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Part 1

Realty Transfer Tax

§101. Short Title.

This Part 1 shall be known as the “Realty Transfer Tax Ordinance of the Borough of Mohnton. (Ord. 466, 1/14/1987, §1)

§102. Authority.

A Realty Transfer Tax for general revenue purposes is hereby imposed upon the transfer of real estate or interest in real estate situated within the Borough of Mohnton, regardless of where the documents making the transfer are made, executed or delivered, or where the actual settlements on such transfer took place as authorized by Article XI-D, “Local Real Estate Tax,” 72 P.S. §8101-D et seq. (Ord. 466, 1/14/1987, §2)

§103. Definitions.

ASSOCIATION — a partnership, limited partnership, or any other form of unincorporated enterprise owned or conducted by two or more persons other than a private trust or decedent’s estate.

CORPORATION — a corporation, joint-stock association, business trust, or banking institution which is organized under the laws of this Commonwealth, the United States, or any other state, territory, foreign country or dependency.

DOCUMENT — any deed, instrument or writing which conveys, transfers, demises, vests, confirms, or evidences any transfer or demise of title to real estate, but does not include wills, mortgages, deeds of trust or other instruments or like character given as security for a debt and deeds of release thereof to the debtor, land contracts whereby the legal title does not pass to the grantee until the total consideration specified in the contract has been paid or any cancellation thereof unless the consideration is payable over a period of time exceeding 30 years, or instruments which solely grant, vest or confirm a public utility easement. “Document” shall also include a declaration of acquisition required to be presented for recording under §102 of this Part 1.

FAMILY FARM CORPORATION — a corporation of which at least 75% of its assets are devoted to the business of agriculture and at least 75% of each class of stock of the corporation is continuously owned by members of the same family. The business of agriculture shall not be deemed to include:

- A. Recreational activities such as, but not limited to hunting, fishing, camping, skiing, show competition or racing;

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- B. The raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;
- C. Fur farming;
- D. Stockyard and slaughterhouse operations; or
- E. Manufacturing or processing operations of any kind.

MEMBERS OF THE SAME FAMILY — any individual, such individual's brothers and sisters, the brothers and sisters of such individual's parents or grandparents, the ancestors and lineal descendants of any of the foregoing, a spouse of any of the foregoing, and the estate of any of the foregoing. Individuals related by the half-blood or legal adoption shall be treated as if they were related by the whole-blood.

PERSON — every natural person, association, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both. The term "person" as applied to associations, shall include the responsible members or general partners thereof, and as applied to corporations, the officers thereof.

REAL ESTATE –

- A. All lands, tenements or hereditaments within the Borough of Mohnton, including without limitation, buildings, structures, fixtures, mines, minerals, oil, gas, quarries, spaces with or without upper or lower boundaries, trees, and other improvements, immovables or interests which by custom, usage or law pass with a conveyance of land, but excluding permanently attached machinery and equipment in an industrial plant.
- B. A condominium unit.
- C. A tenant-stockholder's interest in a cooperative housing corporation, trust or association under a proprietary lease or occupancy agreement.

REAL ESTATE COMPANY — a corporation or association which is primarily engaged in the business of holding, selling or leasing real estate, 90% or more of the ownership interest in which is held by 35 or fewer persons and which:

- A. Derives 60% or more of its annual gross receipts from the ownership or disposition of real estate; or
- B. Holds real estate, the value of which comprises 90% or more of the value of its entire tangible asset holdings exclusive of tangible assets which are freely transferable and actively traded on an established market.

TITLE TO REAL ESTATE –

- A. Any interest in real estate which endures for a period of time, the termination of which is not fixed or ascertained by a specific number of years, including without limitation an estate in fee simple, life estate, or perpetual leasehold; or
- B. Any interest in real estate enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consists of a group of rights approximating those of an estate in fee simple, life estate or perpetual leasehold, including without limitation a leasehold interest or possessory interest under a lease or occupancy agreement for a term of 30 years or more or a leasehold interest or possessory interest in real estate in which the lessee has equity.

TRANSACTION — the making, executing, delivering, accepting or presenting for recording of a document.

