

Chapter 248

TAXATION

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[HISTORY: Adopted by the Borough Council of the Borough of Beech Creek as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Occupation Privilege Tax

[Adopted 6-4-1974 by Ord. No. 53 (Ch. XXIV, Part 2, of the 1978 Code of Ordinances)]

§ 248-1. Definitions.

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

BOROUGH OF BEECH CREEK — The area within the corporate limits of the Borough of Beech Creek.

COLLECTOR — The duly elected Tax Collector of the Borough of Beech Creek.

EMPLOYER — Any individual, partnership, association, 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.

FISCAL YEAR — The twelve-month period beginning January 1 – December 31.

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

INDIVIDUAL — Any person, male or female, engaged in any occupation, trade or profession within the corporate limits of the Borough of Beech Creek.

OCCUPATION — Any trade, profession, business or under-taking of any type, kind or character, including services carried on or performed within the corporate limits of the Borough of Beech Creek, which compensation is charged or received whether by means of salary, wages, commissions or fees for services rendered.

TAX — The occupation privilege tax in the amount of \$10 levied by this article.

§ 248-2. Levy.

The Borough of Beech Creek hereby levies and imposes on each occupation engaged in by individuals within its corporate limits an occupation privilege tax. This tax is in addition to all other taxes of any kind or nature heretofore levied by the Borough of Beech Creek.

§ 248-3. Amount of tax.

Beginning with the first day of January, 1975, each occupation, as hereinbefore defined, engaged in within the corporate limits of the Borough of Beech Creek shall be required to pay an occupation privilege tax in the amount of \$10 per annum.

§ 248-4. Duty of employers.

Each employer within the Borough of Beech Creek as well as those employers situated outside the Borough of Beech Creek, but who engage in business within the Borough of Beech Creek, is hereby charged with the duty of collection from each of his employes

engaged by him and performing for him within the Borough of Beech Creek the said tax of \$10 per annum and making a return and payment thereof to the Collector. Further, each employer is hereby authorized to deduct this tax from each employe in his employ, whether said employe is paid by salary, wages, or commission and whether or not part or all such services are performed within the Borough of Beech Creek.

§ 248-5. Returns.

Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied to him by the Collector. Each employer in filing this return and making payment of the tax withheld from his employes shall be entitled to retain a commission calculated at the rate of 2% of the gross tax due and payable, provided that such tax is collected and paid over by the employer on or before the dates hereinafter set forth. It is further provided that if the employer fails to file said return and pay said tax, whether or not he makes collection thereof from the salary, wages, or commissions paid by him to said employes, the employer shall be responsible for the payment of the tax in full without deducting a commission and as though the tax had originally been levied against him.

§ 248-6. Dates for determining tax liability and payment.

Each employer shall use his employment records from the first day of January to the 15th day of May for determining the number of employes from which said tax shall be deducted and paid over to the Collector on or before June 15 of each fiscal year. Supplemental reports shall be made by each employer on August 15 and October 15, of new employes as reflected on his employment records, from May 15 to August 15, August 15 to October 15. Payments on these supplemental reports shall be made on September 15 and November 15, respectively.

§ 248-7. Individuals engaged in more than one occupation.

Each individual who shall have more than one occupation within the Borough of Beech Creek shall be subject to the payment of this tax on his principal occupation and his principal employer shall deduct this tax and deliver to him evidence of deductions on a form to be furnished to the employer by the Collector, which form shall be evidence of deductions having been made and when presented to any other employer shall be authority for such employer to not deduct this tax from the employe's wages, but to include such employe on his return by setting forth his name, address and the name and account number of the employer who deducted this tax.

§ 248-8. Self-employed individuals.

All self-employed individuals who perform services of any type or kind, engage in any occupation or profession within the Borough of Beech Creek shall be required to comply with this article and pay the tax to the Collector on June 15 each year, or as soon thereafter as he engages in an occupation.

§ 248-9. Employers and self-employed individuals residing beyond corporate limits of Borough.

All employers and self-employed individuals residing or having their place of business outside of the Borough of Beech Creek, but who perform services of any type or kind, or engage in any occupation or profession within the Borough of Beech Creek 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 the Borough of Beech Creek. Further, any individual engaged in an occupation within the Borough of Beech Creek and an employee of a nonresident employer may, for the purpose of this article, be considered as a self-employed person, and in the event this tax is not paid, the Borough shall have the option of proceeding against either the employer or employee for the collection of this tax as hereinafter provided.

§ 248-10. Administration of tax.

- A. 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 to prescribe, adopt, promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this article including provisions for the examination of the 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 the decision of the Collector shall have the right to appeal to the Court of Common Pleas of Clinton 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.

§ 248-11. 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 said tax shall be calculated beginning with the due date 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 therefor shall, in addition, be responsible and liable for the costs of collection.

§ 248-12. Violations and penalties. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Whoever makes any false or untrue statement on any return required by this article, or who refuses inspection of his books, records or accounts in his custody and control setting forth the number of employes subject to this tax who are in his employment, or, whoever fails or refuses to file any return required by this article, shall, upon being found liable therefor, pay a fine of not more than \$600, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. If the penalty is not paid, the Borough shall initiate a civil action for collection in accordance with the Pennsylvania Rules of Civil Procedure. Each day a violation exists shall constitute a separate offense, and each section of this article that is violated shall also constitute a separate offense. In addition to or in lieu of enforcement under this section, the Borough may enforce this article in equity in the Court of Common Pleas of Clinton County. It is further provided that the action to enforce the fine and penalty herein provided may be instituted against any person in charge of the business of any employer who has failed or refuses to file a return required by this article.

§ 248-13. Severability.

