

NORTHAMPTON TAX
COLLECTION COMMITTEE

Policies and Procedures for the Administration
of Local Earned Income and Net Profits Taxes in the
Northampton Tax Collection District

Adopted July 12, 2012

POLICIES AND PROCEDURES FOR THE ADMINISTRATION
OF LOCAL EARNED INCOME AND NET PROFITS TAXES
IN THE NORTHAMPTON TAX COLLECTION DISTRICT

Political subdivisions of the Northampton Tax Collection District (“TCD”) have adopted tax ordinances and resolutions (“Tax Ordinances and Resolutions”) imposing earned income and net profits taxes (together referred to as “income taxes”) on residents and non-residents of the TCD. The Tax Ordinances and Resolutions further provide that employers are required to withhold income taxes from an employee’s salary or other compensation, and remit them to the Tax Officer of the TCD.

The Northampton Tax Collection Committee (“TCC”) is the governing body for the TCD. The TCC adopts these Policies and Procedures for the administration of local income taxes in the TCD. All residents, non-residents, and employers in the TCD are subject to these Policies and Procedures. The Policies and Procedures are continuing ones, applicable until changed by the TCC. These Policies and Procedures shall supersede any contrary provision in the Tax Ordinances and Resolutions, except as to rate and subject of tax. The Policies and Procedures are intended to be consistent with the Pennsylvania Local Tax Enabling Act, and any regulations promulgated thereunder by the Pennsylvania Department of Community and Economic Development (the “Department”). To the extent there is irreconcilable conflict between these Policies and Procedures and state law or regulations, the provisions of state law or regulations shall govern, and shall be considered part of these Policies and Procedures in place of the conflicting provision.

The TCC has appointed a Tax Officer, Keystone Collections, to administer the collection and distribution of local income taxes in the TCD. The Tax Officer’s collection and distribution of local income taxes shall be in furtherance of, and consistent with, these Policies and Procedures.

Copies of the Tax Ordinances and Resolutions may be obtained from the TCC’s Administrative Director, the Tax Officer, or the offices of the political subdivision which adopted the applicable Tax Ordinance or Resolution.

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ARTICLE I
GENERAL PROVISIONS

SECTION 101. Definitions:

Unless the context clearly indicates a different meaning, the following words and phrases shall have the following meanings, which are intended to be consistent with words and phrases as defined in the LTEA, or the Tax Ordinances and Resolutions:

- “Appeals Board”: The board established by the Tax Collection Committee (TCC) to hear appeals relating to the determinations made by the Tax Officer relating to the assessment, collection, refund, withholding, remittance or distribution of income taxes.
- “Association”: A partnership, limited partnership, or any other unincorporated group of two or more persons.
- “Business”: An enterprise, activity, profession or any other undertaking of an unincorporated nature conducted for profit or ordinarily conducted for profit whether by a person, partnership, association or any other entity.
- “Compensation”: See “Earned Income.”
- “Corporation”: A corporation or joint stock association organized under the laws of the United States, the Commonwealth of Pennsylvania, or any other state, territory, foreign country or dependency. The term shall include an entity which is classified as a corporation for Federal income tax purposes.
- “Covenant Not to Compete”: An agreement whereby one party promises to compensate another to refrain from working in a certain profession or business, within a limited geographical region, for a certain period of time. It is a positive absence of activity in the form of an affirmative restraint and is therefore taxable. It is not comparable to income from the sale of good will, nor can the compensation received be considered investment income, for the payments are directly dependent upon the conduct of the person receiving the compensation.
- “Current Year”: The calendar year for which the tax is being levied.
- “Department”: The Department of Community and Economic Development of the Commonwealth.
- “Domicile”: The place where one lives and has his or her 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 businesses, 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 Pennsylvania 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/compensation.
- “Employee”:
A person employed by an "employer" on a salary, wage, commission or other compensation basis. Any person who renders services to another for financial consideration or its equivalent, under an express or implied contract, and who is under the control and direction of the latter and shall include temporary, provisional, casual, or part-time employment.
- “Employer”:
A person, 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 chapter, the term includes a corporate officer.
- “Income Tax”:
Except as set forth in section 511(b), an earned income and net profits tax, personal income tax or other that is assessed on the income of a taxpayer levied by a political subdivision under the authority of this act or any other act.

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

“Limited Liability Company” or “Company”:
An association that is a limited liability company organized and existing under Pa. Act 106 of 1994, known as the Limited Liability Company Act, or organized and existing under a statute of another State or commonwealth.

“Limited Partnership”:
A type of partnership comprised of one or more general partners who manage the business and who are personally liable for partnership debts, and one or more limited partners who take no part in running the business, and who incur no liability for partnership obligations beyond the contribution they invested in the partnership.

“Local taxing authority”:
A political subdivision of the Northampton TCD levying an income tax.

“LTEA” or the “Act”:
The Pennsylvania Local Tax Enabling Act, as amended, 53 P.s. §§6924.101, et seq.

“Multi Site Employer”:
An employer that has more than one place of employment in more than one tax collection district.

“Net Losses”:
When the costs and expenses incurred in the operation of a business, profession or other activity (except corporations) are greater than its income or profits, as hereinafter defined.

“Net Profits”:
The net income from the operation of a business, 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, 1071 (P.L.6, No.2), known as the Tax Reform Code of 1971, and rules and regulations promulgated under that section. The term does not 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.

“Non-Resident”:
A person, or business domiciled outside the political subdivision levying the tax.

“Overpayment”:
Any payment of tax which is determined in the manner provided by law not to be legally due.

“Person” or
“Individual”:
A natural person.

“Political Subdivision”:
A city of the second class, city of the second class A, city of the third class, borough, town, township of the first class, township of the second class, school district of the first class A, school district of the second class, school district of the third class, school district of the fourth class or municipal authority.

“Preceding Year”:
The calendar year before the current year.

“Resident”:
A person, or business domiciled in the political subdivision levying the tax.

“Succeeding Year”:
The calendar year following the current year.

“Tax”:
The earned income tax and/or net profits tax enacted under Act 511, P.L. 1257 known as “The Local Tax Enabling Act” as amended. Tax shall include interest, penalties and additions to tax, and shall further include the tax required to be withheld by an employer on earned income paid, unless a more limited meaning is disclosed by the context

“Tax Officer” or “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 Ordinances and Resolutions”:

Legislation adopted by the municipalities or school districts within the Northampton TCD imposing earned income and net profits taxes upon residents and non-residents of the TCD.

“Taxpayer”:

A person or business required under this act to file a return of an income tax or to pay an income tax.

“TCC” or “Northampton TCC”:

The Northampton Tax Collection Committee. The committee established to govern the TCD for the purpose of income tax collection.

“TCD” or Northampton TCD”:

The Northampton Tax Collection District.

“Underpayment”:

The amount or portion of any tax determined to be legally due in the manner provided by law for which payment or remittance has not been made.

“Voluntary payment”:

A payment of an income tax made pursuant to the free will of the taxpayer. The term does not include a payment made as a result of distraint or levy or pursuant to a legal proceeding in which the local taxing authority is seeking to collect its delinquent taxes or file a claim therefor.

ARTICLE II

IMPOSITION OF TAX

SECTION 201. Persons Subject to Tax:

The Tax Ordinances and Resolutions impose earned income and net profits taxes upon both residents and non-residents of the Northampton TCD, but only as provided in the applicable political subdivision Tax Ordinance or Resolution. The rate and subject of taxation is determined by the applicable political subdivision Tax Ordinance or Resolution. School Districts do not impose an earned income or net profits tax on non-residents.

A. Resident Taxation - A Resident of a political subdivision of the TCD who is employed or engaged in the operation of a business, profession, or other activity for income or profit, will be subject to a resident tax under the applicable Tax Ordinance or Resolution. The entire earned income and net profits received and/or earned by the resident is subject to this tax. Neither the

source of the earned income or net profits, nor the place where it is received and/or earned, exempts the resident from the tax. A taxpayer may, however, be entitled to a credit depending on where the income or net profits are earned, and other tax payments that are made.

B. Non-Resident Taxation – A non-resident of a political subdivision of the Northampton TCD, who is employed in a political subdivision of the TCD, or engaged in the operation of a business, profession, or other activity for income or profit in a political subdivision of the TCD, is subject to non-resident tax when authorized by an applicable political subdivision Tax Ordinance or Resolution. The entire earned income and net profits received and/or earned by the non-resident from employment, business, profession or other activity for income or profit in a political subdivision of the TCD is subject to this tax when authorized by an applicable Tax Ordinance or Resolution. A taxpayer may, however, be entitled to a credit depending on the taxpayer’s place of residence and other tax payments made by the taxpayer.

A persons with a federal immigration visa “Green Card”, who is employed for a wage or who endeavor to earn a net profit within a political subdivision of the TCD, shall be considered a *domiciliary* of the political subdivision (someone who is physically present in a place with the intent to remain there indefinitely), as the person in question has made this address or location their *domicile of choice* (the domicile that an individual has the power to select through intent and physical presence). Therefore, such person shall be liable for timely filing and paying the earned income tax and net profits tax when the person is physically present through their residing, or employment, or conducting a business within a political subdivision of the TCD.

Any person claiming non-residency status must provide proof of non-residency such as a passport with valid student or exchange visitor’s visa, driver’s license or other acceptable documentation. Any person claiming non-residency exemption status must provide proof of payment of local income taxes elsewhere for the concurrent time period, [unless the place of residency has no local income tax](#).

