

BUSINESS REGULATION AND TAXATION CODE

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Power to Tax - See Act. 511 of 12/31/65 - (53 P.S. §6901-6924)

EDITOR'S NOTE: The Local Tax Enabling Act (Act 511, approved December 31, 1965, as amended) provides in Section 4 that every tax imposed under authority of the Act shall continue on either a calendar or fiscal year basis, without annual reenactment unless the rate of the tax is subsequently changed. Council by Ordinance 11855, passed December 15, 1970, and pursuant to Act 511, has enacted the earned income tax for the 1971 calendar year, to continue thereafter unless amended or repealed. Section 13 of Act 511 provides that the provisions of such section shall be included in or construed to be a part of each tax levied and assessed upon earned income by any city, and that the definitions contained in Section 13 shall be exclusive and not altered or changed by any city.

331.01 DEFINITIONS

The following words and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

1. **Association** shall mean a partnership, limited partnership or any other unincorporated group of two or more persons.
2. **Bureau** shall mean the Department of Administration and Finance designated by the Mayor to administer the provisions of the Earned Income Tax Ordinance under the direction of the Department Director.
3. **Business** shall mean an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association or any other entity.
4. **Corporation** shall mean 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.
5. **Earnings** shall include salaries, wages, commissions and other compensation as defined in this section.

6. **Employer** shall mean an individual, partnership, association, corporation, governmental body or unit or agency or any other entity employing one or more persons on a salary, wage, commission or other compensation basis.

7. **Finance Officer** shall mean that person designated by the Department Director to administer the provisions of the Earned Income Tax Ordinance.

8. **Net Profits** shall mean the net income from the operation of a business, profession or other activity, after provision for all costs and expenses incurred in the conduct thereof, either paid or accrued in accordance with the accounting system used in such business, profession or other activity, but without deduction of taxes based on income.

9. **Nonresident** shall mean an individual, partnership, association or other entity domiciled outside the City of Allentown.

10. **Person** shall mean a natural person, partnership, corporation, fiduciary or association. Whenever used in any section prescribing and imposing a penalty, the term "person", as applied to associations, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

11. **Resident** shall mean an individual, partnership, association or other entity domiciled in the City of Allentown.

12. **Salaries, wages, commissions and other compensation** shall mean salaries, wages, commissions, bonuses, incentive payments, fees and tips that may accrue or be received by an individual for services rendered, whether directly or through an agent and whether in cash or in property. The terms shall not include periodic payments for sick or disability benefits and those commonly recognized as old-age benefits, retirement pay or pensions paid to persons retired from service after reaching a specific age or after a stated period of employment, nor public assistance or unemployment compensation payments made by any governmental agency, nor any wages or compensation paid by the United States to any person for active service in the Army, Navy or Air Force of the United States, nor any bonus or additional compensation paid by the United States or the Commonwealth of Pennsylvania or any other state for such service.

13. **Taxable** shall mean subject to the tax imposed by this article.

14. **Taxpayer** shall mean a person, whether an individual, partnership, association or any other entity, required hereunder to file a return of earnings or net profits, or to pay a tax thereon.

15. **Treasurer** shall mean the City Treasurer of the City of Allentown.

16. **Personal pronouns** shall include the singular as well as the plural number and the male, neuter and female gender. (11855 §1 12/15/70)

331.02 IMPOSITION OF TAX

A tax for general revenue purposes of one percent is imposed on the following:

A. Salaries, wages, commissions and other compensation earned on and after January 1, 1971, by individual residents of the City;

B. Salaries, wages, commissions and other compensation earned on and after January 1, 1971, by individual nonresidents of the City in the City;

C. Net profits, earned on and after January 1, 1971, by residents of the City;

D. Net profits, earned on and after January 1, 1971, in the City by nonresidents of the City.

The tax levied under subsections A and B herein shall relate to and be imposed upon salaries, wages, commissions and other compensation paid by an employer or on his behalf to a person who is employed by him. The tax levied under subsections C and D herein shall relate to and be imposed on the net profits of any business, profession or other activity carried on by any person or persons.

Every corporation which is subject to the Pennsylvania Corporate Net Income Tax or exempt from the Pennsylvania Corporate Net Income Tax, and every foreign corporation which is subject to the Pennsylvania Franchise Tax or exempt from the Pennsylvania Franchise Tax, shall be exempt from the tax imposed by this article.

The tax levied by this article shall be applicable to salaries, wages, commissions and other compensation and to net profits earned in the period beginning January 1, 1971, and ending December 31, 1971. (11855 §2 12/15/70)

331.03 DECLARATION AND PAYMENT OF TAX

A. Net Profits

1. Every person hereinafter called "taxpayer", who reasonably expects that he will earn any taxable net profits during the period between January 1, 1971, and December 31, 1971, shall, on or before April 15, 1971, make and file with the Treasurer on a form prescribed by the Bureau, a declaration of his estimated net profits for the period beginning January 1, 1971, and ending December 31, 1971, setting forth the estimated amount of net profits reasonably expected by him for such period and subject to the tax, the amount of estimated tax imposed by this article on such estimated net profits and such other relevant information as the Bureau may require. The taxpayer making the declaration shall, at the time of filing thereof, pay the City one-fourth of the estimated tax shown as due thereon. Such taxpayer shall thereafter pay one-fourth of the estimated tax in each of three installments, as follows: one installment on or before June 15, 1971, one installment on or before September 15, 1971, and the last installment on or before January 15, 1972.

2. A person who on April 15, 1971, did not reasonably expect that he would earn any taxable net profits during the period between January 1, 1971 and December 31, 1971, and who subsequent to April 15, 1971, reasonably expects that he will earn taxable net profit on or before December 31, 1971, shall make and file on or before June 15, 1971, September 15, 1971, or January 15, 1972, whichever of these dates next follows the date on which the taxpayer first reasonably expects such net profits, a declaration similar to that required under subsection (A)(1) hereof. The taxpayer making the declaration shall, at the time of filing thereof, pay to the City the estimated tax shown as due thereon, provided, however, that the taxpayer shall have the right to pay the estimated tax in equal installments on or before the quarterly installment payment dates which remain after the filing of the declaration.

3. The Finance Officer is hereby authorized to provide by regulation, subject to approval of the Business Administrator, for the making and filing of adjusted declarations of estimated net profits, and for the payments of the estimated tax in cases where a taxpayer who has filed the declaration herein above required shall, thereafter, either reasonably expect additional profits not previously declared or find that he has overestimated his net profits.

4. On or before April 15, 1972, every taxpayer who has earned taxable net profits shall make and file with the Treasurer, on a form prescribed by the Bureau, a final return showing all of such net profits for the period beginning January 1, 1971, and ending December 31, 1971, the total amount of tax due, the amount of estimated tax paid under the provisions of this section, and the balance due. When the return is made for a fiscal year different from the calendar year, the return shall be made within 105 days from the end of the fiscal year. The percentage of the total net profits of any fiscal year of a taxpayer, beginning or ending within the period beginning January 1, 1971, and ending December 31, 1971, to which the tax imposed by this article shall be applicable, shall be equal to the same percentage of such total net profits as the number of days in any such year within such period bears to the total number of days in any such year.

At the time of filing the final return, the taxpayer shall pay the balance of the tax due or shall make demand for refund or credit in the case of overpayment.

5. Every taxpayer who discontinues business prior to December 31, 1971, shall, within thirty days after the discontinuance of business, file his final return as herein above required, pay the tax due or demand refund or credit in the case of overpayment.

Any taxpayer may, in lieu of paying the fourth quarterly installment of his tax, elect to make and file with the Treasurer, on or before January 15, 1972, the final return as above required. (11855 §3 12/15/70)

6. Every resident of the City who has received taxable salaries, wages, commissions, other compensation or net profits from any business, profession or other activity shall, on or before April 15, of the succeeding year, make and file with the Treasurer, on a form prescribed by the Bureau, a final return showing the amount of taxable earnings received during the period January 1 to December 31 of the current year, the total amount of tax due thereon, the amount of tax paid thereon, the amount of tax thereon that has been withheld pursuant to the provisions relating to the collection at source and the balance of the tax due. At the time of filing the final return, the taxpayer shall pay the balance of the tax due or shall make demand for refund or credit in the case of overpayment. (12282 §1 1/18/78)

B. Salaries, Wages, Commissions and Other Compensation

1. Every taxpayer who is employed on a salary, wage, commission or other compensation basis, and who reasonably expects to earn any taxable earnings not subject to the provisions of Section 331.04 of this article, relating to the collection at source, shall, on or before April 15, 1971, make and file with the Treasurer a declaration of his estimated total amount of taxable salaries, wages, commissions and other compensation for the period beginning January 1, 1971, and ending December 31, 1971; the estimated amount of the tax thereon that will be deducted therefrom pursuant to Section 331.04 of this article; the estimated amount of tax imposed by this article that will not be deducted therefrom pursuant to Section 331.04 and such other relevant information as the Bureau may require. In preparing his declaration of estimated taxable salaries, wages, commissions and other compensation taxable under this article, the taxpayer shall use the same amounts with respect to such items as he shall have used in preparing his declaration of estimated tax for the year 1969 for Federal income tax purposes, if such taxpayer shall be required to file any such last-mentioned declaration. The taxpayer making the declaration shall, at the time of filing thereof, pay the City the balance shown as due thereon or he shall have the right to pay one-fourth of the balance shown due thereon. Such taxpayer shall thereafter pay one-fourth of the balance in each of three installments as follows: one installment on or before June 15, 1971, one installment on or before September 15, 1971, and the last installment on or before January 15, 1972.

2. A person who on April 15, 1971, did not reasonably expect that he would earn any salaries, wages, commissions and other compensation not subject to the provisions of Section 331.04 of this article, relating to the collection at source, during the period between January 1, 1971, and December 31, 1971, and who subsequent to April 15, 1971, reasonably expects that he will earn salaries, wages, commissions and other compensation, not subject to the provisions of Section 331.04 of this article, on or before December 31, 1971, shall make and file on or before June 15, 1971, September 15, 1971, or January 15, 1972, whichever of these dates next follows the date on which the taxpayer first reasonably expects that he will earn such salaries, wages, commissions and other compensation, a declaration similar to that required under subsection (B)(1) hereof. The taxpayer making the declaration shall, at the time of filing thereof, pay to the City the estimated tax as shown as due thereon, provided, however, that the taxpayer shall have the right to pay the estimated tax in equal installments on or before the quarterly installment payment dates which remain after the filing of the declaration.

3. The Finance Officer is hereby authorized to provide by regulation, subject to approval of the Business Administrator, for the making and filing of adjusted declarations of estimated salaries, wages, commissions and other compensation, and for the payments of the estimated tax in a case where a taxpayer who has filed the declaration herein above required shall thereafter either reasonably expect additional salaries, wages, commissions and other compensation not previously declared, or find that he has overestimated his salary, wages, commissions and other compensation.

4. On or before April 15, 1971, every taxpayer who has received taxable salaries, wages, commissions and other compensation, shall make and file with the Treasurer, on a form prescribed by the Bureau, a final return showing all such salaries, wages, commissions and other compensation earned during the period beginning January 1, 1971, and ending December 31, 1971, the total amount of tax due thereon, the amount of estimated tax thereon paid under the provisions of this section, if any, and the amount, if any, of tax thereon that has been withheld pursuant to the provisions of Section 331.04 of this article and the balance of tax due.

At the time of filing the final return, the taxpayer shall pay the balance of the tax due or shall make demand for refund or credit in the case of overpayment.