The provisions of this article are severable and if any of its provisions shall be held invalid or unconstitutional, the decision of the court shall not affect or invalidate any of the remaining provisions. It is hereby declared to be the legislative intent that this article would have been adopted if such illegal, invalid or unconstitutional provision had not been included herein.

§ 248-14. Saving clause.

- A. Nothing contained in this article shall be construed to empower the Borough of Beech Creek to levy and collect the tax hereby imposed on any occupation not within the taxing power of the Borough under the Constitution of the United States and the laws of the Commonwealth of Pennsylvania. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- 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 II

Mercantile Tax

[Adopted 1-8-1985 by Ord. No. 1985-1 (Ch. XXIV, Part 5, of the 1978 Code of Ordinances)]

§ 248-15. Definitions.

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

ENGAGE IN BUSINESS — Engage in business within the Borough of Beech Creek, Clinton County, Pennsylvania.

FISCAL YEAR — The Borough's fiscal year beginning the first day of January.

GROSS OR WHOLE VOLUME OF BUSINESS — Includes both cash and credit transactions occurring within the Borough of Beech Creek, Clinton County, Pennsylvania, excepting that the tax shall not be levied on the dollar volume of business transacted by wholesale and retail dealers derived from the resale of goods, wares and merchandise taken by any dealer as a trade-in or as part payment for other goods, wares and merchandise, except to the extent that the resale price exceeds the trade-in allowance.

PERSON — Includes natural persons, corporations, partnerships, associations, firms and fiduciaries. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to associations shall mean the partners or members thereof, and as applied to corporations, the officers thereof. The term "person" shall not include those corporations or associations organized for religious, charitable or educational purposes, nor agencies of the government of the United States or the Commonwealth of Pennsylvania.

QUARTERLY or QUARTER — One of the four periods into which the fiscal year is divided, namely as follows: first quarter - January 1 to March 31; second quarter - April 1 to June 30; third quarter - July 1 to September 30; fourth quarter - October 1 to December 31.

RETAIL DEALER OR VENDOR — Any person who is a dealer in, or a vendor of goods, wares and merchandise who is not a wholesale dealer or wholesale vendor.

TAX COLLECTOR — The person duly elected or appointed by the Borough of Beech Creek to collect the tax hereinafter imposed.

TEMPORARY, SEASONAL OR ITINERANT BUSINESS — Any business that is conducted at one location for less than 60 consecutive calendar days.

WHOLESALE DEALER OR VENDOR — Any person who sells to dealers in, or vendors of goods, wares and merchandise, and shall include any merchandise broker, factor or commission merchant.

§ 248-16. Imposition of tax.

A tax for general revenue purpose is hereby imposed upon the privilege of doing business within the Borough of Beech Creek, on and after July 1, 1985, according to the following schedule:

- A. Wholesale vendors or dealers in goods, wares, and merchandise at the rate of one mill on each dollar of whole or gross volume of business transacted.
- B. Retail vendors or dealers, and such businesses which may not be said to be wholesale, or retail, including all theaters and moving-picture houses; morticians; tombstone and monument dealers; meat dealers; grocers; druggists; confectioners; restaurants or other places where food, drink or refreshments are sold; produce and merchandise vendors; stationers; jewelers; lumber dealers, including commission men and all persons who make a business of buying lumber for sale; persons engaged in the development or improvement of real estate for profit; new and used furniture dealers; merchants

offering for sale goods, wares or merchandise at public auction; and those who engage in or conduct any of the several trades, businesses or occupations herein enumerated with the use of vending machines; and dealers and/or collectors of salvage, rags, junk, ashes, or refuse, at the rate of 1 1/2 mills on each dollar of gross volume of business transacted.

- C. Persons who are engaged in a business which is both wholesale and retail, or in both types of business, at the rate of one mill on each dollar of the annual gross volume of wholesale business transacted, and at the rate of 1 1/2 mills on the gross volume of retail business transacted.
- D. Persons who are engaged in a business, temporary, seasonal or itinerant by its nature, if at wholesale at the rate of one mill on each dollar of the whole volume gross of business transacted within the territorial limits of the Borough of Beech Creek and if at retail at the rate of 1 1/2 mills on each dollar of the whole volume gross of business transacted by him within the territorial limits of the Borough of Beech Creek.

§ 248-17. Returns.

- A. Every person subject to the tax herein imposed by this article shall make a quarterly return to the Tax Collector upon a form provided by the Tax Collector, which form shall include the computed quarterly gross volume of business, the classification of the business, the rate of the tax, and such other pertinent information as the Tax Collector may require. Every return shall be given under oath as to the facts appearing thereon, or may be certified to as a true and correct and complete return given under penalty of perjury. The return for a quarter as required in this section shall be filed on or before the 15th day of the quarter next succeeding the quarter for which the return is to be filed; that is, the return for the quarter from the first day of July to the 30th day of September shall be filed on or before the 15th day of October, and likewise for the following quarters on the 15th day of January, April, and July, respectively. No person, however, shall be considered to have failed to have filed a return under this section until 15 days after the date for filing the return.
- B. Those temporary, seasonal or itinerant persons who shall engage in business for a period of less than 60 consecutive days shall file their return on the day they conclude their business, but the Tax Collector, in his discretion, may extend the time of filing an additional 15 days before the person will be considered to have failed to file a return.

§ 248-18. Improper returns or failure to file; tax due; appeal.