SECTION 202. Determining Place of Residence:

A person is a “resident” of a political subdivision when the person’s domicile is located in the political subdivision, as evidenced, among other things, by one or more of the following:

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

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

For a business, domicile shall be determined by the consideration of the relevant factors. In the case of the single location business, where all business activity occurs at that location, domicile is the physical location of that business. As an example, a convenience store with a single location within a single political subdivision would be determined to be domiciled in that specific political subdivision.

In the case of a single location business, with its permanent physical location where the payroll and other financial responsibilities are performed a single political subdivision, but the business's primary services are performed in one or more political subdivisions on a temporary basis, domicile would be the permanent physical location of that business. The fact that this business may establish temporary offices within the political subdivision where the services are performed does not establish domicile as these temporary locations are established for the special, limited purpose of directing the performance of services being provided. Such a business would not be required to remit the local income tax withheld from the employees performing the service to the tax officer of the political subdivision where the services are being performed. This does not relieve the employer from the requirement to withhold the income tax from those employees performing the services in the other political subdivision. Nor does this relieve the employer from the requirement to remit the income tax withheld from the employees performing the services in the other political subdivision to the tax officer for the political subdivision where the business maintains its permanent physical location.

The rules for determining an employee's work location for purposes of withholding of non-resident tax are different from rules concerning a business's place of domicile. Rules regarding an employee's work location are found in Section 203 below.

SECTION 203. Determining Work Location:

Determining the work location for non-resident taxation is important, as the employer is responsible for withholding at the highest rate of the resident or the non-resident tax. The non-resident tax rate is dependent on the employee's work location.

Use the following rules to determine an employee's work location:

1. If a taxpayer works for an extended period within the same location "X" then the location "X" is the work location.

2. If an employee is working temporarily at a PA facility for a period of time that encompasses a “reporting quarter”, then the facility site would be the **work location address** used to determine the EIT rate and corresponding PSD code.
3. If an individual works for an employer who has a central business location in PA, but the employee “floats” or is transferred daily, weekly or monthly between other business sites, then the **central or main employer business location** would be the work location address to determine the EIT rate and corresponding PSD code.
4. If a taxpayer reports to work out in the field, then the work location is the office where he or she receives instructions. For example, if an employee is hired by an employer and receives work orders or instructions at home in PA but physically reports to other business sites on a daily, weekly or monthly basis, then the **employee’s home address** should be used as both the home and work location address used to determine the EIT rates and corresponding PSD codes.
5. If a taxpayer works from home and only goes into the office on occasion, then the work location is the taxpayer’s home.
6. If the taxpayer is hired out of the union hall, then the work location is the union hall.
7. If a taxpayer works in multiple locations, and no single work location applies, then the taxpayer has multiple work locations. Professional athletes, entertainers and lecturers are a few examples of taxpayers who generally have multiple work locations. The taxpayer or their employer would withhold and remit tax payments based on the non-resident tax for each separate work location.

SECTION 204. What is Taxed:

A. The tax is imposed on earned income and net profits as defined in Section 101 of these Policies and Procedures. These items are subject to the tax whether a taxpayer received them directly or through an agent and whether received in or in kind.

B. The earned income and net profits tax shall be applicable to earned income received and net profits earned in the period beginning January 1 and ending December 31 of each year. The tax shall continue in force on a calendar year basis, without annual reenactment, unless the rate of tax is subsequently changed. Changes in the rate shall become effective on the date specified in the applicable Tax Ordinance or Resolution.

C. Trusts or Estates. Every estate or trust must pay the tax: (1) on net profits resulting from its engagement in any business, trade or other activity which would require the filing of a return by an individual or partnership, and (2) on income/compensation which would be subject to the tax if received by an individual or partnership.

SECTION 205. What is Included in Earned Income:

The statutory definition of “Earned Income” found in Section 101 of these Policies and Procedures.. For purposes of these Policies and Procedures “Compensation” is equivalent to “Earned Income”. The purpose of this section is to provide additional clarification of these definitions using various examples and explanations. These examples are not exhaustive nor are they intended either to modify the definitions or to limit what constitutes taxable income.

Examples of Earned Income are:

1. Gross Salaries.
2. Gross Wages, including Clergy pay.
3. Commissions.
4. Bonuses.
5. Drawing Accounts. (If amounts received as a drawing account exceed the salary or commissions earned, the tax is payable on the amounts received. If the employee subsequently repays to the employer any amounts not in fact earned, the tax shall be adjusted accordingly).
6. Incentive Payments. Payments received from employers or on behalf of employers, other than the usual compensation, for the purpose of inducing the employee to make a decision such as buying out an agreement or contract or moving to another location or accepting an early retirement or “Golden Parachute Settlements” are incentive payments and constitute taxable income. Incentive payments shall further include Stock Appreciation Rights (SAR) and/or phantom stock plan payments, where such payments are attributable to remuneration for services rendered and shall further include Auto manufacturers incentive payments, whether made directly to individual salespersons or through a dealership. Incentive payments are not to be considered “retirement” as referenced in Section 101, definition of Earned Income. If the payment/settlement of such sums is to be made in the future, such sums shall be taxed in the year they are received.
7. Tips and gratuities.
8. Fees. Include Administrator fee, Director fee, Executor fee, Expert witness fee, Fiduciary fee, Honoraria fee (if one profession is being a professional speaker), Trustee fee, fee received for service performed by taxpayer, fee received for decision made by taxpayer, even if it is not considered as self-employment income in the Internal Revenue Code. The fees referenced herein involve activity and participation on the part of the taxpayer.

9. Earnings Component of Stock Options Plans when the option is exercised. The “earnings component” is considered the difference between the stock option price and the fair market value of the stock at the time the option is exercised.
10. Benefits accruing from employment, including but not limited to, salary advances, annual leave, vacation, holiday, sickness, and severance or separation pay or benefits; excluding, however, benefits referred to in Section 205 and/or by Pa. Personal Income Tax Regulations.
11. Fair market value of non-cash fringe benefits or incentives accruing by virtue of employment recognized as taxable by the Pennsylvania Department of Revenue are also to be included as taxable earned income/compensation, except to the extent they are specifically excluded by section 207 and/or by Pa. Personal Income Tax Regulations.

Partial Listing of Taxable Incentive Items:

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

EXAMPLES:

- (1) Taxpayer A receives a salary of \$70,000. In addition to his salary, he exercised a nonqualified stock option as reported on Form W-2, of \$11,000, and was compensated for spouse's travel expenses in the amount of \$3,100. Therefore Taxpayer A's total taxable compensation is \$84,100.
- (2) Taxpayer B receives a salary of \$55,000, of which \$9,000 is deferred to a 401(k) plan for retirement. Her local taxable earned income/compensation is \$55,000. Any plan that serves to reduce gross taxable wages for federal tax purposes is not recognized as an exclusion for earned income/compensation tax purposes.

- (3) Taxpayer C is a minister, employed by a church, but he does not live in a church provided parsonage. Taxpayer C receives a salary of \$30,000, a housing allowance of \$10,000, and a car/travel expense allowance of \$3,000. The total taxable compensation is \$33,000. To claim unreimbursed business expenses, Taxpayer C can file a Pennsylvania Department of Revenue Schedule UE as a deduction from the taxable income/compensation. His housing allowance is not taxable.
 - (4) Taxpayer D has recently moved into the tax collection district. In addition to a salary of \$43,000, Taxpayer D received \$10,000 in moving expense payments from his employer. The total taxable compensation for Taxpayer D is \$53,000. Taxpayer D can file a Pa. Department of Revenue Schedule UE and deduct his actual moving expenses, but must enclose Schedule UE and any other supporting documentation when filing his local tax return.
12. Taxes assumed by the employer for the employee.
13. Regular wages received during a period of sickness or disability, except for wages or compensation received pursuant to the Pennsylvania Heart and Lung Act.
14. Employee contributions to deferred compensation plans and old age or retirement benefit programs, or cafeteria plans, since any plan that, through an employee's contribution, serves to reduce gross taxable wages for federal income tax purposes may not be recognized as an exclusion for local tax purposes. Examples: employee contribution/deferment under Sec. 403(b), Sec. 457(b) or Sec. 401(k) of the Internal Revenue Code.
15. Value of meals and lodging furnished by employers to domestics or other employees unless provided for the convenience of the employer on the employer's premises.
16. National Guard Drill Pay and Military Reserve Drill Pay or Inactive Duty for Training (IDT). Beginning January 1, 2012, the local earned income tax law will follow the state tax law for taxation of active military pay. This means that all active duty military pay earned by residents while serving in Pennsylvania will now be taxable at the local level. All Active military pay earned outside of Pennsylvania will remain exempt.
17. Scholarships, grants and fellowships, if services are rendered in connection therewith.
18. Stipends paid to Graduate Assistants.

19. Premature Profit Distributions not rolled into a qualified pension plan, individual retirement account or an annuity plan. Early distribution from retirement or pension plan, on the contributions not taxed when earned. This can include employer contributions, interest earned and employee contributions.
20. Premature withdrawal of “employer contributed portion of principal” which is actually received by the taxpayer from a regular IRA or from a ROTH IRA, to the extent the employer contributed portion of the principal being withdrawn was not previously taxed for the local earned income/compensation tax, unless the premature principal withdrawal is rolled over without passing to the taxpayer. The taxpayer should use the cost recovery method of accounting to determine the taxable portion of only the previously not taxed principal that the employer contributed.
21. Cash reimbursements made by an employer to the employee for dependent care, legal services or other personal services.
22. All other forms of compensation or remuneration for an employee's services rendered, whether in cash, property or services.
23. That portion of salary or wages that an employee contributes under a plan that provides for an employee’s election to contribute a portion of his/her salary or wages to receive a benefit in lieu of receiving the cash is taxable. The actual amount the employee elects not to receive in cash is the amount that is taxable and shall be included as gross salary or wages, as the employee has constructive control of the cash.

