

ORDINANCE NO. ~~4~~-2011

**AN ORDINANCE OF BEECH CREEK BOROUGH, CLINTON COUNTY,
PENNSYLVANIA, RE-ENACTING, RESTATING AND AMENDING
ITS EARNED INCOME TAX ORDINANCE/RESOLUTION TO
ESTABLISH CONFORMITY WITH THE LOCAL TAX ENABLING
ACT, AS AMENDED BY ACT 32, DATED JULY 2, 2008.**

WHEREAS, the Borough of Beech Creek (hereinafter referred to as the "Borough") previously enacted an Ordinance/Resolution imposing a tax at the rate of five (5) mills or one-half (1/2%) per cent for General Revenue purposes on earned income tax and net profits; and

WHEREAS, the Pennsylvania Legislature enacted Act No. 32 which, inter alia, provided for a consolidated collection of local income taxes within a Tax Collection District under said Act, beginning on or after January 1, 2012; and

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

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Council for the Borough of Beech Creek, in lawful session, duly assembled, as follows:

SECTION I – DEFINITIONS.

- "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 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, 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 Ordinance, the term includes a Corporate Officer.
- “Income Tax” - Except as set forth in Section 511(b) of the Local Tax Enabling Act, P.L. 1257, Act 511 of 1965, as amended (hereinafter the “LTEA”), 53 P.S. §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.
- “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 Paragraphs:
- (1) Income which:
 - (i) is not paid for services provided; and
 - (ii) is in the nature of earnings from an investment.
 - (2) Income which represents:
 - (i) any gain on the sale of farm machinery;
 - (ii) any gain on the sale of livestock held twelve (12) months or more for draft, breeding or dairy purposes; or
 - (iii) any gain on the sale of other capital assets of a farm.
- “Non-resident” - A person or business domiciled outside the Borough levying the tax.
- “Non-resident Tax” - An Income Tax levied by a Municipality on a non-resident.
- “Resident” - A person or business domiciled in the Political Subdivision levying the tax.

- “Resident Tax” - An Income Tax levied by:
- (i) a Municipality on a resident of that Municipality; or
 - (ii) 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.
- “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 (1) 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 Ordinance. 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:
- (1) In the case of an Earned Income and Net Profits tax, earned income and net profits.
 - (2) In the case of a Personal Income Tax, income enumerated in Section 303 of the Act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971, 72 P.S. §7303, as reported to and determined by the Department of Revenue, subject to correction for fraud, evasion or error, as finally determined by the Commonwealth.

“Taxpayer” - A person or business required under this Ordinance to file a Return of an income tax or to pay an income tax.

“Withholding Tax” - An income tax levied by a Political Subdivision under the authority of this Ordinance, or any other tax levied by a Municipality or School District for which Employer withholding may be required under this Ordinance.

SECTION II – IMPOSITION OF TAX.

1. The total levied under this Ordinance is a continuation of a tax previously described in the above-referenced Whereas clauses. The tax previously imposed and continued under this Ordinance is a tax for General Revenue purposes of five (5) mills or one-half (1/2%) per cent is hereby imposed on the following:
 - A. Earned Income, as defined by this Ordinance, received by residents of the Borough, on or after January 1, 2012;
 - B. Earned Income, as defined by this Ordinance, received by non-residents of the Borough for work done or services performed or rendered in the Borough on or after January 1, 2012;
 - C. Net Profits, as defined by this Ordinance, earned on or after January 1, 2012, of businesses, professions, and other activities conducted by residents of the Borough; and
 - D. Net Profits, as defined by this Ordinance, earned on or after January 1, 2012, on businesses, professions, and other activities conducted by non-residents in the Borough.
2. The tax levied under A and B herein shall relate to and be imposed upon salaries, wages, commissions, and other compensation paid by an Employer or on its behalf to any person who is employed by or renders services to him. The tax levied under C and D herein shall relate to and be imposed on the Net Profits of any business, profession, or enterprise carried on by any person as Owner or as Proprietor, either individually or in association with some other person or persons.

SECTION III – DECLARATION AND PAYMENT OF TAX.

1. Application.

- A. Income taxes shall be applicable to taxable income earned or received based on the method of accounting used by the Taxpayer in the period beginning January 1 of 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 re-enactment, unless the rate of the tax is subsequently changed.
- B. For a Taxpayer whose fiscal year is not a calendar year, the Tax Officer shall establish deadlines for filing, reporting and payment of taxes that provide time periods equivalent to those provided for a calendar year Taxpayer.

2. 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 twelve (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.

3. Declaration and Payment. Except as provided in Subsection 1B of Section III of this Ordinance, Taxpayers shall declare and pay income taxes as follows:

- A. 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.

- B. 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 (4) equal quarterly installments, the tax due on the estimated net profits. The first (1st) 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.
- C. 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.
- D. 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 (4th) 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.
- E. 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.

- F. Every Taxpayer who discontinues business prior to December 31 of the current year, shall, within thirty (30) days after the discontinuance of business, file a final Return as required under this Paragraph and pay the tax due.
- G. 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 (3)-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.

SECTION IV – 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:

1. Every Employer having an office, factory, workshop, branch, warehouse, or other place of business within the Tax Collection District which employs one (1) or more persons, other than Domestic Servants, for a salary, wage, commission or other compensation, who has not previously registered, shall, within fifteen (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.
2. 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.
3. Every Employer having an office, factory, workshop, branch, warehouse or other place of business within a Tax Collection District that employs one (1) or more persons, other than Domestic Servants, for a salary, age, 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 non-resident tax as released in the Official Register under Section 511 of the LTEA, 53 P.S. §6934.511.

4. Except as set forth in Subsection 5, *infra*, within thirty (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 (3)-month period, the Income Tax deducted from the Employee, the Political Subdivision imposing the Income Tax upon the Employee, the total compensation of all Employees during the preceding calendar quarter, the total Income Tax deducted from the Employees and paid with the Return and any other information prescribed by the Department.
5. Notwithstanding Subsection 4 above, the provisions of this Paragraph shall apply if an Employer has more than one (1) place of employment in more than one (1) Tax Collection District. Within thirty (30) days following the last day of each month, the Employer may file the Return required by Subsection 4 and pay the total amount of Income Taxes deducted from Employees in all work locations during the preceding month to the Tax Officer for either the Tax Collection District in which the Employer's payroll operations are located or as determined by the Department. The Return and Income Taxes deducted shall be filed and paid electronically. The Employer must file a Notice of Intention to file combined Returns and make combined payments with the Tax Officer for each place of employment at least one (1) month before filing its first (1st) combined Return or making its first (1st) combined payment. This Paragraph shall not be construed to change the location of an Employee's place of employment for purposes of non-resident tax liability.
6. Any Employer who, for two (2) of the preceding four (4) 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 3 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.
7. On or before February 28 of the year succeeding that of the effective date of this Ordinance and each succeeding year thereafter, every Employer shall file with the Tax Officer where Income Taxes have been deducted and remitted pursuant to Subsection 3 of Section IV of this Ordinance:

- A. An Annual Return showing, for the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of compensation paid, the total amount of Income Tax Deducted, the total amount of Income Tax paid to the Tax Officer and any other information prescribed by the Department.
 - B. An Individual Withholding Statement, which may be integrated with the Federal Wage and Tax Statement (Form W-2) for each Employee employed during all or any part of the period beginning January 1 of the current year and ending December 31 of the current year, setting forth the address and Social Security number, the amount of compensation paid to the Employee during the period, the amount of Income Tax deducted, the amount of Income Tax paid to the Tax Officer, the numerical code prescribed by the Department representing the Tax Collection District where the payments required by Subsections 4 and 5 were remitted and any other information required by the Department. Every Employer shall furnish one (1) copy of the Individual Withholding Statement to the Employee for whom it is filed.
- 8. Any Employer who discontinues business prior to December 31 of the current year shall, within thirty (30) days after the discontinuance of business, file Returns and Withholding Statements required under this Section and pay the Income Tax due.
 - 9. Except as otherwise provided in Section 511 of the LTEA, 53 P.S. §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 of 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.

