File of the
Council of the City of Easton, Pa.

Ordinance No. **SESSION 2011** **Bill No. 34**

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Introduced by: Jeffrey Warren – October 26, 2011

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Enacted by Council:

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AN ORDINANCE: Amending Article III, Traffic Control Map of Chapter 560, Vehicles and Traffic, of the Code of the City of Easton, Pa.

THE CITY OF EASTON HEREBY ORDAINS:

SECTION 1. Article III, Traffic Control Map of Chapter 560, Vehicles and Traffic of the Code of the City of Easton, Pa., be and it is hereby amended by adding the following:

(a) Creation of a Load/Unload Zone, Monday – Friday 7:30 am – 4:00 pm, in front of 1156 Butler Street.

SECTION 2. All Ordinances or parts of ordinances inconsistent herewith be, and the same are hereby repealed.

SECTION 3. This ordinance shall take effect 30 days following adoption by Council.

Signed the day of , 2011

ATTEST:_____ _____

City Clerk Mayor

File of the
Council of the City of Easton, Pa.

Ordinance No. **SESSION 2011** **Bill No. 35**

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Introduced by: Kenneth Brown - October 26, 2011

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Enacted by Council:

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AN ORDINANCE: RE-ENACTING, RESTATING AND AMENDING ARTICLE VIII, EARNED INCOME AND NET PROFITS, OF CHAPTER 535, TAXATION. OF THE CODE OF THE CITY OF EASTON, TO ESTABLISH CONFORMITY WITH THE LOCAL TAX ENABLING ACT AS AMENDED BY ACT 32 OF JULY 2, 2008.

THE CITY OF EASTON HEREBY ORDAINS:

WHEREAS, the City of Easton, Northampton County, Pennsylvania (hereinafter referred to as the "City") previously enacted its Ordinance No. 5038 (hereinafter the "Prior Ordinance"), imposing a tax at the rate of one and one-quarter percent (1.25%) for general revenue purposes on earned income and net profits; and

WHEREAS, on July 2, 2008, the Pennsylvania Legislature enacted Public Law 197, Act No. 32 (hereinafter "Act 32"), which Act 32, *inter alia*, provided for the consolidated collection of local income taxes within a tax collection district established in each county under Section 504 of Act 32, 53 P.S. Section 6924.504, for tax years beginning not later than on and after January 1, 2012; and

WHEREAS, the City desires to re-enact, restate and amend in its entirety the Prior Ordinance relating to the imposition and collection of an earned income and net profits tax by the City of Easton in order to conform with the provisions of Act 32.

SECTION 1. Article VIII, Earned Income and Net Profits of Chapter 535, Taxation of the Code of the City of Easton, be and it is hereby, re-enacted, restated and amended in its entirety to read as follows:

535-64 DEFINITIONS

"Article XIII tax officer." The tax officer authorized by the City to collect income taxes levied prior to January 1, 2012.

"Business." An enterprise, activity, profession or any other undertaking of an unincorporated nature

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

"Business entity." A sole proprietorship, corporation, joint-stock association or company, partnership, limited partnership, limited liability company, association, business trust, syndicate or other commercial or professional activity organized under the laws of this Commonwealth or any other jurisdiction.

"Certified public accountant" or **"public accountant."** A certified public accountant, public accountant or firm, as provided for in the act of May 26, 1947 (P.L. 318, No. 140), known as the CPA Law.

"Claim." A written demand for payment made by a tax officer or tax collection district for income taxes collected by another tax officer or tax collection district.

"Corporation." A corporation or joint-stock association organized under the laws of the United States, the Commonwealth of Pennsylvania or any other state, territory, foreign country or dependency. The term shall include an entity which is classified as a corporation for Federal income tax purposes.

"Current year." The calendar year for which the tax is levied.

"Department." The Department of Community and Economic Development of the Commonwealth.

"Domicile." 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 taxpayer, is permanent rather than transitory. Domicile is the voluntarily fixed place of habitation of a person, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some event occurs to induce 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.

