



To: Centre County Tax Collection District Members
From: Centre Tax Agency
Re: Rules and Regulations
Date: December 31, 2015

Enclosed you will find a photocopy of the Rules and Regulations and associated exhibits that have been drafted for the Centre County Tax Collection District.

The documents have been prepared by Mr. Jason Confair, an associate of the firm Kegel, Kelin Almy & Lord LLP located in Lancaster, Pennsylvania. This firm played an integral role across the state assisting a number of Tax Collection Districts in the preparation of various Act 32 of 2008 documents, policies, and regulations. The firm also has a long standing relationship with PASBO (Pennsylvania Association of School Business Officials). Due to the active role this firm played in the implementation of Act 32, it was selected to assist with the preparation of the Rules and Regulations for our Tax Collection District.

We feel confident Mr. Confair prepared our county's documents keeping in mind legal requirements under the Act, as well as to ensure that the Rules and Regulations could be enforced in a uniform and fair manner county-wide. I am pleased to report that the current version does include some changes suggested by our county members. There were several suggestions that were not included due to the changes creating a weakness to the documents (increasing the risk of unfavorable outcomes during appeals or legal challenges) or due to the cost effectiveness to enforce at the county-wide level.

It is our belief that the Department of Community and Economic Development will, at some future date, implement state-wide standardized Rules and Regulations making the attached copy obsolete. We do ask for your support in adopting the enclosed draft, keeping in mind that the Rules and Regulations can be amended (if a state-wide standard format does not evolve). The scope of amendments would need to factor whether a proposed change would be beneficial for all county-wide members. There will be a cost associated with referring the Rules and Regulations back to the law firm for further revisions.

Feedback related to the Rules and Regulations should be provided no later than January 20, 2016 to allow the tax office time to research your comments. If sending feedback via email please direct it to: centretaxagency@statecollegepa.us In the weeks ahead we will be contacting Mr. Randy Brown to discuss a plan to place the Rules and Regulations on the agenda for adoption.

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CENTRE TAX AGENCY

Earned Income and Net Profits Tax Regulations

Background. Pursuant to Act 32 of 2008, the Centre Tax Agency collects all local earned income tax levied by school districts and municipalities that are part of the Centre Tax Collection District. Under Act 32 § 505(a.1)(7), the Centre County Tax Collection Committee must adopt regulations to address the unique collection issues within the Centre Tax Collection District that are not adequately addressed in the Local Tax Enabling Act, 53 P.S. § 6924.501 *et seq.*, or in regulations promulgated by the Pennsylvania Department of Community and Economic Development under the Act. The Centre Tax Agency has proposed these Regulations to the Centre County Tax Collection Committee, and the Committee has adopted them. Accordingly, these Regulations supplement the Local Tax Enabling Act and any regulations of the Pennsylvania Department of Community and Economic Development promulgated under the Act.

Regulations Table of Contents

ARTICLE I – DEFINITIONS

101 – Definitions

ARTICLE II – IMPOSITION OF TAX

201 – Persons Subject to Tax; Tax Rates

202 – Rules Governing Tax

203 – Residence Determination For Taxpayers

204 – What is Taxed

205 – Losses, Deductions, and Unreimbursed Business Expenses

206 – Tax Credits and Exemptions

ARTICLE III – EMPLOYER WITHHOLDING AND REMITTANCE

301 – Employer Registration

302 – Employee Certificate of Residency

303 – Employer Required Withholding

304 – Employer Voluntary Withholding

305 – Employer Quarterly Returns

306 – Multi-Site Employer Option; Monthly Returns

307 – Delinquent Employers; Monthly Returns

308 – Employer Annual Returns and Withholding Statements

309 – Employer Discontinuance of Business

310 – Employer and Officer Liability

311 – Payroll Service Electronic Filing Requirement

312 – Electronic Filing Requirement – Employers Not Using a Payroll Service

ARTICLE IV – INDIVIDUAL RETURNS

401 – Annual Returns by Resident and Resident Foreign National Taxpayers

402 – Annual Returns by Nonresident and Nonresident Foreign National Taxpayers

403 – Requirement to Amend Returns

404 – Individual Quarterly Returns

405 – Multiple Tax Rates

ARTICLE V – ADMINISTRATION

501 – Taxpayer and Employer Records

502 – Failure to Receive Forms

503 – Interest, Penalties, and Fines

504 – Delinquent Tax Collection Costs

505 – Refunds

506 – Taxpayer and Employer Rights and Obligations

507 – Rulings and Appeals

508 – Annual Return Extensions

509 – Rules of Construction

ARTICLE I – DEFINITIONS

SECTION 101 – DEFINITIONS

All terms defined in the Enabling Act shall have the meanings set forth therein or herein. However, if any definition herein is more expansive than the definition in the Enabling Act, the definition herein shall control. The following terms shall have the meanings set forth herein, except where the context clearly indicates a different meaning.

- A. *Collector* – State College Borough, doing business as “Centre Tax Agency”.
- B. *DCED* – Pennsylvania Department of Community and Economic Development.
- C. *Domicile* – As defined in Section 203 of these Regulations.
- D. *Employee* – Any individual who receives compensation from an Employer for performing an Occupation.
- E. *Employer* – As defined in Section 301 of these Regulations.
- F. *Enabling Act* – The Local Tax Enabling Act, as currently set forth in 53 P.S. § 6924.101 *et seq.* and as amended in the future.
- G. *Enactment* – An ordinance or resolution of a Taxing Authority or another Pennsylvania municipality or school district imposing or otherwise relating to the Tax.
- H. *Nonresident* – A person or business domiciled outside a municipality or school district imposing the Tax.
- I. *Nonresident Foreign National* – Any foreign national: (1) holding an F1 (academic student) or J1 (exchange visitor) visa who has a temporary residence in a municipality within the TCD and who derives earned income or net profits from an Occupation engaged in within the boundaries of that municipality; or (2) holding any visa who resides (temporarily or otherwise) outside a municipality imposing the Tax, but who derives earned income or net profits from an Occupation engaged in within the boundaries of that municipality.
- J. *Nonresident Tax* – Tax levied by a municipality on a Nonresident or Nonresident Foreign National based on earned income or net profits derived by an individual from an Occupation engaged in within the boundaries of the municipality. Nonresident Tax is owed to the municipality where the Workplace is located.
- K. *Occupation* – Any work, business, profession, or activity of any kind, including domestic or other services, for which any compensation is received.
- L. *Place of Business* – As defined in Section 301 of these Regulations.
- M. *Regulations* – These Earned Income and Net Profits Tax Regulations.
- N. *Resident* – A person or business domiciled within a municipality or school district imposing the Tax.

- O. *Resident Foreign National* – Any foreign national domiciled within a municipality or school district imposing the Tax.
- P. *Resident Tax* – The Tax levied by: (1) a municipality on a Resident or Resident Foreign National of that municipality; or (2) a school district on a Resident or Resident Foreign National of that school district.
- Q. *TCC* – Centre County Tax Collection Committee.
- R. *TCD* – Centre Tax Collection District.
- S. *Tax* – A tax on earned income or net profits, as defined in the Enabling Act.

The Enabling Act currently defines “**earned income**” as compensation as required to be reported or as determined by the Pennsylvania Department of Revenue under the Pennsylvania Personal Income Tax Law, 72 P.S. § 7301(d) and § 7303(a)(1), and the Pennsylvania Department of Revenue Regulations, 61 Pa. Code § 101.6a. The Enabling Act expressly provides that the amount of any housing allowance provided to a member of the clergy does not constitute “earned income.”

The Enabling Act currently defines “**net profits**” as net income from the operation of a business other than a corporation as required to be reported or as determined by the Pennsylvania Department of Revenue under the Pennsylvania Personal Income Tax Law, 72 P.S. § 7303(a)(2). The Enabling Act expressly provides that “net profits” does not include income which is not paid for services provided, and is in the nature of earnings from an investment. In addition, the Enabling Acts expressly provides that “net profits” does **not** include any income which represents: (1) gain on the sale of farm machinery; (2) gain on the sale of livestock held 12 months or more for draft, breeding, or dairy purposes; or (3) gain on the sale of any other capital assets of a farm.

- T. *Tax Return* – A form provided by the Collector for reporting the amount of Tax deducted or owed.
- U. *Taxing Authority* – A school district or municipality that has imposed a Tax and that is included in the TCD.
- V. *Taxpayer* – Any individual on whom Tax is imposed.
- W. *Workplace* – As defined in Section 201 of these Regulations.

ARTICLE II – IMPOSITION OF TAX

SECTION 201 – PERSONS SUBJECT TO TAX; TAX RATES

The persons subject to Tax and applicable Tax rates are as set forth in the applicable Enactment. Persons subject to Tax as set forth in an Enactment might include: (1) as to the Resident Tax, individuals who are Residents and Resident Foreign Nationals of a Pennsylvania municipality or school district; and (2) as to the Nonresident Tax, individuals who are not domiciled in a Pennsylvania municipality but who engage in an Occupation within the boundaries of the Pennsylvania municipality. The Nonresident Tax applies to all earned income or net profits derived by an individual who is not a Resident or Resident Foreign National from any work,

business, profession, or activity of any kind engaged in within the boundaries of the municipality.

