YORK ADAMS TAX BUREAU

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

ADOPTED OCTOBER 27, 2003
AMENDED JULY 31, 2006

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NOTICE

The York County Earned Income Tax Bureau was established July 1, 1966 by a Board of Directors comprised of one member from each participating municipality and school district, to administer the earned income and net profits Resolutions and Ordinances as adopted by the various taxing jurisdictions. The name of the Bureau was changed effective January 1, 1983 to York Area Earned Income Tax Bureau by the Board of Directors at the Board Meeting on July 26, 1982. The name of the Bureau was changed a third time, effective July 28, 2003 to York Area Tax Bureau by the Board of Directors at the board meeting on July 28, 2003. The name of the Bureau was changed again, effective January 1, 2006, to York Adams Tax Bureau, when the Adams County Earned Income Tax Collection Agency merged with the York Area Tax Bureau. The original Act 511 Rules and Regulations were approved by the Board of Directors on October 27, 1969. The dates mentioned in the original Rules and Regulations applied to the 1966 calendar year and the months following it on a calendar year basis.

PREFACE

In accordance with the Joint Agreement or the Joint Resolution and/or Ordinance as adopted, as required for membership in the Bureau, the York Area Earned Income Tax Bureau, under the Administrator thereof, superseded the Income Tax Officer and is charged with the duties and powers of the Income Tax Officer. The respective districts' Earned Income and Net Profits Tax Resolutions and/or Ordinances provide that the Administrator of the York Area Earned Income Tax Bureau (now York Adams Tax Bureau) be empowered, subject to the Executive Committee of the York Adams Tax Bureau, to prescribe, adopt and promulgate and enforce Rules and Regulations relating to any matter pertaining to the Administration and enforcement of the Resolutions and/or Ordinances. The following Rules and Regulations were approved by the York Area Tax Bureau Board of Directors on July 28, 2003. Should the Earned Income Tax Resolution and/or Ordinance be re-adopted in substantially its present form in future years, these Regulations will apply to those years. While the Rules and Regulations do not specify particular taxing jurisdictions, they apply to all those districts which have commissioned or appointed the York Adams Tax Bureau to administer their earned income/compensation and net profits tax levy. If the non-resident factor is not included in any of the Resolutions and/or Ordinances in subsequent years, the Rules and Regulations would then apply to residents only.

The Tax Resolutions and Ordinances and these Rules and Regulations are continuing ones, applicable until changed by the member School Districts and Municipalities. Copies of the original Tax Resolutions and Ordinances may be examined at the School Districts or Municipal Offices or at this Bureau.

All residents, non-residents, and employers, either residing, working, or conducting a business within the Municipalities and School Districts for whom this Bureau is the appointed or commissioned collector, are subject to these Rules and Regulations and to the Earned Income/Compensation and Net Profits Tax Ordinances and Resolutions of the participating Municipalities and School Districts levying a tax on earned income/compensation and net profits.

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ARTICLE I

GENERAL PROVISIONS

SECTION 101. DEFINITIONS:

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

"Association." A partnership, limited partnership, or any other unincorporated group of two or more persons, including a Limited Liability Company.

"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.

A **"Covenant Not To Compete"** is a sort of non-activity:

"Non-activity" is defined as deliberately refraining from doing something. It is a positive absence of activity – as affirmative restraint. Each day throughout a certain time period, the payee taxpayer is under a duty to refrain from working in that profession or business. Performance under a covenant not to compete is deliberate and purposeful non-activity, and while inactivity is generally weak and dissipating, non-activity can be extremely powerful and potent, and can be just as powerful as activity.

Example: A covenant not to compete agreement is so important in our society that courts may even enforce them by issuing injunctions – a rare civil remedy – in addition to awarding money damages.

"Covenant Not To Compete" is defined as 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, and is not comparable to income from the sale of good will. Nor can money received under a non-compete contract be considered investment income, for the payments are directly dependant upon the conduct of the person receiving the money.

"Current Year." The calendar year for which the tax is 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 voluntary 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. 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 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. See Appendix beginning on page 56 for referenced act and regulations.

"Earning" or **"Earnings"** or **"Earned"** shall not depend solely on one's level of activity.

"Employee." A person employed by an employer for a salary, wage, commission or other compensation. 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 or unit or agency, or any other entity employing one or more persons for a salary, wage, commission or other compensation.

"General Partner" One of two or more persons who associate to carry on a business as co-owners for profit and who are personally liable for all the debts of the partnership.

"Inactivity" is defined as doing "Nothing." Generally weak and dissipating.

"Income Tax Officer or **Officer."** Person, administrator, public employee or private agency designated by the governing body to collect and administer the tax on compensation and net profits. (The York Adams Tax Bureau).

"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 an employer, however, that contractor will be considered an employee of said employer for the purpose of withholding the tax due under the Resolution, or Ordinance.

"IRC." The Internal Revenue Code, as amended from time to time.

"Limited Liability Company" or "Company." An association that is a limited liability company organized and existing under Pa. Act 106 of 1994, known as the Limited Liability Company Act, or organized and existing under an Act of another state or commonwealth..

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

"Net Profits." The net income from the operation of a business, profession, or other activity, except corporations, determined under section 303 of the act of March 4, 1971 (P.L. 6, No.2), known as the "Tax Reform Code of 1971," and regulations in 61 Pa. Code Pt. I Subpt. B Art. V (relating to personal income tax). The term does not include income which is not paid for services provided and which is in the nature of earnings from an investment. For taxpayers engaged in the business, profession or activity of farming, the term shall not include:

(1) any interest earnings generated from any monetary accounts or investment instruments of the farming business;

(2) any gain on the sale of farm machinery;

(3) any gain on the sale of livestock held twelve months or more for draft, breeding or dairy purposes; and

(4) any gain on the sale of other capital assets of the farm.

See Appendix for referenced act and regulations.

"Net Losses." The Pennsylvania Supreme Court has ruled that the tax is levied on total earned income and net profits. Taxpayers may deduct proper, permitted business losses from wage and salary income. However, the Court let stand a prior Commonwealth Court ruling that taxpayers could not apply net losses from one business against the net profits of another business.
Liability for earned income taxes on net profits is to be calculated for each business separately. (Aronson vs City of Pittsburgh, 485A 2nd 890; Pa. CMWLTH. Court, 1985). (The Bureau will apply this opinion for tax years prior to 2003 and for tax year 2003 and subsequent tax years.)

"Nonresident." A person, partnership association or other entity domiciled outside the taxing district.

"Partnership Income." The taxable income in respect to a partnership is taxable to its partners, whether or not it is distributed. The character of any item includable in each partner's share is determined as if the item were realized directly by the partner from the source from which it was realized by the partnership or incurred in the same manner as incurred by the partnership.

"Passive Activity of a Partner" Is an activity in which the partner does not materially participate in the management of the entity, by having influence or effect on decisions or actions, or through physical presence or activity.

"Person or Individual." A natural person.

"Preceding Year." The calendar year before the current year.

"Realized Income." Is defined as "investment income," not earned income/compensation.

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

"Resolution or Ordinance." As adopted by the respective Member Taxing Authorities empowering or levying tax for a given year, or any part thereof.

"S Corporation." A corporation that is eligible to choose S Corporation status and whose shareholders have all consented to the corporation's choice of S Corporation status as per Federal Law.

"Succeeding Year." The calendar year following the current year.

"Taxing District." The individual Municipalities and/or School Districts which have appointed or commissioned the York Adams Tax Bureau as the collector of the earned income/compensation and net profits tax as levied by the Municipalities and/or School Districts.

"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 as amended and known as "The Local Tax Enabling Act 166 of 2002." TAX includes interest, penalties and additions to tax, and further includes the tax required to be withheld by an employer on earned income/compensation paid, unless a more limited meaning is disclosed by the context.

"Total Income." The sum of "Earned Income/Compensation" plus "Net Profits."

ARTICLE 11

IMPOSITION OF TAX

SECTION 201. PERSONS SUBJECT TO TAX AND THE TAX RATE:

All residents of the participating member Municipalities and School Districts; and nonresidents thereof who are not required to file and/or pay a similar tax elsewhere are subject to this tax when the municipality in which they work has a nonresident clause in their Ordinance, whether such activities are carried on within or outside the municipality. School Districts may not tax nonresidents.

A. "Resident" is a person who is domiciled in the Taxing District as evidenced, among other things, by one or more of the following:

a. By his/her customarily being physically present, sleeping and eating there;

b. By holding himself/herself out as residing there, i.e., giving address in registration for licenses, voting, and payment of personal or property taxes, or state or federal income taxes;

c. By his/her spouse and minor children living there;

d. By his/her maintaining religious, civic and club affiliations there;

e. By the center of his/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, domicile shall be determined by the Officer based upon all facts and circumstances relevant to the case. (Refer to Section 101 definition of Domicile).

B. "Non-Resident" is a person, partnership association or other entity domiciled outside the taxing district, but who is employed either full time or part time within this bureau's taxing district.

C. By virtue of the Ordinances and Resolutions adopted by the various member taxing jurisdictions, the tax rate is one percent or any fraction thereof, unless or until the tax rate is amended in the respective Ordinances and Resolutions or by any act passed or amended by the Pennsylvania General Assembly.

D. Non-resident taxpayers at the rate of no less than one (1%) percent of the non-resident taxpayer's earned income and net profits. (Excepting Maryland residents who are exempt).

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 receives them directly or through an agent and whether a taxpayer receives them in cash or in another medium. Where a taxpayer has received remuneration, a portion of which is attributable to services provided ("the earnings component") and another portion of which is not attributable to services rendered, then only the "earnings component" shall be subject to tax.

B. The tax levied under the Act and Sections 203 and 204 shall be applicable to earned income/compensation received and to net profits earned in the period beginning January 1, of the current year, and ending December 31, of the current year or for taxpayer fiscal years beginning in the current year, except that taxes imposed for the first time shall become effective from the date specified in the Ordinance or Resolution, and the tax shall continue in force on a calendar year or taxpayer fiscal year basis, without annual reenactment, unless the rate of the tax is subsequently changed. Changes in rate shall become effective on the date specified in the Ordinance or Resolution.

C. Trusts or Estates. Every estate or trust must pay the tax (1) on net profits resulting from its engagement in any business, trade or other activity which would require the filing of a return by an individual or partnership, and (2) on earned 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" can be found in Section 101, Definitions. The purpose of this section is not to modify these definitions, but to provide additional clarification through various examples and explanations. This list of examples and explanations is not exhaustive and in no way limits what constitutes taxable income.

Examples of Earned Income/Compensation are:

1. Gross Salaries

2. Gross Wages

3. Commissions

4. Bonuses.

5. Drawing accounts as reported on current year's Form W-2. (If amounts received as a drawing account exceed the salary or commissions earned, the tax is payable on the amounts received. If the employee subsequently repays to the employer any amounts not in fact earned, the tax shall be adjusted accordingly).

6. Clergy pay.

7. 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. Such payments/settlements constitute taxable income. Incentive payments are not to be considered "retirement" as referenced in Section 101, definition of Compensation. Lump sum payments shall be taxable in the year received by the employee or former employee. 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. Incentive payments include Stock Appreciation Rights (SAR) and/or a phantom stock plan payment, where these payments are attributable to remuneration for services rendered.

<u>(a) EXAMPLE</u>: Employer offers to give employee F an INCENTIVE PAYMENT of $20,000 if employee F agrees to depart or retire before his scheduled date. The $20,000 is to be paid at a rate of $5000 per year over a four year period after the retirement becomes effective. The $20,000 is taxable income. It will be taxed in the years that it is received by employee F. That is to say that employee F shall have to include as earned income/compensation the extra $5,000 received for/in each of the four years following his retirement.

<u>(b) EXAMPLE</u>: The employee has been a product manager with an art supply business for 12 years. He and his wife purchased a home in a suburb of Houston for $80,000, $55,000 of which they financed through a loan from their bank. The lending rate for home mortgages was 6%, and their mortgage payments were $520 per month.

Twelve years after purchasing the house, he was offered a transfer to York County, Pa., to open a sales office and showroom in York County. His employer agreed to reimburse him for his moving expenses if he took the assignment. When he and his wife traveled here to look for a new residence, they were told that a comparable home in Adams County or in York County would be $130,000 and that the mortgage rate would be 8.5% The mortgage payment on their new home would be $952. His employer was willing to pay the $432 difference between his old and his new mortgage for two years. This form of reimbursement is wages to the employee, subject to earned income/compensation and payroll tax withholding.

<u>(c) EXAMPLE</u>: In a SAR plan, the employee-participant is allowed to share in the appreciation in value of the company stock plan. The employee shares in the appreciation in value of the company stock over the period selected.

In a phantom stock plan, the employee shares in the appreciation and is also given the value of the stock at the starting point.

In each of these plans, the employee is not the owner of any shares. By agreement the employee participates in the growth of the business's value through a formula that measures the growth in value of the company's stock. The employee is credited on paper, with a percentage of the growth in value, which value is convertible to cash at a future date. The employee will be taxed on the date in the future that he or she receives the cash benefit.

(d) EXAMPLE: An employer offers and pays an employee 15% on a house purchase in another location in lieu of the employer acquiring the employee's house and becoming responsible for selling the house. This type of circumstance shall be considered as an incentive for the employee to move to another location. IF the payment is restricted or imperfect with a qualified right to enter (confined, temporary, modified, conditioned, limited provisional, guarded, ambiguous, reserved, dependent, defined, it shall not be taxable as earned income/compensation.

The employee is responsible for providing proper documentation to this Bureau so as to establish whether this payment is or is not restricted.

Moving expenses which are permitted on Pa. Schedule UE will be deductible.

(e) EXAMPLE: Auto manufacturers incentive payments paid by or on behalf of any automobile manufacturer, whether directly to individual salespersons or through a dealership are taxable for local earned income/compensation tax purposes.