VALUE –

- A. In the case of any bona fide sale of real estate at arm's length for actual monetary worth, the amount of the actual consideration therefore, paid or to be paid, including liens or other encumbrances thereon existing before the transfer and not removed thereby, whether or not the underlying indebtedness is assumed, and ground rents, or a commensurate part thereof where such liens or other encumbrances and ground rents also encumber or are charged against other real estate, provided that where such documents shall set forth a nominal consideration, the "value" thereof shall be determined from the price set forth in or actual consideration for the contract of sale;
- B. In the case of a gift, sale by execution upon a judgment or upon the foreclosure of a mortgage by a judicial officer, transactions without consideration or for consideration less than the actual monetary worth of the real estate, a taxable lease, an occupancy agreement, a leasehold or possessory interest, any exchange of properties, or the real estate of an acquired company, the actual monetary worth of the real estate of an acquired company, the actual monetary worth of the real estate determined by adjusting the assessed value of the real estate for local real estate tax purposes for the common level ratio factor developed by the Pennsylvania Department of Revenue for Pennsylvania Realty Transfer Tax base calculations.
- C. In the case of an easement or other interest in real estate, the value of which is not determinable under Subsection (A) or (B), the actual monetary worth of such interest; or
- D. The actual consideration for or actual monetary worth of any executory agreement for the construction of buildings, structures or other permanent

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improvements to the real estate between the grantor and other persons existing before the transfer and not removed thereby or between the grantor, the agent or principle of the grantor of a related corporation, association or partnership and the grantee existing before or effective with the transfer.

(Ord. 466, 1/14/1987, §4)

§104. Imposition of Tax; Interest.

1. Every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf a document is made, executed, delivered, accepted or 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.
2. The payment of the tax imposed herein shall be evidenced by the affixing of an official stamp or writing by the Recorder of Deeds or other designee, whereon the date of the payment of the tax, amount of the tax and the signature of the collecting agent shall be set forth.
3. It is the intent of this Part 1 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 impose or hereafter shall impose such tax on the same person or transfer then the tax levied by the Borough of Mohnton 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 Borough of Mohnton, provided, however, that the Borough of Mohnton and any other political subdivision which impose 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."
4. If for any reason the tax is not paid when due, interest at the rate in effect at the time the tax is due, shall be added and collected.

(Ord. 466, 1/14/1987, §4)

§105. 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 Part 1.

The exemption of such governmental bodies shall not, however, relieve any other party to a transaction from liability for the tax. (Ord. 466, 1/14/1987, §5)

§106. Excluded Transactions.

The tax imposed by §104 shall not be imposed upon:

1. A transfer to the Commonwealth, or to any of its instrumentalities, agencies or political subdivision, by gift, dedication or deed in lieu of 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 said reconveyance is made within one year from the date of condemnation.
2. A document which the Borough of Mohnton 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 or division in kind for no nominal actual consideration of property passed by testate or intestate succession and held by co-tenants; however, if any of the parties take 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 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 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 from 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

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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 (A) for no or nominal actual consideration between principal and agent or straw party; or (B) 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 Part 1.

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 non-profit corporation, except where the department reasonably determines that the primary intent for such merger, consolidation or division is avoidance of the tax imposed by this Part 1.
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 non-profit 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 non-profit industrial development agency or authority.
15. A transfer from a non-profit industrial development agency or authority to a grantee purchasing directly from it, but only if: (A) 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 (B) 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. Section 501(c)(#) and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open space opportunities.
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 between members of the same family of an ownership interest in a real estate company or family farm corporation.
21. A transaction wherein the tax due is \$1 or less.
22. Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof.

In order to exercise any exclusion provided in this §106, 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 Part 1.

(Ord. 466, 1/14/1987, §6)

§107. Documents Relating to Associations or Corporations and Members, Partners, Stockholders or Shareholders Thereof.

Except as otherwise provided in §106, documents which make, confirm or evidence any transfer or demise of title to real estate between association or corporations and the members, partners, shareholders or stockholders thereof are fully taxable. For the purposes of this Part 1, corporations and associations are entities separate from their members, partners, stockholders or shareholders. (Ord. 466, 1/14/1987, §7)

§108. Acquired Company.

1. 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.

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2. 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 Part 1.
3. Within 30 days after becoming an acquired company, the company shall present a declaration of acquisition with the Recorder of Deeds 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.

(Ord. 466, 1/14/1987, §8)

§109. Credits Against Tax.

1. Where there is a transfer of a residential property by a licensed real estate broker which property was transferred to him 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 shall be given to him toward the amount of the tax due upon the transfer.
2. 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.
3. Where there is a transfer of real estate which is leased by the grantor, a credit for the amount of tax paid at the time of the lease shall be given the grantor toward the tax due upon the transfer.
4. 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.
5. If the tax due upon the transfer is greater than the credit given under this §109, 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.

(Ord. 466, 1/14/1987, §9)

§110. 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. (Ord. 466, 1/14/1987, §10)

§111. Proceeds of Judicial Sale.

The tax herein imposed shall be fully paid, and have priority out of the proceeds of 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 except the State Realty Transfer Tax, and the Sheriff or other officer conducting said sale, shall pay the tax herein imposed out of the first moneys paid to him 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. (Ord. 466, 1/14/1987, §11)

§112. Duties of Recorder of Deeds.

