

CITY OF GREENSBURG

RULES AND REGULATIONS

AMENDED LOCAL TAX ENABLING ACT

BASED ON ACT 166 OF 2002

FOR 2003 AND SUBSEQUENT TAX YEARS

**EARNED INCOME/COMPENSATION AND
NET PROFITS TAX**

NOTICE

All taxpayers are subject to these Rules and Regulations and to the Earned Income Tax Resolutions/Ordinances of the City of Greensburg, levying a tax on earned income and net profits and requiring resident employers to withhold the tax from their employees.

The Tax Resolutions/Ordinances and these Rules and Regulations are continuing ones, applicable until changed by the City of Greensburg.

Copies of the original Tax Resolutions/Ordinances may be examined during normal business hours at City Hall, 416 S. Main Street, Greensburg PA 15601.

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ARTICLE I

GENERAL PROVISIONS

SECTION 101. DEFINITIONS

The following words and phrases used in the Tax Ordinances and Resolutions and in these Rules and Regulations have the following meanings unless the context clearly indicates a different meaning:

- "Assessment" The determination by a local taxing authority of the amount of underpayment by a taxpayer.
- "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.
- "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 dependant upon the conduct of the person receiving the compensation.
- "Current Year." The calendar year for which the tax is being levied.
- "Domicile." The place where one lives and has his or her permanent home and to which he or she has the intention of returning whenever he or she 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 or her 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." "Compensation" as determined under Section 303 of the Act of March 4, 1971 (P.L. 6, No. 2), known as the "Tax Reform Code of 1971," and regulations contained in 61 Pa. Code Pt. I Subpt. B Art. V (relating to personal income tax). Employee business expenses are allowable deductions as determined under Article III of the "Tax Reform Code of 1971". The amount of any housing allowance provided to a member of the clergy shall not be 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, partnership, association, corporation, institution, governmental body or 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 governing body to collect and administer the tax on earned income, compensation and net profits.
- "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.
- "Local taxing authority" A political subdivision levying an eligible tax. The term shall include any officer, agent, agency, clerk, income tax officer, collector, employee or other person to whom the governing body has assigned responsibility for the audit, assessment, determination or administration of an eligible tax. The term shall not include a tax collector or collection agency who has no authority to audit a

taxpayer or determine the amount of eligible tax or whose only responsibility is to collect an eligible tax on behalf of the governing body.

- "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, profession, or other activity, except corporations, as determined under section 303 of the Act of March 4, 1971 (P.L. 6, No 2), known as the "Tax Reform Code of 1971 and regulations contained in 61 Pa. Code Pt. I Subpt. B Art. V (relating to personal income tax).
- "Nonresident." A person, partnership, association or other entity domiciled outside the taxing district.
- "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.
- "Preceding Year." The calendar year before the current year.
- "Resident." A person, partnership, association, or other entity domiciled in the taxing district.
- "Resolution or Ordinance" Legislation adopted by the taxing district levying and or assessing an earned income/compensation and net profits tax.
- "Succeeding Year." The calendar year following the current year.
- "Taxing District" The political subdivisions, including school districts, levying and assessing an earned income/compensation and net profits tax, which have appointed or commissioned the Officer to collect and administer the tax on earned income/compensation and net profits.
- "Taxpayer." A person, partnership, association, or any other entity, required hereunder to file a return of earned income/compensation or net profits, or to pay a tax thereon.
- "Tax" The earned income/compensation tax and/or net profits tax enacted under Act 511, P.L. 1257 known as "The Local Tax Enabling Act" as amended by Act 166 of 2002. 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/compensation paid, unless a more limited meaning is disclosed by the context.

“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 eligible 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:

All persons who are:

- (a) residents of the Taxing District, who are employed or engaged in the operation of a business, profession, or other activity for income or profit;
- (b) non-residents of the Taxing District, who are employed in the Taxing District, or engaged in the operation of a business, profession, or other activity for income or profit in the Taxing District, are subject to this tax when authorized by ordinance or resolution of the Taxing District.

A "resident" is an individual who is domiciled in the Taxing District, as evidenced, among other things, by one or more of the following:

- a. By customarily being physically present, sleeping, and eating there.
- b. 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.
- c. By his or her spouse and minor children living there.
- d. By maintaining religious, civic, and club affiliations there.
- e. 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 district, he or she is a resident of that district. Of more difficulty is the situation concerning persons for whom some of the factors occur in one district and others take place elsewhere. In such cases the residence or domicile of an individual shall be determined by the Officer based on all of the legally relevant factors which affect the issue. Each case shall be determined solely on its own facts.

SECTION 202. WHAT IS TAXED:

- A. The tax is imposed on earned income/compensation and net profits as defined in Section 101 of these Rules and Regulations. These items are subject to the tax whether a taxpayer received them directly or through an agent.
- B. The earned income/compensation and net profits tax shall be applicable to earned income/compensation 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 Ordinances or Resolutions.
- 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 203. WHAT IS INCLUDED IN EARNED INCOME/COMPENSATION:

The statutory definitions of "Earned Income" and "Compensation" are found in Section 101 of these Rules and Regulations. 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 to either modify the definitions or to limit what constitutes taxable income.

Examples of earned income/compensation are:

- A. Gross Salaries.
- B. Gross Wages, including Clergy pay.
- C. Commissions.
- D. Bonuses.

- E. 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).
- F. 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.
- G. Tips and gratuities.
- H. 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.
- I. Earnings Component of Stock Options Plans when the option is exercised. The “earnings component” is considered to be the difference between the stock option price and the fair market value of the stock at the time the option is exercised.
- The Pennsylvania Supreme Court in its’ 2/22/2000 decision in the *Marchlen* case makes no distinction between qualified and non-qualified stock options plans. *Marchlen v. Township of Mt. Lebanon* (707 A.2d 631, PA Cmwlt. 1998).
- J. 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.
- K. 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 205 and/or by Pa. Personal Income Tax Regulations.

PARTIAL LISTING OF TAXABLE INCENTIVE ITEMS:

- (1) Automobile allowance which 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 which 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 Taxing 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.
- L. Taxes assumed by the employer for the employee.
 - M. Regular wages received during a period of sickness or disability.
 - N. Employee contributions to deferred compensation plans and old age or retirement benefit programs, or cafeteria plans, since any plan which, through an employee's contribution, serves to reduce gross taxable wages for federal income tax purposes is not 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.
 - O. 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.
 - P. National Guard Pay, Military Reserve Pay and Military Active Duty Pay (where being served within the State of Pennsylvania).
 - Q. Scholarships, grants and fellowships, if services are rendered in connection therewith.
 - R. Stipends paid to Graduate Assistants. (Also see Section 205.U).
 - S. 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.
 - T. 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 which the employer contributed.