8. Tips; gratuities; honoraria; financial counseling services allowance; travel allowance; moving allowance; mortgage differential; legal service allowance; grossed up income. Reimbursements received in cash, when in excess of allowable business expenses. Reimbursements received in cash, when in excess of allowable physical moving expense. (Refer to Section 209 for deductions against income).

9. Fees include: Administrator fee, Director fee, Executor fee, Expert witness fee, Fiduciary fee, Honoraria fee (if one's profession is being a professional speaker), Trustee fee, fee received for service performed by taxpayer, and fee received for decision made by taxpayer. The fees referenced herein involve activity and participation on the part of the taxpayer.

10. Earnings component of stock option 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.

EXAMPLE: There is a basis under the LTEA for taxing the "earnings component" of stock option plans. Stock option plans have an earnings component, namely the difference between the option price and the fair market value of stock at the time the option is exercised. This difference is to be reported on the taxpayer's W-2 form and is taxable for local earned income/compensation tax purposes, upon exercise of the stock option.

The Pennsylvania Supreme Court in its' 2/22/2000 decision in the Marchlen case makes no distinction between qualified and non-qualified stock option plans. The case cite is:

"Louis Thomas Marchlen Appellee, vs. The Township of Lebanon, al, No. 7

W.D. Appeal Docket 1998, (707 Atl 2nd 631, PA Cmwlth. 1998)

"At the time that the stock options in this case were granted to Appellee, they could not be exercised. This does not imply that stock options have no value at the time they are granted. Stock options are valuable inducements to attract and retain employees and to compensate them for their services. The holder of a stock option can reap the benefits of stock price increases without bearing the risks of stock price declines. However, at the time that the stock option is granted, its "value" is purely speculative, for should the fair market value of the stock drop below the purchase price of the option, the exercise of the option on or after its maturity date would result in a loss to the holder of the option - i.e. the option would be worthless. In contrast, should the fair market value of the stock rise above the purchase price of the option, the exercise of the option on or after its maturity date would result in a gain to the holder of the option. Further, the holder of the stock option may well choose not to exercise the option. Thus, it is not that stock options have no value at the time they are granted, rather, the value of the stock option is speculative and not readily ascertainable until exercised. It is precisely for this reason that the taxing authority must wait until the exercise of the stock option to compute the associated tax liability (emphasis added)."

This says absolutely nothing about qualified vs. non-qualified plans. This says that all stock options without differentiation are taxable when exercised. It makes no difference if the plans are qualified or not.

The only limitation imposed by Marchlen is, ".... that the taxing authority must wait until the exercise of the stock option to compute the associated tax liability."

Employers have an obligation to withhold the local earned income/compensation tax on the "earnings component" of stock options at the time the option is exercised. Employers should also report the "earnings component" as a part of the local wages total on the employee's W-2 form.

11. Payments accruing from employment, including, but not limited to salary advances, annual leave, stand-by pay, overtime, vacation, holiday, severance, separation pay or benefits, but excluding benefits mentioned in Section 205(A) of these Rules and Regulations.

12. Fair market value of all non-cash fringe benefits accruing by virtue of employment are also to be included as taxable income for purposes of the **TAX,** except to the extent that they are specifically excluded in section 205, and/or by Pa. P.I.T. Regulations.

EXAMPLES:

(a) Stock options.

(b) Group legal services plans.

(c) Dependent care assistance programs.

(d) Mortgage assistance in lieu of other compensation.

(e) Non-cash payment for services rendered.

(f) Stock bonus plans.

(g) Automobile allowance which exceeds actual expenses incurred.

(h) Taxpayer A receives a gross salary of $70,000. In addition to his salary, he exercised a non-qualified stock option as reported on Form W-2, of $11,000, plus he was compensated for his spouse's travel in the amount of $3,100. Therefore taxpayer A's total taxable compensation is $84,100.

(i) Taxpayer B receives a gross salary of $55,000, of which $9,000 is deferred to a 401(k) plan for her retirement. Her local taxable compensation is $55,000. Any plan which serves to reduce gross taxable wages for federal income tax purposes is not recognized as an exclusion for local earned income/compensation tax purposes.

(j) Taxpayer C receives a gross salary of $80,000. She also receives excess life insurance as reported on the W-2 form in the amount of $325. Her total taxable earned income/compensation is $80,000 as this benefit is not taxable earned income/compensation.

(k) Taxpayer D is a minister, employed by a church, but he does not live in a church-provided parsonage. He receives a salary of $30,000, a housing allowance of $10,000, and a car/travel expense allowance of $3,000. The total taxable earned income/compensation is $33,000. To claim unreimbursed business expenses, he can file a Pennsylvania Department of Revenue Schedule UE with this Bureau, as a deduction from his taxable earned income/compensation. The housing allowance, rent, utilities cash payments are not taxable.

(l) Taxpayer E has recently moved into one of the Taxing Districts for whom this Bureau collects the **TAX**. In addition to his salary of $43,000, he was given or had paid for him $10,000 in moving expenses. The total earned income/compensation of $53,000 is taxable. Taxpayer E can file a Pennsylvania Department of Revenue Schedule UE for his actual moving expenses. The Pa. Schedule UE is required to be enclosed with Form 214 when filing his or her local tax return with this Bureau. Additionally, when qualified moving expense reimbursements are included in W-2 income, the taxpayer may file a PA-UE Schedule to claim the deductible expense.

13. Taxes assumed by the employer for the employee. The payment of taxes by employers in consideration of services rendered by the employee is a gain derived by the employee for her or his labor and is therefore considered as part of her or his earned income/compensation. This income is taxable in the year that it is reported as taxable on the W-2 form or similar form.

14. Regular wages paid by the employer, which are received by the taxpayer during a period of sickness or disability.

15. Employee contributions to deferred compensation plans and old age or retirement benefit programs, or cafeteria plans.

NOTE: 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 the **TAX** and will therefore be taxed accordingly. EXAMPLE: An employee's contribution/deferment under Section 403(b); Section 457(b); or Section 401(k) of the Internal Revenue Code will not be recognized as a reduction of taxable wages for purposes of this **TAX**.

16. Act 40 became law in July, 2005. Part of this bill addressed Deferred Compensation Plans. Non-Qualified Deferred Compensation Plans are not to be includible in taxable compensation. This will be taxable when the employee, retiree, etc. receives the distribution.

17. 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. When lodging is provided by the employer and the employee is not required to reside on the premises by his or her employer, the fair market value of the lodging shall be included in the employee's earnings as it shall be taxable.

18. Scholarships, grants and fellowships shall be taxed as earned income/compensation IF services are rendered in connection therewith.

19. National Guard Pay and Military Reserve Pay (**except active duty**).

20. Stipends are taxed as earned income/compensation when paid to graduate students such as medical interns and a residency program that conforms with the essentials of an approved internship, or the essentials of an approved residency, as established by the American Medical Association, if services are rendered in connection therewith.

21. 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 contribution, interest earned and employee contributions.

22. 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.

23. Cafeteria Plan money (credits) and cash reimbursements made by an employer to the employee for dependant care, legal services or other personal services.

24. Deferred compensation plan distribution (pre-retirement), to the extent it exceeds employee contributions into the plan. Distributions received prior to the taxpayer's actual date of retirement, including but not limited to ESOP, PAYSOP, 401K, 403B, cafeteria plans, etc. shall be taxable on the interest and employer's contributed portion, if the distribution is not rolled into an individual retirement account, annuity plan, or another qualified retirement plan.

25. That portion of salary or wages which an employee contributes under a plan which provides for an employee's election to contribute a portion of his/her salary or wages to receive a benefit in lieu of receiving the cash is taxable. The actual amount the employee elects not to receive in cash is the amount which is taxable and shall be included as gross salary or wages when filing the tax return with this Bureau, as the employee has constructive control of the cash.

This amount is to be included in the W-2 total for local wages and the applicable earned income/compensation tax is also to be withheld on this portion of the employee's gross salary or wages.

26. Back pay awards when the payment represents salary, wages, commissions, bonuses, incentive payments, fees, tips or other compensation to which the employee is entitled for services rendered is taxable. However, back pay and retroactive wage increases which have been <u>proven</u> to constitute punitive damages are generally not taxable.

27. All other forms of earned income/compensation or remuneration for an employee's services rendered, whether this compensation is received directly or through an agent and whether it is paid in cash, property or services. This shall include prizes and awards when the recipient has rendered substantial service as a condition to receive the prize or award. The manner of employment, or the rate of payment, or the kind of payment will not cause the person to be exempt from the applicable tax. Compensation received in the form of property shall be taxed at its fair market value at the time of receipt. In the event that payment received by an employee consists of a portion of this payment for services rendered ("the earnings component") and a portion that is not attributable to remuneration or compensation for services rendered, then only the earnings component shall be subject to TAX.

28. Covenants not to compete which arise "within an employment relationship," such as when an employee signs a covenant not to compete with his or her employer if and when he or she is no longer employed. (Example: In such a case, the consideration for the agreement is usually provided at the time the agreement is executed, and often consists of the employment itself).

To the extent that explicit compensation is provided to the employee during his or her employment, such compensation shall be taxable as earned income.

See also Rauch Vs. Philadelphia, 708 A.2d 142 (Pa. CMWLTH 1998).

29. Termination or severance pay received by taxpayer.

30. Taxpayer payments realized in the form of "debt forgiveness" as payment for compensable services provided by a taxpayer.

31. Deceased taxpayer's earned income/compensation or net profits from self-employment.

32. Golden Parachute payments.

33. Guaranteed payments to partners are to be included on a PA RK-1 form.

SECTION 204. WHAT IS INCLUDED IN NET PROFITS:

The statutory definitions of "Net Profits" can be found in Section 101, Definitions. The purpose of this section is not to modify this definition, but to provide additional clarification through various examples and explanations. This list of examples and explanations is not exhaustive and in no way limits what constitutes taxable profits.

Net profits shall be determined on a cash or accrual basis in accordance with accepted accounting principles and practices, but without deduction of taxes based on income.

Persons, Activities and Property are subject to the **TAX** on Net Profits. Partnership income which is the net income from business, profession or farming, including guaranteed payments is taxable.

Persons are subject to the TAX on Net Profits: Any individual engaged in a business, trade, profession or other activity carried on for a profit, shall pay the **TAX** on the Net Profits therefrom. The form of business shall not be the determining factor.

<u>EXAMPLES</u> of Net Profits are:

1. The net profits of a business, profession or farm conducted by a sole proprietor.

2. The net profits of a business, profession or farm conducted as a partner.

3. The net profits of a limited liability company as referenced in Act 106 of 1994 known as the Limited Liability Company Act, in Section 8925 of the Act.

4. Net profits from the operation of hotels, motels, tourist homes, boarding houses, bed and breakfast establishments, mobile home parks, child care, adult care, day care and other similar businesses.

5. Net profits generated under the provision of rental services, from the business of renting personal property.

6. Net profits on Pa. Schedule C from rental of real estate. Any individual obtaining net profits from the rental or leasing of any commercial, industrial or residential property must file and pay the **TAX** on such profits. (Also refer to Section 205.)

   Real estate rental services Pa. Schedule C "profits" received in the course of a trade or business are taxable. Rental income received from the operation of real estate is subject to this tax when the owner actively manages and supervises the property himself/herself or through agents or servants, by providing labor and service in connection with it. By furnishing labor and service - this signifies activity and participation on the part of the owner and classifies him or her as conducting or carrying on a business.

   When any property falls within a taxable classification the manner of its acquisition, i.e., purchase, gift, inheritance, fiduciary, or as a fiduciary mortgagor in possession, etc., does not affect the taxability of the income derived therefrom, unless specifically stated otherwise in these Rules and Regulations.

7. All other net profits of business activities except any portion thereof resulting from items not taxed under the provisions of the Resolution and Ordinances as set forth in Section 205 hereof.

In the calculations utilized to determine the correct net profits, the following items are to be included as they shall be considered to be a part of the business income:

a. Interest received on credit sales.

b. Discounts received from Pennsylvania for timely remitting of sales tax.

c. Damages/awards settlements received, except for personal injuries cases. Both punitive and compensatory damages received in personal injury actions are excluded when physical sickness or injury has occurred. Punitive damages awarded on a personal injury claim where no physical sickness or injury has occurred, such as awards made in defamation actions, are taxable income for determining correct net profits.

8. In determining a taxpayer's net profits subject to tax under the provisions of the Resolutions and Ordinances, the net profit of each business activity is to be determined separately with reference only to the gross income and expenses of that business and without mixing the income of one activity with the expenses of another. Persons engaged in more than one business activity during the tax year may <u>not</u> offset a loss in one activity <u>class</u> against the gain in another activity <u>class</u>. The tax is imposed on the net profit of each business activity separately. A loss incurred from a profession, business activity or venture, regardless of the nature, may be deducted from the person's earned income/compensation within the same tax year. Such loss may not be deducted from a spouse's earned income/compensation.

<u>EXAMPLE:</u> A person who receives Schedule C net profits from the operation of a sole proprietorship may not offset against such profits the net losses incurred as a partner in another business activity class such as Schedule E, nor may the same person offset net profits from one sole proprietorship with the loss from another sole proprietorship in another Schedule class.

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

10. The net profit received by a general partner of a limited partnership entity (15 Pa. C.S.A. 8925)

11. Guaranteed payments to partners/taxpayers on Schedule RK-1.

12. "Covenants Not To Compete" executed after 12/31/2001 which involve taxpayers who are not employees. The promise not to compete and the subsequent undertaking of that effort pursuant to a business arrangement is sufficient to bring this within the purview of the Net Profits Tax. The fact that this is a negative covenant or rather, a promise not to do something,

does not remove it from the realm of a business activity which is undertaken as part and parcel of a contract for a fee. The act of not competing is the consideration contributed to this contract by the taxpayer. It is consideration that has a business purpose, not a personal purpose.