For purposes of the Enabling Act and these Regulations, the “Workplace” generally determines the municipality in which an individual is considered to earn income for purposes of a Nonresident Tax. “Workplace” focuses on the place where work is performed or income is derived by an individual – in contrast to “Place of Business,” which is defined in Section 301 and determines tax collection districts where an Employer must register, file returns, and remit Tax. “Workplace” is defined as follows:

1. If an individual generally works at the same fixed location within Pennsylvania during any calendar quarter, the Workplace is such fixed location for that calendar quarter.
2. If an individual generally works at more than one location during any calendar quarter, the Workplace for that calendar quarter is the location within Pennsylvania where the individual generally spends the most work time during that calendar quarter.
3. If there is no location within Pennsylvania that can be identified as the place where the individual generally spends the most work time during a calendar quarter as an employee of the same employer or as an individual subject to the Tax on net profits, the Workplace is the location within Pennsylvania where the individual regularly reports to work or from which the individual regularly receives work assignments from the employer during the calendar quarter, or if the individual is subject to the Tax on net profits, then the primary location from which the individual operates the business during the calendar quarter.
4. The main office to which a company officer reports or at which a company officer receives mail during a calendar quarter is the Workplace of such individual for that calendar quarter.
5. If neither 1, nor 2, nor 3, nor 4 above applies, the individual will be considered to have multiple Workplaces and the Nonresident Tax is owed to each Taxing Authority within which an Occupation is performed, with Tax owed to each Taxing Authority based on earned income or net profits derived from the Occupation engaged in within the boundaries of the Taxing Authority. An example to which this category applies include an employee who works within different municipalities for different employers, whether during the same time period or different time periods.

Whether or not an individual falls under the paragraph above, an individual may allocate income to multiple Workplaces based on a reasonable method of allocation. Such allocation shall be supported by a written statement explaining the basis for allocation. If the individual is required to file an annual Nonresident Tax return with Collector under these Regulations, the statement shall be filed with the individual’s annual Nonresident Tax return. If the individual is not required to file an annual Nonresident Tax return with the Collector under these

Regulations, the statement shall be filed with the Employer, and the Employer shall file the statement with the Employer's annual Tax return. If the written explanatory statement does not provide a reasonable method of allocating income, Collector has, to the extent appropriate based on the circumstances, authority to impose interest, penalties, fines, and collection costs on the individual who compiled the statement.

6. All earned income or net profits derived from a source within Pennsylvania is Pennsylvania source income for purposes of the Pennsylvania personal income tax, and therefore must be allocated to one or more Workplaces within Pennsylvania for purposes of the Tax.

Information concerning persons subject to Tax and applicable Tax rates in each municipality and school district can be obtained from the Collector's website, DCED's internet website, or by contacting the Collector, DCED, or the municipality and school district where the person resides or works.

SECTION 202 – RULES GOVERNING TAX

Rules governing imposition, administration, and collection of the Tax are contained in multiple resources, including without limitation: (1) the Enactments; (2) Collector's Tax Return and instructions; (3) these Regulations; (4) other policies and procedures adopted by the TCC and the Collector; (5) DCED rules and regulations; (6) the Local Taxpayers Bill of Rights Act, 53 Pa.C.S.A. § 8421 *et seq.*; (7) the Enabling Act; (8) the Pennsylvania personal income tax law; and (9) well-established tax law doctrines. An example of a well-established tax law doctrine is the "constructive receipt doctrine." Pursuant to that doctrine, a Taxpayer will be deemed to have received earned income or net profits at the point in time at which the earned income or net profits is credited to the Taxpayer's account, set apart for the Taxpayer, or made available to the Taxpayer such that the Taxpayer may draw upon the earned income or net profits at any time. Other well-established tax law doctrines shall be applied as necessary and appropriate in resolving issues relating to the imposition, administration, and collection of the Tax.

SECTION 203 – RESIDENCE DETERMINATION FOR TAXPAYERS

- A. Determination of where a person resides is based on the definition of "Domicile." Any foreign national who holds an F1 (academic student) or J1 (exchange visitor) visa is by definition domiciled in a foreign country. For all other foreign nationals, Domicile is determined by applying the rules set forth in this Section solely to activities within the United States and without regard to what occurs in foreign countries. Thus, for example, if a foreign national holds a visa other than an F1 or J1 and has only one residence within the United States, the foreign national will be presumed to have his or her Domicile at the place where that residence is located provided the factors listed under Section 203C do not clearly and convincingly point to another Domicile.
- B. For purposes of the Enabling Act and these Regulations, "Domicile" means the place where a person lives and has a permanent home and to which the person has the intention of returning whenever absent. Actual residence is not necessarily Domicile, for Domicile is the fixed place of abode which, in the intention of the person, is permanent rather than

transitory. Domicile is the voluntarily fixed place of habitation of a person, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some event occurs to induce the person to adopt some other permanent home. In the case of a business, Domicile is that place considered as the center of business affairs and the place where its functions are discharged.

- C. A person having a home within the TCD is presumed to have his or her Domicile at the place where the home is located. In addition, the following questions are generally relevant to determining Domicile:
1. What is the place to which the person has the intention of returning whenever absent?
 2. What is the place the person intends as the person's permanent home?
 3. How many days and nights has the person spent or does the person generally expect to spend at the home during a calendar year?
 4. Does the person have another home? If yes, what is the address and purpose of the other home and number of days and nights the person has spent or generally expects to spend at the other home during a calendar year?
 5. Does the person have a spouse or dependent children? If yes, where do they spend the largest number of days and nights during a calendar year?
 6. Does the person own a home within the Taxing Authority? If yes, has the person claimed a homestead tax exemption for the home by filing with the County Tax Assessment Office? Has the person claimed a homestead tax exemption for a home in any other geographic area?
 7. If the person changed the claimed Domicile from a home within the Taxing Authority to a home outside the Taxing Authority, did the person move furniture and other major items of personal property from the home within the Taxing Authority?
 8. What address does the person use as residence for federal income tax returns?
 9. Does the person file a Pennsylvania income tax return? If yes, what address is used as residence for this income tax return?
 10. Does the person pay income or personal property tax to any government jurisdiction other than the IRS, Pennsylvania Department of Revenue, or the Taxing Authority?
 11. What is the address shown on the person's bank account checks?
 12. What is the address at which the person receives most personal mail?

13. What is the address stated on the person's passport? Driver license? Motor vehicle registration? Voter registration? Bank accounts? Brokerage accounts? Credit cards? Insurance policies – homeowner, liability, automobile, life, and other?
14. Does the person have a mortgage? If yes, what address is used by the bank for communications?
15. What is the nature of the person's work? Who is the Employer? Where is the Workplace? What address does the Employer record as the person's residence?
16. Does the person belong to a church, club, or other organization? If yes, what are the names and addresses?
17. Where is the office of the person's primary doctor? Primary lawyer? Primary accountant?
18. Does the person have a telephone listing in a telephone directory for an address within the Taxing Authority?

Normally it is not difficult to determine the residence of a person because most of the determining factors usually point to only one conclusion. If a person has all of the foregoing factors point to one Taxing Authority as the Domicile, the person is a Resident of that Taxing Authority.

Of more difficulty is the situation of individuals to whom some of the factors point to one Taxing Authority and others point elsewhere. In these situations, each case must be determined based on its own facts. Contrary to the law applicable to the Pennsylvania personal income tax, spending a specific number of days within the Taxing Authority does not alone make an individual a Resident of the Taxing Authority. Residence is determined by all facts relevant to each case.

- E. A person can have only one Domicile at any given time. Domicile does not change until an individual moves with the sincere intention of making a new permanent home and abandoning the previous permanent home.

If an individual moves, but intends to stay at the new location only for a fixed or limited time, Domicile does not change. If an individual leaves his or her Domicile to seek new employment intending to remain in the location only if he or she finds employment, there is no Domicile change. In order to establish a new Domicile, the following three conditions must be met:

1. There must be evidence of a firm and definite present intention of the individual to discontinue making the former Domicile as his or her primary home and base of operations.
2. There must be evidence of a firm and definite present intention of the individual to make the new Domicile his or her primary home and base of operations.

3. There must be evidence of actual physical presence and living in the new location.

SECTION 204 – WHAT IS TAXED

- A. Examples. There is no such thing as an exhaustive list of what constitutes “earned income” or “net profits” for purposes of determining what is subject to Tax. However, for the use of Taxpayers and Tax professionals, attached at Exhibit A is a list of items that are currently subject to Tax and attached at Exhibit B is a list of items that are currently not subject to Tax. Tax laws change from time to time, and it is possible Exhibits A and B will not be immediately updated to reflect future changes in the law. Accordingly, no Taxpayer or Tax professional should rely on Exhibits A and B without consulting current law or should construe anything in either Exhibit as tax advice from the TCC, the Collector, or any Taxing Authority. In addition to the examples in Exhibits A and B, this Section provides detailed rules and examples regarding how income from sole proprietorships, partnerships, limited liability companies, S corporations, rents, royalties, patents, and copyrights is currently treated for Tax purposes.
- B. General Rule for All Income – Refer to Three Lines on Pennsylvania Personal Income Tax Return. Per the definition in Section 101, we refer to the local tax on earned income and net profits as “Tax,” and the Enabling Act defines this term by reference to the Pennsylvania personal income tax. The Pennsylvania personal income tax applies to eight different categories of income. Although there are some exceptions, the general rule is that amounts are subject to the local Tax if reportable on a Pennsylvania personal income tax return of a Pennsylvania Resident or Nonresident under two of the eight categories: (1) Amounts reportable on the Pennsylvania return as “**gross compensation**” (currently PA-40 line 1a) are reportable on the local Tax return as “**earned income.**” (2) Amounts reportable on the Pennsylvania return as “**net income from the operation of a business, profession, or farm**” (currently PA-40 line 4) are reportable on the local Tax return as “**net profits.**” In addition, amounts reportable on the Pennsylvania return as “**net income or loss from rents, royalties, patents, or copyrights**” (currently PA-40 line 6) are sometimes reportable on the local Tax return as “**net profits.**”

The general rule is that all payments received for or earnings generated from services or work by an individual within Pennsylvania are subject to Tax. Contrary to the Pennsylvania personal income tax, amounts considered investment income are not subject to Tax. Payments received for or earnings generated from services or work do not necessarily need to be made in the form of cash in order to be subject to Tax. In situations where payments are received in some form other than cash, the item or property received shall be taxed based on the fair market value of the item or property at the time of receipt.

