” are incentive payments and constitute taxable income. Incentive payments shall further include Stock Appreciation Rights (SAR) and /or phantom stock plan payments, where such payments are attributable to remuneration for services rendered and shall further include Auto manufacturers incentive payments, whether made directly to individual salespersons or through a dealership. Incentive payments are not to be considered “retirement” as referenced in Section 101, definition of Earned Income. If the payment/settlement of such sums is to be made in the future, such sums shall be taxed in the year they are received.
- G. Tips and gratuities.
- H. Fees: include Administrator fee, Director fee, Executor fee, Expert witness fee, Fiduciary fee, Honoraria fee (if one profession is being a professional speaker, Trustee fee, fee received for service performed by taxpayer, fee received for decision made by taxpayer, even if it is not considered as self-employment income in the Internal Revenue Code. The fees referenced herein involve activity and participation on the part of the taxpayer.
- I. Earnings Component of Stock Options Plans when the option is exercised. The “earnings component” is considered to be the difference between the stock option price and the fair market value of the stock at the time the option is exercised.
- The Pennsylvania Supreme Court in its’ 2/22/2000 decision in the Marchlen case makes no distinction between qualified and non-qualified stock options plans. Marchlen v. Township of Mt. Lebanon (707 A.2d 631, PA Cmwlt. 1998).
- J. Benefits accruing from employment, including but not limited to, salary advances, annual leave, vacation, holiday, sickness, and severance or separation pay or benefits; excluding, however, benefits referred to in Section 205 and/or by Pa. Personal Income Tax Regulations.
- K. Fair market value of non-cash fringe benefits or incentives accruing by virtue of employment recognized as taxable by the Pennsylvania Department of Revenue are also to be included as taxable earned income/compensation, except to the

extent they are specifically excluded by section 205 and/or by Pa. Personal Income Tax Regulations.

PARTIAL LISTING OF TAXABLE INCENTIVE ITEMS:

- (1) Automobile allowance which exceeds actual expenses incurred.
- (2) Stock options.
- (3) Group legal services plans.
- (4) Dependent care assistance programs.
- (5) Mortgage assistance in lieu of other compensation.
- (6) Non-cash payment for services rendered.
- (7) Stock bonus plans.
- (8) Moving Allowances.

EXAMPLES:

- (1) Taxpayer A receives a salary of \$ 70,000. In addition to his salary, he exercised a nonqualified stock option as reported on Form W-2, of \$ 11,000, and was compensated for spouse's travel expenses in the amount of \$ 3,100. Therefore Taxpayer A's total taxable compensation is \$84,100.
- (2) Taxpayer B receives a salary of \$ 55,000, of which \$ 9,000 is deferred to a 401(k) plan for retirement. Her local taxable earned income/compensation is \$ 55,000. Any plan which serves to reduce gross taxable wages for federal tax purposes is not recognized as an exclusion for earned income/compensation tax purposes.
- (3) Taxpayer C is a minister, employed by a church, but he does not live in a church provided parsonage. Taxpayer C receives a salary of \$ 30,000, a housing allowance of \$ 10,000, and a car/travel expense allowance of \$3,000. The total taxable compensation is \$ 33,000. To claim unreimbursed business expenses, Taxpayer C can file a Pennsylvania Department of Revenue Schedule UE as a deduction from the taxable income/compensation. His housing allowance is not taxable.

- (4) Taxpayer D has recently moved into the Taxing District. In addition to a salary of \$ 43,000, Taxpayer D received \$ 10,000 in moving expense payments from his employer. The total taxable compensation for Taxpayer D is \$ 53,000. Taxpayer D can file a Pa. Department of Revenue Schedule UE and deduct his actual moving expenses, but must enclose Schedule UE and any other supporting documentation when filing his local tax return.
- L. Taxes assumed by the employer for the employee.
- M. Regular wages received during a period of sickness or disability.
- N. Employee contributions to deferred compensation plans and old age or retirement benefit programs, or cafeteria plans, since any plan which, through an employee's contribution, serves to reduce gross taxable wages for federal income tax purposes is not recognized as an exclusion for local tax purposes. Examples: employee contribution/deferment under Sec. 403(b), Sec. 457(b) or Sec. 401(k) of the Internal Revenue Code.
- O. Value of meals and lodging furnished by employers to domestics or other employees unless provided for the convenience of the employer on the employer's premises.
- P. National Guard Pay, Military Reserve Pay and Military Active Duty Pay (where being served within the State of Pennsylvania).
- Q. Scholarships, grants and fellowships, if services are rendered in connection therewith.
- R. Stipends paid to Graduate Assistants. (Also see Section 205.U).
- S. Premature Profit Distributions not rolled into a qualified pension plan, individual retirement account or an annuity plan. Early distribution from retirement or pension plan, on the contributions not taxed when earned. This can include employer contributions, interest earned and employee contributions.
- T. Premature withdrawal of "employer contributed portion of principal" which is actually received by the taxpayer from a regular IRA or from a ROTH IRA, to the extent the employer contributed portion of the principal being withdrawn was not previously taxed for the local earned income/compensation tax, unless the premature principal withdrawal is rolled over without passing to the taxpayer. The taxpayer should use the cost recovery method of accounting to determine the taxable portion of only the previously not taxed principal which the employer contributed.

- U. Cafeteria Plan money (credits) and cash reimbursements made by an employer to the employee for dependant care, legal services or other personal services.
- V. All other forms of compensation or remuneration for an employee's services rendered, whether in cash, property or services.
- W. Back pay awards (unless proven to constitute punitive damages) when the payment represents salary, wages, commissions, bonuses, incentive payments, fees, tips, or other compensation to which the employee is entitled for services rendered.
- X. Severance or separation pay.
- Y. Distributions received prior to the taxpayer's actual date of retirement, including but not limited to E.S.O.P., P.A.Y.S.O.P., 401K, 403B, cafeteria plans, etc. shall be taxable on the employer's contributed portion, if the distribution is not rolled into an individual retirement account, annuity plan, or another qualified retirement plan.
- Z. Covenants not to compete which arise "within an employment relationship," such as when an employee signs a covenant not to compete with his or her employer if and when he or she is no longer employed. (Example: In such a case, the consideration for the agreement is usually provided at the time the agreement is executed, and often consists of the employment itself).

Neither the kind nor the rate of payment, nor the manner of employment, exempts an employee from the tax. Compensation received in the form of property shall be taxed at its fair market value at the time of receipt.

SECTION 204. WHAT IS INCLUDED IN NET PROFITS:

The statutory definition of "Net Profits" is found in Section 101 of these Rules and Regulations. The purpose of this section is to provide additional clarification of this definition using various examples and explanations. These examples are not exhaustive nor are they intended to either modify the definition or to limit what constitutes taxable profits.

Examples of "net profits" are:

- A. The net profits of a business, profession or farm conducted by a sole proprietor.
- B. The net profits of a business, profession or farm conducted as a partnership.
- C. Net profits from the operation of hotels, motels, trailer camps, tourist homes, boarding houses, bed and breakfast establishments, mobile home parks and other similar businesses.