13. "Bonus Depreciation" Business bonus depreciation amounts are to be calculated for local tax purposes in the same manner as calculated for Pennsylvania personal income tax purposes (not according to federal tax provisions).

SECTION 205. EXCLUSIONS FROM TAX. (These are not Deductions from Tax).

The items listed and described within Section 205 are not to be utilized as deductions against income (except paragraph 19), as they are a list of non-taxable income sources.

The following are not considered to be compensation or net profits and are not subject to tax:

1. Sickness, disability or retirement benefits paid, except regular wages as provided in Section 203 (22).

2. Benefits paid under any public assistance, unemployment or worker's compensation legislation, including supplemental unemployment benefits (SUB pay), or strike pay.

3. Compensation or bonuses paid by a State or the United States for active military service in the Armed Forces, and active duty military service pay.

4. Death Benefit payments to any employee's beneficiary or estate, whether payable in a lump sum or otherwise.

5. Proceeds of life insurance policies or annuities.

6. Cash or property received as a gift, by will, or by statutes of descent and distribution.

7. Interest and dividends: All forms of interest, i.e., on obligations of the United States or its possessions, the Commonwealth of Pennsylvania, or any political subdivision thereof, or on any bank or postal savings accounts, mortgages, or loans, received by an individual, except those amounts representing compensation by virtue of being remuneration for services provided, such as those amounts reported as "wages, salaries, tips, etc." on the appropriate lines of the taxpayer's W-2.

8. All forms of dividends received by a person, except those amounts representing earnings or compensation by virtue of being remuneration for services provided, such as those amounts reported as "wages, salaries, tips, etc." on the appropriate lines of the taxpayer's W-2.

9. Rents derived from mere "passive" or "investment" ownership or subleasing of real estate without the furnishing by the lessor of services to the leased premises or to the lessee other than gas, electricity, water, sewage and heat. Such rents are considered to be the return solely from invested capital and not profits from the operation of a business activity taxed by the Resolutions and Ordinances.

10. Value of meals and lodging furnished by employers to domestics or other employees for the convenience of the employer on the employer's premises. However, when board or lodging is provided by the employer and the employee is not required to reside on the premises by his or her employer, the fair market value of the board or lodging shall be included in the employee's earnings as it shall be taxable.

11. Capital gains as reported on Pennsylvania Form PA-40, Line 5.

12. Social Security benefits.

13. Veterans administration allotments for subsistence or disability.

14. Income from pensions or old age and retirement benefit plans upon retirement.

15. Lottery winnings.

16. IRA pension payments received upon retirement.

17. Profits applicable to the limited partners within a limited partnership entity.

18. A net loss on a self-employment business schedule may be deducted only from that individual's earned income/compensation for that tax year. A Schedule E loss will not offset earned income/compensation as Schedule E net profit will not be taxed.

19. Distributions from deferred compensation plans to the extent that such distributions represent a return of the taxpayer's own contribution upon which he or she originally paid the tax.

20. Damages for personal injuries.

21. Payments received for child support and alimony.

22. Scholarships and fellowships awarded from detached generosity on the basis of financial need or academic achievement for the sole purpose of encouraging or allowing the recipient to further his or her educational development and not as compensation for past, present or future services. A scholarship or fellowship shall constitute earned income/compensation if the recipient must apply his or her skills and training to advance research, creative work or some other project or activity.

23. Prizes and awards unless the recipient must render substantial service as a condition to receiving the prize or award.

24. Profit from the casual exchange or sale of property.

25. S Corporation income.

26. Parsonage/housing/rent/utilities payments received by clergy.

27. Jury Duty pay.

SECTION 206. RESIDENT TAXATION:

The entire gross earned income/compensation and net profits received and/or earned by a resident of the Taxing District is subject to this tax. Neither the source of the earned income/compensation or net profits nor the place where it is received and/or earned exempts a resident from the tax.

SECTION 207. NONRESIDENT TAXATION:

The entire gross earned income/compensation and net profits received and/or earned within the Municipality Taxing District with a non-resident provision in the applicable tax ordinance, by a nonresident of the Taxing District who is not required to pay a similar tax elsewhere is subject to taxation by the Municipality in which the person works. Nonresidents are not subject to taxation by the School District.

Persons with Green Cards, who are employed for a wage or who endeavor to earn a net profit within a member taxing authority, shall be considered a *domiciliary* (someone who is physically present in a place with the intent to remain there indefinitely), as the person in question has made this address or location their *domicile of choice* (the domicile that an individual has the power to select through intent and physical presence). Therefore persons with Green Cards shall be liable for timely filing and paying the earned income/compensation tax and net profits tax when the person is physically present through their residing, or employment, or conducting a business within a member municipality.

Any person claiming non-residency status must provide proof of non-residency such as a passport with valid student or exchange visitor's visa, driver's license or other acceptable documentation. Any person claiming non-residency exemption status must provide proof of payment of local earned income/compensation and net profits tax elsewhere for the concurrent time period.

NOTE: Maryland residents employed within this Bureau's Taxing District have been exempted from paying this tax by Ordinances passed in 2005 by this Bureau's member municipalities. Employers should not withhold the local earned income/compensation tax from these employees.

SECTION 208. CREDITS:

Earned income/compensation tax or net profits tax paid for the concurrent time period to another state or political subdivision within the United States will be allowed as a credit from the liability of taxpayers for tax imposed under the provisions of the Resolutions and Ordinances. Such credit will be allowed up to the maximum effective rate of the tax levied by the applicable Municipality and/or School District for whom this Bureau is the collector, **on the identical income and net profits <u>taxed</u> by our member taxing authorities and other Commonwealth of Pa. and/or another state's political subdivisions**, provided this same credit has not already been applied toward the taxpayer's liability for the Pennsylvania Personal Income Tax for the same period.

Evidence of the amount of gross earnings and payments of the applicable tax on earned income/compensation or net profits to another state or political subdivision for the concurrent time period is required before such credit is allowed.

EXAMPLES:

1. Taxpayer G, a RESIDENT within our jurisdiction, who works in Philadelphia and pays Philadelphia income tax is entitled to a credit of up to the amount of local tax paid to Philadelphia toward his/her local earned income/compensation and net profits tax liability at this Bureau. The credit shall generate a refund if the credit amount exceeds the tax that would have been due this Bureau. Refunds generated as a result of this policy shall not exceed the tax actually received by this Bureau for the taxpayer.

2. Taxpayer H, a RESIDENT within our jurisdiction works full time in City A, Delaware, which exacts a 1.3% tax on his/her earnings in that city. Taxpayer H may take credit against his local earned income/compensation tax liability on which he paid City A tax.

3. Taxpayer I, a RESIDENT within our jurisdiction, works three days in Wilmington, Delaware and two days in York, and pays Wilmington city tax. The taxpayer may take a credit of 3/5 against his/her liability for the **TAX**.

4. Taxpayer J, a RESIDENT within our jurisdiction, is a partner in a national CPA firm with offices in our jurisdiction, plus Chicago, New York City and New Orleans. Taxpayer J pays taxes on income earned in each of these cities. Taxpayer J may take credit toward the **TAX** using the following method:

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

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

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

$10,000 x 1% = $100.00
5,000 x 1% = 50.00
15,000 x 1% = 150.00
$300.00 maximum credit that can be applied to the **TAX**.

(c) List the amount of **TAX** paid to each locality

$ 400 to Chicago

200 to New York City
600 to New Orleans
$ 1,200 total paid to other jurisdictions

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

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

(e) The maximum credit that can be applied to the **TAX** is $300 (see above step (b). This can be entered on our Form 214 tax return on the local earned income/compensation tax withheld line. If the credit remaining after step 4 had been less than $300, then that amount would be allowed as a credit against the **TAX**.

Residents who take credit for taxes paid in other jurisdictions shall provide the Bureau with an exact duplicate copy of the tax return as filed with other jurisdictions, along with an exact duplicate copy of their Commonwealth of Pennsylvania Individual Income Tax Return (PA 40) plus any additional documentation requested by Bureau personnel.

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

SECTION 209. DEDUCTIONS AND LOSSES:

A. Deductions:

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

1. Customary and accepted in the industry or occupation in which the taxpayer works.
2. Directly related to the taxpayer’s present occupation, as opposed to an occupation which the taxpayer plans to enter in the future
3. Reasonable in amount and not excessive; and

4. Necessary (required by the employer) to enable the taxpayer to properly perform the duties of his or her employment.
5. Directly related to performing the duties of the taxpayer's present occupation or employment.

Those expenses not meeting the "five part test" are not allowed as a deduction from earned income/compensation. The taxpayer has the burden of proving that any expense claimed is ordinary, actual, reasonable, necessary and directly related to the performance of the duties of the taxpayer's occupation or employment, and must maintain adequate and sufficient records to substantiate any such deduction taken.

<u>EXAMPLES</u> of expenses which may <u>not</u> be deducted from earned income/compensation include: Cost of travel (commuting) to and from work; cost of travel (commuting) to and from a secondary place of employment; meals and lodging unless the "away from home overnight test" is met; capital expenditures; moving, educational and office-in-home expenses except as allowed by the Pennsylvania Department of Revenue; and personal expenses such as medical, dental, life insurance premiums, contributions, interest, other taxes, gifts and entertainment, dues to professional or fraternal societies, club memberships, subscriptions to publications, alimony, baby-sitting, books, casualty or theft losses, clothing suitable for everyday use, employee deferred compensation plan contributions, Federal Form 1040 tax credits and other taxes, individual retirement account (IRA) contributions, self-employed retirement plans contributions, employee contributions to Simplified Employee Pension Plan (S.E.P.) contributions, Federal, State or Local Income Taxes, gifts, estate or inheritance taxes and personal taxes, tools for use at home, Federal Form 1040 itemized deductions or the Occupational Privilege Tax.

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

Business expenses as documented on Pennsylvania Department of Revenue Schedule UE are permitted. If employee business expenses are claimed, a copy of Pa. Schedule UE must be provided. If moving expenses are claimed, a copy of Pa. Schedule UE must be provided to this Bureau along with tax Form 214.

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

B. Losses:

Taxpayers are not allowed to **offset** a loss in one **<u>class</u>** of business activity against a **gain** in another **<u>class</u>** of business activity. If a net loss is incurred from the operation on one or more business activities, zero must be entered on the appropriate line(s) of the Annual Tax Return. Losses may be applied only in the year in which the loss was actually incurred, and may not be carried over to subsequent years. One person's losses may not be deducted from his or her spouse's earnings. S Corporation losses may not offset earned income/compensation or net profits for any taxpayer.

EXAMPLE - Computation of net profit - John Doe, an engineer and consultant, maintains an office where he conducts a consultant business (Schedule C). He is also employed for a salary by an engineering firm within one of our member districts. In addition to the consulting business, he conducts a Schedule E business from his home (or elsewhere) unrelated to engineering.

He earned a $50,000 salary at the firm, earned a net profit of $12,000 from his consulting business and also suffered a net loss of $51,000 from the other business. The net loss of $51,000 cannot offset the net profit, but it would reduce the earned income/compensation. Therefore there will be zero earned income/compensation tax due, but he would owe a net profit tax on the $12,000.

C. Losses from items or activities which are excluded from the **TAX** may not be used to offset earned income/compensation or net profits.

SECTION 210. ALLOCATION/APPORTIONMENT OF EARNED INCOME/COMPENSATION TAX AND NET PROFITS TAX FOR NON-RESIDENTS.

A. Compensation allocation: Apportionment of earned income/compensation tax to a non-resident's earnings generated from full time employment within one of our municipalities which taxes non-residents.

Generally - A non-resident working in one or more of our member municipalities which taxes non-residents is subject to a 1% tax on all earnings for work done or services performed or rendered in such municipality pursuant to the following conditions:

1. Where the borough, city, township or school district of which the employee is a resident imposes and collects a **TAX** of 1% or more on earned income/compensation, the earnings of such employee are not taxable by this Bureau if the employee files a local return with the tax officer for his/her resident political subdivision.

2. Where the borough, city, township or school district of which the employee is a resident imposes and collects a **TAX** of less than 1% on earned income/compensation, the earnings of such employee are taxable at a rate which equals the difference between 1% and the rate of the **TAX** imposed and collected by the political subdivision of which the employee is a resident.

3. Non-residents working full time in one or more of our member municipalities which taxes non-residents, by virtue of a contract of employment, on a 5 day week basis (Monday through Friday), he or she may NOT, in computing the **TAX** due, exclude from earnings, compensation for days for which he or she is compensated but not required to work (ie., Saturdays, Sundays, vacations, holidays, etc.).

B. Non-residents working part time in a member municipality within our jurisdiction, which taxes non-residents:

1. Where a non-resident receives earned income/compensation for work done or for services rendered or performed partly within and partly outside said municipality, the **TAX** shall attach to that portion of the compensation which is earned within said municipality in accordance with the rules of apportionment or allocation set forth in paragraphs 2, 3, 4, 5, 6 & 7 which immediately follow.

2. If the non-resident is paid on a straight salary or wage basis, the **TAX** shall be based on that portion of his or her earned income/compensation which the total number of working days employed within the municipality bears to the total number of working days employed within and outside of said municipality.

3. If the non-resident is paid commissions, based on the volume of business transacted, the **TAX** is computed on that portion of their entire commissions which the volume of business transacted by the employee within the municipality bears to the volume of business transacted by him or her both within and outside of the municipality. The place of solicitation shall generally determine whether the business transacted was within or outside of the municipality.

4. If the employee receives both salary and commissions, the **TAX** shall be allocated on the basis of working days and volume of business transacted in accordance with paragraphs 2 and 3 immediately above.