"Earned income." Salaries, wages, commissions, bonuses, incentive payments, fees, tips and other compensation received by a person or his personal representative for services rendered, whether directly or through an agent, and whether in cash or in property; not including, however, wages or compensation paid to persons on active military service, periodic payments for sickness and disability other than regular wages received during a period of sickness, disability or retirement or payments arising under workmen's compensation acts, occupational disease acts and similar legislation, or payments commonly recognized as old-age benefits, retirement pay or pensions paid to persons retired from service after reaching a specific age or after a stated period of employment or payments commonly known as public assistance, or unemployment compensation payments made by a governmental agency or payments to reimburse expenses or payments made by employers or labor unions for wage and salary supplemental programs, including but not limited to programs covering hospitalization, sickness, disability or death, supplemental unemployed benefits, strike benefits, social security and retirement. In addition to the above-mentioned income, earned income shall include the compensation as required to be reported to or as determined by the Department of Revenue under Section 303 of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971, and rules and regulations promulgated under that section. Employee business expenses as reported to or determined by the Department of Revenue under Article III of the Tax Reform Code of 1971 shall constitute allowable deductions in determining earned income. The term does not include offsets for business losses. The amount of any housing allowance provided to a member of the clergy shall not be

taxable as earned income.

"Earned income and net profits tax." The tax levied by the City on earned income and net profits.

"Employer." A person, business entity or other entity, employing one or more persons for a salary, wage, commission or other compensation. The term includes the Commonwealth, a political subdivision and an instrumentality or public authority of either. For purposes of penalties under this Ordinance, the term includes a corporate officer.

"Income tax." Except as set forth in section 511(b) of the Local Tax Enabling Act, P.L. 1257, Act 511 of 1965, as amended (hereinafter the "LTEA"), 53 P.S. Section 6924.511 (b), an earned income and net profits tax, personal income tax or other tax that is assessed on the income of a taxpayer levied by the Borough/Township/City under the authority of this act or any other act.

"Joint tax collection committee." An entity formed by two or more tax collection committees for the purpose of income tax collection in more than one tax collection district.

"**LTEA**." The Pennsylvania Local Tax Enabling Act, P.L. 1257, Act 511 of 1965, as amended.

"Net profits." The net income from the operation of a business, other than a corporation, as required to be reported to or as determined by the Department of Revenue under section 303 of the act of March 4, 1971 (P.L. 6, No. 2), 72 P.S. Section 7303, known as the Tax Reform Code of 1971, and rules and regulations promulgated under that section. The term does not include income under any of the following paragraphs:

(1) Income which:

(i) is not paid for services provided; and

(ii) is in the nature of earnings from an investment.

(2) Income which represents:

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

(ii) any gain on the sale of livestock held 12 months or more for draft, breeding or dairy purposes; or

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

"Nonresident." A person or business domiciled outside the City levying the tax.

"Nonresident tax." An income tax levied by the City on nonresidents.

"Official register." The part of the tax register that includes withholding tax rates as provided in section 511(a)(3) of the LTEA, 53 P.S. Section 6924.511 (a) (3).

"Person." A natural person.

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

"Private agency." A business entity or person appointed as a tax officer by a tax collection committee.

"Public agency." Any and all public bodies, authorities, agencies, instrumentalities, political subdivisions, intermediate units, councils, boards, commissions or similar governmental entities.

"Resident." A person or business domiciled in the City levying the tax.

"Resident tax." An income tax levied by the City.

"Resident tax officer." The tax officer administering and collecting income taxes for the tax collection district in which a taxpayer is domiciled.

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

"Tax bureau." A public nonprofit entity established for the administration and collection of taxes.

"Tax collection committee." The committee established to govern the Northampton Tax Collection District for the purpose of income tax collection. The term shall include a joint tax collection committee.

"Tax collection district." The Northampton Tax Collection District established under section 504 of the LTEA.

"Tax officer." A political subdivision, public employee, tax bureau, county, except a county of the first class, or private agency which administers and collects income taxes for one or more tax collection districts. Unless otherwise specifically provided, for purposes of the obligations of an employer, the term shall mean the tax officer for the tax collection district within which the employer is located, or, if an employer maintains workplaces in more than one district, the tax officer for each such district with respect to employees principally employed therein.

"Tax records." Tax returns, supporting schedules, correspondence with auditors or taxpayers, account books and other documents, including electronic records, obtained or created by the tax officer to administer or collect a tax under this Ordinance. The term includes documents required by Section 509(e) of the LTEA, 53 P.S. Section 6924.509 (e). The term "electronic records" includes data and information inscribed on a tangible medium or stored in an electronic or other medium and which is retrievable in perceivable form.

"Tax register." A database of all county, municipal and school tax rates available on the Internet as provided in section 511(a)(1) of the LTEA, 53 P.S. Section 6924.511 (a) (1).