This amount is to be included in the W-2 total for local wages and the applicable earned income/compensation tax is to be withheld on this portion of the employee’s gross salary or wages.
24. Taxpayer payments realized in the form of “debt forgiveness” as payment for compensable services provided by a taxpayer.
25. Guaranteed payments to partners are to be included on a PA RK-1 form and are taxable.
26. Back pay awards (unless proven to constitute punitive damages) when the payment represents salary, wages, commissions, bonuses, incentive payments, fees, tips, or other compensation to which the employee is entitled for services rendered.
27. Severance or separation pay.
28. Distributions received prior to the taxpayer’s actual date of retirement, including but not limited to E.S.O.P., P.A.Y.S.O.P., 401K, 403B, cafeteria plans, etc. shall

be taxable on the employer's contributed portion, if the distribution is not rolled into an individual retirement account, annuity plan, or another qualified retirement plan.

29. Covenants not to compete which arise "within an employment relationship", such as when an employee signs a covenant not to compete with his or her employer if and when he or she is no longer employed. (Example: In such a case, the consideration for the agreement is usually provided at the time the agreement is executed, and often consists of the employment itself).
30. Neither the kind nor the rate of payment, nor the manner of employment, exempts an employee from the tax. Compensation received in the form of property shall be taxed at its fair market value at the time of receipt.

SECTION 206. What is Included in Net Profits:

The statutory definition of "Net Profits" is found in Section 101 of these Policies and Procedures. The purpose of this section is to provide additional clarification of this definition using various examples and explanations. These examples are not exhaustive nor are they intended either to modify the definition or to limit what constitutes taxable profits. Net profits shall be determined on a cash or accrual basis in accordance with accepted accounting principles and practices, but without deduction of taxes based on income.

Examples of "net profits" are:

1. The net profits of a business, profession or farm conducted by a sole proprietor.
2. The net profits of a business, profession or farm conducted as a partnership.
3. The net profits resulting from the operation of a Limited Liability Company (LLC) when:
 - 1) the LLC is treated as a partnership and the net profits are derived from the management or other active involvement, or
 - 2) the net profits are derived from an LLC with only one registered member.
4. The net profits from the management or active involvement in a Limited Partnership.
5. The net profits from the operation of hotels, motels, trailer camps, tourist homes, boarding houses, bed and breakfast establishments, mobile home parks and other similar businesses.
6. Net profits from the business of renting personal property.

7. Net profits from real estate rentals received in the course of a trade or business are taxable. Rental income is subject to this tax when the owner actively manages and supervises the property himself/herself or through agents or servants, by providing labor and service in connection with it. The furnishing of such labor and service further signifies activity and participation on the part of the owner and classifies him or her as conducting or carrying on a business as opposed to merely being an incidental owner of investment property.
8. “Covenants Not to Compete” involving taxpayers who are not employees. The promise not to compete and the subsequent undertaking of that effort pursuant to a business arrangement are sufficient to bring this within the purview of the Net Profits Tax. The fact that this is a negative covenant or rather, a promise not to do something, does not remove it from the realm of a business activity that is undertaken as part and parcel of a contract for a fee. The act of not competing is the consideration contributed to this contract by the taxpayer. It is consideration that has a business purpose, not a personal purpose. See *Rauch v. Tax Review Board of Philadelphia*, 708 A.2d 142 (1998).
9. All other net profits of business activities except any portion thereof resulting from items not taxed under the provisions of Section 207 hereof.
10. In determining a taxpayer’s net profits subject to tax under the provisions of the Resolutions and Ordinances, the net profit of each business activity is to be determined separately with reference only to the gross income and expenses of that business and without mixing the income of one activity with the expenses of another. Persons engaged in more than one business activity during the tax year may offset a loss in one business activity against the gain in another business activity. However, a loss from a non-taxable entity cannot be claimed against a taxable entity. The tax is imposed on the net profit of all business activity. A loss incurred from a profession, business activity or venture, regardless of the nature, may not be deducted from compensation, however a net loss may be deducted from the net profit of any other business activity.
11. Each resident partner or member of a non-resident partnership, association or other entity must pay the tax on his or her share of the net profits whether or not it is actually distributed to him or her.
12. Business “Bonus Depreciation” amounts are to be calculated for local purposes in the same manner as calculated for Pennsylvania personal income tax purposes (not according to federal income tax provisions).
13. In the calculations utilized to determine the correct net profits, the following items are to be included as they shall be considered to be part of the business income:
 - (a) Interest received on business checking and/or savings accounts.

- (b) Interest received on credit sales.
- (c) Interest received on withheld employee taxes.
- (d) Discounts received from Pennsylvania for timely remitting of sales taxes.
- (e) Damages, awards and settlements received when such damages, awards and settlements represent compensation for income lost.

SECTION 207. Exclusions from Tax:

The following are not considered earned income/net profits and are not subject to the tax; provided, however, any exclusion from tax would be finally determined by reference to applicable provisions of the LTEA and any standards incorporate by reference into the definitions of “Earned Income” or “Net Profits”:

1. Sickness, disability, or retirement benefits paid, other than regular wages as provided in Section 205.
2. Benefits paid under any public assistance, unemployment or worker's compensation legislation, including supplemental unemployment benefits, or strike pay.
3. Death benefits payments to an employee's beneficiary or estate, whether payable in a lump sum or otherwise.
4. Proceeds of Life Insurance policies or annuities.
5. Cash or property received as a gift, by will, or by statutes of descent and distribution.
6. Personal interest and dividends. (Interest earned on business accounts must be included in the calculations of net profits and may not be deducted).
7. Value of meals and lodging furnished by the employer to domestics or other employees for the convenience of the employer on the employer's premises.
8. Capital gains as reported on PA-40, Line 5.
9. Social Security benefits.
10. Veterans Administration allotments for subsistence or disability.
11. Income from pensions or old age and retirement benefit plans upon retirement.

12. Active duty military service pay and bonuses (after January 1, 2012, the active duty exemption will only apply to that income/compensation earned outside the boundaries of Pennsylvania).
13. Lottery winnings.
14. Cost of group term life insurance.
15. Individual Retirement Account (IRA) payments received upon retirement.
16. S Corporation income. (This exclusion does not include compensation paid or attributed to the officers of an S corporation as reasonable compensation for services rendered nor does it apply to any salary, wage, commission, fee, or other compensation received by an officer, director, stockholder, or employee of an S Corporation). Scott v. Hempfield Area School District, 168 Pa.Cmwlth. 588 (1994).
17. Profits applicable to the limited partners within a limited partnership entity when the partner is not a manager or an active participant.
18. Limited Liability Company (LLC) profits when the LLC is treated as a Corporation or when the income is derived from purely passive participation (passive investment) in the LLC.
19. A Schedule E loss will not offset earned income/compensation as Schedule E net profit will not be taxed.
20. Distributions from deferred compensation plans to the extent that such distributions represent a return of the taxpayer's own contribution upon which he originally paid the tax.
21. Damages for personal injuries (this exclusion does not include compensation for lost or future wages).
22. Payments received for child support and alimony.
23. Scholarships and fellowships awarded from detached generosity on the basis of financial need or academic achievement for the sole purpose of encouraging or allowing the recipient to further his or her educational development and not as compensation for past, present or future services. A scholarship or fellowship shall constitute earned income/compensation if the recipient must apply his or her skills and training to advance research, creative work or some other project or activity.

24. Prizes and awards unless the recipient must render substantial service as a condition to receiving, the prize or award.
25. The net profits derived from any institution or organization operated for public, religious, educational, or charitable purposes, organization of institutions not organized or private profit, and trusts or foundations established for any of these purposes shall be exempt from the tax on net profits.

The items listed and described within Section 207 are not to be listed as deductions against income, as they are a list of non-taxable income sources.

SECTION 208. Credits:

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

EXAMPLES:

- (1) Taxpayer G, a resident of a local taxing authority of the TCD is employed or self-employed in Philadelphia and pays the Philadelphia income tax. Taxpayer G is entitled to a credit of up to the current resident tax rate of the local taxing authority of the earning income and/or net profits taxed by the City of Philadelphia, towards his or her local earned income and or net profits tax due to the local taxing authority.

Since the City of Philadelphia is a “non-reciprocating” tax district that derives its power to levy a local income tax by virtue of the “Sterling ACT” at a rate higher than that allowed by the Local Tax Enabling Act, tax paid to Philadelphia cannot be applied as a credit to earned income and/or net profits earned outside the City of Philadelphia, not subject to the Philadelphia local income tax. The Tax Officer will not refund the Philadelphia local income tax paid in excess of the tax due to Taxpayer G’s resident municipality or School District.

The TCC has adopted Resolution No. 2012-2, included in these Policies and Procedures as Appendix “A”, which approves a Tax Credit Apportionment Policy applicable to the Philadelphia Tax Credit.

- (2) Taxpayer H, a resident of a local taxing authority of the TCD is employed or

self-employed in City A in the State of Delaware, which exacts a 1.3% on his or her earned income and/or net profits. Taxpayer H is entitled to a credit of up to 1% (the current tax rate for the local taxing authority of the earning income and/or net profits taxed by City A, Delaware.