- A. If the Tax Collector is of the opinion that any person shall have made a return that is not true and correct or shall have failed to file a return, the Tax Collector shall assess the said person for such gross volume of business and at such rate, and in such classification, as shall be proper. The Tax Collector may make an assessment at any time after the returns have been filed, or after the returns have not be filed.
- B. If the Tax Collector shall make an assessment, the Tax Collector shall give notice of the assessment to the person affected. Such notice shall set forth the fact of the assessment, the classification of the business, the rate of tax and the tax due according

to the assessment. Any person aggrieved by any decision of the Tax Collector shall have the right to appeal to the appropriate court as in other cases.

§ 248-19. Payment.

- A. Payment of the tax imposed by this article for a quarter shall be made on or before the 15th day of the quarter next succeeding the quarter for which the tax is to be paid, but no tax imposed by this article shall be considered overdue until 15 days after the date for paying the tax.
- B. An assessment or appeal shall not affect the day payment is due, but any amounts imposed by an assessment shall be considered due as above, that is retroactively from the final assessment.
- C. Those persons who engage in business for a period of less than 60 days consecutively shall pay the tax imposed by this article on the day their return should be filed with the Tax Collector according to § 248-17, above, and the tax will be immediately overdue if not paid by such date.

§ 248-20. Issuance of receipts.

The Tax Collector shall issue a receipt upon payment of the tax imposed by this article. If an additional sum is found due under an assessment, the Tax Collector shall issue a supplemental receipt upon payment of the additional sum.

§ 248-21. Retention of receipts.

Every person who shall have received a receipt issued in accord with § 248-20, above, shall retain the same and exhibit it upon request during a period of one year after the time when the tax which is receipted shall have become due.

§ 248-22. Conducting business without paying tax prohibited.

No person shall conduct any business subject to the payment of the tax imposed by this article after the payment of the tax shall have become overdue and remain unpaid.

§ 248-23. Violations and penalties. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Any person, or any officer, agent, employee, employer, or servant who knowingly makes any incomplete, false, or fraudulent return or application required in this article; or who fails, neglects, or refuses to file a return or application required by this article, shall, upon being found liable therefor, pay a fine of not more than \$600, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. If the penalty is not paid, the Borough shall initiate a civil action for collection in accordance with the Pennsylvania Rules of Civil Procedure. Each day a violation exists shall constitute a separate offense, and each section of this article that is violated shall also constitute a separate offense.

In addition to or in lieu of enforcement under this section, the Borough may enforce this article in equity in the Court of Common Pleas of Clinton County.

A.

§ 248-24. Suit for collection; interest and penalty.

- A. The Tax Collector may sue for the recovery of taxes due and unpaid under this article.
- B. If for any reason the tax is not paid when due in each year, interest at the rate of 6% per annum on the amount of said tax, and an additional penalty of 1% per annum on 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 penalties herein imposed.

ARTICLE III

**Realty Transfer Tax
[Adopted 10-2-2007]**

§ 248-25. Imposition of tax.

The Council of the Borough of Beech Creek, Clinton County, Pennsylvania hereby adopts the provisions of Article XI-D of the Tax Reform Code of 1971 and imposes a realty transfer tax as authorized under that Article subject to the rate limitations therein. The tax amount imposed under this section shall be at the rate of 1% which may be from time-to-time modified by resolution of the Council of the Borough of Beech Creek without the need to amend this article.

§ 248-26. Administration.

The tax imposed under § 248-25 and all applicable interest and penalties shall be administered, collected and enforced under the Act of December 31, 1965 (P.L. 1257, No. 511), as amended, known as "The Local Tax Enabling Act," provided, that if the correct amount of the tax is not paid by the last date prescribed for timely payment, Beech Creek Borough, pursuant to Section 1102-D of the Tax Reform Code of 1971 (72 P.S. § 8102-D), authorizes and directs the Department of Revenue of the Commonwealth of Pennsylvania to determine, collect and enforce the tax, interest and penalties.

§ 248-27. Interest.

Any tax imposed under § 248-25, above, that is not paid by the date the tax is due shall bear interest as prescribed for interest on delinquent municipal claims under the Act of May 16, 1923 (P.L. 207, No. 153) (53 P.S. § 7101 et seq.), as amended, known as "The Municipal Claims and Tax Liens Act." The interest rate shall be the lesser of the interest rate imposed

1. Editor's Note: See now 53 P.S. § 6924.101 et seq.

upon delinquent commonwealth taxes as provided in Section 806 of the Act of April 9, 1929 (P.L. 343, No. 176) (72 P.S. § 806), as amended, known as "The Fiscal Code," or the maximum interest rate permitted under the Municipal Claims and Tax Liens Act for tax claims.

§ 248-28. Severability. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

In the event any provision, section, sentence, clause or part of this article shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this article, it being the intent of the Borough that such remainder shall remain in full force and effect.

§ 248-29. Repealer.

All ordinances or parts of ordinances that are inconsistent with this article shall be and the same expressly are repealed.

§ 248-30. When effective.

The provisions of this article shall become effective on the first day allowable under the Commonwealth of Pennsylvania's Borough Code.

ARTICLE IV

Earned Income Tax

[Adopted 12-6-2011 by Ord. No. 4-2011²]

§ 248-31. Definitions.

As used in this article, the following terms shall have the meanings indicated:

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

BUSINESS ENTITY — A sole proprietorship, corporation, joint-stock association or company, partnership, limited partnership, limited liability company, association, business trust, syndicate or other commercial professional activity organized under the laws of this commonwealth or any other jurisdiction.

CLAIM — A written demand for payment made by a Tax Officer or Tax Collection District for income taxes collected by another Tax Officer or Tax Collection District.