- D. Net profits from the business of renting personal property.
- E. Net profits from real estate rentals received in the course of a trade or business are taxable. Rental income is subject to this tax when the owner actively manages and supervises the property himself/herself or through agents or servants, by providing labor and service in connection with it. The furnishing of such labor and service further signifies activity and participation on the part of the owner and classifies him or her as conducting or carrying on a business as opposed to merely being an incidental owner of investment property.
- F. “Covenants Not To Compete” involving taxpayers who are not employees. The promise not to compete and the subsequent undertaking of that effort pursuant to a business arrangement is sufficient to bring this within the purview of the Net Profits Tax. The fact that this is a negative covenant or rather, a promise not to do something, does not remove it from the realm of a business activity which is undertaken as part and parcel of a contract for a fee. The act of not competing is the consideration contributed to this contract by the taxpayer. It is consideration that has a business purpose, not a personal purpose. See *Rauch v. Tax Review Board of Philadelphia*, 708 A.2d 142 (1998).
- G. All other net profits of business activities except any portion thereof resulting from items not taxed under the provisions of the Ordinances or Resolutions as set forth in Section 205 hereof.
- H. In determining net profits subject to tax under the provisions of the Ordinances and Resolutions, the net profit of each business activity is to be determined separately with reference only to the gross income and expenses of that business and without mixing the income of one activity with the expenses of another. Persons engaged in more than one business activity during the tax year may not offset a loss in one activity against the gain in another. The tax is imposed on the net profit of each business activity separately. A net loss incurred from a profession, business activity or venture, regardless of the nature, may not be deducted from the net profit of any other business activity. (See *Aronson vs. City of Pittsburgh*, 86 Pa. Cmwlth. 591, 485 A.2d 890 (1985)). Nor may any net loss of one taxpayer be offset or deducted from the earned income/compensation of another.

EXAMPLE:

A person who receives net profits from the operation of a sole proprietorship may not offset against such profits the net losses incurred as a sole proprietor or partner in another business activity.

- I. Each resident partner or member of a non-resident partnership, association or other entity must pay the tax on his or her share of the net profits whether or not it is actually distributed to him or her.
- J. Business "Bonus Depreciation" amounts are to be calculated for local purposes in the same manner as calculated for Pennsylvania personal income tax purposes (not according to federal income tax provisions).
- K. In the calculations utilized to determine the correct net profits, the following items are to be included as they shall be considered to be part of the business income:
 - (1) Interest received on business checking and/or savings accounts.
 - (2) Interest received on credit sales.
 - (3) Interest received on withheld employee taxes.
 - (4) Discounts received from Pennsylvania for timely remitting of sales taxes.
 - (5) Damages, awards and settlements received when such damages, awards and settlements represent compensation for income lost.

SECTION 205. EXCLUSIONS FROM TAX:

The following are not considered to be compensation/net profits and are not subject to the tax:

- A. Sickness, disability, or retirement benefits paid, other than regular wages as provided in Section 203.M.
- B. Benefits paid under any public assistance, unemployment or worker's compensation legislation, including supplemental unemployment benefits, or strike pay.
- C. Death benefits payments to an employee's beneficiary or estate, whether payable in a lump sum or otherwise.
- D. Proceeds of Life Insurance policies or annuities.

- E. Cash or property received as a gift, by will, or by statutes of descent and distribution.
- F. Personal interest and dividends. (Interest earned on business accounts must be included in the calculations of net profits and may not be deducted).
- G. Value of meals and lodging furnished by the employer to domestics or other employees for the convenience of the employer on the employer's premises.
- H. Capital gains as reported on PA-40, Line 5.
- I. Social Security benefits.
- J. Veterans administration allotments for subsistence or disability.
- K. Income from pensions or old age and retirement benefit plans upon retirement.
- L. Active duty military service pay when served outside of Pennsylvania.
- M. Lottery winnings.
- N. Cost of group term life insurance.
- O. Individual Retirement Account (IRA) payments received upon retirement.
- P. S Corporation income. (This exclusion does not include compensation paid or attributed to the officers of an S corporation as reasonable compensation for services rendered nor does it apply to any salary, wage, commission, fee, or other compensation received by an officer, director, stockholder, or employee of an S Corporation). *Scott v. Hempfield Area School District*, 168 Pa.Cmwlth. 588 (1994).
- Q. Profits from limited partnerships engaged in real estate, oil, gas, mining leases or other similar passive investments.
- R. Distributions from deferred compensation plans to the extent that such distributions represent a return of the taxpayer's own contribution upon which he originally paid the tax.
- S. Damages for personal injuries.
- T. Payments received for child support and alimony.
- U. Scholarships and fellowships awarded from detached generosity on the basis of financial need or academic achievement for the sole purpose of encouraging or allowing the recipient to further his or her educational development and not as

compensation for past, present or future services. A scholarship or fellowship shall constitute earned income/compensation if the recipient must apply his or her skills and training to advance research, creative work or some other project or activity.

- V. Prizes and awards unless the recipient must render substantial service as a condition to receiving, the prize or award.

The items listed and described within Section 205 are not to be listed as deductions against income, as they are a list of non-taxable income sources.

SECTION 206. RESIDENT TAXATION:

The entire earned income/compensation and net profits received and/or earned by a resident of the Taxing District is subject to this tax. Neither the source of the earned income/compensation or net profits nor the place where it is received and/or earned exempts a resident from the tax.

SECTION 207. NON-RESIDENT TAXATION:

The entire earned income/compensation and net profits received and/or earned by a non-resident of the Taxing District who is employed in the Taxing District or engaged in the operation of a business, profession, or other activity for income or profit in the Taxing District, is subject to this tax when authorized by ordinance or resolution of the Taxing District, provided, however, that non-residents are not subject to taxation by school districts.

Any person claiming non-residency status must provide proof of non-residency such as a passport with valid student or exchange visitor's visa, driver's license or other acceptable documentation. Any person claiming non-residency exemption status must provide proof of payment of local income taxes elsewhere for the concurrent time period.

SECTION 208. CREDITS:

Credit for earned income/compensation or net profits tax paid for the concurrent time period to another state or political subdivision will be allowed as a deduction from the liability of taxpayers for tax imposed under the provisions of the Ordinances and Resolutions and as provided by Act 511. Such allowable credit will be available up to the maximum effective rate of tax levied by the Taxing District provided, however, that this same credit has not already been applied towards the taxpayer's liability for the Pennsylvania Personal Income Tax for the same period. Evidence of the amount of gross earnings and payments of the applicable tax on earned income/compensation or net profits is required before this credit is allowed.

SECTION 209. DEDUCTIONS AND LOSSES:

A. Deductions:

Employee's Unreimbursed Business Expenses - Business Expenses for which an employee has not been reimbursed are allowed as a deduction from earned income/compensation provided such expenses meet the "four part test" as established by the Pennsylvania Department of Revenue. That is, the expense must be "ordinary, actual, reasonable, and necessary" in order to be deducted from earned income/compensation. This means that any expense claimed as a deduction from gross earnings must be:

1. Customary and accepted in the industry or occupation in which the taxpayer works.
2. Directly related to the taxpayer's present occupation as opposed to an occupation in which he plans to enter in the future.
3. Reasonable in amount and not lavish or excessive.
4. Necessary to enable the taxpayer to properly perform the duties of his present employment.

Those expenses not meeting the "four part test" are not allowed as a deduction from earned income/compensation. The taxpayer has the burden of proving that any expense claimed is ordinary, actual, reasonable and necessary and must maintain adequate and sufficient records to substantiate any such deduction taken.

Examples of expenses which may not be deducted from earned income/compensation include (but are not limited to): Travel (commuting) to and from work; meals and lodging unless the "away from home overnight test" is met; capital expenditures, moving, educational and office-in-home expenses except as allowed by the Pennsylvania Department of Revenue; and personal expenses such as medical, dental, life insurance premiums, contributions, interest, other taxes, gifts and entertainment, dues to professional or fraternal societies, club memberships, subscriptions to publications, alimony, babysitting, books, casualty or theft losses, license fees, clothing suitable for everyday use, employee deferred compensation plan contributions, Federal Form 1040 tax credits and other taxes, individual retirement account (IRA) contributions, employee contributions to Simplified Employee Pension Plans (S.E.P.), Federal State or Local income taxes, gift estate or inheritance taxes and personal taxes, penalties or interest paid on delinquent income taxes, tools for use at home, Federal Form 1040 itemized deductions or the Occupational Privilege Tax.

