

Chapter 24

Taxation; Special

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Part 1**Earned Income Tax****A. Imposition of Tax****§24-101. Definitions.**

1. The following words, when used in this Part, shall have the meanings ascribed to them in this Section, except where the context clearly indicates or requires a different meaning:

Association - a partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.

Business - an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, copartnership, 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 or foreign country or dependency.

Employer - an individual, copartnership, association, corporation, governmental body or unit or agency, or any other entity, who or that employs one or more persons on a salary, wage, commission or other compensation basis.

Net profits - the net gain from the operation of a business, profession or enterprise, after provision for all costs and expenses incurred in the conduct thereof, either paid or accrued in accordance with the accounting system used, and without deduction of taxes based on income.

Nonresident - an individual, copartnership, association or other entity domiciled outside the Borough of Clarks Green.

Person - Every natural person, copartnership, fiduciary or association. Whenever used in any clause prescribing and imposing a penalty, the term "person," as applied to an association, shall mean the partners or members thereof, and, as applied to corporations, the officers thereof.

Resident - an individual, copartnership, association or other entity domiciled in the Borough of Clarks Green.

Taxpayer - a person, whether an individual, copartnership, association or any other entity, required hereunder to file a return of earnings or net profits, or to pay a tax thereon.

2. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

(Ord. 4-1949, 11/30/1949)

§24-102. Imposition of Tax.

1. An annual tax for general revenue purposes of 1% is hereby levied and imposed on:

A. Salaries, wages, commissions and other compensation earned on and after January 1, 1950, by residents of Clarks Green.

B. Salaries, wages, commissions and other compensation earned on and after January 1, 1950, by nonresidents of Clarks Green for work done or services performed or rendered in Clarks Green.

C. The net profits earned on and after January 1, 1950, of businesses, professions or other activities conducted by such residents.

D. The net profits earned on and after January 1, 1950, of businesses, professions or other activities conducted in Clarks Green by nonresidents.

2. The taxes levied under subsections .1.A and .B herein shall relate to and be imposed upon salaries, wages, commissions and other compensation paid by an employer or on his behalf to any person who is employed by or renders services to him.

3. The taxes levied under subsections .1.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, owner or proprietor, either individually or in association with some other person or persons.

4. Said tax shall first be levied, collected and paid with respect to the salaries, wages, commissions and other compensation earned on and after January 1, 1950, and with respect to the net profits of businesses, professions or other activities, earned on and after January 1, 1950.

(Ord. 4-1949, 11/30/1949; as amended by Ord. 3-1989, 10/9/1989, §108-2)

§24-103. Filing of Return; Payment of Tax.

1. Each person whose earnings or profits are subject to the tax imposed by this Part shall, on or before April 15, 1950, make and file with the Borough Tax Collector, a return on a form furnished by or obtainable from the Borough Tax Collector, setting forth the aggregate amount of salaries, wages, commissions and other compensation or net profits earned by him during the period beginning January 1, 1950, and ending March 31, 1950, and subject to said tax, together with such other pertinent information as the Borough Tax Collector may require, and shall make and file with the Borough Tax Collector a similar return within 15 days after the expiration of each 3-month period thereafter during each year; such returns shall also show the amount of the tax imposed by this Part on such earnings and profits.

2. The person making the return shall, at the time of filing thereof, pay to said Borough Tax Collector the amount of tax shown as due thereon.

(Ord. 4-1949, 11/30/1949)

§24-104. Duties of Tax Collector.

It shall be the duty of the Tax Collector of the Borough of Clarks Green to collect and receive the tax imposed by this Part. It shall also be the duty of the Tax Collector, in addition to keeping the records now required by law or ordinance, to keep a record showing the amount received by him from each taxpayer and the date of such receipt. Immediately upon payment by any taxpayer of the tax imposed by this Part, the Borough Tax Collector shall furnish such taxpayer with a receipt for such tax in duplicate, showing the amount paid and the period covered by the payment.

(Ord. 4-1949, 11/30/1949)

§24-105. Examination of Records and Persons; Confidentiality; Violations and Penalties.

1. The Borough Tax Collector is hereby authorized to examine the books, papers and records of any employer or supposed employer, or of any taxpayer or supposed taxpayer, in order to verify the accuracy of any return made or, if no return was made, to ascertain the tax imposed by this Part. Every such employer or supposed employer, or taxpayer or supposed taxpayer, is hereby directed and required to give to said Tax Collector, or his duly authorized agent, the means, facilities and opportunity for such examinations and investigations as are hereby authorized. The Borough Tax Collector is hereby authorized to examine any person under oath concerning any income which was or should have been returned for taxation, and to this end may compel the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, whom he believes to have knowledge of said income.