In order to determine what is subject to the local Tax, Taxpayers and Employers should refer to the applicable 3 lines on their PA-40 Pennsylvania income tax return, namely the lines for “**gross compensation**” (currently PA-40 line 1a); “**net income from operation of a business, profession, or farm**” (currently PA-40 line 4); and “**net income or loss from rents, royalties, patents, or copyrights**” (currently PA-40 line 6). In addition, as part of completing the Pennsylvania return and local Tax return, individuals and employers should refer to the Pennsylvania Personal Income Tax Law, 72 P.S. § 7301 *et*

seq., the Pennsylvania Department of Revenue Regulations, 61 Pa. Code § 101 *et seq.*, the Enabling Act, these Regulations, and the applicable Enactments. Guidance can also be obtained by reference to the Pennsylvania Personal Income Tax Guide, Pennsylvania income tax return instructions, and other information published by the Pennsylvania Department of Revenue. This information can be obtained from the Department of Revenue's internet website or by contacting the Department of Revenue.

- C. General Rule for Compensation. The general rule is that income reportable as "earned income" on the local Tax return is the same as "gross compensation" reportable on the Pennsylvania return. Generally, this will be the same as state W-2 compensation. However, the Enabling Act expressly provides that the amount of any housing allowance provided to a member of the clergy does not constitute "earned income."
- D. General Rule for Business Income. Although there are some exceptions, the general rule is that income reportable as "net profits" on the local Tax return is the same as "net income from operation of a business, profession, or farm" reportable on the Pennsylvania return. Generally, this includes income from a proprietorship, from a partnership, or from a limited liability company treated for tax purposes as a partnership, and also includes income characterized as "guaranteed payments." The exceptions generally relate to circumstances when amounts *are not subject to Tax* because they represent income from mere "**passive**" investments but might be reportable on the Pennsylvania return as "net income from the operation of a business, profession, or farm" (currently PA-40 line 4); or circumstances when amounts *are subject to Tax* because they represent income derived from personal services or work or "**active**" management of property or business and might be reportable on the Pennsylvania return as "net income from rents, royalties, patents, or copyrights" (currently PA-40 line 6). These exceptions are addressed in greater detail below.

The Enabling Act expressly provides that "net profits" subject to Tax does *not* include: (1) Income which is not paid for services provided, and is in the nature of earnings from an investment. (2) Income which represents gain on the sale of farm machinery; gain on the sale of livestock held 12 months or more for draft, breeding, or dairy purposes; or gain on the sale of other capital assets of a farm.

- E. Subchapter S Corporations. Although reported on the Pennsylvania return as "net income from the operation of a business, profession, or farm," net income from a Subchapter S corporation is generally not subject to Tax, whether or not distributed as a dividend. However, W-2 compensation paid to an individual by a Subchapter S corporation is subject to Tax. In addition, if an individual providing services to or actively involved in management or conduct of the business of a Subchapter S corporation does not receive appropriate W-2 compensation for services rendered, Subchapter S income allocated to the individual is subject to Tax to the extent necessary to reflect appropriate compensation, whether or not distributed.
- F. Limited Liability Companies. For purposes of Pennsylvania income tax law, a limited liability company (LLC) may elect treatment as a Subchapter C corporation, a Subchapter S corporation or, if there are multiple members, as a general partnership. A single member LLC is a disregarded entity unless it elects treatment as a Subchapter C

corporation or a Subchapter S corporation. Income from a single member LLC owned by an individual is reported on the Pennsylvania return as “net income from the operation of a business, profession, or farm,” and is reported on the local Tax return as “net profits.” If an LLC (whether multi-member or single member) elects treatment as a Subchapter C or S corporation, income of the LLC members will be treated in the same manner as income from the type of corporation elected. If an LLC elects treatment as a general partnership, income from the LLC will be generally reported on the Pennsylvania return as “net income from the operation of a business, profession, or farm,” and is generally reported on the local Tax return as “net profits.”

- G. Limited Partnerships. Although reported on the Pennsylvania return as “net income from the operation of a business, profession, or farm,” income from a limited partnership interest is generally not subject to Tax, whether or not distributed. However, if the individual is actively involved in management or conduct of the business of the company, the income is subject to Tax and reportable on the local Tax return as “net profits,” whether or not distributed.
- H. Net Income from Rents, Royalties, Patents, and Copyrights. Amounts reported on the Pennsylvania return as “net income from rents, royalties, patents, or copyrights” (currently PA-40 line 6) might or might not be subject to Tax.

As to rents, the amount is subject to Tax if the individual is actively involved in management of the property, in which case the amount is generally reportable on the Pennsylvania return as “net income from the operation of a business, profession, or farm” and on the local Tax return as “net profits.” However, the amount is not subject to Tax if the individual is a mere passive owner not actively involved in management of the property. Generally, amounts will be considered rents not subject to Tax if derived from mere passive or investment ownership of property without the furnishing by the owner of significant services. Generally, paying for heat, lighting, electric service, elevators, cleaning of public access and exit areas, trash collection, and property maintenance are not significant services. The Pennsylvania personal income tax publications provide additional guidance on applying these rules.

Amounts reported on the Pennsylvania return as “net income from royalties, patents, or copyrights” are considered “net income from the operation of a business, profession, or farm” subject to Tax and reportable on the local Tax return as “net profits” if the income is derived from intellectual property developed by the Taxpayer to whom the amounts are payable. For example, royalties and other amounts received by authors, composers, and inventors are subject to Tax and reportable on the local Tax return as “net profits” even though reported on the Pennsylvania return as “net income from royalties, patents, or copyrights.”

- I. Income Not Taxed. The following five categories of income are subject to Pennsylvania personal income tax but generally not subject to Tax: interest income (currently PA-40 line 2); dividend and capital gain distribution income (currently PA-40 line 3); net gain from sale, exchange, or disposition of property (currently PA-40 line 5); estate or trust income (currently PA-40 line 7); and gambling or lottery winnings (currently PA-40 line 8).

SECTION 205 – LOSSES, DEDUCTIONS, AND UNREIMBURSED BUSINESS EXPENSES

- A. Except as set forth below, for purposes of determining “net profits,” a loss from the operation of one business may be used to offset net income from the operation of another business.
- B. Losses resulting from activities the income from which is not subject to Tax may not be used to offset net income. This includes losses from a Subchapter S corporation, a limited liability company, a limited partnership, property rental, and other activities where the individual is a mere “passive” owner or investor and is not “actively” involved in the management or conduct of the business.
- C. A loss from the operation of a business conducted by one spouse may not be used to offset net income from the operation of a business by another spouse.
- D. A loss may not be used to offset net income if the loss is incurred in connection with an activity that is a hobby or otherwise is not a true business conducted with the intent to generate a source of income.
- E. A loss in one year may not be carried backward or forward to another year.
- F. A loss from the operation of a business may not be used to offset “earned income.”
- G. Deductions are allowed only to the extent allowed as deductions against “compensation” or “net income from the operation of a business, profession, or farm” on the Pennsylvania personal income tax return.
- H. A Taxpayer may deduct unreimbursed business expenses provided the following are true: (1) the Taxpayer paid the unreimbursed expense while performing the duties of his or her employment; (2) the expense is ordinary, customary, and accepted in the industry or occupation in which the Taxpayer works; (3) the expense was necessary to enable the Taxpayer to perform the duties of his or her employment; (4) the expense is directly related to the Taxpayer’s performance of the duties relating to his or her employment; and (5) the expense is reasonable in amount and not excessive. A Taxpayer who deducts unreimbursed business expenses has the burden to establish the deduction is proper based on the requirements set forth in this paragraph. While there is no such thing as an exhaustive list of expenses that are not eligible for deduction as unreimbursed business expenses, a list of examples of expenses that cannot be deducted is attached at **Exhibit C**.

SECTION 206 – TAX CREDITS AND EXEMPTIONS

- A. **Resident and Nonresident Tax.** The Enactments impose Tax on “earned income” or “net profits.” All “earned income” or “net profits” earned by a Resident or Resident Foreign National is subject to the Resident Tax **without regard to the place where the income was earned**. As to the Nonresident Tax, the Tax is based on the Workplace where income is earned. Tax credits or exemptions might apply to potentially reduce or eliminate the amount of Tax owed.

- B. Credit to Pennsylvania Residents and Resident Foreign Nationals Against Nonresident Tax for Tax Paid to Municipality or School District of Residence. Subject to the limits in Section 206E and in this Section, Tax on income paid to a municipality or school district by a Resident or Resident Foreign National thereof shall be credited to and allowed as a deduction from the Nonresident Tax owed by such person to a municipality that taxes Nonresidents or, as the case may be, Nonresident Foreign Nationals. The credit is limited to the combined Resident Tax rate levied under the Enabling Act Chapter 3 by a municipality and school district that tax the Resident or, as the case may be, Resident Foreign National times the Taxpayer's income taxed by the municipality that taxes Nonresidents or Nonresident Foreign Nationals. The credit shall be applied only to the extent that the income taxed by the municipality or school district of the Taxpayer's residence represents earned income or net profits.