1. As provided in 16 P.S. §1101-6, as amended by Act of July 7, 1983, (P.L. 40, No. 21), the Recorder of Deeds shall be the collection agent for the local Realty Transfer Tax, including any amount payable to the Borough of Mohnton based on a re-determination of the amount of tax due by the Commonwealth of Pennsylvania of the Pennsylvania Realty Transfer Tax, without compensation from the Borough of Mohnton.
2. In order to ascertain the amount of taxes due when the property is located in more than one political subdivision, the Recorder of Deeds shall not accept for recording such a deed unless it is accompanied by a statement of value showing what taxes are due each municipality.
3. On or before the tenth of each month, the Recorder of Deeds shall pay over the Borough of Mohnton 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 2% commission shall be paid to the County.
4. Upon a determination of the amount of Realty Transfer Tax due by the Commonwealth of Pennsylvania, the Recorder of Deeds 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.

(Ord. 466, 1/14/1987, §12)

§113. 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 Part 1. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. The provisions of this §113 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 Part 1. (Ord. 466, 1/14/1987, §13)

§114. Civil Penalties.

1. If any part of any underpayment of tax imposed by this Part 1 is due to fraud, there shall be added to the tax an amount equal to 50% of the underpayment.
2. In the case of failure to record a declaration required under this Part 1 on the date prescribed therefore, unless it is shown that such failure is due to reasonable cause, there shall be added to the tax five 5% of the amount of such tax if the failure is for not more than one month, with an additional 5% for each additional month or fraction thereof during which such failure continues, not exceeding 50% of the aggregate. (Ord. 466, 1/14/1987, §14)

§115. Lien.

The tax imposed by this Part 1 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 Borough of Mohnton, which lands, tenements, hereditaments, or interest therein, are described in or conveyed by or transferred by the deed which is the subject of the tax imposed, assessed and levied by this Part 1, said lien to begin at the time when the tax under this Part 1 is due and payable, and continue until discharged 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 Berks 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. (Ord. 466, 1/14/1987, §15)

§116. Enforcement.

All taxes imposed by this Part 1 together with interest and penalties prescribed herein, shall be recoverable as other debts of like character are recovered. (Ord. 466, 1/14/1987, §16)

§117. Regulations.

The Recorder of Deeds for the Borough of Mohnton is charged with enforcement and collection of tax and is empowered to promulgate and enforce reasonable regulations for enforcement and collection of the tax. The regulations which have been promulgated by the Pennsylvania Department of Revenue under 72 P.S. §8101-C et seq. are incorporated and made part of this Part 1. (Ord. 466, 1/14/1987, §17)

Part 2

Earned Income and Net Profits Tax

§201. Definitions.

The following words and phrases, when used in this Part 2, shall have the meanings ascribed to them in the “Enabling Act.”

ASSOCIATION

BUSINESS

CORPORATION

CURRENT YEAR

DOMICILE

EARNED INCOME

EMPLOYER

INCOME TAX OFFICER OR OFFICER

NET PROFITS

NON-RESIDENTS

PERSON OR INDIVIDUAL

PRECEDING YEAR

RESIDENT

SUCCEEDING YEAR

TAXPAYER

(Ord. 371, 11/9/1977, §1)

§202. Imposition of Tax; Modification of Previous Levy.

1. A tax for general revenue purposes of 1% is hereby imposed on the following:
 - A. Earned income received by individual residents of the Borough;

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- B. Earned income received by individual non-residents of the Borough in the Borough;
 - C. Net profits, earned by residents of the Borough; and
 - D. Net profits earned in the Borough by non-residents of the Borough.
2. The tax levied under (A) and (B) herein shall relate to and be imposed upon earned income paid by an employer or on his behalf to a person who is employed by him. The tax levied under (C) and (D) herein shall relate to and be imposed on the net profits of any business, profession or other activity carried on by any person or persons.
 3. The tax levied under (A) and (C) being a continuation of a tax previously levied for the current year shall continue in effect except that to the extent certain individuals were previously granted an exemption from paying the tax by reason of age, said exemption is rescinded effective January 1, 1978.
 4. The tax levied under (A), (B), (C), and (D) shall continue in force on a calendar year or taxpayer fiscal year basis without annual reenactment.

(Ord. 371, 11/9/1977, §2)

§203. Returns and Payments of Tax.

1. Every taxpayer earning net profits or receiving earned income in the current year shall, on or before April 15 of the succeeding year, make and file with the Income Tax Officer a return thereof (on forms, and furnishing information, prescribed by the Income Tax Officer) and pay the tax (or balance thereof after crediting employers withholding) due thereon.
2. Further details concerning taxpayers payment and making returns of tax levied by this Part 2 are set forth in the mandatory provisions, and also in the optional provisions (hereby adopted by this Borough Council) relating to annual or final returns and annual payments of tax, in Section 13 (III) of the Enabling Act. This Borough Council hereby adopts the optional provision in said Section 13 (III) relating to filing of declarations of estimated net profits and quarterly returns and payments of tax by taxpayers; and such declarations or quarterly returns or payments by taxpayers are required by this Part 2.
3. When the return of a taxpayer is made for a fiscal year different from the calendar year, the return shall be made and the tax due thereon paid within three months and 15 days from the end of the said fiscal year.

