

Chapter 160

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

ARTICLE I

Collection of Delinquent Real Estate Taxes

[Adopted 5-2-1963 as Ord. No. 4]

§ 160-1. Method of collection.

The Supervisors of the Township of West Earl do hereby elect to collect its delinquent township taxes on real estate under and in accordance with the provisions of the Real Estate Tax Sale Law.’

ARTICLE II

Earned Income and Net Profits Tax

[Adopted 4-1-1975 as Ord. No. 31; amended in its entirety 11-22-1999 by Ord. No. 148]

§ 160-2. Short title.

This article shall be known and may be cited as the “West Earl Township Earned Income Tax Ordinance, as amended.”

§ 160-3. Definitions.

All terms defined in Section 13 of The Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, 53 P.S. § 6913, shall have the meanings set forth therein. The following terms shall have the meanings set forth herein:

BUREAU - The Lancaster County Tax Collection Bureau, an unincorporated agency organized and operated jointly by the school districts of Lancaster County to collect, receive and administer earned income taxes as authorized by resolutions of the various districts and also of municipalities with which it may enter into agency and collection agreements.

ENABLING ACT - The Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, 53 P.S. § 6901 et seq., and as may be amended in the future.

REGULATIONS - Regulations duly adopted by the Bureau for the administration of the earned income tax. To the extent provided by law, including but not limited to I Pa.C.S.A. § 1937, it is the intention of the Board of Supervisors to incorporate amendments to the regulations. If a court of competent jurisdiction prohibits such construction, it is the intention of the Board of Supervisors to incorporate the regulations as they exist on the date of enactment of this article except as provided in § 160-6D herein.

TOWNSHIP - The Township of West Earl, County of Lancaster, and Commonwealth of Pennsylvania.

§ 160-4. Imposition of tax.

A tax for general revenue purposes, at the rate of 1%, subject to the maximum rate as permitted under Section 8 of the Enabling Act,² is hereby restated and amended on earned income received and net profits earned by individual residents of the Township of West Earl during the calendar year 2000 (or taxpayer's fiscal year beginning in said calendar year) and during each year thereafter (on a calendar or taxpayer fiscal year basis), without reenactment, until this article shall be repealed or the rate of tax changed.

§ 160-S. Returns and payments by taxpayers.

- A. Every taxpayer earning net profits or receiving earned income in the current year shall, on or before April 15 of the succeeding year, make and file with the Income Tax Officer a return thereof (on forms and furnishing information prescribed by the Income Tax Officer) and pay the tax (or balance thereof after crediting employers' withholding) due thereon.
- B. Further details concerning taxpayers' payment and making returns of tax levied by this article are set forth in the regulations. If required in the regulations, taxpayers shall file a declaration of estimated net profits and pay the tax due thereon and shall file quarterly returns of earned income and pay the tax due thereon.

§ 160-6. Employers' collection at source; commission.

- A. As authorized in Section 10 of the Enabling Act,³ the township has entered into a joint agreement with other political subdivisions for collection of the tax by the Bureau, and has included in this article provisions as deemed necessary for collection of the tax. Every employer with a place of business within this township or within the jurisdiction of the Bureau, as defined in the regulations, is required to register, to deduct tax from earned income of employees subject to the tax within the jurisdiction of the Bureau, to file quarterly reports and make remittances and to do other acts as fully set forth in Section 13(IV) of the Enabling Act.⁴
- B. Any employer who has no place of business in this township or within the jurisdiction of the Bureau, as defined in the regulations, but who desires, for the convenience of his employees residing within the township, to deduct tax hereunder from such employees' wages, shall become subject to all obligations of timely filing of returns, reports and remittances and of maintaining and disclosing records, and to all interest and penalties with respect to such tax as he may actually deduct, in all respects, and with the same incidents as though he were a resident employer.

2. Editor's Note: See 53 P.S. § 6908.

3. Editor's Note: See 53 P.S. § 6910.

4. Editor's Note: See 53 P.S. § 6913, Subdivision IV.

- C. Tax deducted from wages by an employer shall at all times be and remain the property of this township and shall constitute a trust fund in the employer's hands until remitted to the Income Tax Officer; and deduction of tax from wages shall, as between the employee and this township, constitute payment of the tax by the employee, regardless of any insolvency or failure to remit on the employer's part.
- D. If and to the extent provided in the regulations, every employer who shall deduct tax from wages and remit it may deduct from each such remittance a commission, not to exceed 2% or any lesser amount provided in the regulations, of the tax withheld. The township expressly authorizes the Bureau to amend the regulations to decrease or eliminate such commission.

