

## BUSINESS REGULATION AND TAXATION CODE

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### CROSS REFERENCES

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to Act 511, has enacted the earned income tax for the 1971 calendar year, to continue thereafter unless amended or repealed.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. Council by ordinance 14839, passed December 1, 2010 pursuant to Act 511, has enacted the earned income tax for the 2011 calendar year, to continue thereafter unless amended or repealed.

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## 331 EARNED INCOME TAX

### 331.01 DEFINITIONS

**“Article XIII tax officer.”** The tax officer authorized by the City of Allentown to collect income taxes levied prior to January 1, 2012.

**“Business.”** An enterprise, activity, profession or any other undertaking of an unincorporated nature conducted for profit or ordinarily conducted for profit whether by a person, partnership, association or any other entity.

**“Business entity.”** A sole proprietorship, corporation, joint-stock association or company, partnership, limited partnership, limited liability company, association, business trust, syndicate or other commercial or professional activity organized under the laws of this Commonwealth or any other jurisdiction.

**“Certified public accountant”** or **“public accountant.”** A certified public accountant, public accountant or firm, as provided for in the act of May 26, 1947 (P.L. 318, No. 140), known as the CPA Law.

**“Claim.”** A written demand for payment made by a tax officer or tax collection district for income taxes collected by another tax officer or tax collection district.

**“Corporation.”** A corporation or joint-stock association organized under the laws of the United States, the Commonwealth of Pennsylvania or any other state, territory, foreign country or dependency. The term shall include an entity which is classified as a corporation for Federal income tax purposes.

**“Current year.”** The calendar year for which the tax is levied.

**“Department.”** The Department of Community and Economic Development of the Commonwealth.

**“Domicile.”** The place where a person lives and has a permanent home and to which the person has the intention of returning whenever absent. Actual residence is not necessarily domicile, for domicile is the fixed place of abode which, in the intention of the taxpayer, is permanent rather than transitory. Domicile is the voluntarily fixed place of habitation of a person, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some event occurs to induce the person to adopt some other permanent home. In the case of a business, domicile is that place considered as the center of business affairs and the place where its functions are discharged.

**“Earned income.”** The compensation as required to be reported to or as determined by the Department of Revenue under Section 303 of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971, and rules and regulations promulgated under that section. Employee business expenses as reported to or determined by the Department of Revenue under Article III of the Tax Reform Code of 1971 shall constitute allowable deductions in determining earned income. The term does not include offsets for business losses. The amount of any housing allowance provided to a member of the clergy shall not be taxable as earned income.

**“Earned income and net profits tax.”** The tax levied by the City of Allentown on earned income and net profits.

**“Employer.”** A person, business entity or other entity, employing one or more persons for a salary, wage, commission or other compensation. The term includes the Commonwealth, a political subdivision and an instrumentality or public authority of either. For purposes of penalties under this Ordinance, the term includes a corporate officer.

**“Income tax.”** Except as set forth in section 511(b) of the Local Tax Enabling Act, P.L. 1257, Act 511 of 1965, as amended (hereinafter the “LTEA”), 53 P.S. Section 6924.511 (b), an earned income and net profits tax, personal income tax or other tax that is assessed on the income of a taxpayer levied by the City of Allentown under the authority of this act or any other act.

**“Joint tax collection committee.”** An entity formed by two or more tax collection committees for the purpose of income tax collection in more than one tax collection district.

**“LTEA.”** The Pennsylvania Local Tax Enabling Act, P.L. 1257, Act 511 of 1965, as amended.

**“Net profits.”** The net income from the operation of a business, other than a corporation, as required to be reported to or as determined by the Department of Revenue under section 303 of the act of March 4, 1971 (P.L. 6, No. 2), 72 P.S. Section 7303, known as the Tax Reform Code of 1971, and rules and regulations promulgated under that section. The term does not include income under any of the following paragraphs:

- (1) Income which:
  - (i) is not paid for services provided; and
  - (ii) is in the nature of earnings from an investment.
- (2) Income which represents:
  - (i) any gain on the sale of farm machinery;
  - (ii) any gain on the sale of livestock held 12 months or more for draft, breeding or dairy purposes; or
  - (iii) any gain on the sale of other capital assets of a farm.