"Taxable income." Includes:

(1) In the case of an earned income and net profits tax, earned income and net profits.

(2) In the case of a personal income tax, income enumerated in section 303 of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971, 72 P.S. Section 7303, as reported to and determined by the Department of Revenue, subject to correction for fraud, evasion or error, as finally

determined by the Commonwealth.

"Taxpayer." A person or business required under this Ordinance to file a return of an income tax or to pay an income tax.

–"Withholding tax." An income tax levied by a political subdivision under the authority of this Ordinance or any other Ordinance, or any other tax levied by a municipality or school district for which employer withholding may be required under this Ordinance.

535-65 IMPOSITION OF TAX

The tax levied under this Ordinance is a continuation of a tax previously described in the above referenced Whereas clauses. The tax previously imposed and continued under this Ordinance is a tax for general revenue purposes of one and one-quarter percent (1.25 %) is hereby imposed on the following:

(a) Earned Income, as defined by this Ordinance, received by residents of the City, on or after January 1, 2012;

(b) Earned income, as defined by this Ordinance, received by non-residents of the City for work done or services performed or rendered in the City on or after January 1, 2012;

(c) Net profits, as defined by this Ordinance, earned on or after January 1, 2012, of businesses, professions, and other activities conducted by residents in the City; and

(d) Net profits, as defined by this Ordinance, earned on or after January 1, 2012, of businesses, professions, and other activities conducted by non-residents in the City.

The tax levied under (a) and (b) herein shall relate to and be imposed upon salaries, wages, commissions, and other compensation paid by an employer or on its behalf to any person who is employed by or renders services to him. The tax levied under (c) and (d) herein shall relate to and be imposed on the net profits of any business, profession, or enterprise carried on by any person as owner or as proprietor, either individually or in association with some other person or persons.

535-66 DECLARATION AND PAYMENT OF TAX

1. Application.

(a) Income taxes shall be applicable to taxable income earned or received based on the method of accounting used by the taxpayer in the period beginning January 1 of the current year and ending December 31 of the current year, and the tax shall continue in force on a calendar year or taxpayer fiscal year basis, without annual reenactment, unless the rate of the tax is subsequently changed.

(b) For a taxpayer whose fiscal year is not a calendar year, the tax officer shall establish deadlines for filing, reporting and payment of taxes which provide time periods equivalent to those provided for a calendar year taxpayer.

(c) Partial domicile. The taxable income subject to tax of a taxpayer who is domiciled in the City for only a portion of the tax 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 tax year that the individual is domiciled in the City and the denominator of which is 12. A taxpayer shall include in the numerator any calendar month during which the taxpayer is domiciled 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 domiciles are equal, the calendar month shall be included in calculating the number of months in the new domicile.

(d) Declaration and payment.--Except as provided in subsection (1) (b), taxpayers shall declare and pay income taxes as follows:

(i) Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the resident tax officer, a final return showing the amount of taxable income received during the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of tax due on the taxable income, the amount of tax paid, the amount of tax that has been withheld under section 512 of the LTEA, 53 P.S. Section 6924.512, and the balance of tax due. All amounts reported shall be rounded to the nearest whole dollar. At the time of filing the final return, the taxpayer shall pay the resident tax officer the balance of the tax due or shall make demand for refund or credit in the case of overpayment. Every taxpayer is required to file a final return showing the amount of earned income received even if no payment is due and owing.

(ii) Every taxpayer making net profits shall, by April 15 of the current year, make and file with the resident tax officer a declaration of the taxpayer's estimated net profits during the period beginning January 1 and ending December 31 of the current year, and shall pay to the resident tax officer in four equal quarterly installments the tax due on the estimated net profits. The first installment shall be paid at the time of filing the declaration, and the other installments shall be paid on or before June 15 of the current year, September 15 of the current year and January 15 of the succeeding year, respectively.

(iii) Any taxpayer who first anticipates any net profit after April 15 of the current year shall make and file the declaration required on or before June 15 of the current year, September 15 of the current year or December 31 of the current year, whichever date next follows the date on which the taxpayer first anticipates such net profit, and shall pay to the resident tax officer in equal installments the tax due on or before the quarterly payment dates that remain after the filing of the declaration.

