

Chapter 186

TAXATION

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[HISTORY: Adopted by the Board of Supervisors of the Township of North Middleton as indicated in article histories. Amendments noted where applicable.]

ARTICLE I
 Earned Income Tax

[Adopted 5-3-1979 as Ch. XXIV, Part 1, of the 1979 Code of Ordinances]

§ 186-1. Definitions.

The following words and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates or requires a different meaning.

ASSOCIATION — A partnership, limited partnership or any other unincorporated group of two or more persons.

BUSINESS — An enterprise, activity, profession or any other undertaking of an unincorporated nature conducted for profit or ordinarily conducted for profit, whether by a person, partnership, association or any other entity.

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.

CURRENT YEAR — The calendar year for which the tax is levied.

DOMICILE — The place where one lives and has his permanent home and to which he has the intention of returning whenever he is absent. Actual residence is not necessarily "domicile," for "domicile" is the fixed place of abode which, in the intention of the taxpayer,

is permanent rather than transitory. "Domicile" is the place in which a man has voluntarily fixed the habitation of himself and his family, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some event occurs to induce him to adopt some other permanent home. In the case of business or associations, the 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 any government 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 unemployment benefits, strike benefits, social security and retirement.

EMPLOYER — A person, partnership, association, corporation, institution, governmental body or unit or agency, or any other entity employing one or more persons for a salary, wage, commission or other compensation.

INCOME TAX OFFICER or OFFICER — Person, public employee or private agency designated by the Board of Supervisors of North Middleton Township to collect and administer the tax on earned income and net profits; hereinafter referred to as "Officer."

NET PROFITS — The net income from the operation of a business, profession, or other activity, except corporations, after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with the accounting system used in such business, profession, or other activity, but without deduction of taxes based on income.

NONRESIDENT — A person, partnership, association or other entity domiciled outside the Township of North Middleton.

PERSON or INDIVIDUAL — A natural person.

PRECEDING YEAR — The calendar year before the current year.

RESIDENT — A person, partnership, association or other entity domiciled in the Township of North Middleton.

SUCCEEDING YEAR — The calendar year following the current year.

TAXPAYER — A person, partnership, association or any other entity, required hereunder to file a return of earned income or net profits, or to pay a tax thereon.

§ 186-2. Imposition of tax.

- A. A tax for general revenue purposes is hereby imposed at the rate of 1/2 of 1% on the following:
- (1) Earned income received on and after July 1, 1966, by residents of the Township of North Middleton.
 - (2) Earned income received on and after July 1, 1966, by nonresidents of the Township of North Middleton.
 - (3) Net profits earned on and after July 1, 1966, by residents of the Township of North Middleton.
 - (4) Net profits earned on and after July 1, 1966, in the Township of North Middleton by nonresidents of the Township of North Middleton.
- B. The tax levied upon earned income herein shall relate to and be imposed upon that earned income paid by an employer or on his behalf to a taxpayer who is employed by him. The tax levied upon net profits herein shall relate to and be imposed on the net profits of any business, profession or other activity carried on by any taxpayer.
- C. Every corporation which is subject to the Pennsylvania Corporate Net Income Tax or exempt from the Pennsylvania Corporate Net Income Tax and every foreign corporation which is subject to the Pennsylvania Franchise Tax or exempt from the Pennsylvania Franchise Tax shall be exempt from the tax imposed by this article.
- D. The tax levied by this article shall be applicable to earned income received and to net profits earned on and after July 1, 1966, and until December 31, 1966, and the tax shall thereafter continue in force on a calendar year or taxpayer fiscal year basis, whichever is applicable.
- E. Commencing with the year following 1966 and continuing yearly thereafter, whenever July 1 is referred to herein, January 1 shall be substituted therefor. Notwithstanding that all dates herein specifically refer to 1966 and 1967, the said dates shall also apply to all current and succeeding years subsequent to 1966 and 1967.

§ 186-3. Exemption from tax. ¹

Persons whose total income from all sources is less than \$5,000 per annum are hereby exempted from this tax.

§ 186-4. Declaration and payment of tax.

- A. Net profits.
- (1) Every taxpayer making taxable net profits during the period July 1, 1966, to and including December 31, 1966, shall pay to the Officer an annual payment of tax

1. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions).

due on or before April 15 of 1967 and of succeeding years thereafter, for the period beginning July 1, 1966, and ending December 31, 1966, and beginning January 1 and ending December 31 of the current years thereafter. The payment shall be made to and filed with the Officer or his agent or employee on and with forms prescribed by said Officer, setting forth the amount of net profits earned during the periods set forth above, the amount of tax due and other reasonable information required by the Officer for administration of this article.

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

B. Earned income.

- (1) Every taxpayer who has received earned income shall, on or before April 15 of 1967 and of succeeding years, make and file with the Officer on a form prescribed or approved by the Officer a final return showing the amount of earned income received during the period beginning July 1, 1966, and ending December 31, 1966, and during the period beginning January 1 and ending December 31 of the current year, the total amount of tax due thereon, the amount of tax paid thereon, the amount of tax thereon that has been withheld pursuant to provisions relating to collection at source, and balance of tax due. At the time of filing final return, taxpayer shall pay the balance of tax due or shall make demand for refund or credit in the case of overpayment.
- (2) Every taxpayer who is employed for a salary, wage, commission, or other compensation and who received any earned income not subject to the provisions of § 186-5 of this article relating to collection at the source, shall either:
 - (a) Make and file with the Officer, on a form prescribed or approved by the Officer, an annual return setting forth the aggregate amount of earned income not subject to withholding from him during the period beginning January 1 and ending December 31 of the current year, and such other information as the Officer may require, and pay to the Officer the amount of tax shown as due thereon on or before April 15 of the succeeding year; or
 - (b) Make and file with the Officer, on a form prescribed or approved by the Officer, a quarterly return on or before April 30 of the current year, July 31 of the current year, October 31 of the current year, and January 31 of the succeeding year, setting forth the aggregate amount of earned income not subject to withholding by him 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 the tax, together with such other information as the Officer may require. Every taxpayer making such return shall, at the time of filing thereof, pay to the Officer the amount of tax shown as due thereon; except that for current year 1966, quarterly return shall be made and filed on October 31, 1966, and January 31, 1967.

§ 186-5. Collection at source.

- A. Every employer having an office, factory, workshop, branch, warehouse or other place of business within the Township of North Middleton who employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, who has not previously registered shall, within 15 days after becoming an employer, register with the Officer or his agent or employee his name and address and such other information as the Officer or his agent or employee may require.
- B. Every employer having an office, factory, workshop, branch, warehouse or other place of business within the Township of North Middleton who employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation shall deduct at the time of payment thereof the tax imposed by this article on the earned income due to his employee or employees, and shall, on or before October 31, 1966, and January 31, 1967, and April 30, July 31, and October 31 of a current year, and January 31 of succeeding year for current years thereafter, make and file with Officer or his agent or employee on a form prescribed by Officer a return, setting forth the taxes so deducted and pay to Officer or his agent or employee the amount of taxes deducted during the preceding three-month periods ending March 31, June 30, September 30, and December 31, respectively. Such return unless otherwise agreed upon between the Officer and employer shall show the name and Social Security number of each such employee, the earned income of such employee during such preceding three-month period, the tax deducted therefrom, the political subdivisions imposing the tax upon such employee, the total earned income of all such employees during such preceding three-month period, and the total tax deducted therefrom and paid with the return. Any employer who for two of the preceding four quarterly periods has failed to deduct the proper tax, or any part thereof, or has failed to pay over the proper amount of tax to Officer or his agent or employee, may be required by the Officer to file his return and pay the tax monthly. In such cases, payments of tax shall be made to the Officer or his agent or employee on or before the last day of the month succeeding the month for which the tax was withheld.
- C. On or before February 28, 1967, every employer shall file with the Officer or his agent or employee on forms prescribed by him:
- (1) An annual return showing the total amount of earned income received by his employee or employees, on which a tax is imposed by this article, the total amount of tax deducted and the total amount of tax paid to the Officer or his agent or employee for the period beginning July 1, 1966, and ending December 31, 1966, and beginning January 1 and ending December 31 for current years hereafter; and
 - (2) A return withholding statement for each employee employed during all or any part of the period beginning July 1, 1966, and ending December 31, 1966, and for the period beginning January 1 and ending December 31 of current years hereafter; setting forth the employee's name, address and social security number, the amount of earned income paid to the employee during said period, the amount of tax deducted, the political subdivisions imposing the tax upon such employee, the amount of tax paid to the Officer or his agent or employee and such other relevant information as the Officer or his agent or employee may require. Every employer

shall furnish two copies of the individual return to the employee for whom it was filed.