2. Any information gained by the Borough Tax Collector, or any other official or agent of the Borough of Clarks Green as a result of any returns, investigations, hearings or verifications required or authorized by this Part shall be confidential, except for official purposes, and except in accordance with proper judicial order, or as otherwise provided by law, and any person or agent divulging such information shall be in violation of this Part and, upon conviction thereof, shall be subject to penalties set forth in §24-108.

(Ord. 4-1949, 11/30/1949; as amended by Ord. 3-2005, 10/10/2005)

§24-106. Interest and Penalties for Nonpayment.

All taxes imposed by this Part remaining unpaid after they become due shall bear interest in addition to the amount of the unpaid tax at the rate of 6% per year, and the persons upon whom said taxes are imposed shall be further liable to a penalty of 10% of the amount of the tax due which shall not have been paid within 4 months after the date of the tax notice given to the taxpayer.

(Ord. 4-1949, 11/30/1949; as amended by Ord. 7-1977, 7/11/1977)

§24-107. Collection of Unpaid Taxes.

All taxes imposed by this Part, together with all interest and penalties, shall be recoverable by the Borough Solicitor as other debts of like amount are recoverable.

(Ord. 4-1949, 11/30/1949)

§24-108. Violations and Penalties; Failure to Acquire Form Not Excuse.

1. Any person who fails, neglects, or refuses to make any declaration or return required by this Part, any employer who fails, neglects or refuses to register or to pay the tax deducted from his employees, or fails, neglects, or refuses to deduct or withhold the tax from his employees, any person who refuses to permit the officer or any agent designated by him to examine his books, records, and papers, and any person who knowingly makes any incomplete, false or fraudulent return, or attempts to do anything whatsoever to avoid the full disclosure of the amount of his net profits or earned income in order to avoid the payment of the whole or any part of the tax

imposed by this Part, shall, upon conviction therefor 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. [*Ord. 3-1989*]

2. Any person who divulges any information which is confidential under the provisions of this Part, shall, upon conviction therefor, 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.

3. The penalties imposed under this Section shall be in addition to any other penalty imposed by any other Section of this Part.

4. The failure of any person to receive or procure forms required for making the declaration or returns required by this Part shall not excuse him from making such declaration or return.

(*Ord. 4-1949, 11/30/1949; as amended by Ord. 3-1989, 10/9/1989, §108-8; and by Ord. 3-2005, 10/10/2005*)

§24-109. Applicability.

This Part shall not apply to any person or property as to whom or which it is beyond the legal power of Council to impose the tax or duties herein provided for.

(*Ord. 4-1949, 11/30/1949*)

§24-110. Appointment of Tax Collector.

1. Wherever in the foregoing Part reference is made to the Borough Wage Tax Collector of the Borough of Clarks Green, the same shall be construed to mean such person, officer, collector, assistant, employee or individual who, by resolution of the Clarks Green Borough Council, may be appointed to perform the duties prescribed by said Chapter.

2. The Mayor, with the advice and consent of the Council of the Borough of Clarks Green, shall have the power and authority to appoint any person, officer, collector, assistant, employee or individual to collect the taxes herein imposed and perform the other duties assigned to the Wage Tax Collector of the Borough of Clarks Green.

(*Ord. 4-1949, 11/30/1949; as amended by Ord. 3-1962, 3/12/1962; and by Ord. 3-2005, 10/10/2005*)

B. Setoff of Losses**§24-111. Prohibition.**

The Borough Local Wage Tax Collector shall be instructed to permit no setoff of losses in one or more business endeavors against profits from one or more business endeavors (as evidenced by the filing of copies of Schedule C or Schedule K-1 as filed with the United States Internal Revenue Service or with the Commonwealth of Pennsylvania Department of Revenue), nor against wages as evidenced by a W-2 form filed with those governmental agencies.

(Res. 1-1987, 1/12/1987)

Part 2**Local Services Tax****§24-201. Short Title.**

This Part shall be known and as the “Clarks Green Borough Local Services Tax Ordinance.”

(*Ord. 3-2007, 11/12/2007, §1*)

§24-202. Definitions.

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

Borough of Clarks Green or Borough - the area within the geographic limits of the Borough of Clarks Green.

Collector - the person, public employee or private agency designated by the Borough of Clarks Green to collect and administer the tax herein imposed.

DCED - the Department of Community and Economic Development of the Commonwealth of Pennsylvania.

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

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

He, his or him - indicates the singular and plural number, as well as male, female and neuter genders.