Example Municipality A imposes a 1.5% Nonresident Tax
 (1% under Enabling Act Chapter 3 + .5% under Act 47)
 Municipality B + School District C impose a combined 1% Resident Tax
 (under Enabling Act Chapter 3)
 Taxpayer X lives in B/C; works/earns \$100,000 in B/C;
 and works/earns \$100,000 in A
 Taxpayer X owes B/C \$2,000 Resident Tax
 (i.e., 1% x \$200,000 total income)
 Taxpayer X owes A \$1,500 in Nonresident Tax
 (i.e., 1.5% x \$100,000)
 Taxpayer X is entitled to a \$1,000 credit against Nonresident Tax
 Thus, Taxpayer X owes a total of \$2,500 in Tax
 (\$2,000 Resident Tax to B/C; \$500 in Nonresident Tax to A under Act 47)

Note: Based on the limits in Section 206E, the credit is only \$1,000 because the Taxpayer is not permitted to credit any Resident Tax she pays to Municipality B and School District C against the \$500 she owes in Nonresident Tax under Act 47.

- C. Credit to Pennsylvania Residents and Resident Foreign Nationals Against Resident Tax for Tax Paid to Political Subdivisions Located in Other States. Subject to the limits in Section 206E and in this Section, Tax paid on income by a Resident or a Resident Foreign National of a Taxing Authority to any political subdivision located outside Pennsylvania shall be credited to and allowed as a deduction from the Resident Tax owed by such person. The credit is limited to the combined Resident Tax rate levied under Enabling Act Chapter 3 to which the Taxpayer is subject times the Taxpayer's income taxed in the out-of-state political subdivision. The credit shall be applied only to the extent that the income taxed by the out-of-state political subdivision represents income subject to Tax. This credit is available regardless of whether the state in which the out-of-state political subdivision is located is a reciprocal state. (See Section 206D below.)

Example Municipality D in another state imposes a 1.25% nonresident tax
 Municipality B + School District C impose a combined 2% Resident Tax
 (1% under Enabling Act Chapter 3 + 1% under Act 24)
 Taxpayer X lives in B/C; works/earns \$100,000 in D
 Taxpayer X owes D \$1,250 nonresident tax

(i.e., 1.25% x \$100,000)
 Taxpayer X owes B/C \$2,000 Resident Tax
 (i.e., 2% x \$100,000)
 Taxpayer X is entitled to a \$1,000 credit against Resident Tax
 Thus, Taxpayer X owes a total of \$2,250 in Tax
 (\$1,250 nonresident tax to D; \$1,000 in Resident Tax to B/C under Act
 24)

Note: Based on the limits in Section 206E, the credit is only \$1,000 because the Taxpayer is not permitted to credit any tax she pays to Municipality D in the other state against her \$1,000 in Resident Tax liability under Act 24.

- D. Credit to Pennsylvania Residents and Resident Foreign Nationals Against Resident Tax for Tax Paid to Other States. Subject to the limits in Section 206E and in this Section, Tax on income paid by a Resident or a Resident Foreign National of a Taxing Authority to another state of the United States shall be credited to and allowed as a deduction from the Resident Tax owed by such person. The credit is limited to the combined Resident Tax rate levied under Enabling Act Chapter 3 to which the Taxpayer is subject times the Taxpayer's income taxed in the other state. The credit shall be applied only to the extent it exceeds the amount of the credit that can be taken against the Pennsylvania income tax for tax on income paid to the other state, and only to the extent that the income taxed by the other state represents income subject to Tax.

Example State E is a nonreciprocal state and imposes a 4% nonresident tax
 Municipality B + School District C impose a combined 1% Resident Tax
 (under Enabling Act Chapter 3)
 Taxpayer X lives in B/C; works/earns \$100,000 in E
 Taxpayer X owes E \$4,000 nonresident tax
 (i.e., 4% x \$100,000)
 Taxpayer X receives credit of \$3,070 against PA income tax
 Taxpayer X owes B/C: \$1,000 – (\$4,000 - \$3,070) credit = \$70

In situations where a state has a reciprocal income tax agreement with Pennsylvania, this Tax credit may not be available to a Taxpayer. Under a reciprocal agreement, a state excuses a Pennsylvania resident from paying income tax to that state on compensation earned in that state provided certain conditions are met. So, for example, currently a Pennsylvania resident who works in Maryland is generally excused under a reciprocal agreement from paying income tax to Maryland on Maryland source income. Thus, Pennsylvania residents who benefit from that reciprocal agreement have no Maryland tax payment to credit against Resident Tax liability incurred on their Maryland source income and, as a result, the Tax credit in Section 203D is not available.

Foreign nationals residing in Pennsylvania who earn income in a reciprocal state will need to check the terms and conditions of the reciprocal agreement between Pennsylvania and that reciprocal state to determine whether income tax must be paid in the reciprocal state on compensation earned in that state. If a foreign national subject to Resident Tax is excused from paying income tax in a reciprocal state on income earned in that state, the

foreign national has no tax payment to credit against Resident Tax liability incurred on that out-of-state source income.

E. Other Rules Relating to Credits.

1. A Taxpayer is not entitled to a payment or a “refund” if the Taxpayer has total available credits in an amount that exceeds the Taxpayer’s Tax. For example, assume a Resident pays \$2,000 in Tax to a political subdivision located outside of Pennsylvania on \$100,000 in income. Further assume the Resident owes an additional \$1,000 in Resident Tax on the income. As explained in Section 206C above, the Taxpayer may credit the \$2,000 in out-of-state Tax against her \$1,000 in Resident Tax liability. As a result, the Taxpayer does not owe any Resident Tax. However, the Taxpayer is **not** also then entitled to a \$1,000 refund simply because she is eligible for a \$2,000 credit but only owes \$1,000 in Resident Tax.
2. Evidence of payment is required in order to take any Tax credit.
3. A Resident who earns income in Pittsburgh and is liable for Nonresident Tax on that income may not credit that Nonresident Tax liability against Resident Tax liability. However, Residents who incur liability for Pittsburgh Nonresident Tax are eligible for the credit under Section 206B. A Taxpayer who works in Pittsburgh but lives elsewhere will be subject to withholding under Section 303.
4. No credit is allowed for tax paid to other countries.
5. Based on 53 P.S. § 6926.323(b), the credit described in Section 206B applies, but the credits described in Sections 206 C and D do not apply against the amount of additional income tax levied after June 27, 2006 by school districts or Taxpayer liability incurred after June 27, 2006 pursuant to the Taxpayer Relief Act, Act 1 of 2006, 53 P.S. § 6926.101 *et seq.* Except as stated in the preceding sentence, based on 53 P.S. § 6924.317, the credits described in Sections 206 B, C, and D apply only against income tax amounts levied and otherwise payable under authority of Chapter 3 of the Enabling Act, and do not apply against additional income tax amounts levied pursuant to other authority such as Act 24 (occupation tax conversion), Act 442 (open space tax), Act 177 (home rule tax), and Act 47 (distressed municipality tax). Based on 53 P.S. § 6924.317, the credit described in Section 206B is available only for payment of a Resident Tax amount levied under authority of Chapter 3 of the Enabling Act and not for payment of a Resident Tax amount levied pursuant to other authority such as Act 24 (occupation tax conversion), Act 442 (open space tax), Act 177 (home rule tax), or Act 47 (distressed municipality tax).

- F. Exemptions from Tax. Although credits and deductions against Tax are permitted under certain circumstances, there is no blanket exemption from Tax within the TCD based on age, income, or other factors. However, a Taxing Authority may provide for one or more exemptions in its Enactment. Any individual who believes he or she may be exempt from Tax has the burden to consult the Enactments the individual is subject to in order to determine whether an exemption applies. If an individual is exempt from the Tax and

receives a Tax Return, the individual shall sign, date, and return the Tax Return with a notation that the individual is exempt from Tax and a brief explanation of the basis on which the exemption is being claimed.

ARTICLE III – EMPLOYER WITHHOLDING AND REMITTANCE

SECTION 301 – EMPLOYER REGISTRATION

Every Employer that has not already done so shall register with the Collector on the form prescribed by Collector the name and address of the Employer, the Federal employer identification number of the Employer, and such other information as the Collector may require.

An Employer is subject to these Regulations if the Employer: (1) has a Place of Business within the TCD; and (2) employs one or more persons, other than domestic servants, for compensation.

For purposes of the Enabling Act and these Regulations, “Place of Business” determines the tax collection districts where an Employer must register, file returns, and remit Tax. “Place of Business” focuses on the Employer – in contrast to “Workplace,” which determines the municipality in which an individual is considered to earn income for purposes of Nonresident Tax. “Place of Business” is defined to include, without limitation: (1) any location at which any property of the Employer including, without limitation, inventory, samples, computers, or other electronic devices, is regularly located, held, stored, or maintained; and (2) any location from which an Employee regularly conducts business for the Employer including, without limitation, an Employee’s home if the Employer regularly mails or emails directions to the Employee at the home, or the Employee regularly mails or emails business communications to the Employer, Employer customers, or Employer vendors from the home.

The Enabling Act defines “Employer” to include every person or entity employing one or more persons, other than domestic servants, for any type of compensation. For purposes of the Enabling Act and these Regulations, “Employer” includes certain persons or entities not considered common law employers. For example, “Employer” includes a person or entity who or which engages the services of an individual considered a “statutory employee” under the Internal Revenue Code, 26 U.C.S. § 3121, such as certain corporate officers, commission vehicle drivers, full-time traveling salespersons, full-time life insurance sales agents, and home workers, even though such individuals might be considered common law independent contractors. Such Employer must register and deduct the Tax from the compensation paid to the person performing the services.