(iv) Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the resident tax officer a final return showing the amount of net profits earned or received based on the method of accounting used by the taxpayer during the period beginning January 1 of the current year, and ending December 31 of the current year, the total amount of tax due on the net profits and the total amount of tax paid. At the time of filing the final return, the taxpayer shall pay to the resident tax officer the balance of tax due or shall make demand for refund or credit in the case of overpayment. Any taxpayer may, in lieu of paying the fourth quarterly installment of the estimated tax, elect to make and file with the resident tax officer on or before January 31 of the succeeding year, the final return. Every taxpayer is required to file a return showing the amount of net profits earned or received even if no payment is due and owing.

(v) The Department, in consultation with the Department of Revenue, shall provide by regulation for the filing of adjusted declarations of estimated net profits and for the payments of the estimated tax in cases where a taxpayer who has filed the declaration required under this subsection anticipates additional net profits not previously declared or has overestimated anticipated net profits.

(vi) Every taxpayer who discontinues business prior to December 31 of the current year, shall, within 30 days after the discontinuance of business, file a final return as required under this paragraph and pay the tax due.

(vii) Every taxpayer who receives any other taxable income not subject to withholding under section 512 (3) of the LTEA, 53 P.S. Section 6924.512 (3), shall make and file with the resident tax officer a quarterly return on or before April 15 of the current year, June 15 of the current year, September 15 of the current year, and January 15 of the succeeding year, setting forth the aggregate amount of taxable income not subject to withholding by the taxpayer during the three month periods ending March 31 of the current year, June 30 of the current year, September 30 of the current year, and December 31 of the current year, respectively, and subject to income tax, together with such other information as the Department may require. Every taxpayer filing a return shall, at the time of filing the return, pay to the resident tax officer the amount of income tax due. In accordance with criteria established by the Department, the tax officer may waive the quarterly return and payment of the income tax and permit a taxpayer to file the receipt of taxable income on the taxpayer's annual return and pay the income tax due on or before April 15 of the succeeding year.

535-67 WITHHOLDING AND REMITTANCE

For taxable years commencing on and after January 1, 2012, income taxes shall be withheld, remitted and reported as follows:

(1) Every employer having an office, factory, workshop, branch, warehouse, or other place of business within the tax collection district which employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, who has not previously registered, shall, within fifteen days after becoming an employer, register with the tax officer the name and address of the employer and such other information as the tax officer may require.

(2) An employer shall require each new employee to complete a certificate of residency form, which shall be an addendum to the Federal Employee's Withholding Allowance Certificate (Form W-4). An employer shall also require any employee who changes their address or domicile to complete a certificate of residency form. The certificate of residency form shall provide information to help identify the political subdivision where an employee lives and works. Forms of certificate of residency may be obtained by an employer from the Department upon request by an employer.

(3) Every employer having an office, factory, workshop, branch, warehouse or other place of business within a tax collection district that employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, shall, at the time of payment, deduct from the compensation due each employee employed at such place of business the greater of the employee's resident tax or the employee's nonresident tax as released in the official register under Section 511 of the LTEA, 53 P.S. Section 6924.511.

(4) Except as set forth in paragraph (5), within 30 days following the end of each calendar quarter, every employer shall file a quarterly return and pay the amount of income taxes deducted during the

preceding calendar quarter to the tax officer for the place of employment of each employee. The form shall show the name, address and Social Security number of each employee, the compensation of the employee during the preceding three-month period, the income tax deducted from the employee, the political subdivision imposing the income tax upon the employee, the total compensation of all employees during the preceding calendar quarter, the total income tax deducted from the employees and paid with the return and any other information prescribed by the Department.

(5) Notwithstanding paragraph (4), the provisions of this paragraph shall apply if an employer has more than one place of employment in more than one tax collection district. Within 30 days following the last day of each month, the employer may file the return required by paragraph (4) and pay the total amount of income taxes deducted from employees in all work locations during the preceding month to the tax officer for either the tax collection district in which the employer's payroll operations are located or as determined by the department. The return and income taxes deducted shall be filed and paid electronically. The employer must file a notice of intention to file combined returns and make combined payments with the tax officer for each place of employment at least one month before filing its first combined return or making its first combined payment. This paragraph shall not be construed to change the location of an employee's place of employment for purposes of nonresident tax liability.

(6) Any employer who, for two of the preceding four quarterly periods, has failed to deduct the proper income tax, or any part of the income tax, or has failed to pay over the proper amount of income tax as required by paragraph (3) to the tax collection district, may be required by the tax officer to file returns and pay the income tax monthly. In such cases, payments of income tax shall be made to the tax officer on or before the last day of the month succeeding the month for which the income tax was withheld.