CORPORATION — A corporation or joint-stock association organized under the laws of the United States, the Commonwealth of Pennsylvania or any other state, territory, foreign

2. Editor's Note: This ordinance, in its preamble, also noted that it reenacted, restated and amended in entirety the Borough's prior ordinance relating to the earned income and net profits tax.

country or dependency. The term shall include an entity which is classified as a corporation for federal income tax purposes.

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

DEPARTMENT — The Department of Community and Economic Development of the Commonwealth.

DOMICILE — The place where a person lives and has a permanent home and to which the person has the intention of returning whenever absent. Actual residence is not necessarily domicile, for "domicile" is the fixed place of abode which, in the intention of the taxpayer, is permanent rather than transitory. "Domicile" is the voluntarily fixed place of habitation of a person, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some event occurs to induce a person to adopt some other permanent home. In the case of a business, "domicile" is that place considered as the center of business affairs and the place where its functions are discharged.

EARNED INCOME — The compensation as required to be reported to or as determined by the Department of Revenue under Section 303 of the Act of March 4, 1971 (P.L. 6, No. 2), known as the "Tax Reform Code of 1971,"³ and Rules and Regulations promulgated under that section. Employee business expenses as reported to or determined by the Department of Revenue under Article III of the Tax Reform Code of 1971 shall constitute allowable deductions in determining earned income. The term does not include offsets for business losses. The amount of any housing allowance provided to a member of the clergy shall not be taxable as earned income.

EARNED INCOME AND NET PROFITS TAX — The tax levied by the Borough on earned income and net profits.

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

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

LTEA — The Pennsylvania Local Tax Enabling Act, P.L. 1257, Act 511 of 1965, as amended.⁴

NET PROFITS — The net income from the operation of a business, other than a corporation, as required to be reported to or as determined by the Department of Revenue under Section 303 of the Act of March 4, 1971 (P.L. 6, No. 2), 72 P.S. § 7303, known as the "Tax Reform Code of 1971," and Rules and Regulations promulgated under that Section. The term does not include income under any of the following subsections:

A. Income which:

3. Editor's Note: See 72 P.S. § 7101 et seq.

4. Editor's Note: See now 53 P.S. § 6924.101 et seq.

- (1) Is not paid for services provided; and
- (2) Is in the nature of earnings from an investment.

B. Income which represents:

- (1) Any gain on the sale of farm machinery;
- (2) Any gain on the sale of livestock held 12 months or more for draft, breeding or dairy purposes; or
- (3) Any gain on the sale of other capital assets of a farm.

NONRESIDENT — A person or business domiciled outside the Borough levying the tax.

NONRESIDENT TAX — An income tax levied by a municipality on a nonresident.

RESIDENT — A person or business domiciled in the political subdivision levying the tax.

RESIDENT TAX — An income tax levied by:

- A. A municipality on a resident of that municipality; or
- B. A school district on a resident of that school district.

SUCCEEDING YEAR — The calendar year following the current year.

TAX COLLECTION COMMITTEE — The Committee established to govern the Beech Creek Borough Tax Collection District for the purpose of income collection. The term shall include a Joint Tax Collection Committee.

TAX COLLECTION DISTRICT — The Beech Creek Borough Tax Collection District established under Section 504 of the LTEA.⁵

TAX OFFICER/TAX COLLECTOR — The agency engaged to administer and collect earned income taxes for Tax Collection Districts. Unless otherwise specifically provided, for purposes of the obligations of an employer, the term shall mean the Tax Officer for the Tax Collection District within which the employer is located, or if an employer maintains workplaces in more than one district, the Tax Officer for each such district with respect to employees principally employed therein.

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

TAXABLE INCOME — Includes:

- A. In the case of an earned income and net profits tax, earned income and net profits.
- B. In the case of a personal income tax, income enumerated in Section 303 of the Act of March 4, 1971 (P.L. 6, No. 2), known as the "Tax Reform Code of 1971," 72 P.S.

⁵ Editor's Note: See 53 P.S. § 6924.504.

§ 7303, as reported to and determined by the Department of Revenue, subject to correction for fraud, evasion or error, as finally determined by the commonwealth.

TAXPAYER — A person or business required under this article to file a return of an income tax or to pay an income tax.

WITHHOLDING TAX — An income tax levied by a political subdivision under the authority of this article, or any other tax levied by a municipality or school district for which employer withholding may be required under this article.

§ 248-32. Imposition of tax.

- A. The total levied under this article is a continuation of a tax previously described in the above-referenced Whereas clauses.⁶ The tax previously imposed and continued under this article is a tax for general revenue purposes of five mills or 1/2% is hereby imposed on the following:
- (1) Earned income, as defined by this article, received by residents of the Borough on or after January 1, 2012;
 - (2) Earned income, as defined by this article, received by nonresidents of the Borough for work done or services performed or rendered in the Borough on or after January 1, 2012;
 - (3) Net profits, as defined by this article, earned on or after January 1, 2012, of businesses, professions, and other activities conducted by residents of the Borough; and
 - (4) Net profits, as defined by this article, earned on or after January 1, 2012, on businesses, professions, and other activities conducted by nonresidents in the Borough.
- B. The tax levied under Subsection A(1) and (2) herein shall relate to and be imposed upon salaries, wages, commissions, and other compensation paid by an employer or on its behalf to any person who is employed by or renders services to him. The tax levied under Subsection A(3) and (4) herein shall relate to and be imposed on the net profits of any business, profession, or enterprise carried on by any person as owner or as proprietor, either individually or in association with some other person or persons.

§ 248-33. Declaration and payment of tax.

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

6. Editor's Note: This wording refers to the preamble in Ord. No. 4-2011, a complete copy of which is on file in the Borough offices.