SECTION 302 – EMPLOYEE CERTIFICATE OF RESIDENCY

Every Employer subject to these Regulations shall require each Employee who is or becomes domiciled in or has a Workplace within Pennsylvania to complete a certificate of residency on a Collector provided form, which shall be an addendum to the Federal Employee’s Withholding Allowance Certificate (Form W-4). The Employer shall also require any such Employee who changes address to complete a new certificate of residency. The Employer shall retain certificates of residency and provide copies to the Collector upon request.

SECTION 303 – EMPLOYER REQUIRED WITHHOLDING

Every Employer subject to these Regulations at the time of payment shall deduct from the compensation due each Employee who is domiciled within the TCD or has a Workplace within the TCD: the greater of the Employee's combined Resident Tax or the Employee's Nonresident Tax determined from the official register published by DCED on its Internet website.

In deducting Tax from Employees, Employers should be cognizant that a Nonresident Foreign National who holds an F1 (academic student) or J1 (exchange visitor) visa and who derives earned income from an Occupation engaged in from a Workplace situate within the boundaries of a municipality located in the TCD is subject to Nonresident Tax – not Resident Tax.

SECTION 304 – EMPLOYER VOLUNTARY WITHHOLDING

When not required to withhold under Section 303 and not required to withhold and remit to the Collector for another tax collection district, an Employer may voluntarily withhold and remit to Collector the Tax owed by an Employee. For example, this would apply to an Employer whose only places of business are outside Pennsylvania, within Philadelphia, or within a tax collection district that has not appointed a county-wide tax collector. If an Employer is not required to withhold Tax from a Taxpayer but voluntarily chooses to do so, the Employer is encouraged to register with the Collector on the form prescribed by Collector and to notify the Collector if and when the voluntary withholding ceases.

SECTION 305 – EMPLOYER QUARTERLY RETURNS

Except as set forth in Section 306, within 30 days following the end of each calendar quarter, every Employer subject to these Regulations shall file a quarterly return on a Collector prescribed form and pay to the Collector the amount of Tax deducted during the preceding calendar quarter to the Collector.

SECTION 306 – MULTI-SITE EMPLOYER OPTION; MONTHLY RETURNS

Notwithstanding Section 305, the provisions of this Section shall apply if an Employer has a Place of Business in more than one tax collection district. As set forth in this Section, an Employer that has a Place of Business in more than one tax collection district may file the return otherwise required by Section 305 and pay the total amount of Tax deducted from Employees at all Workplaces within all tax collection districts during the preceding month to Collector. If an Employer has payroll operations located in the TCD or another tax collector has refused to accept combined returns from the Employer and the Employer has a Place of Business within the TCD, the Employer may file combined returns and make combined payments with Collector provided the following conditions are met: (1) The Employer files a notice of intention to file combined returns and make combined payments with Collector and also with the tax collector for each Workplace at least one month before Employer files its first combined return or makes its first combined payment. (2) Collector does not object to receiving combined returns and combined payments from the Employer. (3) The combined return and all Tax deducted from Employees at all Workplaces within all tax collection districts shall be filed and paid electronically within 30 days following the last day of each month. This Section shall not be

construed to change the location of an Employee's Workplace for purposes of Nonresident Tax liability.

SECTION 307 – DELINQUENT EMPLOYERS; MONTHLY RETURNS

Any Employer who, for two of the preceding four quarterly periods, has failed to deduct the proper amount of Tax, or has failed to pay over the proper amount of Tax as required by Section 305, may be required by the Collector to file returns and remit Tax monthly. In such cases, payments of Tax shall be made to the Collector on or before the last day of the month succeeding the month for which Tax was required to be withheld.

SECTION 308 – EMPLOYER ANNUAL RETURNS AND WITHHOLDING STATEMENTS

On or before February 28 of every year, every Employer shall file with the Collector:

- A. An annual return showing, for the period beginning January 1 of the most recently-ended year and ending December 31 of such year, the total amount of compensation paid, the total amount of Tax deducted, the total amount of Tax paid to the Collector, and any other information required by the Collector.
- B. An individual withholding statement, which may be integrated with the Federal Wage and Tax Statement (Form W-2), for each Employee employed during all or any part of the period beginning January 1 of the most recently-ended year and ending December 31 of such year, setting forth the Employee residence address and Social Security number, the amount of compensation paid to the Employee during the period, the amount of Tax deducted, the amount of Tax paid to the Collector, the numerical code prescribed by DCED for the TCD, and any other information required by the Collector. Every Employer shall furnish one copy of the individual withholding statement to the Employee for whom it is filed.
- C. With respect to any Employee who has elected to allocate income to multiple Workplaces under Section 201 above, the Employee's written statement explaining the basis for allocation shall be filed with the Employer's annual tax return.

SECTION 309 – EMPLOYER DISCONTINUANCE OF BUSINESS

Any Employer that discontinues business prior to December 31 of any given year shall, within 30 days after the discontinuance of business, file returns and withholding statements required under this Article and pay all Tax due for the year in which business was discontinued and, to the extent applicable, all prior years.

SECTION 310 – EMPLOYER AND OFFICER LIABILITY

An Employer who willfully or negligently fails or omits to make the deductions required by this Article shall be liable for payment of Tax which the Employer was required to withhold to the extent that Tax has not been recovered from the Employee. If the Employer is a partnership, the partners thereof, and if the Employer is a corporation, limited liability company, or other organization or entity, all officers thereof, and any other person responsible for tax matters, shall

have the same liability as the Employer. An Employer that engages a firm to process payroll will not be relieved of any requirement imposed under these Regulations by virtue of the firm's failure to satisfy the requirement on the Employer's behalf. The failure or omission of any Employer to make the required deductions shall not relieve any Employee from payment of Tax or from complying with the requirements for filing of returns.

SECTION 311 – PAYROLL SERVICE ELECTRONIC FILING REQUIREMENT

Firms engaged by Employers to process payroll shall submit Tax information and payments on or before the required due date in an electronic format prescribed by the Collector.

SECTION 312 – ELECTRONIC FILING REQUIREMENT – EMPLOYERS NOT USING A PAYROLL SERVICE

All Employers shall submit Tax information and payments on or before the required due date in an electronic format prescribed by the Collector. Except for Employers that file combined returns under Section 306, Employers with 50 or less employees may request relief from electronic filing provided they can document that electronic filing is a hardship.

ARTICLE IV – INDIVIDUAL RETURNS

SECTION 401 – ANNUAL RETURNS BY RESIDENT AND RESIDENT FOREIGN NATIONAL TAXPAYERS

- A. On or before April 15 of each year, every person domiciled within the TCD at any time during the previous calendar year and having earned income or net profits shall file with the Collector an annual return for the previous calendar year on a Collector provided form showing all earned income and net profits received or earned.
- B. Every such person shall file a return even if the compensation was subject to withholding by an Employer and even if no additional Tax remains due.
- C. If a person receives a Tax Return and has no earned income or net profits to report, the person shall enter the word "None" on the Tax Return and shall sign, date, and return the form to the Collector with an annotation such as "Retired," "Permanently Disabled," or "Unemployed." Such information is required so that the Collector knows not to assess interest, penalties, fines, and collection costs in circumstances where a person is not subject to Tax.
- D. If a person resides in more than one tax collection district during the calendar year, the person must file an annual return with the tax collector for each tax collection district.
- E. The taxable income subject to Resident Tax of a Taxpayer who resides in a political subdivision for only a portion of the calendar year shall be an amount equal to the Taxpayer's taxable income multiplied by a fraction, the numerator of which is the number of calendar months during the year that the individual resides in the political subdivision, and the denominator of which is 12. A Taxpayer shall include in the numerator any calendar month during which the Taxpayer resides for more than half the

calendar month. A day that a Taxpayer's Domicile changes shall be included as a day the individual is in the new Domicile and not the old Domicile. If the number of days in the calendar month in which the individual lived in the old and new Domicile are equal, the calendar month shall be included in calculating the number of months in the new Domicile.

- F. The Taxpayer shall file with the annual return a copy of the W-2 and 1099 forms that substantiate the earned income reported, a copy of all supporting schedules that substantiate the profits and losses reported, and any other annual return information specified in Collector's Tax Return instructions or otherwise requested by Collector. Any return submitted without the forms, schedules, and information referenced in this paragraph shall be deemed incomplete and any Taxpayer who submits an incomplete return may be subject to a late filing fine and collection costs.
- G. After filing with the Collector a copy of the federal or Pennsylvania approval for filing on a fiscal year basis, a Taxpayer may file returns and pay Tax on the same fiscal year basis used for Pennsylvania income tax purposes. When a return is made for a fiscal year, the return shall be filed within 105 days from the end of the fiscal year.
- H. Married Taxpayers may file a combined annual return. However, a combined annual return is not a joint return. As a convenience, if a combined annual return shows a Taxpayer is due a refund, Collector has the discretion to use that refund to offset any balance due from the Taxpayer's spouse under the combined return.

SECTION 402 – ANNUAL RETURNS BY NONRESIDENT AND NONRESIDENT FOREIGN NATIONAL TAXPAYERS

- A. Nature of Tax. Nonresident Tax is owed by a Nonresident or Nonresident Foreign National on earned income or net profits derived by the individual from an Occupation engaged in within the boundaries of a municipal Taxing Authority that imposes Nonresident Tax. Nonresident Tax is owed to the Taxing Authority where the Workplace is located.
- B. Return Requirement for Nonresidents. A Nonresident or Nonresident Foreign National subject to Nonresident Tax is **required** to file a Tax return **if, and only if**, the Nonresident or Nonresident Foreign National is not entitled to a credit for Resident Tax that negates the full amount of the Nonresident Tax that would be owed in the absence of the credit and: (1) the Nonresident or Nonresident Foreign National is an Employee whose Employer has not withheld the full amount of Nonresident Tax owed; or (2) the Nonresident or Nonresident Foreign National owes Nonresident Tax based on net profits; or (3) the Nonresident or Nonresident Foreign National is seeking a refund.