§ 160-7. Income Tax Officer.

This township hereby designates the Bureau as its Income Tax Officer to perform all the duties, be subject to all the requirements and have all the powers prescribed by Section 13(V) of the Enabling Act.⁵ Said Bureau shall receive such compensation for its services as it and this township may agree from time to time. The township expressly authorizes the Bureau to promulgate and amend the regulations.

§ 160-8. Suit for collection of tax; interest and penalties; incorporation of all present and future Enabling Act provisions.

- A. Suits for collection of tax are hereby authorized, and interest and penalties shall be imposed, as provided in Section 13(VII) and (VIII) of the Enabling Act.⁶
- B. Notwithstanding prior mention in this article, for convenience of reference only, of specific subsections of Section 13 of the Enabling Act,⁷ all provisions of the entire Section 13 of the Enabling Act are hereby incorporated into this article by this reference as required by the Enabling Act. Any provisions which any future supplements to or amendments of the Enabling Act may require to be included in or construed to be a part of any tax on earned income or net profits, or of the ordinance levying the same, shall automatically become a part of this article upon the effective date of such supplement or amendment, without the need for formal amendment of this article by the Board of Supervisors of the Township of West Earl to the maximum extent authorized by 1 Pa.C.S.A. § 1937.

§ 160-9. Deductions; losses; exemptions.

- A. Employee's unreimbursed business expenses. Business expenses are as set forth in the regulations.
- B. Losses. Losses are as set forth in the regulations.

5. Editor's Note: See 53 P.S. § 6913, Subdivision V.

6. Editor's Note: See 53 P.S. § 6913, Subsections VII and VIII.

7. Editor's Note: See 53 P.S. § 6913.

- C. Persons under 16 years of age. This township finds that minors of various age groups have traditionally and with judicial sanction been considered as comprising separate classes for many legislative purposes and that minors under the age of 16 years are for the most part unemancipated and subject to compulsory school attendance and child labor laws and, therefore, for the most part so lacking in power to earn and to have legal control of money or property that enforcement of reporting and collection of tax hereunder against them would yield inconsequential amounts and would be unduly difficult, expensive and not in the public interest, and therefore persons under the age of 16 years are hereby exempted from all liability for tax under this article.

§ 160-9.1. Continuity; nonapplicability; severability.

- A. The tax levied by this article imposes the same tax without substantial change as imposed in previous years and shall be so interpreted.
- B. This article shall not apply to any person or property as to whom or which it is beyond the legal power of this township to impose any tax or duty herein provided for.
- C. If any section, clause, sentence or part of this article is for any reason judicially determined to be unconstitutional, illegal or invalid, such determination shall not affect or impair any of the remaining sections, clauses, sentences or parts hereof; and it is hereby declared to be the intent of the Board of Supervisors of this township that this article would have been adopted even if such unconstitutional, illegal or invalid portions had not been included herein.

§ 160-10. Violations and penalties. [Added 8-9-1993 by Ord. No. 101]

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

- D. The failure of any person to receive or procure forms required for making the declarations or returns required by this Article shall not excuse him or her from making such declaration or return.

ARTICLE III
Realty Transfer Tax
[Adopted 8-18-1987 as Ord. No. 65]

§ 160-11. Title.

This Article shall be known as the “West Earl Township Realty Transfer Tax Ordinance.”

§ 160-12. Legislative authority.

This realty transfer tax is levied under authority of Article XI-D, entitled “Local Real Estate Transfer Tax,” of the Pennsylvania Real Estate Transfer Tax Act, which is a new Article added by Act 77-1986 (Act of July 2, 1986, P.L. 318, No. 77) to the Pennsylvania Real Estate Transfer Tax Act, Act 14-1981 (Act of May 5, 1981, P.L. 36, No. 14), as amended. The Pennsylvania Real Estate Transfer Tax Act is codified at 72 P.S. § 8101-C et seq., and Article XI-D is codified at 72 P.S. § 8101-D et seq. This realty transfer tax is also levied under authority of the Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, as amended.⁸

§ 160-13. Definitions and word usage.

- A. The following words, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

ASSOCIATION – A partnership or limited partnership or any other form of unincorporated enterprise owned or conducted by two or more persons.

COLLECTOR – The Recorder of Deeds of Lancaster County, Pennsylvania, is hereby appointed collector of the tax levied by this Article.

CORPORATION – A corporation, joint-stock association, business trust or banking institution which is organized under the laws of the Commonwealth of Pennsylvania, 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 within the municipality, 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 30 years or instruments which solely grant, vest or confirm a public utility easement. “Document” shall also include a

8. Editor’s Note: See 53 P.S. § 6901 et seq.

declaration of acquisition required to be presented for recording under § 160-19 of this Article.