5. Any taxpayer may, in lieu of paying the fourth quarterly installment of his tax, elect to make and file with the Treasurer, on or before January 15, 1972, the final return as above required. (11855 §3 12/15/70)

331.04 COLLECTION AT SOURCE

A. Every person within the City who employs one or more persons on a salary, wage, commission or other compensation basis, other than domestic servants, shall deduct at the time of the payment thereof, the tax imposed by this article on the salaries, wages, commissions and other compensation due to his employee or employees, and shall, on or before April 30, 1971; July 31, 1971; October 31, 1971, and January 31, 1972, respectively, make and file with the Treasurer on a form prescribed by the Bureau a return, setting forth the taxes so deducted and pay to the City the amount of taxes deducted for the preceding quarter ending March 31, 1971; June 30, 1971; September 30, 1971, and December 31, 1971, respectively.

The Finance Officer is hereby authorized to provide by regulations approved by the Business Administrator for payments on a monthly basis, where an aggregate amount of tax in excess of Fifty (\$50.00) Dollars per month is deducted.

B. On or before January 31, 1972, every such employer shall file with the Treasurer on forms prescribed by the Bureau:

1. An annual return showing the total amount of salaries, wages, commissions and other compensation earned by his employees, on which a tax is imposed by this article, the total amount of tax deducted and the total amount of tax paid to the City

in respect of salaries, wages, commissions and other compensation earned by his employees during the period beginning January 1, and ending December 31, 1971;

2. A return in respect of each person who was an employee during all or any part of the period beginning January 1, 1971, and ending December 31, 1971, and who earned during such period any salaries, wages, commissions or other compensation subject to the tax imposed by this article, setting forth the employee's name, address and Social Security number, the amount of such salaries, wages, commissions or other compensation earned by the employee during such period, the amount of tax deducted therefrom and such other relevant information as the Bureau may require. Every employer shall furnish a copy of the individual return to the employee in respect of whom it was filed.

C. Every employer who discontinues business prior to December 31, 1971, shall, within thirty days after the discontinuance of business, file the returns herein above required and pay the tax due, except that immediate returns and the payment of any tax due thereon may be required upon the discontinuance of any temporary business.

D. Any employer required to withhold the tax from employees as herein provided shall be personally liable for the payment of the tax in the event such employer does not, for any reason, deduct such tax from employees and transmit the same to the City. This liability shall be in addition to interest and penalties for failure to withhold, file or transmit as imposed elsewhere herein.

E. 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 this article relating to the filing of declarations and returns.

F. If an employer makes a deduction of tax as required by this section, the amount deducted shall constitute in the hands of such employer a trust fund held for the account of the City as beneficial owner thereof. The employee from whose salaries, wages, commissions or other compensation such tax was deducted shall be deemed to have paid such tax. (11855 §4 12/15/70)

331.05 POWERS AND DUTIES OF TREASURER

It shall be the duty of the Treasurer to collect and receive the taxes, fines and penalties imposed by this article. It shall also be his duty to keep a record showing the amount received by him 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 such receipt. (11855 §5 12/15/70)

331.06 POWERS AND DUTIES OF THE FINANCE OFFICER

A. The Finance Officer is hereby charged with the administration and enforcement of the provisions of this article. He is empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this article, subject to approval of Council, including provisions for the re-examination and correction of declarations and returns, and of payments alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred, reasonable extensions of time upon proper cause shown for filing declarations or returns, and to prescribe forms necessary for the administration of this article.

B. The Finance Officer and agents designated in writing by him are authorized to examine the books, papers and records of any person in order to verify the accuracy of any declaration or return or, if no declaration or return was filed, to ascertain the tax due. Every person is directed and required to give to the Finance Officer, or to any agent so designated by him, the opportunity for such examinations and investigations as are hereby authorized.

C. Any information gained by the Finance Officer, his agents or by any other official, agent or employee of the City as a result of any declarations, returns, investigations, hearings or verifications required or authorized by this article shall be confidential and shall not be disclosed to any person, except for official use in connection with the administration or enforcement of this article, or as otherwise provided by law.

D. Any person aggrieved by any action of the Officer shall have the right to appeal as provided by law. (11855 §6 12/15/70)

331.07 SUIT FOR COLLECTION OF DELINQUENT AMOUNTS

A. The City of Allentown or its designees shall bring legal action for the recovery of taxes due and unpaid under the Ordinances, Resolutions or these Rules and Regulations. (13410 §1 7/19/96)

B. Any suit brought to recover the tax, penalty, interest and costs imposed by the Ordinance, Resolutions or these Rules and Regulations must be begun within three (3) years after such tax is due, or within three (3) years after the declaration or return has been filed, whichever date is later. This limitation does not prevent the institution of an action 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, there are no limitations;

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 (25%) percent or more and no fraud, legal action must be taken within six (6) years;

4. Where any person has deducted taxes under the provisions of the Ordinances, Resolutions or these Rules and Regulations, 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, there is no limitation. (13410 §1 7/19/96)

C. In no way is this section to be construed so as to limit the City of Allentown from recovering delinquent taxes by any other means permitted under the laws of Pennsylvania. (11855 §7 12/15/70; 13410 §1 7/19/96)

331.08 INTEREST AND PENALTY FOR LATE PAYMENT

If for any reason the tax is not paid when due, interest at the rate of six percent per annum on the amount of such tax, and an additional penalty of one-half of one percent 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 is brought for the recovery of any such tax, the person liable therefore shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed. (11855 §8 12/15/70)

331.09 PAYMENT AND REFUNDS

The Treasurer is authorized to accept payment of the amount of tax claimed by the City in any case where any person disputes the validity or amount of the City's claim for the tax. If it is thereafter judicially determined by a court of competent jurisdiction that there has been an overpayment to the Treasurer, the amount of the overpayment shall be refunded to the person who paid. (11855 §9 12/15/70)

331.10 APPLICABILITY

The tax imposed by this article shall not apply:

A. To any person as to whom it is beyond the legal power of the City to impose the tax herein provided for under the Constitution of the United States and the Constitution and laws of the Commonwealth of Pennsylvania;

B. To the net profits of any institution or organization operated for public, religious, educational or charitable purposes, to an institution or organization not organized or operated for private profit or to a trust or a foundation established for any of such purposes.

This section shall not be construed to exempt any person who is an employer from the duty of collecting the tax at source from his employees and paying the amount collected to the City under the provisions of Section 331.04 of this article. (11855 §10 12/15/70)

331.11 SEVERABILITY

The provisions of this article are severable. If any sentence, clause or section of this article, is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses or sections of this article. It is hereby declared to be the legislative intent that this article would have been adopted had such unconstitutional, illegal or invalid sentence, clause or section not been included herein. (11855 §12 12/15/70)

331.12 CONFLICT

All ordinances or parts of ordinances inconsistent herewith are hereby repealed. (11855 §13 12/5/70)

331.99 PENALTY

A. Any person who fails, neglects or refuses to make any payment, declaration or return required by this article; any person who fails, neglects or refuses to pay the tax deducted from his employees; any person who refuses to permit the Finance Officer or any agent properly designated by him to examine his books, records and papers, and any person who makes incomplete, false or fraudulent return to avoid the payment of the whole or any part of the tax imposed by this article shall, upon summary conviction thereof before any District Justice in the County of Lehigh, be sentenced to pay a fine of not less than Fifty (\$50.00) Dollars nor more than Five Hundred (\$500) Dollars for each offense, and costs and restitution, and, in default of payment of such

fine and costs, to be imprisoned in the Lehigh County Correctional Facility for a period not exceeding ninety (90) days. (14402 §3 7/28/06)

B. Any person who, except as permitted by the provisions of Section 331.06(C), divulges any information which is confidential under the provisions of such section shall upon summary conviction thereof before any District Justice in the County of Lehigh, be sentenced to pay a fine of not more than Three Hundred (\$300) Dollars for each offense, and costs, and, in default of payment of such fine and costs, to be imprisoned in the Lehigh County Jail for a period not exceeding ninety (90) days.

C. The penalties imposed under this section shall be in addition to any other penalty imposed by any other section of this article.

D. The failure of any person to receive or procure the forms required for making any declaration or return required by this article shall not excuse him from making such declaration or return. (11855 §11 12/15/70)

ARTICLE 333 BUSINESS PRIVILEGE TAX

- 333.01 Short Title
- 333.02 Definitions
- 333.03 Tax Rate and Basis; Business Volume Determination; Exemptions and Records
- 333.04 Returns; Interest and Penalty for Late Payment; Receipt
- 333.05 Duties of Director of Administration and Finance and Treasurer
- 333.06 Confidential Nature of Returns and Information
- 333.07 Suit for Recovery of Tax and Costs of Collection
- 333.08 Savings and Severability Clauses
- 333.99 Penalty

EDITOR'S NOTE: The Local Tax Enabling Act (Act 511, approved December 31, 1965, as amended) provides in Section 4 that every tax imposed under authority of the Act shall continue on either a calendar or fiscal year basis, without annual re-enactment unless the rate of the tax is subsequently changed. Council by Ordinance 11851, passed December 15, 1970, and pursuant to Act 511, has enacted the business privilege tax for the 1971 calendar year to continue thereafter unless amended or repealed.

Ordinance 13383, passed by Council and signed by the Mayor on March 7, 1996, changed the tax year to a calendar year and extracted the business license from the business privilege tax, making it a separate article.

333.01 SHORT TITLE

This article shall be known as the "Business Privilege Tax Ordinance." (11851 §1 12/15/70)

333.02 DEFINITIONS

The following words and phrases, when used in this article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

1. **Business** means any activity carried on or exercised for gain or profit in the City, including but not limited to, the sale of merchandise or other tangible personalty or the performance of services.
2. **Calendar year** means the period January 1 to December 31, inclusive.
3. **City** means the City of Allentown.
4. **Manufacturing** consists of the application of labor and skill to material whereby the original article undergoes a substantial change resulting in a new, different and useful item as defined by the Courts of Pennsylvania. (13142 §1 8/6/92)
5. **Person** means any individual, partnership, limited partnership, association, firm or corporation. Whenever used in any clause prescribing or imposing a penalty, the term "person" as applied to association means the partners or members thereof, and as applied to corporations, the officers thereof.
6. **Taxpayer** means a person subject to the payment of the tax imposed by this Article.

7. **Treasurer** means the Treasurer of the City.