SECTION V – EXEMPTIONS AND CREDITS.

- 1. No exemptions or credits based on age or income, or any other conditions are granted by this Ordinance. Nothing in this Ordinance is intended to preclude or inhibit any credit or exemption imposed by act of law or regulation.
- 2. 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 Ordinance 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.

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 Ordinance. Nothing in this Ordinance is intended to preclude or inhibit any credit or exemption imposed by act of law or regulation.

No credit or deduction shall be allowed against any tax on earned income imposed under authority of this Ordinance 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.

3. Any non-resident 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 non-resident 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 non-resident. No other exemption or credit based on any other factor to include age or income level is granted by this Ordinance. Nothing in this Ordinance is intended to preclude or inhibit any credit or exemption imposed by act of law or regulation.

SECTION VI – POWERS AND DUTIES OF THE TAX OFFICER.

1. *Tax Collection.* The collection and administration of the tax provided for in this Ordinance shall be performed by the Tax Officer appointed by the Tax Collection Committee. It shall be the duty of the Tax Officer:

- A. To collect, reconcile, administer and enforce Income Taxes imposed on residents and non-residents in the Borough included in the Tax Collection District.
 - B. To receive and distribute Income Taxes and to enforce withholding by Employers located in the Tax Collection District.
 - C. To receive Income Taxes distributed by Tax Officers for other Tax Collection Districts.
 - D. To invest all Income Taxes in the custody of the Tax Officer in authorized investments, subject to the approval of the Tax Collection Committee. The Tax Officer shall observe the standard of care that would be observed by a prudent person dealing with property of another. For the purposes of this Paragraph, the term "authorized investment" shall include those investments as provided in Section 509(a) of the LTEA, 53 P.S. §6924.509(a).
- 2. *Monthly Reports.* The Tax Officer shall, within twenty (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 Ordinance.
 - 3. *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.
 - 4. *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).
 - 5. *Records.* It shall be the duty of the Tax Officer to keep a record showing the amount of Income Taxes received from each Taxpayer or other Tax Officer, the date of receipt, the amount and date of all other 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. Ch. 13, Subch. F

(relating to records). Tax records under this Subsection may be retained electronically as permitted by law.

6. *Employer and Taxpayer Audits.*

- A. In order to verify the accuracy of any Income Tax Declaration or Return, or if no Declaration or Return was filed, to ascertain the Income Tax due, the Tax Officer and the Tax Officer's designated Employees may examine or audit the records pertaining to Income Taxes due of any of the following:
 - (i) An Employer;
 - (ii) A Taxpayer; and/or
 - (iii) A person whom the Tax Officer reasonably believes to be an Employer or Taxpayer.
- B. The examination 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. §8421, et seq.
- C. 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 Subsection 6A of Section XI of this Ordinance.
- D. For purposes of this Subsection, the term "**records**" shall include any books, papers and relevant Federal or State Tax Returns and accompanying Schedules, or supporting documentation for any income taxable under this Ordinance.

7. *Exchange of Information.*

- A. The Tax Officer shall ensure that the Tax Collection District enters into an Agreement with the Pennsylvania Department of Revenue for the exchange of information necessary for the collection of Income Taxes.
- B. 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 (1) year after the deadline for filing Returns for the tax year in question.

8. *Actions for Collection of Income Taxes.* The Tax Officer may file an Action in the name of the 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 Ordinance. 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 Ordinance or by law. Actions for collection of Income Taxes shall be subject to the following:

- A. Except as set forth in Subsections 8B and 8D of Section VI of this Ordinance, an Action brought to recover Income Taxes must be commenced within three (3) years of the later of the date:
 - (i) the Income Taxes are due;
 - (ii) the Declaration or Return has been filed; or
 - (iii) of a re-determination of compensation or Net Profits by the Pennsylvania Department of Revenue.
- B. If there is substantial understatement of income tax liability of twenty-five (25%) per cent or more and there is no fraud, an Action must be commenced within six (6) years.
- C. Except as set forth in Subsection 8D(ii) of Section VI of this Ordinance, an Action by a Tax Officer for recovery of an erroneous refund must be commenced as follows:
 - (i) Except as set forth in Subsection 8C (ii) of Section VI of this Ordinance, within two (2) years after making the refund.
 - (ii) If it appears that any part of the refund was induced by fraud or misrepresentation of material fact, within five (5) years after making the refund.
- D. There is no limitation of Action if any of the following apply:
 - (i) A Taxpayer fails to file a Declaration or Return required under this Ordinance.
 - (ii) An examination of a Declaration or Return or of other evidence in the possession of the Tax Officer relating to the Declaration or Return reveals a fraudulent evasion of Income Taxes.
 - (iii) An Employer has deducted Income Taxes under Section 512 of the LTEA, 53 P.S. §6924.512, and has failed to pay the amount deducted by the Tax Officer.
 - (iv) An Employer has intentionally failed to make deductions required by this Ordinance.

9. *Interest and Penalties.*

- A. Except as provided in Subsection 9B of Section VI of this Ordinance, if the Income Tax is not paid when due, interest at the rate of 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 one (1%) per cent 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 fifteen (15%) per cent in the aggregate. Where an Action is brought for the recovery of the Income Tax, the Taxpayer liable for the Income Tax shall, in addition, be liable for the costs of collection, interest and penalties.
- B. The Department may establish conditions under which a Tax Officer, with the concurrence of the Tax Collection Committee, may abate interest or penalties that would otherwise be imposed for the non-reporting or under-reporting of income tax liabilities or for the non-payment of Income Taxes previously imposed and due if the Taxpayer voluntarily files delinquent Returns and pays the Income Taxes in full.
- C. The provision of Subsection 9C of Section VI of this Ordinance shall not affect or terminate any petitions, investigations, prosecutions or other proceedings pending under this Ordinance, or prevent the commencement or further prosecution of any proceedings by the proper authorities for violations of this Ordinance. No proceeding shall, however, be commenced on the basis of delinquent Returns filed pursuant to Subsection 8 of Section VI of this Ordinance if the Returns are determined to be substantially true and correct and the Income Taxes are paid in full within the prescribed time.

10. *Fines and Penalties for Violations.*

- A. Any Taxpayer who fails, neglects or refuses to make any Declaration or Return required by this Ordinance, any Employer who fails, neglects or refuses to register, keep or supply records or Returns required by Section 512 of the LTEA, 53 P.S. §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 Two Thousand Five Hundred (\$2,500.00) Dollars for each offense and reasonable accosts, and in default of payment of said fines and costs, to imprisonment for not more than six (6) months.