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

- (1) Recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing.
- (2) 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.
- (3) Fur farming.
- (4) Stockyard and slaughterhouse operations.
- (5) Manufacturing or processing operations of any kind.

MEMBERS OF THE SAME FAMILY – Any individual, such an individual's brothers and sisters, the brothers and sisters of such individual's parents and grandparents, the ancestors or 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 half blood or legal adoption shall be treated as if they were related by the whole blood.

MUNICIPALITY - The Township of West Earl, Lancaster County, Pennsylvania.

PERSON - Every natural person, association, corporation or entity of any kind. 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 -

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

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

- (1) Derives 60% or more of its annual gross receipts from the ownership or disposition of real estate; or

- (2) Holds real estate, the value of which comprises 90% or more of the value of its entire tangible asset holdings exclusive of tangible assets which are freely transferable and actively traded on an established market.

REAL ESTATE TRANSACTION – The making, executing, delivering, accepting or presenting for recording of a document.

TITLE TO REAL ESTATE –

- (1) 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
- (2) Any interest in real estate enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consists of a group of rights approximating those of an estate in fee simple, life estate or perpetual leasehold, including, without limitation, a leasehold interest or possessory interest under a lease or occupancy agreement for a term of 30 years or more or a leasehold interest or possessory interest in real estate in which the lessee has equity. 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.

VALUE –

- (1) 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 the document 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.
- (2) 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 within the municipality, determined by adjusting the assessed value of the real estate for local real estate tax purposes for the common level ratio of assessed values to market values of the taxing district in which the municipality is located, as established by the State Tax Equalization Board, or a commensurate part of the assessment where the assessment includes other real estate.
- (3) In the case of an easement or other interest in real estate the "value" of which is not determinable under Subsection (1) or (2) of this definition, the actual monetary worth of such interest.

- (4) 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 principal of the grantor or a related corporation, association or partnership and the grantee existing before or effective with the transfer.
- B. The singular shall include the plural, and the masculine shall include the feminine and neuter.

§ 160-14. Tax imposed; payment; calculation; intent.

A tax is hereby levied and imposed, for general municipal purposes, on every real estate transaction, at the rate of I % of the value of the real estate represented by the document involved in the real estate transaction.

- A. The tax shall be payable at the earlier of the time the document is presented for recording, within 30 days of acceptance of the document or within 30 days of becoming an acquired company.
- B. If the real estate is located partially within and partially outside the municipality, the tax shall be calculated on the value of the portion within the municipality.
- C. The tax imposed hereunder shall be due and payable to the collector, as a joint and several liability, by every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording. In the case of an acquired company, the company shall also have liability for payment of the tax. All such persons shall also be liable for any penalties imposed under this Article.
- D. It is the intent of this Article that the entire burden of the tax imposed on a real estate transaction by the municipality and other political subdivisions shall not exceed the limitations prescribed in Section 8 of the Local Tax Enabling Act, 53 P.S. § 6908, so that if any other political subdivision imposes a tax on real estate transactions taxed under this Article, the provisions of said Section 8 shall apply.

§ 160-15. Evidence of payment.

The payment of the tax imposed hereunder shall be evidenced by the collectors affixing on the document an official stamp or writing setting forth the date of payment of the tax and the amount of tax paid.

§ 160-16. 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 Article. The exemption of such governmental bodies shall not, however, relieve any other party to a real estate transaction from liability for the tax.

§ 160-17. Excluded transactions.