**“Nonresident.”** A person or business domiciled outside the City of Allentown levying the tax.

**“Nonresident tax.”** An income tax levied by the City of Allentown on nonresidents.

**“Official register.”** The part of the tax register that includes withholding tax rates as provided in section 511(a)(3) of the LTEA, 53 P.S. Section 6924.511 (a) (3).

**“Person.”** A natural person.

**“Preceding year.”** The calendar year before the current year.

**“Private agency.”** A business entity or person appointed as a tax officer by a tax collection committee.

**“Public agency.”** Any and all public bodies, authorities, agencies, instrumentalities, political subdivisions, intermediate units, councils, boards, commissions or similar governmental entities.

**“Resident.”** A person or business domiciled in the City of Allentown levying the tax.

**“Resident tax.”** An income tax levied by the City of Allentown.

**“Resident tax officer.”** The tax officer administering and collecting income taxes for the tax collection district in which a taxpayer is domiciled.

**“Succeeding year.”** The calendar year following the current year.

**“Tax bureau.”** A public nonprofit entity established for the administration and collection of taxes.

**“Tax collection committee.”** The committee established to govern the Lehigh Tax Collection District for the purpose of income tax collection. The term shall include a joint tax collection committee.

**“Tax collection district.”** The Lehigh Tax Collection District established under section 504 of the LTEA.

**“Tax officer.”** A political subdivision, public employee, tax bureau, county, except a county of the first class, or private agency which administers and collects income taxes for one or more tax collection districts. Unless otherwise specifically provided, for purposes of the obligations of an employer, the term shall mean the tax officer for the tax collection district within which the employer is located, or, if an employer maintains workplaces in more than one district, the tax officer for each such district with respect to employees principally employed therein.

**“Tax records.”** Tax returns, supporting schedules, correspondence with auditors or taxpayers, account books and other documents, including electronic records, obtained or created by the tax officer to administer or collect a tax under this Ordinance. The term includes documents required by section 509(e) of the LTEA, 53 P.S. Section 6924.509 (e). The term “electronic records” includes data and information inscribed on a tangible medium or stored in an electronic or other medium and which is retrievable in perceivable form.

**“Tax register.”** A database of all county, municipal and school tax rates available on the Internet as provided in section 511(a)(1) of the LTEA, 53 P.S. Section 6924.511 (a) (1).

**“Taxable income.”** Includes:

(1) In the case of an earned income and net profits tax, earned income and net profits.

(2) In the case of a personal income tax, income enumerated in section 303 of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971, 72 P.S. Section 7303, as reported to and determined by the Department of Revenue, subject to correction for fraud, evasion or error, as finally determined by the Commonwealth.

**“Taxpayer.”** A person or business required under this Ordinance to file a return of an income tax or to pay an income tax.

**“Withholding tax.”** An income tax levied by a political subdivision under the authority of this Ordinance or any other Ordinance, or any other tax levied by a municipality or school district for which employer withholding may be required under this Ordinance.

### **331.02 IMPOSITION OF TAX**

The tax levied under this Ordinance shall be applicable to earned income received and to net profits earned in the period beginning January 1, of the current year, and ending December 31, of the current year or for taxpayer fiscal years beginning in the current year, except that taxes imposed for the first time shall become effective from the date specified in the ordinance or resolution, and the tax shall continue in force on a calendar year or taxpayer fiscal year basis, without annual reenactment, unless the rate of the tax is subsequently changed. Changes in rate shall become effective on the date specified in the ordinance. A tax for general revenue purposes and special municipal tax is imposed on the following as set forth herein: (15171 §1 12/4/14)

A. Salaries, wages, commissions and other compensation earned on and after January 1, 2017, by individual residents of the City; (15171 §1 12/4/14; 15260 §1 12/14/15; 15336 §1 12/7/16)

B. Salaries, wages, commissions and other compensation earned on and after January 1, 2017, by individual nonresidents of the City in the City; (15171 §1 12/4/14; 15260 §1 12/14/15; 15336 §1 12/7/16)

C. Net profits, earned on and after January 1, 2017, by residents of the City; (15171 §1 12/4/14; 15260 §1 12/14/15; 15336 §1 12/7/16)

D. Net profits, earned on and after January 1, 2017, in the City by nonresidents of the City. (15171 §1 12/4/14; 15260 §1 12/14/15; 15336 §1 12/7/16)