- (2) For a taxpayer whose fiscal year is not a calendar year, the Tax Officer shall establish deadlines for filing, reporting and payment of taxes that provide time periods equivalent to those provided for a calendar-year taxpayer.
- B. Partial domicile. The income subject to tax of a taxpayer who is domiciled in the Borough for only a portion of the tax year shall be an amount equal to the taxpayer's taxable income multiplied by a fraction, the numerator of which is the number of calendar months during the tax year that the individual is domiciled in the Borough and the denominator of which is 12. A taxpayer shall include in the numerator any calendar month during which the taxpayer is domiciled for more than half the calendar month. A day that a taxpayer's domicile changes shall be included as a day the individual is in the new domicile and not the old domicile. If the number of days in the calendar month in which the individual lived in the old and new domiciles are equal, the calendar month shall be included in calculating the number of months in the new domicile.
- C. Declaration and payment. Except as provided in Subsection A(2) of § 248-33 of this article, taxpayers shall declare and pay income taxes as follows:
- (1) Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the resident Tax Officer, a final return showing the amount of taxable income received during the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of tax due on the taxable income, the amount of tax paid, the amount of tax that has been withheld under Section 512 of the LTEA, 53 P.S. § 6924.512, and the balance of tax due. All amounts reported shall be rounded to the nearest whole dollar. At the time of filing the final return, the taxpayer shall pay the Resident Tax Officer the balance of the tax due or shall make demand for refund or credit in the case of overpayment. Every taxpayer is required to file a final return showing the amount of earned income received even if no payment is due and owing.
 - (2) Every taxpayer making net profits shall, by April 15 of the current year, make and file with the Resident Tax Officer declaration of the taxpayer's estimated net profits during the period beginning January 1 and ending December 31 of the current year, and shall pay to the Resident Tax Officer in four equal quarterly installments, the tax due on the estimated net profits. The first installment shall be paid at the time of filing the declaration, and the other installments shall be paid on or before June 15 of the current year, September 15 of the current year, and January 15 of the succeeding year, respectively.
 - (3) Any taxpayer who first anticipates any net profit after April 15 of the current year shall make and file the declaration required on or before June 15 of the current year, September 15 of the current year, or December 31 of the current year, whichever date next follows the date on which the taxpayer first anticipates such net profit, and shall pay to the Resident Tax Officer in equal installments the tax due on or before the quarterly payment dates that remain after the filing of the declaration.
 - (4) Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the Resident Tax Officer a final return showing the amount of net profits earned or received based on the method of accounting used by the taxpayer during the period beginning January 1 of the current year, and ending December

31 of the current year, the total amount of tax due on the net profits and the total amount of tax paid. At the time of filing the final return, the taxpayer shall pay to the Resident Tax Officer the balance of tax due or shall make demand for refund or credit in the case of overpayment. Any taxpayer may, in lieu of paying the fourth quarterly installment of the estimated tax, elect to make and file with the Resident Tax Officer on or before January 31 of the succeeding year, the final return. Every taxpayer is required to file a return showing the amount of net profit earned or received even if no payment is due or owing.

- (5) Every taxpayer who has filed the declaration required under this subsection and who anticipates additional net profits not previously declared or has overestimated anticipated net profits may file adjusted declarations of estimated net profits and for the payments of the estimated taxes per any rules/regulations made by the Department in consultation with the Department of Revenue.
- (6) Every taxpayer who discontinues business prior to December 31 of the current year, shall, within 30 days after the discontinuance of business, file a final return as required under this subsection and pay the tax due.
- (7) Every taxpayer who receives any other taxable income not subject to withholding under Section 512(3) of the LTEA, 53 P.S. § 6924.512(e), shall make and file with the Resident Tax Officer a quarterly return on or before April 15 of the current year, June 15 of the current year, September 15 of the current year, and January 15 of the succeeding year, setting forth the aggregate amount of taxable income not subject to withholding by the taxpayer during the three-month periods ending March 31 of the current year, June 30 of the current year, September 30 of the current year, and December 31 of the current year, respectively, and subject to income tax, together with such other information as the Department may require. Every taxpayer filing a return shall, at the time of filing of the return, pay to the Resident Tax Officer the amount of income tax due. In accordance with the criteria established by the Department, the Tax Officer may waive the quarterly return and payment of the income tax and permit a taxpayer to file the receipt of taxable income on the taxpayer's annual return and pay the income tax due on or before April 15 of the succeeding year.

§ 248-34. Withholding and remittance.

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

- A. Every employer having an office, factory, workshop, branch, warehouse, or other place of business within the Tax Collection District which employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, who has not previously registered, shall, within 15 days after becoming an employer, register with the Tax Officer the name and address of the employer and such other information as the Tax Officer may require.
- B. Forms of certificates of residency may be obtained by an employer from the applicable Tax Officer or from the Department upon request by an employer.