A. The tax imposed by this Article shall not be imposed upon:

- (1) A transfer to the Commonwealth of Pennsylvania or to any of its instrumentalities, agencies or political subdivisions, by gift, dedication or deed in lieu of condemnation or deed of confirmation in connection with condemnation proceedings, or a reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation, which reconveyance may include property line adjustments, provided that said reconveyance is made within one year from the date of condemnation.
- (2) A document which the municipality is prohibited from taxing under the Constitution or statutes of the United States.
- (3) A conveyance to a municipality, township, school district or county pursuant to acquisition by the municipality, township, school district or county of a tax-delinquent property at a Sheriff's sale or Tax Claim Bureau sale.
- (4) A transfer for no or nominal actual consideration which corrects or confirms a transfer previously recorded but which does not extend or limit existing record legal title or interest.
- (5) A transfer or division in kind, for no 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 a husband and wife, between persons who were previously husband and wife who have since been divorced, provided that the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, between a parent and child or the spouse of such child, between a brother or sister or the spouse of a brother or sister and a brother or sister or the spouse of a brother or sister and between a grandparent and grandchild or the spouse of such grandchild, except that a subsequent transfer by the grantee within one year shall be subject to tax as if the grantor were making such transfer.
- (7) A transfer for no or nominal actual consideration of property passing by testate or intestate succession from a personal representative of a decedent to the decedent's devisee or heir.
- (8) A transfer for no or nominal actual consideration to a trustee of an ordinary trust where the transfer of the same property would be exempt if the transfer were 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 collector 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 a trustee to a successor trustee.
- (11) A transfer for no or nominal actual consideration between a principal and an agent or straw party or from or to an agent or straw party where, if the agent or straw party were his principal, no tax would be imposed under this Article. Where the document by which title is acquired by a grantee or the 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 subsection.
- (12) A transfer made pursuant to the statutory merger or consolidation of a corporation or statutory division of a nonprofit corporation, except where the municipality reasonably determines that the primary intent for such merger, consolidation or division is avoidance of the tax imposed by this Article.
- (13) A transfer from a corporation or association of real estate held of record in the name of the corporation or association where the grantee owns stock of the corporation or an interest in the association in the same proportion as his interest in or ownership of the real estate being conveyed and where the stock of the corporation or the interest in the association has been held by the grantee for more than two years.
- (14) A transfer from a nonprofit industrial development agency or authority to a grantee of property conveyed by the grantee to that agency or authority as security for a debt of the grantee or a transfer to a nonprofit industrial development agency or authority.
- (15) A transfer from a nonprofit industrial development agency or authority to a grantee purchasing directly from it, but only if:
 - (a) The grantee shall directly use such real estate for the primary purpose of manufacturing, fabricating, compounding, processing, publishing, research and development, transportation, energy conservation, energy production, pollution control, warehousing or agriculture; and
 - (b) The agency or authority has the full ownership interest in the real estate transferred.
- (16) A transfer by a mortgagor to the holder of a bona fide mortgage in default in lieu of a foreclosure or a transfer pursuant to a judicial sale in which the successful bidder is the bona fide holder of a mortgage, unless the holder assigns the bid to another person.
- (17) Any transfer between religious organizations or other bodies or persons holding title for a religious organization if such real estate is not being or has not been used by such transferor for commercial purposes.
- (18) A transfer to a conservancy which possesses tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954 and which has as its primary

purpose preservation of land for historic, recreational, scenic, agricultural or open-space opportunities.

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

§ 160-18. Documents relating to associations or corporations.

Except as otherwise provided in § 160-17, documents which make, confirm or evidence any transfer or demise of title to real estate between associations or corporations and the members, partners, shareholders or stockholders thereof are fully taxable. For the purposes of this Article, corporations and associations are entities separate from their members, partners, stockholders or shareholders.

§ 160-19. Acquired companies.

- A. A real estate company is an acquired company upon a change in the ownership interest in the company, however effected, if the change:
- (1) Does not affect the continuity of the company; and
 - (2) Of itself or together with prior changes, has the effect of transferring, directly or indirectly, 90% or more of the total ownership interest in the company within a period of three years.
- B. With respect to real estate acquired after February 16, 1986, a family farm corporation is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm corporation or when, because of issuance or transfer of stock or because of acquisition or transfer of assets, it fails to meet the minimum requirements of a family farm corporation under this Article.
- C. Within 30 days after becoming an acquired company, the company shall present a declaration of acquisition to the collector for recording and for the affixation of the official stamp or writing evidencing payment of the tax. Such declaration shall set forth the value of real estate holdings of the acquired company in the municipality.

§ 160-20. Credits against tax.

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

§ 160-21. Statement of value.

Every document lodged with or presented to the collector 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 Article. The provisions of this section shall not apply to any excludable real estate transfers which are exempt from taxation based on family relationship, provided that the relationship is specified in the deed, instrument or writing. Documents which are not to be recorded shall be presented to the collector and shall be accompanied by a certified copy of the document and a statement of value executed by a responsible person connected with the transaction, showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this Article. Evidence of payment shall be affixed to the original document and the certified copy. The certified copy and statement of value shall be filed with the collector.

§ 160-22. Unlawful acts.