The tax levied under subsections A herein above shall total one and nine hundred seventy-five thousandths percent (1.975%) and 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 total one and nine hundred seventy-five thousandths (1.975%) and shall relate to and be imposed on the net profits of any business, profession or other activity carried on by any person or persons. (15100 §1 12/9/13; 15171 §1 12/4/14; 15260 §1 12/14/15; 15336 §1 12/7/16)

The tax levied under subsection B herein above shall total one and twenty-eight hundredths percent (1.28%) and 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 subsection D herein above shall total one and twenty-eight hundredths percent (1.28%) and shall relate to and be imposed on the net profits of any business, profession or other activity carried on by any person or persons. (15171 §1 12/4/14)

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, 2017, and ending December 31, 2017 and for tax years thereafter with an effective date as provided by law. (15100 §1 12/9/13; 15171 §1 12/4/14; 15260 §1 12/14/15; 15336 §1 12/7/16)

### 331.03 DECLARATION AND PAYMENT OF TAX

#### 1. Application.

(a) Income taxes shall be applicable to taxable income earned or received based on the method of accounting used by the taxpayer in the period beginning January 1 of the current year and ending December 31 of the current year, except that taxes imposed for the first time and changes to existing tax rates shall become effective on January 1 or July 1, as specified in the Ordinance, and the tax shall continue in force on a calendar year or taxpayer fiscal year basis, without annual reenactment, unless the rate of the tax is subsequently changed.

(b) For a taxpayer whose fiscal year is not a calendar year, the tax officer shall establish deadlines for filing, reporting and payment of taxes which provide time periods equivalent to those provided for a calendar year taxpayer.

(c) **Partial domicile.** The taxable income subject to tax of a taxpayer who is domiciled in the City of Allentown for only a portion of the tax year shall be an amount equal to the taxpayer's taxable income multiplied by a fraction, the numerator of which is the number of calendar months during the tax year that the individual is domiciled in the City of Allentown and the denominator of which is 12. A taxpayer shall include in the numerator any calendar month during which the taxpayer is domiciled for more than half the calendar month. A day that a taxpayer's domicile changes shall be included as a day the individual is in the new domicile and not the old domicile. If the number of days in the calendar month in which the individual lived in the old and new domiciles are equal, the calendar month shall be included in calculating the number of months in the new domicile.

(d) **Declaration and payment.**--Except as provided in subsection (1) (b), taxpayers shall declare and pay income taxes as follows:

(i) Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the resident tax officer, a final return showing the amount of taxable income

received during the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of tax due on the taxable income, the amount of tax paid, the amount of tax that has been withheld under section 512 of the LTEA, 53 P.S. Section 6924.512, and the balance of tax due. All amounts reported shall be rounded to the nearest whole dollar. At the time of filing the final return, the taxpayer shall pay the resident tax officer the balance of the tax due or shall make demand for refund or credit in the case of overpayment.

(ii) Every taxpayer making net profits shall, by April 15 of the current year, make and file with the resident tax officer a declaration of the taxpayer's estimated net profits during the period beginning January 1 and ending December 31 of the current year, and shall pay to the resident tax officer in four equal quarterly installments the tax due on the estimated net profits. The first installment shall be paid at the time of filing the declaration, and the other installments shall be paid on or before June 15 of the current year, September 15 of the current year and January 15 of the succeeding year, respectively.

(iii) Any taxpayer who first anticipates any net profit after April 15 of the current year shall make and file the declaration required on or before June 15 of the current year, September 15 of the current year or December 31 of the current year, whichever date next follows the date on which the taxpayer first anticipates such net profit, and shall pay to the resident tax officer in equal installments the tax due on or before the quarterly payment dates that remain after the filing of the declaration.

(iv) Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the resident tax officer a final return showing the amount of net profits earned or received based on the method of accounting used by the taxpayer during the period beginning January 1 of the current year, and ending December 31 of the current year, the total amount of tax due on the net profits and the total amount of tax paid. At the time of filing the final return, the taxpayer shall pay to the resident tax officer the balance of tax due or shall make demand for refund or credit in the case of overpayment. Any taxpayer may, in lieu of paying the fourth quarterly installment of the estimated tax, elect to make and file with the resident tax officer on or before January 31 of the succeeding year, the final return.

(v) The Department, in consultation with the Department of Revenue, shall provide by regulation for the 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 required under this subsection anticipates additional net profits not previously declared or has overestimated anticipated net profits.