5. The occasional entry into the municipality by a non-resident employee, who performs the duties for which he or she is employed entirely outside the municipality, but who enters the municipality for the purpose of reporting, receiving instructions, etc. incidental to his or her duties outside the municipality, and non-residents engaged as performers, participants or otherwise, in traveling troupes, sports teams, shows, demonstrations or exhibits, originating elsewhere, shall NOT be deemed to take such employee out of the class of those rendering services entirely outside the municipality.

6. The claim for an apportionment or allocation shall be supported by a written statement signed by the employer setting forth the date or dates the employee was assigned outside of the municipality. Whenever the Bureau shall determine, either upon its own initiative or upon application by the taxpayer, that an apportionment is appropriate for a particular taxpayer, a class of taxpayer, or for the municipality or Bureau, he or she may provide for a method of apportionment with due regard to the nature of the business concerned.

7. Where it is impractical to apportion or allocate the earned income/compensation at the end of each month, the apportionment or allocation may be made at the end of the year and the **TAX** adjusted accordingly.

C. Allocation of net profits of non-residents:

1. <u>Where the entire business is transacted in the municipality.</u> A non-resident individual conducting any business, trade, profession, or other activity is subject to the **TAX** on the entire net profits thereof if the entire business is conducted or carried on in the municipality.

2. <u>Where the sole store or office is in the municipality.</u> A non-resident who maintains his or her sole store or office in the municipality and transacts business both within and outside of the municipality is NOT entitled to an allocation on his or her net profits. The business status, in such instances, is considered transacted as flowing through the municipality store or office.

<u>EXAMPLE:</u> A non-resident surgeon who maintains an office in the municipality and none outside of the municipality, would not be permitted to allocate the **TAX** as to fees received for surgery actually performed outside the municipality. The same example applies to a non-resident attorney who maintains his or her sole office in the municipality.

3. <u>When a non-resident is entitled to an allocation of net profits</u>: A non-resident who, in addition to having a place of business or office outside of the municipality also maintains a branch office or store and transacts business both within and outside of the municipality, shall be entitled to an allocation of his or her net profits.

4. If the non-resident referenced in 3 above claims an allocation on the basis of a branch office or store outside of the municipality, he or she must prove to the administrator that it is established, self-sustaining, bona fide branch office or store.

5. <u>Special allocation formula:</u> Where it is impossible to allocate with certainty the net profits subject to the **TAX** by reason of the absence of an office or store within the municipality, or because the taxpayer's records do not disclose the actual net profits where he or she does have a branch in the municipality, or for any other reason the administrator, upon request, may permit the use of the allocation formula to effect a fair and proper apportionment so that only that portion of the net profits attributable to the municipality is included in the measure of the **TAX**. <u>These factors are:</u>

6. <u>Real and tangible personal property factor:</u> The taxpayer computes a percentage on the basis of a fraction using the total average book value of all such property located in the municipality as the numerator, and the total average book value of all such property located within and outside of the municipality as the denominator.

7. <u>Wages and salaries factor:</u> A percentage is computed on the basis of a fraction using the total amount of wages and salaries paid to employees who work in, or from, or are attached to places of business located in the municipality as the numerator, and the total amount of wages and salaries paid to all employees within and outside the municipality as the denominator.

8. <u>Gross receipts factor:</u> A percentage is computed on the basis of a fraction using as the numerator gross receipts from sales or services within the municipality, as the denominator all gross receipts from sales or services made within and outside of the municipality.

9. <u>Averaging:</u> the percentages obtained for the three factors herein above described are to be added together and the total thereof divided by three (3) to obtain the average of the three percentages. If the numerator and the denominator of any fraction are both zero,

the factor is deemed to be nonexistent and shall be omitted in calculating the average of the percentages.

EXAMPLE/ILLUSTRATION:

(a) Average Real and Tangible Personal Property in the Municipality $25,000 = 25%
Average Real and Tangible Personal Property within and Outside of the Municipality $100,000

(b) Wages and Salaries in the Municipality $10,000 = 20%
Wages and Salaries in and Outside the Municipality $50,000

(c) Gross Receipts in the Municipality $75,000 = 25%
Gross Receipts in and Outside the Municipality $300,000

Total of Percentages	70%
Average of Percentages (Total of Percentages Divided by 3)	23 1/3%

ARTICLE III

COLLECTION AT THE SOURCE

SECTION 301. EMPLOYERS REQUIRED TO WITHHOLD:

A. Every employer having an office, factory, workshop, branch, warehouse or other place of business located within the Taxing District, and who employs one or more persons (other than domestic servants in a private home or Maryland residents) for a salary, wage, commission, or other compensation, shall deduct the applicable tax rate from residents of that district and nonresident employee's wages at the time of payment thereof.

B. Fiduciary Status - Employers who withhold earned income/compensation tax from employees, and the person responsible for the transmission of earned income/compensation tax withheld by a corporate employer, shall be a fiduciary charged with all the responsibilities of a fiduciary with respect to taxes withheld, and shall be subject to all duties imposed by law on fiduciaries, including criminal penalties for breach of duties.

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

(1) Musicians:

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

Contractor - The term contractor means that individual musicians 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.

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 a employer's control over the conduct of the musicians.

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

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

Name bands and orchestras - A name band or orchestra is one which is identified or known by a name and which holds itself out to the public as a permanent organization, and in addition has either (a) a fixed personnel or (b) the individual member musician has contracted for his or her services with the leader or owner of the band at a fixed salary, by term or by individual engagement, and over whom the purchaser 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.

(2) Entertainers other than Musicians:

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

The owner of a club, cafe, taproom, 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 earned income/compensation paid to the entertainer.

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

(4) Ministers, Rabbis and Clergymen:

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

(5) Domestics:

The earned income/compensation received by domestics is taxable. The employer may, with the consent of the domestic, withhold the tax.

Where the duties of domestics require them to live at their place of employment, board and lodging shall not be considered as wages or salary earned.

SECTION 302. VOLUNTARY WITHHOLDING:

Any employer located outside our Taxing Districts may voluntarily withhold the tax from employees who are residents of our Taxing Districts but who are employed outside the Districts.

SECTION 303. REGISTRATION OF EMPLOYERS:

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

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

SECTION 304. LIABILITY OF EMPLOYEE:

Failure of any employer to withhold tax shall not relieve the employee from payment of such tax, or from complying with the requirements of the ordinance or resolution or these rules and regulations relating to the filing of declarations and tax returns.

ARTICLE IV

PAYMENT OF TAX AND RETURNS

SECTION 401. ANNUAL RETURNS OF TAXPAYERS:

A. On or before April 15 of each year, every person 16 or more years of age who was a resident or non-resident in one or more than one of our member municipalities and/or School Districts for all or any portion of the preceding calendar year shall file with this Bureau an Annual Tax Return Form 214 showing all earned income/compensation and net profits received and/or earned for the previous year. A husband and wife may not file a "joint return" with this Bureau. Photocopies, facsimiles, reproductions, of the Bureau's tax return forms are not acceptable.

B.(1) Persons residing in more than one Taxing District as a result of moving during the calendar year must file an Annual Tax Return with the Officer for each District in which they resided during the year. EXAMPLE: York Adams Tax Bureau and Hanover Area Tax Bureau.

(2) The Bureau's employees have the authority to request and receive or view a paystub or letter from the taxpayer's employer or employers for the applicable period of time relevant to the tax filing period. The pay stub or letter from the employer should indicate the gross earnings and earned income/compensation tax withheld for each period and taxing authority. To facilitate tax return processing this information must accompany each tax return when it is received. Alternatively, the taxpayer's net profits and/or earned income/compensation for the year may be divided by (12) twelve, and multiplied by the number of months appropriate for each taxing jurisdiction.

C. If a person has no earned income/compensation or net profit to report, the word "none" shall be entered on the Annual Tax Return, and the return shall be signed, dated, and returned to this Bureau with an explanation. EXAMPLE: Military service, retired, disability income only, etc.

D. If net profits are received, the type of business, profession, or activity shall be indicated on the Annual Tax Return and the amount of the profits shall be shown on the appropriate line(s) of the Return. If a net loss is incurred in the operation of one class of business activity, it may not be offset against the net profit of other classes of business activities. Losses shall be indicated as zero in all calculations involving net profits on the Annual Tax Return. Copies of the appropriate Pennsylvania PA-40 and Pennsylvania Schedules C, E, F, UE, Pa. Schedule RK-1 or PA. NRK-1 are to be attached to the Annual Tax Return Form 214 to substantiate profits and/or losses indicated. Schedule E profits are not taxed. Schedule E losses do not offset earned income or other schedule profit.

E. When a Return is made for a fiscal year, the Return shall be filed within one hundred and five (105) days from the end of said fiscal year.

F. The Annual Tax Return shall also show the taxpayer's name, social security number, address, place or places of employment or business, the amounts of tax due, the amount of any credit claimed for tax withheld by an employer (with a copy of the earnings and tax statement) or prepaid to this Bureau and such other information as may be indicated on the Return form or as may be required by the Administrator. Every person subject to the **TAX** shall file such return regardless of the fact that his or her earned income may have been subject to withholding of the **TAX** by his or her employer and regardless of whether or not tax is due.

G. At the time of filing the Annual Return Form 214, the taxpayer is required to pay any tax due. Total balances of less than $1.00 need not be paid. Tax payment schedule contracts are available when approved by this Bureau.

H. Tax returns must be signed and dated by the taxpayer in the space provided.

I. Remittance shall be made payable to York Adams Tax Bureau.

J. Third party checks in payment of the tax due may be refused by the Administrator or Bureau staff.

K. Bad checks - A $20.00 penalty will be levied if a check is returned unpaid by the bank.

L. Taxpayers with S Corporation income shall report their total S Corporation income in the appropriate box as required on the annual Form 214 tax return. This information is used for audit purposes only. S Corporation income is not taxed for local tax purposes. S Corporation losses do not offset earned income/compensation or net profits.

SECTION 402. QUARTERLY PAYMENT BY TAXPAYERS: - (ADOPTED APRIL 29, 1991)

A. Implementation date was January 1, 1992.

B. In addition to the Form 214 Annual Tax Return, a Declaration of Estimated Income Tax Form, must be filed by all taxpayers who anticipate receiving earned income/compensation or net profits in excess of *$10,000.00 individually in a given calendar or fiscal year, if the tax due thereon is not withheld by employer(s). Quarterly payments of one-fourth (1/4) of the prior year's net profits and earned income/compensation not subject to employer withholding of tax and/or 90% of the current year's tax not subject to employer withholding shall be made to the York Adams Tax Bureau, at the following times:

For quarter comprising the following months in which earned income or net profits are received	Quarterly payment (1/4 of total estimated yearly tax owed) due on or before:
Jan., Feb., March	April 30
April, May, June	July 31
July, August, September	October 31
October, November, December	January 31

C. Refer to Section 406 for calculating the penalty and interest due on late payments of tax.

D. An additional penalty of $20.00 per failure to comply with the filing requirement shall be imposed and collected, in addition to the fines and penalties referenced in Section 506 of these Rules and Regulations.

E. The additional $20 penalty shall apply to the following:

1. Failure to file the quarterly declaration of estimated income tax form for each period.
2. The deliberate misrepresentation of information or an improperly filed declaration.
3. Failure to pay any of the estimated tax due for each period.
4. Failure to make timely estimated tax payments for each period.

*Approved as amended by the Board of Directors on July 28, 1997, effective January 1, 1998, the threshold for filing the ES-77 form has been changed from $2,500.00 to $10,000.00.

F. A taxpayer who obtains not less than two-thirds of his/her gross income from farming or fishing for each period, shall have the option of filing a Declaration of Estimated Income Tax Form ES-77 and of paying the estimated tax prior to March 2, of the following calendar year, except that the quarterly declaration due January 31, is due prior to March 2, of the same calendar year.

The Declaration of Estimated Income Tax Form ES-77 shall contain a box to be checked if the applicable taxpayer chooses to file the declaration and pay the estimated tax prior to March 2, in lieu of filing and paying quarterly.

G. A husband and wife shall not file a joint declaration using one social security number. If one payment is made for multiple persons, the amount of tax to be applied to each person identified by their correct social security number is required.

H. Should the Bureau accept a combined Declaration of Estimated Income Tax Form ES-77, the combined declaration must be signed by both spouses. It must also contain each spouse's correct social security number.

I. A taxpayer may make and file adjusted declarations and pay the estimated **TAX** in cases where a taxpayer who has filed the previous quarterly return anticipates additional net profits not previously declared or finds that he has overestimated his anticipated net profit.

<u>EXAMPLES:</u>

(1) If a taxpayer has high business expenses in the 1st quarter which causes a loss for the 1st quarter, this does not allow a delay in the payment of taxes equal to one fourth (1/4) the <u>estimated annual net profits.</u>

(2) Taxpayer X is self employed. For the 1st quarter he filed a quarterly declaration indicating zero earnings for that quarter. Although taxpayer X's expenses

may exceed revenues, he must make quarterly tax payments based on his estimated tax liability for the year to avoid penalty and interest charges.

SECTION 403. RETURNS OF EMPLOYERS AND PAYMENT OF WITHHELD TAX:

A. Every employer required to withhold the tax shall file a quarterly return on the proper form setting forth the name, social security number, address, municipality of residence, withholding rate, gross earnings and amount of tax withheld for each employee, and shall remit the total sum thereof to the York Adams Tax Bureau on the dates specified.