(7) On or before February 28 of the succeeding year, every employer shall file with the tax officer where income taxes have been deducted and remitted pursuant to paragraph (3):

(a) An annual return showing, for the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of compensation paid, the total amount of income tax deducted, the total amount of income tax paid to the tax officer and any other information prescribed by the Department.

(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 current year and ending December 31 of the current year, setting forth the address and Social Security number, the amount of compensation paid to the employee during the period, the amount of income tax deducted, the amount of income tax paid to the tax officer, the numerical code prescribed by the Department representing the tax collection district where the payments required by paragraphs (4) and (5) were remitted and any other information required by the Department. Every employer shall furnish one copy of the individual withholding statement to the employee for whom it is filed.

(8) Any employer who discontinues business prior to December 31 of the current year shall, within 30 days after the discontinuance of business, file returns and withholding statements required under this section and pay the income tax due.

(9) Except as otherwise provided in section 511 of the LTEA, 53 P.S. Section 6924.511, an employer who willfully or negligently fails or omits to make the deductions required by this subsection

shall be liable for payment of income taxes which the employer was required to withhold to the extent that the income taxes have not been recovered from the employee. The failure or omission of any employer to make the deductions required by this section shall not relieve any employee from the payment of the income tax or from complying with the requirements for filing of declaration and returns.

535-68 POWERS AND DUTIES OF TAX OFFICER

(1) Tax Collection.- In addition to any other power and duty conferred upon a tax officer in this Ordinance or by law, it shall be the duty of the tax officer:

(a) To collect, reconcile, administer and enforce income taxes imposed on residents and nonresidents in the City included in the tax collection district.

(b) To receive and distribute income taxes and to enforce withholding by employers located in the tax collection district.

(c) To receive income taxes distributed by tax officers for other tax collection districts.

(d) To distribute income taxes to the City as required by section 513 of the LTEA, 53 P.S. Section 6924.513.

(e) To comply with all regulations adopted by the City under this Ordinance and all resolutions, policies and procedures adopted by the tax collection committee.

(f) To invest all income taxes in the custody of the tax officer in authorized investments, subject to the approval of the tax collection committee. The tax officer shall observe the standard of care that would be observed by a prudent person dealing with property of another. For the purposes of this paragraph, the term "authorized investment" shall include all of the following:

(i) Short-term obligations of the United States Government or its agencies or instrumentalities which are backed by the full faith and credit of the United States or are rated in the highest category by a nationally recognized statistical rating organization.

(ii) Deposits in savings accounts, time deposits, share accounts or certificates of deposit of institutions, insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, or their successor agencies, to the extent that the accounts are insured and, for the amount above the insured maximum, that collateral, free from other liens, for the amount is pledged by the depository institution.

(iii) Deposits in investment pools established by the State Treasurer or established by local governments pursuant to 53 Pa.C.S. Ch. 23 Subchapter. A (relating to intergovernmental cooperation) and related statutes provided that the investment pools are rated in the highest category by a nationally recognized statistical rating organization.

(iv) Repurchase agreements which are fully collateralized by obligations of the United States Government or its agencies or instrumentalities, which are free from other liens and backed by the full faith and credit of the United States or are rated in the highest category by a nationally recognized statistical rating organization.

(g) To distribute income generated from investments authorized under paragraph (f) as determined by the tax collection committee.

(2) Monthly reports. The tax officer shall, within 20 days after the end of each month, provide a written report, on forms prescribed by the Department, to the secretary of the tax collection committee and to the Finance Director of the City for which taxes were collected during the previous month. The report shall include a breakdown of all income taxes, income generated from investments under subsection (1)(f), penalties, costs and other money received, collected, expended and distributed for each political subdivision served by the tax officer and of all money distributed to tax officers for other tax collection districts.

(3) Overpayments. A tax officer shall refund, under 53 Pa.C.S. § 8425 (relating to refunds of overpayments) and § 8426 (relating to interest on overpayment), on petition of and proof by the taxpayer, income taxes paid in excess of income taxes rightfully due.