(3) Taxpayer I, a resident of a local taxing authority of the TCD is a partner in a national CPA firm with offices in our taxing jurisdiction, plus Chicago, New York and New Orleans. Taxpayer I pays taxes on income earned in some of these cities. Taxpayer I may take credit towards the tax using the following method:

(a) Determine the income earned in each locality during the tax year.

\$ 50,000 in Northampton
5,000 in New York City
15,000 in Chicago
10,000 in New Orleans
\$ 80,000 gross income – all taxable locally

(b) Determine the maximum credit that can be taken for taxes paid to the other localities.

\$ 5,000 x 1% = \$ 50.00
15,000 x 1% = 150.00
10,000 x 1% = 100.00
\$ 300.00 maximum allowable credit that can be applied towards the tax.

(c) List the amount of tax paid to each locality.

\$ 200 to New York City
400 to Chicago
600 to New Orleans
\$ 1,200 total paid to other localities

(d) Subtract from the total the credit already taken on the PA State Return PA-40.

\$ 1,200 total paid to other localities
735 credit taken on PA-40
\$ 465 credit remaining

- The maximum credit that can be applied towards the tax is \$ 300 – see step (b) above. This amount (\$ 300) can be entered on our Final Individual Earned Income Tax Return as an out-of state/miscellaneous credit. If the credit remaining after step (d) had been less than \$ 300, then the lesser amount would be allowed as a credit against the tax.

Residents who take credit for taxes paid in other jurisdictions shall provide the Northampton Area EIT Office with an exact duplicate copy of the tax return as filed with the other taxing

jurisdictions, along with an exact duplicate copy of their Commonwealth of Pennsylvania Individual Income Tax Return (PA-40) and any additional documentation or schedules requested by the Tax Bureau.

Residents who pay taxes to “any foreign country” shall not be eligible for credits against the earned income/compensation and/or net profits tax as a result of Pennsylvania Supreme Court decision per the March 16, 1989 opinion by Justice McDermott in the O’Reilly case, in that it was the intention of the General Assembly to limit the application of the credit to taxes paid to other “States” of these United States; for absent clear words evincing a manifest intent we cannot presume that the General Assembly determines politics or their consequences based on the laws of nations or states beyond the borders of the United States.

SECTION 209. Deductions and Losses:

A. Deductions:

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

1. Ordinary, customary and accepted in the industry or occupation in which the taxpayer works.
2. Directly related to the taxpayer's present occupation as opposed to an occupation in which he plans to enter in the future.
3. Reasonable in amount and not lavish or excessive.
4. Necessary to enable the taxpayer to perform the duties of his present employment.
5. Actually paid by the taxpayer while performing the duties of the taxpayer’s employment.

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

Examples of expenses which may not be deducted from earned income/compensation include (but are not limited to): Travel (commuting) to and from work; meals and lodging unless the “away from home overnight test” is met; capital expenditures, moving, educational and office-in-home expenses except as allowed by the Pennsylvania Department of Revenue; and personal expenses such as medical, dental, life insurance premiums, contributions, interest, other taxes,

gifts and entertainment, dues to professional or fraternal societies, club memberships, subscriptions to publications, alimony, babysitting, books, casualty or theft losses, license fees, clothing suitable for everyday use, employee deferred compensation plan contributions, Federal Form 1040 tax credits and other taxes, individual retirement account (IRA) contributions, employee contributions to Simplified Employee Pension Plans (S.E.P.), Federal State or Local income taxes, gift estate or inheritance taxes and personal taxes, penalties or interest paid on delinquent income taxes, tools for use at home, Federal Form 1040 itemized deductions or the Local Service Tax.

Employees engaged in income producing activities separate and apart from their salary and wages may be permitted ordinary, necessary, actual and reasonable expenses. However, employees whose activities do not generate supplemental income shall not be permitted deductions for associated expenses.

Business expenses as documented on Pennsylvania Department of Revenue Schedule UE are permitted. If employee business or moving expenses are claimed, a copy of PA Schedule UE must be provided.

Should the taxpayer omit the required expense deduction forms or if the expense deduction forms are not fully completed, the expense deduction shall be systematically disallowed and denied without notification to the taxpayer.

B. Losses:

A loss from one business can be used to offset net profits from another business with the following exceptions:

- 1) Losses may be applied only in the year in which the loss was actually incurred, and may not be carried over to subsequent years.
- 2) Combined or net losses from business activities cannot offset earned income/compensation.
- 3) S Corporation losses may not offset earned income/compensation or net profits for any taxpayer.
- 4) One person's losses may not be deducted from his or her spouse's earnings.
- 5) Losses from items or activities that are excluded from the tax may not be used to offset earned income/compensation or net profits.

SECTION 210. Allocation/Apportionment of Earned Income and Net Profits Tax for Non-Residents:

GENERALLY – A non-resident working or self-employed within a political subdivision of the

TCD which levies a tax on non-residents is subject to a tax on all earned income and/or net profits for work done or services provided or originating in or directed from within the political subdivision.

A. Compensation Allocation: Apportionment of earned income tax to a non-resident's earnings generated from full time employment within a political subdivision of the TCD:

1. The employer shall withhold at the higher of the resident or non-resident rate, and remit the tax to the Tax Officer in accordance with Act 32 and these Policies and Procedures. Any difference between the tax actually imposed by the employee's resident taxing jurisdiction(s) and the amount of tax withheld will be retained by the municipality of the place of employment.
2. Non-residents working full-time in one or more of our taxing jurisdictions which tax non-residents, by virtue of a contract of employment, on a 5 day per week basis (Monday through Friday) may not exclude from his or her earned income/compensation, compensation for days which he or she is compensated but not required to work (i.e., Saturdays, Sundays, Holidays, vacations, etc.).

B. Non-residents working part-time in a political subdivision of the TCD.

1. Where a non-resident receives earned income for work done or services provided or originating in or directed from within a political subdivision of the TCD (the "First PSD") and additionally receives earned income for work done or services provided or originating in or directed from another political subdivision, only that income attributable to the First PSD shall be subject to the tax under the First PSD's Ordinance or Resolution.
2. Non-residents employed in the TCD are not allowed to use the "Days Present" method of apportioning income. Non-residents are taxed on total earned income from sources within a political subdivision of the TCD.

C. Allocation of Net Profits of Non-Residents.

1. Where the entire business is transacted within the a political subdivision of the TCD. A non-resident individual conducting any business, trade, profession, or other activity is subject to a non-resident tax on the entire net profits thereof if the entire business is conducted or carried on in a non-resident tax political subdivision of the TCD.
2. Where the sole store or office is in a political subdivision of the TCD. A non-resident who maintains his or her sole store or office in a political subdivision and transacts business both within and outside the political subdivision is not entitled to an allocation of his or her net profits. The business status, in such instances, is considered transacted as flowing through the political subdivision store or office is located.

EXAMPLE:

A non-resident surgeon who maintains an office within a political subdivision of the TCD and no other office outside the political subdivision would not be permitted to allocate the non-resident tax as to fees received for surgery actually performed outside the political subdivision. The same example would apply to an attorney who maintains his or her sole office within the political subdivision.

3. When a non-resident is entitled to an allocation of net profits. A non-resident who, in addition to having a place of business or office within a political subdivision of the TCD, also maintains a place of business or office outside the political subdivision shall be entitled to an allocation of his or her net profits. Such allocation is subject to the approval of the Tax Officer and shall only be considered if sufficient proof is provided that the place of business or office outside the political subdivision is an established, self-sustaining, bona fide branch office or store.

METHODS OF ALLOCATION:

Special Allocation Formula. Where it is impossible to allocate with certainty the net profits subject to a non-resident tax by reason of the absence of a place of business or office within the political subdivision, or because the non-resident taxpayer's records do not disclose a breakdown of the actual net profits earned within the political subdivision, or for any other reason the Tax Officer, upon request, may permit the use of a special allocation formula to effect a fair and proper apportionment so that only that portion of the net profits attributable to the a political subdivision is included in the measure of the tax. These factors are:

- (1) Real and Tangible Property Factor. The taxpayer computes a percentage on the basis of a fraction using the total average book value of all such property located within the political subdivision as the numerator, and the total average book value of all property located within and outside the political subdivision as the denominator.
- (2) Wages and Salaries Factor. A percentage is computed on the basis of a fraction using the total amount of wages and salaries paid to employees who work in, or from, or are attached to places of business located within the political subdivision as the numerator, and the total wages and salaries paid to all employees within and outside the political subdivision as the denominator.
- (3) Gross Receipts Factor. A percentage is computed on the basis of a fraction using as the numerator gross receipts from sales or services attributable to the political subdivision and as the denominator all gross receipts from sales or services made within and outside the political subdivision.
- (4) Averaging. The percentages obtained for the three factors described herein above are to be added together and the total thereof divided by three (3) to obtain the average of the three percentages. If the numerator and/or the denominator of any fraction are zero, the factor is deemed to be non-existent and shall be omitted in

calculating the average of the percentages.

EXAMPLE:

(1) <u>Average Real & Tangible Personal Property in the Taxing Jurisdiction</u>	<u>\$25,000</u>	
Average Real & Tangible Personal Property within and outside the Taxing Jurisdiction	\$100,000	25%
(2) <u>Wages & Salaries in Taxing Jurisdiction</u>	<u>\$10,000</u>	
Wages & Salaries within and outside the Taxing Jurisdiction	\$50,000	20%
(3) <u>Gross Receipts in Taxing Jurisdiction</u>	<u>\$75,000</u>	
Gross Receipts within and outside the Taxing Jurisdiction	\$300,000	25%
(4) $25\% + 20\% + 25\% = 70\%$ then 70% divided by 3 factors = $23\frac{1}{3}\%$		

Result: $23\frac{1}{3}\%$ would be the allocation percentage for taxable net profits.