- D. Every employer who discontinues business prior to December 31 shall, within 30 days after the discontinuance of business, file the returns and withholding statements hereinabove required and pay the tax due.
- E. Except as otherwise provided in Section 9 of Act of December 31, 1965, P. L. [1257] (Act No. 511), known as "The Local Tax Enabling Act,"² every employer who willfully or negligently fails or omits to make the deductions required by this section shall be liable for payment of the taxes which he was required to withhold to the extent that such taxes have not been recovered from the employee.
- F. 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 tax or from complying with the requirements of this article relating to the filing of declarations and returns.
- G. If an employer makes a deduction of tax as required by this § 186-5, the amount deducted shall constitute in the hands of such employer a trust fund held for the account of the Township of North Middleton as beneficial owner thereof and the employee from whose earned income such tax was deducted shall be deemed to have paid such tax.

§ 186-6. Powers and duties of Income Tax Officer.

- A. It shall be the duty of Officer to collect and receive the taxes, fines and penalties imposed by this article. It shall also be his duty to keep a record showing the amount received by him from each person or business paying the tax and the date of such receipt.
- B. Each Officer, before entering his official duties, shall give and acknowledge a bond to the township which shall be conditioned, and shall provide for all rights and obligations on the respective parties as set forth in the Act of 1965, Act No. 511, V(b), as amended.³ Said bond shall be delivered to the Secretary of the township and maintained with the township records or at such place as is required by law.
- C. The Officer charged with the administration and enforcement of the provisions of this article is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this article, including provisions for the reexamination and correction of declarations and returns and of payments alleged or found to be incorrect or as to which an overpayment is claimed or found to have occurred, and to make refunds in cases of overpayment for any period of time not to exceed six years subsequent to the date of payment of the sum involved, and to prescribe forms necessary for the administration of this article. No rule or regulation of any kind shall be enforceable unless it has been approved by resolution by the governing body. A copy of such rules and regulations currently in force shall be available for public inspection.

2. Editor's Note: See 53 P.S. § 6901 et seq.

3. Editor's Note: See 53 P.S. § 6901 et seq.

- D. The Officer shall refund, on petition of and proof by the taxpayer, earned income tax paid on the taxpayer's ordinary and necessary business expenses, to the extent that such expenses are not paid by the taxpayer's employer.
- E. The Officer and agents designated by him are hereby authorized to examine the books, papers and records of any employer or of any taxpayer or of any person whom the Officer reasonably believes to be an employer or taxpayer in order to verify the accuracy of any declaration or return or, if no declaration or return was filed, to ascertain the tax due. Every employer and every taxpayer and every person whom the Officer reasonably believes to be an employer or taxpayer is hereby directed and required to give to the Officer, or to any agent designated by him, the means, facilities and opportunity for such examination and investigations, as are hereby authorized.
- F. Any information gained by the Officer, his agents or by any other official or agent of the taxing district as a result of any declarations, returns, investigations, hearings or verifications required or authorized by this article shall be confidential, except for official purposes and except in accordance with a proper judicial order, or as otherwise provided by law.
- G. The Officer is authorized to establish different filing, reporting and payment dates for taxpayers whose fiscal years do not coincide with the calendar year.
- H. Any person aggrieved by any action of the Officer shall have the right of appeal as provided by law.

§ 186-7. Compensation of Income Tax Officer.

The Income Tax Officer shall receive such compensation for his services and expenses as shall be determined by the Board of Supervisors of Township and as shall be permitted by law. In fixing such compensation, said Board may, pursuant to a resolution, enter into such written agreements for such compensation as shall be deemed necessary.

§ 186-8. Suit for collection of tax.

- A. The Officer may sue in the name of North Middleton Township for the recovery of taxes due and unpaid under this article.
- B. Any suit brought to recover the tax imposed by this article shall be begun within three years after such tax is due, or within three years after the declaration or return has been filed, whichever date is later. Provided, however, that this limitation shall not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:
- C. Where no declaration or return was filed by any person although a declaration or return was required to be filed by him under provisions of this article, there shall be no limitation.

- D. Where an examination of the declaration or return filed by any person, or of other evidence relating to such declaration or return in the possession of the Officer, reveals a fraudulent evasion of taxes, there shall be no limitation.
- E. In the case of substantial understatement of tax liability of 25% or more, and no fraud, suit shall be begun within six years.
- F. Where any person has deducted taxes under the provisions of this article, and has failed to pay the amounts so deducted to the Officer, or where any person has willfully failed or omitted to make the deductions required by this section, there shall be no limitation.
- G. This section shall not be construed to limit the township from recovering delinquent taxes by any other means provided by this article.
- H. The Officer may sue for recovery of an erroneous refund provided such suit is begun two years after making such refund, except that the suit may be brought within five years if it appears that any part of the refund was induced by fraud or misrepresentation of material fact.

§ 186-9. Interest and penalties.

If for any reason the tax is not paid when due, interest at the rate of 6% per annum on the amount of said tax, and an additional penalty of 1/2 of 1% of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid, shall be added and collected. Where suit is brought for the recovery of any such tax, the person liable therefor shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

§ 186-10. Violations and penalties.

- A. Any person who fails, neglects or refuses to make any declaration or return required by this article, any employer who fails, neglects or refuses to register or to pay the tax deducted from his employees or fails, neglects or refuses to deduct or withhold the tax from his employees, any person who refuses to permit the Officer or any agent designated by him to examine his books, records and papers, and any person who knowingly makes any incomplete, false or fraudulent return, or attempts to do anything whatsoever to avoid the full disclosure of the amount of his net profits or earned income in order to avoid the payment of the whole or any part of the tax imposed by this article, shall, upon conviction thereof before any District Justice or court of competent jurisdiction in the county or counties in which the political subdivision imposing the tax is located, be sentenced to pay a fine of not more than \$500 for each offense and costs, and in default of payment of said fine and costs to be imprisoned for a period not exceeding 30 days.
- B. Any person who divulges any information which is confidential under the provisions of this article shall, upon conviction thereof before any District Justice or court of competent jurisdiction be sentenced to pay a fine of not more than \$500 for each offense

and costs, and in default of payment of said fine and costs to be imprisoned for a period not exceeding 30 days.

- C. The penalties imposed under this section shall be in addition to any other penalty imposed by any other section of this article.
- D. The failure of any person to receive or procure forms required for making the declaration or returns required by this article shall not excuse him from making such declaration or return.

§ 186-11. Payment and refunds.

The Income Tax Officer is hereby authorized to accept payments of the amount of tax claimed by the township in any case where any person disputes the validity of amount of the township's claim for the tax. If it is thereafter judicially determined by a court of competent jurisdiction that there has been an overpayment to the Income Tax Officer, the amount of the overpayment shall be refunded to the person who paid.

§ 186-12. Applicability.

The tax imposed by this article shall not apply to the net profits of any institution or organization operated for public, religious, educational or charitable purposes, to an institution or organization not organized or operated for private profit or to a trust of a foundation 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 at the source from his employees and paying the amount collected to the township under the provisions of § 186-5 of this article.