(Ord. 371, 11/9/1977, §3)

§204. Employers' Collection at Source.

1. Every employer within the Borough is required to register, to deduct tax from employees' earned income, to file quarterly reports and make remittances, and to do other acts as fully set forth in Section 13 (IV) of the Enabling Act.
2. In addition, every employer having a factory, workshop, branch, warehouse or other place of business within the Borough is required to register to deduct tax from the earned income of employees employed outside the Borough but domiciled within the Borough, to file quarterly reports and make remittances and to do other acts as fully set forth in Section 13 (IV) of the Enabling Act.

(Ord. 371, 11/9/1977, §4)

§205. Collection at Source.

1. The failure or omission of any employer to make the deductions required by §204 hereof shall not relieve any employee from the payment of the tax or from complying with the requirements of this Part 2 relating to the filing of declarations and returns.
2. If an employer makes a deduction of tax as required by this Part 2, the amount deducted shall constitute in the hands of such an employer a trust fund held for the account of the Borough as beneficial owner thereof and the employee from whose salaries, wages, commissions, or other compensation from which such tax was deducted shall be deemed to have paid such tax.
3. To the extent an employer was previously permitted to deduct from a tax remittance a 2% commission from the tax withheld, said previous enactment is amended, and said commission is eliminated effective with the quarter beginning January 1, 1978.

(Ord. 371, 11/9/1977, §5)

§206. Suit for Collection of Tax, Interest and Penalties.

1. Suits for collection of tax are hereby authorized and interest and penalties shall be imposed as provided in Section 13 (VII) and (VIII) of the Enabling Act.
2. The failure of any person to receive or procure forms required for making the declaration or returns required by this Part 2 shall not excuse him from making such declaration or return.
3. Notwithstanding prior mention in this Part 2, for convenience of reference only, of specific subsections of Section 13 of said Act, all provisions of the entire Section 13

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of said Act, are hereby incorporated into this Part 2 by this reference as required by the Enabling Act. Any provisions which any future supplements to or amendments of the Enabling Act may require to be included in or construed to be a part of any tax on earned income or net profits, or any ordinance levying the same, shall automatically become a part of this Part 2 upon the effective date of such supplement or amendment, without the need for formal amendment of this Part 2 by the Council of the Borough.

(Ord. 371, 11/9/1977, §6)

§207. Payments and Refunds.

The Income Tax Officer is hereby authorized to accept payment of the amount of tax claimed by the Borough in any case where any person disputes the validity or amount of the Borough'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. (Ord. 371, 11/9/1977, §7)

§208. Income Tax Officer.

The Income Tax Officer shall perform all the duties, be subject to all the requirements, and have all the powers prescribed by Section 13 (V) of the Enabling Act. (Ord. 371, 11/9/1977, §8)

Part 3

Municipal EMS Tax

§301. Definitions.

The following words and phrases, when used in this Part 3, shall have the meaning ascribed to them in this §301, unless the context clearly indicates a different meaning:

EMPLOYER — an individual, partnership, limited partnership, association or corporation that engages the services of any individual and makes payment to said individual, whether by salary, wages or commission. An "employer" shall include a self-employed person who engages in his employ the services of one or more individuals besides himself.

EMS TAX — a flat tax of \$52 per year levied on each individual exercising the privilege of engaging in any occupation, as hereinbefore defined, within the corporate limits of the Borough of Mohnton, after the effective date of this Part 3 and during the current fiscal year.

INDIVIDUAL — any person, male or female, who attains or is over the age of 21 years, during the fiscal year of the Borough of Mohnton beginning the first Monday of January and ending on the day prior to the first Monday of the following year, engaged in any occupation of any nature, type or kind whatsoever within the corporate limits of the Borough of Mohnton, whether in the employ of another or self-employed, after the effective date of this Part 3 and during each fiscal year.

PRIVILEGE — the exercising or carrying on by any manner or means any occupation whatsoever, whether it be trade, profession, business or undertakings of any type or kind carried on or performed within the corporate limits of the Borough of Mohnton for which recompense is received, whether by means of salary, wages, commission or whether the individual be self-employed by payment for services rendered.

TREASURER — the Treasurer of the Borough of Mohnton.

(Ord. 294, 3/20/1967; as amended by Ord. 474, 1/14/1987; by Ord. 474, 12/9/1988; by Ord. 478, 8/10/1988; by Ord. 480, 12/14/1988; and by Ord. 707, 12/14/2005)

§302. Levy and Collection of Tax.

