

GENERAL McLANE SCHOOL DISTRICT
 EARNED INCOME AND NET PROFITS TAX
 RULES AND REGULATIONS

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RULES AND REGULATIONS

PREFACE

IN ACCORDANCE WITH ACT 511, SECTION 13, PART V, SUBSECTION (c) THE FOLLOWING RULES AND REGULATIONS ARE ADOPTED TO GOVERN THE ADMINISTRATION OF THE EARNED INCOME TAX RESOLUTION ADOPTED BY THE GENERAL McLANE SCHOOL DISTRICT.

ARTICLE 1

GENERAL PROVISIONS

Section 100. Definitions.

“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 any unincorporated nature conducted for profit or ordinarily conducted for profit whether by a person, partnership, association, or any other entity.

“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.

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

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

“Earned Income” Salaries, wages, commissions, bonuses, incentive payments, fees, tips, and other compensation received by a person or his personal representative for services rendered, whether directly or through an agent, and whether in cash or in property; not including, however, wages or compensation paid to persons on active military service, periodic payments for sickness and disability other than regular wages received during a period of sickness, disability, or retirement or payments arising under workers’ compensation acts, occupational disease acts, and similar legislation or payments commonly recognized as old-age benefits, retirement pay, or pensions paid to persons retired from service after reaching a specific age or after a stated period of employment

or payments commonly known as public assistance, or unemployment compensation payments made by any governmental agency or payments to reimburse expenses or payments made by employers or labor unions for wage and salary supplemental programs, including, but not limited to, programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, social security and retirement.

“Employee” Any person who renders services to another for a financial consideration or its equivalent, under an express or implied contract, and who is under the control and direction of the latter and shall include temporary, provisional, casual, or part-time employment.

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

“Income Tax Officer or officer” Person, public employee, or private agency designated by the School District to collect and administer the tax on earned income and net profits.

“Independent Contractor” A person who, while performing services, is not under the direction and control of another person, as to the result to be accomplished by the work and as to the details and means by which that result is accomplished, such as authors, professional men, seamstresses, laundresses, tailors, and registered and practical nurses. Where the independent contractor is in the permanent or part-time employment of another, however, that contractor will be considered an employee of said employer for the purpose of withholding the tax due under the resolution.

“Local Tax Enabling Act” 53 P.S. §6901 et. seq., Act 511 of 1965 P.L. 1257 as amended.

“Net Profits” The net income from the operation of a business, profession, or other activity, except corporations, after provision for all costs and expenses incurred in the conduct thereof determined either on a cash or accrual basis in accordance with the accounting system used in such business, profession, or other activity, but without deduction of taxes based on income.

“Non-resident” A person, partnership, association, or other entity domiciled outside the School District.

“Person” Any individual, partnership, association, or other entity.

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

“Resident” A person, partnership, association, or other entity domiciled in the taxing district.

“Resolution” Resolution as adopted by the School District empowering the tax for a given year, or any part thereof and shall specifically include the School District’s Earned Income Tax Ordinance.

“School District” or “Taxing District” or “Taxing Jurisdiction” The General McLane School District, levying and assessing earned income and/or net profits taxes.

“State” Encompasses government entities other than the Commonwealth of Pennsylvania located within the United States, but does not include foreign countries, for purposes of crediting provisions.

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

“Taxing District” or “School District” or “Taxing Jurisdiction” The General McLane School District, levying and assessing earned income and/or net profits taxes.

“Taxpayer” A person, partnership, association, or other entity required to file a return of earned income or net profits, or to pay a tax thereon.

ARTICLE 2

IMPOSITION AND RATE OF TAX

Section 200. Tax on Earnings and Net Profits of Residents.

A. By virtue of the Resolutions adopted by the School District, a tax for general revenue purposes of one percent (1%) has been imposed on the following:

1. Salaries, wages, commissions, and other compensation earned by residents of the School District during the calendar year.
2. Net profits earned by residents of the School District during the calendar year.

B. The tax levied under 1. Above shall relate to and be imposed upon salaries, wages, commissions, and other compensation paid by an employer, or on his behalf, to a person who is employed by him.

The tax levied under 2. Above shall relate to and be imposed on the net profits of any business, profession, or other activity carried on by a person or owner or proprietors, either individually or in association with some other person or persons.

C. The entire taxable earnings of resident employees and the total net profits of residents from businesses, professions, and other activities are subject to this tax. Neither the source of the earnings or net profits, nor the place or places where the services were rendered exempt a resident from the tax.

D. At any time another political subdivision imposes a tax on the same items described in paragraph A above earned by a resident of the School District, then the tax levied by the School District shall be one-half the rate in paragraph A above without any action on the part of the School District.

Section 201. Exemption of Corporations.

Every corporation, including sub-chapter 5 corporations, shall be exempt from this tax.

COMMENT: "Pass-through" income received by a shareholder of an S corporation is not subject to local earned income tax under *Scott v. Hempfield Area School District*, 643 A.2d 1140, 164 Pa. Cmwlth. 588 (1994). Only wages, salaries or other compensation paid by the S corporation to a shareholder for services rendered by the shareholder may be taxed.

Section 202. Exemption of Non-Profit Organizations.

- A. The net profits of 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.
- B. This section shall not be construed to exempt any person who is an employer from the duty of withholding the tax at the source from his employees and paying the amount withheld to the income Tax Officer.

Section 203. Registration of Taxpayers.