B. Losses:

Taxpayers are permitted to offset a loss in one class of taxable income against his/her W-2 income. *O'Reilly v. Fox Chapel Area School District*, 555 A.2d 1288, 521 Pa. 471, 1959.

However, if a net loss is incurred from the operation one or more business activities, the amount of the net loss or losses must be listed separately (not combined with the net profit of any other business or businesses). *Aronson v. City of Pittsburgh*, 485 A.2d 890, 86 Pa.Cmwlth. 591, 1985

Losses may only be applied in the year in which the loss was actually incurred, and may not be carried forward to subsequent years.

One person's losses may not be deducted from his or her spouse's earnings.

S Corporation losses may not offset the earned income/compensation or net profit of any taxpayer.

ARTICLE III

COLLECTION AT THE SOURCE

SECTION 301. EMPLOYERS REQUIRED TO WITHHOLD:

- A. Every employer having an office, factory, workshop, branch, warehouse or other place of business located within the Taxing District and who employs one or more persons (other than domestic servants in a private home) for a salary, wage, commission, or other compensation, shall deduct the tax from the employee's wage at the time or payment thereof pursuant to Taxing District Ordinance or Resolution.
- B. Fiduciary Status - Employers who withhold earned income/compensation tax from employees, and the person responsible for the transmission of earned income/compensation tax withheld by a corporate employer, shall be a fiduciary charged with all the responsibilities of a fiduciary with respect to taxes withheld, and shall be subject to all duties imposed by law on fiduciaries, including criminal penalties for breach of duties.

SECTION 302. VOLUNTARY WITHHOLDING:

Any employer located outside the Taxing District may voluntarily withhold the tax from employees who are residents of Taxing District but are employed outside the Taxing District. Such employers assume the fiduciary responsibilities as outlined in Section 301. B.

SECTION 303. REGISTRATION OF EMPLOYERS:

- A. Each employer withholding or required to withhold tax pursuant to Sections 301 and 302 shall register with the Taxing District such employer's name and address and such other information as the Officer may require within fifteen (15) days after becoming a withholding employer.

- B. All employers who have a place of business located within the Taxing District shall maintain complete records of all employees for a period of six (6) years in such form as to enable the Officer to determine the employers' liability to withhold for each employee, the amount of taxable income for each employee, the actual amount of tax withheld, the actual amount transmitted to the Officer and such other information available to such employers as will enable the Officer to carry out his or her responsibilities.

SECTION 304. LIABILITY OF EMPLOYEE:

Failure or omission of any employer to withhold the tax shall not relieve the employee from the payment of the tax, or from complying with the requirements relating to the filing of declarations and returns.

ARTICLE IV

PAYMENT OF TAX AND RETURNS

SECTION 401. ANNUAL RETURNS OF TAXPAYERS:

- A. On or before April 15 of each year, every person who was:

- (1) a resident of the Taxing District who was employed or engaged in the operation of a business, profession, or other activity for income or profit; or
- (2) a non-resident of the Taxing District who was employed in the Taxing District or engaged in the operation of a business, profession, or other activity for income or profit in the Taxing District, for all or any part of the preceding calendar year;

shall file with the Income Tax Officer an Annual Tax Return showing all earned income/compensation and net profits received and/or earned for the previous year.

- B. Persons residing in more than one taxing district during the calendar year must file an Annual Tax Return with the Officer for each district in which they resided during the year.
- C. If a person receives an Annual Tax Return from the Income Tax Officer and has no earned income/compensation to report, the word "none" shall be entered on the Annual Tax Return, and the return shall be signed, dated, and returned to the Officer with an explanation (Military Service, Retired, Disability Income Only, Unemployment Compensation Only, S Corporation Only, Housewife, Unemployed Student, or Deceased).

- D. If net profits are received, the type of business, profession or activity shall be indicated on the Annual Tax Return and the amount of the profit shall be shown on the appropriate line of the return. If a net loss is incurred in the operation of a business activity, it may not be offset against the net profit of other business activities. Losses shall be indicated as zero in all calculations involving net profits, and zero shall be entered on the appropriate line of the Annual Tax Return. There shall also be attached to the Annual Tax Return a copy of the appropriate PA-40 and Pennsylvania C, E, F, UE, or RK-1) to substantiate profits and/or losses indicated.
- E. The Annual Tax Return shall also show the taxpayer's name, Social Security number, address, place or places of employment or business, the amount of tax due, the amount of credit claimed for tax withheld by an employer (with a copy of the Earnings and Tax Statement showing the amount of tax withheld) and such other information as may be indicated on the return form or as may be required by the Officer.
- G. Every person subject to the tax shall file such return regardless of the fact that his or her wages may have been subject to withholding of the tax by his or her employer and regardless of whether or not any tax is due.
- H. At the time of filing the annual return, the taxpayer shall pay any tax due. Total balances less than \$ 1.00 need not be paid.
- I. The annual tax return must be signed and dated by the taxpayer in the space provided.
- J. Each taxpayer shall report his or her earned income(s), net profits(s), taxes paid by the taxpayer, taxes withheld by the taxpayer's employer, and business expenses, individually, in the columns on the annual tax return headed by their social security number.
- K. Taxpayers with S Corporation income shall file an Annual Tax Return and attach a copy of their Federal Tax Form 1120 S for audit purposes only. Except in situations where compensation is either paid or attributed to the officers of an S corporation as reasonable compensation for services rendered, S Corporation income is not taxed for local tax purposes. Likewise, S Corporation losses may not offset earned income/compensation or net profits.
- L. Remittances shall be made payable to the Taxing District or Income Tax Officer.
- M. Bad Checks - A \$29.00 charge will be levied each time a check is returned from the bank unpaid. Checks issued in violation of the Pennsylvania Crimes Code will be referred to appropriate authorities for possible criminal prosecution.

SECTION 402. DECLARATION AND PAYMENT OF TAX:

- A. Every taxpayer who has earned any income that is not subject to withholding but that is otherwise subject to the tax, shall file quarter-annual estimated tax returns with the Income Tax Officer and pay the estimated tax due. The quarter-annual returns shall be due on or before April 30, July 31 and October 31 of the current year and January 31 of the succeeding year.
- B. Every taxpayer not subject to withholding is required to pay at least seventy-five percent (75%) of the annual tax liability on or before January 31 of the succeeding year.
- C. Payments made after due dates shall be subject to interest at the rate of six percent (6%) per annum on the amount of tax and an additional penalty of one-half of one percent (1/2 %) of the amount of unpaid tax for each month or fraction thereof during which the tax remains unpaid.
- D. Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the officer an annual tax return setting forth the amount of wages and net profit(s) earned during the period beginning January 1, and ending December 31, of the current year, the amount of tax due thereon, the amount of tax paid thereon, the balance of tax due, and all supporting documentation required with the filing of an annual tax return. At the time of filing the annual tax return, the taxpayer shall make payment of the tax due as shown thereon or shall make demand for refund or credit in the case of overpayment.
- E. Every taxpayer is required to file an annual return, pursuant to SECTION 401, whether or not a declaration and/or quarterly installments have been filed and/or paid.