For the current fiscal year, the Borough of Mohnton hereby imposes on each individual engaged in an occupation within the corporate limits of the Borough of Mohnton an annual EMS tax in the manner and at the rates hereinafter set forth. (Ord. 294, 3/20/1967; as amended by Ord. 465, 1/14/1987; by Ord. 474, 12/9/1988; by Ord. 478, 8/10/1988; by Ord. 480, 12/14/1988; and by Ord. 707, 12/14/2005)

§303. Amount of Tax.

Beginning on the first day of March of each fiscal year, each individual engaged in an occupation, as hereinbefore defined, within the corporate limits of the Borough of Mohnton shall be required to pay an annual EMS tax of \$52; subject, however, to the low income limit of \$12,000 and the Borough of Mohnton collection policy. (Ord. 294, 3/20/1967; as amended by Ord. 465, 1/14/1987; by Ord. 474, 12/9/1988; by Ord. 478, 8/10/1988; by Ord. 480, 12/14/1988; by Ord. 495, 12/13/1989; by Ord. 503, 12/12/1991; and by Ord. 707, 12/14/2005)

§304. Discount, Flat Rate and Penalty Periods.

1. Said tax shall be paid to the Borough Treasurer, and said tax shall be due and payable on the first day of April of each fiscal year; and if payment of said tax of \$52 is made within the two months next following the first day of April of each fiscal year, a discount of 2% shall be allowed to each individual so paying said annual tax of \$52; and after the expiration of the two months next following the first day of April of each fiscal year, said tax of \$52 hereby levied upon each individual engaged in an occupation within the limits of the Borough of Mohnton shall be paid at the flat rate for the next ensuing month; and after the expiration of said next ensuing month, a penalty of 5% is hereby imposed.
2. If said tax is not paid when due in each fiscal year, interest thereon shall begin to accrue at the rate of 6% per annum on the amount of said tax remaining unpaid. Said interest shall be calculated beginning on the first Monday in January of each fiscal year and shall be calculated thereafter until said tax is paid in full, together with penalty as hereinbefore provided.

(Ord. 294, 3/20/1967; as amended by Ord. 465, 1/14/1987; by Ord. 474, 12/9/1988; by Ord. 478, 8/10/1988; by Ord. 480, 12/14/1988; and by Ord. 707, 12/14/2005)

§305. Duty of Employers.

Each employer within the Borough of Mohnton is hereby charged with the duty of collecting and paying over to the Borough Treasurer from each employee engaged in his services said tax of \$52 per year for each individual employed by said employer who performs services on behalf of said employer within the Borough of Mohnton or who is engaged in an occupation, as hereinbefore defined, for the benefit of said employer or in the service of said employer within the corporate limits of the Borough of Mohnton. Each employer shall make a return and payment of said tax and is authorized to deduct said EMS tax at the rates hereby imposed for each employee in his service, whether said employee is paid by salary, wages or commission. Each employer within the Borough of Mohnton shall prepare and file a return showing a computation of the tax on a form to be obtained by him from the Borough Treasurer. Each employer, in filing his return and

making payment by deduction from the salary, wages, commission or other compensation payable by him to his employees, shall be entitled to retain a commission, calculated at 2%, on the gross tax due and payable by each individual, provided that such tax is collected and paid over by the employer within the two months next following the first day of April of each fiscal year. It is further provided that, if the employer fails to file said return and pay said tax but makes collection thereof from the salary, wages or commissions paid by him to said employee, the employer shall be responsible for payment of the tax in full without any deductions or commissions as though the tax had originally been levied against him. (Ord. 294, 3/20/1967; as amended by Ord. 465, 1/14/1987; by Ord. 474, 12/9/1988; by Ord. 478, 8/10/1988; by Ord. 480, 12/14/1988; and by Ord. 707, 12/14/2005)

§306. Individuals Engaged in More than One Occupation.

Each individual who shall have more than one occupation within the Borough of Mohnnton shall be subject to the payment of the annual EMS tax solely upon his principal occupation, and his principal employer shall deliver to him a certificate of payment in a form to be furnished to the employer by the Borough Treasurer certifying to any other employer of such individual that said EMS tax has been paid by the employee to the employer and in turn remitted by said employer to the Borough Treasurer. Any employer receiving such certificate of payment of the EMS tax by another employer by deduction from said individual shall not deduct or collect the EMS tax imposed by this Part 3. (Ord. 294, 3/20/1967; as amended by Ord. 465, 1/14/1987; by Ord. 474, 12/9/1988; by Ord. 478, 8/10/1988; by Ord. 480, 12/14/1988; and by Ord. 707, 12/14/2005)

§307. Employer's Date of Determination of Liability for Tax.