(4) Bonds. Prior to initiating any official duties, each tax officer shall give and acknowledge a bond to the appointing tax collection committee as follows:

(a) The tax collection committee shall fix the amount of the bond in an amount equal to the maximum amount of taxes that may be in the possession of the tax officer at any given time or an amount sufficient, in combination with fiscal controls, insurance and other risk management and loss prevention measures used by the tax collection district, to secure the financial responsibility of the tax officer in accordance with guidelines adopted by the Department. The amount of the bond shall be revised annually by the tax collection committee based upon the annual examination required under section 505(h) of the LTEA, 53 P.S. Section 6924.515 (h).

(b) Each bond shall be joint and several, with one or more corporate sureties, which shall be surety companies authorized to do business in this Commonwealth and licensed by the Insurance Department.

(c) Each bond shall be conditioned upon the completion of all of the following by the tax officer's employees and appointees:

(i) The faithful execution of all duties required of the tax officer.

(ii) The just and faithful accounting or payment over of all moneys and balances paid to, received or held by the tax officer by virtue of the office in accordance with law.

(iii) The delivery of all tax records or other official items held in right as the tax officer to the tax officer's successor in office.

(d) Each bond shall be taken in the name of the tax collection district and shall be for the use of the tax collection district appointing the tax officer, and for the use of any other political subdivision

or tax collection district for which income taxes shall be collected or distributed in case of a breach of any conditions of the bond by the acts or neglect of the principal on the bond.

(e) The tax collection committee or any political subdivision may sue upon the bond for the payment or distribution of income taxes.

(f) Each bond shall contain the name of the surety company bound on the bond.

(g) The tax collection committee may, upon cause shown and due notice to the tax officer and the tax officer's sureties, require or allow the substitution or the addition of a surety company acceptable to the tax collection committee for the purpose of making the bond sufficient in amount, without releasing the sureties first approved from any accrued liability or previous action on the bond.

(h) The tax collection committee shall designate the custodian of the bond.

(i) The tax officer shall file copies of all bonds in effect with the City.

(j) A copy of all bonds in effect shall be made available upon request and at no cost to the Department or to a tax collection district or political subdivision seeking payment or distribution of income taxes authorized by this Ordinance.

(5) Records. It shall be the duty of the tax officer to keep a record showing the amount of income taxes received from each taxpayer or other tax officer, the date of receipt, the amount and date of all other moneys received or distributed and any other information required by the Department. All tax records shall be the property of the City and the tax collection district in which the taxes were collected. The tax collection district and tax officer shall retain all tax records as directed by the tax collection committee and, when applicable, in accordance with retention and disposition schedules established by the Local Government Records Committee of the Pennsylvania Historical and Museum Commission under 53 Pa.C.S. Ch. 13 Subchapter. F (relating to records). Tax records under this subsection may be retained electronically as permitted by law.

(6) Employer and taxpayer audits.

(a) In order to verify the accuracy of any income tax declaration or return or, if no declaration or return was filed, to ascertain the income tax due, the tax officer and the tax officer's designated employees may examine or audit the records pertaining to income taxes due of any of the following:

(i) An employer;

(ii) A taxpayer; and/or

(iii) A person whom the tax officer reasonably believes to be an employer or taxpayer.

(b) The examination or audit conducted by the tax officer and the tax officer's designated employees shall conform to the requirements set forth in the Local Taxpayers Bill of Rights, 53 Pa.C.S. Section 8421 *et seq.*

(c) Every employer and taxpayer or other person whom the tax officer reasonably believes to be an employer or taxpayer shall provide to the tax officer and the tax officer's designated employees the means, facilities and opportunity for the examination and investigation authorized under paragraph (a).

(d) For purposes of this subsection, the term “records” shall include any books, papers and relevant Federal or State tax returns and accompanying schedules, or supporting documentation for any income taxable under this Ordinance.

(7) Exchange of Information.

(a) The tax officer shall ensure that the tax collection district enters into an agreement with the Department of Revenue for the exchange of information as necessary for the collection of income taxes.

(b) The Department of Revenue may enter into agreements with each tax collection district and shall establish procedures under which tax collection, filing and other taxpayer and locality information in its custody will be made available to tax officers for purposes of collection, reconciliation and enforcement no later than one year after the deadline for filing returns for the tax year in question.

(8) Actions for collection of income taxes**.** The tax officer may file an action in the name of the City for the recovery of income taxes due to the City and unpaid. Nothing in this subsection shall affect the authority of the City to file an action in its own name for collection of income taxes under this Ordinance. This subsection shall not be construed to limit a tax officer, a tax collection district or the City from recovering delinquent income taxes by any other means provided by this Ordinance or by law. Actions for collection of income taxes shall be subject to the following:

(a) Except as set forth in paragraph (b) or (d), an action brought to recover income taxes must be commenced within three years of the later of the date:

(i) the income taxes are due;

(ii) the declaration or return has been filed; or

(iii) of a redetermination of compensation or net profits by the Department of Revenue.