8. **Wholesale dealer or wholesale vendor** means any person who sells to dealers in or vendors of goods, wares and merchandise and to no other persons. (11851 §2 12/15/70)

**333.03 TAX RATE AND BASIS; BUSINESS VOLUME DETERMINATION;
EXEMPTIONS AND RECORDS**

There is hereby levied for the tax year 1980-1981 and annually thereafter a tax for general revenue purposes on the privilege of doing business as herein defined in the City as follows:

A. Rate and Basis of Tax

The rate of the tax on each dollar of the whole or gross volume of business transacted within the territorial limits of the City shall be as herein set forth, on retail business the rate shall be one and one-half mills (one and one-half mills means One Dollar and Fifty Cents [\$1.50] per Thousand [\$1,000.00] Dollars of gross volume of business), the rate of the tax for wholesale business transacted shall be one mill (one mill means One [\$1.00] Dollar per Thousand [\$1,000.00] Dollars of gross volume of business.) The rate of tax for service and rental business transacted shall be three mills (three mills means Three [\$3.00] Dollars per Thousand [\$1,000.00] Dollars of gross volume of business). For purposes of this section, the nature of the transaction which yields the gross volume and not the principal business of the vendor shall determine the appropriate rate of taxation, e.g., any retail transactions of a wholesale dealer shall be taxed at the rate established for retail transactions rather than for wholesale transactions. (12429 §1 9/17/80)

B. Tax Year Change

Beginning in 1997, the business privilege tax return shall be due on or before April 15 of each year. In the year 1997, the return shall be due on April 15 and the corresponding tax, based on 1996 receipts, may be paid on an installment basis through October 1, 1997, as established by the Department of Administration and Finance. In years after 1997, both the business privilege tax return and the tax shall be due on April 15 of each year. The tax is measured by the actual gross receipts generated in the preceding year, except in cases of a seasonal, temporary or itinerant business. (13383 §1 3/7/96)

C. Computation of Volume of Business

1. Commencing Business Before January 1 of Full Year Prior to October 1 For Years Prior to 1997: Every person subject to the payment of the tax hereby imposed, who has commenced his business prior to the full calendar year prior to the tax year, shall compute his annual estimated gross volume of business upon the actual gross amount of business transacted by him during the immediately preceding calendar year. (13383 §1 3/7/96)

2. Commencing Business Before October 1 but After January 1 of Full Prior Year For Years Prior to 1997: Every person subject to the payment of the tax hereby imposed, who has commenced or who commences his business before the beginning of the tax year but after the beginning of the full calendar year prior to the tax year, shall compute his estimated annual gross volume of business for the tax year upon the gross volume of business transacted by him during prior calendar year, taking the monthly average during such period and multiplying the same by twelve (12). In the event that he was in business fewer than ninety (90) days in the prior calendar year, he shall be permitted to use sufficient days in the calendar year in which the tax year begins to equal ninety (90) successive days after commencement of business, to take a monthly average thereon, and to multiply the average by twelve (12). (13383 §1 3/7/96)

3. Commencing Business After October 1 For Years Prior to 1997: Every person subject to the payment of the tax hereby imposed, who has commenced or commences his business subsequent to the beginning of the tax year, if there is less than three (3) months from the commencement of his business to the end of the tax year, shall compute his annual gross volume of business upon the actual gross amount of business transacted by him during the tax year. If there is more than three (3) months from the commencement of his business to the end of the tax year, he shall compute his estimated gross volume of business for such tax year upon the gross volume of business transacted by him during the period from the commencement of his business to the end of the tax year, taking the monthly average during the first three (3) months of business and multiplying the same by the number of months from the commencement of business to the end of the tax year. (13383 §1 3/7/96)

4. Temporary Seasonal or Itinerant Business Every person subject to the tax hereby imposed, who engages in a business temporary, seasonal or itinerant by nature, shall compute the estimated gross amount of business to be transacted by him for the period he engages in such temporary, seasonal or itinerant business within the City by a method to be determined by the Director of Administration and Finance. (12688 §2 12/18/85; 13383 §1 3/7/96)

5. Refund of Overpayment Under Protest The Director of Administration and Finance is hereby authorized to accept payment under protest of the amount of business privilege tax claimed by the City in any case where the taxpayer disputes the validity or amount of the City's claim for tax. If it is thereafter judicially determined by a court of competent jurisdiction that the City has been overpaid, the amount of the overpayment shall be refunded to the taxpayer. The provisions of this Section shall be applicable to cases in which the facts are similar to those in a case litigated in a court of competent jurisdiction. (12688 §2 12/18/85; 13383 §1 3/7/96)

6. Incidental Use of Residential Property No tax shall be assessed and collected on rental received by an owner from a building of two units or less originally erected as a private dwelling house and occupied as a residence by such owner during the tax year. (13099 §1 11/27/91; 13383 §1 3/7/96)

7. Allentown Gross Receipts Tax No tax shall be assessed or collected on any receipts which are subject to a gross receipts tax under any other Article of the City. (13383 §1 3/7/96)

D. Persons, Business and Receipt Exempted

1. Persons and Businesses Persons employed for a wage or salary, nonprofit corporations or associations operating as purely public charities or with religious or educational purposes, agencies of the Government of the United States or of the Commonwealth of Pennsylvania and the business of any political subdivision, or of any authority created or organized under and pursuant to any act of assembly are exempt from the provisions of this Article. (13142 §2 8/6/92; 13177 §1 2/4/93; 13347 §1 8/17/95; 13398 §1 6/7/96)

For purposes of this Article, evidence that a corporation is non-profit or is operating with charitable purposes shall include, but not be limited to, charitable exemption status for State Corporate Net Income Tax purposes, State Sales and Use Tax purposes, Business Privilege Tax purposes, or Local Real Estate Tax purposes and such evidence must be presented to the City every three (3) years. Failure to provide evidence of such status shall result in a denial of exempt business privilege tax status. A copy of the Federal 990 Form shall be the evidence. (14361 §1 2/17/06)

2. State Preemption No tax shall be assessed and collected on a privilege, transaction, subject or occupation which is subject to a State tax or license fee, and which tax or license fee has been held by the courts of Pennsylvania to be the basis for exemption from the imposition of a business privilege or mercantile tax by a municipality. (13142 §3 8/6/92)

3. Utilities No tax shall be assessed and collected on the gross receipts from utility service of any person or company whose rates of service are fixed and regulated by the Pennsylvania Public Utility Commission; or on any public utility service rendered by any such person or company or on any privilege or transaction involving the rendering of any such public utility service.

4. State Tax on Tangible Property No tax shall be assessed and collected on the privilege of employing such tangible property as is subject to a State tax except on sales of admission to places of amusement or on sales or other transfers of title or possession of property.

5. Production and Manufacture No tax shall be assessed and collected on goods, articles, and products, or on by-products of manufacture, or on minerals, timber, natural resources and farm products, manufactured, produced or grown in the City, or on the preparation or processing thereof for use or market, or on any privilege, act or transaction related to the business of manufacturing, the production, preparation or processing of minerals, timber and natural resources or farm products, by manufacturers, by producers and by farmers with respect to the goods, articles and products of their own manufacture, production or growth, or any privilege, act or transaction relating to the business of processing by-products of manufacture, or on the transportation, loading, unloading or dumping or storage of such goods, articles, products or by-products. (13383 §1 3/7/96)

E. Determination of Gross or Whole Volume Business

Gross or whole volume of business upon which the tax hereunder is computed shall include the gross consideration credited or received for or on account of sales made and/or services rendered, subject only to the following allowable deductions and exemptions:

1. The dollar volume of business transacted by wholesale and retail dealers derived from the resale of goods, wares and merchandise taken by any dealer as trade-in or as part payment for other goods, wares and merchandise, except to the extent that the resale price exceeds the trade-in allowance.

2. Refunds, credits or allowances given by a taxpayer to a purchaser on account of defects in goods, wares or merchandise sold, or on account of goods, wares or merchandise returned.

3. Any commission paid by a broker to another broker on account of a purchase or sales contract initiated, executed or cleared with such other broker.

4. Bad debts, where the deduction is also taken in the same year for Federal income taxation purposes.

5. Taxes collected as agent for the United States of America, Commonwealth of Pennsylvania or the City.

F. Partial Exemptions

Where gross or whole volume of business in its entirety cannot be subjected to the tax imposed by this Article by reason of the provisions of the Constitution of the United States, or any other provisions of law, the Director of Administration and Finance under the direction of the Mayor shall establish rules and regulations and methods of allocation and evaluation so that only that part of the gross or whole volume of business which is properly attributable and allowable to doing business in the City shall be taxed hereunder. (12688 §2 12/18/85)

G. Rate When Same Tax is Imposed by Two (2) Taxing Bodies

If any person is liable for the same tax on the same subject imposed under the Local Tax Enabling Act, December 31, 1965, (Pamphlet Law 1257) and its amendments, to the City and one or more political subdivisions of the State, the tax shall be apportioned by such percentage as may be agreed upon by such political subdivisions. However, the combined taxes of both subdivisions shall not exceed a maximum rate of tax as fixed by the Enabling Act permitting the imposition of such taxes.

H. Records

The taxpayer, to obtain the foregoing enumerated exclusions and deductions, shall keep books and records of his business so as to show clearly, accurately and separately the amount of such sales and services as are excluded from the tax and the amounts of such sales and services which he is entitled to deduct from the gross volume of business as hereinbefore provided. (11851 §3 12/15/70)

333.04 RETURNS; INTEREST AND PENALTY FOR LATE PAYMENT; RECEIPT

A. Forms, Affidavit and Filing Time

Every return shall be made upon a form furnished by the Director of Administration and Finance. Every person making a return shall certify the correctness thereof by affidavit. (12688 §2 12/18/85)

1. For Years Prior to 1997: Every person subject to the tax imposed by this Article who commenced his business on or before January 1 of the full calendar year previous to the beginning of any tax year shall on or before October 1 of the tax year file with the Director of Administration and Finance a return setting forth his name, his business, business address and such other information as may be necessary in arriving at the actual gross amount of business transacted by him during the preceding calendar year, and the amount of the tax due. (12688 §2 12/18/85; 13383 §1 3/7/96)

2. For Years Prior to 1997: Every person subject to the tax imposed by this Article who has commenced his business before the beginning of the tax year but after January 1 of the full calendar year previous to the beginning of the tax year shall on or before the October 1 of the tax year file with the Director of Administration and Finance a return setting forth his name, his business, business address and such other information as may be necessary in arriving at the estimated gross amount of business transacted by him as calculated under Section 333.03(C)(2) and the amount of tax due. (12688 §2 12/18/85; 13383 §1 3/7/96)

3. For Years Prior to 1997: Every person subject to the tax imposed by this Article who commences business subsequent to the beginning of any tax year shall within one hundred (100) days from date of commencing such business file a return with the Director of Administration and Finance setting forth his name, his business, business address and such information as may be necessary in arriving at the estimated or actual gross amount of business transacted by him as calculated under Section 333.03(C)(3) and the amount of the tax due. (12688 §2 12/18/85; 13383 §1 3/7/96)

4. Every person subject to the payment of the tax imposed by this Article who engages in a business temporary, seasonal or itinerant by its nature shall, at the time application is made for the business privilege license, file a return with the Director of Administration and Finance setting forth his name, his business, business address and such information as may be

necessary in arriving at the estimated gross amount of business to be transacted by him as calculated in accordance with Section 333.03(C)(4). (12688 §2 12/18/85; 13383 §1 3/7/96)

5. Any person going out of or ceasing to do business shall, within thirty (30) days from the date of ceasing to do business, file a return showing the actual gross volume of business conducted and done by such person during that tax year in which such person ceased doing business, and pay the tax due as computed thereon at the rate herein provided for at the time of filing the return. (13383 §1 3/7/96)

B. Payment of Tax and Penalty for Late Payment

The business privilege tax levied pursuant to this Article shall be due and payable on the date on which the taxpayer is required to file a return as set forth above and if the same is not paid on such date, a five (5%) percent penalty shall be added thereto, plus an additional penalty of one-half (½) of one (1%) percent per month or fractional part of a month and an additional one-half (½) of one (1%) percent interest per month or fractional part of a month until paid. (13142 §4 8/6/92; 13383 §1 3/7/96)

C. Receipt

The Treasurer shall, upon payment to him of the business privilege tax, give the person paying the same a receipt therefore. (11851 §4 12/15/70)

333.05 DUTIES OF DIRECTOR OF FINANCE

A. The Director of Finance is charged with the duties of collecting and receiving the taxes, fines and penalties imposed by this Article. It shall be his duty to keep a record showing the amount received by him from each person paying the tax and the date of such receipt.