For Quarter comprising the following months in which wages are paid	Employer's Quarterly return and payment due on or before
Jan., Feb., March	April 30
April, May, June	July 31
July, Aug., Sept.	October 31
Oct., Nov., Dec.	January 31

B. Employers may utilize computer printouts or similar listings to transmit quarterly and/or annual employee withholding data provided the required information is furnished in a manner acceptable to the Administrator. By prior arrangement with the Administrator employers with less than 250 employees may furnish quarterly and/or annual employee withholding data Form W-2 **electronically, or via other Bureau approved magnetic, optical, or other media approved by this Bureau**. In such cases, an Employer's Quarterly Return Form 319 shall be completed and attached as a cover sheet to transmit the data and withheld tax to the York Adams Tax Bureau quarterly. The annual employee withholding Form W-2 data shall be reported to this Bureau during February of the ensuing calendar year and shall be accompanied by the annual reconciliation Form 322.

C. Every employer who discontinues business prior to the completion of the tax year, shall, within thirty (30) days after discontinuance of business, file and furnish the returns required by this section covering periods between the last such returns and date of discontinuing business and transmit to the Officer all tax remaining due.

D. Every employer with 250 or more employees shall be required to submit calendar years withholding data for form W-2 information to this Bureau on Bureau approved magnetic media during February of the ensuing calendar year as per the Resolution passed by the Bureau's Board of Directors on Monday, July 30, 1990.

E. Every employer who is engaged in a business activity within and outside the approving Political Subdivision shall withhold from resident and nonresident employees who work for such employers within the approving Political Subdivision even though the payroll records and place of payment are not in the approving Political Subdivision.

F. Local earned income/compensation taxes withheld from employee wages by an employer or business entity or a corporation is held in trust for the taxing authority and it's tax collector, even in the event of a bankruptcy; nor shall these withheld tax funds be the "property of the bankrupt estate." These withheld taxes shall not be commingled in the employer's general cash or other accounts.

G. (1) TRUSTEE EX MALEFICIO: One who collects the earned income/compensation tax as agent for a taxing authority or the taxing authority's tax collector and fails to pay same over to the appointed collector for the taxing authority is a trustee ex maleficio.

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

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

> <u>EXAMPLE:</u> A corporation which files a tax return form, or the forms W-2 document collections from employees, but remits only part of these collections to this Bureau shall be liable for the withheld taxes as a trustee through wrong doing. The controlling corporate officer is also liable for the tax as a trustee through wrong doing, to the extent that this officer failed, permitted and/or directed the corporation not to remit the withheld tax.

> <u>EXAMPLE:</u> An officer and/or director of a corporation or business who has knowledge that the corporation has failed to pay over withheld earned income/compensation tax shall be personally liable for the tax withheld because that person did not try to prevent the corporation or business from spending its funds without first paying the withheld tax to this Bureau.

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

> <u>EXAMPLE:</u> The officers are the sole owners of the shares of stock and/or are the "guiding force" of the corporation. The officers are trustees of the earned income/compensation tax collected since they are responsible for the corporation's failure to remit the tax and for the misappropriation of the funds. The doctrine of separate entity of the corporation shall not defeat this Bureau's claims.

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

I. LOWEST INTERMEDIATE BALANCE TEST (L.I.B.T.). This is a judicial test which this Bureau will apply to ease the burden of the beneficiary (the tax collector, in this case the Bureau) to trace the funds if or when a trustee commingles trust funds due this Bureau with other monies in a single account. The L.I.B.T. allows trust beneficiaries to assume that trust funds are withheld last from a commingled account. Therefore the lowest intermediate balance in a commingled account represents trust funds that have never been dissipated and which are reasonably identifiable. The Bureau will take the position that the Court will keep in mind a broad policy against allowing a party unilaterally to make a trust unenforceable by commingling assets. Also, in the event of a bankruptcy filing the L.I.B.T. is intended to provide a method for this Bureau to demonstrate that amounts of withheld taxes were/are still in the possession of the debtor at the commencement of the case.

See: 300-227 City of Farrell VS Sharon Steel Corp.; United States Office; Mueller Industries, Inc.; Citibank, N.A. United States Court of Appeals, third Circuit, No. 94-3130, November 14, 1994 case.

J. INTERLOCKING BUSINESS ENTITIES: A company that maintains separate payrolls for its employees on a separate checking account or general ledger system and reported to this Bureau that it has withheld payroll tax from its employees shall be liable for the earned income/ compensation tax, plus interest, plus penalty when the tax has not been remitted to this Bureau.

EXAMPLE: The fact that a company is closely tied to a corporation and that together the company and corporation provide a single overall set of services does not excuse the corporation from liability for unremitted earned income/compensation tax withheld where the entities have been kept separate for bookkeeping and operational purposes.

K. RESPONSIBLE PARTY. An officer or employee of a business entity including a corporation, who is responsible or has the duty to collect or withhold earned income/compensation tax and/or possesses actual or implied control over funds and tax accounts will be personally assessed for collected or withheld earned income/compensation tax that is not remitted. Generally this Bureau will issue an assessment, or file a legal action, against the chief operating officer and/or financial officers of any entity, including corporations, if the facts of the particular case disclose that these individuals are involved in the day to day operation of the business entity and retain decision making authority over financial matters. A responsible person need not be an officer of the entity. Managers whose duties include authority and control over financial decisions may likewise be held responsible.

This Bureau's process of determining the responsible person begins with the "Employer Questionnaire Form" and/or the tax return form itself. Bureau regulations do not restrict who may sign a tax return form. However, it is important for the person signing the Form 319 to understand that act, along with other factors, may subject her or him to personal liability. Because signing the tax return Form 319 evidences control over the funds of the entity and an active involvement in the entity, this Bureau presumes the person signing the tax return Form 319 to be the person responsible for the payment of the withheld tax unless the facts of each particular case do not support that inference. Therefore, if the signatory is an officer of the entity, it is likely that an assessment will be made.

SECTION 404. FISCAL YEARS:

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

B. A taxpayer, by filing with the Bureau his or her written election to do so, may make returns and pay tax on the same fiscal year basis used for Pennsylvania Personal Income Tax purposes.

SECTION 405. CASH OR ACCRUAL BASIS:

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

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

(1) "Cash Basis Method - A taxpayer employing the cash basis of accounting includes in gross income all income subject to tax received during the year in cash or its equivalent. He or she deducts all disbursements made during the year in cash or its equivalent, provided deduction for such expenditures is authorized by law.

(2) The use of the cash basis is mandatory where no book or records of account are maintained.

(3) Items of income and expenditure which, as gross income and deduction, are elements in computing taxable income need not necessarily be in the form of cash. It is sufficient that such items, if otherwise properly included in the computation, can be valued in terms of money.

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

(4) If the return is made on a "cash basis," gross profit shall include receipts from commissions and fees, as well as the gross profit or loss from sales of merchandise, goods, wares, and services.

(5) "Accrual Basis" - If income is taken into consideration when earned, even though not received in cash, and expenses are considered as soon as incurred, whether paid or not, the system of accounting is said to be on the "accrual basis." These are the basic rules: (1) the right to receive an item of income (as distinguished from actual receipt) determines its inclusion in gross income under the accrual method; and (2) a deduction cannot be accrued until an actual liability is incurred.

<u>EXAMPLE:</u> In September of last year a contractor performed work for a customer. Payment for the work was not received until this year. If the taxpayer reports on the accrual basis, the income will be included in last year's return (when earned). If he or

she reports on the cash basis, the payment will be included in this year's return (when received).

C. A taxpayer engaged in more than one business 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.

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

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

SECTION 406. PENALTY AND INTEREST:

If for any reason the tax is not paid when due, interest at the rate of six percent(.06) per annum on the amount of said tax, and an additional penalty of one-half of one percent (.005) 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 recovery of any such tax, the person liable therefore shall, in addition, be liable for the cost of collection and interest and penalties herein imposed.

EXAMPLE: Tax due x .06 x No. of days delinq. divided by 360 = Interest.

SECTION 407. EXTENSIONS:

A taxpayer who requires an extension of time in which to file his or her Annual Tax Return shall make written application to the Bureau no later than one hundred and five (105) days from the end of the calendar or fiscal year for which the Return will be filed. A Taxpayer who is granted an extension of time for filing his or her Federal or Pennsylvania Income Tax Return shall not automatically be entitled to a similar extension of time for filing his or her local return. A copy of the taxpayer's York Adams Tax Bureau or the Federal tax extension form received at this Bureau on or before April 15, or postmarked by this date is required for approval to be considered.

Interest at the rate of six percent (.06) per annum must be paid even though an extension of time for filing is granted.

SECTION 408. CHANGE IN FEDERAL OR PENNSYLVANIA TAXABLE INCOME:

If the amount of a taxpayer's earned income/compensation or net profits reported on his or her annual Federal or Pennsylvania Personal Income Tax Return is changed or corrected either by action of the Internal Revenue Service or Pennsylvania Department of Revenue or by the individual's filing of an amended annual Federal or Pennsylvania return, the taxpayer shall report to this Bureau such change or correction was determined, by filing an amended tax return indicating the applicable tax year on the return.

SECTION 409. PAYMENT TO BUREAU BY CREDIT CARD, FED WIRE TRANSFER OR OTHER ELECTRONIC METHODS:

You may elect to pay your tax balance due by credit card (VISA, MasterCard, American Express and Discover credit charge cards) through Official Payments Corp. Payments must be made via a link through our website www.yatb.com or by phone (1-800-272-9829). There is a fee charged by Official Payments Corp. for utilizing this method of paying any tax due.

Payment of tax, penalty or interest to the Bureau by any other electronic means shall require the Bureau's prior written approval. The written approval shall be in the form of a letter or on a form prepared by the Bureau which provides the necessary information to assure prompt, accurate accounting and proper credit for said payment by electronic means. The letter or Bureau form must contain the signature of the Bureau administrator or assistant administrator and the date the signature is affixed thereto.

The Bureau and the Bureau's employees shall not be held accountable for unauthorized transfers of funds into any Bureau cash account when no prior approved, written authorization has been issued to the originator of the funds transfer process.

The originator of each prior approved electronic funds transfer to Bureau cash accounts shall also simultaneously notify the Bureau of the incoming electronic transfer of funds by means of a FAX to telephone number (717)854-6376. the Fax must contain all the information required for Bureau employees to fully and properly credit the proper persons or employer accounts for the amount of the electronic funds payment.

ARTICLE V

ADMINISTRATION AND ENFORCEMENT

SECTION 501. INCOME TAX OFFICER:

A. The Administrator is charged with the administration and enforcement of the Ordinances and Resolutions and these Rules and Regulations, and is authorized to act on behalf of the member Municipalities and School Districts in such administrative and enforcement matters.

B. The York Adams Tax Bureau, 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 for (7) seven years.

SECTION 502. REQUESTS FOR RULINGS:

Any taxpayer or employer or tax preparer desiring a specific ruling concerning the Resolutions and Ordinances or these Rules and Regulations shall submit all relevant facts in writing to the Administrator who shall issue a written ruling.

SECTION 503. EXAMINATION OF BOOKS AND RECORDS OF TAXPAYERS AND EMPLOYERS:

A. The Administrator and agents or staff members of the Bureau designated in writing 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, if any. Every taxpayer or supposed taxpayer and every employer or supposed employer is required to give the Administrator or any agent or staff member so designated by him the means, facilities and opportunity for such examinations and investigations as are authorized. In addition to all other powers, the Administrator and staff shall have the power, on behalf of the taxing jurisdictions 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. Information obtained by the Administrator or any other official, staff member or agent of the Bureau as a result of any return, examination, investigation, hearing, or verification required or authorized, is confidential and may not be disclosed to any person, except for official use in connection with administration or enforcement of the Resolutions and Ordinances, or as otherwise provided by law.

SECTION 504. RECORDS TO BE KEPT BY TAXPAYERS AND EMPLOYERS:

Taxpayers and employers subject to the Resolutions and Ordinances are required to keep such records as will enable the filing of true and accurate returns, whether of taxes payable upon earned income/compensation or net profits, or both; and such records shall be preserved for a period of not less than six (6) years in order to enable the Bureau staff to verify the correctness and accuracy of the returns filed.

SECTION 505. REFUNDS:

A. A completed Annual Tax Return Form 214 must be filed and be processed before a request for refund can be considered. Depending upon the nature of the refund, additional documentation to substantiate the request may be required by the Bureau. Refund requests will not be processed until the necessary documentation is provided. Requests for refund will be considered based upon the relevant facts and circumstances pertinent to each case. Amounts less than one dollar ($1.00) will be refunded only upon written request of the taxpayer, accompanied by a stamped, self-addressed envelope.

B. Bureau policy regarding uncashed tax refund checks.
In the event that, through no fault of this Bureau, the payee's tax refund check is not received at this Bureau's bank for payment within six months from the issue date printed on the face of the tax refund check, <u>and</u> the dollar amount of the tax refund check is less than ten dollars (l$10.00), this Bureau shall not be responsible for, or required to issue a replacement tax refund check, and that check shall be void. This policy was adopted 10/29/2001 by this Bureau's Board of Directors, and the effective date was 01/01/2002, for this policy.

SECTION 506. FINES AND PENALTIES FOR VIOLATIONS:

Any person who violates any provision of the Resolutions and Ordinances shall, upon conviction, be sentenced to pay a fine of not more than $500.00 for each offense plus costs, and in default of payment thereof, to be imprisoned in the County Prison for a period not exceeding thirty (30) days. Some of the violations which may result in such conviction are:

A. Disclosure for unauthorized purposes by any Bureau employee or any official or employee of any former or present member districts of any confidential information acquired as a result of the operation of the Resolutions and Ordinances or these Rules and Regulations.

B. Failure, neglect, or refusal on the part of any person, any partner of a partnership or any officer of a corporation or association to file any report or return, or to pay, deduct from wages, or transmit any tax, penalty or interest required of such person, partnership, corporation or association.

C. Failure, neglect or refusal to maintain or to reveal to the Bureau or its authorized representative, books, records, or papers relevant to the tax imposed hereunder.