Individual - any person, male or female, engaged in any occupation, trade or profession within the geographic limits of the Borough of Clarks Green.

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

Occupation - any trade, profession, business or undertaking of any type, kind or character, including services, domestic or other, carried on or performed within the geographic limits of the Borough of Clarks Green for which compensation is charged or received, whether by means of salary, wages, commission or fees for services rendered.

Tax- the local services tax at the rate fixed in §24-203 of this Part.

Tax year - the period from January 1 until December 31 in any year; a calendar year.

(*Ord. 3-2007, 11/12/2007, §1*)

§24-203. Levy of Tax.

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

(Ord. 3-2007, 11/12/2007, §1)

§24-204. Exemption and Refunds.

1. *Exemption.* Any person whose total earned income and net profits from all sources within the Borough is less than \$12,000 for any calendar year in which the tax is levied is exempt from the payment of the tax for that calendar year. In addition, the following persons are exempt from payment of the tax:

A. Any person who has served in any war or armed conflict in which the United States was engaged and is honorably discharged or released under honorable circumstances from active service if, as a result of military service, the person is blind, paraplegic or a double or quadruple amputee or has a service-connected disability declared by the United States Veterans' Administration or its successor to be a total 100% disability.

B. Any person who serves as a member of a reserve component of the armed forces and is called to active duty at any time during the taxable year. For the purposes of this paragraph, "reserve component of the armed forces" shall mean the United States Army Reserve, United States Navy Reserve, United States Marine Corps Reserve, United States Coast Guard Reserve, United States Air Force Reserve, the Pennsylvania Army National Guard or the Pennsylvania Air National Guard.

2. *Procedure to Claim Exemption.*

A. A person seeking to claim an exemption from the local services tax may annually file an exemption certificate with the Borough and with the person's employer affirming that the person reasonably expects to receive earned income and net profits from all sources within the Borough of less than \$12,000 in the calendar year for which the exemption certificate is filed. In the event the Borough utilizes a tax collection officer, it shall provide a copy of the exemption certificate to that officer. The exemption certificate shall have attached to it a copy of all the employee's last pay stubs or W-2 forms from employment within the Borough for

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

B. With respect to a person who claimed an exemption for a given calendar year from the tax, upon notification to an employer by the person or by the Borough that the person has received earned income and net profits from all sources within the Borough equal to or in excess of \$12,000 in that calendar year or that the person is otherwise ineligible for the tax exemption for that calendar year, or upon an employer's payment to the person of earned income within the Borough in an amount equal to or in excess of \$12,000 in that calendar year, an employer shall withhold the local services tax from the person under paragraph .C.

C. If a person who claimed an exemption for a given calendar year from the tax becomes subject to the tax for the calendar year under paragraph .B, the employer shall withhold the tax for the remainder of that calendar year. The employer shall withhold from the person, for the first payroll period after receipt of the notification under paragraph .B, a lump sum equal to the amount of tax that was not withheld from the person due to the exemption claimed by the person under this subsection, plus the per payroll amount due for that first payroll period. The amount of tax withheld per payroll period for the remaining payroll periods in that calendar year shall be the same amount withheld for other employees. In the event the employment of a person subject to withholding of the tax under this clause is subsequently severed in that calendar year, the person shall be liable for any outstanding balance of tax due, and the Borough may pursue collection under this Part.

D. Except as provided in paragraph .B, it is the intent of this subsection that employers shall not be responsible for investigating exemption certificates, monitoring tax exemption eligibility or exempting any employee from a local services tax.

3. *Refunds.* The Borough Council, in consultation with the Collector and DCED, shall establish procedures for the processing of refund claims for any tax paid by any person who is eligible for exemption, which procedures shall be in accord with provisions of the general municipal law relating to refunds of overpayments and interest on overpayments. Refunds made within 75 days of a refund request or 75 days after the last day the employer is required to remit the tax for the last quarter of the calendar year, whichever is later, shall not be subject to interest. No refunds shall be made for amounts overpaid in a calendar year that do not exceed \$1. The Borough Council or the Collector shall determine eligibility for exemption and provide refunds to exempt persons.

(*Ord. 3-2007, 11/12/2007, §1*)

§24-205. Duty of Employers to Collect.

1. Each employer within the Borough of Clarks Green, as well as those employers situated outside the Borough of Clarks Green but who engage in business within the Borough of Clarks Green is hereby charged with the duty of collecting the tax from each of his employees engaged by him or performing for him within the Borough of Clarks Green and making a return and payment thereof to the Collector. Further, each employer is hereby authorized to deduct the tax from each employee in his or her employ, whether said employee is paid by salary, wage or commission and whether or not all such services are performed within the Borough of Clarks Green.