B. The Director of Finance and his duly appointed deputies under the direction of the Mayor are hereby empowered with the approval of the Mayor to prescribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this Article, including provisions for the examination and correction of returns, and payments alleged or found to be incorrect, or as to which an overpayment is claimed, or found to have occurred, and charged with enforcing the provisions of this Article and any rules and/or regulations promulgated pursuant hereto. (12688 §2 12/18/85)

C. In the event the person to be assessed neglects or refuses to make a return, the Director of Finance or his duly appointed deputies shall assess such person on such an amount of whole or gross volume of business as the Director of Administration and Finance or his deputies deem reasonable and appropriate. In all cases of assessment, the Director of Administration and Finance or his duly appointed deputies shall give the parties assessed a notice in which shall be stated the trade, business, occupation or class, and the amount of the business privilege tax imposed or levied and a formal written appeal process as established and followed by the Director of Administration and Finance and the Director's deputies. (12688 §2 12/18/85; 13041 §1 4/3/91; 13383 §1 3/7/96)

D. The taxpayer shall maintain such records and books of account as will enable him to make a true and accurate return in accordance with the provisions of this Article. Such accounts and records shall disclose in detail the gross receipts and other data pertaining to the taxpayer's gross volume of business, and shall be sufficiently complete to enable the Director of Administration and Finance or his deputies to verify all transactions. The Director of Administration and Finance or his deputies are hereby authorized to examine the books, papers and records of any person subject to or supposed to be subject to the tax imposed by this Article, in order to verify the accuracy of the return made or, if no return was made, ascertain the tax due. (12688 §2 12/18/85)

E. Any person aggrieved by any decision of the Director of Administration and Finance shall as in other cases have the right to appeal to the Court of Common Pleas. (12688 §2 12/18/85)

333.06 CONFIDENTIAL NATURE OF RETURNS AND INFORMATION

Any information gained by the Director of Finance or any other official, agent or employee of the City, as a result of any returns, investigations, hearings or verifications required or authorized by this Article, shall be confidential, except in accordance with proper judicial order or as otherwise provided by law. (11851 §10 12/15/70; 12688 §2 12/18/85)

333.07 SUIT FOR RECOVERY OF TAX AND COSTS OF COLLECTION

A. The Director of Finance or his duly appointed deputies shall have the power in the name of the City to institute proceedings against any and all persons who violate the provisions of this Article. (12688 §2 12/18/85)

B. If for any reason the tax is not paid when due and suit is brought for the recovery of any such tax, the person liable therefor, shall, in addition, be liable for the costs of collection and interest and penalties herein imposed. (11851 §11 12/15/70)

333.08 SAVINGS AND SEVERABILITY CLAUSES

A. Nothing contained in this Article shall be construed to empower the City to levy and collect the taxes hereby imposed on any person, any business or any portion of any business not within the taxing power of the City under the Constitution of the United States and the laws and Constitution of the Commonwealth of Pennsylvania.

B. If the tax, or any portion thereof, imposed upon any person under the provisions of this Article is held by any court of competent power or jurisdiction to be in violation of the Constitution of the United States or of the Commonwealth of Pennsylvania or any other provision of the law, the decision of the court shall not affect or impair the right to impose the taxes or the validity of the taxes so imposed upon other persons as herein provided.

C. The provisions of this Article are severable, and if any of its provisions shall be held illegal, invalid or unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this Article. It is hereby declared to be the intention of Council that this Article would have been adopted if such illegal, invalid or unconstitutional provisions had not been included herein. (11851 §12 12/15/70)

333.99 PENALTY

Any person who fails, neglects or refuses to make any payment, declaration or return required by this article; any person who refuses to permit the Finance Officer or any agent properly designated by him to examine his books, records and papers, and any person who makes incomplete, false or fraudulent return to avoid the payment of the whole or any part of the tax imposed by this article shall, upon summary conviction thereof before any District Justice in the County of Lehigh, be sentenced to pay a fine of not less than Fifty (\$50.00) Dollars nor more than Five Hundred (\$500.00) Dollars for each offense, and costs and restitution, and, in default of payment of such fine and costs, to be imprisoned in the Lehigh County -Correctional Facility for a period not exceeding ninety (90) days. Each day of a continuing violation shall be considered a separate offense. (11851 §7,8 12/15/70; 13383 §1 3/7/96; 14402 §4, 7/28/06)

ARTICLE 335 OCCUPATION PRIVILEGE TAX

- 335.01 Definition
- 335.02 Levy
- 335.03 Amount of Tax
- 335.04 Duty of Employers
- 335.05 Returns
- 335.06 Dates for Determining Tax Liability and Payment
- 335.07 Individuals Engaged in More than One Occupation
- 335.08 Self-Employed Individuals
- 335.09 Employers and Self-Employed Individuals Residing Beyond Corporate Limits
- 335.10 Administration of Tax
- 335.11 Suits for Collection
- 335.12 Saving Clause
- 335.13 Validity
- 335.99 Penalty

CROSS REFERENCES

Power to Tax - Act. 511 of 12/31/65 - (53 P.S. §6901 - 6924)

EDITOR'S NOTE: The Local Tax Enabling Act (Act 511, approved December 31, 1965, as amended) provides in Section 4 that every tax imposed under authority of the Act shall continue on either a calendar or fiscal year basis, without annual re-enactment unless the rate of the tax is subsequently changed. Council by Ordinance 11853, passed December 15, 1970, and pursuant to Act 511, has enacted the occupation privilege tax for the 1971 calendar year to continue thereafter unless amended or repealed.

335.01 DEFINITIONS

The following words and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context or language clearly indicates or requires a different meaning:

1. **Individual** shall mean any person, male or female, engaged in any occupation, trade or profession within the City.
2. **Occupation** shall mean any trade, profession, business or undertaking of any type, kind or character, including services, domestic or other, carried on or performed within the City for which compensation is charged or received, whether by means of salary, wages, commissions or fees for services rendered.
3. **Employer** shall mean an individual, partnership, association, corporation, governmental body, agency or other entity employing one or more persons on a salary, wage, commission or other compensation basis, including a self-employed person.
4. **Tax** shall mean the Occupation Privilege Tax in the amount of Ten Dollars (\$10.00) levied by this article.
5. **Treasurer** shall mean the Treasurer of the City.
6. **Director** shall mean the Business Administrator, under whose direction this tax shall be enforced.
7. **Fiscal year** shall mean the twelve-month period beginning January 1, 1971, and ending December 31, 1971.
8. **City of Allentown** shall mean the area within the corporate limits of the City of Allentown.
9. **He, his or him** shall mean and indicate the singular and plural number as well as male, female and neuter gender. (11853 §1 12/15/70)

335.02 LEVY

The City of Allentown hereby levies and imposes on each occupation engaged in by individuals within its corporate limits during the fiscal year of 1971 an Occupation Privilege Tax. This tax is in addition to all other taxes of any kind or nature heretofore levied by the City of Allentown. (11853 §2 12/15/70)

335.03 AMOUNT OF TAX

Beginning with the first day of January 1971, each occupation, as hereinbefore defined, engaged in within the corporate limits of the City of Allentown, shall be subject to an Occupation Privilege Tax in the amount of Ten Dollars (\$10.00) per annum, such tax to be paid by the individual so engaged. (11853 §2 12/15/70)

335.04 DUTY OF EMPLOYERS

Each employer within the City, as well as those employers situated outside the City, but who engage in business within the City, is charged with the duty of collecting from each of his employees engaged by him and performing for him within the City such tax of Ten Dollars (\$10.00) per annum and making a return and payment thereof to the Treasurer. Further, each employer is hereby required to deduct this tax from the first paycheck of each employee in his employ, whether such employee is paid by salary, wages or commission, and whether or not part or all such services are performed within the City. (11853 §4 12/15/70; 12999 §1 9/5/90)

335.05 RETURNS

Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied to him by the Bureau of Fiscal Management, City Hall. Each employer, in filing this return and making payment of the tax withheld from his employees, shall be entitled to retain a commission calculated at the rate of two percent of the gross tax due and payable, provided that such tax is collected and paid over by the employer on or before the dates hereinafter set forth. It is further provided that if the employer fails to file such return and pay such tax, whether or not he makes collection thereof from the salary, wages or commissions paid by him to such employee, the employer shall be responsible for the payment of the tax in full without deducting a commission and as though the tax had originally been levied against him. (11853 §5 12/15/70)

335.06 DATES FOR DETERMINING TAX LIABILITY AND PAYMENT

Each employer shall use his employment records from January 1 to March 31, 1971, for determining the number of employees from whom such tax shall be deducted and paid over to the Treasurer on or before April 30, 1971.

Supplemental reports and payment of tax due thereon shall be made by each employer on July 31, 1971, October 31, 1971 and January 31, 1972, of new employees as reflected on his employment records from April 1, 1971 to June 30, 1971; July 1, 1971 to September 30, 1971, and October 1, 1971 to December 31, 1971. Payment of tax due on these supplemental reports shall be made on July 31, 1971, October 31, 1971, and January 31, 1972, respectively. (11853 §6 12/15/70)

335.07 INDIVIDUALS ENGAGED IN MORE THAN ONE OCCUPATION

A. Each individual who shall have more than one occupation within the City shall be subject to the payment of this tax on his principal occupation. His principal employer shall deduct this tax and deliver to him evidence of deductions on a form to be furnished to the employer by the Bureau of Fiscal Management, which form shall be evidence of deduction having been made and when presented to any other employer shall be authority for such employer to NOT DEDUCT this tax from the employee's wages, but to include such employee on his return by setting forth his name, address and the name and account number of the employer who deducted this tax.

B. In the event a person is engaged in more than one occupation, or an occupation which requires his working in more than one political subdivision during the calendar year, the priority of claim to collect such occupation privilege tax shall be in the following order: First, the political subdivision in which a person maintains his principal office or is principally employed; second, the political subdivision in which the person resides and works, if such a tax is levied by that political subdivision; third, the political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home. The place of employment shall be determined as of the day the taxpayer first becomes subject to the tax during the calendar year. It is the intent of this provision that no person shall pay more than Ten Dollars (\$10.00) in any calendar year as an occupational privilege tax, irrespective of the number of the political subdivision within which such person may be employed within any given calendar year. In case of dispute, a tax receipt of the taxing authority for that calendar year declaring that the taxpayer has made prior payment shall constitute prima facie certification of payment to all other political subdivisions. (11853 §8 12/15/70)

335.08 SELF-EMPLOYED INDIVIDUALS

All self-employed individuals who perform services of any type or kind, engage in any occupation or profession within the City shall be required to comply with this article and pay the tax to the Treasurer on April 30, 1971, or as soon thereafter as they engage in an occupation. (11853 §7 12/15/70)

335.09 EMPLOYERS AND SELF-EMPLOYED INDIVIDUALS RESIDING BEYOND CORPORATE LIMITS

All employers and self-employed individuals residing or having their place of business outside of the City, but who perform services of any type or kind, or engage in any occupation or profession within the City, do by virtue thereof agree to be bound by and subject themselves to the provisions, penalties and regulations promulgated under this article with the same force and effect as though they were residents of the City. Further, any individual engaged in an occupation within the City and an employee of a nonresident employer may, for the purpose of this article, be considered a self-employed person. In the event this tax is not paid, the City shall have the option of proceeding against either the employer or employee for the collection of this tax as hereinafter provided. (11853 §9 12/15/70)

335.10 ADMINISTRATION OF TAX

A. It shall be the duty of the Treasurer to accept and receive payments of this tax and to keep a record thereof showing the amount received by him from each employer or self-employed person, together with the date the tax was received.