§ 186-13. Title and authority.

This article shall be known as the "North Middleton Township Earned Income Tax Ordinance" and is enacted pursuant to the procedures and authority of, and as set forth in, the Act of the General Assembly of December 31, 1965, P.L. 1257, Act No. 511, known as "The Local Tax Enabling Act."⁴

ARTICLE II

Per Capita Tax

[Adopted 5-3-1979 as Ch. XXIV, Part 2, of the 1979 Code of Ordinances]

§ 186-14. Levy of tax.

A per capita tax is hereby levied and assessed under the authority of the Act of December 31, 1965, P.L. 1257, known as the "Local Tax Enabling Act,"⁵ as amended.

4. Editor's Note: See 53 P.S. § 6901 et seq.

5. Editor's Note: See 53 P.S. § 6901 et seq.

§ 186-15. Rate.

A tax for general township revenue purposes is hereby assessed and levied in the amount of \$5 per capita on each and every person who is 18 years of age or more and is a resident of the Township of North Middleton during the calendar year.

§ 186-16. Penalty for late payment.

A penalty of 5% is imposed on the amount of taxes due and payable by any person neglecting to pay the tax herein levied and assessed within a period of four months after the date of the tax notice.

§ 186-17. Collection of tax and penalties.

All taxes and penalties levied and assessed by this article shall be collected by the Tax Collector and shall be collected and enforced according to the laws of the Commonwealth of Pennsylvania in the same manner as other taxes. Tax Collector shall demand, receive and collect from all corporations, political subdivisions, associations, companies, firms or individuals, employing persons owing delinquent per capita taxes, or whose wife owes delinquent per capita taxes, or having in possession unpaid commissions or earnings belonging to any person or persons owing delinquent per capita taxes, or whose wife owes delinquent per capita taxes, upon the presentation of a written notice and demand and under oath and/or affirmation, containing the name of taxable or the husband thereof and the amount of tax due. Notice, demand and collection and enforcement provisions for such collection are as set forth in Section 19 of the above Local Tax Enabling Act.

§ 186-18. Tax Collector's compensation.

Compensation of the Tax Collector shall be the same as determined by ordinance of the Board of Supervisors for the collection of township taxes.

§ 186-19. Violations and penalties.

Any person who violates or permits a violation of this article shall, upon being found liable therefor in a civil enforcement proceeding commenced by the township before a District Justice, pay a fine of not less than \$200 nor more than \$600, plus all court costs, including reasonable attorney's fees, incurred by the township in the enforcement of this article. No judgment shall be imposed until the date of the determination of the violation by the District Justice. If the defendant neither pays nor timely appeals the judgment, the township may enforce the judgment pursuant to the applicable Rules of Civil Procedure. Each day a violation exists shall constitute a separate offense. Further, the appropriate officers or agents of the township are hereby authorized to seek equitable relief, including injunction, to enforce compliance herewith.

ARTICLE III
Local Services Tax
[Adopted 12-6-2007 by Ord. No. 2007-6⁶]

§ 186-20. Definitions.

The following words and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context or language clearly indicates or requires a different meaning:

COLLECTOR — The person, public employee or private agency designated by North Middleton Township to collect and administer the tax herein imposed.

DCED — The Department of Community and Economic Development of the Commonwealth of Pennsylvania.

EARNED INCOME — Compensation as this term is defined in Section 13 (relating to earned income taxes) of the Local Tax Enabling Act, the Act of December 31, 1965, P.L. 1257, § 13, as amended, 53 P.S. § 6913, as amended.

EMPLOYER — An individual, partnership, association, limited liability corporation, limited liability partnership, corporation, governmental body, agency or other entity employing one or more persons on a salary, wage, commission or other compensation basis, including a self-employed person.

HE, HIS or HIM — Indicates the singular and plural number, as well as male, female and neuter genders.

INDIVIDUAL — Any person, male or female, engaged in any occupation, trade or profession within the corporate limits of North Middleton Township.

NET PROFITS — The net income from the operation of a business, profession, or other activity, as this term is defined in Section 13 (relating to earned income taxes) of the Local Tax Enabling Act, the Act of December 31, 1965, P.L. 1257, § 13, as amended, 53 P.S. § 6913, as amended.

NORTH MIDDLETON TOWNSHIP or TOWNSHIP — The area within the corporate limits of North Middleton Township.

OCCUPATION — Any trade, profession, business or undertaking of any type, kind or character, including services, domestic or other, carried on or performed within the corporate limits of North Middleton Township for which compensation is charged or received, whether by means of salary, wages, commission or fees for services rendered.

TAX — The local services tax at the rate fixed in § 186-21 of this article.

TAX YEAR — The period from January 1 until December 31 in any year; a calendar year.

6. Editor's Note: This ordinance also repealed former Art. III, Emergency and Municipal Services Tax, adopted 1-3-2006 by Ord. No. 2006-1.

§ 186-21. Levy of tax.

For specific revenue purposes, an annual tax is hereby levied and assessed, commencing January 1, 2008, upon the privilege of engaging in an occupation with a primary place of employment within North Middleton Township during the tax year. Each natural person who exercises such privilege for any length of time during any tax year shall pay the tax for that year in the amount of \$52, assessed on a pro rata basis, in accordance with the provisions of this article. This tax may be used solely for the following purposes as the same may be allocated by the Board of Supervisors from time to time: emergency services, which shall include emergency medical services, police services and/or fire services; road construction and/or maintenance; reduction of property taxes; or property tax relief through implementation of a homestead and farmstead exclusion in accordance with 53 Pa.C.S.A. Chapter 85, Subchapter F (relating to homestead property exclusion). The Township shall use no less than 25% of the funds derived from the tax for emergency services. This tax is in addition to all other taxes of any kind or nature heretofore levied by North Middleton Township. The tax shall be no more than \$52 on each person for each calendar year, irrespective of the number of political subdivisions within which a person may be employed.

§ 186-21.1. Exemption and refunds.

- A. Exemption. Any person whose total earned income and net profits from all sources within the Township is less than \$12,000 for any calendar year in which the tax is levied is exempt from the payment of the tax for that calendar year. In addition, the following persons are exempt from payment of the tax:
- (1) Any person who has served in any war or armed conflict in which the United States was engaged and is honorably discharged or released under honorable circumstances from active service if, as a result of military service, the person is blind, paraplegic or a double or quadruple amputee or has a service-connected disability declared by the United States Veterans' Administration or its successor to be a total one-hundred-percent disability.
 - (2) Any person who serves as a member of a reserve component of the armed forces and is called to active duty at any time during the taxable year. For the purposes of this subsection, "reserve component of the armed forces" shall mean the United States Army Reserve, United States Navy Reserve, United States Marine Corps Reserve, United States Coast Guard Reserve, United States Air Force Reserve, the Pennsylvania Army National Guard or the Pennsylvania Air National Guard.
- B. Procedure to claim exemption.
- (1) A person seeking to claim an exemption from the local services tax may annually file an exemption certificate with the Township and with the person's employer affirming that the person reasonably expects to receive earned income and net profits from all sources within the Township of less than \$12,000 in the calendar year for which the exemption certificate is filed. In the event the Township utilizes a tax collection officer, it shall provide a copy of the exemption certificate to that officer. The exemption certificate shall have attached to it a copy of all the employee's last pay stubs or W-2 forms from employment within the Township for

the year prior to the fiscal year for which the employee is requesting to be exempted from the tax. Upon receipt of the exemption certificate and until otherwise instructed by the Township or except as required by Subsection B(2), the employer shall not withhold the tax from the person during the calendar year or the remainder of the calendar year for which the exemption certificate applies. Employers shall ensure that the exemption certificate forms are readily available to employees at all times and shall furnish each new employee with a form at the time of hiring. The exemption certificate form shall be the uniform form provided by the Township.