Every resident of the School District who received, or anticipates that he will receive, taxable earned income in the form of earnings or net profits during the calendar year must register his name and residence address, his social security number, and the name and address of his place of employment or business with the Income Tax Officer. All residents will thereafter be responsible for reporting changes in their name, place of business, or place of employment or business to the Income Tax Officer.

ARTICLE 3

DECLARATION, AND PAYMENT OF TAX, ANNUAL AND QUARTERLY RETURNS

Section 300. Returns.

- A. On or before April 15, of the current year, every person who has earned taxable net profits, shall file with the income tax officer on a form prescribed by him, a declaration of his estimated net profits during the period beginning January 1, and ending December 31, of the current year, and pay to the officer in four equal quarterly installments the tax due thereon as follows: the first installment at the time of filing the declaration, and the other installments on or before June 15, of the current year, September 15, of the current year, and January 15 of the succeeding year, respectively.
- B. Any person who first anticipates any taxable net profits after April 15, of the current year, shall file a declaration hereinabove required on or before June 15, of the current year, September 15, of the current year, or December 31, of the current year, whichever of these

dates next follows the date on which the person first anticipates such net profit, and pay to the officer in equal installments the tax due thereon on or before the quarterly payment dates which remain after the filing of the declaration.

- C. Every person who is employed for a salary, wage, commission, or other compensation and who received any earned income not subject to the provisions relating to collection at source, shall make and file with the officer on a form prescribed by him, a quarterly return on or before April 30, of the current year, July 31, of the current year, October 31, of the current year, and January 31, of the succeeding year, setting forth the aggregate amount of earned income not subject to withholding by him during the three month periods ending March 31, of the current year, June 30, of the current year, September 30, of the current year, and December 31, of the current year, respectively, and subject to the tax, together with such other information as the officer may require. Every taxpayer making such returns shall, at the time of filing thereof pay to the officer the amount of tax shown as due thereon.
- D. Any taxpayer may, in lieu of paying the fourth quarterly installment of his estimated tax, elect to make and file with the officer on or before January 31, of the succeeding year, the final return as hereinabove required.
- E. The officer may provide by regulation for the making and filing of adjusted declarations of estimated net profits and earned income, and for the payments of the estimated tax in cases where a person who has filed the declaration hereinabove required anticipates additional net profits or earned income not previously declared or finds that he has over estimated his anticipated net profits or earned income.
- F. On or before April 15 of the succeeding year, every person who has earned taxable net profits or taxable earned income shall file with the Income Tax Officer, on a form prescribed by him, a final return showing all taxable income from January 1 to December 31, the total amount of tax due, the amount of tax withheld or paid, and the balance due. A return is required from every person subject to the tax regardless of the fact that his wages may have been subject to withholding of the tax by his employer, or regardless of whether or not any tax is due.
- G. When the return is made for a fiscal year different from the Income Tax Officer's calendar year, the return shall be filed within one hundred and five (105) days from the end of said fiscal year.
- H. At the time of filing the final return, the taxpayer shall pay the balance of the tax due or shall make demand for refund in the case of overpayment.
- I. Every taxpayer who discontinues business prior to the end of the calendar year shall within thirty (30) days after the discontinuance of business, file his final return as hereinabove required and pay the tax due, or demand refund in the case of overpayment. Where discontinuance of business is due to the absence of a personal representative, his heirs as designated by the Pennsylvania Intestate Act of 1947, as amended, or as hereafter amended

or supplemented, shall file his return within sixty (60) days after the taxpayer's death and pay the tax due or demand refund in the case of overpayment.

- J. If the amount of the net earned income as returned by any taxpayer under the Resolution is finally changed or corrected by the Federal Commissioner of Internal Revenue, or by any other agency or court of the United States, such taxpayer, within thirty (30) days after receipt of notice of such final change or correction shall make a report of same to the Income Tax Officer.
- K. Every person must file a final return, even though he expects to have no earnings; stating on the final return why he expects to have no earnings, such as retired, unemployed, housewife, etc.

NET PROFITS

Section 301. Computation of Net Profits.

The net profits of a business, trade, profession, or other activity shall be computed by subtracting from gross receipts the cost of goods sold and all ordinary and necessary expenses of doing business. Ordinarily no business deduction which is not permitted by the Federal Government for income tax purposes will be allowed.

Section 302. Taxable Entities.

Persons subject to a tax on net profits shall be the following:

- A. Individuals. Any individual engaged in a business, trade, profession, or other activity carried on for profit shall pay a tax on the net profits therefrom.
- B. Partnership, Small Business Corporations ("S" Corporations), and other Entities. A partnership, "S" corporation, association, or other entity engaged in carrying on a business, trade, profession, or other activity wholly or partly within a taxing jurisdiction shall be required to provide each partner or member with the appropriate information and/or schedule(s), (i.e. Schedule K-1), sufficient to inform the individual of his percentage of net profits, whether or not the net profits are actually distributed to the individual. The individual shall include the percentage of the net profits as income when determining his tax liability.

Each resident partner or member of a non-resident partnership, association, or other entity must pay the tax on his share of the net profits whether or not it is actually distributed to him.

- C. Trusts or Estates. Every estate or trust must pay the tax on:
 - 1. 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. Income which would be subject to the tax if received by an individual or partnership.

Section 303. Deductions from Gross Profits.