Each employer in the Borough of Mohnnton shall use his employment records as of the first Monday of each fiscal year in determining the number of employees from whom said EMS tax shall be deducted and paid over to the Borough Treasurer. Each employer who engages the services of any individual in an occupation to be performed in the Borough of Mohnnton after the first day of March of each fiscal year shall require said employee to furnish to him a certificate to be supplied by the Borough Treasurer showing that the EMS tax has theretofore been paid or deducted by a previous employer, and in the absence thereof, said employer shall deduct and pay over to the Borough Treasurer the tax herein levied and imposed; provided, however, that if the person so employed by an individual has not, since the first day of March of the current fiscal year, performed any services of any type or kind within the corporate limits of the Borough of Mohnnton, the employer making such deduction and payment shall be entitled to deduct and retain the two-percent commission on said gross tax set forth in §305, and said new employee shall be entitled to the two-percent deduction, provided that such deduction and payment to the Borough Treasurer is made within the three months next following the date of employment of the new employee. (Ord. 294, 3/20/1967; as amended by Ord. 465, 1/14/1987; by Ord. 474, 12/9/1988; by Ord. 478, 8/10/1988; by Ord. 480, 12/14/1988; and by Ord. 707, 12/14/2005)

§308. Self-Employed Individuals and Employers Beyond Corporate Limits of the Borough of Mohnton.

Each self-employed individual in the Borough of Mohnton who performs any services of any type or kind within the corporate limits of the Borough of Mohnton, whether the same be regarded either as a profession or as a business, shall be required to pay an EMS tax of \$52 for himself and shall, further, be required to deduct and pay over in the manner hereinbefore set forth in §305, an annual EMS tax of \$52 for every individual in his employ who is engaged in the performance of any occupation or profession for him within the Borough of Mohnton. Any individual engaged in any occupation within the Borough who is an employee of another shall be liable for the payment of the EMS tax of \$52 for himself and shall be treated and regarded as a self-employed individual if the location of the business of his employer is beyond the corporate limits of the Borough of Mohnton. Each employer whose business location is beyond the corporate limits of the Borough of Mohnton shall be required to furnish to the Borough Treasurer a list of all individuals employed by him who exercise the privilege of engaging in any occupation of any type or kind within the corporate limits of the Borough of Mohnton after the effective date of this Part 3 and during the current fiscal year. (Ord. 294, 3/20/1967; as amended by Ord. 465, 1/14/1987; by Ord. 474, 12/9/1988; by Ord. 478, 8/10/1988; by Ord. 480, 12/14/1988; and by Ord. 707, 12/14/2005)

§309. Domestics.

Where a person is engaged in domestic services for others and has more than one employer in the performance of such services, the employer by whom such domestic is employed on the first day of March of each fiscal year is responsible for the collection and payment of the annual EMS tax for such domestic to the Borough Treasurer, and in the event that the domestic is not employed by any person on the first day of March of each fiscal year, said responsibility for deducting and paying over the Borough EMS tax shall rest upon the employer of the domestic on the next succeeding date following the first day of March of each fiscal year, and said employer shall furnish to said domestic employee a certificate of payment of said EMS tax to be exhibited to all other employers of said domestic, and the producing of said certificate to such other employers shall excuse them from the deduction of any further EMS tax from said domestic employee for the current fiscal year. (Ord. 294, 3/20/1967; as amended by Ord. 465, 1/14/1987; by Ord. 474, 12/9/1988; by Ord. 478, 8/10/1988; by Ord. 480, 12/14/1988; and by Ord. 707, 12/14/2005)

§310. Other Taxes.

The tax imposed by this Part 3 shall be in addition to all other taxes of any kind or nature heretofore or hereafter levied by the Borough of Mohnton. (Ord. 294, 3/20/1967; as amended by Ord. 465, 1/14/1987; by Ord. 474, 12/9/1988; by Ord. 480, 12/14/1988; and by Ord. 707, 12/14/2005)

§311. Adoption of Rules and Regulations.

The Council of the Borough of Mohnton is hereby empowered to prescribe and adopt, by resolution, rules and regulations relating to any matter pertaining to the enforcement of this Part 3. (Ord. 294, 3/20/1967; as amended by Ord. 465, 1/14/1987; by Ord. 474, 12/9/1988; by Ord. 480, 12/14/1988; and by Ord. 707, 12/14/2005)

§312. Powers and Duties of the Borough Treasurer.