- (2) With respect to a person who claimed an exemption for a given calendar year from the tax, upon notification to an employer by the person or by the Township that the person has received earned income and net profits from all sources within the Township equal to or in excess of \$12,000 in that calendar year or that the person is otherwise ineligible for the tax exemption for that calendar year, or upon an employer's payment to the person of earned income within the Township in an amount equal to or in excess of \$12,000 in that calendar year, an employer shall withhold the local services tax from the person under Subsection B(3).
 - (3) If a person who claimed an exemption for a given calendar year from the tax becomes subject to the tax for the calendar year under Subsection B(2), the employer shall withhold the tax for the remainder of that calendar year. The employer shall withhold from the person, for the first payroll period after receipt of the notification under Subsection B(2), a lump sum equal to the amount of tax that was not withheld from the person due to the exemption claimed by the person under this subsection, plus the per payroll amount due for that first payroll period. The amount of tax withheld per payroll period for the remaining payroll periods in that calendar year shall be the same amount withheld for other employees. In the event the employment of a person subject to withholding of the tax under this subsection is subsequently severed in that calendar year, the person shall be liable for any outstanding balance of tax due, and the Township may pursue collection under this article.
 - (4) Except as provided in Subsection B(2), it is the intent of this subsection that employers shall not be responsible for investigating exemption certificates, monitoring tax exemption eligibility or exempting any employee from the local services tax.
- C. Refunds. The Township Manager, in consultation with the Collector and DCED, shall establish procedures for the processing of refund claims for any tax paid by any person who is eligible for exemption, which procedures shall be in accord with provisions of the general municipal law relating to refunds of overpayments and interest on overpayments. (NOTE: With respect to refunds, see 53 P.S. § 8425; with respect to interest, see 53 P.S. § 8426.) Refunds made within 75 days of a refund request or 75 days after the last day the employer is required to remit the tax for the last quarter of the calendar year, whichever is later, shall not be subject to interest. No refunds shall be made for amounts overpaid in a calendar year that do not exceed \$1. The Township Manager or the Collector shall determine eligibility for exemption and provide refunds to exempt persons.

§ 186-22. Duty of employers to collect.

- A. Each employer within North Middleton Township, as well as those employers situated outside North Middleton Township but who engage in business within North Middleton Township, is hereby charged with the duty of collecting the tax from each of his employees engaged by him or performing for him within North Middleton Township and making a return and payment thereof to the Collector. Further, each employer is hereby authorized to deduct this tax from each employee in his or her employ, whether said employee is paid by salary, wage or commission and whether or not all such services are performed within North Middleton Township.
- B. A person subject to the tax shall be assessed by the employer a pro rata share of the tax for each payroll period in which the person is engaging in an occupation. The pro rata share of the tax assessed on the person for a payroll period shall be determined by dividing the combined rate of the tax levied for the calendar year by the number of payroll periods established by the employer for the calendar year. For purposes of determining the pro rata share, an employer shall round down the amount of the tax collected each payroll period to the nearest 1/100 of a dollar. Collection of the tax shall be made on a payroll period basis for each payroll period in which the person is engaging in an occupation, except as provided in Subsection D of this section. For purposes of this subsection, "combined rate" shall mean the aggregate annual rate of the tax levied by the school district and the Township.
- C. No person shall be subject to the payment of the local services tax by more than one political subdivision during each payroll period.
- D. In the case of concurrent employment, an employer shall refrain from withholding the tax if the employee provides a recent pay statement from a principal employer that includes the name of the employer, the length of the payroll period and the amount of the tax withheld and a statement from the employee that the pay statement is from the employee's principal employer and the employee will notify other employers of a change in principal place of employment within two weeks of its occurrence. The employee's statement shall be provided on the form approved by DCED.
- E. The tax shall be no more than \$52 on each person for each calendar year, irrespective of the number of political subdivisions within which a person may be employed. The Township shall provide a taxpayer a receipt of payment upon request by the taxpayer.
- F. No employer shall be held liable for failure to withhold the tax or for the payment of the withheld tax money to the Township if the failure to withhold taxes arises from incorrect information submitted by the employee as to the employee's place or places of employment, the employee's principal office or where the employee is principally employed. Further, an employer shall not be liable for payment of the local services tax in an amount exceeding the amount withheld by the employer if the employer complies with the provisions of § 186-21.1B of this article and this section and remits the amount so withheld in accordance with this article.
- G. Employers shall be required to remit the local services taxes 30 days after the end of each quarter of a calendar year.

§ 186-23. Returns.

Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied to the employer by the Collector. If an employer fails to file the return and pay the tax, whether or not the employer makes collection thereof from the salary, wages or commissions paid by him or her to an employee, except as provided hereafter in this article, the employer shall be responsible for the payment of the tax in full as though the tax had been originally levied against the employer.

§ 186-24. Dates for determining tax liability and payment.

In each tax year, each employer shall use his or her employment records to determine the number of employees from whom such tax shall be deducted and paid over to the Collector on or before the 30th day following the end of each calendar quarter of each such tax year.

§ 186-25. Self-employed individuals.

Each self-employed individual who performs services of any type or kind or engages in any occupation or profession within a primary place of employment within North Middleton Township shall be required to comply with this article and pay the pro rata portion of the tax due to the Collector on or before the 30th day following the end of each quarter.

§ 186-26. Individuals engaged in more than one occupation or employed in more than one political subdivision.

- A. The situs of the tax shall be the place of employment on the first day the person becomes subject to the tax during each payroll period. In the event a person is engaged in more than one occupation, that is, concurrent employment, or an occupation which requires the person working in more than one political subdivision during a payroll period, the priority of claim to collect the local services tax shall be in the following order:
- (1) First, the political subdivision in which a person maintains his or her principal office or is principally employed;
 - (2) Second, the political subdivision in which the person resides and works if the tax is levied by that political subdivision;
 - (3) Third, the political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home.
- B. In case of dispute, a tax receipt of the taxing authority for that calendar year declaring that the taxpayer has made prior payment constitutes prima facie certification of payment to all other political subdivisions.

§ 186-27. Nonresidents subject to tax.

All employers and self-employed individuals residing or having their places of business outside of North Middleton Township but who perform services of any type or kind or engage

in any occupation or profession within North Middleton Township do, by virtue thereof, agree to be bound by and subject themselves to the provisions, penalties and regulations promulgated under this article with the same force and effect as though they were residents of North Middleton Township. Further, any individual engaged in an occupation within North Middleton Township and an employee of a nonresidential employer may, for the purpose of this article, be considered a self-employed person, and in the event his or her tax is not paid, the Township shall have the option of proceeding against either the employer or employee for the collection of this tax as hereinafter provided.

§ 186-28. Administration of tax.

- A. The Collector shall be appointed by resolution of the Board of Supervisors. It shall be the duty of the Collector to accept and receive payments of this tax and to keep a record thereof showing the amount received by him from each employer or self-employed person, together with the date the tax was received.
- B. The Collector is hereby charged with the administration and enforcement of this article and is hereby charged and empowered, subject to Board of Supervisors approval, to prescribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this article, including provisions for the examination of payroll records of any employer subject to this article, the examination and correction of any return made in compliance with this article and any payment alleged or found to be incorrect or as to which overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the Collector shall have the right to appeal to the Court of Common Pleas of Cumberland County as in other cases provided.
- C. The Collector is hereby authorized to examine the books and payroll records of any employer in order to verify the accuracy of any return made by an employer or, if no return was made, to ascertain the tax due. Each employer is hereby directed and required to give the Collector the means, facilities and opportunity for such examination.

§ 186-29. Suits for collection.