(vi) Every taxpayer who discontinues business prior to December 31 of the current year, shall, within 30 days after the discontinuance of business, file a final return as required under this paragraph and pay the tax due.

(vii) Every taxpayer who receives any other taxable income not subject to withholding under section 512 (3) of the LTEA, 53 P.S. Section 6924.512 (3), shall make and file with the resident tax officer a quarterly return on or before April 15 of the current year, June 15 of the current year, September 15 of the current year, and January 15 of the succeeding year, setting forth the aggregate amount of taxable income not subject to withholding by the taxpayer during the three month periods ending March 31 of the current year, June 30 of the current year, September 30 of the current year, and December 31 of the current year, respectively, and subject to income tax, together with such other information as the department may require. Every taxpayer filing a return shall, at the time of filing the return, pay to the resident tax officer the amount of income tax due. In accordance with criteria established by the Department, the tax officer may waive the quarterly return and payment of the income tax and permit a taxpayer to file the receipt of taxable income on the taxpayer's annual return and pay the income tax due on or before April 15 of the succeeding year.

### **331.04 WITHHOLDING AND REMITTANCE**

For taxable years commencing on and after January 1, 2012, or earlier taxable years if specified by a tax collection district, income taxes shall be withheld, remitted and reported as follows:

(1) Every employer having an office, factory, workshop, branch, warehouse, or other place of business within the tax collection district which employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, who has not previously registered, shall, within fifteen days after becoming an employer, register with the tax officer the name and address of the employer and such other information as the officer may require.

(2) An employer shall require each new employee to complete a certificate of residency form, which shall be an addendum to the Federal Employee's Withholding Allowance Certificate (Form W-4). An employer shall also require any employee who changes their address or domicile to complete a certificate of residency form. The certificate of residency form

shall provide information to help identify the political subdivision where an employee lives and works. Forms of certificate of residency may be obtained by an employer from the Department upon request by an employer.

(3) Every employer having an office, factory, workshop, branch, warehouse or other place of business within a tax collection district that employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, shall, at the time of payment, deduct from the compensation due each employee employed at such place of business the greater of the employee's resident tax or the employee's nonresident tax as released in the official register under section 511 of the LTEA, 53 P.S. Section 6924.511.

(4) Except as set forth in paragraph (5), within 30 days following the end of each calendar quarter, every employer shall file a quarterly return and pay the amount of income taxes deducted during the preceding calendar quarter to the tax officer for the place of employment of each employee. The form shall show the name, address and Social Security number of each employee, the compensation of the employee during the preceding three-month period, the income tax deducted from the employee, the political subdivision imposing the income tax upon the employee, the total compensation of all employees during the preceding calendar quarter, the total income tax deducted from the employees and paid with the return and any other information prescribed by the department.

(5) Notwithstanding paragraph (4), the provisions of this paragraph shall apply if an employer has more than one place of employment in more than one tax collection district. Within 30 days following the last day of each month, the employer may file the return required by paragraph (4) and pay the total amount of income taxes deducted from employees in all work locations during the preceding month to the tax officer for either the tax collection district in which the employer's payroll operations are located or as determined by the department. The return and income taxes deducted shall be filed and paid electronically. The employer must file a notice of intention to file combined returns and make combined payments with the tax officer for each place of employment at least one month before filing its first combined return or making its first combined payment. This paragraph shall not be construed to change the location of an employee's place of employment for purposes of nonresident tax liability.

(6) Any employer who, for two of the preceding four quarterly periods, has failed to deduct the proper income tax, or any part of the income tax, or has failed to pay over the proper amount of income tax as required by paragraph (3) to the tax collection district, may be required by the tax officer to file returns and pay the income tax monthly. In such cases, payments of income tax shall be made to the tax officer on or before the last day of the month succeeding the month for which the income tax was withheld.

(7) On or before February 28 of the succeeding year, every employer shall file with the tax officer where income taxes have been deducted and remitted pursuant to paragraph (3):

(a) An annual return showing, for the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of compensation paid, the total amount of income tax deducted, the total amount of income tax paid to the tax officer and any other information prescribed by the department.