D. Knowingly making any incomplete, false or fraudulent report or return or attempting to do any other thing to avoid payment of the tax in whole or in part.

E. All taxes, fines, interest and penalties imposed by these Resolutions and Ordinances shall be paid to the York Adams Tax Bureau.

SECTION 507. CONCURRENT REMEDIES:

Imposition of any fine or imprisonment shall not bar either civil liability for tax, penalty or interest, or criminal prosecution for embezzlement, fraudulent conversion, theft or other offense under the Pennsylvania Crimes Code, or criminal prosecution for failure to file a properly prepared tax return under Act 511, P.L. 1257 of 1965, as amended by Act 166 of 2002.

SECTION 508. FAILURE TO RECEIVE FORMS:

Failure of a taxpayer or employer to receive forms or returns required by the Resolutions and Ordinances does not excuse any failure to file any reports or returns required or to pay any tax due, including penalty and interest.

SECTION 509. SPOUSE'S NAME AND SOCIAL SECURITY NUMBER:

Taxpayers shall provide the full name and social security number of their spouse in the space provided on the annual tax return form.

SECTION 510. RETURN COMPLETION - GENERAL:

A. Each taxpayer shall account for all 12 months of the calendar year as to their place of domicile and the months in each place and also provide the name of each Borough, Township or City in which they lived during the calendar year.

B. Figures may be rounded to the nearest whole dollar, except where prohibited as indicated on the tax return form.

C. All appropriate schedules, W-2 forms and 1099 forms shall be enclosed with the tax return Form 214 when received. Tax returns shall be considered as incomplete without the appropriate Schedules, W-2 forms and 1099 forms.

D. Tax returns received without the applicable tax and penalty and interest shall be considered as being an incomplete filing as the return cannot be processed without payments.

E. Taxpayers with earnings in another State and having paid tax on earnings there must provide a copy of the State tax return for that State, plus their Pennsylvania personal income tax return. (PA-40).

F. Estimates of income and/or expenses by the taxpayer are not acceptable unless accepted by the Bureau administrator.

G. Should the taxpayer omit the required expense deduction forms or if the expense deduction forms are not fully completed, the expense deductions shall be disallowed and shall be systematically denied without notification to the taxpayer. The taxpayer instructions shall also indicate this provision.

H. Taxpayers may not submit Federal Schedules in lieu of Pennsylvania Schedules C, E, F, G, I, UE, RK-1, or NRK-1 to this Bureau.

I. Taxpayers may not submit Schedule E form in lieu of submitting their applicable K-1 form. Failure to submit the completed K-1 form shall result in the rejection and return of the taxpayer's forms as an incomplete or fraudulent filing.

J. The Bureau may acquire and utilize the Pennsylvania Department of Revenue, Individual Income Tax information regarding compensation and net profits for audit and compliance purposes.

K. Signing of Returns and other Documents:

(1) Any tax return form other than a Form ES-77 Quarterly Declaration under section 402, or a declaration, statement, schedule or other document required to be made and/or submitted to this Bureau pursuant to P.L. 1257, No. 511 of 1965 as amended by Act 166 of 2002, and these Rules and Regulations, or when requested by the Bureau's administrator, shall be signed by the taxpayer or by the person legally authorized to sign on behalf of the taxpayer when the tax return form, declaration, statement, schedule or other document is filed with the Bureau.

(2) Any tax return form, declaration, statement, schedule or other document required as per P.L. 1257, No. 511 of 1965, as amended by Act 166 of 2002, or by these Rules and Regulations for a partnership shall be signed by one of the partners. The fact that a partner's name is signed to a return, declaration, statement, schedule or other document, shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(3) The making or filing of any tax return form, declaration, statement, schedule or other document pursuant to P.L. 1257, No. 511 of 1965, as amended by Act 166 of 2002, or by these Rules and Regulations, shall constitute a certification by the person making or filing such tax return form, declaration, statement, schedule or other document or copy thereof that the statements and information therein are true and correct and that any copy filed is a true copy.

(4) Any unsigned tax return form received at the Bureau shall be considered as incomplete and unacceptable until it is properly signed.

L. TAX REFUNDS: No tax refund will be made unless a proper claim in writing on an approved form for refund is filed by the taxpayer or the employer or business entity, within three years from the date of filing the final return for the taxpayer's 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 tax return form.

SECTION 511. WHO MUST FILE:

A. Each resident of our participating Municipalities and School Districts, who is 16 years of age or older. All earned income/compensation and net profits are taxable for the entire calendar year in which an individual becomes 16 years of age.

B. Taxpayers who are retired or permanently disabled and have no taxable income may be coded on the bureau's files so as not to receive a tax form. The taxpayer must properly notify the Bureau in writing and also provide the effective date of retirement or permanent disability.

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

D. A taxpayer 16 years or more of age must file a tax return if he or she was a college student when the place of legal domicile is or was within our participating Municipalities and School Districts.

E. Taxpayers who had the earned income/compensation tax withheld by their employer are not exempt from filing a properly completed tax return.

F. Partial year residents and out of state residents must file for the applicable portion of the calendar year they lived or worked in one of our participating Municipalities and/or School Districts.

SECTION 512. REGISTRATION OF TAXPAYERS:

Every resident of a taxing jurisdiction who receives, or anticipates that he or she will receive taxable earned income/compensation or net profits during the calendar year must register his or her name and residence address, his or her social security number and the name and address of his or her place of employment or business with the York Adams Tax Bureau. All residents will thereafter be responsible for reporting changes in their name, place of residence or place of employment or business to the York Adams Tax Bureau. In the Districts which levy the non-resident tax, the above would also apply to these persons. This registration is required to be initiated within fifteen (15) days after becoming a resident or non-resident employee within the Bureau's jurisdiction.

It shall also be the responsibility of the member Municipalities and School Districts to provide the full name and address of new residents on a timely basis to this Bureau. The Taxing Districts shall also provide changes and new street names to the Bureau on a timely basis such as monthly.

SECTION 513. WAGE ATTACHMENTS:

The York Adams Tax Bureau shall demand, receive and collect from all corporations, political subdivisions, associations, companies, firms or individuals, employing persons owing delinquent earned income/compensation taxes, or whose spouse owes delinquent earned income/compensation taxes or net profits, or having in possession unpaid commissions or earnings belonging to any person or persons owing delinquent earned income/compensation taxes, or whose spouse owes delinquent earned income/compensation taxes, upon the presentation of a written notice and demand under oath or affirmation, containing the name of the taxable 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 possession, or that shall within sixty (60) days thereafter come into its or his possession, a sum sufficient to pay the respective amount of the delinquent earned income/compensation taxes or net profits, and costs shown upon the written notice or demand, and to pay the same to the York Adams Tax Bureau within sixty (60) days after such notice shall have been given. Such corporation, political sub-division, 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 (2%) per cent of the amount of money so collected and paid over to the York Adams Tax Bureau. 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 York Adams Tax Bureau, 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 taxable whose taxes were not withheld and paid over, or that are withheld and not paid over together with a penalty of ten (10%) per cent added thereto, to be recovered by an action of assumpsit in a suit to be instituted by the York Adams Tax Bureau or by the proper authorities of the taxing 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.

SECTION 514. BAD CHECKS:

When any person shall give or cause to be given to this bureau a check in payment of any obligation whether due to the bureau or others, including but not limited to any tax, which is dishonored or unpaid by the bank upon which it is drawn, the sum of twenty ($20) dollars shall be added to the obligation and interest and penalty provided by law or otherwise, to cover the additional cost to the bureau, plus the issuer/maker may have a criminal complaint court action filed against him or her.

SECTION 515. CHANGES IN ACT 511 BY THE PENNSYLVANIA GENERAL ASSEMBLY:

Should Act 511 language be amended by the Pennsylvania General Assembly, the amended language shall be incorporated into these Rules and Regulations.

SECTION 516. ASSESSMENT AND COLLECTION OF UNDERPAYMENT OF THE TAX:

A. If as a result of research of investigation conducted by or on behalf of the Administrator of the Bureau, a declaration or return is found or is reasonably believed to be incorrect, the Administrator is authorized to assess and collect any underpayments of taxes withheld at the source, or any underpayments of **TAXES** withheld at the source, or any underpayments of **TAX** owed by any taxpayer with respect to earnings or net profits or both. If no declaration or return has been filed and a **TAX** is found or determined to be due, the **TAX** actually due may be assessed and collected with or without the formality of obtaining a delinquent declaration or return from the taxpayer.

B. Hearings/Meetings: Any person aggrieved by an assessment made by the Administrator may, within thirty days after receipt of notice of the assessment, appeal the assessment by forwarding a letter to the Administrator stating in detail why the taxpayer believes the assessment to be incorrect and including documentation to support the appellant's position.. A meeting or hearing will be arranged within thirty days of the receipt of the appeal notice. The appeal meeting or hearing may be recorded at the decision of the Administrator. A decision on the appeal shall be rendered by the Administrator within thirty days of the close of the meeting or hearing. The person aggrieved may also properly file all applicable returns and provide all needed supporting documentation if this was not previously done by the aggrieved person. This may also permit promptly amending the assessment to the satisfaction of both parties.

C. Administrative Review Procedure: Upon receipt of a written request for an Administrative Review (hereinafter referred to as "the Review"), the Review will be scheduled within thirty (30) days from the date such request is received by the Bureau Administrator

(1) The Review may be recorded at the option of the Administrator and the Appellant may be required to provide verification that all factual information presented, including oral statements, are true, correct and complete to the best of their knowledge and belief. If a record is made of the Review, the Appellant may obtain a copy of the record by paying a fee equal to 50% of all costs incurred in the preparation and transcription of the record.

(2) The purpose of the Review shall include, but not be limited to a review of all documents, data and records produced by Appellant and an opportunity for Appellant to explain his or her position and be heard on issues directly relating to the filing of his or her Tax Return and payment of his or her taxes. The Administrator, or his authorized representative, shall have ample opportunity to make such inquiries of Appellant as will enable the Administrator, to fully understand Appellant's information and documents and to make such other inquiries as may be appropriate in examining and understanding Appellant's position.

(3) Appellant shall file with the Administrator properly completed and signed proposed Tax Returns for each Tax Year in question and such Returns, along with any supporting data and documents, shall be reviewed. A reasonable effort shall be made to reach a fair and equitable accommodation with the Appellant. In the event this can not be done, the Administrator, after a review of all the data and records submitted and of the

record of the Hearing, shall make such determination as he believes in his opinion to be appropriate and notify Appellant of his determination, in writing, on the form attached hereto and made a part hereof, which shall be sent to Appellant at Appellant's last known address by ordinary mail and which shall then become Appellant's formal notice of Appellant's tax liability as of the date of that determination.

(4) If the Appellant is aggrieved by the adverse determination of the Administrator, the Appellant may, within 90 days of the postmark of the Administrator's determination, file a formal Appeal Petition, setting forth in detail the issues the Appellant believes have not been properly addressed, to the Hearing Officer appointed by the Bureau. Decisions on petitions submitted under Act 50 of 1998 shall be issued within 60 days of the date a complete petition is received. Failure to act within 60 days shall result in the petition being deemed approved.

SECTION 517. "PAID UNDER PROTEST":

A check endorsement shall not qualify as a refund claim. The words "Paid Under Protest" handwritten, typed or otherwise placed on a taxpayer's check or money order, or the check or money order of an employer, shall not qualify as a refund claim as the words are not sufficient to appraise the Bureau's personnel of the taxpayer's intent to seek a refund or of the substance of their claim, or of facts sufficient to permit the Bureau to undertake an investigation of the person's claim.

SECTION 518. DELINQUENT TAX FILING AND COLLECTION EXPENSE:

A. Act 192 was enacted by the Pa. Legislature in December of 2004 to authorize third party collection agencies (re: York Adams Tax Bureau) to impose those costs associated with the collection of delinquent and unpaid taxes. The Bureau Board of Directors at the April, 2005, meeting approved the "Schedule of Costs to Provide Notices of Delinquency or to Collect Delinquent Taxes." Beginning with tax year 2005, these applicable costs will be included in all delinquent notices and legal action:

YORK ADAMS TAX BUREAU

SCHEDULE OF COSTS TO PROVIDE NOTICES OF DELINQUENCY OR TO COLLECT DELINQUENT TAXES

I. Individual Earned Income Tax.

A. Non-filing individual taxpayer delinquency notices:

1. First delinquent notice (each notice)	**$ 5.00**
2. Second delinquent notice (each notice)	**$ 10.00**
3. Preparation of Criminal Complaint	**$ 20.00**
4. Preparation of re-filing Criminal	

Complaint due to non-compliance $ 40.00

B. Unpaid individual earned income tax:

1. **First non-payment notice (each notice) $ 5.00**
2. **Second non-payment notice (each notice) $ 10.00**
3. **Payment schedule fee:**
    a. **0 – 6 months $ 20.00**
    b. **6 – 12 months $ 30.00**
    c. **12 – 18 months $ 40.00**
    d. **18 months or more $ 50.00**
4. **Wage attachment $ 40.00**
5. **Suit in assumpsit or other appropriate remedy Actual costs incurred plus $20.00 preparation fee**

C. Non-compliance with required quarterly individual Tax payments. $ 5.00 per quarter
$ 20.00 per year

D. Cost to provide copies of filed tax returns or W-2s to taxpayers.(current and next prior year) $ 5.00
(2nd prior year and older) $ 10.00

II. Employer Accounts.

A. Non-filing tax return or support documentation: (Applicable for each quarter)

1. **First delinquent notice (each notice) $ 5.00**
2. **Second delinquent notice (each notice) $ 10.00**
3. **Preparation of Criminal Complaint $ 20.00**
4. **Preparation of re-filing Criminal Complaint due to non-compliance $ 40.00**

B. Unpaid Employer's Remittance of Employee's Tax: (Applicable for each quarter)

1. **First non-payment notice (each notice) $ 5.00**
2. **Second non-payment notice (each notice) $ 10.00**
3. **Payment schedule fee:**
    a. **0 - 6 months $ 20.00**
    b. **6 – 12 months $ 30.00**
    c. **12 – 18 months $ 40.00**
    d. **18 months or more $ 50.00**
4. **Preparation of Criminal Complaint $ 20.00**
5. **Preparation of re-filing Criminal Complaint due to non-compliance $ 40.00**

III. Other Tax Collection Services. (Mercantile/Business Privilege; Emergency and Municipal Services Tax; Delinquent Per Capita Tax). (As applicable for year or designated tax period).