B. The Business Administrator is hereby charged with the administration and enforcement of this article and is charged and empowered to prescribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this article, including provisions for the examination of the payroll records of any employer subject to this article, the examination and correction of any return made in compliance with this article and any payment alleged or found to be incorrect, or as to which overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the Administrator shall have the right to appeal to the Court of Common Pleas of Lehigh County, as in other cases provided.

C. The Administrator is hereby authorized to examine the books and payroll records of any employer in order to verify the accuracy of any return made by an employer or, if no return was made, to ascertain the tax due. Each employer is directed and required to give the Administrator the means, facilities and opportunity for such examination. (11853 §10 12/15/70)

335.11 SUITS FOR COLLECTION

A. In the event that any tax under this article remains due or unpaid thirty (30) days after the due dates above set forth, the Business Administrator may sue for the recovery of any such tax due or unpaid under this article, together with interest and penalty.

B. If for any reason the tax is not paid when due, interest at the rate of six percent per annum on the amount of such tax, and an additional penalty of one-half of one percent 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 is brought for the recovery of this tax, the individual liable therefore shall, in addition, be responsible and liable for the costs of collection. (11853 §11 12/15/70; 12999 §2 9/5/90)

335.12 SAVING CLAUSE

A. Nothing contained in this article shall be construed to empower the City to levy and collect the tax hereby imposed on any occupation not within the taxing power of the City under the Constitution of the United States and the laws of the Commonwealth of Pennsylvania.

B. If the tax hereby imposed under the provisions of this article shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United States or of the laws of the Commonwealth of Pennsylvania as to any individual, the decision of the court shall not affect or impair the right to impose or collect such tax or the validity of the tax so imposed on other persons or individuals as herein provided. (11853 §14 12/15/70)

335.13 VALIDITY

The provisions of this article are severable and if any of its provisions shall be held invalid or unconstitutional, the decision of the court shall not affect or invalidate any of the remaining provisions. It is hereby declared to be the legislative intent that this article would have been adopted if such illegal, invalid or unconstitutional provision had not been included herein. (11853 §13 12/15/70)

335.99 PENALTY

Whoever makes any false or untrue statement on any return required by this article, or who refuses inspection of his books, records or accounts in his custody and control setting forth the number of employees subject to this tax who are in his employment, or whoever fails or refuses to file any return required by this article or who fails to pay the tax due, shall, upon conviction before any District Justice in the County of Lehigh, be sentenced to pay a fine of not more than Five Hundred (\$500.00) Dollars for each offense and, in default of payment of fine and costs and restitution, be imprisoned in Lehigh County Prison for a period not exceeding ninety (90) days for each offense. It is further provided that the action to enforce the fine and penalty herein provided may be instituted against any person in charge of the business of any employer who has failed or refuses to file a return required by this article. (11853 §12 12/15/70; 14402 §5 7/28/06)

ARTICLE 336 EMERGENCY AND MUNICIPAL SERVICES TAX

- 336.01 Definition
- 336.02 Imposition of Tax
- 336.03 Exemptions
- 336.04 Amount of Tax
- 336.05 Duty of Employers
- 336.06 Returns
- 336.07 Individuals Engaged in More than One Occupation
- 336.08 Self-Employed Individuals
- 336.09 Employers and Self-Employed Individuals Residing Beyond Corporate Limits
- 336.10 Administration of Tax
- 336.11 Suits for Collection
- 336.12 Saving Clause
- 336.13 Validity
- 336.99 Penalty (14535 §1 10/17/07)

336.01 DEFINITIONS

The following words and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context or language clearly indicates or requires a different meaning:

1. **Individual** shall mean any person, male or female, engaged in any occupation, trade or profession within the City.
2. **Occupation** shall mean any trade, profession, business or undertaking of any type, kind or character, including services, domestic or other, carried on or performed within the City for which compensation is charged or received, whether by means of salary, wages, commissions or fees for services rendered.
3. **Employer** shall mean an individual, partnership, association, corporation, governmental body, agency or other entity employing one or more persons on a salary, wage, commission or other compensation basis, including a self-employed person.

4. **Tax** shall mean the Local Services Tax in the amount of Fifty-two (\$52) Dollars levied by this article. (14535 §1 10/17/07)
5. **Director** shall mean the Director of Finance or designee, under whose direction this tax shall be enforced.
6. **Fiscal year** shall mean the twelve-month period beginning January 1 and ending December 31.
7. **City of Allentown** shall mean the area within the corporate limits of the City of Allentown.
8. **He, his or him** shall mean and indicate the singular and plural number as well as male, female and neuter gender. (14409 §1 8/3/2006)
9. **Earned Income** shall mean 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 in 61 Pa. Code Pt. I Subpt. B Art. V. (relating to personal income tax), not including, however, wages or compensation paid to individuals on active military service. 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 earned income. (14535 §1 10/17/07)

10. **Net profits** shall mean the net income from the operation of a business, profession, or other activity, except corporations, 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 in 61 Pa. Code Pt. I Subpt. B Art. V (relating to person income tax.) The term does not include income which his not paid for services provided and which is in the nature of earnings from an investment. For taxpayers engaged in the business, profession or activity of farming, the term shall not include: (1) any interest earnings generated from any monetary accounts or investment instruments of the farming business; (2) any gain on the same of farm machinery; (3) any gain on the sale of livestock held twelve (12) months or more for draft, breeding or dairy purposes; and, (4) any gain on the sale of other capital assets of the farm. (14535 §1 10/17/07)

336.02 IMPOSITION OF TAX

The City of Allentown hereby levies and imposes during the fiscal year of 2008, and annually thereafter, a Local Services Tax on each individual for the privilege of engaging in an occupation within the corporate limits of the City of Allentown. This tax is in addition to all other taxes of any kind or nature heretofore levied by the City of Allentown. (14409 §1 8/3/2006; 14457 §1 12/20/06; 14535 §1 10/17/07)

336.03 EXEMPTIONS

A. Exempted from this tax is any person whose total earned income and net profits from all sources within the City of Allentown is less than Twelve Thousand (\$12,000) Dollars for the calendar year in which the tax is levied. Also exempted from this tax is any person who has served in any war or armed conflict in which the United States was engaged and is honorably discharged or released under honorable circumstances from active service of the United States if, as a result of such military service, the person is blind, paraplegic or a double or quadruple amputee or has a service-connected disability declared by the United States Veterans' Administrator, or its successor, to be a total one hundred percent permanent disability. Also, exempted from this tax is any person who serves as a member of a reserve component of the armed forces and is called to active duty at any time during the taxable year. For the purposes of this exemption, "reserve component of the armed forces", shall mean the United States Army Reserve, United States Navy Reserve, United States Marine Corps reserve, United States Coast Guard Reserve, United States Air Force Reserve, the Pennsylvania Army National Guard or the Pennsylvania Air National Guard. (14535 §1 10/17/07)

B. A person seeking to claim an exemption from the Local Services Tax shall annually file an exemption certificate with the City Bureau of Tax and Utilities and with the person's employer affirming that the person reasonably expects to receive earned income and net profits from all sources within the City of Allentown of less than Twelve Thousand (\$12,000) Dollars for the calendar year for which the exemption certificate is filed and shall attach a copy of the person's last pay stub or that person's IRS W-2 form from employment in the City of Allentown for the prior year. The exemption certificate shall be a form developed by the Pennsylvania Department of Community and Economic Development, or if said Department fails to develop the same, by the City. (14535 §1 10/17/07)

336.04 AMOUNT OF TAX

Beginning with the first day of January 2008, each individual engaged in an occupation, as hereinbefore defined, within the corporate limits of the City of Allentown, shall, for the privilege of engaging in such occupation, be subject to a Local Services Tax in the amount of Fifty-two (\$52) Dollars per annum, such tax to be paid by the individual so engaged. (14409 §1 8/3/2006; 14535 §1 10/17/07)

336.05 DUTY OF EMPLOYERS

A. Each employer within the City, as well as those employers situated outside the City, but who engage in business within the City, is charged with the duty of collecting from each of his employees engaged by him and performing for him within the City such tax of Fifty-two (\$52) Dollars per annum and making a return and payment thereof to the Director of Finance or designee during the first quarter of each calendar year they are in his employ. Further, each employer is hereby required to deduct this tax from the paycheck of each employee in his employ, whether such employee is paid by salary, wages or commission, on a pro-rata basis in equal amounts, by dividing the rate of the Local Services Tax levied for the calendar year by the number of payroll periods established by the employer for the calendar year, rounded to the nearest one hundredth of a dollar, per pay period established by the employer, and to submit the taxes withheld within thirty (30) days after the end of each quarter of a calendar year. (14409 §1 8/3/2006; 14535 §1 10/17/07)

B. Upon receipt of the exemption certificate filed pursuant to Section 336.02.05(B), Employers shall not withhold the tax until otherwise instructed by the City of Allentown. With respect to a person who claimed an exemption pursuant to Section 336.02.05(B), upon notification to the Employer from the person or by the City of Allentown that the person has received earned income and net profits from all sources within the City of Allentown equal to or in excess of Twelve Thousand (\$12,000) Dollars in that calendar year or is otherwise ineligible for the exemption for that calendar year, or upon an employer's payment to the person of earned income within the City of Allentown in an amount equal to or in excess of Twelve Thousand (\$12,000) Dollars in that calendar year, the Employer shall withhold the tax from the person for the remainder of that calendar year as follows: The employer shall withhold from the first pay period thereafter, a lump sum amount equal to monies not withheld under Paragraph A, above and equal pro-rata amounts for the remainder of the pay periods for the year. In the event that employment of a person subject to withholding of the tax under this subsection is subsequently severed in that calendar year, the person shall be liable for any outstanding balance of tax due and the City of Allentown may pursue collection under this Article. (14535 §1 10/17/07)

C. Employers shall ensure that the exemption certificate forms are available to employees at all times and shall furnish each new employee with a form at the time of hiring.

D. No employer shall be held liable for failure to withhold the Local Services Tax or for the payment of the withheld tax money to a political subdivision if the failure to withhold taxes arises from incorrect information submitted by the employee as to the employee's place or places of employment, the employee's principal office or where the employee is principally employed. An employer shall not be liable for payment of the Local Services Tax in an amount exceeding the amount withheld by the employer if the employer complies with the provisions of Sections 336.04(b) and 337.07 and remits the amount so withheld.

336.06 RETURNS

Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied to him by the Department of Finance. It is further provided that if the employer fails to file such return and pay such tax, whether or not he makes collection thereof from the salary, wages or commissions paid by him to such employee, the employer shall be responsible for the payment of the tax in full without deducting a commission and as though the tax had originally been levied against him.

Employers with over 250 employees and all payroll tax services are required to file electronically with the City. (14409 §1 8/3/2006)

336.07 INDIVIDUALS ENGAGED IN MORE THAN ONE OCCUPATION

A. Each individual who shall have more than one occupation within the City shall be subject to the payment of this tax on his principal occupation. His principal employer shall deduct this tax and deliver to him evidence of deductions on a form to be furnished to the employer by the Department of Finance which form shall be evidence of deduction having been made and when presented to any other employer shall be authority for such employer to NOT DEDUCT this tax from the employee's wages, but to include such employee on his return by setting forth his name, address and the name and account number of the employer who deducted this tax.