- A. In the event that any tax under this article remains due or unpaid 30 days after the due dates above set forth, the Collector may sue for the recovery of any such tax due or unpaid under this article, together with interest and penalty.
- B. If for any reason the tax is not paid when due, interest at the rate of 6% on the amount of such tax shall be calculated beginning with the due date of the tax and a penalty of 5% shall be added to the flat rate of such tax for nonpayment thereof. Where suit is brought for the recovery of this tax or other appropriate remedy undertaken, the individual liable therefor shall, in addition, be responsible and liable for the costs of collection.

§ 186-30. Violations and penalties.

Whoever makes any false or untrue statement on any return required by this article, or whoever refuses inspection of the books, records or accounts in his or her custody and control setting forth the number of employees subject to this tax who are in his or her employment, or

whoever fails or refuses to file any return required by this article shall be guilty of a violation and, upon conviction thereof, shall be sentenced to pay a fine of not more than \$600 and costs of prosecution, and, in default of payment of such fine and costs, to imprisonment for not more than 30 days. The action to enforce the penalty herein prescribed may be instituted against any person in charge of the business of any employer who shall have failed or who refuses to file a return required by this article.

§ 186-31. Interpretation

- A. Nothing contained in this article shall be construed to empower North Middleton Township to levy and collect the tax hereby imposed on any occupation not within the taxing power of the Township under the Constitution of the United States and the laws of the Commonwealth of Pennsylvania.
- B. If the tax hereby imposed under the provisions of this article shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United States or of the laws of the Commonwealth of Pennsylvania as to any individual, the decision of the court shall not affect or impair the right to impose or collect said tax or the validity of the tax so imposed on other persons or individuals as herein provided.

ARTICLE IV

Amusement Tax

[Adopted 1-4-1979 by Ord. No. 79-1]

§ 186-32. Short title.

This article shall be known and may be cited as the "North Middleton Township Amusement Tax Ordinance."

§ 186-33. Definitions.

Unless otherwise expressly stated, the following terms shall have, for the purpose of this article, the meanings herein indicated:

ADMISSION — Monetary charge of any character whatever, including donations, contributions and dues or membership fees (periodical or otherwise) charged or paid for the privilege of attending or engaging in amusements as hereinafter defined. "Admission" shall not include any tax added to the charge.

AMUSEMENT — All manner and form of entertainment, including, among others, the following: theatrical performance, operatic performance, carnival, circus, show, concert, lecture, sports event, vaudeville show, side show, amusement park and all forms of entertainment therein, dancing, golf, bowling, billiards or pool, athletic contests, including wrestling matches, boxing and sparring exhibitions, football, basketball and baseball games, ice skating, roller skating, tennis, hockey, bathing, swimming, archery, shooting, riding, racing and other form of diversion, sport, pastime or recreation, shows, exhibitions, contests, displays and games for which admission is charged or paid. The term "amusement" shall not include any form of entertainment the proceeds of which, after payment of reasonable expenses, inure

exclusively to charitable institutions, societies or organizations, volunteer firemen's organizations, civic activities supported by tax funds. In addition, the term "amusement" shall not include motion-picture exhibitions nor sound motion-picture exhibitions.

COLLECTOR — The person appointed by the Township of North Middleton, Cumberland County, Pennsylvania, for the purpose of issuing permits and collecting the tax imposed by this article.

PERSON — Any natural person, firm, association, copartnership or corporation.

PRODUCER — Any person, as herein defined, conducting any place of amusement, as herein defined, where the general public or a limited or selected number thereof may, upon the payment of an established price, attend or engage in any amusement.

TOWNSHIP — North Middleton Township, Cumberland County, Pennsylvania.

§ 186-34. Imposition of tax.

- A. A tax is hereby imposed for general township purposes under the authority of the Act of Assembly No. 511, dated December 31, 1965, as amended, known as the "Local Tax Enabling Act,"⁷ upon the admission fee or privilege to attend or engage in any amusement during the year 1979, to become effective 30 days from the date of enactment of this article through December 31, 1979, and all calendar years thereafter, within the township, at the rate of 10% of the admission price, which shall be paid by the person acquiring such privilege, commencing 30 days from the date of enactment of this article to December 31, 1979, and thereafter on a calendar-year basis.
- B. Where no established price is charged, the tax shall be based upon the gross admissions collected.

§ 186-35. Permits.

- A. On or after January 1, 1979, any person desiring to conduct, or to continue to conduct, any amusement within the township shall, before conducting the same, file with the Township Secretary-Treasurer an application, on a form to be furnished by the township, for a permanent amusement permit or a temporary amusement permit, as the case may be, and shall pay the fee for such permit required by this section. In the case of any amusement that is to continue for longer than 30 days, a permanent amusement permit shall be issued at a fee as set from time to time by resolution of the Board of Supervisors. In the case of any amusement that is to continue for a period of 30 days or less, a temporary permit shall be issued at a fee as set from time to time by resolution of the Board of Supervisors.
- B. Permanent permits shall expire on December 31 of the year in which issued. Temporary permits shall be valid until the last day the amusement is conducted, but not exceeding 30 days from date of issue.

7. Editor's Note: See 53 P.S. § 6901 et seq.

- C. The Township Secretary-Treasurer shall procure, at the expense of the township, a sufficient number of permit forms, on each of which the following information shall be printed or inserted in ink or by typewriter:
- (1) The number of the permit;
 - (2) The name of the township;
 - (3) Whether a temporary or a permanent permit;
 - (4) The name and address of the person receiving the permit;
 - (5) The location of the amusement covered by the permit;
 - (6) The type of amusement;
 - (7) The period for which the permit is issued;
 - (8) The date when the permit is issued;
 - (9) The signature of the Township Secretary-Treasurer.
- D. Every permit shall be issued in duplicate. The original, to which the seal of the township shall be affixed, shall be given to the person applying for the permit and the duplicate shall be kept on file by the Township Secretary-Treasurer.
- E. In case of the loss, defacement or destruction of any permit, the person to whom the permit was issued shall apply to the Township Secretary-Treasurer, who may issue a new permit, for which a fee as set from time to time by resolution of the Board of Supervisors shall be charged.

§ 186-36. Collection.

- A. Producers shall collect the tax imposed by this article and shall be liable to the township, as agents thereof, for the payment of same into the township treasury, as hereinafter provided in this article.
- B. Where permits are obtained for conducting temporary amusements by persons who are not the owners, lessees or custodians of the place where the amusements are to be conducted or where the temporary amusement is permitted by the owner, lessee or custodian of any place to be conducted without the procurement of a permit or permits required by this article, the tax imposed by this article shall be paid by the owner, lessee or custodian of such place where such temporary amusement is held or conducted unless paid by the producer conducting the amusement.

§ 186-37. Reporting and payment.

- A. Every holder of a permanent permit shall, on or before the last day of every calendar month, transmit to the Township Secretary-Treasurer a report under oath of affirmation, on a form to be furnished by the township, of the total amount of admissions charged and collected by him during the last preceding calendar month and of the total amount of

tax due thereon under this article, and at the same time shall pay over to the Township Secretary-Treasurer the entire amount of said tax.

- B. Every holder of a temporary permit shall, at the close of each day on which the amusement is held, pay over to the Township Secretary-Treasurer the amount of tax due under this article from such person upon admissions charged or collected for such day, and at the same time shall submit to the Township Secretary-Treasurer a report on the form to be furnished by the Township Secretary-Treasurer of the total admissions charged or collected on such day and the total amount of tax due under this article, on such admissions. On the day of expiration of such temporary permit, the person to whom such permit is issued shall, in addition, submit to the Township Secretary-Treasurer a report on a form to be furnished by the Township Secretary-Treasurer, under oath or affirmation, of all admissions charged or collected during the period in which such temporary permit was in effect and of all taxes due, and the same time pay over to the Township Secretary-Treasurer the entire amount of all taxes due and remaining unpaid.
- C. A holder of a temporary permit who is a resident of the township or who has a permanent place of business therein may submit the reports hereinabove required of the holder of a temporary permit and may make the payment hereinabove required of the holder of a temporary permit on the day following the days hereinabove specified.
- D. In any case, the Township Secretary-Treasurer shall furnish to the person paying any tax levied under this article a receipt for the payment of such tax.