ARTICLE III

COLLECTION AT THE SOURCE

SECTION 301. Employers Required to Withhold:

1. Every employer having an office, factory, workshop, branch, warehouse or other place of business located within the tax collection district and who employs one or more persons (other than domestic servants in a private home) for a salary, wage, commission, or other compensation, shall deduct from the compensation due each employee employed at such place of business the greater of the employee's resident tax or the employee's non-resident tax as released in the Official Register, and remit the tax to the Tax Officer.
2. Fiduciary Status - Employers who withhold earned income tax from employees, and the person responsible for the transmission of earned income tax withheld by a corporate employer, shall be a fiduciary charged with all the responsibilities of a fiduciary with respect to taxes withheld, and shall be subject to all duties imposed by law on fiduciaries, including criminal penalties for breach of duties.

3. Withholding by employers from musicians, entertainers, sports participants, clergy and domestics:

A. Musicians:

In the field of professional music there has arisen the practice of engaging musicians exclusively through a so-called “contractor.” The practice, which arose by prescription of the American Federation of Musicians and of local union regulations, enables the purchaser of music to deal with only one of the number of musicians required for a particular event or occasion.

“Contractor”: The term contractor means that individual through whom the purchaser and the musician(s) negotiate the contract of service and the performance thereof. The contractor may or may not perform actual music service under a contract which he or she has negotiated.

“Purchaser of Music”: The person, partnership, organization, or association for whom or which the musical services are to be performed or furnished, and who exercises an employer’s control over the conduct of the musicians. Where a contract for the purchase of music has been executed between a purchaser and a contractor, then the musicians shall be deemed to be the employee of the purchaser. The purchaser shall be the person responsible for the withholding, and remittance to the Tax Officer, of the tax from the wages paid to the musicians.

“Name Bands and Orchestras”: A name band or orchestra is one which is identified or known by a name and which holds itself out to the public as a permanent organization, and in addition has either (a) a fixed personnel or (b) the individual member musician has contracted for his or her services with the leader or owner of the band at a fixed salary, by term or by individual engagement, and over whom the purchaser of music has no direct control. The leader or owner of the band shall be responsible for withholding the tax from the wages paid to members of such name bands, and remitting the withheld tax to the Tax Officer.

B. Entertainers other than Musicians:

An entertainer other than a musician is usually engaged by a purchaser through a booking agent. The booking agent, once the contract of employment has been executed does not exercise an employer’s control over the entertainer.

The owner of a club, café, taproom, theatre or of any place which furnishes entertainment to the public or to its patrons, shall be deemed the person liable as an employer of entertainers. Such employer must deduct, and remit to the Tax Officer, the tax withheld from the earned income/compensation paid to the entertainer.

C. Promoters of Sporting Events:

Promoters of boxing exhibitions and other sporting events are required to withhold the tax from the earned income/compensation paid to the contestants engaged in the particular sporting event.

D. Minister, Rabbis and Clergymen:

Salaries paid by organized religious bodies to ministers, rabbis, clergymen, evangelists or other religious workers are taxable. The organized religious body shall withhold the tax upon such salaries and make remittance to the Tax Office.

E. Domestics:

The earned income/compensation received by domestics is taxable. The employer may, with the consent of the domestic, withhold the tax. Where the duties of domestics require them to live at their place of employment, board and lodging shall not be considered as wages or salary earned.

SECTION 302. Voluntary Withholding:

Any employer located outside the Commonwealth may voluntarily withhold the tax from employees who are residents of the tax collection district but are employed outside the tax collection district. Such employers assume the fiduciary responsibilities as outlined in Section 301(2).

SECTION 303. Registration of Employers:

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

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

SECTION 304. Certificate of Residency:

Employers 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 an employee who changes their address or domicile to complete a certificate of residency form. Upon request, certificate of residency forms shall be

provided by the Department. The certificate of residency form shall provide information to help identify the political subdivisions where an employee lives and works.

SECTION 305. Liability of Employee Taxpayer:

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

ARTICLE IV

PAYMENT OF TAX AND RETURNS

SECTION 401. Annual Returns of Taxpayers:

1. On or before April 15 of each year, every person who has taxable earned income or net profits shall file with the Tax Officer, on a form prescribed by the Department, an Annual Tax Return showing all earned income and net profits received and/or earned for the previous year, as required by the Tax Ordinances and Resolutions..
2. Persons residing in more than one tax collection district during the calendar year must file an Annual Tax Return with the Tax Officer for each district in which they resided during the year.
3. If a person receives an Annual Tax Return from the Tax Officer and has no earned income to report, the word “none” shall be entered on the Annual Tax Return, and the return shall be signed, dated, and returned to the Officer with an explanation (Military Service, Retired, Disability Income Only, Unemployment Compensation Only, S Corporation Only, Housewife, Unemployed, Student, or Deceased).
4. If net profits are received, the type of business, profession or activity shall be indicated on the Annual Tax Return and the amount of the profit shall be shown on the appropriate line of the return. If a net loss is incurred in the operation of a business activity, it may be offset against the net profit of other business activities. There shall also be attached to the Annual Tax Return a copy of the appropriate PA-40 and Pennsylvania C, E, F, UE, or RK-1) to substantiate profits and/or losses indicated.
5. The Annual Tax Return shall also show the taxpayer's name, Social Security number, address, place or places of employment or business, the amount of tax due, the amount of credit claimed for tax withheld by an employer (with a copy of the Earnings and Tax Statement showing the amount of tax withheld) and such other information as may be indicated on the return form or as may be required by the Tax Officer.

6. Every person subject to the tax shall file such return regardless of the fact that his or her wages may have been subject to withholding of the tax by his or her employer and regardless of whether or not any tax is due.
7. At the time of filing the annual return, the taxpayer shall pay any tax due. Total balances less than \$1.00 need not be paid.
8. The annual tax return must be signed and dated by the taxpayer in the space provided.
9. Each taxpayer shall report his or her earned income(s), net profits(s), taxes paid by the taxpayer, taxes withheld by the taxpayer's employer, and business expenses, individually, in the columns on the annual tax return headed by their social security number.
10. Taxpayers with S Corporation income shall file an Annual Tax Return and attach a copy of their Federal Tax Form 1120 S for audit purposes only. Except in situations where compensation is either paid or attributed to the officers of an S corporation as reasonable compensation for services rendered, S Corporation income is not taxed for local tax purposes. Likewise, S Corporation losses may not offset earned income/compensation or net profits.
11. Remittances shall be made payable to the tax collection district or Income Tax Officer.
12. Bad Checks - A \$29.00 charge will be levied each time a check is returned from the bank unpaid. Checks issued in violation of the Pennsylvania Crimes Code will be referred to appropriate authorities for possible criminal prosecution.
13. Fiscal Year Filers - When a return is made for a fiscal year, the return shall be filed within one hundred and five (105) days from the end of said fiscal year.

SECTION 402. Quarterly Returns and Payment of Tax:

1. Every taxpayer making net profits or who has earned any income that is not subject to withholding, but that is otherwise subject to the tax, shall make declarations, file quarter-annual estimated or actual tax returns, as the case may be, with the Tax Officer and pay the estimated or actual tax due, in accordance with provisions of the LTEA.

In February of 2012, the Commonwealth Agency charged with oversight and implementation of countywide tax collection consolidation, the Department of Community and Economic Development (Department), identified inconsistencies in the statutory filing timeframe. The Department accordingly issued a strong recommendation to the designated Tax Officers serving the 69 Commonwealth tax collection districts that the respective quarterly filing deadlines for withheld and self-reporting tax filing should maintain consistency. In response to the

Department's recommendation, the TCC has recognized for purposes of the 2012 tax year, a grace period whereby the Tax Officer shall not impose penalty and interest on quarter-annual returns filed, and corresponding tax payments made, by April 30, July 30 and October 31 of the current year and January 31 of the succeeding year.

2. Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the Tax Officer an annual tax return setting forth the amount of wages and net profit(s) earned during the period beginning January 1, and ending December 31, of the current year, the amount of tax due thereon, the amount of tax paid thereon, the balance of tax due, and all supporting documentation required with the filing of an annual tax return. At the time of filing the annual tax return, the taxpayer shall make payment of the tax due as shown thereon or shall make demand for refund or credit in the case of overpayment.
3. Every taxpayer is required to file an annual return, pursuant to SECTION 401, whether or not a declaration and/or quarterly installments have been filed and/or paid.

SECTION 403. Returns of Employers and Payments of Withheld Tax:

A. Employer Quarterly Returns - Within 30 days following the end of each calendar quarter, every employer in the TCD shall file a quarterly return on the Tax Officer's internet "Business Portal" or upon other forms provided by the Tax Officer and pay the amount of income taxes deducted during the preceding calendar quarter to the Tax Officer.

1. Employers shall transmit the required quarterly and/or annual employee withholding data in a manner acceptable to the Income Tax Officer.
2. Employers may utilize electronic media filings to transmit quarterly and/or annual employee withholding data provided the required information is furnished in a manner acceptable to the Income Tax Officer.
3. Any employer who for two of the preceding four quarterly periods has failed to deduct the proper tax, or any part thereof, or has failed to pay over the proper amount of tax to the Tax Officer, may be required by the Tax Officer to file the return and pay the tax monthly. In such cases, payments of tax shall be made to the Tax Officer on or before the last day of the month succeeding the month for which the tax was withheld.
4. Employers with 20 or more employees should file and remit payment to the Tax Officer in an approved electronic format.