- B. Any Employer required under this Ordinance to collect, account for and distribute Income Taxes who willfully fails to collect or truthfully account for and distribute Income Taxes, commits a misdemeanor and shall upon conviction, be sentenced to pay a fine not exceeding Twenty-Five Thousand (\$25,000.00) Dollars or to imprisonment not exceeding two (2) years, or both.
 - C. The penalties imposed under this Subsection shall be in addition to any other costs and penalties imposed by this Ordinance.
 - D. The failure of any person to obtain forms required or making the Declaration or Returns required by this Ordinance shall not excuse the person from making the Declaration or Return.
11. *Costs.* The Tax Officer shall be entitled to impose and collect the reasonable costs incurred to provide notices of delinquency or to implement similar procedures utilized to collect delinquent taxes from a Taxpayer as approved by the Tax Collection Committee. Reasonable costs collected may be retained by the Tax Officer. An itemized accounting of all costs collected shall be remitted to the Tax Collection Committee on an annual basis.
12. *Appeals and Tax Officer Actions.* A determination of the Tax Officer relating to the assessment, collection, refund, withholding, remittance or distribution of income taxes may be appealed to the Appeals 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 ten (10%) per cent 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 ten (10%) per cent threshold may be subject of voluntary mediation in accordance with Regulations and Guidelines adopted by the Department.

13. *Confidentiality:*

- A. General Rule. Any information gained by a Tax Officer or any Employee or Agent 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.
- B. 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:
 - (i) Divulge or make known confidential tax information.
 - (ii) Permit confidential tax information or a book containing an abstract or particulars of the abstract to be seen or examined by another person.
 - (iii) Print, publish or otherwise make known any confidential tax information.
- C. *Penalties.* A person who violates Subsection 13B of Section VI of this Ordinance commits a misdemeanor of the third (3rd) degree and shall, upon conviction, be sentenced to pay a fine of not more than Two Thousand Five Hundred (\$2,500.00) Dollars or to imprisonment for not more than one (1) 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.

SECTION VII – COMPENSATION OF INCOME TAX OFFICER.

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

SECTION VIII – APPLICABILITY.

The tax imposed by this Ordinance shall not apply:

- (1) To any person as to whom it is beyond the legal power of the 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.

This Section shall not be construed to exempt any person who is an Employer from the duty of collecting the tax from his Employees and paying the amount collected to the Tax Officer under the provisions of Section 14-104 of this Ordinance.

SECTION IX – SEVERABILITY.

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

SECTION X – REPEALER AND/OR CONFLICT.

Nothing contained herein shall be considered to repeal by implication or otherwise the provisions of any Earned Income and Net Profits Tax Ordinance(s) previously enacted as it may apply to Earned Income and Net Profits of Taxpayers prior to the effective date of this Ordinance, which shall remain in full force and effect with respect to such Earned Income and Net Profits.

Subject to valid enactment of this Ordinance without appeal, all provisions of any prior Ordinance/Resolution or parts thereof inconsistent herewith are hereby modified, amended and repealed by the provisions of this Ordinance which shall thereafter govern the taxation of such Earned Income and Net Profits.

SECTION XI – EFFECTIVE DATE.

This Ordinance shall become effective January 1, 2012.

DULY ENACTED AND ORDAINED this 6th day of December, 2011, by Council for
the Borough of Beech Creek, Clinton County, Pennsylvania, in lawful session, duly assembled.

Attest:

BOROUGH OF BEECH CREEK


Secretary

By: 
Council President

APPROVED this 6th day of December, 2011.


Mayor

ORDINANCE NO. 1-2012

AN ORDINANCE FIXING TAX RATES FOR THE YEAR 2012

Council for the Borough of Beech Creek, Clinton County, Pennsylvania, hereby enacts and ordains as follows:

SECTION 1: That a tax be and the same is being levied on all real property within the said municipality subject to taxation for the fiscal year 2012 at the rate for general purposes of 1.11 mills on each dollar of assessed valuation.

SECTION 2: That a tax be and the same is being levied upon all income earned by residents of the Borough of Beech Creek during 2012 at the rate of one and one-half (1½%) percent.

SECTION 3: That a tax be and the same is being levied upon the privilege of doing business within the Borough of Beech Creek during 2012 at the rate of one (1) mill on each dollar of wholesale business transacted and one and one-half (1 ½) mill on each dollar of retail business transacted.

SECTION 4: That a tax be and the same is being levied on transfers of real estate within the Borough of Beech Creek during 2012 at the rate of one-half (1/2) of one (1%) percent of value of said transfers subject however to such exclusions as set forth in the Local Tax Enabling Act.

SECTION 5: That a tax be and the same is being levied upon mechanical amusement machines within the Borough of Beech Creek during 2012 at the rate of Twenty-five (\$25.00) Dollars per machine.

ORDINANCE NO. 96-1

AN ORDINANCE OF THE BOROUGH OF BEECH CREEK,
CLINTON COUNTY, PENNSYLVANIA
FIXING THE TAX RATE ON REAL ESTATE
FOR THE YEAR 1997

THE COUNCIL OF BEECH CREEK BOROUGH, hereby ordains:

SECTION I. TAX LEVY

That the tax be and the same is hereby levied on all real property within the Borough of Beech Creek subject to taxation for the fiscal year of 1997 at a tax rate for general revenue purposes in the sum of three (3) mills on each dollar of assessed value.

SECTION II. DISCOUNTS

A taxpayer subject to the payment of a tax levied by this Ordinance shall be entitled to a discount of two (2%) percent from the amount of such tax upon making payment of the whole amount of such tax within two (2) months after the date of the tax notice.

SECTION III. PENALTIES

A taxpayer subject to the payment of a tax levied by this Ordinance, who shall fail to make payment of such tax for four (4) months after the date of the tax notice, shall be charged a penalty of ten (10%) percent which penalty shall be added to the tax by the tax collector and shall be collected by the tax collector.

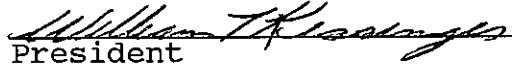
SECTION IV. EFFECTIVE DATE

This Ordinance and the real estate tax herein levied shall take effect on January 1, 1997 and shall remain in effect for each and every year thereafter until otherwise amended or repealed.

SECTION V. SEVERABILITY

Any ordinance or part of an ordinance conflicting with this Ordinance shall be in the same is hereby repealed insofar as the same affects this Ordinance.


BEECH CREEK BOROUGH


President

ATTEST:


Secretary

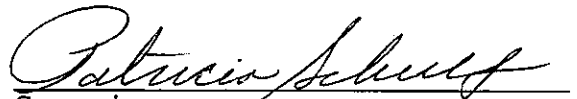
APPROVED:


Mayor, Beech Creek Borough

CERTIFICATION

TO: Secretary of Community Affairs
Commonwealth of Pennsylvania
Harrisburg, PA

I HEREBY CERTIFY that the foregoing is a true and correct copy of ORDINANCE NO. 96-1 enacted by the Council of Beech Creek Borough, Clinton County, Pennsylvania, on the 3rd day of December, 1996.


Secretary

CHAPTER XXIV
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- Section 2. Imposition of Tax
- Section 3. Declaration and Payment of Tax - Net Profits
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Part I

Earned Income and Net Profits

Section 1. Definitions.¹ The following words and phrases used in this ordinance² shall have the meaning hereby ascribed thereto:

"Association" - a partnership, limited partnership, or any other unincorporated group of two or more persons.

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

"Corporation" - a corporation or joint stock association organized under the laws of the United States, the Commonwealth of Pennsylvania, or any other state, territory, foreign country or dependency.

"Current Year" - the calendar year for which the tax is levied.

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

"Earned Income" - salaries, wages, commissions, bonuses, incentive payments, fees, tips and other compensation received by a person or his personal representative for services rendered, whether directly or through an agent, and whether in cash or in property; not including, however, wages or compensation paid to persons on active military service, periodic payments for sickness and disability other than regular wages received during a period of sickness, disability or retirement or payments arising under workmen's compensation acts, occupational disease acts and similar legislation, or payments commonly recognized as old age benefits, retirement pay or pensions paid to persons retired from service after reaching a specific age or after a stated

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1. This heading, and those of Sections 2 to 10 of this chapter, are part of Ordinance 59 as enacted.
 2. Sections 1 to 10 of this chapter.

period of employment or payments commonly known as public assistance, or unemployment compensation payments made by any government agency or payments to reimburse expenses or payments made by employers or labor unions for wage and salary supplemental programs, including, but not limited to, programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, Social Security and retirement.