§ 186-38. Failure to file; penalty.

If any report required to be filed in pursuance of this article shall not be filed within the prescribed time or if any tax levied in pursuance of this article shall not be paid when due, a penalty of 5% of the amount of the tax due and unpaid shall be added thereto, if the failure to file the return or to pay the tax is for not more than 30 days, with an additional 5% for each additional 30 days, or fraction thereof, during which failure continues, not to exceed 25% of the aggregate.

§ 186-39. Record of admissions.

- A. Every person required by the provisions of this article to pay to the township any tax on admissions must keep or cause to be kept an accurate record of admissions and reduced rate admissions. The records must show as to each class of admissions the following: All figures and other information necessary to determine the amount of the tax due and the amount of tax due.
- B. The records must be kept on file at the place of business or at some other convenient location and shall be available for inspection by the Township Secretary-Treasurer or other persons designated by the Supervisors of the township.
- C. Such records shall contain sufficient information to enable the Secretary-Treasurer of the township, or other person designated by the Supervisors of the township, to determine whether the correct amount of tax has been paid. The records shall at all times be open to

inspection by the Township Secretary-Treasurer or other person designated by the Supervisors of the township.

- D. Any information gained by the Township Secretary-Treasurer or any other agent of the Supervisors of the township as a result of any reports or investigations required or authorized by this article shall be confidential, except for official purposes, and except in accordance with proper judicial order or as otherwise provided by law. Any divulgence of any such information so gained is hereby declared to be a violation of this article.

§ 186-40. Authorization to examine records.

The Township Secretary-Treasurer, or other person designated by the Supervisors of the Township, is hereby authorized to examine any relevant books, papers and records of any person required under this article to secure a permit, in order to verify the accuracy of any report made or to ascertain and assess the tax imposed by this article.

§ 186-41. Assessment of tax and penalty.

- A. If any person required to secure a permit under this article shall fail to file a report at the time stipulated by this article, or shall file a report which on the face appears inaccurate, incorrect or incomplete, the Township Secretary-Treasurer shall make an assessment of such tax, or any deficiency thereof, against such person of the amount of the tax or deficiency for which such person is liable or for which the Township Secretary-Treasurer believes such person is liable, to which such assessment the Township Secretary-Treasurer shall add the penalties herein provided for and the aggregate amount so obtained shall be the basis of taxation.
- B. After such assessment, the Secretary-Treasurer of the township shall give written notice of such assessment to the person liable for the tax imposed thereby. Such assessment shall finally and irrevocably fix and determine the tax due unless such person shall appeal in writing to the Supervisors of the township for a hearing within 30 days of the date of such notice. Such hearing by the Supervisors shall be held within 30 days of the request for hearing. Any person aggrieved by any decision of the Collector shall have the right of appeal to the Court of Common Pleas of Cumberland County within 30 days from the date of such decision; provided, however, that such appeal shall not act as a supersedeas unless specifically allowed by the Court. Promptly upon the filing of such appeal, the petitioner shall serve a copy of the Petition therefor and any Rule granted by the Court upon the Collector.

§ 186-42. Recovery of debts.

All taxes imposed by this article, together with all penalties, shall be recoverable by the Secretary-Treasurer of the township as other debts of like amounts are recoverable.

§ 186-43. Violations and penalties.

Any person who violates or permits a violation of any of the provisions or requirements of this article or of neglecting, failing or refusing to furnish complete and correct reports or returns or to pay over any tax levied by this article at the time required shall, upon being found liable therefor in a civil enforcement proceeding commenced by the township before a District Justice, pay a fine of not less than \$200 nor more than \$600, plus all court costs, including reasonable attorney's fees, incurred by the township in the enforcement of this article. No judgment shall be imposed until the date of the determination of the violation by the District Justice. If the defendant neither pays nor timely appeals the judgment, the township may enforce the judgment pursuant to the applicable Rules of Civil Procedure. Each day a violation exists shall constitute a separate offense. Such fine or penalty shall be in addition to any other penalty imposed by any other section of this article. Further, the appropriate officers or agents of the township are hereby authorized to seek equitable relief, including injunction, to enforce compliance herewith.

ARTICLE V

Realty Transfer Tax

[Adopted 4-21-1987 by Ord. No. 87-2]

§ 186-44. Short title.

This article shall be known as the "Realty Transfer Tax of North Middleton Township."

§ 186-45. Authority.

This realty transfer tax is levied under authority of Article XI-D, entitled "Local Real Estate Transfer Tax," of the Pennsylvania Real Estate Transfer Tax Act, which is a new article added by Act 77-1986 (Act of July 2, 1986, P.L. _____, No. 77) to the Pennsylvania Real Estate Transfer Tax Act, Act 14-1981 (Act of May 5, 1981, P.L. 36), as amended. The Pennsylvania Real Estate Transfer Tax Act is codified at 72 P.S. § 8101-C et seq., and Article XI-D is codified at 72 P.S. § 8101-D et seq. A tax imposed under said article is to be administered, collected and enforced under the Act of December 31, 1965 (P.L. 1257, No. 511), known as "The Local Tax Enabling Act." The tax imposed hereunder is imposed for general revenue purposes.

§ 186-46. Definitions.⁸

As used in this article, the words and phrases defined in 72 P.S. § 8101-C shall have the meanings ascribed to them in that section.

§ 186-47. Imposition of tax; interest.

- A. Every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or

8. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

presented for recording shall be subject to pay for and in respect to the transaction, or any part thereof, a tax at the rate of 1% of the value of the real estate represented by such document, which tax shall be payable at the earlier of the time the document is presented for recording or within 30 days of acceptance of such document or within 30 days of becoming an acquired company.

- B. The payment of the tax imposed herein shall be evidenced by the affixing of an official stamp or writing by the Collector wherein the date of the payment of the tax and the amount of the tax shall be set forth.
- C. If the real estate is located partially within and partially outside the municipality, the tax shall be calculated on the value of the portion within the municipality.
- D. The tax imposed hereunder shall be due and payable to the Collector, as a joint and several liability, by every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording. In the case of an acquired company, the company shall also have liability for payment of the tax. All such persons shall also be liable for any penalties imposed under this article.
- E. It is the intent of this article that the entire burden of the tax imposed herein on a person or transfer shall not exceed the limitations prescribed in the Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, 53 P.S. § 6901 et seq., so that if any other political subdivision shall have imposed or hereafter shall impose such tax on the same person or transfer then the tax levied by the municipality under the authority of that Act shall during the time such duplication of the tax exists, except as hereinafter otherwise provided, be 1/2 of the rate, and such 1/2 rate shall become effective without any action on the part of the municipality; provided, however, that the municipality and any other political subdivision which imposes such tax on the same person or transfer may agree that, instead of limiting their respective rates to 1/2 of the rate herein provided, they will impose respectively different rates, the total of which shall not exceed the maximum rate permitted under the Local Tax Enabling Act.
- F. If for any reason the tax is not paid when due, interest at the legal rate in effect at the time the tax is due shall be added and collected.

§ 186-48. Exempt parties.

The United States, the commonwealth or any of their instrumentalities, agencies or political subdivisions shall be exempt from payment of the tax imposed by this article. The exemption of such governmental bodies shall not, however, relieve any other party to a transaction from liability for the tax.

§ 186-49. Excluded transactions.

- A. The tax imposed by § 186-47 shall not be imposed upon:
 - (1) A transfer to the commonwealth, or to any of its instrumentalities, agencies or political subdivisions by gift, dedication or deed in lieu of condemnation or deed

of confirmation in connection with condemnation proceedings, or a reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation which reconveyance may include property line adjustments, provided that said reconveyance is made within one year from the date of condemnation.