- A. All ordinary and necessary expenses of doing business, including reasonable compensation paid employees, shall be allowed. No deduction may be claimed for “salary” or withdrawals of a sole proprietor or of the partners or members of an unincorporated business or enterprise.
- B. A taxpayer who is a wage earner and runs a separate and distinct business may deduct a business loss against a salary, wage, commission or other earned compensation (O’Reilly v. Fox Chapel, 538 A.2d 581, 1989). However, a person who runs more than one business may not deduct a loss from one business against the net profits of another business (Aronson v. City of Pittsburgh, 485 A.2d 890, 1985).
- C. Rentals or other payments required to be made as a condition of the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity, shall be allowed as deductions.
- D. Interest on indebtedness incurred by the business, including mortgage interest (where proprietor also owns the building) and interest payments on loans made for use in the business, shall be allowed as deductions.
- E. Taxes directly connected with the operation of the business and on business property shall be allowed. However, the following taxes are not to be deducted.
 1. The tax under the Earned Income Tax Resolution.
 2. Any federal, state, or local taxes based upon income.
 3. Any gift, estate, or inheritance taxes.
 4. Taxes or assessments for local benefits or improvements to property which tend to appreciate the value thereof.
- F. Casualty Losses sustained during the taxable period and not fully compensated for by insurance or otherwise shall be allowed, if incurred in conducting the trade or business. subject to the tax. Where such a loss is claimed, there must be attached to the return a Schedule showing in detail the nature of the loss and of the property damaged, destroyed, or stolen, its cost or other valuation, the depreciation sustained prior to the time of the damage, destruction, or theft, the measure of loss, and any recovery through insurance or otherwise. In any event, the amount of the loss to be recognized shall not exceed that permitted for the purpose of the Federal Income Tax.
- G. Bad debts, in a reasonable amount, may be allowed in the year ascertained worthless and charged off; or, at the discretion of the Income Tax Officer (if the reserve method is used), a reasonable addition to the reserve may be claimed; but in no event shall the amount allowed exceed the amount recognized as a deduction for the purpose of the Federal Income Tax.

- H. Depreciation may be claimed and allowed in a reasonable amount for the exhaustion, wear and tear (including a reasonable allowance for obsolescence) of property used in the trade or business. The amount so allowed, however, may not exceed that recognized for the purpose of the Federal Income Tax. The Accelerated Recovery Systems (ACRS) is an acceptable method of depreciation.

Section 304. Items Not Deductible.

In computing net profits, no deduction shall in any case be allowed in respect to the following:

- A. Gifts of any kind, regardless of character or purposes of recipient or donor.
- B. Personal taxes, including taxes on real estate occupied as taxpayer's residence, personal property taxes, and per capita, occupation, and poll taxes.
- C. Premiums paid on any life insurance policy covering the life of any employee or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.
- D. Any amount otherwise allowable as a deduction which is allowable to one or more classes of income wholly exempt from the tax imposed herein.
- E. Any amount otherwise allowable as an ordinary and necessary expense of doing business (Section 303) which is allowable to interest wholly exempt from the tax imposed herein.
- F. Any loss resulting from an activity which in the case of a profit would not be considered earned income or a net profit taxable hereunder.
- G. Contributions by an individual to an Individual Retirement Account, a Keogh/HR 10 Plan, a tax deferred annuity, a 401(k) plan, or a Simplified Employee Pension Plan (SEP).
- H. If permitted on the tax form, spouses may file on one form but must calculate their tax liability separately. Joint filing, by combining income and losses, is not permitted.

Section 305. Net Losses.

A net loss in any year may not be carried over to any other year.

Section 306. Rentals and/or Sale of Real Estate.

The income received from the rental or sale of real estate by licensed Realtors in the Commonwealth of Pennsylvania, or persons in the business of renting real estate, shall be subject to the tax imposed herein. Rental income received by a person from real estate and from personal property leased with the real estate is not taxable and any loss incurred from such activity is not an allowable deduction against earned income.

EARNED INCOME

Section 307. Exclusions and Deductions from Earnings.

The following payments or benefits received by an individual shall not be subject to the tax:

- A. “Social Security Benefits, Retirement Pay and Pensions.”
- B. “Sick or Disability Benefits.” Periodical payments received by an individual under a sickness or disability insurance plan are not taxable. Where, however, an employee received a regular salary from his employer during a period of sickness or disability by virtue of his contract of employment, such compensation shall be fully taxed.
- C. “Benefits Arising Under Workers’ Compensation Acts, Occupational Disease Acts, and Similar Legislation.” Compensation received by employees under the provisions of workers’ compensation acts, occupational disease acts, or similar legislation together with any amount received as damages by suit or agreement on account of any injury or disease is not taxable.
- D. “Public Assistance or Unemployment Compensation Payments.” Payments made under any public assistance or unemployment compensation legislation are not taxable.
- E. “Active Military Service Pay.” Compensation paid by the United States to any person for active service in the armed forces of the United States is not taxable. This includes compensation paid to Reserve or National Guard for active duty service.
- F. “Bonuses Paid by United States Pennsylvania, or any other State, for Active Military Service.” Any bonus or additional compensation paid to a person by the United States, by the Commonwealth of Pennsylvania, or by any other state, for active service in the armed forces of the United States is not taxable.
- G. “Death Benefits.” Where an employer makes death benefit payments to the beneficiary of an employee or to his estate, whether payable in a lump sum or otherwise, such payments are not taxable.
- H. “Proceeds of Life Insurance Policies.” Proceeds of life insurance policies payable by reason of the death of an insured to his estate or to a beneficiary are not taxable.
- I. “Gifts and Bequests.” Cash or property received as a gift or under a will or under statutes of descent and distribution is not taxable.
- J. “Interest Received.” All forms of interest, e.g., on obligations of the United States or its possessions, the Commonwealth of Pennsylvania, or any political subdivision thereof, or on bank or postal savings accounts, mortgages, or loans received by an individual, are not taxable. However, where a person, other than a Corporation, is engaged in the business of

lending money at interest, e.g., loan or finance companies or private bankers, the net profits of such business are taxable.