Examples of individuals required to file a Nonresident Tax return include: (1) An Employee who is a Nonresident or Nonresident Foreign National, who does not have a Resident Tax credit that eliminates his or her Nonresident Tax liability, and whose Employer has for some reason failed to withhold Nonresident Tax or the proper amount of Nonresident Tax. (2) A Nonresident or Nonresident Foreign National who has a Workplace within a municipal Taxing Authority that imposes Nonresident Tax, but who

resides in a Pennsylvania jurisdiction where Resident Tax is not imposed. (3) A Nonresident or Nonresident Foreign National who has a Workplace within a Taxing Authority that imposes Nonresident Tax at a rate higher than the Resident Tax rate applicable where the individual resides.

For example, assume a Nonresident Foreign National holding an F1 (academic student) or J1 (exchange visitor) visa who temporarily resides in State College Borough has a part time job in the Borough. Per these Regulations, the Nonresident Foreign National is subject to Nonresident Tax. Further assume the Nonresident Foreign National's employer failed to withhold the full amount of Nonresident Tax owed. Because the Nonresident Foreign National is not subject to Resident Tax and therefore has no credit for Resident Tax and also owes Nonresident Tax to the Borough that was not withheld, the Nonresident Foreign National is required to file an annual return with the Collector. Conversely, if the Nonresident Foreign National's employer had withheld too much Tax, the Nonresident Foreign National would be required to file an annual return in order to obtain a refund.

- C. Scope of Requirement. Nonresidents and Nonresident Foreign Nationals who are required to file returns with Collector shall file with the Collector annual and quarterly returns on Collector's Tax Returns at the same times as applicable to Resident Taxpayers. In addition, any Nonresident or Nonresident Foreign National required to file an annual Nonresident return with Collector shall file with the annual return a copy of the W-2 and 1099 forms that substantiate the earned income reported, a copy of all supporting schedules that substantiate the profits and losses reported, and any other annual return information specified in Collector's Tax Return instructions or otherwise requested by Collector including, but not limited to, the proof of status required under Section 402D.

Any annual Nonresident Tax return submitted without the forms and schedules necessary to substantiate the earned income or net profits and losses reported shall be deemed incomplete. The Collector shall impose interest, penalties, fines, and collection costs as appropriate on any Taxpayer who files an incomplete Nonresident Tax return.

If a Nonresident or Nonresident Foreign National files an annual Nonresident Tax return without the proof of status required under Section 402D, the Collector shall assess Resident Tax on the Taxpayer and shall have discretion to impose interest, penalties, fines, and collection costs on the Taxpayer if the Resident Tax was not paid when the return was filed.

- D. Proof of Status – United States Citizens. For *Pennsylvania residents* who are asserting Nonresident status, the proof of status shall be a photocopy of a valid driver license or photo identification card issued to the Taxpayer by the Commonwealth of Pennsylvania. For *residents of other states* who are asserting Nonresident status, proof of status includes: (1) a photocopy of a valid driver license or photo identification card issued to the Taxpayer by the Taxpayer's state of Domicile; (2) a copy of a receipt from The Pennsylvania State University showing the Taxpayer paid "out-of-state tuition" for the tax year in question; **or** (3) a copy of the Taxpayer's tax return from the Taxpayer's state of Domicile for the year in question. Each annual return is a separate filing that requires

current proof of status at the time of filing. No expired documentation will be accepted for proof of status.

- E. Proof of Status – Nonresident Foreign Nationals. For any Nonresident Foreign National filing a Nonresident Tax return, the proof of status shall be: (1) a photocopy of the Taxpayer’s current work authorization; (2) a photocopy of the visa held by the Taxpayer as of the date on which the return accompanying the proof of status is filed; **and** (3) a photocopy of documentation – such as a deed, lease agreement, utility bills, etc. – establishing the location at which the Taxpayer resided during the Tax year being reported in the return. Each annual return is a separate filing that requires current proof of status at the time of filing. No expired documentation will be accepted for proof of status.
- F. Changes in Visa Status. The visa held by a foreign national as of the date on which the foreign national files an annual return is controlling for purposes of determining whether the foreign national is a Resident Foreign National or a Nonresident Foreign National, regardless of whether the foreign national’s visa status changed during the year being reported in the annual return or changed after such year but before the date on which the annual return is filed.

SECTION 403 – REQUIREMENT TO AMEND RETURNS

If the amount of “net compensation,” “net income from the operation of a business, profession or farm,” or “net income from rents, royalties, patents, or copyrights” is changed (whether as a result of an amended return, assessment, audit, or otherwise) in a manner resulting in an increase in income for purposes of Pennsylvania income tax for any period, the Taxpayer shall, within 30 days after such change, file an amended annual return with the Collector reflecting additional Tax owed for the corresponding period.

SECTION 404 – INDIVIDUAL QUARTERLY RETURNS

Every Taxpayer with earned income or net profits not subject to Employer withholding shall file by April 30 a declaration of estimated income not subject to withholding during the year. Consistent with guidance promulgated by DCED, the Taxpayer shall file quarterly returns on **April 30, July 31, and October 31** of the current year, and **January 31** of the succeeding year, and pay to the Collector in four equal quarterly installments the Tax due on the estimated income. A Taxpayer who first anticipates any such income after April 30 shall file the declaration on or before the first quarterly return due date that follows the date on which the Taxpayer first anticipates such income. A Taxpayer who fails to file quarterly returns and make required quarterly payments within the deadlines set forth in this Section is subject to interest, penalties, fines, and collection costs as set forth in the Enabling Act and these Regulations. The interest and penalty amount shall be applied based on the requirement to pay in four equal quarterly installments Tax owed for the year.

SECTION 405 – MULTIPLE TAX RATES

Multiple Tax rates might apply to a Taxpayer during a calendar year due to a Tax rate change by a Taxing Authority, or a Taxpayer moving between areas with different rates or working in different municipalities with different rates.

ARTICLE V – ADMINISTRATION**SECTION 501 – TAXPAYER AND EMPLOYER RECORDS**

Taxpayers and Employers are required to keep records sufficient to allow filing accurate returns and to justify all information reported on returns in the event of a request for information or audit by the Collector. Such records shall be preserved for at least 6 years after the end of the calendar year to which the records apply.

SECTION 502 – FAILURE TO RECEIVE FORMS

Failure of a Taxpayer or Employer to receive Tax Returns or other forms shall not excuse failure to file any required returns or information or to pay Tax owed.

SECTION 503 – INTEREST, PENALTIES, AND FINES

Taxpayers and Employers are subject to interest, penalties, and fines as set forth in the Enabling Act.

SECTION 504 – DELINQUENT TAX COLLECTION COSTS

Taxpayers and Employers are required to pay delinquent Tax collection costs according to a schedule of delinquent Tax collection costs that has been approved by the TCC and as otherwise authorized by applicable law. Any such schedule approved by the TCC shall be attached to these Regulations at **Schedule A**.

SECTION 505 – REFUNDS

A refund request must be made within the later of: (1) Three (3) years after the due date for filing the return for the Tax for which the refund is requested. (2) One (1) year after actual payment of the Tax for which the refund is requested. Refunds will only be made in the amount of \$1.00 or more.

SECTION 506 – TAXPAYER AND EMPLOYER RIGHTS AND OBLIGATIONS

Additional rights and obligations of Taxpayers and Employers are explained in a Taxpayers Bill of Rights Disclosure Statement available on the Collector internet website or by written request to the Collector.

SECTION 507 – RULINGS AND APPEALS

A Taxpayer or Employer may submit to the Collector a written request for interpretation of these Regulations, or a determination with respect to an obligation of or amount owed by the Taxpayer or Employer. If a Taxpayer or Employer is dissatisfied with a decision of the Collector relating to the assessment, collection, refund, or withholding of Tax, the Taxpayer or Employer may file an appeal to the TCC Tax Appeal Board. Any such appeal must be filed in accordance with the rules set forth in the TCC Tax Appeal Board Regulations (including use of the Tax Appeal Petition form attached to the Tax Appeal Board Regulations).

SECTION 508 – ANNUAL RETURN EXTENSIONS

A Taxpayer may request an extension to file his or her annual return provided Collector receives one of the following from the Taxpayer on or before the original due date of the return: (1) a written application for an extension; (2) a copy of the Taxpayer's extension application (if any) to either the Internal Revenue Service or the Pennsylvania Department of Revenue; or (3) written verification that the Taxpayer has received an extension from either the Internal Revenue Service or the Pennsylvania Department of Revenue. However, an extension of time to file an annual return does **not** extend the time to pay the Tax due. Accordingly, to avoid imposition of interest, penalties, fines, and collection costs, a Taxpayer must remit along with his or her extension request a payment in an amount reasonably estimated to be equal to the amount of Tax the Taxpayer anticipates owing when the return is later filed. An example of a reasonable estimate would be a payment of Tax in an amount equal to the amount of Tax owed by the Taxpayer during the year for which the Taxpayer most recently filed an annual return.

SECTION 509 – RULES OF CONSTRUCTION

These Regulations shall control all issues relating to collection of Tax that arise from the date on which these Regulations were adopted by the TCC forward, regardless of whether such issues arise based on facts and circumstances that occurred prior to the date these Regulations were adopted. If for any reason or at any time any provision of these Regulations or any part of any Exhibit or Schedule attached hereto is deemed invalid or unenforceable, the provision or part shall be adjusted to the extent necessary to cure the cause of such invalidity or unenforceability and all other provisions and parts of these Regulations and attached Exhibits and Schedules shall continue to be valid and fully enforceable. In reading and applying these Regulations, the singular includes the plural and vice-versa as required or reasonably understood from the context. To the extent there is any conflict or inconsistency between these Regulations and any Exhibit or Schedule attached hereto, these Regulations control.

