

## **CHAPTER 27**

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## CHAPTER 27

### TAXATION

#### Part 1

#### Occupational Privilege Tax

**§101. Definitions.** The following words and phrases when used in this part shall have the meanings ascribed to them in this Section, except where the context or language clearly indicates or requires a different meaning.

(a) Employer – an individual, partnership, association, corporation, governmental body, agency, or other entity employing one or more persons on a salary, wage commission or other compensation basis, including a self-employed person.

(b) Individual – any person, male or female, engaged in any occupation, trade or profession within the corporate limits of the Borough.

(c) Occupation – any trade, profession, business, or undertaking of any type, kind or character, including services, domestic or other, carried on or performed within the corporate limits of the Borough for which compensation is charged or received whether by means of salary, wages, commissions or fees for services rendered.

(d) Tax – the occupational privilege tax in the amount of \$5.00 levied by this part.

(e) Tax Receiver – shall mean the person, persons or agency designated by the Borough for the collection of the occupational privilege tax and under whose direction this tax shall be enforce.

(Ord. No. 1967-6, 12/15/1967, Sec. 1, as amended by Ord. No. 1970-4, 12/29/1970, Sec. 1(a))

Editorial Note: The enacting clause of Ord. No. 1967-6 stated that that ordinance was enacted under authority of the Local Tax Enabling Act of 1965 P.L. 1257. The tax was originally imposed for the fiscal year of 1968 only, at the rate of \$10. It was reenacted annually in the tax-levying ordinance, with the rate reduced to \$5. Ord. No. 1970-4 amended Ord. No. 1967-6 to make the tax a permanent one until repealed, and making annual reenactment unnecessary. Nevertheless annual reenactment was continued, the most recent being the ordinance set out as Section 101.

**§102. Levy.** The Borough levies and imposes upon the privilege of engaging in an occupation within its corporate limits during any calendar year an annual occupational privilege tax. This tax shall be paid by the individual exercising that privilege and is in addition to all other taxes of any kind or nature previously levied by the Borough. (Ord. No. 1967-6, 12.15.1967, Sec. 2, as amended by Ord. No. 1970-4, 12/29/70)

**§103. Amount of Tax.** Every person engaging in an occupation, as defined in Section 101 (c) in any calendar year, shall be required to pay an occupational privilege tax of \$5 for that year. (Ord. No. 1967-6, as amended by Ord. No. 1970-4, 12/29/70)

**§104. Duty of Employers.** Each employer within the Borough as well as those employers situated outside the Borough but who engage in business within the Borough, is charged with the duty of collection from each of his employees engaged by him and performing for him within the borough the tax of \$5 per annum and making a return and payment of it to the tax receiver. Further, each employer is authorized to deduct this tax from each employee in his employ whether or not part or all those services are performed within the Borough. (Ord. No. 1867-6, 12/15/1967, Sec. 4, as amended.)

**§105. Returns.** Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied to him by the tax receiver. Each employer in filing this return and making payment of the tax withheld from his employees shall be entitled to retain a commission calculated at the rate of two percent (2%) of the gross tax due and payable, provided that the tax collected and paid over by the employer on or before the dates after set forth in Section 106. If the employer fails to file the return and pay the tax, whether or not he makes collection of it from the salary, wages, or commissions paid by him to an employee, the employer shall be responsible for the payment of the tax in full without deducting a commission and as though the tax had originally been levied against him.

**§106. Dates for Determining Tax Liability and Payment.** Each employer shall use his or her employment records from the 1<sup>st</sup> day of January to the 1<sup>st</sup> day of June, of each year, for determining the number of employees from whom the tax shall be deducted and paid over to the tax receiver on or before August 1, of that year. Supplemental reports shall be made by each employer on October 1, for new employees as reflected on his employment records from June 1, to October 1, of that year. Payments on this supplemental report shall be made on or before November 1 of that year. (Ord. No. 1967-6, 12/15/1967, Sec. 6, as amended by Ord. No. 1970-4, 12/29/70)

**§107. Individuals engaged in more than one Occupation.** Each individual who shall have more than one occupation within the Borough shall be subject to the payment of this tax on his or her principal occupation and his principal employer shall deduct this tax and deliver to him evidence of deduction having been made and when presented to any other employer shall be authority for that employer to not deduct this tax from the employee's wages, but to include that employee on his return by setting forth his or her name, address and the name and account number of the employer who deducted this tax. (Ord. No. 1967-6, 12/15/67, Sec. 7)