- K. “Board and Lodging to Employees for Convenience of Employer.” The value of meals and lodging furnished to domestics or other employees by the employer for the employees convenience is not considered earned income and is not taxable.
- L. Income from stocks (including dividends or capital gains), trusts, and rental of dwellings, or the mere passive ownership and residing in a dwelling, is not taxable. Gain or loss from rental of real estate and from personal property leased with real estate is not taxable.
- M. “Contributions of an Employer to an Employee’s Trust or Annuity Plan and Compensation under a Deferred Payment Plan.” Contributions paid by an employer to or under a stock bonus, pension profit-sharing or annuity plan and compensation paid or accrued on account of any employee under a plan deferring the receipt of such compensation shall not be included in gross taxable earnings. Payments to reimburse expenses or payments made by employers or labor unions for wage and salary supplemental programs, including, but not limited to programs covering hospitalization, sickness, disability or death, strike benefits, social security and retirement are not taxable.
- N. “Employees’ Deductions for Expenses Directly Connected with Employment.” Employees who incur and pay expenses directly connected with the performance of their duties or services, may deduct such expenses in computing the amount subject to the tax provided:
 - 1. No reimbursement is made by the employer;
 - 2. They are reasonable and actual;
 - 3. They are recognized as deductions by Federal authorities for Federal income tax purposes.

Allowable expenses include but are not limited to the following:

- 1. Union dues;
- 2. Moving expenses allowed on PA UE-1;
- 3. Small tools required by, but not provided by Employer. A letter must be submitted on Employer’s letterhead and signed by an officer or owner of the Employer stating such tools were purchased by Employee;
- 4. Home office expenses, if expense qualifies as a home office deduction for federal income tax purposes. A letter must be submitted on Employer’s letterhead and signed by an officer or owner of Employer stating that Employee requires such home office;
- 5. Dues to professional clubs and societies and subscriptions to professional journals if related to job;
- 6. Work clothing and uniforms, if required by employer and are not suitable for everyday use or protective clothing required by an Employer;
- 7. License fees as required for a profession by the State;

8. Transportation costs. These are the costs of traveling from one place to another if directly attributable to the conduct of employment. They must be incurred while employee is not in a travel status. Commuting to and from work are not allowable;
9. Non-reimbursed automobile expenses incurred by salesmen, if business related;
10. Travel expenses, when incurred when the individual is away from home overnight as is required by Employer. The following may be included:
 - a. Air, rail and bus fares;
 - b. Operation and maintenance of automobile;
 - c. Taxi fares or other transportation, such as trips between airport or station and hotel, from one place of business to another, or from where Employee eats and sleeps to temporary work assignment;
 - d. Meals and lodging when away from home on business;
 - e. Tips that are incidental to any of the above expenses;

Section 308. Taxable Earnings of Employees.

- A. The items of compensation listed below are taxable. They are subject to the tax whether an employee received them directly or through an agent. Moreover, neither kind of rate of payment nor the manner of employment exempts an employee from the tax.
1. Salaries;
 2. Wages;
 3. Commissions;
 4. Bonuses;
 5. Drawing Accounts. If amounts received as a drawing account exceed the salaries 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 for services rendered including the fair market value of prizes and awards if given as part of an incentive program or the recipient was required to render any services as a condition of receiving the prize or award, and income from incentive stock options and phantom stock plans;
 7. Tips received;
 8. Fees, such as those received by a director or officer of a Corporation;
 9. Benefits accruing from employment;
 10. Taxes assumed by the employer;
 11. Fellowships. The portion, if any, of payment to a graduate student in a college or university as a fellowship or scholarship grant which represents compensation for services required to be performed by him, is taxable;
 12. Compensation received in the form of property (including non-cash fringe benefits such as group legal services, and dependent care benefits) shall be taxed at its fair market value at the time of receipt;
 13. Net Profits;
 14. Stipends;
 15. Severance pay;

16. Cafeteria or flexible benefit plans, to the extent that the Employee could have elected taxable benefits (e.g. - cash);
17. Payments made for covenants not to compete regardless of what form of agreement the payments arise from;
18. Annual leave income received after retirement;
19. Jury duty pay;
20. Sabbatical leave pay;
21. Vacation and holiday pay;
22. Sick pay representing regular wages. (See Section 307, paragraph B.);
23. Employee contributions to 401(k), 403(b), 457 and other types of deferred payment programs - 408(k), (6), 501(c) 18(d);
24. Educational assistance plans (EAP'S). All payments made to employees for educational costs are taxable unless the education expenses would qualify as an allowable business expense using the guidelines of the PA Personal Income Tax;
25. Premature retirement or other deferred payment plan distributions for reasons other than death or disability not rolled over into another federally qualified retirement plan to the extent that they do not represent a return of an employee's previously taxed contribution or passive income generated by the plan.