A. Non-filing of return or support documentation delinquency notice:

1. First delinquent notice (each notice)	**$ 5.00**
2. Second delinquent notice (each notice)	**$ 10.00**
3. Preparation of Criminal Complaint	**$ 20.00**
4. Preparation of re-filing Criminal Complaint due to non-compliance	**$ 40.00**

B. Unpaid taxes.

1. First non-payment notice (each notice)	**$ 5.00**
2. Second non-payment notice (each notice)	**$ 10.00**
3. Payment schedule fee:	
a. 0 – 6 months	**$ 20.00**
b. 6 – 12 months	**$ 30.00**
c. 12 – 18 months	**$ 40.00**
d. 18 months or more	**$ 50.00**
4. Wage Attachment	**$ 40.00**
5. Suit in assumpsit or other appropriate remedy	**Actual costs incurred plus $20.00 preparation fee**

B. If a wage attachment is subsequently prepared, the postage expense will become a part of and shall be included in the $40.00 wage attachment amount when the wage attachment is prepared and mailed to the employer.

SECTION 519 - INDEBTEDNESS AND PRIORITY CLAIMS:

In bankruptcy cases the Priority Claim due to, or held by this Bureau shall survive the confirmation of any bankruptcy claim and shall not be subject to discharge of debt to the extent that such claims are not paid by the bankruptcy plan of the debtor.

Amounts owing or which shall be determined to be due this Bureau shall be the amount of the Priority Claim due to this Bureau when a bankruptcy plan is filed with the Bankruptcy Court.

SECTION 520 - PROCEDURE WHEN TAXATION IS NOT DEFINED IN RULES AND REGULATIONS:

In cases where a question arises as to the taxation of earned income or net profits not specified in these rules and regulations, then the regulations promulgated by the Pennsylvania Department of Revenue for the personal income tax shall apply, so long as they are not contrary to the provisions of the Local Tax Enabling Act of 1965, as amended by Act 166 of December, 2002.

SECTION 521 – RULE ON APPORTIONING INCOME ON PROFESSIONAL ATHLETES:

Apportioning the income **is required by** a non-resident who receives earned income/compensation for services rendered within the geographic boundary of a member taxing authority which levies a non-resident tax, as a member of a professional athletic team, or as an individual professional athlete. This rule shall not apply to athletes domiciled within any states which have reciprocity agreements with the Commonwealth of Pennsylvania.

Generally, a non-resident professional athlete's income will be apportioned to this bureau's applicable member taxing authority on the basis of a fraction, the numerator of which is the number of duty days spent within the member taxing authority rendering services to the team, or as an individual, and the denominator of which is the total number of duty days spent both within and outside the member taxing authority during the tax year. An alternative method may be prescribed by this bureau or proposed by the athlete if the above method does not fairly and equitably apportion the compensation.

Duty days defined: Duty days generally mean all days during the tax year.

(a) From the beginning of official preseason training through the last scheduled or actually played game or event and

(b) Other days, not in the period, during which the athlete renders a service for the team. Rendering a service includes conducting training and rehabilitation activities at the team's facilities.

(c) Duty days include:
Game days
Practice days
Days spent at team meetings, promotional caravans, and preseason training camps
Days spent participating in instructional leagues and at special games such as all-star games; and
Days served with the team through all post-season games in which the team completes or is scheduled to compete.

Duty days do not include days for which an athlete is suspended without pay or prohibited from performing services for the team. For athletes who switch teams during the tax year, a separate duty day calculation, representing the number of duty days spent with each team, must be made. Duty days are included in the apportionment formula for the tax year in which they occur.

Disability and travel days: Days that an athlete is on a disabled list, and does not engage in rehabilitation at the team's facility or is not otherwise rendering services for the team within a member taxing authority, are not considered duty days spent within the taxing authority, but they are included in the total duty days spent within and outside the taxing authority, i.e., they are included in the denominator, but not in the numerator of the apportionment formula.

Travel days not including a game, practice, team meeting, promotional caravan or other similar team event shall not be considered duty days spent within the taxing authority, but they shall be included in the total duty days spent both within and outside the taxing authority.

Bonuses: Performance bonuses earned as a result of play during the season, such as a bonus received for championship, playoff, or all-star games are included in the apportionment formula. Bonuses paid for signing a contract are included in the apportionment formula unless:

(a) Payment is not conditioned on playing any games, performing subsequent services, or making the team
(b) The bonus is payable separately from the salary or other compensation; and
(c) The bonus is nonrefundable.

ARTICLE VI

Appendices

SECTION 601 – EARNED INCOME / COMPENSATION:

Section 303 of the Act of March 4, 1971 (P.L. 6, No. 2)
72 P.S. § 7303

(a)(1) Compensation. All salaries, wages, commissions, bonuses and incentive payments whether based on profits or otherwise, fees, tips and similar remuneration received for services rendered whether directly or through an agent and whether in cash or in property except income derived from the United States Government for active duty outside the Commonwealth of Pennsylvania as a member of its armed force.

61 Pa. Code Pt. I Subpt. B Art. V
61 Pa. Code § 103.11. Compensation.

Reference should be made to § 101.6 (relating to compensation).

61 Pa. Code Pt. I Subpt. B Art. V
61 Pa. Code § 101.6. Compensation.

(a) Compensation includes items of remuneration received, directly or through an agent, in cash or in property, based on payroll periods or piecework, for services rendered as an employee or casual employee, agent or officer of an individual, partnership, business or nonprofit corporation, or government agency. These items include salaries, wages, commissions, bonuses, stock options, incentive payments, fees, tips, dismissal, termination or severance payments, early retirement incentive payments and other additional compensation contingent upon retirement, including payments in excess of the scheduled or customary salaries provided for those who are not terminating service, rewards, vacation and holiday pay, paid leaves of absence, payments for unused vacation or sick leave, tax assumed by the employer, or casual employer signing bonuses, amounts received under employee benefit plans and deferred compensation arrangements, and other remuneration received for services rendered.

(b) Scholarships, stipends, grants and fellowships shall be taxable as compensation, <u>if</u> services are rendered in connection therewith.

(1) For taxable compensation, the following words have the following meanings, unless the context clearly indicated otherwise:

(i) Fellowship stipend or fellowship award – A fixed sum of money paid periodically for services or to defray expenses to a graduate student who is enrolled in a graduate degree program at a university.

(ii) Grant-in-aid – Financial support given by a public agency or private institution to an individual to further the individual's education.

(iii) Postdoctoral research fellowship stipend or postdoctoral research fellowship award – A fixed sum of money paid periodically for services or to defray expenses of an individual who has obtained a doctoral degree at a university and is conducting research at a research facility.

(iv) Scholarship – A grant-in-aid to a student.

(2) Scholarships, grants, awards and other types of student aid which require no past, present or future services in return for receipt of the funds are not taxable.]

Examples:

(i) John has a high school diploma and is currently employed. John's employer promises to pay for John's college tuition, room and board for 4 years and John agrees to return to his employer after obtaining his degree and to work for the employer for 4 consecutive years. John's grant-in-aid is taxable compensation and is subject to employer withholding and reporting.

(ii) Peter is employed by ABC Company. Peter and ABC Company agree that he will work for them for 1 year without receiving any salary. In return, after that year Peter will attend XYZ College and ABC Company will pay his tuition, room and board for the entire year. ABC's payment of Peter's tuition, room and board is taxable compensation and is subject to employer withholding and reporting.

(iii) John is employed by XYZ Corporation. XYZ Corporation has established a "Scholarship Program" for the children of its employees. The program does not qualify as an employer scholarship program for Federal income tax purposes. John's child, Erin, received a "scholarship" from the plan to attend college. The fair market value of the Federally nonqualified scholarship is taxable compensation to John and is subject to employer withholding.

(3) Fellowship awards or fellowship stipends made to graduate students enrolled in a graduate degree program at a university chartered by a state or foreign country on the basis of need or academic achievement for the purpose of encouraging or allowing the recipient to further their educational development are not taxable. When the fellowship awards or fellowship stipends are made as compensation for past or present employment or in expectation of future employment services they are taxable.

Example:

Jane is enrolled in a graduate degree program in biochemistry at a university. Jane is in the first year of a 3-year graduate degree program. A pharmaceutical company enters into an agreement to pay the remaining tuition, room and board expenses necessary for Jane to obtain her graduate degree. In return, Jane promises to work for the pharmaceutical company for 4 years after graduation. Jane's receipt of these payments from her future employer constitute taxable compensation.

(4) Fellowship awards and fellowship stipends are taxable compensation for services if the recipient is required to apply his or her skill and training to advance research, creative work, or some other project or activity, unless the recipient can show that the recipient is a candidate for a degree and the same activities are required of all candidates for that degree as a condition to receive that degree.

Example:

Steven is enrolled in a graduate degree program in education at ABC University. Degree candidates are required to teach an undergraduate education course for 5 hours a week to obtain their degree. Steven and two of the other 15 candidates in the degree program are receiving federal stipends. If Steven does not perform additional services for ABC University, his teaching will not make his stipend taxable compensation.

(5) For a payment received by a postdoctoral research fellow for conducting research to be excludable from the definition of compensation, the payment shall meet the following conditions. <u>If</u> the payment fails to meet one or more of these (15) conditions, the payment is taxable compensation:

(i) The source of funding for the payment is a governmental agency, a private foundation as described in section 509 of the Internal Revenue Code (26 U.S.C.A. § 509) a Federally exempt organization as described in sections 501(c)(3) or (5) of the Internal Revenue Code (26 U.S.C.A. § 501(c)(3) and (5)), or a public or private university chartered by a state.

(ii) The organization which is permitting the fellow to use its facilities and which is sponsoring the fellow's research (sponsoring organization) is a governmental agency, a Federally exempt organization as described in section 501(c)(3) of the Internal Revenue Code, or a public or private university chartered by a state.

(iii) Prior to enrollment in the sponsoring organization's postdoctoral research fellowship program, the fellow has obtained a doctoral degree in a field of study which is related to the field of study being research by the fellow.

(iv) The amount of the fellow's stipend or grant is based on the scale established by the source of funding.

(v) Each fellow formulates his or her own research project or advances his or her own research project throughout the stipend or grant period.

(vi) The sponsoring agency serves only in an advisory capacity in the selection of research projects and cannot establish or control the fellow's hours or methods of research except as control relates to legal or regulatory matters.

(vii) The fellow is not required to perform administrative work, teaching assignments or other duties for the sponsoring organization or another entity as a condition for receiving a payment and will not be penalized for not performing these duties.

(viii) The fellow is not required to enter a contractual commitment for future employment with a specified entity as a condition for obtaining or continuing to obtain the payments.

(ix) Payments to the fellow for conducting research are limited to no more than 36 months.

(x) Research results or writings made by the fellow during the program do not become the property of the sponsoring organization or another entity other than the fellow. Patent or copyright royalties or other income derived directly or indirectly from the fellow's research results or writings may become the property of the sponsoring organization. Income or gain derived from patent or copyright royalties by the postdoctoral research fellow is taxable income to the fellow.

(xi) The fellow is not required to assist employees of the sponsoring organization in conducting research being performed by employees of the sponsoring organization.

Example:

John is a postdoctoral research fellow at ABC Cancer Research Institute. His research is being funded by the National Institute of Health. The sponsoring organization, ABC Cancer Research Institute, requires John to spend half of his time assisting its own employees on their own research project as a condition for sponsoring his research. John's postdoctoral research fellowship stipend is taxable compensation.

(xii) The fellow does not receive fringe benefits to which an employee of the sponsoring organization is entitled, except to the extent that the benefits are at no additional cost to the sponsoring organization. For purposes of the subparagraph 'fringe benefits' means payor provided health, life, disability income or group legal services insurance plans, payor provided automobile and payor provided dependent care assistance, educational assistance plans or retirement benefits.

(xiii) Pennsylvania unemployment compensation premiums are not required to be paid by the sponsoring organization or another entity on behalf of the fellow.

(xiv) Federal social security employment tax is not required to be paid by the sponsoring organization or another entity or the fellow with respect to the fellowship.

(xv) The fellow is not under the coverage of the sponsoring organization's worker's compensation insurance plan or policy.

(6) Fellowship stipends paid to medical interns and residents under an internship or residency program which conforms or substantially conforms to standards set by the American Medical Association are taxable compensation. If the program does not conform to the referenced standards, the amount received will be taxable as wages.

(c) Compensation does <u>not</u> mean or include any of the following:

(1) Periodic payments for periods of sickness or disability paid by or on behalf of an employer under a program or plan unless the payments are regular wages. Additionally, no amount of damages received (whether by suit or agreement and whether as lump sums or as periodic payments) if pain and suffering, emotional distress or other like noneconomic element was, or would have been, a significant evidentiary factor in determining the amount of the taxpayer's damage. No payments made by third-party insurers for periods of sickness or disability would be considered payments of regular wages. A program or plan where any of the following occur would <u>not</u> be considered payment of regular wages.

(i) The periodic payments have no direct relationship to the employee's usual rate of compensation.

(ii) The periodic payments are computed with reference to the nature of the sickness or disability and without regard to the employee's job classification.