B. Employer Annual Returns (Reconciliation). On or before February 28, of the succeeding year, every employer shall file with the Tax Officer on the approved forms or in approved electronic format:

- (1) An annual return showing the employee's name, address and identification number, the total number of withholding statements transmitted with the annual return, the total income tax withheld from wages during the year as shown by withholding tax statements and the total income tax withheld as reported on the quarterly returns. Any differences between the total income tax withheld from wages as shown on the withholding statements and the total income tax withheld as reported on the quarterly returns must be fully explained in an attached note.
- (2) 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 (PSD code) prescribed by the department representing the tax collection district where the payments were remitted.

C. Multi Site Employers. An employer who 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 required return 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 Pennsylvania Department of Community and Economic Development (DCED). 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 non-resident tax liability. To allow the Tax Officer to determine the best practices for collection and distribution, Multi-Site Employers intending to file a combined return must file with the Tax Officer where they intend to make a combined return, both a notice of intention to file the combined return and a listing of each tax collection district wherein the employer operates.

D. Withheld Taxes to Constitute a Trust: The local earned income taxes withheld from an employee's wages by an employer or business entity or a corporation shall be held in "trust" for the taxing jurisdiction and the Tax Officer, even in the event of bankruptcy. These withheld tax funds shall not be considered to be part of the "property of the bankrupt estate." These withheld taxes shall not be commingled in the employer's general cash or other operating accounts. The following shall apply:

- (1). One who collects the earned income/compensation tax as an agent for the taxing jurisdiction or the taxing jurisdiction's tax officer and fails to pay over such withheld taxes to the appointed collector for the taxing jurisdiction is a trustee ex maleficio.

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

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

EXAMPLE: A corporation which files an Employer's Quarterly Return of Tax Withheld From Employees, or the Forms W-2 documenting collections from employees, but does not remit the tax withheld in full to the Tax Officer shall be liable for the withheld taxes as a trustee through wrong doing. The controlling corporate officer is also liable for the tax as a trustee through wrong doing, to the extent that this officer has failed, permitted and/or directed the corporation not to remit the withheld tax.

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

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

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

- (4). The employer, the business, the corporation shall not characterize the tax withheld simply as creating a debtor-creditor relationship between the employer or business or corporation and the Tax Officer as collector for the TCD. The employer is the conduit for its employees' tax payments. Consequently, these taxes withheld are held in "express trust" or in "constructive trust" for the local taxing authority and its collector of these taxes.

E. Responsible Party. An officer or employee of a business entity including a corporation, who is responsible or has the duty to collect or withhold earned income tax and/or possesses actual or implied control over funds and tax accounts will be personally assessed for collected or withheld earned income tax that is not remitted. Generally, the income tax officer will issue an

assessment, or file a legal action, against the chief operating officer and/or financial officers of any entity, including corporations, if the facts of the particular case disclose that these individuals are involved in the day-to-day operation of the business entity and retain decision-making authority over financial matters. A responsible person need not be an officer of the entity. Managers whose duties include authority and control over financial decisions may likewise be held responsible.

F. Discontinuance of Business. Every employer who discontinues business prior to the completion of taxable year, shall, within thirty (30) days after the discontinuance of business, file and furnish the returns required by this section covering the periods between the last such return and the discontinuance of business, and remit to the Tax Officer all remaining tax due.

G. Failure to Withhold or Remit.

(1) The failure or omission of any employer to make the deductions required by this section shall not relieve any employee from the payment of the tax or from complying with the requirements of the Ordinances or Resolutions relating to the filing of Declarations and Returns.

(2) An employer who willfully or negligently fails or omits to make the required deductions shall be liable in accordance with the applicable law for payment of income taxes that the employer was required to withhold to the extent that the income taxes have not been recovered after reasonable attempts from the employee. Recovery of any tax owed from the employee shall not excuse the employer and officers of the employer from civil liabilities and criminal penalties for violation of the LTEA and the Tax Ordinances and Resolutions.

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

SECTION 404. Fiscal Years

A. Normally taxpayers shall use the calendar year method for reporting and paying the tax.

B. A taxpayer, by filing with the Tax Officer his written election to do so, may make and file returns and pay tax on the same Fiscal Year basis used for Federal Income Tax purposes. (See Section 401.3).

SECTION 405. Cash or Accrual Basis:

A. A taxpayer may calculate income on the cash or accrual basis as those terms are used for Pennsylvania Personal Income Tax purposes. The basis used by the taxpayer shall be the same as used by the taxpayer for the Pennsylvania Personal Income Tax.

B. Illustrations of Computations of Net Profits - As amplification of the definition contained in Section 405 A, but not a limitation thereof, the following information and requirements for the determination of net business profits are furnished:

- (1) "Cash Basis" Method - A taxpayer employing the cash basis of accounting includes in gross income all income subject to tax received during the year in cash or its equivalent. He or she deducts all disbursements made during the year in cash or its equivalent, provided deduction for such expenditures is authorized by law.
- (2) The use of the "Cash Basis" is mandatory where no books or records of account are maintained.
- (3) Items of income and expenditure which, as gross income and deduction, are elements in computing taxable income need not necessarily be in the form of cash. It is sufficient that such items, if otherwise properly included in the computation, can be valued in terms of money.

EXAMPLE: A taxpayer on the "Cash Basis" received shares of stock in payment of services. Assuming that the stock has a fair market value, the taxpayer has received the equivalent of cash to the extent of its value and that amount must be included as income.

- (4) If a return is made on the "Cash Basis", gross profit shall include receipts from commissions, fees and interest, as well as the gross profit or loss from sales of merchandise, chattels, goods, wares, securities, notes, choses-in-action and services.
- (5) "Accrual Basis" - If income is taken into consideration when earned, even though not received in cash, and expenses are considered as soon as incurred, whether paid or not, the system of accounting is said to be on the "Accrual Basis". These are the basic rules: (a) the right to receive an item of income (as distinguished from actual receipt) determines its inclusion in gross income under the "Accrual Basis"; and (b) a deduction cannot be accrued until an actual liability is incurred.

EXAMPLE: In September of last year, a contractor performed work for a customer. Payment for this work was not received until this year. If the taxpayer reports on the "Accrual Basis", the income will be included in last year's return (when earned). If the taxpayer reports on the "Cash Basis", the payment will be included in this year's return (when received).

C. A taxpayer engaged in more than one business activity may, in computing taxable income, use a different method for each trade or business activity.

D. Methods of accounting must clearly reflect income. No method of accounting is allowed unless it clearly reflects income. Thus, even if the taxpayer's accounts are kept and the return

made on the "Cash Basis", unusual cases may arise in which a payment made during the year is not deductible.

EXAMPLE: Commissions, fees and costs paid in one year by a taxpayer in securing a loan for ten or fifteen years covered by a mortgage on property to be leased are not deductible in full in the year of payment but should be spread over the period of the loan, even though the taxpayer's accounts are kept and the return made on the "Cash Basis."

E. Income or net profits shall be taxable in the year when they are actually or constructively received by the taxpayer. Income or net profits, although not actually reduced to a taxpayer's possession, will be deemed to be constructively received by the taxpayer in the tax year during which it is credited to the taxpayer's account, set apart for the taxpayer, or otherwise made available so that the taxpayer may draw upon it at any time. However, income will not be deemed to be constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions, such as those relating to age, death, disability, retirement or other similar factors.

SECTION 406. Penalty and Interest:

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, 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.

SECTION 407. Abatement of Interest and/or Penalty:

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

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

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

2. Abatement due to erroneous written advice by the Tax Officer:
 - (a) The Tax Officer may abate any portion of any penalty or excess interest attributable to erroneous advice furnished to the taxpayer in writing by an officer, employee or agent of the Tax Officer acting, in the officer's, employee's or agents official capacity if:
 - (1) the written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer, and
 - (2) the portion of the penalty or addition to tax or excess interest did not result from a failure by the taxpayer to provide adequate or accurate information.
3. This subsection shall not be construed to require the Tax Officer to provide written advice to the taxpayer.
4. All abatements shall be subject to the final approval of the TCC. No abatement shall be allowed in any circumstance in which the TCC has expressly determined that abatement is not proper, regardless of any contrary action taken by the Tax Officer. Further, the actions or omissions of the Tax Officer shall not constitute an excuse for abatement in any circumstance where the TCC has determined that abatement is improper.

SECTION 408. Extensions:

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

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

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

SECTION 409. Change in Taxable Income:

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

ARTICLE V

ADMINISTRATION AND ENFORCEMENT

SECTION 501. Tax Officer:

A. The Tax Officer is charged with the administration and enforcement of the Tax Ordinances and Resolutions and these Policies and Procedures, and is authorized to act on behalf of the TCD in such administrative and enforcement matters.

B. The Tax Officer shall keep a record showing the amount received by it from each person paying the tax and, if paid by such person in respect of another person, the name of such other person, and the date of receipt for seven (7) years.

C. In accordance with prior approval of the TCC, the Tax Officer has prepared a "DISCLOSURE STATEMENT" which sets forth the following in simple and non-technical terms:

- (1) The rights of a taxpayer and the obligation of the Tax Officer during an audit or an administrative review of the taxpayer's books and records.
- (2) The administrative and judicial procedures by which a taxpayer may appeal or seek review of any adverse decision of the Tax Officer.
- (3) The procedure for filing and processing refund claims and taxpayer complaints.
- (4) The enforcement procedures.