- (2) A document which the municipality is prohibited from taxing under the Constitution or statutes of the United States.
- (3) A conveyance to a municipality, township, school district or county pursuant to acquisition by the municipality, township, school district or county of a tax delinquent property at sheriff sale or Tax Claim Bureau sale.
- (4) A transfer for no or nominal actual consideration which corrects or confirms a transfer previously recorded, but which does not extend or limit existing record legal title or interest.
- (5) A transfer of division in kind for no or nominal actual consideration of property passed by testate or intestate succession and held by cotenants; however, if any of the parties takes shares greater in value than their undivided interest, tax is due on the excess.
- (6) A transfer between husband and wife, between persons who were previously husband and wife who have since been divorced, provided that the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, between parent and child or the spouse of such child, between brother or sister or spouse of a brother or sister and brother or sister or the spouse of a brother or sister and between a grandparent and grandchild or the spouse of such grandchild, except that a subsequent transfer by the grantee within one year shall be subject to tax as if the grantor were making such transfer.
- (7) A transfer for no or nominal actual consideration of property passing by testate or intestate succession from a personal representative of a decedent to the decedent's devisee or heir.
- (8) A transfer for no or nominal actual consideration to a trustee of an ordinary trust where the transfer of the same property would be exempt if the transfer was made directly from the grantor to all of the possible beneficiaries, whether or not such beneficiaries are contingent or specifically named. No such exemption shall be granted unless the Recorder of Deeds is presented with a copy of the trust instrument that clearly identifies the grantor and all possible beneficiaries.
- (9) A transfer for no or nominal actual consideration from a trustee to a beneficiary of an ordinary trust.
- (10) A transfer for no or nominal actual consideration from trustee to successor trustee.
- (11) A transfer for no or nominal actual consideration between principal and agent or straw party; or from or to an agent or straw party where, if the agent or straw party were his principal, no tax would be imposed under this article. Where the

document by which title is acquired by a grantee or statement of value fails to set forth that the property was acquired by the grantee from or for the benefit of his principal, there is a rebuttable presumption that the property is the property of the grantee in his individual capacity if the grantee claims an exemption from taxation under this clause.

- (12) A transfer made pursuant to the statutory merger or consolidation of a corporation or statutory division of a nonprofit corporation, except where the municipality reasonably determines that the primary intent for such merger, consolidation or division is avoidance of the tax imposed by this article.
- (13) A transfer from a corporation or association of real estate held of record in the name of the corporation or association where the grantee owns stock of the corporation or an interest in the association in the same proportion as his interest in or ownership of the real estate being conveyed and where the stock of the corporation or the interest in the association has been held by the grantee for more than two years.
- (14) A transfer from a nonprofit industrial development agency or authority to a grantee of property conveyed by the grantee to that agency or authority as security for a debt of the grantee or a transfer to a nonprofit industrial development agency or authority.
- (15) A transfer from a nonprofit industrial development agency or authority to a grantee purchasing directly from it, but only if the grantee shall directly use such real estate for the primary purpose of manufacturing, fabricating, compounding, processing, publishing, research and development, transportation, energy conversion, energy production, pollution control, warehousing or agriculture; and the agency or authority has the full ownership interest in the real estate transferred.
- (16) A transfer by a mortgagor to the holder of a bona fide mortgage in default in lieu of a foreclosure or a transfer pursuant to a judicial sale in which the successful bidder is the bona fide holder of a mortgage, unless the holder assigns the bid to another person.
- (17) Any transfer between religious organizations or other bodies or persons holding title for a religious organization if such real estate is not being or has not been used by such transferor for commercial purposes.
- (18) A transfer to a conservancy which possesses a tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954 [68A. Stat. 3, 26 U.S.C. § 501(c)(3)] and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open space opportunities; or a transfer from such a conservancy to the United States, the commonwealth or to any of their instrumentalities, agencies or political subdivisions; or any transfer from such a conservancy where the real estate is encumbered by a perpetual agricultural conservation easement as defined by the Act of June 30, 1981 (P.L. 128, No.

43),⁹ known as the "Agricultural Area Security Law," and such conservancy has owned the real estate for at least two years immediately prior to the transfer.¹⁰

- (19) A transfer of real estate devoted to the business of agriculture to a family farm corporation by a member of the same family which directly owns at least 75% of each class of the stock thereof.
 - (20) A transfer of real estate devoted to the business of agriculture to a family farm partnership by a member of the same family, which family directly owns at least 75% of the interest in the partnership.¹¹
 - (21) A transfer between members of the same family of an ownership interest in a real estate company, family farm corporation or family farm partnership which owns real estate.¹²
 - (22) A transaction wherein the tax due is \$1 or less.
 - (23) Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof.
- B. In order to exercise any exclusion provided in this section, the true, full and complete value of the transfer shall be shown on the statement of value. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. For leases of coal, oil, natural gas or minerals, the statement of value may be limited to an explanation of the reason such document is not subject to tax under this article.

§ 186-50. Documents relating to associations or corporations and members, partners, stockholders or shareholders thereof.

Except as otherwise provided in § 186-49, documents which make, confirm or evidence any transfer or demise of title to real estate between associations or corporations and the members, partners, shareholders or stockholders thereof are fully taxable. For the purposes of this article, corporations and associations are entities separate from their members, partners, stockholders or shareholders.

§ 186-51. Acquired company.

- A. A real estate company is an acquired company upon a change in the ownership interest in the company, however effected, if the change does not affect the continuity of the company; and of itself or together with prior changes has the effect of transferring, directly or indirectly, 90% or more of the total ownership interest in the company within a period of three years.

9. Editor's Note: See 3 P.S. § 901 et seq.

10. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. 1).

11. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions).

12. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. 1).

- B. With respect to real estate acquired after February 16, 1986, a family farm corporation is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm corporation or when, because of issuance or transfer of stock or because of acquisition or transfer of assets that are devoted to the business of agriculture, it fails to meet the minimum requirements of a family farm corporation under this article.
- C. A family farm partnership is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm partnership or when, because of transfer of partnership interests or because of acquisition or transfer of assets that are devoted to the business of agriculture, it fails to meet the minimum requirements of a family farm partnership under this Act.¹³
- D. Within 30 days after becoming an acquired company, the company shall present a declaration of acquisition with the Recorder of each county in which it holds real estate for the affixation of documentary stamps and recording. Such declaration shall set forth the value of real estate holdings of the acquired company in such county. A copy of the Pennsylvania Realty Transfer Tax Declaration of Acquisition may be submitted for this purpose.

§ 186-52. Credits against tax.

- A. Where there is a transfer of a residential property by a licensed real estate broker, which property was transferred to him or her within the preceding year as consideration for the purchase of other residential property, a credit for the amount of the tax paid at the time of the transfer to him or her shall be given to him or her toward the amount of the tax due upon the transfer.
- B. Where there is a transfer by a builder of residential property which was transferred to the builder within the preceding year as consideration for the purchase of new, previously unoccupied residential property, a credit for the amount of the tax paid at the time of the transfer to the builder shall be given to the builder toward the amount of the tax due upon the transfer.
- C. Where there is a transfer of real estate which is demised by the grantor, a credit for the amount of tax paid at the time of the demise shall be given the grantor toward the tax due upon the transfer.
- D. Where there is a conveyance by deed of real estate which was previously sold under a land contract by the grantor, a credit for the amount of tax paid at the time of the sale shall be given the grantor toward the tax due upon the deed.
- E. If the tax due upon the transfer is greater than the credit given under this section, the difference shall be paid. If the credit allowed is greater than the amount of tax due, no refund or carry-over credit shall be allowed.

13. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 186-53. Extension of lease.