(b) An individual withholding statement, which may be integrated with the Federal Wage and Tax Statement (Form W-2), for each employee employed during all or any part of the period beginning January 1 of the current year and ending December 31 of the current year, setting forth the address and Social Security number, the amount of compensation paid to the employee during the period, the amount of income tax deducted, the amount of income tax paid to the tax officer, the numerical code prescribed by the department representing the tax collection district where the payments required by paragraphs (4) and (5) were remitted and any other information required by the department. Every employer shall furnish one copy of the individual withholding statement to the employee for whom it is filed.

(8) Any employer who discontinues business prior to December 31 of the current year shall, within 30 days after the discontinuance of business, file returns and withholding statements required under this section and pay the income tax due.

(9) Except as otherwise provided in section 511 of the LTEA, 53 P.S. Section 6924.511, an employer who willfully or negligently fails or omits to make the deductions required by this subsection shall be liable for payment of income taxes which the employer was required to withhold to the extent that the income taxes have not been recovered from the employee. 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 income tax or from complying with the requirements for filing of declaration and returns.

### **331.05 POWERS AND DUTIES OF TAX OFFICER**

(1) **Tax Collection.**- In addition to any other power and duty conferred upon a tax officer in this Ordinance, it shall be the duty of the tax officer:

(a) To collect, reconcile, administer and enforce income taxes imposed on residents and nonresidents in the City of Allentown included in the tax collection district.

(b) To receive and distribute income taxes and to enforce withholding by employers located in the tax collection district.

(c) To receive income taxes distributed by tax officers for other tax collection districts.

(d) To distribute income taxes to the City of Allentown as required by section 513 of the LTEA, 53 P.S. Section 6924.513.

(e) To comply with all regulations adopted by the City of Allentown under this Ordinance and all resolutions, policies and procedures adopted by the tax collection committee.

(f) To invest all income taxes in the custody of the tax officer in authorized investments, subject to the approval of the tax collection committee. The tax officer shall observe the standard of care that would be observed by a prudent person dealing with property of another. For the purposes of this paragraph, the term "authorized investment" shall include all of the following:

(i) Short-term obligations of the United States Government or its agencies or instrumentalities which are backed by the full faith and credit of the United States or are rated in the highest category by a nationally recognized statistical rating organization.

(ii) Deposits in savings accounts, time deposits, share accounts or certificates of deposit of institutions, insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, or their successor agencies, to the extent that the accounts are insured and, for the amount above the insured maximum, that collateral, free from other liens, for the amount is pledged by the depository institution.

(iii) Deposits in investment pools established by the State Treasurer or established by local governments pursuant to 53 Pa.C.S. Ch. 23 Subch. A (relating to intergovernmental cooperation) and related statutes provided that the investment pools are rated in the highest category by a nationally recognized statistical rating organization.

(iv) Repurchase agreements which are fully collateralized by obligations of the United States Government or its agencies or instrumentalities, which are free from other liens and backed by the full faith and credit of the United States or are rated in the highest category by a nationally recognized statistical rating organization.

(g) To distribute income generated from investments authorized under paragraph (f) as determined by the tax collection committee.

(2) **Monthly reports.** The tax officer shall, within 20 days after the end of each month, provide a written report, on forms prescribed by the department, to the secretary of the tax collection committee and to the appointed tax collection committee delegates of the City of Allentown for which taxes were collected during the previous month. The report shall include a breakdown of all income taxes, income generated from investments under subsection (1)(f), penalties, costs and other money received, collected, expended and distributed for each political subdivision served by the tax officer and of all money distributed to tax officers for other tax collection districts.

(3) **Overpayments.** A tax officer shall refund, under 53 Pa.C.S. § 8425 (relating to refunds of overpayments) and § 8426 (relating to interest on overpayment), on petition of and proof by the taxpayer, income taxes paid in excess of income taxes rightfully due.

(4) **Bonds.** Prior to initiating any official duties, each tax officer shall give and acknowledge a bond to the appointing tax collection committee as follows:

(a) The tax collection committee shall fix the amount of the bond in an amount equal to the maximum amount of taxes that may be in the possession of the tax officer at any given time or an amount sufficient, in combination with fiscal controls, insurance and other risk management and loss prevention measures used by the tax collection district, to secure the financial responsibility of the tax officer in accordance with guidelines adopted by the department. The amount of the bond shall be revised annually by the tax collection committee based upon the annual examination required under section 505(h) of the LTEA, 53 P.S. Section 6924.515 (h).

(b) Each bond shall be joint and several, with one or more corporate sureties, which shall be surety companies authorized to do business in this Commonwealth and licensed by the Insurance Department.