**§108. Self-employed Individuals.** All self-employed individuals who perform services of any type or kind, engage in any occupation or profession within the Borough shall be required to comply with this part and pay the tax to the tax receiver on August 1 of each

year or as soon after than date as he engages in an occupation. (Ord. No. 1967-6, 12/15/1967, Sec.8, as amended by Ord. No. 1970-4, 12/29/1970)

**§109. Employers and Self-employed Individuals Residing beyond the Corporate Limits of the Borough.** All employers and self-employed individuals residing or having their place of business outside of the Borough, but who perform services of any type or kind, or engage in any occupation or profession within the Borough do by virtue of that fact agree to be bound by and subject themselves to the provisions, penalties and regulations promulgated under this part, with the same force and effect as though they were residents of the Borough and an employee of a non-resident employers may, for the purpose of this part, be considered a self-employed person, and in the event this tax is not paid, the Borough shall have the option of proceeding against either the employer or employee for the collection of this tax as provided in Section 111. (Ord. No. 1967-6, 12/15/1967, Sec. 9)

**§110. Administration of Tax.**

(a) It shall be the duty of the tax receiver to accept and receive payment of this tax and to keep a record showing the amount received by him from each employer or self-employed person together with the date the tax was received.

(b) The tax receiver is charged with the administration and enforcement of this article and is charged and empowered to prescribe, adopt, promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this part, including provisions for the examination of the payroll records of any employer subject to this part; the examination and correction of any return made in compliance with this part and any payment alleged or found to be incorrect, or as to which overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the tax receiver shall have the right to appeal to the court of common pleas of Luzerne County as in other cases provided.

(c) The tax receiver is authorized to examine the books and payroll records of any employer in order to verify the accuracy of any return made by an employer, or, if no return was made, to ascertain the tax due. Each employer is directed and required to give the tax receiver the means, facilities and opportunity for that examination.

(Ord. No. 1967-6, 12/15/1967, Sec. 10)

**§111. Suits for Collection.**

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

(b) If for any reason the tax is not paid when due, interest at the rate of six percent (6%) on the amount of the tax shall be calculated beginning with the due date of

the tax and a penalty of five percent (5%) shall be added to the flat rate of the tax for nonpayment. Where suit is brought for the recovery of this tax, the individual liable for the tax shall, in addition, be responsible and liable for the costs of collection. (Ord. No. 1967-6, 12/15/1967, Sec. 11)

**§112. Validity.** The provisions of this part are severable and if any of its provisions shall be held invalid or unconstitutional, the decision of the court shall not affect or invalidate any of the remaining provisions. It is declared to be the legislative intent that this part would have been adopted if those illegal, invalid or unconstitutional provisions had not been included in it. (Ord. No. 1967-6, 12/15/1967, Sec. 13)

**§113. Saving Clause.**

(a) Nothing contained in this part shall be construed to empower the Borough to levy and collect the tax imposed by this part on any occupation not within the taxing power of the Borough under the Constitution of the United States and the laws of the Commonwealth.

(b) If the tax imposed under the provisions of this part shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United States and of the laws of the Commonwealth of Pennsylvania as to any individual, the decisions of the court shall not affect or impair the right to impose or collect that tax, or the validity of the tax so imposed on other persons or individuals as provided in this part.

(Ord. No. 1967-6, 12/15/1967, Sec. 14)

**§114. Fine and Penalty.** Whoever makes any false or untrue statement on any return required by this part, or who refuses inspection of his books, records or accounts in his or her custody and control setting forth the number of employees subject to this tax who are in his employment, or, whoever fails or refuses to file any return required by this part shall, upon conviction, be sentenced to pay a fine of not more than Three Hundred (\$300) Dollars for each offense and in default of payment of the fine and costs be imprisoned not more than 30 days for each offense. It is further provided that the action to enforce the fine and penalty provided in this section may be instituted against any person in charge of the business of any employer who has failed or refuses to file a return required by this part. (Ord. No. 1967-6, 12/15/1967, Sec. 12)

**§115. Effective Date and Duration.** This ordinance shall become effective 30 days after date of adoption and shall remain in force and effect for the fiscal year 1971, and subsequent thereto until repealed. (Ord. No. 1967-6, 12/15/1967, Sec. 15, as amended by Ord. No. 1970-4, 12/29/70, Sec. 2)

Editorial Note: "This Ordinance" refers to Ord. No. 1967-6, as amended by Ord. No. 1970-4, and not to this code of ordinances.

**Part 2**

[RESERVED FOR POSSIBLE FUTURE ADOPTION OF A LOCAL SERVICE TAX]