B. In the event a person is engaged in more than one occupation, or an occupation which requires his working in more than one political subdivision during the calendar year, the priority of claim to collect such Local Services Tax shall be in the following order: First, the political subdivision in which a person maintains his principal office or is principally employed; second, the political subdivision in which the person resides and works, if such a tax is levied by that political subdivision; third, the political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home. The place of employment shall be determined as of the day the taxpayer first becomes subject to the tax during the calendar year. It is the intent of this provision that no person shall pay more than Fifty-two (\$52) Dollars in any calendar year as a Local Services Tax, irrespective of the number of the political subdivision within which such person may be employed within any given calendar year. In case of dispute, a tax receipt of the taxing authority for that calendar year declaring that the taxpayer has made prior payment shall constitute prima facie certification of payment to all other political subdivisions. (14409 §1 8/3/2006 14535 §1 10/17/07)

336.08 SELF-EMPLOYED INDIVIDUALS

All self-employed individuals who perform services of any type or kind, engage in any occupation or profession within the City shall be required to comply with this article and pay the tax to the Director of Finance, or designee, or as soon thereafter as they engaged in an occupation. (14409 §1 8/3/2006)

336.09 EMPLOYERS AND SELF-EMPLOYED INDIVIDUALS RESIDING BEYOND CORPORATE LIMITS

All employers and self-employed individuals residing or having their place of business outside of the City, but who perform services of any type or kind, or engage in any occupation or profession within the City, do by virtue thereof agree to be bound by and subject themselves to the provisions, penalties and regulations promulgated under this article with the same force and effect as though they were residents of the City. Further, any individual engaged in an occupation within the City and an employee of a nonresident employer may, for the purpose of this article, be considered a self-employed person. In the event this tax is not paid, the City shall have the option of proceeding against either the employer or employee for the collection of this tax as hereinafter provided. (14409 §1 8/3/2006)

336.10 ADMINISTRATION OF TAX

A. It shall be the duty of the Director of Finance or designee, to accept and receive payments of this tax and to keep a record thereof showing the amount received by him from each employer or self-employed person, together with the date the tax was received.

B. The Director or designee is hereby charged with the administration and enforcement of this article and is charged and empowered to prescribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this article, including provisions for the examination of the payroll records of any employer subject to this article, the examination and correction of any return made in compliance with this article and any payment alleged or found to be incorrect, or as to which overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the Director or designee shall have the right to appeal to the Court of Common Pleas of Lehigh County, as in other cases provided.

C. The Director of Finance or designee is hereby authorized to examine the books and payroll records of any employer in order to verify the accuracy of any return made by an employer or, if no return was made, to ascertain the tax due. Each employer is directed and required to give the Administrator the means, facilities and opportunity for such examination. (14409 §1 8/3/2006)

336.11 SUITS FOR COLLECTION

A. In the event that any tax under this article remains due or unpaid thirty (30) days after the due dates above set forth, the Director may sue for the recovery of any such tax due or unpaid under this article, together with interest and penalty.

B. If for any reason the tax is not paid when due, interest at the rate of six percent per annum on the amount of such tax, and an additional penalty of one-half of one percent 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 is brought for the recovery of this tax, the individual liable therefore shall, in addition, be responsible and liable for the costs of collection. (14409 §1 8/3/2006)

336.12 SAVING CLAUSE

A. Nothing contained in this article shall be construed to empower the City to levy and collect the tax hereby imposed on any occupation not within the taxing power of the City under the Constitution of the United States and the laws of the Commonwealth of Pennsylvania.

B. If the tax hereby imposed under the provisions of this article shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United States or of the laws of the Commonwealth of Pennsylvania as to any individual, the decision of the court shall not affect or impair the right to impose or collect such tax or the validity of the tax so imposed on other persons or individuals as herein provided (14409 §1 8/3/2006)

336.13 VALIDITY

The provisions of this article are severable and if any of its provisions shall be held invalid or unconstitutional, the decision of the court shall not affect or invalidate any of the remaining provisions. It is hereby declared to be the legislative intent that this article would have been adopted if such illegal, invalid or unconstitutional provision had not been included herein. (14409 §1 8/3/2006)

336. 99 PENALTY

Whoever makes any false or untrue statement on any return required by this article, or who refuses inspection of his books, records or accounts in his custody and control setting forth the number of employees subject to this tax who are in his employment, or whoever fails or refuses to file any return required by this article or who fails to pay the tax due, shall, upon conviction before any District Justice in the County of Lehigh, be sentenced to pay a fine of not more than Five Hundred (\$500)

Dollars for each offense and, in default of payment of fine and costs, be imprisoned in Lehigh County Prison for a period not exceeding ninety (90) days for each offense. It is further provided that the action to enforce the fine and penalty herein provided may be instituted against any person in charge of the business of any employer who has failed or refuses to file a return required by this article. (14409 §1 8/3/2006)

Editorial Note – these sections were part of the ordinance:

SECTION TWO: This tax is replacing the Occupational Privilege Tax. For the tax year 2006, any persons paying the Occupational Privilege Tax for the tax year 2006 shall receive a credit to the Emergency and Municipal Services tax due for the year 2006. Said credit may be applied directly by employers who are required to withhold the Emergency and Municipal Services tax for 2006 for, and who withheld the 2006 Occupational Privilege Tax from, the affected employee. All other employees who paid the 2006 Occupational Privilege Tax, and the 2006 Emergency and Municipal Services tax may apply for a refund of \$10 from the City's Bureau of Tax and Utilities. For the tax year 2006, any persons who paid the Emergency and Municipal Services Tax levied and imposed pursuant to Ordinance No. 14409 shall receive a credit toward the Emergency and Municipal Services Tax due for the year 2006 under this Ordinance. Said credit may be applied directly by employers who are required to withhold the Emergency and Municipal Services Tax pursuant to this Ordinance for 2006, and who withheld the Emergency and municipal Services Tax levied and imposed pursuant to Ordinance No. 14409, from the affected employee. (14457 §2 12/20/06)

SECTION THREE: This tax shall be subject to the sharing provisions of the Pennsylvania Local Tax Enabling Act with the Allentown School District and the Parkland School District, and \$5 of said tax will be payable by the City of Allentown to said school districts as applicable. For those persons who pay the 2006 Emergency and Municipal Services tax and also paid the 2006 Occupational Privilege Tax prior to the effective date of this ordinance, no additional monies shall be shared with the said school districts as \$5 has or will be remitted to the school district from the 2006 Occupational Privilege Tax. 14409 §1 8/3/2006)

SECTION FOUR: This Ordinance is enacted pursuant to the authority of the Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, No. 511, as amended, and shall become effective ten (10) days after it has been passed by Council and signed by the Mayor and shall continue in force thereafter, without annual reenactment unless amended or repealed. (14457 §4 12/20/06)

ARTICLE 337 REALTY TRANSFER TAX

- 337.01 Short Title
- 337.02 Authority
- 337.03 Definitions
- 337.04 Imposition of Tax; Interest
- 337.05 Exempt Parties
- 337.06 Excluded Transactions
- 337.07 Documents Relating to Associations or Corporations and Members, Partners, Stockholders, or Shareholders Thereof
- 337.08 Acquired Company
- 337.09 Credits against Tax
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- 337.11 Proceeds of Judicial Sale
- 337.12 Duties of the Recorder of Deeds
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EDITOR'S NOTE: The Local Tax Enabling Act (Act 511, approved December 31, 1965, as amended, provides in Section 4 that every tax imposed under Authority of the Act shall continue on either a calendar or fiscal year basis, without annual re-enactment unless the rate of the tax is subsequently changed. Council by Ordinance No. 11852, passed December 15, 1970, and pursuant to Act 511, has enacted realty transfer tax for the 1971 calendar year to continue thereafter unless amended or repealed.

337.01 SHORT TITLE

This ordinance shall be known as the "Realty Transfer Tax" of the City of Allentown.

337.02 AUTHORITY

A realty transfer tax for general revenue purposes is hereby imposed upon the transfer of real estate or interest in real estate situated within the City of Allentown, regardless of where the documents making the transfer are made, executed or delivered, or where the actual settlements on such transfer took place as authorized by Article XI-D, "Local Real Estate Transfer Tax," 72 P.S. §8101-d, et seq.

337.03 DEFINITIONS

1. **Association** shall mean a partnership, limited partnership, or any other form of unincorporated enterprise owned or conducted by two or more persons other than a private trust or decedent's estate.

2. **Corporation** shall mean a corporation, joint-stock association, business trust, or banking institution which is organized under the laws of this Commonwealth, the United States, or any other state, territory, foreign country or dependency.

3. **Document** shall mean any deed, instrument or writing which conveys, transfers, demises, vests, confirms or evidences any transfer or demise of title to real estate, but does not include wills, mortgages, deeds of trust or other instruments or like character given as security for a debt and deeds of release thereof to the debtor, land contracts whereby the legal title does not pass to the grantee until the total consideration specified in the contract has been paid or any cancellation thereof unless the consideration is payable over a period of time exceeding thirty (30) years, or instruments which solely grant, vest or confirm a public utility easement. This shall also include a declaration of acquisition required to be presented for recording under Section 337.08 of this article.

4. **Family Farm Corporation** shall mean a corporation of which at least seventy-five (75%) percent of its assets are devoted to the business of agriculture and at least seventy-five (75%) percent of each class of stock of the corporation is continuously owned by members of the same family. The business or agriculture shall not be deemed to include:

- a. Recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;
- b. The raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;
- c. Fur farming;
- d. Stockyard and slaughterhouse operations;
- e. Manufacturing or processing operations of any kind.

5. **Members of the same family** shall mean any individual, such individual's brothers and sisters, the brothers and sisters of such individual's parents and grandparents, the ancestors and lineal descendants of any of the foregoing, a spouse of any of the foregoing, and the estate of any of the foregoing. Individuals related by the half-blood or legal adoption shall be treated as if they were related by the whole-blood.

6. **Person** shall mean every natural person, association, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both. The term "person" as applied to associations, shall include the responsible members or general partners thereof, and as applied to corporations, the officers thereof.

7. **Real estate** shall mean:

- a. All lands, tenements or hereditaments within this City, including without limitation buildings, structures, fixtures, mines, minerals, oil, gas, quarries, spaces with or without upper or lower boundaries, trees, and other improvements, immovables or interests which by custom, usage or law pass with a conveyance or land, but excluding permanently attached machinery and equipment in an industrial plant.
- b. A condominium unit.
- c. A tenant-stockholder's interest in a cooperative housing corporation, trust or association under a proprietary lease or occupancy agreement.

8. **Real estate company** shall mean a corporation or association which is primarily engaged in the business of holding, selling or leasing real estate, ninety (90%) percent or more of the ownership interest in which is held by thirty-five (35) or fewer persons and which:

a. Derives sixty (60%) percent or more of its annual gross receipts from the ownership or disposition of real estate; or

b. Holds real estate, the value of which comprises ninety (90%) percent or more of the value of its entire tangible asset holdings exclusive of tangible assets which are freely transferrable and actively traded on an established market.

9. **Title to real estate** shall mean:

a. Any interest in real estate which endures for a period of time, the termination of which is not fixed or ascertained by a specific number of years, including without limitation an estate in fee simple, life estate, or perpetual leasehold; or

b. Any interest in real estate enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consists of a group of rights approximating those of an estate in fee simple, life estate or perpetual leasehold, including without limitation a leasehold interest or possessory interest under a lease or occupancy agreement for a term of thirty (30) years or more or a leasehold interest or possessory interest in real estate in which the lessee has equity.

10. **Transaction** shall mean the making, executing, delivering, accepting, or presenting for recording of a document.