"Income Tax Officer" or "Officer" - person, public employe or private agency authorized by the Council to collect and administer the tax on earned income and net profits.

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

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

"Nonresident" - a person, partnership, association or other entity domiciled outside the Borough of Beech Creek.

"Person" or "Individual" - a natural person.

"Preceding Year" - the calendar year before the current year.

"Resident" - a person, partnership, association or other entity domiciled in the Borough of Beech Creek.

"Succeeding Year" - the calendar year following the current year.

"Taxpayer" - a person, partnership, association, or any other entity, required hereunder to file a return of earned income or net profits, or to pay a tax thereon.

(February 15, 1966, Section 1, as reenacted and amended by Ordinance 59, September 6, 1977)

Section 2. Imposition of Tax. The tax levied under this ordinance³ shall be applicable to earned income received and to net profits earned in the period beginning January 1 of the current year, and ending December 31 of the current year, or for taxpayer fiscal years beginning in the current year. The said tax shall continue in force on a calendar year or taxpayer fiscal year basis, without annual reenactment, unless the rate of the tax is changed. Changes in the rate of tax shall become effective on the date specified in the amending ordinance. (February 15, 1966, Section 2, as reenacted and amended by Ordinance 59, September 6, 1977)

3. Sections 1 to 10 of this chapter.

Section 3. Declaration and Payment of Tax - Net Profits.

1. Every taxpayer making net profits shall, on or before April 15 of the current year, make and file with the Officer on a form prescribed or approved by the Officer, a declaration of his estimated net profits during the period beginning January 1, and ending December 31, of the current year, and to pay to the Officer in four equal quarterly installments the tax due thereon as follows: the first installment at the time of filing the declaration, and the other installments on or before June 15 of the current year, September 15 of the current year, and January 15 of the succeeding year, respectively.

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

3. Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the Officer on a form prescribed or approved by the Officer a final return showing the amount of net profits earned during the period January 1 of the current year, and ending December 31 of the current year, the total amount of tax due thereon and the total amount of tax paid thereon. At the time of filing the final return, the taxpayer shall pay to the 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 his estimated tax, elect to make and file with the Officer on or before January 31 of the succeeding year, the final return as hereinabove required.

4. The Officer may provide by regulation for the making and filing of adjusted declarations of estimated net profits, and for the payments of the estimated tax in cases where a taxpayer who has filed the declaration hereinabove required anticipates additional net profits not previously declared or finds that he has overestimated his anticipated net profits.

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

(February 15, 1966, Section 3, as reenacted and amended by Ordinance 59, September 6, 1977)

Section 4. Earned Income not Subject to Withholding. Every taxpayer who is employed for a salary, wage, commission, or other compensation and who received any earned income not subject to the provisions relating to collection at source, shall make and file with the Officer, on a form prescribed or approved by the Officer, a quarterly return on or before April 30 of the current

year, July 31 of the current year, October 31 of the current year, and January 31 of the succeeding year, setting forth the aggregate amount of earned income not subject to withholding by him during the three-month periods ending March 31 of the current year, June 30 of the current year, September 30 of the current year, and December 31 of the current year, respectively, and subject to the tax, together with such other information as the Officer may require. Every taxpayer making such return shall, at the time of filing thereof, pay to the Officer the amount of tax shown as due thereon. (February 15, 1966, Section 4, as reenacted and amended by Ordinance 59, September 6, 1977)

Section 5. Collection at Source.

(a) Every employer having an office, factory, workshop, branch, warehouse or other place of business within the taxing jurisdiction imposing a tax on earned income or net profits within the taxing district who employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, who has not previously registered, shall, within fifteen (15) days after becoming an employer, register with the Officer his name and address and such other information as the Officer may require.

(b) Every employer having an office, factory, workshop, branch, warehouse, or other place of business within the taxing jurisdiction imposing a tax on earned income or net profits within the taxing district who employs one or more persons, other than domestic servants, for a salary, wage, commission, or other compensation, shall deduct at the time of payment thereof, the tax imposed by this ordinance⁴ on the earned income due to his employe or employes, and shall, on or before April 30 of the current year, July 31 of the current year, October 31 of the current year, and January 31 of the succeeding year, file a return and pay to the Officer the amount of taxes deducted during the preceding 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. Such return unless otherwise agreed upon between the Officer and employer shall show the name and Social Security number of each such employe, the earned income of such employe during such preceding three-month period, the tax deducted therefrom, the political subdivisions imposing the tax upon such employe, the total earned income of all such employes during such preceding three-month period, and the total tax deducted therefrom and paid with the return.

Any employer who for two of the preceding four quarterly periods has failed to deduct the proper tax, or any part thereof, or has failed to pay over the proper amount of tax to the taxing authority, may be required by the Officer to file his return and pay the tax monthly. In such cases, payments of tax shall be made to the Officer on or before the last day of the month succeeding the month for which the tax was withheld.

4. Sections 1 to 10 of this chapter.

(c) On or before February 28 of the succeeding year, every employer shall file with the Officer:

(1) An annual return showing the total amount of earned income paid, the total amount of tax deducted, and the total amount of tax paid to the Officer for the period beginning January 1 of the current year, and ending December 31 of the current year.

(2) A return withholding statement 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 employee's name, address and Social Security number, the amount of earned income paid to the employee during said period, the amount of tax deducted, the political subdivisions imposing the tax upon such employee, the amount of tax paid to the Officer. Every employer shall furnish two copies of the individual return to the employee for whom it is filed.

(d) Every employer who discontinues business prior to December 31 of the current year shall, within thirty (30) days after the discontinuance of business, file the returns and withholding statements hereinabove required and pay the tax due.

(e) Except as otherwise provided in Section 10,⁵ every employer who wilfully or negligently fails or omits to make the deductions required by this section shall be liable for payment of the taxes which he was required to withhold to the extent that such taxes have not been recovered from the employee.

(f) The failure or omission of any employer to make the deductions required by this section shall not relieve any employee from the payment of the tax or from complying with the requirements of this ordinance⁶ relating to the filing of declarations and returns.

(February 15, 1966, Section 5, as reenacted and amended by Ordinance 59, September 6, 1977)

Section 6. Powers and Duties of Officer.

(a) It shall be the duty of the Officer to collect and receive the taxes, fines and penalties imposed by this ordinance.⁷ It shall also be his duty to keep a record showing the amount received by him from each person or business paying the tax and the date of such receipt.

(b) Each Officer, before entering upon his official duties shall give and acknowledge a bond to the Borough of Beech Creek.

5. Section 10 of this chapter.

6. Sections 1 to 10 of this chapter.

7. Sections 1 to 10 of this chapter.

Such bond shall be joint and several, with one or more corporate sureties which shall be surety companies authorized to do business in this Commonwealth and duly licensed by the Insurance Commissioner of this Commonwealth.

Such bond shall be conditioned upon the faithful discharge by the Officer, his clerks, assistants and appointees of all trusts confided in him by virtue of his office, upon the faithful execution of all duties required of him by virtue of his office, upon the just and faithful accounting or payment over, according to law, of all moneys and all balances thereof paid to, received or held by him by virtue of his office and upon the delivery to his successor or successors in office of all books, papers, documents or other official things held in right of his office.