2. A person subject to the tax shall be assessed by the employer a pro rata share of the tax for each payroll period in which the person is engaging in an occupation. The pro rata share of the tax assessed on the person for a payroll period shall be determined by dividing the combined rate of the tax levied for the calendar year by the number of payroll periods established by the employer for the calendar year. For purposes of determining the pro rata share, an employer shall round down the amount of the tax collected each payroll period to the nearest one-hundredth of a dollar. Collection of the tax shall be made on a payroll period basis for each payroll period in which the person is engaging in an occupation, except as provided in subsection .4 of this Section. For purposes of this subsection, "combined rate" shall mean the aggregate annual rate of the tax levied by the school district and the Borough.

3. No person shall be subject to the payment of the local services tax by more than one political subdivision during each payroll period.

4. In the case of concurrent employment, an employer shall refrain from withholding the tax if the employee provides a recent pay statement from a principal employer that includes the name of the employer, the length of the payroll period and the amount of the tax withheld and a statement from the employee that the pay statement is from the employee's principal employer and the employee will notify other employers of a change in principal place of employment within 2 weeks of its occurrence. The employee's statement shall be provided on the form approved by DCED.

5. The tax shall be no more than \$52 on each person for each calendar year, irrespective of the number of political subdivisions within which a person may be employed. The Borough shall provide a taxpayer a receipt of payment upon request by the taxpayer.

6. No employer shall be held liable for failure to withhold the tax or for the payment of the withheld tax money to the Borough if the failure to withhold taxes arises from incorrect information submitted by the employee as to the employee's place or places of employment, the employee's principal office or where the employee is principally employed. Further, an employer shall not be liable for payment of the local services tax in an amount exceeding the amount withheld by the employer if the employer complies with the provisions of subsection .2 of §24-204 of this Part and this Section and remits the amount so withheld in accordance with this Part.

7. Employers shall be required to remit the local services taxes 30 days after the end of each quarter of a calendar year.

(Ord. 3-2007, 11/12/2007, §1)

§24-206. Returns.

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

(Ord. 3-2007, 11/12/2007, §1)

§24-207. Dates for Determining Tax Liability and Payment.

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

(Ord. 3-2007, 11/12/2007, §1)

§24-208. Self-Employed Individuals.

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

(Ord. 3-2007, 11/12/2007, §1)

§24-209. Individuals Engaged in More than One Occupation or Employed in More than One Political Subdivision.

1. The situs of the tax shall be the place of employment on the first day the person becomes subject to the tax during each payroll period. In the event a person is engaged in more than one occupation, that is, concurrent employment, or an occupation which requires the person working in more than one political subdivision during a payroll period, the priority of claim to collect the local services tax shall be in the following order:

A. First, the political subdivision in which a person maintains his or her principal office or is principally employed.

B. Second, the political subdivision in which the person resides and works if the tax is levied by that political subdivision.

C. Third, the political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home.

In case of dispute, a tax receipt of the taxing authority for that calendar year declaring that the taxpayer has made prior payment constitutes prima facie certification of payment to all other political subdivisions.

(Ord. 3-2007, 11/12/2007, §1)

§24-210. Nonresidents Subject to Tax.

All employers and self-employed individuals residing or having their places of business outside of the Borough of Clarks Green but who perform services of any type

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

(Ord. 3-2007, 11/12/2007, §1)

§24-211. Administration of Tax.

1. The Collector shall be appointed by resolution of the Borough Council. It shall be the duty of the Collector to accept and receive payments of this tax and to keep a record thereof showing the amount received by him from each employer or self-employed person, together with the date the tax was received.

2. The Collector is hereby charged with the administration and enforcement of this part and is hereby charged and empowered, subject to Borough Council approval, to prescribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this Part, including provisions for the examination of payroll records of any employer subject to this Part, the examination and correction of any return made in compliance with this Part and any payment alleged or found to be incorrect or as to which overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the Collector shall have the right to appeal to the Court of Common Pleas of Lackawanna County as in other cases provided.

3. 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.

(Ord. 3-2007, 11/12/2007, §1)

§24-212. Suits for Collection.

1. In the event that any tax under this Part remains due or unpaid 30 days after the due dates above set forth, the Collector may sue for the recovery of any such tax due or unpaid under this Part, together with interest and penalty.