- A. It shall be unlawful for any person to:

- (1) Make, execute, deliver, accept or present for recording or cause to be made, executed, delivered, accepted or presented for recording any document without the full amount of tax thereon being duly paid.
 - (2) Fail to record a declaration of acquisition, as required by this Article.
 - (3) Fraudulently affix to any document any forged evidence of payment.
 - (4) Fail, neglect or refuse to comply with or violate other provisions of this Article or any rules and regulations promulgated by the municipality under this Article or any rules and regulations of the Pennsylvania Department of Revenue to the extent applicable to the tax levied hereunder.
- B. Any person violating any of the provisions of this section shall be guilty of a summary offense.
- C. A person who makes a false statement of value or declaration of acquisition, when he does not believe the statement or declaration to be true, is guilty of a misdemeanor of the second degree.

§ 160-23. Civil penalties.

- A. If any tax owing under the terms of this Article shall not be paid when due, 10% of the amount of the tax shall be added and collected as an initial penalty for nonpayment or underpayment of the tax.
- B. In addition, if any tax owing under the terms of this Article shall not be paid when due, a penalty shall accrue on the amount of the unpaid tax at the rate of 1% per month or fractional part of a month, on the amount of the unpaid tax, from the due date until the amount of the tax is paid in full.
- C. In addition, in the case of failure of any acquired company to record a declaration of acquisition, as required by this Article, unless it is shown to the satisfaction of the municipality that such failure is due to reasonable cause, a penalty shall accrue on the amount of the unpaid tax at the rate of 5% per month or fractional part of a month from the due date until the amount of the tax is paid in full. This penalty shall be in addition to all other penalties but shall not in the aggregate exceed 50% of the amount of the unpaid tax.
- D. In addition, if any part of any underpayment of tax is due to fraud, there shall be added to the tax an amount equal to 50% of the underpayment.
- E. In addition, if the municipality files suit in order to collect the amount of any tax not paid when due under this Article, at the discretion of the court, any person liable for payment of the tax shall also be liable for reasonable attorneys fees incurred by the municipality in prosecution of the suit.
- F. No document upon which tax is imposed by this Article shall at any time be made the basis of any action or other legal proceeding, nor shall proof thereof be offered or received in evidence in any court of this commonwealth, or recorded in the office of any

Recorder of Deeds of any county of this commonwealth, unless the tax imposed hereunder shall have been paid in full and evidence of payment shall have been affixed thereto by the collector.

§ 160-24. Unpaid tax to become lien.

The tax imposed by this Article, together with all penalties, shall be a lien against the real estate to which the document relates and, in the case of an acquired company, the real estate owned by the acquired company. The lien shall date from the time when the tax is due and payable and shall continue until discharged by payment in full of the tax, together with all penalties. In order to enforce the lien, the municipality may proceed under the Municipal Claims and Liens Act of 1923, 53 P.S. § 7101 et seq., or in any other appropriate manner.

§ 160-25. Proceeds of judicial sales.

The tax imposed under this Article shall be fully paid and have priority out of the proceeds of any judicial sale of real estate before any other obligation, claim, lien, judgment estate or costs of the sale and of the writ upon which the sale is made, 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.

§ 160-26. Enforcement.

- A. In order to determine whether the proper amount of tax has been paid, without limiting any other rights of the municipality, the municipality shall have the right to review all documents or records relating to any real estate transaction or any related transactions and to take such other steps as the municipality shall deem necessary or appropriate, including a review or audit of any documents or records of any party to a real estate transaction to determine the fair market value of the real estate or any other relevant matter as determined by the municipality. Upon request of the municipality and at such place and time as specified by the municipality, any party shall make available to the municipality any documents or records requested by the municipality.
- B. In the event that any tax is not paid when due, the municipality may enforce payment of the tax, together with all penalties, by a suit in assumpsit or any other appropriate means.

§ 160-27. Collector.

- A. As provided in 16 P.S. § 11011-6, the Recorder of Deeds of Lancaster County shall be the collection agent for this tax, without compensation from the municipality.
- B. In order to ascertain the amount of taxes due when the property is located in more than one political subdivision, the collector shall not accept for recording any document unless it is accompanied by a statement of value showing what taxes are due each political subdivision.

- C. On or before the 10th day of each month, the collector shall pay over to the municipality all taxes collected under this Article, less 2% for use of the county, and shall also provide a report containing the information required by the Commonwealth of Pennsylvania in reporting collections of the Pennsylvania realty transfer tax. The two-percent commission shall be paid to the county.
- D. In accordance with Act 77-1986,⁹ any recorder of deeds who shall record any document upon which tax is imposed under this Article without payment of tax as required under this Article, as is indicated in the document or accompanying statement of value, shall, upon summary conviction, be sentenced to pay a fine of \$50 and costs of prosecution.

§ 160-28. Rules and regulations.

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

§ 160-29. Construal of provisions.