1. It shall be the duty of the Treasurer to collect and receive the taxes, fines or penalties imposed by this Part 3. It shall also be his duty to keep a record showing the amount received by him from each self-employed person paying the tax and the date of such receipt; and, further, it shall be his duty to keep a record showing the amount received by him from every employer paying the tax on behalf of his employees by deduction made by such employer from the salary, wages, commissions or other forms of recompense.
2. The Treasurer is hereby charged with the administration and enforcement of the provisions of this Part 3 and is hereby empowered to administer and enforce rules and regulations prescribed and adopted by Borough Council and is further charged with the responsibility for re-examination and correction of any returns made in compliance with this Part 3 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 Treasurer shall have the right to appeal to the Court of Common Pleas of Berks County as in other cases provided.
3. The Treasurer is hereby authorized to examine the books and payroll records of any employer in order to verify the accuracy of any return made by any employer on behalf of his employees or, if no return was made, to ascertain the EMS tax due. Each employer in the Borough of Mohnton is hereby directed and required to give to the Treasurer the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

(Ord. 294, 3/20/1967; as amended by Ord. 465, 1/14/1987; by Ord. 474, 12/9/1988; by Ord. 480, 12/14/1988; and by Ord. 707, 12/14/2005)

§313. Suit on Collection.

1. In the event that any tax under this Part 3 remains due or unpaid at the end of the current fiscal year, the Treasurer may sue for the recovery of any such tax due or unpaid under this Part 3, together with penalty.
2. If for any reason the tax is not paid when due in each fiscal year, interest at the rate of 6% on the amount of said tax shall be calculated beginning with the first Monday of each fiscal year, and a penalty of 5% shall be added to the flat rate of

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said tax for nonpayment thereof on and after the first day of July of each fiscal year. Where suit is brought for the recovery of any EMS tax, the individual liable therefore shall, in addition, be responsible and liable for the costs of collection and the interest and penalties herein imposed. (Ord. 294, 3/20/1967; as amended by Ord. 465, 1/14/1987; by Ord. 474, 12/9/1988; by Ord. 478, 8/10/1988; by Ord. 480, 12/14/1988; and by Ord. 707, 12/14/2005)

§314. Fines and Penalties.

Whoever makes any false or untrue statement on any return required by this Part 3, or who refuses inspection of his books, records or accounts in his custody or control, in order to determine the number of employees subject to the EMS tax who are in his employment, or whoever fails or refuses to file any return required by this Part 3, shall, upon conviction before any District Justice, be sentenced to pay a fine of not more than \$300 for each offense and, in default of payment of said fine, to be imprisoned in Berks County Prison for a period not exceeding 90 days, for each offense. It is further provided that action to enforce the penalty herein provided may be begun and instituted against any person in charge of the business premises of any employer who has failed or who refuses to file a return required by this Part 3. (Ord. 294, 3/20/1967; as amended by Ord. 465, 1/14/1987; by Ord. 474, 12/9/1988; by Ord. 478, 8/10/1988; by Ord. 480, 12/14/1988; and by Ord. 707, 12/14/2005)

§315. Occupations Requiring Licenses.

If any individual is engaged in any occupation of any type or kind licensed by the Commonwealth of Pennsylvania, the tax imposed by this Part 3 shall nevertheless be payable and due by said individual for the privilege of maintaining a location within the corporate limits of the Borough of Mohnton or for the carrying on of such occupation or business so licensed within the corporate limits of the Borough of Mohnton. (Ord. 294, 3/20/1967; as amended by Ord. 465, 1/14/1988; by Ord. 474, 12/9/1988; by Ord. 480, 12/14/1988; and by Ord. 707, 12/14/2005)

§316. Authority for Enactment.

This Part 3 is enacted under the authority of Act 222 of 2004. (Ord. 294, 3/20/1967; as amended by Ord. 465, 1/14/1987; by Ord. 474, 12/9/1988; by Ord. 480, 12/14/1988; and by Ord. 707, 12/14/2005)

§317. Claim for Refund.

Any claim for refund of any EMS tax paid during each fiscal year must be filed in writing with the Borough Treasurer on or before the first day of July of each fiscal year; any claim for refund filed on or after said date shall be barred and disallowed. (Ord. 294,

3/20/1967; as amended by Ord. 456, 1/14/1987; by Ord. 474, 12/9/1988; by Ord. 478, 8/10/1988; by Ord. 480, 12/14/1988; and by Ord. 707, 12/14/2005)

Part 4

Per Capita Tax

§401. Imposition of Tax.

The Borough of Mohnton hereby levies and assesses a Per Capita Tax of \$5 per annum on each resident of the Borough of Mohnton, 18 years of age and over, for the tax year 1999, which will be collectible at the same time as the per capita school tax. (Ord. 475, 12/9/1988, §1; as reenacted by Ord. 482, 12/14/1988, §1; as reenacted by Ord. 494, 12/13/1989, §1; by Ord. 502, 12/12/1990, §1; by Ord. 511, 12/11/1991, §1; as amended by Ord. 522, 12/9/1992, §1; by Ord. 537, 12/8/1993, §1; by Ord. 549, 12/14/1994, §1; by Ord. 559, 12/13/1995, §1; by Ord. 574, 12/11/1996, §1; by Ord. 590, 12/10/1997, §1; and by Ord. 599, 12/9/1998, §1)

Part 5

Occupation Assessment Tax

§501. Definitions.