Exhibit A: Items Subject to Tax

[Note: This Exhibit does not provide an exhaustive list of items that are considered “earned income” and “net profits.” Moreover, tax laws change from time to time, and it is possible this Exhibit will not be immediately updated to reflect future changes in the law. Accordingly, you should not rely on this Exhibit without consulting current law and you should not construe anything in this Exhibit as tax advice from the TCC, the Collector, or any Taxing Authority. If you have questions as to whether an item you have received is subject to Tax, you are encouraged to consult your professional advisors about your particular situation.]

Items Considered “Earned Income.”

1. Salaries and wages, including any wages that may be received during a period of sickness or disability. However, earned income does not include: (i) the amount of salary or wages received while on active military duty within the Commonwealth of Pennsylvania; or (ii) the amount of any housing allowance provided to a member of the clergy. Other salaries and wages received by military personnel and clergy members are earned income.
2. Commissions.
3. Bonuses.
4. Tips and gratuities.
5. Stipends.
6. Honoraria.
7. Fees earned by directors, executors, administrators, trustees, or fiduciaries for rendering services, consultation, or decisions.
8. The fair market value of meals and lodging furnished by employers to employees for the convenience of the employee.
9. Payments received for unused annual leave, vacation days, holiday time, or for separation from employment.
10. Incentive payments which include payments other than salaries, wages, commissions, bonuses, or other forms of compensation that an employee receives from an employer. Examples of incentive payments include, but are not limited to: (1) payments received by an employee for releasing the employer from an employment contract; (2) payments received by an employee from an employer for a covenant not to compete; (3) payments made under “phantom stock” plans where an employee receives compensation based on an increase in the value of the employer’s stock.
11. Drawing accounts to the extent funds from such accounts are actually received and not repaid to an employer.

12. The “earnings component” of any qualified or non-qualified stock option plan. The “earnings component” is the difference between a stock option price and the fair market price of the stock at the time the stock option is exercised.
13. Stock bonus plans.
14. Early retirement payments, “golden parachute” payments, and distributions from a qualified old age or retirement benefit program received by a taxpayer prior to actual retirement to the extent such payments are represented by employer contributions that are not rolled into another qualified old age or retirement benefit program.
15. Mortgage assistance provided by an employer in lieu of other compensation.
16. Tax liability incurred by an employee but paid by an employer on behalf of the employee in consideration for services rendered by the employee.
17. Any debt obligation that is forgiven in lieu of some other form of compensation being paid for services provided.

Exhibit A (Continued): Items Subject to Tax

Items Considered “Net Profits.”

1. Net profits from the operation of hotels, motels, tourist homes, boarding houses, bed and breakfast establishments, mobile home parks, and other similar businesses.
2. Net profits received by a trust or estate resulting from its engagement in any business, trade, or other activity if such net profits would otherwise be taxable if received by an individual taxpayer.
3. Payments received from a non-employer as consideration for refraining from the performance of services or similar activities under a covenant not to compete.

[**Note:** In Section 204 of the attached Regulations, there is detailed discussion regarding the Tax treatment of income from sole proprietorships, partnerships, limited liability companies, S-corporations, rents, royalties, patents, and copyrights. You are encouraged to review Section 204 in detail.]

Exhibit B: Items Generally Not Subject to Tax

[Note: This Exhibit does not provide an exhaustive list of items that are not subject to Tax. Moreover, tax laws change from time to time, and it is possible this Exhibit will not be immediately updated to reflect future changes in the law. Accordingly, you should not rely on this Exhibit without consulting current law and you should not construe anything in this Exhibit as tax advice from the TCC, the Collector, or any Taxing Authority. If you have questions as to whether an item you have received is subject to Tax, you are encouraged to consult your professional advisors about your particular situation.]

1. Gain on the sale of any of the following: (a) farm machinery; (b) livestock held 12 months or more for draft, breeding, or dairy purposes; or (c) any other capital assets of a farm.
2. Interest income.
3. Dividends.
4. Capital gains.
5. Net gains from the sale, exchange, or distribution of property.
6. Gambling and lottery winnings.
7. Prizes and awards, but only to the extent no services are rendered in exchange.
8. Cash or property received as a gift, by will, or by statutes of descent and distribution.
9. Scholarships and fellowships, but only those awarded on the basis of financial need, academic achievement, or for the purpose of encouraging the recipient to further his or her education.
10. Employer provided automobile, living, or moving allowances or reimbursements, but only to the extent such allowances or reimbursements represent actual expenses incurred by an employee.
11. Discounts offered by an employer to an employee.
12. Life insurance premiums paid by an employer for an employee.
13. Employer contributions to annuities, deferred compensation plans, or qualified old age or retirement benefit programs.
14. Payments made on an employee's behalf pursuant to a qualifying cafeteria plan under Section 125 of the Internal Revenue Code of 1986, 26 U.S.C. § 125.

15. Child support or alimony.
16. Jury duty pay.
17. Cancellation of personal credit card debt that is reported on Internal Revenue Form 1099-C.
18. Strike benefits.
19. Damages received for personal injuries.
20. Unemployment benefits.
21. Benefits paid under any workers compensation or public assistance program or legislation.
22. Disability benefits received from an insurer.
23. Veterans Administration subsistence or disability benefits.
24. Social Security benefits.
25. Distributions from a qualified old age or retirement benefit program, but only to the extent such distributions represent a return of a Taxpayer's own contributions of earned income or net profits that was already taxed.
26. Payments from pensions or distributions from qualified old age or retirement benefit plans, but only to the extent such payments or distributions are received after retirement.
27. Life insurance proceeds and death benefit payments paid to an employee's beneficiary or estate.

Exhibit C: Items that Cannot be Deducted as Unreimbursed Business Expenses

[Note: This Exhibit does not provide an exhaustive list of items that cannot be deducted as unreimbursed business expenses. Any item that does not meet the test set forth in Section 205D of the attached Regulations cannot be deducted from earned income. None of the items below meet that test. Please note that tax laws change from time to time, and it is possible this Exhibit will not be immediately updated to reflect future changes in the law. Accordingly, you should not rely on this Exhibit without consulting current law and you should not construe anything in this Exhibit as tax advice from the TCC, the Collector, or any Taxing Authority. If you have questions as to whether a deduction is lawful, you are encouraged to consult your professional advisors about your particular situation.]

1. Costs incurred to travel to and from work, such as gas, parking, and tolls.
2. Work clothing suitable for everyday wear.
3. Child care expenses.
4. Medical expenses.
5. Charitable contributions.
6. Political contributions.
7. Employee contributions to benefit plans or programs.
8. Interest payments.
9. Cost of gifts.
10. Expenses incurred from working from home, except to the extent such expenses can be deducted from personal income as permitted by the Pennsylvania Department of Revenue.
11. Expenses incurred in looking for a new home or apartment, selling a home, buying out a lease, or for temporary lodging pending a move.
12. Any expenses incurred in moving for any reason other than for the benefit of an employer. However, even if moving expenses are incurred for the benefit of an employer, the expenses cannot be deducted unless all applicable requirements of Section 217 of the Internal Revenue Code of 1986, 26 U.S.C. § 217, are met. If a Taxpayer is permitted to deduct moving expenses, all moving expenses (including fuel costs, meals and lodging expenses incurred during the move, and toll costs) may be deducted.

CENTRE TAX AGENCY

Local Taxpayers Bill of Rights Act Disclosure Statement

Background. Pursuant to Act 32 of 2008, the Centre Tax Agency (the “Agency”) collects all local earned income tax (“EIT”) levied under the Local Tax Enabling Act, (“LTEA”), 53 P.S. § 6901 *et seq.*, by the school districts and municipalities that are part of the Centre Tax Collection District (the “TCD”). The Agency’s collection of EIT is overseen by the Centre County Tax Collection Committee or the “TCC.” In addition, the Agency also collects local service tax (“LST”) for certain school districts and municipalities. The EIT and LST collected by the Agency is referred to in this Statement collectively as “Tax.” In fulfilling its obligations, the Agency is authorized to request additional information from taxpayers and to review taxpayer books and records. Given those powers, the Agency must adopt a disclosure statement under the Local Taxpayers Bill of Rights Act (“LTBR”), 53 Pa.C.S.A. § 8423, explaining: (1) the obligations of the Agency and the rights of the taxpayer during an audit or administrative review of the taxpayer’s books and records; (2) the procedure for filing refund claims; (3) the procedure by which a taxpayer may appeal an adverse decision from the Agency; and (4) the Agency’s enforcement procedures. This Statement lists a number of obligations imposed on the Agency. However, unless expressly provided in the LTBR, the failure of any Agency representative to comply with any provision of this Disclosure Statement, the LTEA, the LTBR, or other applicable law will not excuse any taxpayer from paying Tax owed.

A. General Agency Obligations and Taxpayer Rights During Review and Audit.

1. **Confidentiality.** In discharging its duties, the Agency shall keep confidential all information gained as a result of any return, report, audit, investigation, hearing, or verification, except as required for official purposes or by law.

2. **Courtesy and Professionalism.** The Agency will treat taxpayers courteously and professionally at all times.

3. **Taxpayer Correspondence.** In all correspondence requesting information from taxpayers, the Agency will include a **Notice of Procedure to Request Extension of Time** in the form set forth in the attached **Exhibit A**. In all correspondence to a taxpayer regarding assessment, audit, determination, review, or collection of Tax, the Agency will include a **Taxpayer Bill of Rights Notice** in the form set forth in the attached **Exhibit B**.