- A. To the extent that this Article imposes a tax on a real estate transaction which is subject to the Commonwealth of Pennsylvania realty transfer tax imposed by Act 77-1986¹⁰ and to the extent not inconsistent herewith or with rules or regulations adopted by the municipality, this Article shall be interpreted in the same manner as Act 77-1986 and in accordance with regulations promulgated thereunder.
- B. The provisions of this Article, so far as they are the same as those of ordinances in force immediately prior to the adoption of this Article, are intended as a continuation of such ordinances and not as new enactments.
- C. This Article shall impose a tax on all transactions which the municipality is permitted to tax under Act 77-1986¹¹ to the fullest extent permissible.
- D. In the event that this Article is declared invalid, the prior ordinance or ordinances of the municipality levying a realty transfer tax shall remain in full force and effect and shall not be affected in any way by adoption of this Article.
- E. The provisions of this Article shall not affect any act done or liability incurred, nor shall they affect any suit or prosecution pending or to be instituted to enforce any right or penalty or to punish any offense, under the authority of any ordinance in force prior to adoption of this Article.
- F. Subject to the provisions in this section, this Article shall supersede, replace and repeal ordinances levying a realty transfer tax in force immediately prior to the adoption of this Article.

9. Editor's Note: See 72 P.S. § 8101-D et seq.

10. Editor's Note: See 72 P.S. § 8101-I) ci seq.

11. Editor's Note: See 72 P.S. § 8101-I) et seq.

ARTICLE IV
Local Services Tax

[Adopted 2-26-2007 by Ord. No. 195; amended in its entirety 11-12-2007 by Ord. No. 198¹²]

§ 160-30. Short title; legislative authority.

This article shall be known and may be cited as the “West Earl Township Local Services Tax Ordinance.” This article is enacted under the authority of The Local Tax Enabling Act, 53 P.S. § 6901 et seq., and continues and redesignates the emergency and municipal services tax pursuant to Act 7 of 2007.

§ 160-31. Definitions.

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

ACT –The Local Tax Enabling Act, 53 P.S. § 6901 et seq., as amended from time to time, including future amendments.

BOARD OF SUPERVISORS –The Board of Supervisors of West Earl Township, Lancaster County, Pennsylvania, its governing body.

COLLECTOR –The person or agency appointed from time to time by the Township Board of Supervisors or the Manager to assess and collect the tax imposed under this article.

COMPENSATION –Salaries, wages, commissions, tips, bonuses, fees, or any other payment or income.

EARNED INCOME –Earned income as defined in the Act.

EFFECTIVE DATE –January 1, 2008.

EMPLOYEE –An individual paid compensation by an employer to perform work or services of any kind.

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

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

INCOME FROM ALL SOURCES –Earned income and net profits or as otherwise defined by the Act.

INDIVIDUAL –Any person, male or female, engaged in any occupation, trade or profession within the corporate limits of the Township of West Earl.

12. Editor’s Note: This ordinance provided for an effective date of 1.1.2008.

LTEA –See “Act.”

MANAGER –The Manager of the Township under whose direction this tax shall be administered and enforced.

NET PROFITS –Net profits as defined in the Act.

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

REGULATIONS –Regulations duly adopted by the collector for administration of the tax. To the extent allowed by law, including but not limited to 1 Pa.C.S.A. § 1937, the Board of Supervisors intends to incorporate future amendments to the regulations. If a court prohibits such construction, the Board of Supervisors intends to incorporate the regulations as they exist on the date of enactment of this article. A copy of the regulations currently in force shall be available for public inspection.

SCHOOL DISTRICT –The Conestoga Valley School District.

TAX or LOCAL SERVICES TAX –The local services tax in the amount of \$52 per annum levied by this article.

TAX RETURN –A form prescribed by the collector for reporting the amount of any tax deducted from an employee or otherwise owed under this article.

TAX YEAR –The period from January 1 to December 31.

TOWNSHIP OF WEST EARL or TOWNSHIP –The area within the corporate limits of the Township of West Earl, Lancaster County, Pennsylvania.

§ 160-32. Imposition of tax.

- A. The Township hereby levies and imposes on each individual engaged in an occupation within its corporate limits during each fiscal year a local services tax in the amount of \$52 per annum, such tax to be paid by the individuals so engaged.
- B. The local services tax is based on an individual engaging in an occupation within the Township at any time during the tax year.
- C. All provisions of the LTEA imposing requirements applicable to a local services tax are incorporated into this article. All provisions of the regulations are incorporated into this article. If there is any discrepancy between the regulations and the LTEA, the provisions of the LTEA shall control.
- D. This tax is in addition to all other taxes of any kind or nature heretofore levied by the Township, and this tax shall continue in force on a calendar-year basis, without annual reenactment, unless the rate of the tax is subsequently changed or this article is repealed. The tax is imposed, and proceeds of the tax shall be used in accordance with all applicable requirements of the LTEA.