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

BOROUGH - The Borough of Mohnton, Berks County, Pennsylvania.

EMPLOYER - an individual, partnership, association, corporation, governmental body, agency or other entity employing one (1) or more persons on a salary, commission or other compensation basis, including a self-employed person.

HE, HIS or HIM - the singular and plural number, as well as male, female and neuter gender.

INDIVIDUAL - any person, male or female, who attains or is over the age of eighteen (18) years after the effective date of this Part, and is engaged in any occupation, trade or profession of any nature, type or kind whatsoever, resides within the corporate limits of the Borough, whether in the employ of another or self-employed during any fiscal year.

OCCUPATION - any trade, profession, business or undertaking of any type, kind or character, including services, domestic or other, carried on or performed either within the corporate limits of the Borough or outside this corporate limits of the Borough, for which compensation is charged or received, whether by means of salary, wages, commissions or fees for services rendered.

SECRETARY - the Secretary of the Borough of Mohnton under whose direction this tax shall be enforced.

TAX - the flat rate occupation tax levied by this Part.

TAX COLLECTOR - the person or agency designated by the Borough to collect the tax.

YEAR - the calendar year beginning January 1 and ending December 31 of each year.

(Ord. 542, 12/8/1993, §1)

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§502. Levy.

For general revenue purposes, a tax is hereby levied upon individuals engaged in an occupation and residing within the corporate limits of the Borough during the year beginning January 1, 1994, and during each year thereafter. Each individual who is engaged in an occupation for any length of time during any year shall pay a flat rate in the amount of ten dollars (\$10.00) in accordance with the provision of the Part. This tax is in addition to all other taxes of any kind or nature levied by the Borough.

(Ord. 542, 12/8/1993, §2)

§503. Collection of Tax.

1. Payment. Said tax shall be paid to the Tax Collector of the Borough of Mohnton.
2. Delinquency. If said tax is not paid by the due date, hereinafter, a penalty of five (5) percent of the amount of the tax, together with interest computed at six (6) percent per annum until paid shall be added to the tax and collected.
3. Refund to Certain Individuals. If any individual engaging in an occupation, as is defined in this Part, received one thousand dollars (\$1,000.00), or less, gross income in any one (1) year from an occupation or occupations, the tax, following payment, may be refunded upon written application addressed to the Tax Collector and accompanied by any of the following:
 - A. Information return for U.S. income tax purposes.
 - B. A copy of current year U.S. income tax return.
 - C. A certificate from the individual's employer or employers certifying that the individual's gross income was less than one thousand dollars (\$1,000.00) when said certificate is accompanied by the individual's affidavit that the attached receipts or certificate of payment represents the total gross income received by him for the year. The tax collector shall be entitled to grant a refund up to February 1 of the current year.
4. Due Date.
 - A. Each resident shall pay the tax to the tax collector on or before July 1 of each year.
 - B. If said tax is paid on or before April 30, the individual shall receive a two (2) percent discount on the flat rate tax, i.e. a tax of nine dollars and eighty cents (\$9.80).
 - C. If said tax is paid after July 1, there shall be ten (10) percent penalty on the flat rate tax, i.e. a tax and penalty of eleven dollars (\$11.00).

5. Administration of Tax.

- A. It shall be the duty¹ of the tax collector to accept and receive payments of this tax and to keep a record thereof, showing the amount received by him from each employee or self-employed person, together with the date the tax was received.
- B. The tax collector is hereby charged with the administration and enforcement of this Part and is hereby charged and empowered to prescribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this Part, including 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 tax collector shall have the right to appeal to the Court of Common Pleas of Berks County as in other cases provided.
- C. The Borough Secretary is hereby authorized to examine the books and payroll records of any employer to ascertain the tax due. Each employer is hereby directed and required to give the Borough Secretary the means, facilities and opportunity for such examination.

6. Suits for Collection.

- A. In the event that any tax under this Part remains due or unpaid 30 days after the due date above set forth, the Borough Secretary may sue for the recovery of any such tax due or unpaid under this Part, 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 said tax and a penalty of 5% shall be added to the flat rate of said tax for nonpayment thereof. Where suit is brought for the recovery of this tax, the individual liable therefore shall, in addition, be responsible for the cost of collection.

7. Saving Clause.

- A. Nothing contained in this Part shall be construed to empower the Borough to levy and collect the tax hereby imposed on any resident not within the taxing power of the Borough under the Constitution of the United States and Constitution and laws of the Commonwealth of Pennsylvania.
- B. If the tax hereby imposed under the provision of this Part shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United States or of the Constitution of Laws of the Commonwealth of Pennsylvania as to any individual, the decision of the court shall not affect

¹ Editor's Note: Ord. 542 read "duly."

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or impair the right to impose or collect said tax, or the validity of the tax so imposed on other persons.

(Ord. 542, 12/8/1993, §3)