- C. Every employer having an office, factory, workshop, branch, warehouse or other place of business within a Tax Collection District that employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, shall, at the time of payment, deduct from the compensation due each employee employed at such place of business, the greater of the employee's resident tax or the employee's nonresident tax as released in the Official Register under Section 511 of the LTEA, 53 P.S. § 6934.511.
- D. Except as set forth in Subsection E, infra, within 30 days following the end of each calendar quarter, every employer shall file a quarterly return and pay the amount of income taxes deducted during the preceding calendar quarter to the Tax Officer for the place of employment of each employee. The form shall show the name, address, and social security number of each employee, the compensation of the employee during the preceding three-month period, the income tax deducted from the employee, the political subdivision imposing the income tax upon the employee, the total compensation of all employees during the preceding calendar quarter, the total income tax deducted from the employees and paid with the return and any other information prescribed by the Department.
- E. Notwithstanding Subsection D above, the provisions of this subsection shall apply if an employer has more than one place of employment in more than one Tax Collection District. Within 30 days following the last day of each month, the employer may file the return required by Subsection D and pay the total amount of income taxes deducted from employees in all work locations during the preceding month to the Tax Officer for either the Tax Collection District in which the employer's payroll operations are located or as determined by the Department. The return and income Taxes deducted shall be filed and paid electronically. The employer must file a notice of intention to file combined returns and make combined payments with the Tax Officer for each place of employment at least one month before filing its first combined return or making its first combined payment. This subsection shall not be construed to change the location of an employee's place of employment for purposes of nonresident tax liability.
- F. Any employer who, for two of the preceding four quarterly periods, has failed to deduct the proper income tax, or any part of the income tax, or has failed to pay over the proper amount of income tax as required by Subsection C to the Tax Collection District, may be required by the Tax Officer to file returns or pay the income tax monthly. In such cases, payments of income tax shall be made to the Tax Officer on or before the last day of the month succeeding the month for which the income tax was withheld.
- G. On or before February 28 of the year succeeding that of the effective date of this article and each succeeding year thereafter, every employer shall file with the Tax Officer where income taxes have been deducted and remitted pursuant to Subsection C of § 248-34 of this article:
- (1) An annual return showing, for the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of compensation paid, the total amount of income tax deducted, the total amount of income tax paid to the Tax Officer and any other information prescribed by the Department.

- (2) An individual withholding statement, which may be integrated with the Federal Wage and Tax Statement (Form W-2) for each employee employed during all or any part of the period beginning January 1 of the current year and ending December 31 of the current year, setting forth the address and social security number, the amount of compensation paid to the employee during the period, the amount of income tax deducted, the amount of income tax paid to the Tax Officer, the numerical code prescribed by the Department representing the Tax Collection District where the payments required by Subsections D and E were remitted and any other information required by the Department. Every employer shall furnish one copy of the individual withholding statement to the employee for whom it is filed.
- H. Any employer who discontinues business prior to December 31 of the current year shall, within 30 days after the discontinuance of business, file returns and withholding statements required under this section and pay the income tax due.
- I. Except as otherwise provided in Section 511 of the LTEA, 53 P.S. § 6924.511, an employer who willfully or negligently fails or omits to make the deductions required by this subsection shall be liable for payment of income taxes which the employer was required to withhold to the extent that the income taxes have not been recovered from the employee. The failure or omission of any employer to make the deductions required by this section shall not relieve any employee from the payment of the income tax or from complying with the requirements for filing of declaration and returns.

§ 248-35. Exemptions and credits.

- A. No exemptions or credits based on age or income, or any other conditions are granted by this article. Nothing in this article is intended to preclude or inhibit any credit or exemption imposed by act of law or regulation.
- B. Payments of tax on income due any state other than Pennsylvania, or to any political subdivision thereof, by residents thereof pursuant to any state or local law, to the extent that such information includes salaries, wages, commissions, bonuses, incentive payments, fees, tips and other compensation or net profits of businesses, professions or other activities, but in such proportions as hereinafter set forth, shall be credited to and allowed as a deduction from the liability of such person for the tax imposed by this article on salaries, wages, commissions, bonuses, incentive payments, fees, tips, and other compensation or net profits of business, professions or other activities, if residents of the Borough receive like credits and deductions of a similar degree from the tax on income imposed by the other state or political subdivision thereof.
 - (1) Where a credit or deduction is allowable, it shall be allowed in proportion to the concurrent periods for which taxes are imposed by the other state or respective political subdivision, but not in excess of the amount paid for the concurrent period and not in excess of the local Pennsylvania tax liability. No other exemptions based on any other factor to include age or income level is granted by this article. Nothing in this article is intended to preclude or inhibit any credit or exemption imposed by act of law or regulation.

- (2) No credit or deduction shall be allowed against any tax on earned income imposed under authority of this article to the extent the amount of credit or deduction takes from the same period by the taxpayer against any income tax imposed by the Commonwealth of Pennsylvania under Section 314 of the Act of March 4, 1971 (P.L., No. 2) known as the "Tax Reform Code of 1971," on account of taxes imposed on income by other states or by their political subdivisions.
- C. Any nonresident who is otherwise subject to the earned income tax of the Borough is hereby exempted from the imposition, collection, and payment of this tax, provided the domicile of the nonresident taxpayer provides a like exemption from the imposition, collection and payment of an earned income tax to any resident of the Borough, Clinton County, Pennsylvania, who would otherwise be subject to an earned income tax in the domicile of that nonresident. No other exemption or credit based on any other factor to include age or income level is granted by this article. Nothing in this article is intended to preclude or inhibit any credit or exemption imposed by act of law or regulation.

§ 248-36. Powers and duties of Tax Officer.

- A. Tax collection. The collection and administration of the tax provided for in this article shall be performed by the Tax Officer appointed by the Tax Collection Committee. It shall be the duty of the Tax Officer to:
- (1) Collect, reconcile, administer and enforce income taxes imposed on residents and nonresidents in the Borough included in the Tax Collection District.
 - (2) Receive and distribute income taxes and to enforce withholding by employers located in the Tax Collection District.
 - (3) Receive income taxes distributed by Tax Officers for other Tax Collection Districts.
 - (4) Invest all income taxes in the custody of the Tax Officer in authorized investments, subject to the approval of the Tax Collection Committee. The Tax Officer shall observe the standard of care that would be observed by a prudent person dealing with property of another. For the purposes of this subsection, the term "authorized investment" shall include those investments as provided in Section 509(a) of the LTEA, 53 P.S. § 6924.509(a).
- B. Monthly reports. The Tax Officer shall, within 20 days after the end of each month, provide a written report, on forms prescribed by the Department, to the Secretary of the Tax Collection Committee and to the Secretary of the Borough for which taxes were collected during the previous month. The report shall include a breakdown of all income taxes, income generated from investments under this article.
- C. Overpayments. A Tax Officer shall refund under Section 53 Pa.C.S. § 8425 (relating to refunds of overpayments) and § 8426 (relating to interest on overpayments), on petition of and proof by the taxpayer, Income taxes paid in excess of income taxes rightfully due.