Such bond shall be taken in the name of the Borough, and shall be for its use and for the use of such other person or persons for whom money shall be collected or received, or as his or her interest shall otherwise appear, in case of a breach of any of the conditions thereof by the acts or neglect of the principal on the bond.

The political subdivision or political subdivision appointing the Officer, or any person may sue upon the said bond in its or his own name for its or his own use.

Each such bond shall contain the name or names of the surety company or companies bound thereon. The political subdivision or political subdivisions appointing the Officer shall fix the amount of the bond at an amount equal to the maximum amount of taxes which may be in the possession of the Officer at any given time.

The Borough of Beech Creek may, at any time, upon cause shown and due notice to the Officer, and his surety or sureties, require or allow the substitution or the addition of a surety company acceptable to the said Borough for the purpose of making the bond sufficient in amount, without releasing the surety or sureties first approved from any accrued liability, or previous action on such bond.

The Borough of Beech Creek shall designate the custodian of the bond required to be given by the Officer.

(c) The Officer charged with the administration and enforcement of the provisions of this ordinance is hereby empowered to prescribe, adopt, promulgate and enforce, rules and regulations relating to any matter pertaining to the administration and enforcement of this ordinance, including provisions for the re-examination and correction of declarations and returns, and of payments alleged or found to have occurred, and to make refunds in cases of overpayment, for any period of time not to exceed six years subsequent to the date of payment of the sum involved, and to prescribe forms necessary for the administration of this ordinance. No rule or regulation of any kind shall be

enforceable unless it has been approved by resolution by the Council. A copy of such rules and regulations currently in force shall be available for public inspection.

(d) The Officer shall refund, on petition of and proof by the taxpayer, earned income tax paid on the taxpayer's ordinary and necessary business expenses, to the extent that such expenses are not paid by the taxpayer's employer.

(e) The Officer and agents designated by him are hereby authorized to examine the books, papers, and records of any employer or of any taxpayer or of any person whom the Officer reasonably believes to be an employer or taxpayer, in order to verify the accuracy of any declaration or return, or if no declaration or return was filed, to ascertain the tax due. Every employer and every taxpayer and every person whom the Officer reasonably believes to be an employer or taxpayer, is hereby directed and required to give to the Officer, or to any agent designated by him, the means, facilities and opportunity for such examination and investigations, as are hereby authorized.

(f) Any information gained by the Officer, his agents, or by any other official or agent of the Borough, as a result of any declarations, returns, investigations, hearings or verifications required or authorized by this ordinance, shall be confidential, except for official purposes and except in accordance with a proper judicial order, or as otherwise provided by law.

(g) The Officer is authorized to establish different filing, reporting and payment dates for taxpayers whose fiscal years do not coincide with the calendar year.

(February 15, 1966, Section 6, as reenacted and amended by Ordinance 59, September 6, 1977)

Section 7. Compensation of Income Tax Officer. The Income Tax Officer shall receive such compensation for his services and expenses as determined from time to time by the Council. (February 15, 1966, Section 7, as reenacted and amended by Ordinance 59, September 6, 1977)

Section 8. Suit for Collection of Tax.

(a) The Officer may sue in the name of the Borough for the recovery of taxes due and unpaid under this ordinance.⁸

(b) Any suit brought to recover the tax imposed by this ordinance shall be begun within three years after such tax is due, or within three years after the declaration or return has been filed, whichever date is later. Provided, however: this limitation shall not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:

8. Sections 1 to 10 of this chapter.

(1) Where no declaration or return was filed by any person although a declaration or return was required to be filed by him under provisions of this ordinance, there shall be no limitation.

(2) Where an examination of the declaration or return filed by any person, or of other evidence relating to such declaration or return in the possession of the Officer, reveals a fraudulent evasion of taxes, there shall be no limitation.

(3) In the case of substantial understatement of tax liability of twenty-five percent (25%) or more, and no fraud, suit shall be begun within six (6) years.

(4) Where any person has deducted taxes under the provisions of this ordinance, and has failed to pay the amounts so deducted to the Officer, or where any person has willfully failed or omitted to make the deductions required by this ordinance, there shall be no limitation.

(5) This section shall not be construed to limit the Council from recovering delinquent taxes by any other means provided by this ordinance.

(c) The Officer may sue for recovery of an erroneous refund provided such suit is begun two (2) years after making such refund, except that the suit may be brought within five (5) years if it appears that any part of the refund was induced by fraud or misrepresentation of material fact.

(February 15, 1966, Section 8, as reenacted and amended by Ordinance 59, September 6, 1977)

Section 9. Interest and Penalties. If for any reason the tax is not paid when due, interest at the rate of six percent (6%) per year on the amount of said tax, and an additional penalty of one-half of one percent (.5%) of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid, shall be added and collected. Where suit is brought for the recovery of any such tax, the person liable therefor shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed. (February 15, 1966, Section 9, as reenacted and amended by Ordinance 59, September 6, 1977)

Section 10. Fines and Penalties for Violation.

(a) Any person who fails, neglects, or refuses to make any declaration or return required by this ordinance,⁹ any employer who fails, neglects or refuses to register or to pay the tax deducted from his employes, or fails, neglects or refuses to deduct or withhold the tax from his employes, any person who refuses to permit the Officer or any agent designated by him to examine his books, records, and papers, and any person who knowingly makes any incomplete,

9. Sections 1 to 10 of this chapter.

false or fraudulent return, or attempts to do anything whatsoever to avoid the full disclosure of the amount of his net profits or earned income in order to avoid the payment of the whole or any part of the tax imposed by this ordinance, shall, upon conviction thereof, be sentenced to pay a fine of not more than five hundred dollars (\$500.00) for each offense, and costs of prosecution, or, in default of payment of such fine and costs, to undergo imprisonment for not more than thirty (30) days.

(b) Any person who divulges any information which is confidential under the provisions of this ordinance shall, upon conviction thereof, be sentenced to pay a fine of not more than five hundred dollars (\$500.00) for each offense, and costs of prosecution, or, in default of payment of such fine and costs, to undergo imprisonment for not more than thirty (30) days.

(c) The penalties imposed under this section shall be in addition to any other penalty imposed by any other section of this ordinance.¹⁰

(February 15, 1966, Section 10, as reenacted and amended by Ordinance 59, September 6, 1977)

10. See especially Section 9 of this chapter.

BOROUGH OF BEECH CREEK, CLINTON COUNTY, PENNSYLVANIA
ORDINANCE NO. 2002- 01

AN ORDINANCE REPEALING ORDINANCE 77, WHICH IMPOSED AN ANNUAL PER CAPITA TAX, AND ANY AMENDMENTS THERETO.

Council of the Borough of Beech Creek, Clinton County, Pennsylvania hereby enacts and ordains as follows:

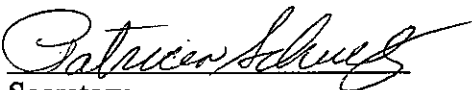
SECTION I: Ordinance 77 of the Borough of Beech Creek dated October 4, 1977, and any amendments thereto, is hereby repealed.

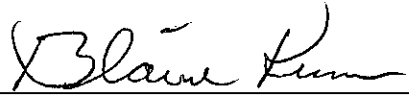
SECTION II: This Ordinance shall become effective on the earliest date permitted by law.

ENACTED and ORDAINED into an Ordinance this 30th day of December, 2002.

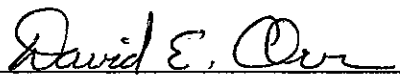
ATTEST:

BEECH CREEK BOROUGH COUNCIL


Secretary

By: 
President

APPROVED this 30th day of December, 2002.