11. **Value** shall mean:

a. In the case of any bona fide sale of real estate at arm's length for actual monetary worth, the amount of the actual consideration therefore, paid or to be paid, including liens or other encumbrances thereon existing before the transfer and not removed thereby, whether or not the underlying indebtedness is assumed, and ground rents, or a commensurate part thereof where such liens or other encumbrances and ground rents also encumber or are charged against other real estate:

Provided, that where such documents shall set forth a nominal consideration, the "value" thereof shall be determined from the price set forth in or actual consideration for the contract of sale;

b. In the case of a gift, sale by execution upon a judgment or upon the foreclosure of a mortgage by a judicial officer, transactions without consideration or for consideration less than the actual monetary worth of the real estate, a taxable lease, an occupancy agreement, a leasehold or possessory interest, any exchange of properties, or the real estate of an acquired company, the actual monetary worth of the real estate determined by adjusting the assessed value of real estate for local real estate tax purposes for the common level ratio factor developed by the Pennsylvania Department of Revenue for Pennsylvania realty transfer tax base calculations;

c. In the case of an easement or other interest in real estate, the value of which is not determinable under clause (1) or (2), the actual monetary worth of such interest; or

d. The actual consideration for or actual monetary worth of any executory agreement for the construction of buildings, structures or other permanent improvements to real estate between the grantor and other persons existing before the transfer and not removed thereby or between the grantor, the agent or principle of the grantor of a related corporation, association or partnership and the grantee existing before or effective with the transfer.

337.04 IMPOSITION OF TAX; INTEREST

A. Every person who makes, executes, delivers, accepts presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, a tax at the rate of one (1%) percent of the value of the real estate represented by such document, which tax shall be payable at the earlier of the time the document is presented for recording or within thirty (30) days of acceptance of such document or within thirty (30) days of becoming an acquired company.

B. The payment of the tax imposed herein shall be evidence by the affixing of an official stamp or writing by the Recorder of Deeds whereon the date of the payment of the tax, amount of the tax and the signature of the collecting agent shall be set forth.

C. It is the intent of this ordinance that the entire burden of the tax imposed herein on a person or transfer shall not exceed the limitations prescribed in The Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, 53 P.S. §6901 et seq., so that if any other political subdivision shall impose or hereafter shall impose such tax on the same person or transfer then the tax levied by the City under the authority of that Act shall during the time such duplication of the tax exists, except as hereinafter otherwise provided, be one-half (½) of the rate and such one-half (½) rate shall become effective without any action on the part of the City provided, however, that the City and any other political subdivision which impose such tax on the same person or transfer may agree that, instead of limiting their respective rates to one-half (½) of the rate herein provided, they will impose respectively different rates, the total of which shall not exceed the maximum rate permitted under "The Local Tax Enabling Act."

D. If for any reason the tax is not paid when due, interest at the rate in effect at the time the tax is due, shall be added and collected.

337.05 EXEMPT PARTIES

The United States, the Commonwealth, or any of their instrumentalities, agencies or political subdivisions shall be exempt from payment of the tax imposed by this article. The exemption of such governmental bodies shall not, however, relieve any other party to a transaction from liability for the tax.

337.06 EXCLUDED TRANSACTIONS

The tax imposed by Section 337.04 shall not be imposed upon:

A. A transfer to the Commonwealth, or to any of its instrumentalities, agencies or political subdivisions, by gift, dedication or deed in lieu of condemnation or deed of confirmation in connection with condemnation proceedings, or a reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation which reconveyance may include property fine adjustments provided said reconveyance is made within one (1) year from the date of condemnation.

B. A document which the City is prohibited from taxing under the Constitution or statutes of the United States.

C. A conveyance to a municipality, township, school district or county pursuant to acquisition by the municipality, township, school district or county of a tax delinquent property at sheriff sale or tax claim bureau sale.

D. A transfer for no or nominal actual consideration which corrects or confirms a transfer previously recorded, but which does not extend or limit existing record legal title or interest.

E. A transfer of division in kind for no or nominal actual consideration of property passed by testate or intestate succession and held by cotenants; however, if any of the parties take shares greater in value than their undivided interest, tax is due on the excess.

F. A transfer between husband and wife, between persons who were previously husband and wife who have since been divorced, provided the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, between parent and child or the spouse of a brother or sister and brother or sister or the spouse of a brother or sister, and between a grandparent and grandchild or the spouse of such grandchild, except that a subsequent transfer by the grantee within one (1) year shall be subject to tax as if the grantor were making such transfer.

G. A transfer for no or nominal actual consideration of property passing by testate or intestate succession from a personal representative of a decedent to the decedent's devisee or heir.

H. A transfer for no or nominal actual consideration to a trustee of an ordinary trust where the transfer of the same property would be exempt if the transfer was made directly from the grantor to all of the possible beneficiaries, whether or not such beneficiaries are contingent or specifically named. No such exemption shall be granted unless the Recorder of Deeds is presented with a copy of the trust instrument that clearly identifies the grantor and all possible beneficiaries.

I. A transfer for no or nominal actual consideration from a trustee to a beneficiary or an ordinary trust.

J. A transfer for no or nominal actual consideration from trustee to successor trustee.

K. A transfer (i) for no or nominal actual consideration between principal and agent or straw party; or (ii) from or to an agent or straw party where, if the agent or straw party were his principal, no tax would be imposed under this article.

Where the document by which title is acquired by a grantee or statement of value fails to set forth that the property was acquired by the grantee from, or for the benefit of, his principal, there is a rebuttable presumption that the property is the property of the grantee in his individual capacity if the grantee claims an exemption from taxation under this clause.

L. A transfer made pursuant to the statutory merger or consolidation of a corporation or statutory division of a nonprofit corporation, except where the department reasonably determines that the primary intent for such merger, consolidation or division is avoidance of the tax imposed by this article.

M. A transfer from a corporation or association of real estate held of record in the name of the corporation or association where the grantee owns stock of the corporation or an interest in the association in the same proportion as his interest in or ownership of the real estate being conveyed and where the stock of the corporation or the interest in the association has been held by the grantee for more than two (2) years.

N. A transfer from a nonprofit industrial development agency or authority to a grantee of property conveyed by the grantee to that agency or authority as security for a debt or the grantee or a transfer to a nonprofit industrial development agency or authority.

O. A transfer from a nonprofit industrial development agency or authority to a grantee purchasing directly from it, but only if: (i) the grantee shall directly use such real estate for the primary purpose of manufacturing, fabricating, compounding, processing, publishing, research and development, transportation, energy conversion, energy production, pollution control, warehousing or agriculture; and (ii) the agency or authority has the full ownership interest in the real estate transferred.

P. A transfer by a mortgagor to the holder of a bona fide mortgage in default in lieu of a foreclosure or a transfer pursuant to a judicial sale in which the successful bidder is the bona fide holder of a mortgage, unless the holder assigns the bid to another person.

Q. Any transfer between religious organizations or other bodies or person holding title for a religious organization if such real estate is not being or has not been used by such transferor for commercial purposes.

R. A transfer to a conservancy which possesses a tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue code of 1954, (68A Stat. 3, 26 U.S.C. §501(c)(3) and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open space opportunities.

S. A transfer of real estate devoted to the business of agriculture to a family farm corporation by a member of the same family which directly owns at least seventy-five (75%) percent of each class of the stock thereof.

T. A transfer between members of the same family of an ownership interest in a real estate company or family farm corporation.

U. A transaction wherein the tax due is One (\$1.00) Dollar or less.

V. Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof.

In order to exercise any exclusion provided in this section, the true, full and complete value of the transfer shall be shown on the statement of value. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. For leases of coal, oil, natural gas or minerals, the statement of value may be limited to an explanation of the reason such document is not subject to tax under this ordinance.

337.07 DOCUMENTS RELATING TO ASSOCIATIONS OR CORPORATIONS AND MEMBERS, PARTNERS, STOCKHOLDERS OR SHAREHOLDERS THEREOF

Except as otherwise provided in Section 337.06, documents which make, confirm or evidence any transfer or demise of title to real estate between associations or corporations and the members, partners, shareholders or stockholders thereof are fully taxable. For the purpose of this article, corporations and associations are entities separate from their members, partners, stockholders or shareholders.

337.08 ACQUIRED COMPANY

A. A real estate company is an acquired company upon a change in the ownership interest in the company, however effected, if the change does not affect the continuity of the company; and of itself or together with prior changes has the effect of transferring, directly or indirectly, ninety (90%) percent or more of the total ownership interest in the company within a period of three (3) years.

B. With respect to real estate acquired after February 16, 1986, a family farm corporation is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm corporation or when, or because of issuance or transfer of stock or because of acquisition or transfer of assets that are devoted to the business of agriculture, it fails to meet the minimum requirements of a family farm corporation under this ordinance.

C. Within thirty (30) days after becoming an acquired company, the company shall present a declaration of acquisition with the Recorder of each county in which it holds real estate for the affixation of documentary stamps and recording. Such declaration shall set forth the value of real estate holdings of the acquired company in such county. A copy of the Pennsylvania Realty Transfer Tax Declaration of Acquisition may be submitted for this purpose.

337.09 CREDITS AGAINST TAX

A. Where there is a transfer of a residential property by a licensed real estate broker which property was transferred to him within the preceding year as consideration for the purchase of other residential property, a credit for the amount of the tax paid at the time of the transfer to him shall be given to him toward the amount of the tax due upon the transfer.

B. Where there is a transfer by a builder of residential property which was transferred to the builder within the preceding year as consideration for the purchase of new, previously unoccupied residential property, a credit for the amount of the tax paid at the time of the transfer to the builder shall be given to the builder toward the amount of the tax due upon the transfer.

C. Where there is a transfer of real estate which is leased by the grantor, a credit for the amount of tax paid at the time of the lease shall be given the grantor toward the tax due upon the transfer.

D. Where there is a conveyance by deed of real estate which was previously sold under a land contract by the grantor, a credit for the amount of tax paid at the time of the sale shall be given the grantor toward the tax due upon the deed.

E. If the tax due upon the transfer is greater than the credit given under this section, the difference shall be paid. If the credit allowed is greater than the amount of tax due, no refund or carryover credit shall be allowed.

337.10 EXTENSION OF LEASE

In determining the term of a lease, it shall be presumed that a right or option to renew or extend a lease will be exercised if the rental charge to the lessee is fixed or if a method for calculating the rental charge is established.

337.11 PROCEEDS OF JUDICIAL SALE

The tax herein imposed shall be fully paid, and have priority out of the proceeds or any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made except the State Realty Transfer Tax, and the sheriff, or other officer, conducting said sale, shall pay the tax herein imposed out of the first moneys paid to him in connection therewith. If the proceeds of the sale are insufficient to pay the entire tax herein imposed, the purchaser shall be liable for the remaining tax.

337.12 DUTIES OF THE RECORDER OF DEEDS

A. As provided in 16 P.S. §11011-6, as amended by Act of July 7, 1983 (P.L. 40, No. 21), the Recorder of Deeds shall be the collection agent for the local Realty Transfer Tax, including any amount payable to the City based on a redetermination of the amount of tax due by the Commonwealth of Pennsylvania of the Pennsylvania Realty Transfer Tax, without compensation from the City.

B. In order to ascertain the amount of taxes due when the property is located in more than one political subdivision, the Recorder of Deeds shall not accept for recording such a deed unless it is accompanied by a statement of value showing what taxes are due each municipality.