7. Editor's Note: See 72 P.S. § 7101 et seq.

- D. Bonds. Prior to initiating any official duties, each Tax Officer shall give and acknowledge a bond to the appointing Tax Collection Committee as provided in Section 509(d) of the LTEA, 53 P.S. § 6924.509(d).
- E. Records. It shall be the duty of the Tax Officer to keep a record showing the amount of income taxes received from each taxpayer or other Tax Officer, the date of receipt, the amount and date of all other monies received or distributed and any other information required by the Department. All tax records shall be the property of the Borough and the Tax Collection District in which the taxes were collected. The Tax Collection District and Tax Officer shall retain all tax records as directed by the Tax Collection Committee and, when applicable, in accordance with Retention and Disposition Schedules established by the Local Government Records Committee of the Pennsylvania Historical and Museum Commission under 53 Pa.C.S.A. Ch. 13, Subch. F (relating to records). Tax records under this subsection may be retained electronically as permitted by law.
- F. Employer and taxpayer audits.
- (1) In order to verify the accuracy of any income tax declaration or return, or if no declaration or return was filed, to ascertain the income tax due, the Tax Officer and the Tax Officer's designated employees may examine or audit the records pertaining to income taxes due of any of the following:
 - (a) An employer;
 - (b) A taxpayer; and/or
 - (c) A person whom the Tax Officer reasonably believes to be an employer or taxpayer.
 - (2) The examination of audit conducted by the Tax Officer or the Tax Officer's designated employees shall conform to the requirements set forth in the Local Taxpayer's Bill of Rights, 53 Pa.C.S.A. § 8421 et seq.
 - (3) Every employer or taxpayer or other person whom the Tax Officer reasonably believes to be an employer or taxpayer shall provide to the Tax Officer and the Tax Officer's designated employees the means, facilities and opportunity for the examination and investigation authorized under § 248-36F(1) of this article.
 - (4) For purposes of this subsection, the term "records" shall include any books, papers and relevant federal or state tax returns and accompanying schedules, or supporting documentation for any income taxable under this article.
- G. Exchange of information.
- (1) The Tax Officer shall ensure that the Tax Collection District enters into an agreement with the Pennsylvania Department of Revenue for the exchange of information necessary for the collection of income taxes.
 - (2) The Pennsylvania Department of Revenue may enter into agreements with each Tax Collection District and shall establish procedures under which tax collection, filing and other taxpayer and locality information in its custody will be made available to Tax Officers for purposes of collection, reconciliation and

enforcement no later than one year after the deadline for filing returns for the tax year in question.

- H. Actions for collection of income taxes. The Tax Officer may file an action in the name of the Borough for the recovery of income taxes due to the Borough and unpaid. Nothing in this subsection shall affect the authority of the Borough to file an action in its own name for collection of income taxes under this article. This subsection shall not be construed to limit a Tax Officer, a Tax Collection District, or the Borough from recovering delinquent income taxes by any other means provided by this article or by law. Actions for collection of income taxes shall be subject to the following:
- (1) Except as set forth in Subsection H(2) and (4) of § 248-36 of this article, an action brought to recover income taxes must be commenced within three years of the later of the date:
 - (a) The income taxes are due;
 - (b) The declaration or return has been filed; or
 - (c) Of a redetermination of compensation or net profits by the Pennsylvania Department of Revenue.
 - (2) If there is substantial understatement of income tax liability of 25% or more and there is no fraud, an action must be commenced within six years.
 - (3) Except as set forth in Subsection H(4)(b) of § 248-36 of this article, an action by a Tax Officer for recovery of an erroneous refund must be commenced as follows:
 - (a) Except as set forth in Subsection H(3)(b) of § 248-36 of this article, within two years after making the refund.
 - (b) If it appears that any part of the refund was induced by fraud or misrepresentation of material fact, within five years after making the refund.
 - (4) There is no limitation of action if any of the following apply:
 - (a) A taxpayer fails to file a declaration or return required under this article.
 - (b) An examination of a declaration or return or of other evidence in the possession of the Tax Officer relating to the declaration or return reveals a fraudulent evasion of income taxes.
 - (c) An employer has deducted income taxes under Section 512 of the LTEA, 53 P.S. § 6924.512, and has failed to pay the amount deducted by the Tax Officer.
 - (d) An employer has intentionally failed to make deductions required by this article.
- I. Interest and penalties.

- (1) Except as provided in Subsection I(2) of § 248-36 of this article, if the income tax is not paid when due, interest at the rate the taxpayer is required to pay to the commonwealth under Section 806 of the Act of April 9, 1929 (P.L. 343, No. 176), known as "The Fiscal Code," 72 P.S. § 806, on the amount of the income tax, and an additional penalty of 1% of the amount of the unpaid income tax for each month or fraction of a month during which the income tax remains unpaid shall be added and collected but the amount shall not exceed 15% in the aggregate. Where an action is brought for the recovery of the income tax, the taxpayer liable for the income tax shall, in addition, be liable for the costs of collection, interest and penalties.
- (2) The Department may establish conditions under which a Tax Officer, with the concurrence of the Tax Collection Committee, may abate interest or penalties that would otherwise be imposed for the nonreporting or underreporting of income tax liabilities or for the nonpayment of income taxes previously imposed and due if the taxpayer voluntarily files delinquent returns and pays the income taxes in full.
- (3) The provision of Subsection I(3) of § 248-36 of this article shall not affect or terminate any petitions, investigations, prosecutions or other proceedings pending under this article, or prevent the commencement or further prosecution of any proceedings by the proper authorities for violations of this article. No proceeding shall, however, be commenced on the basis of delinquent returns filed pursuant to Subsection H of § 248-36 of this article if the returns are determined to be substantially true and correct and the income taxes are paid in full within the prescribed time.