Mayor

NOTICE

NOTICE is hereby given that the Council of the Borough of Beech Creek will act upon the following Ordinance at a special meeting to be held on the 30th day of December, 2002, at 7:00 P.M., at the Borough Building, Beech Creek, Pennsylvania:

ORDINANCE NO. 2002- 01

AN ORDINANCE REPEALING ORDINANCE 77, WHICH IMPOSED AN ANNUAL PER CAPITA TAX, AND ANY AMENDMENTS THERETO.

Council of the Borough of Beech Creek, Clinton County, Pennsylvania hereby enacts and ordains as follows:

SECTION I: Ordinance 77 of the Borough of Beech Creek dated October 4, 1977, and any amendments thereto, is hereby repealed.

SECTION II: This Ordinance shall become effective on the earliest date permitted by law.

Larry E. Coploff, Solicitor

PLEASE PUBLISH ONE (1) TIME ON OR BEFORE DECEMBER 23, 2002. PLEASE SEND BILL AND PROOF OF PUBLICATION TO: PATRICIA SCHULTZ, SECRETARY, BEECH CREEK BOROUGH COUNCIL, P.O. BOX 216, BEECH CREEK, PA 16822

Beech Creek Borough

P.O. Box 216

Beech Creek, PA 16822

Phone 570-962-2291

Fax 570-962-3842

Email: bcboroughsecretary@comcast.net

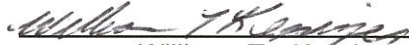
Website: www.beechcreekborough.com

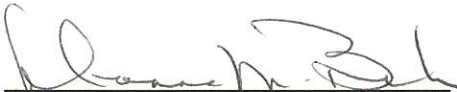
Resolution No. 2013-1

Be it resolved that on February 5, 2013, the following resolution was adopted:

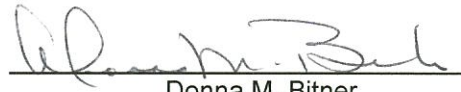
We hereby propose an ordinance amending Beech Creek Borough's zoning ordinance by amending a portion of the zoning map to change R-2 High Density Residential to C-1 General Commercial.

A public hearing on said proposal will be held Tuesday, March 5, 2013.


William T. Kessinger
President


Donna M. Bitner
Secretary

I hereby certify that the within resolution was adopted by a majority vote of the Beech Creek Borough Council at a duly advertised meeting held on February 5, 2013, at which a quorum was present.


Donna M. Bitner
Secretary

Part 2
Occupation Privilege

Section 51. Definitions.¹¹ The following words and phrases, when used in this ordinance,¹² shall have the meaning ascribed to them in this section except where the context or language clearly indicates or requires a different meaning.

(a) "Individual" - shall mean any person, male or female, engaged in any occupation, trade or profession within the corporate limits of the Borough of Beech Creek.

(b) "Occupation" - shall mean any trade, profession, business or undertaking 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.

(c) "Employer" - shall mean 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.

(d) "Tax" - shall mean the occupation privilege tax in the amount of ten (\$10.00) dollars levied by this ordinance.

(e) "Collector" - shall mean the duly elected Tax Collector of the Borough of Beech Creek.

(f) "Fiscal year" - shall mean the twelve (12) month period beginning January 1 - December 31.

(g) "Borough of Beech Creek" - shall mean the area within the corporate limits of the Borough of Beech Creek.

(h) "He," "his," or "him" - shall mean and indicate the singular and plural number as well as male, female and neuter gender.¹³

(Ordinance 53, June 4, 1974, Section 1)

11. This heading, and those of Sections 52 to 64 of this chapter, are part of Ordinance 53 as enacted.

12. Sections 51 to 64 of this chapter.

13. Section 15 of Ordinance 53 provided that the ordinance be effective January 1, 1975.

Section 52. 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. (Ordinance 53, June 4, 1974, Section 2)

Section 53. 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 ten (\$10.00) dollars per annum. (Ordinance 53, June 4, 1974, Section 3)

Section 54. 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 ten (\$10.00) dollars 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. (Ordinance 53, June 4, 1974, Section 4)

Section 55. 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 two per centum (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. (Ordinance 53, June 4, 1974, Section 5)

Section 56. 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. (Ordinance 53, June 4, 1974, Section 6)

Section 57. 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

ordinance; the examination and correction of any return made in compliance with this ordinance 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.

(Ordinance 53, June 4, 1974, Section 10)

Section 61. Suits for Collection.

(a) In the event that any tax under this ordinance¹⁸ remains due or unpaid thirty (30) days after the due dates above set forth,¹⁹ the Collector may sue for the recovery of any such tax due or unpaid under this ordinance together with interest and penalty.

(b) If for any reason the tax is not paid when due, interest at the rate of six percent (6%) on the amount of said tax shall be calculated beginning with the due date of said tax and a penalty of five percent (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.

(Ordinance 53, June 4, 1974, Section 11)

Section 62. Fine and Penalty. Whoever makes any false or untrue statement on any return required by this ordinance,²⁰ 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 ordinance, shall, upon conviction before any Alderman or Magistrate, be sentenced to pay a fine of not more than three hundred (\$300.00) dollars for each offense and in default of payment of said fine be imprisoned in Clinton County Prison for a period not exceeding thirty (30) days for each offense. 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 ordinance.

(Ordinance 53, June 4, 1974, Section 12)

18. Sections 51 to 64 of this chapter.

19. See Sections 56 and 58 of this chapter.

20. Sections 51 to 64 of this chapter.

Part 3
Per Capita

Section 101. Levy. An annual per capita tax of four dollars (\$4.00) for general Borough purposes, is hereby levied and assessed upon each resident and inhabitant of the Borough who is eighteen (18) years of age or older. (Ordinance 77, October 4, 1977, Section 1)

Section 102. Collection. The per capita tax shall be collected by the duly elected or appointed Tax Collector of the Borough of Beech Creek in the same manner and at the same time as other Borough taxes are collected. (Ordinance 77, October 4, 1977, Section 2)

Section 103. Warrant for Collection. The entry of the per capita tax on the tax duplicate and the issuance of such duplicate to the Tax Collector shall constitute his warrant for the collection of the per capita tax. (Ordinance 77, October 4, 1977, Section 3)

Section 104. Notice. The Tax Collector shall give notice to the taxpayer of the amount of per capita tax due under this ordinance,²³ at the same time and in the same manner as provided by the Local Tax Collection Law of 1945, as amended and supplemented. (Ordinance 77, October 4, 1977, Section 4)

Section 105. Addition of Names to Duplicate. If the Tax Collector shall at any time find within the Borough any resident or inhabitant eighteen (18) years of age or older, whose name does not appear on the tax duplicate, he shall report the name of such person to the Assessor, who shall thereupon certify the same to Borough Council, who shall promptly certify the same to the Tax Collector reporting such name, whereupon the Tax Collector shall add such name and the amount of per capita tax owed by such person to the duplicate of the Borough of Beech Creek, and shall proceed to collect the same. (Ordinance 77, October 4, 1977, Section 5)

Section 106. Powers and Duties of Tax Collector. The Tax Collector shall give notice to the taxpayers; shall have the power to collect said taxes by distress; shall have the power and authority to demand and receive said tax from the employer of any person owing any per capita tax; shall remit such taxes to the Borough Treasurer by a separate statement at the same time as other taxes are remitted to the Borough; shall allow discounts and add penalties; shall generally be subject to all the duties and shall have the rights and authority conferred upon him by the Local Tax Collection Law of 1945, as amended and supplemented. (Ordinance 77, October 4, 1977, Section 6)

23. Sections 101 to 107 of this chapter.

Section 107. Penalty for Violation. Any person who shall violate any provision of this ordinance²⁴ shall, upon conviction thereof, be sentenced to pay a fine of not more than three hundred dollars (\$300.00) and costs of prosecution, or, in default of payment of such fine and costs, to undergo imprisonment for not more than thirty (30) days. (Ordinance 77, October 4, 1977, Section 7)

24. Sections 101 to 107 of this chapter.

Part 4
Realty Transfer Tax

Section 151. Short Title. This Part shall be known as the "Realty Transfer Tax Ordinance of the Borough of Beech Creek." (Ord. 1987-1, 2/3/1987, §1)

Section 152. 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 Beech Creek, 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 Transfer Tax," 72 P.S. §8101-D et seq. (Ord. 1987-1, 2/3/1987, §2)

Section 153. Definitions.