§ 160-33. Exemptions from tax.

- A. An individual whose total earned income and net profits from all sources within the Township in any tax year is less than \$12,000 is exempt from the tax for the tax year.
- B. Individuals may also be exempt for other reasons, including disability resulting from serving in the armed forces, active duty as a member of a reserve component of the armed forces, and other reasons as set forth in the regulations.
- C. An individual may obtain an exemption prospectively by filing a local services tax exemption certificate on a form provided by the collector in accordance with the regulations. The exemption certificate shall be filed with the collector and, if the individual is an employee, also with the individual's employer.
- D. If an individual pays the tax and at the end of any tax year has total income during the tax year that is less than the income exemption amount, or otherwise qualifies for an exemption, the Township will on request, after the end of the tax year, refund to the taxpayer the tax paid for the tax year.

§ 160-34. Individuals engaged in occupation in multiple jurisdictions.

Rules applicable to individuals who engage in an occupation in multiple jurisdictions are as set forth in the regulations.

§ 160-35. Collection by employer; return; payment.

- A. Every employer not registered under the provisions of an enactment of the Township imposing a tax on earned income and net profits shall, within 30 days after the effective date of this article or within 30 days after first becoming an employer, register with the collector the employer's name, address and any other information required by the collector on an employer registration form prescribed by the collector.
- B. Every employer is required to deduct the tax, as set forth in the regulations, from any compensation payable to any employee on whom the tax is imposed, unless the employee has filed a local services tax exemption certificate in accordance with the regulations. As set forth in the regulations, the full amount of the tax shall be deducted in lump sum if the combined municipal and school district tax rate is \$10 or less. As set forth in the regulations, the tax shall be deducted pro rata on a per-payroll basis if the combined municipal and school district tax rate exceeds \$10.
- C. If an employee has filed a local services tax exemption certificate and it is determined, as set forth in the regulations, that the employee is not eligible for exemption or is no longer eligible for an exemption, the employer shall start or restart withholding as set forth in the regulations.
- D. As to each taxpayer employed at any time after the effective date and on or before March 31, every employer shall deduct the tax from compensation payable to the taxpayer as set forth in the regulations and shall file a tax return and pay to the collector on or before April 30 the amount of tax deducted on or before March 31. As to each taxpayer for

whom the full amount of the tax has not previously been deducted or paid directly by the taxpayer to the collector, who is employed at any time in any of the three-month periods ending June 30, September 30, and December 31, every employer shall deduct the tax from compensation payable to the taxpayer as set forth in the regulations and shall file a tax return and pay to the collector on or before the following July 31, October 31, and January 31 the amount of tax deducted on or before June 30, September 30, and December 31, respectively. Every employer shall follow this same procedure in every tax year.

- E. If a taxpayer is employed by more than one employer within the Township, the taxpayer's principal employer shall deduct the tax and deliver to the employee evidence of the deduction on a form provided by the collector.
- F. An employer shall not deduct the tax from compensation of an employee who presents evidence, on a form provided by the collector, of prior deduction by an employer within the Township, or who provides evidence, on a form provided by the collector, of prior payment of the tax directly to the collector or of prior payment during the same tax year of \$52 as a tax imposed under the Enabling Act on an individual based on engaging in an occupation in Pennsylvania.
- G. Any employer who discontinues business or ceases operation shall, within 15 days after discontinuing business or ceasing operations, file a tax return and pay to the collector the full amount of the tax deducted from employees prior to ceasing operations.
- H. Tax amounts deducted from wages by an employer shall at all times be the property of the Township and shall constitute a trust fund held by the employer until remitted to the collector; and deduction of tax from wages shall, as between the employee and the Township, constitute payment of the tax by the employee, regardless of any insolvency or failure to remit by the employer.
- I. Any employer who fails to deduct the tax or who fails to pay the tax to the collector shall be liable for the tax and applicable penalties in full as though the tax had originally been imposed against such employer. If the employer is a partnership, the partners thereof, and if the employer is a corporation or limited-liability company, all officers thereof, shall have the same liability as the employer.

§ 160-36. Self-employed individuals.