The School District follows the Pennsylvania Department of Revenue's Personal Income Tax Regulations regarding the taxability of distributions from employee deferred payment programs such as pensions (retirement plans), profit sharing, stock bonus, SEP, 401(k), 403(b) and 457 plans. If a distribution of this type is taxable at the state level, a portion of it may be taxable at the local level. A distribution of such a plan can be made up of three ingredients: 1) the employee's previously taxed contributions, 2) the employer's untaxed contributions, and 3) income generated by the plan's assets. The state taxes items 2 & 3 (employer contribution and income), whereas the School District only taxes item 2 (employer contributions).

Distributions of income generated by the plan are not taxable because they represent passive income (i.e., interest, dividends, capital gains). However, if the plan is unfunded any distribution is an employer's contribution and it is entirely taxable. The taxpayer must provide a statement from the plan administrator or trustee of the account showing what portion, if any, of the distribution is attributable to the employer's contribution.

ARTICLE 4

COLLECTION AT SOURCE

Section 400. Registration of Employers.

- A. Every person within the School District who employs one or more persons, other than domestic, on a salary, wage, commission or other compensation basis shall, within ten (10) days after becoming an employer, register with the Income Tax Officer his name and address and such other information as the Officer may require.

- B. Employers required to register and withhold include all employers who are residents of the School District, and all other employers who maintain a place of business therein.

Section 401. Employers Required to Withhold.

- A. Every person within the School District who employs one or more persons, other than domestics, on a salary, wage, commission or other compensation basis shall deduct at the time of payment thereof, that tax imposed by the Resolution upon residents of the School District regardless of where their services were rendered.
- B. An employer who is engaged in a business activity within and outside of the School District shall withhold the tax from resident employees who work for such employers, irrespective of the location of such business activity, even though the payroll records and place of payment are not in the School District.

Section 402. Withholding by Non-Resident Employers.

Non-resident employers engaged in a business, trade, profession or other activity located outside a taxing jurisdiction are not required to withhold the tax. Any such employer may, however, voluntarily agree with his employee to withhold the tax and transmit it and the appropriate forms to the Income Tax Officer.

Section 403. Drawing Accounts and Allowances for Expenses.

- A. If the amount received by an employee as a drawing account exceeds the salaries or ~ earned, the tax shall be withheld on the amount received. If the employee subsequently repays any amount not in fact earned, the tax shall be adjusted accordingly.
- B. An employer required to withhold the tax on compensation paid to an employee may, in determining the amount on which the tax is to be withheld:
 - 1. Ignore any amount allowed and paid by the employer to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his service, or;
 - 2. Deduct any amount necessarily incurred and expended by the employee in the actual performance of his services, for which expense he is not to be or has not been reimbursed by the employer; provided, that in either case, such expense must be - recognized by the Federal and State authorities for payroll tax purposes and the Federal authorities for income tax purposes, and the employee shall furnish the employer, before said deduction is made, an itemized statement of the expenses claimed.

Section 404. Withholding by Employers of Nurses, Musicians, Entertainers, Clergymen and Domestic.

A. Hospital Nurses -- Nurses in the permanent or part-time employ of hospitals, clinics, schools and institutions shall have their earned income tax withheld by their employers.

B. Musicians

1. 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 occasion.

2. Contractor -- The term "Contractor" means that individual musician through whom the purchaser and the musician negotiate the contract of service and the performance thereof.

The contractor may or may not perform actual musical service under a contract which he has negotiated.

3. 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.

4. When a contract for the purchase of music has been executed between a purchaser and a contractor, then the musician shall be deemed to be the employee of the purchaser.

The purchaser shall be the person responsible for withholding the tax from the wages paid to musicians.

5. 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 services with the leader or owner of the band at fixed salary, by term or by individual engagement, and over whom the purchaser 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.

C. 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 employee's control over the entertainer.

The owner of a club, cafe, bar, theater 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 the tax from the compensation paid to the entertainer.

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

- D. Lecturers and Speakers. The fees received by resident lecturers and speakers are subject to the earned income tax; the responsibility for the payment of the tax lies with the lecturer or speaker.
- E. Clergymen. The compensation received by ministers, rabbis and clergymen is taxable. This includes offerings and fees received for performing marriages, baptisms, funerals and other religious ceremonies; it DOES NOT include offerings made to the religious institution.

A housing allowance paid to clergy is not taxable income if:

1. Said clergyman uses the allowance in the year received to provide a home and/or pay utilities for a home which is provided; and
2. The church, congregation, and/or parish employing said clergy has officially and specifically designated that portion of his salary to be a housing allowance.

The value of a rented home provided by the church is not taxable income to the clergy. A housing allowance used by the clergyman to purchase a home may be excluded from taxable income to the extent it is applied to the down payment, mortgage payment, and/or interest, taxes, utilities, or costs of repair for the home.

- F. Domestic. The compensation received by domestics is taxable income.

Section 405. Liability of Employer.

- A. When an employer required to withhold tax does so withhold, the amount withheld shall constitute in the hands of such employer a trust fund held for the account of the taxing jurisdiction as beneficial owner thereof and the employee from whose compensation such tax was withheld shall be deemed to have paid such tax. The provisions of this paragraph are not applicable in the case of an employer who is not required to withhold tax.
- B. The failure of any employer to withhold the tax shall not relieve the employee from payment of such tax or from complying with the requirements relating to the filing of a final return.
- C. Every employer who willfully or negligently fails or omits to make the deductions required by Section 401 above shall be liable for payment of the taxes which he was

required to withhold to the extent that such taxes have not been recovered from the employee.

Section 406. Returns of Employers and Payment of Withheld Tax.