SECTION 403. RETURNS OF EMPLOYERS AND PAYMENTS OF WITHHELD TAX:

- A. Every employer required to withhold the tax shall file a quarterly return on the PROPER FORM setting forth the name, Social Security number, address, municipality of residence, gross earnings, and the amount of tax withheld for each employee, and shall remit the total sum thereof to the Income Tax Officer at the following times:

For Quarter Comprising the Following
Months in which Wages are paid:

Jan, Feb, Mar
Apr, May, Jun
Jul, Aug, Sep
Oct, Nov, Dec

Employer's Quarterly Return and
Payment DUE on or Before:

April 30
July 31
October 31
January 31

- B. Employers may utilize computer printouts or similar listings to transmit quarterly and/or annual employee withholding data provided the required information is furnished in a manner acceptable to the Income Tax Officer.
- C. Employers may utilize magnetic media filings to transmit quarterly and/or annual employee withholding data provided the required information is furnished in a manner acceptable to the Income Tax Officer.
- D. Any employer who for two of the preceding four quarterly periods has failed to deduct the proper tax, or any part thereof, or has failed to pay over the proper amount of tax to the Officer, may be required by the Officer to file the return and pay the tax monthly. In such cases, payments of tax shall be made to the Officer on or before the last day of the month succeeding the month for which the tax was withheld.
- E. On or before February 15, of the succeeding year, every employer shall file with the Officer:
 - (1) An annual return showing the employees name, address and identification number, the total number of withholding statements transmitted with the annual return, the total income tax withheld from wages during the year as shown by withholding tax statements and the total income tax withheld as reported on the quarterly returns. Any differences between the total income tax withheld from wages as shown on the withholding statements and the total income tax withheld as reported on the quarterly returns must be fully explained in an attached note.
 - (2) A withholding tax statement (W-2) for each employee employed during all or any part of the period beginning January 1, of the current year, and ending December 31, of the current year, setting forth the employee's name, address and Social Security number, the amount of earned income/compensation paid to the employee during said period, the amount of tax deducted, the political subdivision imposing the tax upon such employee, and the amount of tax paid to the Officer.
- F. Every employer who discontinues business prior to the completion of taxable year, shall, within thirty (30) days after the discontinuance of business, file and furnish the returns required by this section covering the periods between the last such return and the discontinuance of business, and remit to the Officer all remaining tax due.
- G. The failure or omission of any employer to make the deductions required by this section shall not relieve any employee from the payment of the tax or from complying with the requirements of the Ordinances or Resolutions relating to the filing of Declarations and Returns.
- H. (1) TRUSTEE EX MALEFICIO: One who collects the earned income/compensation tax as agent for a taxing authority or the taxing authority's tax collector and fails to pay same over to the appointed collector for the taxing authority is a trustee ex maleficio.

EXAMPLE: An officer of a company that fails to remit the earned income/compensation tax withheld from the company's employees may be held personally liable for the earned income/compensation tax withheld as a trustee ex maleficio, where the officer has been active and/or in control over the collection and remitting of taxes.

- (2) Businesses and Corporations must act through individuals and where such individuals are the acting and controlling officers and agents of the corporation or business, and they fail to administer the trust responsibilities, liabilities are imposed upon the individuals who are responsible for the performance of the trust duty.

EXAMPLE: A corporation which files a tax return form, or the forms W2 document collections from employees, but remits only part of these collections to the income tax officer shall be liable for the withheld taxes as a trustee through wrong doing. The controlling corporate officer is also liable for the tax as a trustee through wrong doing, to the extent that this officer failed, permitted and/or directed the corporation not to remit the withheld tax.

EXAMPLE: An officer and/or director of a corporation or business who has knowledge that the corporation has failed to pay over withheld earned income/compensation tax shall be personally liable for the tax withheld because that person did not try to prevent the corporation or business from spending its funds without first paying the withheld tax to the income tax officer.

(3) LIABILITIES OF CORPORATIONS AND OFFICERS: Where a corporation does not remit the earned income/compensation tax withheld from its employees and subsequently is dissolved in bankruptcy, the corporate officers shall be held personally liable, jointly or severally, for the payment of the earned income/compensation tax withheld.

EXAMPLE: The officers are the sole owners of the shares of stock and/or are the "guiding force" of the corporation. The officers are trustees of the earned income/compensation tax collected since they are responsible for the corporation's failure to remit the tax and for the misappropriation of the funds. The doctrine of separate entity of the corporation shall not defeat the income tax officer's claims.

- I. The employer, the business, the corporation shall not characterize the tax withheld simply as creating a debtor-creditor relationship between the employer or business or corporation and the income tax officer as collector for the taxing authority, therefore the employer is the conduit for its employees' tax payments. Consequently, these taxes withheld are held in "express trust" or in "constructive trust" for the taxing authority and its collector of these taxes.
- J. RESPONSIBLE PARTY. An officer or employee of a business entity including a corporation, who is responsible or has the duty to collect or withhold earned income/compensation tax and/or possesses actual or implied control over funds and tax

accounts will be personally assessed for collected or withheld earned income/compensation tax that is not remitted. Generally the income tax officer will issue an assessment, or file a legal action, against the chief operating officer and/or financial officers of any entity, including corporations, if the facts of the particular case disclose that these individuals are involved in the day to day operation of the business entity and retain decision making authority over financial matters. A responsible person need not be an officer of the entity. Managers whose duties include authority and control over financial decisions may likewise be held responsible.

- K. Bad Checks - A \$29.00 charge will be levied each time a check is returned from the bank unpaid. Checks issued in violation of the Pennsylvania Crimes Code will be referred to the appropriate authorities for possible criminal prosecution.

SECTION 404. PENALTY, INTEREST AND LATE FEES:

If for any reason the tax is not paid when due, interest at the rate of six percent (6%) per annum on the amount of said tax, and an additional penalty of one-half of one percent (1/2%) of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid, shall be added and collected. Where suit shall be brought for recovery of any such tax, the person liable therefore shall, in addition, be liable for the cost of collection and the interest and penalty herein imposed.

If a taxpayer fails to file a valid Annual Return (see Section 509), and/or fails to pay the tax in full on or before the due date of the succeeding year or on or before the date to which an extension has been granted pursuant to Section 405, the taxpayer shall at all times remain responsible for the filing of a valid Annual Return and shall be liable for a five dollar (\$5.00) late fee pursuant to Section 509. This late fee shall be paid by the taxpayer in addition to any tax balance due, including any fines, penalties and interest, and shall be paid whether or not all earned income/compensation tax may have been withheld by his or her employer and whether or not there is any tax balance due.

Abatement of certain interest and penalty will be considered under the following conditions:

- (a) Errors and delays - In the case of any underpayment, the Officer may abate all or any part of interest for any period for the following:
 - (1) Any underpayment or tax finally determined to be due attributable in whole or in part to any error or delay by the Officer in the performance of a ministerial act. For the purposes of this paragraph, an error or delay shall be taken into account only if no significant aspect of the error or delay can be attributed to the taxpayer and after the Officer has contacted the taxpayer in writing with respect to the underpayment of tax finally determined to be due or payable.
 - (2) Any payment of a tax to the extent that any error or delay in the payment is attributable to an officer, employee or agent of the Income Tax Officer being erroneous or dilatory in performance of a ministerial act. The Officer shall

determine what constitutes timely performance of ministerial acts performed under this subsection.

(b) Abatement due to erroneous written advice by the Income Tax Officer:

- (1) The Officer shall abate any portion of any penalty or excess interest attributable to erroneous advice furnished to the taxpayer in writing by an officer, employee or agent of the Income Tax Officer acting, in the officer's, employee's or agents official capacity if:
 - (a) the written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer, and
 - (b) the portion of the penalty or addition to tax or excess interest did not result from a failure by the taxpayer to provide adequate or accurate information.
- (2) This subsection shall not be construed to require the Income Tax Officer to provide written advice to the taxpayer.