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

SECTION 502. Administrative Appeals:

A. The TCC has established an appeals board (the "Tax Appeals Board" or "Appeals Board"), comprised of a minimum of three delegates wherein 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 by a taxpayer, employer, political subdivision or another tax collection district.

B. The TCC has further adopted Rules and Regulations for the Tax Appeal Board, a copy of which is included as Appendix "B" to these Policies and Procedures. All appeals to the determinations of the Tax Officer shall be filed in accordance with the Rules and Regulations of the Tax Appeal Board.

SECTION 503. Examination of Books and Records of Taxpayers and Employers:

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

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

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

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

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

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

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

- (3) Print, publish or make known in any manner any confidential tax information.

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

SECTION 504. Records to be Kept by Taxpayers and Employers:

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

SECTION 505. Refunds and Credits:

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

B. A taxpayer who has paid an income tax to the Tax Officer may file a written request with the Officer for a refund or credit of the eligible tax. A request for refund shall be made within three years of the due date for filing the report as extended or one year after actual payment of the tax, whichever is later. If no report is required, the request shall be made within three years after the due date for payment of the income tax or within one year after actual payment of the income tax, whichever is later.

- (1) For purposes of this section, a tax return filed by the taxpayer with the Tax Officer showing an overpayment of tax shall be deemed to be written request for a cash refund unless otherwise indicated on the tax return.
- (2) A request for refund under this subsection shall not be considered a petition under SECTION 502 of these Policies and Procedures and shall not preclude a taxpayer from submitting a petition under SECTION 502 of these Policies and Procedures.

- (3) For amounts paid as a result of a notice asserting or informing the taxpayer of an underpayment, a written request for refund shall be filed with the Tax Officer within one year of payment.

C. All overpayments of tax due a taxpayer shall bear simple interest from the date of overpayment until the date of resolution.

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

- (a) No interest shall be allowed if an overpayment is refunded or applied against any other tax, interest or penalty due the tax collection district within 75 days after the last date prescribed for filing the report of tax liability or within 75 days after the date the tax return is filed or the report of liability due is filed, whichever is later.
- (b) Overpayments of interest and penalty shall not bear any interest.

D. The taxpayer's acceptance of the Tax Officer's check shall not prejudice any right of the taxpayer to claim any additional overpayment and interest thereon. Tender of a refund check by the Tax Officer shall be deemed to be acceptance of the check by the taxpayer for the purposes of this section.

E. As used in this SECTION 505 of these Policies and Procedures, the following words and phrases shall have the meanings given to them in this subsection.

- (1) "Date of overpayment" The later of the date paid or the date tax is deemed to have been overpaid as follows:
 - (a) Any tax actually deducted and withheld at the source shall be deemed to have been overpaid on the last day for filing the report for the tax period, determined without regard to any extension of time for filing.
 - (b) Any amount overpaid as estimated tax for the tax period shall be deemed to have been overpaid on the last day for filing the final report for the tax period, determined without regard to any extension of time for filing.
 - (c) An overpayment made before the last day prescribed for payment shall be deemed to have been paid on the last day.
 - (d) Any amount claimed to be overpaid with respect to which lawful administrative review or appellate procedure is initiated shall be deemed to have been overpaid 60 days

following the date of the initiation of the review or procedure.

- (e) Any amount shown not to be due on an amended income or earned income/compensation and net profits tax return shall be deemed to have been overpaid 60 days following the date of the filing of the amended income tax return.
- (2) "Date of Resolution" The date the overpayment is refunded or credited as follows:
- (1) For a cash refund, a date preceding the date of the Tax Officer's refund check by not more than 30 days.
 - (2) For a credit for an overpayment:
 - (a) The date of the Tax Officer's notice to the taxpayer of the determination of the credit; or
 - (b) The due date for payment of the tax against which the credit is applied, whichever first occurs. For a cash refund of a previously determined credit, interest shall be paid on the amount of the credit from a date 90 days after the filing of a request to convert the credit to a cash refund to a date preceding the date of the refund check by not more than 30 days whether or not the refund check is accepted by the taxpayer after tender.

SECTION 506. Fines and Penalties for Violations:

The LTEA provides fines and penalties for violations of provisions of the LTEA. A violator shall, upon conviction, be sentenced to pay a fine for each offense plus costs, and in default of payment thereof, upon conviction may be subject to imprisonment. Some of the violations that may result in such conviction are:

1. Failure, neglect, or refusal on the part of any person, to make and file any declaration or return required by the Tax Ordinances or Resolutions.
2. Failure, neglect, or refusal of any employer, required to withhold the tax under Article III of these Policies and Procedures, to register with the Tax Officer.
3. Failure, neglect, or refusal of any employer to deduct or withhold the tax from his or her employees.

4. Failure, neglect, or refusal to maintain or to reveal to the Tax Officer or its authorized representative, by any person, any partner of a partnership, or any officer of a corporation or association, books, records, papers (including Federal or State tax forms) relevant to the tax imposed hereunder.
5. Knowingly making any incomplete, false or fraudulent report or return or attempting to do any other thing to avoid full disclosure of net profits or earned income in order to avoid the payment of the whole or any part of the tax imposed by the Tax Ordinances or Resolutions.

The Tax Officer is authorized to file criminal complaints against, and prosecute, any person or employer who violates the provisions of the LTEA, or the Tax Ordinances and Resolutions.

SECTION 507. Concurrent Remedies:

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

SECTION 508. Failure to Receive Forms:

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

SECTION 509. Return Completion- General:

- A. In their preparation and filing of tax returns, taxpayers shall comply with the following:
 1. Each taxpayer shall account for all twelve (12) months of the calendar year as to their place of domicile and, in the case of more than one place of domicile, the months in each place of domicile and also provide the name of each Borough, Township, or City in which they were domiciled during the year.
 2. Amounts may be rounded off to the nearest whole dollar,
 3. All appropriate schedules (Federal and State tax forms and schedules, as well as taxpayer prepared worksheets referenced on Federal or State tax forms and schedules), W-2 forms, and 1099 forms shall be filed with the annual tax return. Annual tax returns received without the appropriate schedules, W-2 forms, or 1099 forms shall be considered incomplete and not a valid filing of the annual tax return.
 4. Taxpayers with earnings in another State who have paid tax on those earnings to the other State, and are applying for credit for tax paid to the other State, must provide a copy of the State tax return for that State, plus their Pennsylvania

personal income tax return. If the aforementioned State tax returns are not provided with the annual tax return, it will be considered as being incomplete and not a valid filing of the annual tax return.

5. Estimates of income and/ or expenses by the taxpayer are not acceptable unless approved by the Tax Officer.
6. Should the taxpayer omit the required expense deduction forms or if the expense deduction forms are not fully completed, the expense deductions shall be disallowed and systematically denied without notification to the taxpayer. In the case where the omission of the required expense deduction forms and the subsequent denial of the expense deduction results in a balance of tax due, the taxpayer will be notified of the balance due.
7. Taxpayers may not submit Federal Schedules in lieu of Pennsylvania Schedules C, E, F, G, I, UE, or RK-1 to the Tax Officer. Any return received without such PA schedules will be considered as an incomplete and invalid filing of the annual tax return.
8. Taxpayers may not submit Schedule E in lieu of the applicable K-1 forms to the Tax Officer. Annual tax returns received without the applicable K-1s will be considered as an incomplete and invalid filing of the annual tax return.
9. Annual tax returns received by the Tax Officer that are not signed and dated by the taxpayer filing the annual tax return will be considered as an incomplete and invalid filing of the annual tax return.
10. Where no annual tax return is filed and/or the tax is not paid in full on or before the date due for the filing of the return, the taxpayer shall be liable for a five dollar (\$5.00) late fee. Where an annual tax return is filed, but is considered as an incomplete and invalid filing because of the failure of a taxpayer to comply with the requirements of this Section 509 and the taxpayer fails to amend or otherwise complete the return so as to comply with this Section 509 on or before the date due for the filing of the return, the Tax Officer shall give the taxpayer written notice by United States mail of the reasons why the return is considered incomplete and invalid. The notice shall inform the taxpayer that he or she must amend or otherwise complete the return so as to comply with this Section 509, and file it with the Tax Officer. The late fee shall be paid by the taxpayer in addition to any tax balance due, including any fines, penalties, interest, and postage expenses, whether or not all earned income/compensation tax may have been withheld by his or her employer and whether or not there is any tax balance due. It is the responsibility of each taxpayer to carefully review his or her return for compliance with this Section 509 before filing.

The volume of returns filed with the Tax Officer prevents it from reviewing all returns for completeness within such time as will permit it to communicate with individual taxpayers that a

return is incomplete before date on which the return is due. The late fee shall be paid to the Tax Officer notwithstanding claims that the incomplete return was filed sufficiently in advance of the due date such that the taxpayer should or could have been notified that the return was incomplete for the purpose of amending or completing the return on or before the due date.

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

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

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

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

D. The Tax Officer shall notify the taxpayer in writing of the basis for any underpayment that the Tax Officer has determined to exist. The notification shall include:

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

SECTION 510. Who Must File:

A. Every person who was:

- (1) a resident of the TCD who was employed or engaged in the operation of a business, profession, or other activity for income or profit; or
- (2) all non-residents of the TCD who were employed in the TCD or engaged in the operation of a business, profession, or other activity for income or profit in the TCD for all or any part of the preceding calendar year, unless otherwise excused by law; shall file with the Tax Officer an annual tax return showing all earned income and net profits received and/or earned for the previous year.