- A. Every person required to withhold tax (see Section 401 of these regulations) shall on or before April 30, July 31, October 31 and January 31, file a return on a form prescribed by the Income Tax Officer setting forth the taxes withheld, and pay to the Income Tax Officer the amount of tax withheld for the preceding quarterly periods ending March 31, June 30, September 30 and December 31.
- B. On or before February 28 following the close of the calendar year, every such employer shall file with the Income Tax Officer an annual return in respect of each employee who earned any taxable salary, wages, commissions or other compensation, setting forth the employee's name, political sub-division, and social security number, the amount of such taxable compensation, the amount of tax deducted and paid to the Income Tax Officer therefrom, and such other information as the Officer may require.
- C. On or before February 28 following the close of each succeeding calendar year, every employer shall furnish two copies of the individual return provided for by paragraph B above to the employee with respect to whom it is filed. These copies must also be furnished by employer to employee at the end of employment listing the district where the withheld tax was paid.
- D. Every employer who discontinues business prior to the completion of the fiscal year shall, within thirty (30) days after discontinuance of business, file the returns required by this section and transmit to the Income Tax Officer any tax remaining due. Where discontinuance of business is due to the death of the employer, his personal representative or, in the absence of a personal representative, his heirs as designated by the Pennsylvania Interstate Act of 1947, as amended or as hereafter amended or supplemented, shall within sixty (60) days after the death of the employer file his final return and pay the tax due.

ARTICLE 5

POWERS AND DUTIES OF OFFICER

Section 500. Income Tax Officer.

- A. All taxes, fines, and penalties imposed by the Resolution shall be paid to the income Tax Officer.
- B. The Income 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 such receipt.

Section 501. Administration and Enforcement, and Rules and Regulations.

- A. The Income Tax Officer is charged with the administration and enforcement of the Resolution. The Income Tax Officer is empowered subject to the approval by resolution of the School District to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of the provisions of the Resolution. This includes provision for re-examination and correction of returns and of payments alleged or found to be incorrect or as to which an overpayment is claimed or found to have occurred; and to prescribe forms necessary for the administration of the Resolution. Under the powers given him, these regulations are issued. Additional regulations and rulings will be issued from time to time as circumstances warrant.
- B. Any taxpayer or employer desiring a specific ruling should submit all of the pertinent facts in writing to the Income Tax Officer and request a determination of his liability for the tax.

Section 502. Examination of Books and Records of Taxpayers and Employers.

- A. The Income Tax Officer and agents designated by him are authorized to examine the books, papers, and records of any taxpayer or supposed taxpayer or of any employer or supposed employer in order to verify the accuracy of any return; or, if no return was filed, to ascertain the tax due. Every taxpayer or supposed taxpayer and every employer or supposed employer is required to give to the Income Tax Officer or to any agent so designated by him, the means, facilities, and opportunity for such examination and investigations as are authorized. In addition to all other powers, the Income Tax Officer shall have the power, on behalf of the taxing jurisdiction to examine any person under oath concerning salaries, wages, commissions, and other compensation returned, or which should have been returned for taxation hereunder; to compel the production of books, papers, and records, and the attendance of persons (whether as parties, principals, agents or witnesses) before him.
- B. The information obtained by the Income Tax Officer, his agent or any other official or agent of a taxing jurisdiction, as a result of any returns, investigation, hearings or verifications required or authorized, is confidential and shall not be disclosed to any person except for official use in connection with the administration or enforcement of the Resolution or as otherwise provided by law.
- C. Any person aggrieved by any action of the Income Tax Officer shall have the right of appeal as provided by law.

Section 503. Refunds.

- A. Where an employer has erroneously withheld and paid any amount of the tax for an employee, either the employer or the employee may file the claim for refund on behalf of the employee with the Income Tax Officer. The Income Tax Officer will pay claims for refund in proper cases. A written claim for refund must be filed by the taxpayer or the employer within three (3) years from the date of filing the final return for the taxpayers calendar year in which the overpayment was made, except that if the return was filed before

the due date, the three-year refund period shall begin on the last day prescribed for filing the return.

- B. The Income Tax Officer is authorized to accept payment of the amount of tax claimed by the School District in any case where any person disputes the validity or the amount of the tax claim. If it is thereafter judicially determined by a court of competent jurisdiction that there has been an overpayment to the Income Tax Officer, the amount of the overpayment will be refunded to the person who paid under protest, upon the filing of a claim for refund.

ARTICLE 6

ACCOUNTING RECORDS, ACCOUNTING PERIODS AND ACCOUNTING METHODS

Section 600. Accounting Records.

Taxpayers, employers, and others required to file returns under the provisions of the Resolution shall keep such records as will permit the filing of true and accurate returns, and such records shall be preserved for a period of not less than six (6) years.

Section 601. Accounting Periods.

Net profits shall be computed on the basis of either the calendar year or fiscal year, or at the option of the taxpayer, upon the basis of that portion or portions of his annual accounting period or periods corresponding with the method on which he files his Federal Income Tax return. The percentage of the total net profits of any fiscal year of a taxpayer beginning or ending within the period beginning July 1, and ending June 30, to which the tax imposed by the Resolution shall be applicable or shall be equal to the percentage of the number of days within the taxpayer's fiscal year.

Section 602. Accounting Methods.

- A. No uniform method of accounting is prescribed. However, the method of accounting used must be consistent with the method of accounting used in the filing of Federal Income Tax returns. Each taxpayer shall adopt such forms and methods of accounting as in his judgment are best suited for his purposes. The two principal methods of accounting are: (1) the cash receipts and disbursements methods, generally called the "cash basis" method; and (2) the "accrual basis" method.