C. On or before the tenth of each month, the Recorder of Deeds shall pay over to the City all local Realty Transfer Taxes collected, less two (2%) percent for use of the County, by the Commonwealth of Pennsylvania in reporting collections of the Pennsylvania Realty Transfer Tax. The two (2%) percent commission shall be paid to the County.

D. Upon a redetermination of the amount of Realty Transfer Tax due by the Commonwealth of Pennsylvania, the Recorder of Deeds shall rerecord the deed or record the additional Realty Transfer Tax form only when both the State and local amounts and a rerecording or recording fee has been tendered.

337.13 STATEMENT OF VALUE

Every document lodged with or presented to the Recorder of Deeds for recording, shall set forth therein and as a part of such document the true, full and complete value thereof, or shall be accompanied by a statement of value executed by a

responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this article. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. The provisions of this subsection shall not apply to any excludable real estate transfers which are exempt from taxation based on family relationship. Other documents presented for the affixation of stamps shall be accompanied by a certified copy of the document and statement of value executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this ordinance.

337.14 CIVIL PENALTIES

A. If any part of any underpayment of tax imposed by this article is due to fraud, there shall be added to the tax an amount equal to fifty (50%) percent of the underpayment.

B. In the case of failure to record a declaration required under this article on the date prescribed therefore, unless it is shown that such failure is due to reasonable cause, there shall be added to the tax five (5%) percent of the amount of such tax if the failure is for not more than one (1) month, with an additional five (5%) percent for each additional month or fraction thereof during which such failure continues, not exceeding fifty (50%) percent in the aggregate.

337.15 LIEN

The tax imposed by this ordinance shall become a lien upon the lands, tenements, or hereditaments, or any interest therein, laying being situated, wholly or in part within the boundaries of the City, which lands, tenements, hereditaments, or interest therein, are described in or conveyed by or transferred by the deed which is the subject of the tax imposed, assessed and levied by this ordinance is due and payable, and continue until discharge by payment, or in accordance with the law, and the Solicitor is authorized to file a municipal or tax claim in the Court of Common Pleas of Lehigh County, in accordance with the provisions of the Municipal Claims and Liens Act of 1923, 53 P.S. §7101 et seq., its supplements and amendments.

337.16 ENFORCEMENT

All taxes imposed by this ordinance together with interest and penalties prescribed herein, shall be recoverable as other debts of like character are recovered.

337.17 REGULATIONS

The Department of Administration and Finance of the City of Allentown is charged with the enforcement and collection of tax and is empowered to promulgate and enforce reasonable regulations for enforcement and collection of the tax. The regulations which have been promulgated by the Pennsylvania Department of Revenue under 72 P.S. §8101-C et seq. are incorporated into and made a part of this ordinance.

337.18 SEVERABILITY

Should any section, subsection, sentence, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of the ordinance in its entirety or of any part thereof other than that declared to be invalid.

ARTICLE 339 MECHANICAL AMUSEMENT DEVICES TAX

- 339.01 Tax Imposed; Rates
- 339.02 Gambling Prohibited
- 339.03 Registration Required; Payment of Tax
- 339.04 Certificate Issuance; Display
- 339.05 Duties of Fiscal Management
- 339.06 Penalty for Late Payment
- 339.07 Collection of Delinquent Taxes
- 339.98 Severability
- 339.99 Penalty

EDITOR'S NOTE: The Local Tax Enabling Act (Act 511, approved December 31, 1965, as amended) provides in Section 4 that every tax imposed under authority of the Act shall continue on either a calendar or fiscal year basis, without annual re-enactment unless the rate of the tax is subsequently changed. Council by Ordinance No. 11854, passed December 15, 1970, and pursuant to Act 511, has enacted the mechanical amusement devices tax for the 1971 calendar year to continue thereafter unless amended or repealed.

339.01 TAX IMPOSED; RATES

There is hereby imposed a tax at the rates hereinafter specified on all persons, firms, corporations or associations using or permitting the use for profit in the City of Allentown, of any machines or device for amusement, entertainment or rendition of music, which is operated by the insertion of a coin or token representing such coin.

A. For each machine or device played with pins and balls, or either of them as well as for all other machines or devices by which amusement is afforded or furnished a tax of Fifty (\$50.00) Dollars.

B. For each arcade devoted to the operation of coin operated amusement machines exceeding ten (10) in number, a tax of Three Hundred and Fifty (\$350.00) Dollars.

C. For each machine by which music is afforded or furnished a tax of Fifteen (\$15.00) Dollars. (12415 §1 4/16/80)

339.02 GAMBLING PROHIBITED

The imposition of this tax shall not be construed to legalize or permit the operation of any machines or devices whatsoever, directly or indirectly, for the purpose of gambling. (11854 §2 12/15/70)

339.03 REGISTRATION REQUIRED; PAYMENT OF TAX

Every person, firm, corporation, or association owning, having or possessing any such machine or device now used or permitted to be used for profit shall, on or before May 16, 1980 (February 1 for years thereafter) register with Fiscal Management the said machine or device and shall, at the time of such registration, pay the tax thereon for the year 1980. Any person, firm, corporation or association who places in use any such machine or device after April 1 of any current tax year shall before such use register the said machine or device and pay the tax for the current year, prorated for the balance of the year by the number of quarters or portions or quarters therein remaining. (12415 §2 4/16/80)

339.04 CERTIFICATE ISSUANCE; DISPLAY

Each application for the registration of any such machine or device shall describe the location thereof at which the same is placed or permitted in use and Fiscal Management shall at the time of payment of the tax therefore issue a certificate for the calendar year for which the tax has been paid, which certificate shall be prominently displayed at the said location. It shall be unlawful to use or permit to be used for profit any such machine or device, at any location, for which the tax has not been paid, or for which a certificate is not displayed, and no certificate shall be displayed for any machine or device beyond the year for which it was so issued. (12415 §3 4/16/80)

339.05 DUTIES OF FISCAL MANAGEMENT

The Fiscal Management is hereby authorized and directed to make and keep such records, prepare such records, prepare such forms, and take such other measures as may be necessary or convenient to carry this Article into effect. (12415 §4 4/16/80)

339.06 PENALTY FOR LATE PAYMENT

If the tax hereby imposed shall not be paid on or before the date fixed for the payment thereof, there shall be added a penalty of five (5%) percent thereof, and the delinquent tax shall bear interest at the rate of one-half of one (½%) percent for each month or fraction thereof after the date herein required for payment of the same. (11854 §6 12/15/70)

339.07 COLLECTION OF DELINQUENT TAXES

Fiscal Management shall proceed for the collection of any delinquent taxes arising hereunder, together with penalties, costs and interest thereon, and shall take such action for that purpose as may be authorized by law. (12415 §5 4/16/80)

339.98 SEVERABILITY

The provisions of this Article are severable and, if any of its provisions or exceptions shall be held illegal, invalid or unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this Article. It is declared to be the legislative intent that this Article would have been adopted if such illegal, invalid or unconstitutional provisions or exemptions had not been included herein.

339.99 PENALTY

Any person, firm, corporation or association violating any of the provisions of this Article or failing to pay the tax on any machine or device and registering the same with Fiscal Management, or permitting the said machine or device to be used without displaying the required certificate shall, upon summary conviction before any District Justice in the County of Lehigh, be sentenced to pay a fine not to exceed the sum of Five Hundred (\$500.00) Dollars for any one offense, recoverable with costs and restitution, or imprisonment not exceeding ninety (90) days, if the amount of said fine and costs shall not be paid. Each day's violation shall constitute a separate offense. (12415 §6 4/6/80; 14402 §6 7/28/06)

**ARTICLE 341
LIMITED TAX AMNESTY PROGRAM**

- 341.01 Definitions
- 341.02 Establishment of Program
- 341.03 Required Payments
- 341.04 Amnesty Contingent on Compliance
- 341.05 Proceeding Relating to Amnesty Return Barred
- 341.06 Undisclosed Liabilities
- 341.07 Duties of Department
- 341.08 Method of Payment

CROSS REFERENCES

Local Tax Enabling Act - 53 P.S. §6901, *et seq.*

341.01 DEFINITIONS

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

1. **Amnesty period** shall mean a time period of 60 consecutive days established by the Mayor during the fiscal year beginning January 1, 2006, and ending December 31, 2006.
2. **Department** shall mean the City of Allentown Department of Administration and Finance.
3. **Eligible tax** shall include the City of Allentown , Occupation Privilege Tax, Business Privilege Tax and Mechanical Amusement Devices Tax.
4. **Program** shall mean the tax amnesty program as provided for in this article. (14402 §1 7/28/06)

341.02 ESTABLISHMENT OF PROGRAM

A. Establishment.

There is hereby established a tax amnesty program which, after establishment of the amnesty period, shall be administered by the Department of Administration and Finance of the City of Allentown.

B. Eligibility.

The amnesty program shall apply to any of the following:

1. A taxpayer who is delinquent on payment of an eligible tax as of December 31, 2005, including tax on returns not filed;
2. Tax liabilities according to City records that would be considered delinquent as of December 31, 2005, tax liabilities not reported, or not established as of December 31, 2005;

C. Ineligibility.

The amnesty program shall not be applicable to any of the following:

1. Any taxpayer who participated in any capacity in a previous tax amnesty program operated by the City of Allentown.
2. Any taxpayer who has been notified by the Department that any tax delinquency exists. (14402 §1 7/28/06)

341.03 REQUIRED PAYMENTS

A. Return due.

All taxpayers who participate in the program shall, during the amnesty period, meet with a Department employee and file a tax amnesty return in such form and containing such information as the Department shall require. A return shall be considered to be timely filed if it is postmarked during the amnesty period. The Department may waive the requirement for a face-to-face meeting.

B. Payment due.

All taxpayers who participate in the program shall make payment of all taxes due the City as of the effective date of this article. The City shall not collect any interest and penalties owed by a taxpayer who is in compliance with all other provisions of this article.

C. Other returns.

In addition to filing an amnesty tax return, a taxpayer must file complete tax returns for all periods for which the taxpayer had not filed returns.

D. Limitations.

The City shall not pursue an administrative or judicial proceeding against a taxpayer with respect to any tax that is disclosed on an amnesty return. (14402 §1 7/28/06)

341.04 AMNESTY CONTINGENT ON COMPLIANCE

Notwithstanding any other provision of this article, the City may assess and collect from a taxpayer all interest and penalties foregone through the tax amnesty program established in this article if, within five years after the end of the amnesty program, the taxpayer granted amnesty under this article becomes delinquent for three consecutive periods in payment or filing of taxes and the taxpayer has not contested such tax liability through a valid administrative or judicial appeal. (14402 §1 7/28/06)

341.05 PROCEEDING RELATING TO AMNESTY RETURN BARRED

Participation in the amnesty program is conditioned upon the taxpayers agreement that the right to protest or pursue an administrative or judicial proceeding with regard to returns filed under the amnesty program or to claim any refund of money paid under the amnesty program is barred. (14402 §1 7/28/06)

341.06 UNDISCLOSED LIABILITIES

Nothing in the article shall be construed to prohibit the City from instituting civil or criminal proceedings against any taxpayer with respect to any amount of tax that is not disclosed on the amnesty return. (14402 §1 7/28/06)

341.07 DUTIES OF DEPARTMENT

A. The Department shall develop a program to implement the provisions of this article.

B. The Department shall publicize the tax amnesty program to encourage public awareness of and participation in the program. The Department shall coordinate all publicity efforts and other actions taken to implement this article. (14402 §1 7/28/06)

341.08 METHOD OF PAYMENT

All tax payments under the amnesty program shall be made by cash, certified check or money order. (14402 §1 7/28/06)