SECTION 405. EXTENSIONS:

A taxpayer who requires an extension of time in which to file his or her Annual Tax Return shall make written application to the Income Tax Officer no later than one hundred and five (105) days from the end of the calendar year for which the Return will be filed. A taxpayer who is granted an extension of time for filing his or her Federal or Pennsylvania Income Tax Return shall not automatically be entitled to a similar extension of time for filing his or her local income tax return. A copy of the taxpayer's Federal or Pennsylvania tax extension form must be received by the Income Tax Officer on or before April 15, of the succeeding year, for the extension to be approved. Such approved extension shall be valid through August 15, of the succeeding year.

Any taxpayer who, after receiving an approved extension to August 15, of the succeeding year, finds that he or she needs additional time for proper completion of the Annual Tax Return, shall make written application to the Income Tax Officer on or before August 15, of the succeeding year, requesting an additional extension of time to file. Such approved second extension shall be valid through October 15, of the succeeding year and will only be approved if a first extension was filed and approved on or before April 15, of the succeeding year. Under no circumstances will extensions be approved after October 15, of the succeeding year.

Interest and penalty, as outlined in Section 404, will be added and collected on tax not received by its due date, even though an extension of time for filing has been granted.

SECTION 406. CHANGE IN FEDERAL TAXABLE INCOME:

If the amount of a taxpayer's earned income/compensation or net profits reported on his or her annual Federal or Pennsylvania Income Tax Return is changed or corrected either by action of the Internal Revenue Service or Pennsylvania Department of Revenue or by the individual's filing of an amended annual Federal or Pennsylvania Return, the taxpayer shall report to the Income Tax Officer such change or correction within thirty (30) days after the date when the change or correction was determined, by filing an amended tax return indicating the applicable tax year on the return.

ARTICLE V
ADMINISTRATION AND ENFORCEMENT

SECTION 501. INCOME TAX OFFICER:

- A. The Officer is charged with the administration and enforcement of the Ordinances and Resolutions and these Rules and Regulations, and is authorized to act on behalf of the Taxing District in such administrative and enforcement matters.
- B. The Officer shall keep a record showing the amount received by it from each person paying the tax and, if paid by such person in respect of another person, the name of such other person, and the date of receipt for seven (7) years.
- C. The Officer has prepared a "DISCLOSURE STATEMENT" which sets forth the following in simple and non-technical terms:
 - (1) The rights of a taxpayer and the obligation of the local taxing authority during an audit or an administrative review of the taxpayer's books and records.
 - (2) The administrative and judicial procedures by which a taxpayer may appeal or seek review of any adverse decision of the local taxing authority.
 - (3) The procedure for filing and processing refund claims and taxpayer complaints.
 - (4) The enforcement procedures.

The Income Tax Officer shall make a copy of the disclosure statement available to any taxpayer contacted regarding the assessment, audit, determination, review or collection of an eligible tax.

SECTION 502. ADMINISTRATIVE APPEALS:

- A. The taxing district has established an administrative process to receive and make determinations on petitions from taxpayers relating to the assessment, determination and refund of eligible taxes as required by Act 50 of 1998. The Hearing Officer shall rule on all petitions submitted, based on the regulations hereinafter set forth governing the practice and procedures of this Administrative Appeals process.
- B. Any taxpayer who is aggrieved by an assessment or determination or delinquency of any of the eligible taxes would have 90 days from the date of the assessment or determination notice to file a petition for reassessment or re-determination with the Hearing Officer.

- C. The petition shall be double spaced, typed or legibly hand written on plain paper. The petition should contain a brief summary of the action and the “legal basis” that precipitated the filing for reassessment or re-determination, along with any pertinent information (copies of tax returns, supporting information, tax schedules, expense records, etc.)
- D. The petition shall be mailed via First Class Mail, or delivered in person to the Hearing Officer c/o the Income Tax Officer. Hand delivered petitions will be receipted by the Income Tax Officer and will be considered filed as of the date receipted. Petitions received by mail will be considered filed as of the United States Postal Service postmark stamped on the envelope.
- E. Petitions will be photocopied by the Income Tax Officer and forwarded immediately to the Hearing Officer. Within 10 days of the petition’s filing date the Income Tax Officer will submit its position and all relevant facts pertaining to the action that precipitated the petition to the Hearing Officer.
- F. Within 60 days of the petition’s filing date a “Final Decision” must be issued by the Hearing Officer. Failure to issue a “Final Decision” within 60 days will result in the petition being deemed approved.
- G. Any person aggrieved by a decision of the Hearing Officer who has a direct interest in the decision shall have the right to appeal to the court vested with the jurisdiction of local tax appeals by or pursuant to 42 Pa.C.S.
- H. Decisions under this Section 502 may be made according to principles of law and equity.

SECTION 503. EXAMINATION OF BOOKS AND RECORDS OF TAXPAYERS AND EMPLOYERS:

- A. The Income Tax Officer and agents or staff members of the Officer designated in writing by him are authorized to examine the books, papers and records of any taxpayer or supposed taxpayer of any employer or supposed employer in order to verify the accuracy of any return; or, if no return was filed, to ascertain the tax due, if any. Every taxpayer or supposed taxpayer and every employer or supposed employer *is* required to give the Officer or any agent or staff member so designated by him, the means, facilities and opportunity for such examination and investigations as are authorized. In addition to all other powers, the Officer and agents or staff members of the Officer shall have the power, on behalf of the taxing jurisdiction to examine any person under oath concerning salaries, wages, commissions, and other compensation listed on the annual tax return, or which should have been listed on the annual tax return for taxation hereunder; to compel the production of books, papers and records, and the attendance of persons (whether as parties, principals, agents or witnesses) before him.

- B. Minimum time period for taxpayer response to requests for information shall be 30 days from the mailing of the audit notice. The Officer shall grant reasonable extensions upon application for good cause and shall notify the taxpayer of the procedure to obtain an extension in its initial request for information.

An initial inquiry by the Officer regarding a taxpayer's compliance with any eligible tax may include taxes required to be paid or tax returns required to be filed no more than three years prior to the mailing date of the notice.

The Officer may make a subsequent request for a tax return or supporting information if, after the initial request, the Officer determines that the taxpayer has failed to file a tax return, underreported income or failed to pay a tax for one or more of the tax periods covered by the initial request. Note that this requirement shall not apply if the Officer has sufficient information to indicate that the taxpayer failed to file a required return or pay an eligible tax which was due more than three years prior to the date of the notice.

- C. Any information gained by the Income Tax Officer as a result of any audit, return, report, investigation, hearing or verification shall be confidential tax information. It shall be unlawful, except for official purposes or as provided by law, for the Officer to:

- (1) Divulge or make known in any manner any confidential information gained in any return, investigation, hearing or verification to any person.
- (2) Permit confidential tax information or any book containing any abstract or particulars thereof to be seen or examined by any person.
- (3) Print, publish or make known in any manner any confidential tax information.

An offense under this subsection is a misdemeanor of the third degree and, upon conviction thereof, a fine of not more than \$2,500 and costs, or a term of imprisonment for not more than one year, or both may be imposed. If the offender is an employee of the Income Tax Officer, the officer or employee shall be dismissed from office or discharged from employment.

Pursuant to the foregoing, the Officer and agents or staff members of the Officer are authorized to require the production of federal and/or state tax returns for purposes of determining the accuracy of a taxpayer's local tax return and/or of assessing the earned income/compensation and net profits tax. [See Borough of Brookhaven v. Century 21, 57 Pa. Cmwith. 211 (1981)].