(c) Each bond shall be conditioned upon the completion of all of the following by the tax officer's employees and appointees:

(i) The faithful execution of all duties required of the tax officer.

(ii) The just and faithful accounting or payment over of all monies and balances paid to, received or held by the tax officer by virtue of the office in accordance with law.

(iii) The delivery of all tax records or other official items held in right as the tax officer to the tax officer's successor in office.

(d) Each bond shall be taken in the name of the tax collection district and shall be for the use of the tax collection district appointing the tax officer, and for the use of any other political subdivision or tax collection district for which income taxes shall be collected or distributed in case of a breach of any conditions of the bond by the acts or neglect of the principal on the bond.

(e) The tax collection committee or any political subdivision may sue upon the bond for the payment or distribution of income taxes.

(f) Each bond shall contain the name of the surety company bound on the bond.

(g) The tax collection committee may, upon cause shown and due notice to the tax officer and the tax officer's sureties, require or allow the substitution or the addition of a surety company acceptable to the tax collection committee for the purpose of making the bond sufficient in amount, without releasing the sureties first approved from any accrued liability or previous action on the bond.

(h) The tax collection committee shall designate the custodian of the bond.

(i) The tax officer shall file copies of all bonds in effect with the City of Allentown.

(j) A copy of all bonds in effect shall be made available upon request and at no cost to the department or to a tax collection district or political subdivision seeking payment or distribution of income taxes authorized by this Ordinance.

(5) **Records.** It shall be the duty of the tax officer to keep a record showing the amount of income taxes received from each taxpayer or other tax officer, the date of receipt, the amount and date of all other monies received or distributed and any other information required by the department. All tax records shall be the property of the City of Allentown and the tax collection district in which the taxes were collected. The tax collection district and tax officer shall retain all tax records as directed by the tax collection committee and, when applicable, in accordance with retention and disposition schedules established by the Local Government Records Committee of the Pennsylvania Historical and Museum Commission under 53 Pa.C.S. Ch. 13 Subch. F (relating to records). Tax records under this subsection may be retained electronically as permitted by law.

(6) **Employer and taxpayer audits.**

(a) In order to verify the accuracy of any income tax declaration or return or, if no declaration or return was filed, to ascertain the income tax due, the tax officer and the tax officer's designated employees may examine or audit the records pertaining to income taxes due of any of the following:

(i) An employer;

(ii) A taxpayer; and/or

(iii) A person whom the tax officer reasonably believes to be an employer or taxpayer.

(b) The examination or audit conducted by the tax officer and the tax officer's designated employees shall conform to the requirements set forth in the Local Taxpayers Bill of Rights, 53 Pa.C.S. Section 8421 *et seq.*



(c) Every employer and taxpayer or other person whom the tax officer reasonably believes to be an employer or taxpayer shall provide to the tax officer and the tax officer's designated employees the means, facilities and opportunity for the examination and investigation authorized under paragraph (a).

(d) For purposes of this subsection, the term "records" shall include any books, papers and relevant Federal or State tax returns and accompanying schedules, or supporting documentation for any income taxable under this Ordinance.

**(7) Exchange of Information.**

(a) The tax officer shall ensure that the tax collection district enters into an agreement with the Department of Revenue for the exchange of information as necessary for the collection of income taxes.

(b) The Department of Revenue may enter into agreements with each tax collection district and shall establish procedures under which tax collection, filing and other taxpayer and locality information in its custody will be made available to tax officers for purposes of collection, reconciliation and enforcement no later than one year after the deadline for filing returns for the tax year in question.

**(8) Actions for collection of income taxes.--**The tax officer may file an action in the name of the City of Allentown for the recovery of income taxes due to the City of Allentown and unpaid. Nothing in this subsection shall affect the authority of the City of Allentown to file an action in its own name for collection of income taxes under this Ordinance. This subsection shall not be construed to limit a tax officer, a tax collection district or the City of Allentown from recovering delinquent income taxes by any other means provided by this Ordinance. Actions for collection of income taxes shall be subject to the following:

(a) Except as set forth in paragraph (b) or (d), an action brought to recover income taxes must be commenced within three years of the later of the date:

(i) the income taxes are due;

(ii) the declaration or return has been filed; or

(iii) of a redetermination of compensation or net profits by the Department of Revenue.