B. Partial year residents are required to file an annual tax return for the applicable portion of the calendar year the taxpayer resided in the TCD.

C. Taxpayers must file an annual tax return even though they may have had earned income tax withheld by an employer.

D. Taxpayers on active military duty must file a tax return for the year in which they first entered the military on active duty and inform the Tax Officer of their active duty military status.

E. Even if a resident of the TCD had no earned income or net profits in the preceding year, the resident must file a final return when requested to do so by the Tax Officer. If the person has no earned income or net profits, the word "None" should be entered on the annual final return, and the return shall be signed, dated, and returned to the Tax Officer with an explanation such as, "Military Service", "Retired", "Disability Income Only", or "Unemployed". Residents who are retired or permanently disabled and have no taxable earned income or net profits may be coded on the Income Tax Officer's files so as not to receive an annual tax form. The resident must notify the Tax Officer in writing and must provide the effective date of retirement or permanent disability.

SECTION 511. Registration of Taxpayers:

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

SECTION 512. Delinquent Tax Filing and Collection Expense:

The LTEA permits a tax collection committee to impose those costs associated with the collection of delinquent and unpaid taxes upon the delinquent taxpayer or employer. The Northampton TCC has adopted a schedule of fees that may be imposed upon a delinquent

taxpayer or employer in connection with the collection of unpaid tax, interest or penalties, or the non-filing of a required tax return. The schedule of fees is attached in Appendix “C”.

SECTION 513. Partial Payment Plans for Delinquent Amounts:

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

1. The taxpayer must file an annual tax return for the current tax year and any delinquent tax years to be covered under the payment plan. These annual tax returns must include a copy of the taxpayer's PA-40 Tax Return and all supporting documentation as verification that all taxable income has been reported. In cases where a PA-40 tax Return cannot be produced, the taxpayer must complete a Federal Form 4506 “Request For Copies Of Tax Return” naming the Tax Officer as recipient of the requested copy. The costs to procure the Federal Tax Return and related information are the sole responsibility of the taxpayer.
2. Formal Payment Plans will not be approved for tax amounts less than \$200.00.
3. Formal Payment Plans will not be approved for more than 18 months. Payment amounts will be calculated by dividing the total tax liability by 18 and adding the applicable penalty, interest, fines, and costs to each payment.
4. A three dollar (\$3.00) handling fee shall be charged for any payment made on a delinquent account (whether or not such payment is pursuant to a formal agreement) which represents less than the full amount of tax, penalty, interest, and costs due.
5. Formal Payment Plans will be revoked and immediate civil action for collection of the tax due will be initiated if any of the aforementioned terms and conditions are not met.
6. The Tax Officer may terminate any prior agreement if:
 - (a) The information which the taxpayer provided to the Tax Officer prior to the date of the agreement was inaccurate or incomplete, or
 - (b) If the Tax Officer believes that collection of any income tax under the Formal Plan is in jeopardy.
7. If the Tax Officer finds that the financial condition of the taxpayer has significantly changed, the Tax Officer may alter, modify or terminate the agreement, but only if:

- (a) Notice of the Tax Officer's finding, is provided to the taxpayer no later than thirty (30) days prior to the date of such action; and
 - (b) The notice contains the reasons why the Tax Officer believes a change has occurred.
- 8. The Tax Officer may alter, modify or terminate a Formal Plan agreement if the taxpayer fails to do any of the following:
 - (a) Pay any installment at the time the installment is due under the agreement.
 - (b) Pay any other tax liability at the time the liability is due.
 - (c) Provide a financial condition update as requested by the Tax Officer.
- 9. Nothing in this subsection shall prevent a taxpayer from prepaying in whole or in part any income tax under any formal or informal agreement with the Tax Officer.

SECTION 514. Suit for Collection of Delinquent Amounts:

A. The Tax Officer may sue in the name of the TCD or its political subdivision for the recovery of taxes, penalties, interest, and late filing fees due and unpaid under the Ordinances or Resolutions.

B. Any suit brought to recover the tax, penalty, interest, and late filing fees imposed by the Ordinances or Resolutions shall begin within three years after such tax is due, or within three years after the declaration or return has been filed, whichever date is later; provided, however, that this limitation shall not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:

- (1) Where no declaration or return was filed by any person although a declaration or return was required to be filed by him or her under provisions of the LTEA, or the applicable Ordinance or Resolution, there shall be no limitation.
- (2) Where an examination of the declaration or return filed by any person, or of any other evidence relating to such declaration or return in the possession of the Tax Officer, reveals a fraudulent evasion of taxes, there shall be no limitation.
- (3) In the case of substantial understatement of tax liability of twenty-five percent or more and no fraud, suit shall be begun within six years.

- (4) Where any person has deducted taxes under the provisions of the LTEA, or applicable Ordinance or Resolution, and has failed to pay the amounts so deducted to the Tax Officer, or where any person has willfully failed or omitted to make the required deductions , there shall be no limitation.
- (5) This section shall not be construed to limit the Tax Officer from recovering delinquent taxes by any other means provided by the LTEA.

C. The Tax Officer may sue for recovery of an erroneous refund or credit provided such suit is begun two (2) years after making such refund or credit, except that such suit may be brought within five (5) years if it appears that any part of the refund or credit was induced by fraud or misrepresentation of material fact.

SECTION 515. Wage Attachments:

The Tax Officer shall demand, receive and collect from all corporations, political subdivisions, associations, companies, firms, or individuals, employing persons owing delinquent earned income taxes, or whose spouse owes delinquent earned income taxes, or having in possession unpaid commissions or earnings belonging to any person or persons owing delinquent earned income taxes, or whose spouse owes delinquent earned income taxes, upon the presentation of a written notice and demand certifying that the information contained therein is true and correct and containing the name of the taxable or the spouse thereof, and the amount of tax due. Upon presentation of such written notice and demand, it shall be the duty of any such corporation, political subdivision, association, company, firm or individual to deduct from the wages, commissions, or earnings of such individual employees, then owing or that shall within sixty (60) days thereafter become due or from any unpaid commissions or earnings of any such taxable in its or his or her possession, or that shall within sixty (60) days thereafter come into its or his or her possession, a sum sufficient to pay the respective amount of the delinquent earned income taxes, penalties, interest, late filing fees, and costs, shown upon written notice or demand, and to pay the same to the Tax Officer sixty (60) days after such notice shall have been given. No more than ten percent of the wages, commissions or earnings of the delinquent taxpayer or spouse thereof may be deducted at any one time for delinquent earned income taxes, penalties, interest and late filing fees and costs. Such corporation, political subdivision, association, firm or individual shall be entitled to deduct from the moneys collected from each employee the costs incurred from the extra bookkeeping necessary to record such transactions, not exceeding two percent of the amount of money so collected and paid over to the Tax Officer. Upon the failure of any such corporation, political subdivision, association, company, firm, or individual to deduct the amount of such taxes, penalties, interest, late filing fees, and costs or to pay the same over to the tax collector, less the cost of bookkeeping involved in such transaction, as herein provided, within the time required, such corporation, political subdivision, association, company, firm or individual shall forfeit and pay the amount of such tax, penalty, interest, late filing fee, and costs for each such taxable whose taxes, penalties, interest, late filing fees and costs are not withheld and paid over, or that are withheld and not paid over together with a penalty of ten percent added thereto, to be recovered by an action of assumpsit in a suit to be instituted by the Tax Officer, or by the effected local tax authorities of the TCD, as debts of like

amount are now by law recoverable, except that such person shall not have the benefit of any stay of execution or exemption law.

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

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

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

SECTION 516. Delinquent Tax Collection by Wage Attachment:

Whenever it shall become necessary for the Tax Officer to notify a delinquent taxpayer of an action for wage attachment, the following provisions will apply:

1. The first pre-wage attachment notice will be mailed by certified mail, with return receipt at the prevailing postage rate. The notice will include “postage expense” and authorized cost of collection amounts.
2. Should the delinquent taxpayer fail to sign for or claim the certified notice, a second notice will be mailed by certificate of mailing at the prevailing postage rate. This notice will also include the “postage expense” and authorized cost of collection amounts in the total amount due.
3. The postage amount will change if the postal rate fee for these services is changed.
4. If a wage attachment is subsequently prepared, the postage expense and authorized costs of collection will become a part of and shall be included in the wage attachment amount when the wage attachment is prepared and mailed to the employer.

SECTION 517. Tax 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 moneys received or distributed and any other information required by the department. All tax records shall be the property of the political subdivision and the TCD in which the taxes were collected. The TCD and Tax Officer shall retain all tax records as directed by the TCC 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.

SECTION 518. Indebtedness and Priority of Claims:

In bankruptcy cases the Priority Claim due to, or held by the Tax Officer shall survive the confirmation of any bankruptcy claim and shall not be subject to discharge of debt to the extent that such claims are not paid by the bankruptcy plan of the debtor. Amounts owing or which shall be determined to be due the Tax Officer shall be the amount of the Priority Claim due to the Tax Officer when a bankruptcy plan is filed with the Bankruptcy Court.

SECTION 519. Procedure When Taxation is not Defined in these Rules and Regulations:

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

SECTION 520. Amendment to Rules and Regulations:

The TCC may adopt additional, revised or modified Policies and Procedures for the TCD and the Tax Officer as the TCC deems necessary or beneficial for the proper administration and enforcement of the Tax Ordinances and Resolutions.