J. Fines and penalties for violations.

- (1) Any taxpayer who fails, neglects or refuses to make any declaration or return required by this article, any employer who fails, neglects or refuses to register, keep or supply records or returns required by Section 512 of the LTEA, 53 P.S. § 6924.512, or to pay the income tax deducted from employees, or fails, neglects or refuses to deduct or withhold the income tax from employees, any taxpayer or employer who refuses to permit the Tax Officer appointed by a Tax Collection Committee or an employee or agent of the Tax Officer to examine books, records and papers, and any taxpayer or employer who knowingly make any incomplete, false or fraudulent return, or attempts to do anything whatsoever to avoid the full disclosure of the amount of income in order to avoid the payment of income taxes shall, upon conviction thereof, be sentenced to pay a fine of not more than \$2,500 for each offense and reasonable accosts, and in default of payment of said fines and costs, to imprisonment for not more than six months.
- (2) Any employer required under this article to collect, account for and distribute income taxes who willfully fails to collect or truthfully account for and distribute income taxes, commits a misdemeanor and shall upon conviction, be sentenced to pay a fine not exceeding \$25,000 or to imprisonment not exceeding two years, or both.
- (3) The penalties imposed under this subsection shall be in addition to any other costs and penalties imposed by this article.

- (4) The failure of any person to obtain forms required or making the declaration or returns required by this article shall not excuse the person from making the declaration or return.
- K. Costs. The Tax Officer shall be entitled to impose and collect the reasonable costs incurred to provide notices of delinquency or to implement similar procedures utilized to collect delinquent taxes from a taxpayer as approved by the Tax Collection Committee. Reasonable costs collected may be retained by the Tax Officer. An itemized accounting of all costs collected shall be remitted to the Tax Collection Committee on an annual basis.
- L. Appeals and Tax Officer Actions. A determination of the Tax Officer relating to the assessment, collection, refund, withholding, remittance or distribution of income taxes may be appealed to the Appeals Borough established by the Tax Collection Committee by a taxpayer, employer, political subdivision or another Tax Collection District pursuant to the provisions of Section 505(j) of Act 32, 53 P.S. § 6924.505(j). Pursuant to Section 505(k) of Act 32, 53 P.S. § 6924.515(k), any dispute among the affected parties involving a 10% or greater deviation from taxes received in the previous tax year shall be subject to mandatory mediation in accordance with regulations and guidelines adopted by the Department. A dispute involving less than a 10% threshold may be subject of voluntary mediation in accordance with regulations and guidelines adopted by the Department.
- M. Confidentiality.
- (1) General rule. Any information gained by a Tax Officer or any employee or agent to a Tax Officer or of the Tax Collection Committee as a result of any declarations, returns, investigations, hearings or verifications shall be confidential tax information.
 - (2) Prohibited conduct. It shall be unlawful, except for official purposes or as provided by law, for the commonwealth, the Borough, Tax Collection Committee Member, Tax Officer or employee or agent of a Tax Officer or Tax Collection Committee to do any of the following:
 - (a) Divulge or make known confidential tax information.
 - (b) Permit confidential tax information or a book containing an abstract or particulars of the abstract to be seen or examined by another person.
 - (c) Print, publish or otherwise make known any confidential tax information.
 - (3) Penalties. A person who violates Subsection M(2) of § 248-36 of this article commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$2,500 or to imprisonment for not more than one year, or both. If the offender is a member of the Tax Collection Committee, the member shall be removed from the Tax Collection Committee. If the offender is an employee of a Tax Collection Committee or the Borough, the employee shall be discharged from employment. The offender shall pay the costs of prosecution.

§ 248-37. Compensation of Tax Officer.

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

§ 248-38. Applicability.

- A. The tax imposed by this article shall not apply:
- (1) To any person as to whom it is beyond the legal power of the Borough to impose the tax herein provided under the Constitution of the United States and the Constitution and laws of the Commonwealth of Pennsylvania.
 - (2) To institutions or organizations operated for public, religious, educational, or charitable purposes, to institutions or organizations not organized and operated for private profit, or to trusts and foundations established for any of the said purposes.
- B. This section shall not be construed to exempt any person who is an Employer from the duty of collecting the tax from his employees and paying the amount collected to the Tax Officer under the provisions of § 248-34 of this article.

§ 248-39. Severability.

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

§ 248-40. Repealer; effect on prior provisions.

- A. Nothing contained herein shall be considered to repeal by implication or otherwise the provisions of any Earned Income and Net Profits Tax Ordinance(s) previously enacted as it may apply to earned income and net profits of taxpayers prior to the effective date of this article, which shall remain in full force and effect with respect to such earned income and net profits.
- B. Subject to valid enactment of this article without appeal, all provisions of any prior ordinance/resolution or parts thereof inconsistent herewith are hereby modified, amended and repealed by the provisions of this article which shall thereafter govern the taxation of such earned income and net profits.

§ 248-41. Effective date.

This article shall become effective January 1, 2012.