(b) If there is substantial understatement of income tax liability of 25% or more and there is no fraud, an action must be commenced within six years.

(c) Except as set forth in paragraph (d) (ii), (iii) or (iv), an action by a tax officer for recovery of an erroneous refund must be commenced as follows:

(i) Except as set forth in subparagraph (ii), within two years after making the refund.

(ii) If it appears that any part of the refund was induced by fraud or misrepresentation of material fact, within five years after making the refund.

(d) There is no limitation of action if any of the following apply:

(i) A taxpayer fails to file a declaration or return required under this Ordinance.

(ii) An examination of a declaration or return or of other evidence in the possession of the tax officer relating to the declaration or return reveals a fraudulent evasion of income taxes.

(iii) An employer has deducted income taxes under Section 512 of the LTEA, 53 P.S. Section 6924.512, and has failed to pay the amount deducted by the tax officer.

(iv) An employer has intentionally failed to make deductions required by this Ordinance.

535-69 Interest and penalties

(a) Except as provided in paragraph (b), if the income tax is not paid when due, interest at the rate the taxpayer is required to pay to the Commonwealth under section 806 of the act of April 9, 1929 (P.L. 343, No. 176), known as The Fiscal Code, 72 P.S. Section 806, on the amount of the income tax, and an additional penalty of 1% of the amount of the unpaid income tax for each month or fraction of a month during which the income tax remains unpaid shall be added and collected but the amount shall not exceed 15% in the aggregate. Where an action is brought for the recovery of the income tax, the taxpayer liable for the income tax shall, in addition, be liable for the costs of collection, interest and penalties.

(b) The Department may establish conditions under which a tax officer, with the concurrence of the tax collection committee, may abate interest or penalties that would otherwise be imposed for the nonreporting or underreporting of income tax liabilities or for the nonpayment of income taxes previously imposed and due if the taxpayer voluntarily files delinquent returns and pays the income taxes in full.

(c) The provisions of paragraph (b) shall not affect or terminate any petitions, investigations, prosecutions or other proceedings pending under this Ordinance, or prevent the commencement or further prosecution of any proceedings by the proper authorities for violations of this Ordinance. No proceedings shall, however, be commenced on the basis of delinquent returns filed pursuant to subsection (8) if the returns are determined to be substantially true and correct and the income taxes are paid in full within the prescribed time.

535-70 Fines and penalties for violations.

(a) Any taxpayer who fails, neglects or refuses to make any declaration or return required by this Ordinance, any employer who fails, neglects or refuses to register, keep or supply records or returns required by section 512 of the LTEA, 53 P.S. Section 6924.512, or to pay the income tax deducted from employees, or fails, neglects or refuses to deduct or withhold the income tax from employees, any taxpayer or employer who refuses to permit the tax officer appointed by a tax collection committee or an employee or agent of the tax officer to examine books, records and papers, and any taxpayer or employer who knowingly makes any incomplete, false or fraudulent return, or attempts to do anything whatsoever to avoid the full disclosure of the amount of income in order to avoid the payment of

income taxes shall, upon conviction thereof, be sentenced to pay a fine of not more than $2,500 for each offense and reasonable costs, and in default of payment of said fine and costs, to imprisonment for not more than six months.

(b) Any employer required under this Ordinance to collect, account for and distribute income taxes who willfully fails to collect or truthfully account for and distribute income taxes, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding $25,000 or to imprisonment not exceeding two years, or both.

(c) The penalties imposed under this subsection shall be in addition to any other costs and penalties imposed by this Ordinance.

(d) The failure of any person to obtain forms required for making the declaration or returns required by this Ordinance shall not excuse the person from making the declaration or return.

(11) **Costs.** The tax officer shall be entitled to impose and collect the reasonable costs incurred to provide notices of delinquency or to implement similar procedures utilized to collect delinquent taxes from a taxpayer as approved by the tax collection committee. Reasonable costs collected may be retained by the tax officer. An itemized accounting of all costs collected shall be remitted to the tax collection committee on an annual basis.