(iii) Periodic payments would be reduced by payments arising under Workmen's Compensation Acts, Occupational Disease Acts, Social Security Disability or similar legislation by any government.

(iv) The periodic payments exceed the employee's usual compensation for the period.

(2) Disability, retirement or other payments arising under workmen's compensation acts, occupational disease acts or similar legislation by any government.

(3) Federal old age insurance benefits payable under 42 U.S.C.A. § 401, Railroad Retirement Act benefits payable under 45 U.S.C.A. § 228 or § 231 or any retired or retainer pay of a member or former member of a uniformed service computed under 10 U.S.C.A. § 1401.

(4) Payments commonly known as public assistance or unemployment compensation by a government agency.

(5) Payments made by employers to employees to reimburse actual expenses allowable as an ordinary, reasonable and necessary business expense.

(6) Payments made by an employer or labor union or elective contributions deemed to be made by an employer under a cafeteria plan for a nondiscriminatory health, accident or death plan.

Example:

P is a partnership that is engaged in providing accounting services. On a nondiscriminatory basis, it offers the following fringe benefits to both employees and partners of the firm:

Blue Shield medical coverage.

Dental and eyeglass coverage with a deductible.

Group term life insurance with coverage up to the equivalent of the employee's annual salary.

P pays the premiums on behalf of all employees and partners for all medical dental, eyeglass and insurance coverage directly to the insurance carrier or benefit provider. P does not add the premium costs for the benefits to any employee's gross wages and it accounts for the benefit costs as nonsalary fringe benefit expenses. In other words, the value of the benefits are not shown as an addition to any employee's wages on the paystubs furnished to employees.

The plan is not a Federally qualifying cafeteria plan.

Conclusion: For the employees of P the employer-provided hospitalization (Blue Shield), eyeglass, dental coverage and group life insurance benefits are excludable from compensation and are therefore not subject to withholding. The premiums paid on behalf of the partners, however, are not deductible or excludable from the income of the partnership or the partners.

(7) The value of meals and lodging furnished for the convenience of an employer or casual employer does not constitute compensation

(8) Old Age or Retirement Benefit Plans.

(i) Scope. For the purpose of this section, the term plan includes Individual Retirement plans (IRA), Simplified Employee Pension Plans (SEP), Keogh plans, Federally qualified employee pension plans and similar old age or retirement benefit plans.

(ii) Contributions.

(A) Contributions to a plan made by employers or labor unions on behalf of an employee are excludable from the employee's income, except as otherwise provided in these Rules and Regulations.

(B) Contributions to a plan made by an employee or other individual directly or indirectly, whether through payroll deduction, a salary reduction agreement or otherwise, are not excludable from his or her income. Contributions by, on behalf of or attributable to a self-employed person are not excludable from either compensation or net profits from a business, profession or other activity.

(iii) Distributions.

(A) Amounts distributed to an individual from a plan shall be included in income to the extent that contributions were not previously included in this income except for either of the following:

(I) Distributions made upon or after his or her retirement from service after reaching a specific age or after a stated period of employment.

(II) Distributions transferred into another plan, where the transferred amounts are not included in income for Federal income tax purposes.

(B) To determine the portion of a distribution to be included in income, an individual shall use the cost recovery method.

Example 1:

John contributed $1,000 to his IRA. He pays tax on the $1,000 contribution. Three years later the account has earned $750 in income. The total balance of the account at that time is

($1,000+$750=) $1.750. John receives a distribution of $750 from his IRA. Since the amount of the distribution does not exceed $1,000, the distribution is not includable in income.

Example 2:

Same facts as Example 1, except that John receives a distribution of $1,500. Since the amount of the distribution exceeds $1,000, the excess of the distribution, $500, is includable in his income, as compensation.

(iv) Income on plan assets. Income on assets held in a plan is not includable in income.

(9) Payments made by an employer or labor union for a nondiscriminatory supplemental unemployment benefit or strike benefit plan.

(10) Federally excludable benefits provided for the convenience of the employer.

(11) Fringe benefits described in "Taxable Compensation" section (relating to fringe benefits in the form of personal use of property or services).

(12) Program benefits payable on condition of hospitalization, sickness, disability or death under a health, accident or death plan.

(13) Guaranteed payments to a partner for services rendered to the partnership.

(14) Benefits payable by an employer or labor union under a supplemental unemployment benefit plan, whether payable on a periodic basis or in the form of cash, services or property.

(d) The Department [and this bureau] may require the submission of a statement from an employer or casual employer with respect to its employees or casual employees regarding the verification or substantiation of unreimbursed and reimbursed business expenses. The statement of the employer or casual employer should verify that the expenses were required by the employer or casual employer. The statement shall set forth the types of expenses such as travel, meals, hotel and so forth that the employer or casual employer specifically requires the employee or casual employee to incur and to what extent, if any, the expenses are reimbursed. If the employer or casual employer requires the employee or casual employee to maintain an office, or office-in-home, a statement by the employer or casual employer to this effect should also be included. The Department will not require the employer or casual employer to specifically list the amount expended or to verify each expense incurred by the employee or casual employee.

(e) Compensation paid in a medium other than cash shall be valued at its current market value. Compensation paid in the form of employer-provided coverage under an employee welfare benefit plan shall be valued at cost. The cost shall be the total amount of payment made during the year by the employer on account of the plan and plan participant, <u>except</u> in the following situations:

(1) In the case of self-insured insurance plans, the cost shall be the annual cost for financial accounting purposes.

(2) The amount of compensation paid in the form of Federally taxable noncash fringe benefits shall be determined in the same manner as is prescribed by the Internal Revenue Service under Federal statutes and regulations.

(3) In the case of cafeteria plans, amounts specified in the plan document as being available to the participant for the purpose of selecting or purchasing benefits when so used, shall be included in the total amount of payment made during the year by the employer on account of the plan and plan participant.

(f) Compensation in the form of incentive, qualified, restricted or nonqualified stock options shall be considered to be received:

(1) When the option is exercised if the stock subject to the option is free from any restrictions having a significant effect on its market value.

(2) When the restrictions lapse if the stock subject to the option is subject to restrictions having a significant effect on its market value.

(3) When exchanged, sold or otherwise converted into cash or other property.

(g) The following rules apply <u>if</u>, under a cafeteria plan, plan participants may choose between benefits consisting of cash, additional paid vacation days, and other benefits; or if, outside a cafeteria plan, plan participants can purchase additional paid vacation days:

(1) <u>If</u> additional paid vacation days are elected or purchased and they are used before the next calendar year, the following apply:

(i) The amount of cash foregone in exchange for the paid vacation day is excluded from income.

(ii) The vacation pay is includable in income when paid.

(2) If additional paid vacation days are purchased outside a cafeteria plan and they are not used before the next calendar year, the amount of cash foregone in exchange for the paid vacation days is excludable for Act 166 of 2002 Income Tax purposes only <u>if both</u> of the following apply:

(i) The value of the vacation day cannot be cashed out or used for any other purpose.

(ii) The vacation day cannot be carried over to the next taxable year.

(h) Employer payments to reimburse employees for uninsured medical or dental expenses are not taxable if the amounts available for covered reimbursement cannot be cashed out or used for any other purpose during the taxable year or be carried over to any other taxable year, normal cash compensation that is forgone by an employee under a spending account or otherwise, and credited to a self-insured medical reimbursement account and drawn upon to reimburse the employee for uninsured medical or dental expenses to which section 105(b) of the IRC (26 U.S.C.A. § 105(b)) applies is excludable from tax.

(i) After December 31, 1996:

(1) Payments made for employee welfare benefit plans under a cafeteria plan will be deemed to be an "employer contribution" for Act 166 of 2002 Income Tax purposes if the following apply:

(i) The payments were not actually or constructively received, after taking section 125 of the IRC (26 U.S.C.A. § 125) into account.

(ii) The payments were specified in a written cafeteria plan document as being available to the participant:

(A) For the purpose of selecting or purchasing benefits under a plan.

(B) As additional cash remuneration received in lieu of coverage under a plan.

(iii) The benefits selected or purchased are nontaxable under the IRC when offered under a cafeteria plan.

(iv) The payments made for the plan would be nontaxable under the Act 166 of 2002 Income Tax if made by the employer outside a cafeteria plan.

(2) If the requirements of paragraph (1) are satisfied, cafeteria plan contributions are taxed under such rules as they apply to employer payments for employee welfare benefit plans. However, if the benefits are taxable for Federal Income Tax purposes when offered under a cafeteria plan, the payments will also constitute compensation for Pennsylvania Personal Income tax purposes. Payments will also constitute compensation if they would be taxable under the Pennsylvania Personal Income Tax if made by the employer outside a cafeteria plan. For example, although not taxable under the IRC, coverage under a dependent care plan providing for the reimbursement of expenses for household or dependent care services would constitute compensation under the Pennsylvania Personal Income Tax because it would be taxable if made by an employer outside a cafeteria plan.

(j) Compensation includes the entire cost of employer-provided coverage provided to a highly compensated participant under any discriminatory employee welfare benefit plan.

(k) Contributions made by an employer for IRC 401(k) plans under a cafeteria plan under which the employee unilaterally may elect to have the employer either make the payments as contributions to a 401(k) plan or other plan on behalf of the employee or to the employee directly in cash are includable in the employee's compensation.

(l) Compensation is taxable regardless of the form of the payment. Examples of taxable forms of payment include:

(1) Cash.

(2) Foreign currency.

(3) A check or other negotiable instrument.

(4) Freely transferable, readily marketable obligations or other cash equivalent.

(5) Tangible property interests, intangible personal property or other rights, claims or things that either:

(i) Can be enforced in courts of equity and transferred and have an ascertainable fair market value.

(ii) Can be reduced to cash or eliminate an expenditure.

(6) A monetary payment in reimbursement of a personal expenditure or to eliminate personal expenditure.

(7) Below- market rate loans.

(8) A cancellation of indebtedness constituting a quid pro quo or incentive that would be taxable had the amount by which the debt had been forgiven or discharged instead been paid to the debtor in cash or property.

(m) For purposes of this section:

(1) A person who separated from service before satisfying superannuation requirements shall be deemed to be retired from service upon reaching retirement age, regardless of whether he has permanently and wholly withdrawn from active working life or not.

(2) The voluntary discontinuance of a plan within 3 years after it has taken effect, for any reason other than business necessity, will be evidence that the plan was temporary and limited.

SECTION 602 – NET PROFITS:

Section 303 of the Act of March 4, 1971 (P.L. 6, No. 2)
72 P.S. § 7303
(a)(2) Net Profits. The net income from the operation of a business, profession, or other activity, after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with accepted accounting principles and practices but without deduction of taxes based on income.

61 Pa. Code Pt. I Subpt. B Art. V (relating to personal income tax).
61 Pa. Code § 103.12
(a) Net profits shall be the net income from the operation of a business, profession or other activity after provision for all costs and expenses incurred in the conduct thereof. They shall be determined either on a cash or accrual basis in accordance with accepted accounting principles and practices.

(b) To constitute net profits, all of the following must apply:

(1) The gross profits shall be derived from one of the following:

(i) The marketing of a product or service to customers on a commercial basis or from securities employed as working capital in the business operations.

(ii) Accounts and notes receivable from sales of products or services sold in the ordinary course of the business operations.

(iii) Assets which serve an operational function in the ordinary course of business operations.

(2) The marketing activity shall be conducted with the manifest objective of achieving profitable operations.

(3) The marketing activity shall be conducted with regularity and continuity and may not be limited or exclusive.

(c) In computing net profits, <u>a deduction will not be allowed</u> for any item of cost, expense or liability derived or incurred in connection with, or <u>attributable to any of the following</u>:

(1) The ownership or disposition of assets that are held for investment purposes or otherwise serve an investment function.

(2) The trading in securities for personal purposes and not for the accounts of customers.

(3) The sale, discontinuation or abandonment of a business or segment thereof.

(4) Any tax imposed on, or measured by, gross or net earned or unearned income, mercantile or business privilege taxes.

(5) An isolated or nonrecurring transaction which is not a normal or routine business activity.

(d) Choosing to form a partnership or other entity or to associate with others, receiving and reporting income or gain as the income of the partnership, entity, or associates or dividing the same among its partners, beneficial owners or associates or the trading in securities for the benefit of shareholders, partners, members or associates does not of itself make the income of the partnership, entity or associates net profits.

(e) For purposes of this section, only the following participants in the stock, securities, options, derivatives, futures or commodities market are engaged in marketing of a product or service to customers:

(1) Those who maintain or provide a market place or facilities for bringing together purchasers and sellers of these financial investment products.

(2) Those who are licensed to act as their customer's agents and charge a negotiated commission for executing transactions and do not take title to the particular positions they buy or sell.

(3) Those who devote managerial attention to the financial investment products holdings of others, or who employ other persons to assist them in that management, in the capacity of a licensed investment advisor.

(4) Licensed dealers, including financial investment product specialists and market makers, if the conditions in subparagraphs (i) – (iv) are met:

(i) The dealer maintains an inventory of financial investment products with the objective of reselling his inventories at a profit to customers or operates as a specialist or market maker.

(ii) The dealer makes market by quoting the bid and asked prices at which he is willing to buy and sell the financial investment products and by buying directly from or selling directly to customers.

(iii) The dealer's profit is determined in whole or in part by a markup based on cost.

(iv) The dealer elects to inventory securities held for resale to customers or uses the mark-to-market system of accounting.

(5) Underwriters who facilitate initial sales of financial investment products by acting either as licensed dealers in a principal capacity or as brokers in an agency capacity.

(f) When a person operates as an investor or trader with respect to a portion of that person's activities and as a market establishment, broker, investment counselor or dealer with respect to the rest, this section applies only to the operations as a market establishment, broker, investment counselor or dealer.