- 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 deducts all disbursements made during the year in cash or its equivalent, provided deduction for such expenditures is authorized by law.

- a. The use of the cash basis is mandatory where no book or records of account are maintained.

- b. 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.
 - c. If the return is made on a “cash basis,” gross profits 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.
2. “Accrual Basis” method. 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 method; and
 - b. A deduction cannot be accrued until an actual liability is incurred.
- B. Generally speaking, under the cash basis method, income is taken into account when actually received, and expenses are deducted when amounts are actually paid out. Under the accrual method, income is taken into account when it is earned and expenses deducted as soon as incurred.
- C. A combination of accounting methods is permitted, provided it clearly reflects income. A taxpayer engaged in more than one business may, in computing taxable income, use a different method for each trade or business.
- 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 a cash basis, unusual cases may arise in which a payment made during the year is not deductible. Where necessary to properly reflect income, inventories must be used. The basis of pricing used for the purpose of the Federal Income Tax must be used in each instance.

Section 603. Fractional Parts of a Dollar.

In deducting and withholding the tax at the source and in the payment of any tax, any fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to one dollar.

Section 604. Payments or Refunds of less than a Dollar.

Any tax due of less than one dollar (\$1.00) may be disregarded. No refund of tax less than one dollar (\$1.00) shall be made.

ARTICLE 7

ENFORCEMENT PROCEEDINGS

Section 700. Suit for Collection of Tax.

- A. The Income Tax Officer may sue in the name of the School District for the recovery of taxes due and unpaid under the Resolution.
- B. Any suit brought to recover the tax imposed by the Resolution shall be begun within three (3) years after such tax is due or within three (3) years after the 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 return was filed by any person, although a return was required to be filed by him under provisions of the Resolution, there shall be no limitation.
 - 2. Where an examination of the return filed by any person, or of other evidence relating to such return in the possession of the Income 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 (25%) or more, and no fraud, suit shall be begun within six (6) years.
 - 4. Where any person has deducted taxes under the provisions of the Resolution, and has failed to pay the amounts so deducted to the Income Tax Officer, or where any person has willfully failed or omitted to make the deductions required by this section, there shall be no limitation.
 - 5. This section shall not be construed to limit the governing body from recovering delinquent taxes by other means provided by this act.
- C. The Income Tax Officer may sue for recovery of an erroneous refund provided such suit is begun two (2) years after making such refund, except that the suit may be brought within five (5) years if it appears that any part of the refund was induced by fraud or misrepresentative of a material fact.
- D. Where suit is brought for the recovery of any unpaid and/or delinquent earned income tax, the person liable therefor shall, in addition, be liable for the costs of collection and interest and penalties imposed.

Section 701. Wage Attachments.

- A. The Income Tax Officer shall demand, receive and collect from all corporations, political subdivisions, associations, companies, firms or individuals employing persons owing delinquent earned income 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 under oath or affirmation, containing the name of the taxpayer or the spouse thereof, and the amount of tax due. Upon the 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/her possession, or that shall within sixty (60) days thereafter come into its or his/her possession, a sum sufficient to pay the respective amount of the delinquent earned income taxes, and costs shown upon the written notice or demand, and to pay the same to the Income Tax Officer within sixty (60) days after such notice shall have been given. No more than ten percent (10%) 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 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 (2%) of the amount of money so collected and paid over to the Income Tax Officer. Upon the failure of any such corporation, political subdivision, association, company, firm or individual to deduct the amount of such taxes or to pay the same over to the Income Tax Officer, less the cost of bookkeeping involved in such transaction, or herein provided, within the time hereby required, such corporation, political subdivision, association, company, firm or individual shall forfeit and pay the amount of such tax for each such taxpayer whose taxes were not withheld and paid over, or that are withheld and not paid over together with a penalty of ten percent (10%) added thereto, to be recovered by an action of assumpsit in a suit to be instituted by the Income Tax Officer or by the proper authorities of the School District, as debts of like amount are now by law recoverable, except that such person shall not have the benefit of any stay of execution or exemption law. The Income Tax Officer shall not proceed against a spouse or his employer until he has pursued collection remedies against the delinquent taxpayer and his employer under this section.
- B. 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 (60) days thereafter become due to any employee, a sum sufficient to pay the respective amount of the delinquent earned income tax and costs shown on the notice; the same shall be paid to the Income Tax Officer within sixty (60) days after such notice is given.

- C. The Income Tax Officer shall, at least fifteen days prior to the presentation of written notice and demand in Section 601 (A) or (B), notify the delinquent taxpayer by registered or certified mail that said written notice and demand shall be presented to his employer unless said tax is paid. The return receipt card for said mailing shall be marked to the addressee only and the costs for said notification shall be added to the costs of collection.

ARTICLE 8

FINES AND PENALTIES FOR VIOLATION OF ORDINANCE

Section 800. Interest.

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

Section 801. Bad Checks.

If any check received in payment of taxes, fines or penalties is returned unpaid by the bank, there shall be added to the amount due, a minimum of twenty dollars (\$20.00) plus additional costs.

Section 802. Fines and Penalties for Violation of Ordinances or Resolutions.