(b) If there is substantial understatement of income tax liability of 25% or more and there is no fraud, an action must be commenced within six years.

(c) Except as set forth in paragraph (d) (ii), (iii) or (iv), an action by a tax officer for recovery of an erroneous refund must be commenced as follows:

(i) Except as set forth in subparagraph (ii), within two years after making the refund.

(ii) If it appears that any part of the refund was induced by fraud or misrepresentation of material fact, within five years after making the refund.

(d) There is no limitation of action if any of the following apply:

(i) A taxpayer fails to file a declaration or return required under this Ordinance.

(ii) An examination of a declaration or return or of other evidence in the possession of the tax officer relating to the declaration or return reveals a fraudulent evasion of income taxes.

(iii) An employer has deducted income taxes under Section 512 of the LTEA, 53 P.S. Section 6924.512, and has failed to pay the amount deducted by the tax officer.

(iv) An employer has intentionally failed to make deductions required by this Ordinance.

**(9) Interest and penalties**

(a) Except as provided in paragraph (b), if the income tax is not paid when due, interest at the rate the taxpayer is required to pay to the Commonwealth under section 806 of the act of April 9, 1929 (P.L. 343, No. 176), known as The Fiscal Code, 72 P.S. Section 806, on the amount of the income tax, and an additional penalty of 1% of the amount of the unpaid income tax for each month or fraction of a month during which the income tax remains unpaid shall be added and collected but the amount shall not exceed 15% in the aggregate. Where an action is brought for the recovery of the income tax, the taxpayer liable for the income tax shall, in addition, be liable for the costs of collection, interest and penalties.

(b) The Department may establish conditions under which a tax officer, with the concurrence of the tax collection committee, may abate interest or penalties that would otherwise be imposed for the nonreporting or underreporting of income tax liabilities or for the nonpayment of income taxes previously imposed and due if the taxpayer voluntarily files delinquent returns and pays the income taxes in full.

(c) The provisions of paragraph (b) shall not affect or terminate any petitions, investigations, prosecutions or other proceedings pending under this Ordinance, or prevent the commencement or further prosecution of any proceedings by the proper authorities for violations of this Ordinance. No proceedings shall, however, be commenced on the basis of delinquent returns filed pursuant to subsection (8) if the returns are determined to be substantially true and correct and the income taxes are paid in full within the prescribed time.

**(10) Fines and penalties for violations.**

(a) Any taxpayer who fails, neglects or refuses to make any declaration or return required by this Ordinance, any employer who fails, neglects or refuses to register, keep or supply records or returns required by section 512 of the LTEA, 53 P.S. Section 6924.512, or to pay the income tax deducted from employees, or fails, neglects or refuses to deduct or withhold the income tax from employees, any taxpayer or employer who refuses to permit the tax officer appointed by a tax collection committee or an employee or agent of the tax officer to examine books, records and papers, and any taxpayer or employer who knowingly makes any incomplete, false or fraudulent return, or attempts to do anything whatsoever to avoid the full disclosure of the amount of income in order to avoid the payment of income taxes shall, upon conviction thereof, be sentenced to pay a fine of not more than \$2,500 for each offense and reasonable costs, and in default of payment of said fine and costs, to imprisonment for not more than six months.

(b) Any employer required under this Ordinance to collect, account for and distribute income taxes who willfully fails to collect or truthfully account for and distribute income taxes, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding \$25,000 or to imprisonment not exceeding two years, or both.

(c) The penalties imposed under this subsection shall be in addition to any other costs and penalties imposed by this Ordinance.

(d) The failure of any person to obtain forms required for making the declaration or returns required by this Ordinance shall not excuse the person from making the declaration or return.

(11) **Costs.** The tax officer shall be entitled to impose and collect the reasonable costs incurred to provide notices of delinquency or to implement similar procedures utilized to collect delinquent taxes from a taxpayer as approved by the tax collection committee. Reasonable costs collected may be retained by the tax officer. An itemized accounting of all costs collected shall be remitted to the tax collection committee on an annual basis.