- B. Information obtained by the Officer or any other official or agent of the Officer as a result of any declarations, returns, investigations, hearings, or verifications required or authorized, shall be confidential and may not be disclosed to any person, except for official purposes and except in accordance with a proper judicial order, or as otherwise provided by law.

SECTION 504. RECORDS TO BE KEPT BY TAXPAYERS AND EMPLOYERS:

Taxpayers and employers subject to the Ordinances or Resolutions are required to keep such records as will enable the filing of true and accurate returns, whether taxes are withheld at the source of earned income/compensation or of taxes payable upon earned income/compensation or net profits, or both; and such records shall be preserved for a period of not less than six (6) years in order to enable the Officer to verify the correctness and accuracy of the returns filed.

SECTION 505. REFUNDS AND CREDITS:

A valid Annual Tax Return must be filed before a request for a refund or credit can be considered. Depending on the nature of the refund or credit, additional documentation to substantiate the request may be required by the Officer. Refund and credit requests will not be processed until the necessary documentation is provided. Requests for refunds and credits will be considered based upon the relevant facts and circumstances pertinent to each case. Amounts less than one dollar (\$ 1.00) will be refunded only upon written request of the taxpayer, addressed to the Officer, and accompanied by a stamped, self-addressed envelope. Credits of less than one dollar (\$ 1.00) will be extended only upon written request of the taxpayer, addressed to the Officer, and accompanied by a stamped, self-addressed envelope.

- A. A taxpayer who has paid an eligible tax to the Income Tax Officer may file a written request with the Officer for a refund or credit of the eligible tax. A request for refund shall be made within three years of the due date for filing the report as extended or one year after actual payment of the tax, whichever is later. If no report is required, the request shall be made within three years after the due date for payment of the eligible tax or within one year after actual payment of the eligible tax, whichever is later.
 - (1) For purposes of this section, a tax return filed by the taxpayer with the Officer showing an overpayment of tax shall be deemed to be written request for a cash refund unless otherwise indicated on the tax return.
 - (2) A request for refund under this subsection shall not be considered a petition under SECTION 502 of these Rules and Regulations and shall not preclude a taxpayer from submitting a petition under SECTION 502 of these Rules and Regulations.
 - (3) For amounts paid as a result of a notice asserting or informing the taxpayer of an underpayment, a written request for refund shall be filed with the Income Tax Officer within one year of payment.
- B. All overpayments of tax due a local taxing authority shall bear simple interest from the date of overpayment until the date of resolution.

Interest on overpayments shall be allowed and paid at the same rate the Commonwealth is required to pay pursuant to 72 P.S. Section 806.1 known as the Fiscal Code. Exceptions are as follows:

- (1) No interest shall be allowed if an overpayment is refunded or applied against any other tax, interest or penalty due the taxing district within 75 days after the last date prescribed for filing the report of tax liability or within 75 days after the date the tax return is filed or the report of liability due is filed, whichever is later.
 - (2) Overpayments of interest and penalty shall not bear any interest.
- C. The taxpayer's acceptance of the Officer's check shall not prejudice any right of the taxpayer to claim any additional overpayment and interest thereon. Tender of a refund check by the Officer shall be deemed to be acceptance of the check by the taxpayer for the purposes of this section.
- D. As used in this SECTION 505 of these Rules and Regulations, the following words and phrases shall have the meanings given to them in this subsection D.

"Date of overpayment" The later of the date paid or the date tax is deemed to have been overpaid as follows:

- (1) Any tax actually deducted and withheld at the source shall be deemed to have been overpaid on the last day for filing the report for the tax period, determined without regard to any extension of time for filing.
- (2) Any amount overpaid as estimated tax for the tax period shall be deemed to have been overpaid on the last day for filing the final report for the tax period, determined without regard to any extension of time for filing.
- (3) An overpayment made before the last day prescribed for payment shall be deemed to have been paid on the last day.
- (4) Any amount claimed to be overpaid with respect to which lawful administrative review or appellate procedure is initiated shall be deemed to have been overpaid 60 days following the date of the initiation of the review or procedure.
- (5) Any amount shown not to be due on an amended income or earned income/compensation and net profits tax return shall be deemed to have been overpaid 60 days following the date of the filing of the amended income tax return.

"Date of Resolution" The date the overpayment is refunded or credited as follows:

- (1) For a cash refund, a date preceding the date of the Officer's refund check by not more than 30 days.
- (2) For a credit for an overpayment:
 - (a) The date of the Officer's notice to the taxpayer of the determination of the credit; or
 - (b) The due date for payment of the tax against which the credit is applied, whichever first occurs. For a cash refund of a previously determined credit, interest shall be paid on the amount of the credit from a date 90 days after the filing of a request to convert the credit to a cash refund to a date preceding the date of the refund check by not more than 30 days whether or not the refund check is accepted by the taxpayer after tender.

SECTION 506. FINES AND PENALTIES FOR VIOLATIONS:

Any person who violates any provision of the Ordinances, Resolutions or these Regulations shall, upon conviction, be sentenced to pay a fine of \$500.00 for each offense plus costs, and in default of payment thereof, to be imprisoned in the County Prison for a period not exceeding thirty (30) days. Some of the violations which may result in such conviction are:

- A. Failure, neglect, or refusal on the part of any person, to make and file any declaration or return required by the Ordinances or Resolutions.
- B. Failure, neglect, or refusal of any employer, required to withhold the tax under Article III of these Rules and Regulations, to register with the Officer.
- C. Failure, neglect, or refusal of any employer to deduct or withhold the tax from his or her employees.
- D. Failure, neglect, or refusal to maintain or to reveal to the Officer or its authorized representative, by any person, any partner of a partnership, or any officer of a corporation or association, books, records, papers (including Federal or State tax forms) relevant to the tax imposed hereunder.
- E. Knowingly making any incomplete, false or fraudulent report or return or attempting to do any other thing to avoid full disclosure of net profits or earned income/compensation in order to avoid the payment of the whole or any part of the tax imposed by the Ordinances or Resolutions.

SECTION 507. CONCURRENT REMEDIES:

Imposition of any fine or imprisonment shall not bar either civil liability for tax, penalty or interest or late filing fee or prosecution for embezzlement, fraudulent conversion, theft, or other offense under the Pennsylvania Crimes Code, or failure to file a properly prepared tax return under Act 511.

SECTION 508. FAILURE TO RECEIVE FORMS:

Failure of a taxpayer or employer to receive forms or returns required by the Ordinances or Resolutions does not excuse any failure to file any reports or returns required or to pay any tax due.

SECTION 509. RETURN COMPLETION - GENERAL:

- A. Each taxpayer shall account for all twelve (12) months of the calendar year as to their place of domicile and, in the case of more than one place of domicile, the months in each place of domicile and also provide the name of each Borough, Township, or City in which they were domiciled during the year.
- B. Amounts are not to be rounded off, Actual amounts are to be used,
- C. All appropriate schedules (Federal and State tax forms and schedules, as well as taxpayer prepared worksheets referenced on Federal or State tax forms and schedules), W-2 forms, and 1099 forms shall be filed with the annual tax return. Annual tax returns received without the appropriate schedules, W-2 forms, or 1099 forms shall be considered incomplete and is not a valid filing of the annual return.
- D. Taxpayers with earnings in another State who have paid tax on those earnings to the other State, and are applying for credit for tax paid to the other State, must provide a copy of the State tax return for that State, plus their Pennsylvania personal income tax return. If the aforementioned State tax returns are not provided with the annual tax return, it will be considered as being incomplete and not a valid filing of the annual tax return.
- E. Estimates of income and or expenses by the taxpayer are not acceptable unless approved by the Officer.
- F. Should the taxpayer omit the required expense deduction forms or if the expense deduction forms are not fully completed, the expense deductions shall be disallowed and systematically denied without notification to the taxpayer. In the case where the omission of the required expense deduction forms and the subsequent denial of the expense deduction results in a balance of tax due, the taxpayer will be notified of the balance due.