In determining the term of a lease, it shall be presumed that a right or option to renew or extend a lease will be exercised if the rental charge to the lessee is fixed or if a method for calculating the rental charge is established.

§ 186-54. Proceeds of judicial sale.

The tax herein imposed shall be fully paid, and have priority out of the proceeds or any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made, and the sheriff or other officer conducting said sale shall pay the tax herein imposed out of the first moneys paid to him or her in connection therewith. If the proceeds of the sale are insufficient to pay the entire tax herein imposed, the purchaser shall be liable for the remaining tax.

§ 186-55. Duties of Recorder of Deeds.

- A. As provided in 16 P.S. § 11011-6, as amended by the Act of July 7, 1983, P.L. 40, the Recorder of Deeds shall be the collection agent for the local realty transfer tax, including any amount payable to the municipality based on a redetermination of the amount of tax due by the Commonwealth of Pennsylvania of the Pennsylvania realty transfer tax, without compensation from the municipality.
- B. In order to ascertain the amount of taxes due when the property is located in more than one political subdivision, the Recorder shall not accept for recording such a deed unless it is accompanied by a statement of value showing what taxes are due each municipality.
- C. On or before the 10th of each month, the Recorder shall pay over to the municipality all local realty transfer taxes collected less 2% for use of the county, together with a report containing the information as is required by the Commonwealth of Pennsylvania in reporting collections of the Pennsylvania realty transfer tax. The two-percent commission shall be paid to the county.
- D. Upon a redetermination of the amount of realty transfer tax due by the Commonwealth of Pennsylvania, the Recorder shall rerecord the deed or record the additional realty transfer tax form only when both the state and local amounts and a rerecording or recording fee has been tendered.

§ 186-56. Statement of value.

Every document lodged with or presented to the Recorder of Deeds for recording shall set forth therein and as a part of such document the true, full and complete value thereof, or shall be accompanied by a statement of value executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this article. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. The provisions of this section shall not apply to any excludable real estate transfers which are exempt from taxation based on family relationship. Other documents presented for the

affixation of stamps shall be accompanied by a certified copy of the document and statement of value executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this article.

§ 186-57. Unlawful acts; penalty.

- A. It shall be unlawful for any person to make, execute, deliver, accept or present for recording or cause to be made, executed, delivered, accepted or presented for recording any document without the full amount of tax thereon being duly paid; fail to record a declaration of acquisition, as required by this article; fraudulently affix to any document any forged evidence of payment; or fail, neglect or refuse to comply with or violate other provisions of this article or any rules and regulations promulgated by the municipality under this article, or any rules and regulations of the Pennsylvania Department of Revenue to the extent applicable to the tax levied hereunder.
- B. Any person violating any of the provisions of this article shall be guilty of a summary offense.

§ 186-58. Civil penalties.

- A. If any tax owing under the terms of this article shall not be paid when due, 10% of the amount of the tax shall be added and collected as an initial penalty for nonpayment or underpayment of the tax.
- B. In addition, if any tax owing under the terms of this article shall not be paid when due, a penalty shall accrue on the amount of the unpaid tax at the rate of 1% per month or fractional part of a month on the amount of the unpaid tax, from the due date until the amount of the tax is paid in full.
- C. If any part of any underpayment of tax imposed by this article is due to fraud, there shall be added to the tax an amount equal to 50% of the underpayment.
- D. In the case of failure to record a declaration required under this article on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause, there shall be added to the tax 5% of the amount of such tax if the failure is for not more than one month, with an additional 5% of each additional month or fraction thereof during which such failure continues, not exceeding 50% in the aggregate alone or in combination with other penalties.
- E. In addition, if the municipality files suit in order to collect the amount of any tax not paid when due under this article, at the discretion of the court, any person liable for payment of the tax shall also be liable for reasonable attorneys' fees incurred by the municipality in prosecution of the suit.

§ 186-59. Violations and penalties.¹⁴

Any person who violates or permits a violation of this article shall, upon being found liable therefor in a civil enforcement proceeding commenced by the township before a District Justice, pay a fine of not less than \$200 nor more than \$600, plus all court costs, including reasonable attorney's fees, incurred by the township in the enforcement of this article. No judgment shall be imposed until the date of the determination of the violation by the District Justice. If the defendant neither pays nor timely appeals the judgment, the township may enforce the judgment pursuant to the applicable Rules of Civil Procedure. Each day a violation exists shall constitute a separate offense. Further, the appropriate officers or agents of the township are hereby authorized to seek equitable relief, including injunction, to enforce compliance herewith.

§ 186-60. Lien.

The tax imposed by this article shall become a lien upon the lands, tenements or hereditaments, or any interest therein, lying, being situated, wholly or in part within the boundaries of the municipality, which lands, tenements, hereditaments or interest therein are described in or conveyed by or transferred by the deed or other instrument which is the subject of the tax imposed, assessed and levied by this article, said lien to begin at the time when the tax under this article is due and payable, and continue until discharge by payment, or in accordance with the law, and the solicitor is authorized to file a municipal or tax claim in the Court of Common Pleas of Cumberland County, in accordance with the provisions of the Municipal Claims and Liens Act of 1923, 53 P.S. § 7101 et seq., its supplements and amendments, or to proceed in any other appropriate manner.

§ 186-61. Enforcement.

All taxes imposed by this article, together with interest and penalties prescribed herein, shall be recoverable as other debts of like character are recovered, including by suit in assumpsit.

§ 186-62. Regulations.

The municipality may promulgate and enforce reasonable rules and regulations for the interpretation, collection and enforcement of the tax.

§ 186-63. Interpretation; effect.

- A. To the extent that this article imposes a tax on a real estate transaction which is subject to the Commonwealth of Pennsylvania realty transfer tax imposed by Act 77-1986, and to the extent not inconsistent herewith or with rules or regulations adopted by the municipality, this article shall be interpreted in the same manner as Act 77-1986 and in accordance with regulations promulgated thereunder.

14. Editor's Note: Added at time of adoption of Code (see Ch. I, General Provisions).

- B. The provisions of this article, so far as they are the same as those of ordinances in force immediately prior to adoption of this article, are intended as a continuation of such ordinance, and not as new enactments.
- C. This article is intended to supplement the realty transfer tax in effect prior to adoption of this article by imposing a tax on real estate transactions not covered by prior ordinances and now taxable under Act 77-1986. This article shall impose a tax on all transactions taxable under ordinances levying a realty transfer tax in force immediately prior to adoption of this article, and also on all transactions which the municipality is permitted to tax under Act 77-1986 to the fullest extent permissible.
- D. To the extent the provisions of this article tax real estate transactions taxable under ordinances levying a realty transfer tax in force immediately prior to adoption of this article, this article shall supersede said prior ordinances.
- E. In the event this article is declared invalid, the prior ordinance or ordinances of the municipality levying a realty transfer tax shall remain in full force and effect and shall not be affected in any way by adoption of this article.
- F. The provisions of this article shall not affect any act done or liability incurred, nor shall they affect any suit or prosecution pending or to be instituted to enforce any right or penalty or to punish any offense, under the authority of any ordinance in force prior to adoption of this article.

ARTICLE VI

Income Tax Officer

[Adopted 1-3-1983 by Ord. No. 83-1]

§ 186-64. Appointment.

The Capital Area Tax Collection Bureau of Harrisburg, Pennsylvania, is hereby appointed as the Income Tax Officer to collect the earned income tax and occupational privilege tax in and for North Middleton Township commencing tax year 1983 and for succeeding tax years until revoked by later ordinance. This appointment is conditioned, however, upon North Middleton Township and the Capital Area Tax Collection Bureau of Harrisburg, Pennsylvania, reaching satisfactory agreement, which agreement shall be reduced to an ordinance or resolution properly enacted by North Middleton Township as to the responsibilities, obligations and procedures to be employed by the Capital Area Tax Collection Bureau of Harrisburg, Pennsylvania.