- A. Any person who fails, neglects, or refuses to make a return as required by the Resolution, any employer who fails, neglects or refuses to register or to pay the tax deducted from his employees, or fails, neglects or refuses to deduct or withhold the tax from his employees, any person who refuses to permit the Income Tax Officer or any agent designated by them to examine his books, records, and papers, and any person who knowingly makes any incomplete, false or fraudulent return, or attempts to do anything whatsoever to avoid the full disclosure of the amount of his net profits or earned income in order to avoid the payment of the whole or any part of the tax imposed by the Resolution, shall upon conviction thereof before any justice of the peace, alderman or magistrate, or court of competent jurisdiction in the county or counties in which the political subdivision imposing the tax is located, be sentenced to pay a fine of not more than five hundred dollars (\$500.00) for each offense, and costs, and, in default of payment of said fine and costs to be imprisoned for a period not exceeding thirty (30) days.
- B. Any person who divulges any information which is confidential under the provisions of the Resolution, shall, upon conviction thereof before any justice of the peace, alderman or magistrate, or court of competent jurisdiction, be sentenced to pay a fine of not more than five hundred dollars (\$500.00) for each offense, and costs, and, in default of payment of said fines and costs to be imprisoned for a period not exceeding thirty (30) days.

- C. Each day that a corporation, political subdivision, association, company, firm, person or other entity violates the Resolution may be considered as a separate offense and is punishable as aforementioned in Paragraph A, *supra*, for each such offense.
- D. The Penalties imposed under this section shall be in addition to any other penalty imposed by any other section of the Resolution.
- E. The failure of any person to receive or procure forms required for making a return as required by the Resolution shall not excuse him from making such return.

ARTICLE 9

PAYMENT OF TAX TO OTHER POLITICAL SUBDIVISIONS OR STATES AS CREDIT OR DEDUCTION: WITHHOLDING TAX

Section 900. Payment of any tax to any political subdivision pursuant to an ordinance or resolution passed or adopted prior to the effective date of the Local Tax Enabling Act shall be credited to and allowed as a deduction from the liability of taxpayers for any like tax respectively on salaries, wages, commissions, other compensation or on net profits of business, professions or other activities and for any income tax imposed by any other political subdivision of this Commonwealth under the authority of the Local Tax Enabling Act.

Section 901. Payment of any tax on salaries, wages, commissions, other compensation or on net profits of business, professions or other activities to a political subdivision by residents thereof pursuant to an ordinance or resolution passed or adopted under the authority of the Local Tax Enabling Act shall be credited to and allowed as a deduction from the liability of such persons for any other like tax respectively on salaries, wages, commissions, other compensation or on net profits of business, professions or other activities imposed by any other political subdivision of the Commonwealth of Pennsylvania under the authority of the Local Tax Enabling Act.

Section 902. Payment of any tax on income to any political subdivision by residents thereof pursuant to an ordinance or resolution passed or adopted under the authority of the Local Tax Enabling Act shall, to the extent that such income includes salaries, wages, commissions, other compensation or net profits of businesses, professions or other activities, but in such proportion as hereinafter set forth, be credited to and allowed as a deduction from the liability of such persons for any other tax on salaries, wages, commissions, other compensation or on net profits of businesses, professions, or other activities imposed by any other political subdivision of the Commonwealth of Pennsylvania under the authority of the Local Tax Enabling Act.

Section 903. Payment of any tax on income to any state or to any political subdivision thereof by residents thereof, pursuant to any State or local law, may, at the discretion of the Pennsylvania political subdivision imposing such tax, to the extent that such income includes salaries, wages, commissions, or other compensation or net profits of businesses, professions or other activities but in such proportions as hereinafter set forth, be credited to and allowed as a deduction from the liability of such person for any other tax on salaries, wages, commissions, other compensation or net profits of businesses, professions or other activities imposed by any political subdivision of this

Commonwealth under the authority of the Local Tax Enabling Act, if residents of the political subdivision of Pennsylvania receive credits and deductions of a similar kind to a like degree from the tax on income imposed by the other state or political subdivision thereof.

Section 904. Payment of any tax on income to any State other than Pennsylvania or to any political subdivision located outside the boundaries of this Commonwealth, by residents of a political subdivision located in Pennsylvania shall, to the extent that such income includes salaries, wages, commissions, or other compensation or net profits of businesses, professions or other activities but in such proportions as hereinafter set forth, be credited to and allowed as a deduction from the liability of such person for any other tax on salaries, wages, commissions, other compensation or net profits of businesses, professions or other activities imposed by any political subdivision of the Commonwealth of Pennsylvania under the authority of the Local Tax Enabling Act.

Section 905. Where a credit or a deduction is allowable in any of the several cases hereinabove provided, it shall be allowed in proportion to the concurrent periods for which taxes are imposed by the other state or respective political subdivisions, but not in excess of the amount previously paid for a concurrent period.

Section 906. No credit or deduction shall be allowed against any tax on earned income imposed under authority of the Local Tax Enabling Act to the extent of the amount of credit or deduction taken for the same period by the taxpayer against any income tax imposed by the Commonwealth of Pennsylvania under section 314 of the act of March 4, 1971 (P.L. 6) known as the Tax Reform Code of 1971, on account of taxes imposed on income by other states or by their political subdivisions. (As amended 1967 P.L. 171, No. 47 and 1972 P.L. 1043, No. 261).

Section 907. No credit or deduction shall be allowed against any tax on earned income imposed under authority of the Local Tax Enabling Act for payment of any tax on salaries, wages, commissions, other compensation or net profits of business, professions or other activities to a foreign country, state or political subdivision located outside the geographic and political boundaries of the United States, by residents thereof, pursuant to foreign law.

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