- G. Taxpayers may not submit Federal Schedules in lieu of Pennsylvania Schedules C, E, F, G, I, UE, or RK-1 to the Officer. Any return received without such Pa schedules will be considered as an incomplete and invalid filing of the annual tax return.
- H. Taxpayers may not submit Schedule E in lieu of the applicable K-1 forms to the Officer. Annual tax returns received without the applicable K-1s will be considered as an incomplete and invalid filing of the annual tax return.
- J. Annual tax returns received by the Officer that are not signed and dated by the taxpayer filing the annual tax return will be considered as an incomplete and invalid filing of the annual tax return.
- K. Where no annual tax return is filed and/or the tax is not paid in full on or before the date due for the filing of the return, the taxpayer shall be liable for a five dollar (\$5.00) late fee. Where an annual tax return is filed on or before the date due, but is considered as an incomplete and invalid filing because of the failure of a taxpayer to comply with the requirements of this Section 509 and the taxpayer fails to amend or otherwise complete the return so as to comply with this Section 509 on or before the date due for the filing of the return, the Officer shall give the taxpayer written notice by United States certified mail of the reasons why the return is considered incomplete and invalid. The notice shall inform the taxpayer that he or she shall have fifteen (15) days from the date the notice is postmarked within which to amend or otherwise complete the return so as to comply with this Section 509, and file it with the Officer. If the taxpayer fails to amend or otherwise complete the return within said fifteen (15) day period, the taxpayer shall be liable for the five dollar (\$ 5.00) late fee. The filing fee shall be paid by the taxpayer in addition to any tax balance due, including any fines, penalties, interest, and postage expenses shall be paid whether or not all earned income/compensation tax may have been withheld by his or her employer and whether or not there is any tax balance due. It is the responsibility of each taxpayer to carefully review his or her return for compliance with this Section 509 before filing.

The volume of returns filed with the Officer prevents it from reviewing all returns for completeness within such time as will permit it to communicate with individual taxpayers that a return is incomplete before date on which the return is due. The late fee shall be paid to the Income Tax Officer notwithstanding claims that the incomplete return was filed sufficiently in advance of the due date such that the taxpayer should or could have been notified that the return was incomplete for the purpose of amending or completing the return on or before the due date.

In the case where a taxpayer remits a voluntary payment towards tax liability, unless specified by the taxpayer otherwise, the payment shall be prioritized as follows:

- (1) Tax
- (2) Interest
- (3) Penalty
- (4) Any other fees or charges

In the case where a taxpayer remits a payment towards the tax due as calculated on the annual tax return and that annual return is later found to be incomplete or not a valid filing of the annual tax return, as outlined above, the payment will be deposited towards the taxpayer's liability as an estimated tax payment to be reconciled upon the receipt of a complete and valid filing of the annual tax return by the aforementioned taxpayer.

The Officer may acquire Pennsylvania Department of Revenue Individual Income Tax information regarding earned income/compensation and net profits for audit and compliance purposes.

- L. The Income Tax Officer shall notify the taxpayer in writing of the basis for any underpayment that the Officer has determined to exist. The notification shall include:
- (1) The tax period or periods for which the underpayment is asserted.
 - (2) The amount of underpayment detailed by tax period.
 - (3) The legal basis upon which the Officer has relied to determine that an underpayment exists.
 - (4) An itemization of the revisions made by the Officer to a return or report filed by the taxpayer that results in the determination that an underpayment exists.

SECTION 510. WHO MUST FILE:

- A. Every person who was:

- (1) a resident of the Taxing District who was employed or engaged in the operation of a business, profession, or other activity for income or profit; or
- (2) non-resident of the Taxing District who was employed in the Taxing District or engaged in the operation of a business, profession, or other activity for income or profit in the Taxing District for all or any part of the preceding calendar year;

shall file with the Income Tax Officer an annual tax return showing all earned income/compensation and net profits received and/or earned for the previous year.

- B. Partial year residents are required to file an annual tax return for the applicable portion of the calendar year filed resided in the Taxing District.
- C. Taxpayers must file an annual tax return even though they may have had earned income/compensation tax withheld by an employer.

- D. Taxpayers who are on active duty within Pennsylvania must file an annual return each year. Taxpayers who are on active duty outside of Pennsylvania must file an annual tax return for the year in which they first entered the military on active duty and inform the Officer of their active duty military status. Upon completion of active duty military status outside Pennsylvania, these taxpayers shall resume filing annual tax returns.
- E. Taxpayers who are retired or permanently disabled and have no taxable earned income/compensation or net profits may be coded on the Income Tax Officer's files so as not to receive an annual tax form. The taxpayer must notify the Officer in writing and must also provide the effective date of retirement or permanent disability.
- F. Approximately every three to five years the Officer will send annual tax forms to all residents for the purpose of updating and verifying taxpayer files.

SECTION 511. REGISTRATION OF TAXPAYERS:

Every taxpayer who receives, or anticipates that he or she will receive, taxable earned income/compensation or net profits during the calendar year must register his or her name and resident address, his or her social security number and the name and address of his or her place of employment or business with the Officer. All taxpayers will thereafter be responsible for reporting changes in their name, place of residence or place of employment or business with the Officer.

SECTION 512. PARTIAL PAYMENT PLANS FOR DELINQUENT AMOUNTS:

The Officer may accept partial payments and/or enter into formal agreements with any taxpayer under which the taxpayer is permitted to satisfy liability for any eligible tax in installment payments if the Officer determines that the agreement will facilitate collection. The following terms and conditions shall apply to all partial payments and installment plans:

- A. The taxpayer must file an annual tax return for the current tax year and any delinquent tax years to be covered under the payment plan. These annual tax returns must include a copy of the taxpayer's PA-40 Tax Return and all supporting documentation as verification that all taxable income has been reported. In cases where a PA-40 tax Return cannot be produced, the taxpayer must complete a Federal Form 4506 "Request For Copies Of Tax Return" naming the IncomeTax Officer as recipient of the requested copy. The costs to procure the Federal Tax Return and related information are the sole responsibility of the taxpayer.
- B. Formal Payment Plans will not be approved for tax amounts less than \$200.00.
- C. Formal Payment Plans will not be approved for more than 8 months. Payment amounts will be calculated by dividing the total tax liability by 8 and adding the applicable penalty, interest, fines, and costs to each payment.

- D. A three dollar (\$3.00) handling fee shall be charged for any payment made on a delinquent account (whether or not such payment is pursuant to a formal agreement) which represents less than the full amount of tax, penalty, interest, and costs due.
- E. Formal Payment Plans will be revoked and immediate civil action for collection of the tax due will be initiated if any of the aforementioned terms and conditions are not met.
- F. The Officer may terminate any prior agreement if:
 - (1) The information which the taxpayer provided to the Officer prior to the date of the agreement was inaccurate or incomplete, or
 - (2) If the Officer believes that collection of any eligible tax under the Formal Plan is in jeopardy.
- G. If the Officer finds that the financial condition of the taxpayer has significantly changed, the Officer may alter, modify or terminate the agreement, but only if:
 - (1) Notice of the Officer's finding, is provided to the taxpayer no later than 30 days prior to the date of such action; and
 - (2) The notice contains the reasons why the Officer believes a change has occurred.
- H. The Officer may alter, modify or terminate a Formal Plan agreement if the taxpayer fails to do any of the following:
 - (1) Pay any installment at the time the installment is due under the agreement.
 - (2) Pay any other tax liability at the time the liability is due.
 - (3) Provide a financial condition update as requested by the Officer.
- J. Nothing in this subsection shall prevent a taxpayer from prepaying in whole or in part any eligible tax under any formal or informal agreement with the Officer.