ASSOCIATION - a partnership, limited partnership, or any other form of unincorporated enterprise owned or conducted by two (2) 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 of 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 thirty (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 this Part.

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

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

* Ord. 1987-1 read "county."

MEMBERS OF THE SAME FAMILY - any individual, such individual's brothers and sisters, the brothers and sisters of such individual's parents and 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 hereditments within this Borough, 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 or 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 propriety 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, ninety (90%) percent or more of the ownership interest in which is held by thirty-five (35) or fewer persons and which:

A. Derives sixty (60%) percent 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 ninety (90%) percent 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 thirty (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 therefor, 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 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.

D. The actual consideration for or actual monetary worth of any executory agreement for the construction of buildings, structures or other permanent improvements to 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 related corporation, association or partnership and the grantee existing before or effective with the transfer.

(Ord. 1987-1, 2/3/1987, §3)

Section 154. Imposition of Tax; Interest.

1. Every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, a tax at the rate of one (1%) percent 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 thirty (30) days of acceptance of such document or within thirty (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 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 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 Council under the authority of the Act shall during the time such duplication of the tax exists, except as hereinafter otherwise provided, be one-half (1/2) of the rate and such one-half (1/2) rate shall become effective without any action on the part of Borough Council provided, however, that the Borough Council 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 one-half (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. 1987-1, 2/3/1987, §4)

Section 155. Exempt Parties. The United States, the Commonwealth of Pennsylvania, or any of their instrumentalities, agencies or political subdivisions shall be exempt from payment of the tax imposed by this Part. The exemption of such governmental bodies shall not, however, relieve any other party to a transaction from liability for the tax. (Ord. 1987-1, 2/3/1987, §5)

Section 156. Excluded Transactions. The tax imposed by this Section shall be imposed upon:

1. A transfer to the Commonwealth, or to any of its instrumentalities, agencies or political subdivisions, by gift, dedication or deed in lieu of condemnation or deed of confirmation in connection with condemnation proceedings, or a reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation which reconveyance may include property line adjustments provided said reconveyance is made within one (1) year from the date of condemnation.

2. A document which the Borough Council is prohibited from taxing under the constitution or statutes of the United States.

3. A conveyance to a municipality, township, school district or county pursuant to acquisition by the municipality, township, school district or county of a tax delinquent property at sheriff sale or tax claim bureau sale.

4. A transfer for no or nominal actual consideration which corrects or confirms a transfer previously recorded, but which does not extend or limit existing record legal title or interest.

5. A transfer of division in kind for no or nominal actual consideration of property passed by testate or intestate succession and held by cotenants; however, if any of the parties 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 children, between brother or sister or 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 (1) year shall be subject to tax as if the grantor were making such transfer.

7. A transfer for no or nominal actual consideration of property passing by testate or intestate succession from a personal representative of a decedent to the decedent's devisee or heir.

8. A transfer for no or nominal actual consideration to a trustee of an ordinary trust where the transfer of the same property would be exempt if the transfer was made directly from the grantor to all of the possible beneficiaries, whether or not such beneficiaries are contingent or specifically named. No such exemption shall be granted unless the recorder of deeds is presented with a copy of the trust instrument that clearly identifies the grantor and all possible beneficiaries.

9. A transfer for no or nominal actual consideration from a trustee to a beneficiary of an ordinary trust.

10. A transfer for no or nominal actual consideration from trustee to successory trustee.

11. A transfer (i) for no or nominal actual consideration between principal and agent or straw party; or (ii) 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.

12. 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.

13. 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.

14. 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 (2) years.

15. 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.

16. A transfer from a non-profit industrial development agency or authority to a grantee purchasing directly from it, but only if: (i) 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 (ii) the agency or authority has the full ownership interest in the real estate transferred.

17. 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.

18. 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.

19. A transfer to a conservancy which possesses a tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, (68A Stat. 3, 26 U.S.C. §501(c)(3)) and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open space opportunities.

20. 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 seventy-five (75%) percent of each class of the stock thereof.

21. A transfer between members of the same family of an ownership interest in a real estate company or family farm corporation.

22. A transaction wherein the tax due is one dollar (\$1.00) or less.

23. Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof.

24. In order to exercise any exclusion provided in this Section, the true, full and complete value of the transfer shall be shown on the statement of value. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. For leases of coal, oil, natural gas or minerals, the statement of value may be limited to an explanation of the reason such document is not subject to tax under this Part.

(Ord. 1987-1, 2/3/1987, §6)

Section 157. Documents Relating to Associations or Corporations and Members, Partners, Stockholders, or Shareholders. Except as otherwise provided herein, documents which make, confirm or evidence any transfer or demise of title to real estate between associations or corporations and the members, partners, shareholders or stockholders thereof are fully taxable. For the purposes of this Part, corporations and associations are entities separate from their members, partners, stockholders or shareholders. (Ord. 1987-1, 2/3/1987, §7)

Section 158. 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, ninety (90%) percent or more of the total ownership interest in the company within a period of three (3) years.

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.

3. Within thirty (30) days after becoming an acquired company, the company shall present a declaration of acquisition with the recorder of each county in which it holds real estate for the affixation of documentary stamps and recording. Such declaration shall set forth the value of real estate holdings of the acquired company in such county. A copy of the Pennsylvania Realty Transfer Tax Declaration of Acquisition may be submitted for this purpose.

(Ord. 1987-1, 2/3/1987, §8)

Section 159. 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 a 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 Section, the difference shall be paid. If the credit allowed is greater than the amount of tax due, no refund or carryover credit shall be allowed.

(Ord. 1987-1, 2/3/1987, §9)

Section 160. 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. 1987-1, 2/3/1987, §10)

Section 161. Proceeds of Judicial Sale. The tax herein imposed shall be fully paid, and have priority out of the proceeds or any judicial sale of real estate before any other obligation, claim, lien, judgment, estate

or costs of the sale and of the writ upon which the sale is made 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. 1987-1, 2/3/1987, §11)

Section 162. Duties of Recorder of Deeds.

1. As provided in 16 P.S. §11011-6, 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 Borough Council based on a redetermination of the amount of tax due by the Commonwealth of Pennsylvania of the Pennsylvania realty transfer tax, without compensation from Borough Council.

2. In order to ascertain the amount of taxes due when the property is located in more than one (1) political subdivision, the recorder shall not accept for recording such a deed unless it is accompanied by a statement of value showing what taxes are due each municipality.

3. On or before the tenth (10th) of each month, the recorder shall pay over to Borough Council all local realty transfer taxes collected, less two (2%) percent for use of the county, together with a report containing the information as is required by the Commonwealth of Pennsylvania in reporting collections of the Pennsylvania realty transfer tax. The two (2%) percent commission shall be paid to the county.