(12) **Appeals and tax officer actions.** A determination of the tax officer relating to the assessment, collection, refund, withholding, remittance or distribution of income taxes may be appealed to the appeals board established by the tax collection committee by a taxpayer, employer, political subdivision or another tax collection district pursuant to the provisions of 53 PS § 6924.505(j). Pursuant to Section 505 (k) of Act 32, 53 P.S. Section 6924.515 (k), any dispute among the affected parties involving a 10% or greater deviation from taxes received in the previous tax year shall be subject to mandatory mediation in accordance with regulations and guidelines adopted by the Department. A dispute involving less than a 10% threshold may be the subject of voluntary mediation in accordance with regulations and guidelines adopted by the Department.

**(13) Confidentiality**

(a) **General Rule.** Any information gained by a tax officer or any employee or agent of a tax officer or of the tax collection committee as a result of any declarations, returns, investigations, hearings or verifications shall be confidential tax information.

(b) **Prohibited conduct.** It shall be unlawful, except for official purposes or as provided by law, for the Commonwealth, the City of Allentown, tax collection committee member, tax officer or employee or agent of a tax officer or tax collection committee to do any of the following:

- (i) Divulge or make known confidential tax information.
- (ii) Permit confidential tax information or a book containing an abstract or particulars of the abstract to be seen or examined by any person.
- (ii) Print, publish or otherwise make known any confidential tax information.

(b) **Penalties.** A person who violates subsection (b) commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$2,500 or to imprisonment for not more than one year, or both. If the offender is a member of the tax collection committee, the member shall be removed from the tax collection committee. If the offender is an employee of a tax collection committee or the City of Allentown the employee shall be discharged from employment. The offender shall pay the costs of prosecution.

### **331.06 COMPENSATION OF INCOME TAX OFFICER (NEW)**

The tax officer shall receive such compensation for his services and expenses as determined by the tax collection committee. At the discretion of the tax collection committee, the tax officer may be permitted to withhold the amount of the tax officer's compensation from income taxes collected if the monthly reports required by section 509(b) of the LTEA, submitted by the tax officer include an accounting for all compensation withheld.

### **SECTION 331.07 APPLICABILITY**

The tax imposed by this Ordinance shall not apply:

- (1) To any person as to whom it is beyond the legal power of the City of Allentown to impose the tax herein provided under the Constitution of the United States and the Constitution and laws of the Commonwealth of Pennsylvania.
- (2) To institutions or organizations operated for public, religious, educational, or charitable purposes, to institutions or organizations not organized or operated for private profit, or to trusts and foundations established for any of the said purposes.

This section shall not be construed to exempt any person who is an employer from the duty of collecting the tax source from his employees and paying the amount collected to the tax officer under the provisions of Section 4 of this Ordinance.

### **331.08 SEVERABILITY**

The provisions of this Ordinance are severable. If any sentence, clause, or section of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionally, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, or sections of this Ordinance. It is hereby declared to be the intent of the City of Allentown that this Ordinance would have been adopted has such unconstitutional, illegal, or invalid sentence, clause, or section not be included herein.

### **331.09 EFFECTIVE DATE, REPEALER, CONFLICT**

The provisions of this Ordinance shall take effect on January 1, 2012 and shall apply to earned income received or earned and net profits earned or made by a taxpayer during calendar year 2012 and each year thereafter without annual reenactment unless the rate of tax is subsequently changed. Changes in the rate of tax shall become effective on the date specified in the Ordinance.

Nothing contained herein shall be considered to repeal by implication or otherwise the provisions of any earned income tax Ordinance(s) previously enacted or adopted on as it may apply to earned income and net profits of taxpayers prior to the effective date of this Ordinance, which shall remain in full force and effect with respect to such earned income and net profits.

Subject to valid enactment of this Ordinance without appeal, all provisions of any prior Ordinance or parts thereof inconsistent herewith are hereby modified, amended, and repealed by the provisions of this Ordinance, which shall thereafter govern the taxation of such earned income and net profits.

This Ordinance is enacted under authority of the LTEA, and all provisions thereof that relate to a tax on earned income or net profits are incorporated into this Ordinance. Any future amendments to the LTEA that are required to be applied to a tax on earned income or net profits will automatically become part of this Ordinance upon the effective date of such amendment, without the need for formal amendment of this Ordinance, to the maximum extent allowed by 1 Pa.C.S.A. Sec. 1937.

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**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
- 333.09 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 900 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)

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## ARTICLE 335 – reserved, previously the Occupation Privilege Tax

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### 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)
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### 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 is 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)

**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
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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.

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**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 released 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 or 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.

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**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)

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## 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.*

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### 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)