SECTION 513. SUIT FOR COLLECTION OF DELINQUENT AMOUNTS:

- A. The Officer may sue in the name of the Taxing District for the recovery of taxes, penalties, interest, and late filing fees due and unpaid under the Ordinances or Resolutions.

- B. Any suit brought to recover the tax, penalty, interest, and late filing fees imposed by the Ordinances or Resolutions shall be begun within three years after such tax is due, or within three years after the declaration or return has been filed, whichever date is later: Provided, however, that this limitation shall not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:
- (1) Where no declaration or return was filed by any person although a declaration or return was required to be filed by him or her under provisions of the Ordinances or Resolutions, there shall be no limitation.
 - (2) Where an examination of the declaration or return filed by any person, or of any other evidence relating to such declaration or return in the possession of the Officer, reveals a fraudulent evasion of taxes, there shall be no limitation.
 - (3) In the case of substantial understatement of tax liability of twenty-five percent or more and no fraud, suit shall be begun within six years.
 - (4) Where any person has deducted taxes under the provisions of the Ordinances or Resolutions, and has failed to pay the amounts so deducted to the Officer, or where any person has willfully failed or omitted to make the deductions required by the Ordinances or Resolutions, there shall be no limitation.
 - (5) This section shall not be construed to limit the Officer from recovering delinquent taxes by any other means provided by Act 511.
- C. The Officer may sue for recovery of an erroneous refund or credit provided such suit is begun two years after making such refund or credit, except that such suit may be brought within five years if it appears that any part of the refund or credit was induced by fraud or misrepresentation of material fact.

SECTION 514. WAGE ATTACHMENTS:

The Income Tax Officer shall demand, receive and collect from all corporations, political subdivisions, associations, companies, firms, or individuals, employing persons owing delinquent earned income/compensation taxes, or whose spouse owes delinquent earned income/compensation taxes, or having in possession unpaid commissions or earnings belonging to any person or persons owing delinquent earned income/compensation taxes, or whose spouse owes delinquent earned income/compensation taxes, upon the presentation of a written notice and demand certifying that the information contained therein is true and correct and containing the name of the taxable or the spouse thereof, and the amount of tax due. Upon presentation of such written notice and demand, it shall be the duty of any such corporation, political subdivision, association, company, firm or individual to deduct from the wages, commissions, or earnings of such individual employees, then owing or that shall within sixty (60) days thereafter

become due or from any unpaid commissions or earnings of any such taxable in its or his or her possession, or that shall within sixty (60) days thereafter come into its or his or her possession, a sum sufficient to pay the respective amount of the delinquent earned income/compensation taxes, penalties, interest, late filing fees, and costs, shown upon written notice or demand, and to pay the same to the Officer sixty (60) days after such notice shall have been given. No more than ten percent of the wages, commissions or earnings of the delinquent taxpayer or spouse thereof may be deducted at any one time for delinquent earned income/compensation taxes, penalties, interest and late filing fees and costs. Such corporation, political subdivision, association, firm or individual shall be entitled to deduct from the moneys collected from each employee the costs incurred from the extra bookkeeping necessary to record such transactions, not exceeding two percent of the amount of money so collected and paid over to the Officer. Upon the failure of any such corporation, political subdivision, association, company, firm, or individual to deduct the amount of such taxes, penalties, interest, late filing fees, and costs or to pay the same over to the tax collector, less the cost of bookkeeping involved in such transaction, as herein provided, within the time required, such corporation, political subdivision, association, company, firm or individual shall forfeit and pay the amount of such tax, penalty, interest, late filing fee, and costs for each such taxable whose taxes, penalties, interest, late filing fees and costs are not withheld and paid over, or that are withheld and not paid over together with a penalty of ten percent added thereto, to be recovered by an action of assumpsit in a suit to be instituted by the Officer, or by the proper authorities of the taxing district, as debts of like amount are now by law recoverable, except that such person shall not have the benefit of any stay of execution or exemption law.

The Officer shall not proceed against a spouse or his or her employer until he has pursued collection remedies against the delinquent taxpayer and his or her employer under this section.

Upon presentation of a written notice and demand under oath or affirmation, to the State Treasurer or any other fiscal officer of the state, or its boards, authorities, agencies or commissions, it shall be the duty of the treasurer or officer to deduct from the wages then owing, or that shall within sixty days thereafter become due to any employee, a sum sufficient to pay the respective amount of the delinquent earned income/compensation tax, penalty, interest, late filing fee, and costs shown on the written notice. The same shall be paid to the taxing district in which said delinquent tax, penalty, interest, late filing fee was levied within sixty (60) days after such notice shall have been given.

The Officer shall, at least fifteen (15) days prior to the presentation of a written notice and demand to the State Treasurer or other fiscal officer of the State, or to any corporation, political subdivision, association, company or individual. notify the taxpayer owing the delinquent tax, penalty, interest, late filing fee, and costs by registered or certified mail that a written notice and demand shall be presented to his or her employer unless such tax, penalty, interest, late filing fee and costs are paid. The return receipt card for certified or registered mail shall be marked delivered to addressee only, and the cost of notification by certified or registered mail shall be added to the costs for collecting taxes, penalties, interest, and late filing fees.

SECTION 515. DELINQUENT TAX COLLECTION POSTAGE EXPENSE.

Whenever it shall become necessary for the income tax officer to notify a delinquent taxpayer by certified mail or to begin any action for wage attachment, the following provisions will apply:

- (A) The first letter will be mailed by first class postage at the prevailing postage rate.
- (B) The second letter, if required, will be mailed by certified mail, with return receipt at the prevailing postage rate. The second letter will also contain a "postage expense" amount which is to be included in the total amount due indicated on the second letter to the taxpayer.
- (C) The postage amount will change if the postal rate fee for these services is changed.
- (D) If a wage attachment is subsequently prepared, the postage expense will become a part of and shall be included in the \$40.00 wage attachment amount when the wage attachment is prepared and mailed to the employer.

SECTION 516. INDEBTEDNESS AND PRIORITY CLAIMS:

In bankruptcy cases the Priority Claim due to, or held by the income tax officer shall survive the confirmation of any bankruptcy claim and shall not be subject to discharge of debt to the extent that such claims are not paid by the bankruptcy plan of the debtor.

Amounts owing or which shall be determined to be due the income tax officer shall be the amount of the Priority Claim due to the income tax officer when a bankruptcy plan is filed with the Bankruptcy Court.

SECTION 517. PROCEDURE WHEN TAXATION IS NOT DEFINED IN THESE RULES AND REGULATIONS.

In cases where a question arises as to the taxation of earned income or net profits not specified in these rules and regulations, then the regulations promulgated by the Pennsylvania Department of Revenue for personal income taxes shall apply, so long as they are not contrary to the provisions of the Local Tax Enabling Act of 1965, as amended by Act 166 of December, 2002.

SECTION 518 AMENDMENT TO RULES AND REGULATIONS:

The Income Tax Officer may propose additional, revised or modified regulations to the Taxing District as he deems necessary or beneficial in the proper administration and enforcement of the earned income/compensation and net profits tax Ordinances and Resolutions.