Every individual who is self-employed, or whose tax for any other reason is not deducted by an employer under § 160-35, shall file a tax return and pay the tax directly to the collector. Every such individual engaged in an occupation within the Township, at any time after the effective date of this article and on or before March 31, shall file a tax return and pay the full amount of the tax to the collector on or before April 30. Every such individual who has not previously paid the full amount of the tax, who engages in an occupation within the Township at any time in any of the three-month periods ending June 30, September 30, and December 31, shall file a tax return and pay the full amount of the tax to the collector on or before the following July 31, October 31, and January 31, respectively. Every individual who is self-employed, or whose tax for any other reason is not deducted by an employer under § 160-35 shall follow this same procedure in every tax year.

§ 160-37. Nonresident taxpayers.

By virtue of engaging in an occupation within the Township, both resident and nonresident individuals are subject to the tax.

§ 160-38. Powers and duties of collector; administration and enforcement of tax.

- A. The collector shall collect the tax, fines and penalties imposed by this article and shall keep records of collection.
- B. The collector may examine the books, papers, and records of any individual or employer in order to verify compliance with this article. Every individual the collector believes might be subject to the tax and every employer or person the collector believes might be an employer shall on request meet with and show to the collector all books, papers, and records requested by the collector. Every employer or person the collector believes might be an employer shall also provide access to the employer's books, papers, and records at the employer's place of business and provide a place for the collector's review of such books, papers, and records. For purposes of this article, records shall include records in any form, including computer and other electronic records.
- C. The collector may file suit in its name or in the name of the Township for recovery of any amount owed to the Township.
- D. Except as limited by any applicable law, the collector shall have all of the powers that the Township has or that the law prescribes for tax collectors relating to administration and enforcement of this article.
- E. The collector may promulgate and enforce regulations relating to administration and enforcement of this article.

§ 160-39. Recovery of unpaid tax; interest and penalty added to unpaid tax.

- A. In the event that any tax under this article remains due or unpaid, a penalty of 5% of the amount unpaid for each month or a fraction of a month during which the amount remains unpaid shall be imposed.
- B. Any individual or entity who or which fails or refuses to pay the tax or other amounts owed or to pay the tax deducted from employees shall, in addition to paying the amount owed, pay reasonable costs incurred, as set forth in the regulations, by the Township, collector, or any other person or entity appointed to collect the amount to provide notices of delinquency or to implement similar procedures to collect delinquent taxes.
- C. If legal proceedings are commenced for failure to pay any amount owed, the person or entity liable therefor shall, in addition to the amount owed, pay to the Township, collector, or any other person or entity appointed to collect the tax the costs of collection, including reasonable attorney's fees.
- D. The failure of any person or entity to receive or procure forms required for making a required filing or return shall not excuse making such a filing or return.

§ 160-40. Violations and penalties.

Any person who makes any false or untrue statement on any return required by this article, or who refuses inspection of his books, records or accounts in his custody and control setting forth the number of employees subject to this tax who are in his employment, or who fails or refuses to file any return required by this article commits a violation of this article. If the Board of Supervisors or the collector determines that a person has committed or permitted the commission of a violation of this article, the Township may institute summary criminal proceedings and/or may seek equitable relief. In the event summary criminal proceedings are instituted, the fine for the first offense shall be not less than \$100 and not more than \$600. The fine for a second offense shall not be less than \$300 and not more than \$600. The fine for a third or greater offense shall not be less than \$500 and not more than \$600. Each day or portion thereof in which a violation exists shall be considered a separate violation of this article. Each section of this article which is violated shall be considered a separate violation. The amount of any fine imposed by a magisterial district judge or a court shall be in addition to any other fine which may be imposed under any other provisions of the Code of Ordinances of the Township or under any statute. In default of payment of any fine, such person shall be liable to imprisonment for not more than 30 days. The action to enforce the article may be instituted against any person in charge of the business or any employer who shall have failed or refused to file a return required by this article.

§ 160-41. Applicability; validity.

- A. Nothing contained in this article shall be construed to empower the Township to levy and collect the tax hereby imposed on any occupation not within the taxing power of the Township under the Constitution of the United States and the laws of the Commonwealth of Pennsylvania.
- B. If the tax hereby imposed under the provisions of this article shall be held to be in violation of the Constitution of the United States or of the laws of the Commonwealth of Pennsylvania as to any individual, such decision shall not affect or impair the right to impose or collect said tax, or the validity of the tax so imposed, on other persons or individuals as herein provided.
- C. It is the intent of this article that the entire burden of the tax imposed on an occupation by the Township and the school district shall not exceed the limitations prescribed in Sections 2 and 8 of the LTEA, 53 P.S. §§6902 and 6908, and, therefore, the school district shall be entitled to its share of the tax in accordance with the provisions of said Sections 2 and 8, Act 222 of 2004, and Act 7 of 2007.