4. Upon a redetermination of the amount of realty transfer tax due by the Commonwealth of Pennsylvania, the recorder shall rerecord the deed or record the additional realty transfer form only when both the State and local amounts and a rerecording or recording fee has been tendered.

(Ord. 1987-1, 2/3/1987, §12)

Section 163. Statement of Value. Every document lodged with or presented to the recorder of deeds for recording, shall set forth therein and as 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. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. The provisions of this Section shall not apply to any excludable real estate transfers which are exempt from taxation based on family relationship. Other documents presented for the affixation of stamps shall be accompanied by a certified copy of the document and statement of value executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this Part. (Ord. 1987-1, 2/3/1987, §13)

Section 164. Civil Penalties.

1. If any part of any underpayment of tax imposed by this Part is due to fraud, there shall be added to the tax an amount equal to fifty (50%) percent of the underpayment.

2. In the case of failure to record a declaration required under this Part on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause, there shall be added to the tax five (5%) percent for each additional month or fraction thereof during which such failure continues, not exceeding fifty (50%) percent in the aggregate.

(Ord. 1987-1, 2/3/1987, §14)

Section 165. Lien. The tax imposed by this Part 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, which lands, tenements, hereditments, 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, said lien to begin at the time when the tax under this Part is due and payable, and continue until discharge by payment, or in accordance with the law, and the Solicitor is authorized to file a municipal or tax claim in the Court of Common Pleas of Clinton 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. 1987-1, 2/3/1987, §15)

Section 166. Enforcement. All taxes imposed by this Part together with interest and penalties prescribed herein, shall be recoverable as other debts of like character are recovered. (Ord. 1987-1, 2/3/1987, §16)

Section 167. Regulations. The Secretary of Borough Council 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 into and made a part of this Part. (Ord. 1987-1, 2/3/1987, §17)

Part 5
Mercantile Tax

Section 171. Definitions. The following words and phrases when used in this Part 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 - shall include 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 - shall include 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 (1) of the four (4) 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 (1) location for less than sixty (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.

(Ord. 1985-1, 1/8/1985, §1)

Section 172. 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 (1) 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 one and one-half (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 (1) mill on each dollar of the annual gross volume of wholesale business transacted, and at the rate of one and one-half (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 (1) 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 one and one-half (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.

(Ord. 1985-1, 1/8/1985, §2)

Section 173. Returns.

1. Every person subject to the tax herein imposed by this Part 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 fifteenth (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 (1st) day of July to the thirtieth (30th) day of September shall be filed on or before the fifteenth (15th) day of October, and likewise for the following quarters on the fifteenth (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 fifteen (15) days after the date for filing the return.

2. Those temporary, seasonal or itinerant persons who shall engage in business for a period of less than sixty (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 fifteen (15) days before the person will be considered to have failed to file a return.

(Ord. 1985-1, 1/8/1985, §3)

Section 174. Improper Returns and Failure to File a Return.

1. 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.

2. 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.

(Ord. 1985-1, 1/8/1985, §4)

Section 175. Payment.

1. Payment of the tax imposed by this Part for a quarter shall be made on or before the fifteenth (15th) day of the quarter next succeeding the quarter for which the tax is to be paid, but no tax imposed by this Part shall be considered overdue until fifteen (15) days after the date for paying the tax.

2. 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.

3. Those persons who engage in business for a period of less than sixty (60) days consecutively shall pay the tax imposed by this Part on the day their return should be filed with the Tax Collector according to §173, above, and the tax will be immediately overdue if not paid by such date.

(Ord. 1985-1, 1/8/1985, §5)

Section 176. Issuance of Receipts. The Tax Collector shall issue a receipt upon payment of the tax imposed by this Part. If an additional sum is found due under an assessment, the Tax Collector shall issue a supplemental receipt upon payment of the additional sum. (Ord. 1985-1, 1/8/1985, §6)

Section 177. Retention of Receipts. Every person who shall have received a receipt issued in accord with §176, above, shall retain the same and exhibit it upon request during a period of one (1) year after the time when the tax which is receipted shall have become due. (Ord. 1985-1, 1/8/1985, §7)

Section 178. Conduct of Business Without Paying Tax. No person shall conduct any business subject to the payment of the tax imposed by this Part

(XXIV, Sec. 178, cont'd)

after the payment of the tax shall have become over due and remain unpaid.
(Ord. 1985-1, 1/8/1985, §8)

Section 179. Fines and Penalties. Any person, or any officer, agent, employee, employer, or servant:

A. Who knowingly makes any incomplete, false, or fraudulent return or application required in this Part; or

B. Who fails, neglects, or refuses to file a return or application required by this Part, shall upon conviction in a summary proceeding before any District Magistrate be sentenced to pay a fine of not more than three hundred dollars (\$300.00) for each and every offense, together with the costs of prosecution, and in default of payment of said fine and costs, be imprisoned in the County Jail for a period of not exceeding thirty (30) days for each offense.

(Ord. 1985-1, 1/8/1985, §9)

Section 180. Suit on Collection and Penalty.

1. The Tax Collector may sue for the recovery of taxes due and unpaid under this Part.

2. If for any reason the tax is not paid when due in each year, interest at the rate of six (6%) per centum per annum on the amount of said tax, and an additional penalty of one (1%) per centum 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.

(Ord. 1985-1, 1/8/1985, §10)

ORDINANCE NO. 07-

**AN ORDINANCE PROVIDING FOR A REALTY TRANSFER TAX AND OTHER
TAX RELATED PROVISIONS PURSUANT TO ARTICLE XI-D OF THE TAX
REFORM CODE OF 1971, AND AUTHORIZING THE DEPARTMENT OF
REVENUE OF THE COMMONWEALTH OF PENNSYLVANIA TO DETERMINE,
COLLECT AND ENFORCE THE TAX, INTEREST AND PENALTIES**

BE IT ORDAINED, by the Council of the Borough of Beech Creek, in the County of Clinton and the Commonwealth of Pennsylvania, as follows:

WHEREAS, Beech Creek Borough desires to assure collection of realty transfer tax for any real estate transfers occurring within the Borough; and

WHEREAS, Beech Creek Borough desires to assure that appropriate interest and penalties are also collected by the Department of Revenue of the Commonwealth of Pennsylvania.

NOW THEREFORE, BE IT ENACTED AND ORDAINED, and it is hereby ENACTED AND ORDAINED by the Council of the Borough of Beech Creek, Clinton County, Pennsylvania, as follows:

SECTION 1: 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 one (1%) percent 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 Ordinance.

SECTION 2: Administration.

The tax imposed under Section 1 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.

SECTION 3: Interest.

Any tax imposed under Section 1, 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 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.

SECTION 4: Severability.

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

SECTION 5: Repealer.

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

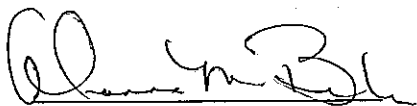
SECTION 6: Effective Date.

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

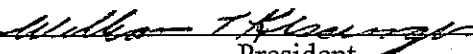
DULY ENACTED AND ORDAINED this 2nd day of October, 2007, by the Council of the Borough of Beech Creek, Clinton County, Pennsylvania.

ATTEST:

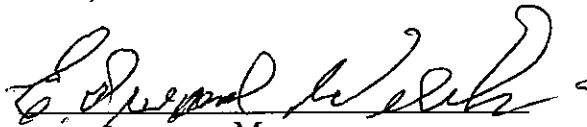
BOROUGH OF BEECH CREEK



Secretary

By: 
President

APPROVED this 2nd day of October, 2007.


Mayor