(12) **Appeals and tax officer actions.** A determination of the tax officer relating to the assessment, collection, refund, withholding, remittance or distribution of income taxes may be appealed to the appeals board established by the tax collection committee by a taxpayer, employer, political subdivision or another tax collection district pursuant to the provisions of Section 505(j) of Act 32, 53 PS § 6924.505(j). Pursuant to Section 505 (k) of Act 32, 53 P.S. Section 6924.515 (k), any dispute among the affected parties involving a 10% or greater deviation from taxes received in the previous tax year shall be subject to mandatory mediation in accordance with regulations and guidelines adopted by the Department. A dispute involving less than a 10% threshold may be the subject of voluntary mediation in accordance with regulations and guidelines adopted by the Department.

(13) **Confidentiality**

(a) **General Rule.** Any information gained by a tax officer or any employee or agent of a tax officer or of the tax collection committee as a result of any declarations, returns, investigations, hearings or verifications shall be confidential tax information.

(b) **Prohibited conduct.** It shall be unlawful, except for official purposes or as provided by law, for the Commonwealth, the City, tax collection committee member, tax officer or employee or agent of a tax officer or tax collection committee to do any of the following:

(i) Divulge or make known confidential tax information.

(ii) Permit confidential tax information or a book containing an abstract or particulars of the abstract to be seen or examined by any person.

(ii) Print, publish or otherwise make known any confidential tax information.

(b) **Penalties.** A person who violates subsection (b) commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than $2,500 or to imprisonment for not more than one year, or both. If the offender is a member of the tax collection committee, the member shall be removed from the tax collection committee. If the offender is an employee of a tax collection committee or the City the employee shall be discharged from employment. The offender shall pay the costs of prosecution.

535-71 COMPENSATION OF INCOME TAX OFFICER

The tax officer shall receive such compensation for his services and expenses as determined by the tax collection committee. At the discretion of the tax collection committee, the tax officer may be permitted to withhold the amount of the tax officer's compensation from income taxes collected if the monthly reports required by section 509(b) of the LTEA, submitted by the tax officer include an accounting for all compensation withheld.

535-72 APPLICABILITY

The tax imposed by this Ordinance shall not apply:

(1) To any person as to whom it is beyond the legal power of the City to impose the tax herein provided under the Constitution of the United States and the Constitution and laws of the Commonwealth of Pennsylvania.

(2) To institutions or organizations operated for public, religious, educational, or charitable purposes, to institutions or organizations not organized or operated for private profit, or to trusts and foundations established for any of the said purposes.

This section shall not be construed to exempt any person who is an employer from the duty of collecting the tax from his employees and paying the amount collected to the tax officer under the provisions of Section 4 of this Ordinance.

535-73 SEVERABILITY

The provisions of this Ordinance are severable. If any sentence, clause, or section of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionally, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, or sections of this Ordinance. It is hereby declared to be the intent of the City that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, or section not been included herein.

535-74 EFFECTIVE DATE, REPEALER, CONFLICT

The provisions of this Ordinance shall take effect on January 1, 2012 and shall apply to earned income and net profits received or earned income and net profits earned or made by a taxpayer during

calendar year 2012 and each year thereafter without annual reenactment unless the rate of tax is subsequently changed. Changes in the rate of tax shall become effective on the date specified in the Ordinance.

Nothing contained herein shall be considered to repeal by implication or otherwise the provisions of any earned income and net profits tax Ordinance(s) previously enacted as it may apply to earned income and net profits of taxpayers prior to the effective date of this Ordinance, which shall remain in full force and effect with respect to such earned income and net profits.

Subject to valid enactment of this Ordinance without appeal, all provisions of any prior Ordinance or parts thereof inconsistent herewith are hereby modified, amended, and repealed by the provisions of this Ordinance, which shall thereafter govern the taxation of such earned income and net profits.

This Ordinance is enacted under authority of the LTEA, and all provisions thereof that relate to a tax on earned income and net profits are incorporated into this Ordinance. Any future amendments to the LTEA that are required to be applied to a tax on earned income or net profits will automatically become part of this Ordinance upon the effective date of such amendment, without the need for formal amendment of this Ordinance, to the maximum extent allowed by 1 Pa.C.S.A. Sec. 1937.

SECTION 2. All Ordinances or parts of ordinances inconsistent herewith be, and the same are hereby repealed.

SECTION 3. This ordinance shall take effect January 1, 2012 days following adoption by Council.

Signed the day of , 2011

ATTEST:_____ _____

City Clerk Mayor