B. Agency Obligations and Taxpayer Rights Re: Information Requests/Review.

1. **Response Time and Extensions.** If the Agency requests information from a taxpayer, the taxpayer will have 30 days from the date of the Agency request to either respond or request an extension of time. Upon receipt of a written request, the Agency will grant an extension if there is “good cause.” The Agency will take no legal action against a taxpayer until the expiration of the response period and any Agency-approved extension.

2. **Request for Prior Year Returns.** Any initial request for information from the Agency may cover only Tax to be filed or paid no more than 3 years prior to the mailing date of the Agency request. Subsequent requests for additional tax returns or supporting information may be made after the initial request if the Agency determines that the taxpayer failed to file a Tax return,

underreported income, or failed to pay a Tax for one or more of the Tax periods covered by the initial request.

3. ***Request for Federal Tax Information.*** The Agency may require a taxpayer to provide copies of the taxpayer's federal individual income tax returns if the Agency can show that the information is reasonably necessary for enforcement or collection of Tax and if the information is not readily available from other sources or the Pennsylvania Department of Revenue.

4. ***Personal Interviews.*** A taxpayer may request or the Agency may provide for a personal interview.

5. ***Representation.*** Taxpayers may represent themselves or authorize someone else in writing to represent them throughout the Agency review process. Someone may accompany the taxpayer at a meeting or hearing conducted by the Agency. A notice or other written communication from the Agency to the taxpayer may be given to the taxpayer's authorized representative, and any such notice or other communication shall have the same effect as if given to the taxpayer directly. Action taken by a taxpayer's authorized representative shall have the same force and effect as if taken by the taxpayer.

6. ***Timely Determination.*** The Agency will process a review in a timely manner. A detailed written statement of any Tax liability determined as a result of a review will also be issued. This notice will include the amount of underpayment detailed by Tax period, a detailed listing of adjustments made to the Tax return(s), and the legal basis for the revisions.

C. **Location of Interviews and Examinations.** If the Agency schedules an interview or a review of records, the taxpayer or employer for which the interview or review is scheduled shall provide the Agency's agents with a reasonably-accessible location within the TCD at which the Agency's agents shall be given a reasonable opportunity to conduct the interview or, as the case may be, the review.

D. **Procedures for Refund of Overpaid Tax.** If a taxpayer has overpaid a Tax, the taxpayer may request a refund by doing any of the following: (1) filing a return with the Agency showing a refund is due; (2) submitting an informal written request to the Agency; or (3) **in the case of EIT only**, filing an appeal with the TCC Tax Appeal Board in accordance with the **Centre County Tax Collection Committee Tax Appeal Board Regulations**. In all cases, sufficient information must be provided to substantiate any refund request. Refund requests for EIT must be filed within 3 years after the due date for filing the return, as extended, or one year after actual payment of the EIT, whichever is later. Refund requests for LST must be filed within 3 years after the due date for payment of the LST, or one year after actual payment of the LST, whichever is later.

E. **Procedures for Appealing Agency Determinations.** If a taxpayer would like to seek review of an adverse determination by the Agency relating to EIT, the taxpayer must file an appeal with the TCC Tax Appeal Board in accordance with the **Centre County Tax Collection Committee Tax Appeal Board Regulations**. If a taxpayer would like to seek review of an adverse determination by the Agency relating to LST, the taxpayer must file an appeal with the Centre County Court of Common Pleas.

F. **Enforcement Procedures and Methods.** If the Agency determines that a required return has not been filed or a liability has not been paid, it is authorized by law to take various actions including, but not necessarily limited to, the following:

1. Assessing interest, penalties, and costs of collection against a delinquent taxpayer or employer.
2. Requesting taxpayer interviews and audits.
3. Contacting a delinquent taxpayer and attempting to resolve the liability through payment in full, installment payment plan, or wage attachment.
4. Employing collection agencies or legal counsel to assist in the collection of delinquent Tax.
5. Garnishing the wages of a delinquent taxpayer.
6. Filing a civil suit against a delinquent taxpayer, employer, and/or the responsible party.
7. Filing a lien against a delinquent taxpayer or employer.
8. Filing a criminal complaint against a delinquent taxpayer, employer, and/or the responsible party.
9. Holding employers and officers liable for failure to make or remit deductions from employee compensation. An employer who willfully or negligently fails or omits to make the required deductions shall be liable for payment of Tax which the employer was required to withhold to the extent the Tax is not recovered from the employee. If the employer is a partnership, the partners thereof, and if the employer is a corporation, limited liability company, or other organization or entity, all officers thereof, and any other person responsible for Tax matters, shall have the same liability as the employer. The failure or omission of any employer to make the required deductions shall not relieve any employee from payment of Tax or from complying with the requirements for filing of returns.

Exhibit A: Notice of Procedure to Request Extension of Time

You have the right to request an extension of time within which to respond to the Agency's request for information. The Agency will grant you an extension of time if there is "good cause" to do so. If the Agency grants an extension of time, it will take no legal action against you until the expiration of the original 30 day response period and any Agency-approved extensions. To request an extension of time, please submit a written request explaining the reasons why you are asking for the extension to: Manager of Tax Services, Centre Tax Agency, Finance Department, State College Borough Municipal Building, 243 South Allen Street, State College, PA 16801.

Exhibit B: Taxpayer Bill of Rights Notice

As set forth in the Centre Tax Agency Local Taxpayers Bill of Rights Act Disclosure Statement, you are entitled to receive a written explanation of your rights with regard to the audit, appeal, enforcement, refund, and collection of taxes collected by the Agency. To obtain a copy, access the Agency website at <http://www.statecollegepa.us/index.aspx?NID=1778>; call the Agency at (814)-234-7120; or send a written request to Centre Tax Agency, Finance Department, State College Borough Municipal Building, 243 South Allen Street, State College, PA 16801.

CENTRE COUNTY TAX COLLECTION COMMITTEE

Delinquent Tax Collection Costs Resolution

Background. Pursuant to Act 32 of 2008, the Centre County Tax Collection Committee (“TCC”) has appointed the Centre Tax Agency (the “Collector”) to collect local earned income tax (“EIT”) throughout the Centre Tax Collection District (“TCD”). Under Act 32 § 707(a), 53 P.S. § 6924.707(a), the Collector may impose and collect “reasonable costs incurred to provide notices of delinquency or to implement similar procedures” in collecting delinquent EIT from and enforcing EIT return filing requirements against taxpayers and employers. Those costs are referred to herein as “**Section 707(a) Costs.**” Act 32 § 707(a) further provides that all Section 707(a) Costs imposed by the Collector and collected from taxpayers and employers within the TCD must be approved either by the TCC or by each school district and municipality within the TCD on a case by case basis. The Collector has proposed the “**Schedule of Collection Costs to be Imposed and Added to Delinquent Tax**” attached to this Resolution (the “**Schedule**”) for the TCC to consider and approve. The costs proposed in the Schedule are similar in nature and amount to those Section 707(a) Costs imposed by other EIT collectors throughout Pennsylvania.

RESOLVED, by the Board of Delegates of the TCC as follows:

1. The TCC hereby approves all Section 707(a) Costs that Collector imposed on and collected from taxpayers and employers on or before this date pursuant to collection and enforcement actions carried out by Collector under the Tax Collection Agreement between the TCC and Collector.
2. The TCC hereby approves of the Collector’s imposition against and collection from taxpayers and employers within the TCD of the Section 707(a) Costs listed in the Schedule.
3. The Chairperson is authorized and directed to take all other actions the Chairperson deems necessary or appropriate to carry out the purposes of this Resolution.
4. The TCC shall provide a copy of this Resolution to the Collector.
5. The Collector shall attach a copy of the Schedule as “Schedule A” to the Centre Tax Agency Earned Income and Net Profits Tax Regulations.

Certification of adoption. The undersigned certifies that the above Resolution was adopted at a public meeting on this date.

Date: _____

Chairperson

Centre Tax Agency

Schedule of Collection Costs to be Imposed and Added to Delinquent Tax

<u>Description of Collection Activity</u>	<u>Cost to Taxpayer</u>
First notice to taxpayer of late payment, underpayment, non-payment, late filing, or failure to file.	\$25.00
Second notice to taxpayer of late payment, underpayment, non-payment, late filing, or failure to file.	\$50.00
Establishment of payment plan.	\$5.00 (per payment)
Notice to taxpayer prior to wage attachment.	\$25.00
Notice to employer of wage attachment.	\$25.00
Fee for cancelled or bounced check.	\$25.00
First notice to employer of late payment, underpayment, non-payment, late filing, or failure to file.	\$25.00
Second notice to employer of late payment, underpayment, non-payment, late filing, or failure to file.	\$50.00
Preparation of District Justice complaint (civil or criminal).	\$100.00
Preparation for District Justice hearing (civil or criminal).	\$100.00
Attendance at District Justice hearing (civil or criminal).	\$100.00 per hour.
Preparation for appeal to the Court of Common Pleas.	\$150.00
Attendance at Court of Common Pleas proceeding or arbitration.	\$100.00 per hour.
Initiation of and attendance at execution sale.	\$100.00 per hour.
Preparation of filing of bankruptcy proof of claim.	\$100.00 per hour.
District Justice, Court of Common Pleas, and Bankruptcy Court filing fees and costs. Fees and costs incurred for audit that results in the assessment of tax, interest, or penalties. Fees and costs incurred to engage legal counsel to assist with collection efforts in District Court, Court of Common Pleas, or Bankruptcy Court.	Actual fees and costs incurred will be imposed on the taxpayer or employer.