2. If for any reason the tax is not paid when due, interest at the rate of 6% on the amount of such tax shall be calculated beginning with the due date of the tax and a penalty of 5% shall be added to the flat rate of such tax for nonpayment thereof. Where suit is brought for the recovery of this tax or other appropriate remedy undertaken, the individual liable therefor shall, in addition, be responsible and liable for the costs of collection.

(Ord. 3-2007, 11/12/2007, §1)

§24-213. Violations and Penalties.

Whoever makes any false or untrue statement on any return required by this Part,

or whoever refuses inspection of the books, records or accounts in his or her custody and control setting forth the number of employees subject to this tax who are in his or her employment, or whoever fails or refuses to file any return required by this Part shall be guilty of a violation and, upon conviction thereof, shall be sentenced to pay a fine of not more than \$600 and costs of prosecution, and, in default of payment of such fine and costs, to imprisonment for not more than 30 days. The action to enforce the penalty herein prescribed may be instituted against any person in charge of the business of any employer who shall have failed or who refuses to file a return required by this Part.

(Ord. 3-2007, 11/12/2007, §1)

§24-214. Interpretation.

1. Nothing contained in this Part shall be construed to empower the Borough of Clarks Green to levy and collect the tax hereby imposed on any occupation not within the taxing power of the Borough under the Constitution of the United States and the laws of the Commonwealth of Pennsylvania.

2. If the tax hereby imposed under the provisions of this Part shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United States or of the laws of the Commonwealth of Pennsylvania as to any individual, the decision of the court shall not affect or impair the right to impose or collect said tax or the validity of the tax so imposed on other persons or individuals as herein provided.

(Ord. 3-2007, 11/12/2007, §1)

Part 3**Real Property Transfer Tax****§24-301. Title.**

This Part shall be known as the "Realty Transfer Tax Ordinance of the Borough of Clarks Green."

(Ord. 4-1987, 5/11/1987; as amended by Ord. 3-1989, 10/9/1989, §108-27)

§24-302. Legislative 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 Clarks Green, 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. 4-1987, 5/11/1987)

§24-303. Definitions.

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

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

Corporation - a corporation, joint-stock association, business trust or banking institution which is organized under the laws of this Commonwealth, the United States or any other state, territory, foreign county 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 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 §24-308 of this Part.

Family farm cooperation - 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 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 -

(1) All lands, tenements or hereditaments within the Borough of Clarks Green, 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.

(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 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.

(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.

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.

(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.

Transaction - the making, executing, delivering, accepting or presenting for recording of a document.

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 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.

(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 determined by adjusting the assessed value of the real estate for local real estate tax purposes for the common level ratio factor developed by the Pennsylvania Department of Revenue for Pennsylvania realty transfer tax base calculations.

(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.

(Ord. 4-1987, 5/11/1987)

§24-304. Payment of Tax; Evidence of Payment; Intent; 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, or for or in respect of the vellum parchment of paper upon which such document is written or printed, a tax at the rate of 1% of the value of the real estate represented by such document, which tax shall be payable at the earlier of the time the document is presented for recording or within 30 days of acceptance of such document or within 30 days of becoming an acquired company.

2. The payment of the tax imposed herein shall be evidenced by the affixing of an official stamp or writing by the Recorder, 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 of Clarks Green under the authority of that act shall, during the time such duplication of the tax exists, except as hereinafter otherwise provided, be one half of the rate, and such one half rate shall become effective without any action on the part of the Borough of Clarks Green; provided, however, that the Borough of Clarks Green 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 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. Any tax imposed under this Part 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 §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. [*Ord. 3-2006*]

(*Ord. 4-1987, 5/11/1987; as amended by Ord. 3-2006, 9/11/2006, §1*)

§24-305. Exempt Parties.

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

(*Ord. 4-1987, 5/11/1987*)

§24-306. Excluded Transactions.

1. The tax imposed by §24-304 shall not be imposed upon:

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

B. A document which the Borough of Clarks Green is prohibited from taxing under the Constitution or statutes of the United States.

C. A conveyance to a municipality, township, school district or county pursuant to acquisition by the municipality, township, school district or county or a tax-delinquent property at sheriff sale or Tax Claim Bureau sale.

D. 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.

E. 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.

F. A transfer between husband and wife, between persons who were previously husband and wife who have since been divorced, provided that the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, between parent and child or the spouse of such child, between brother or sister or the spouse of a brother or sister and brother or sister or the spouse of a brother or sister, and between a grandparent and grandchild or the spouse of such grandchild, except that a subsequent transfer by the grantee within 1 year shall be subject to tax as if the grantor were making such transfer.

G. 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.

H. 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.

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

J. A transfer for no or nominal actual consideration from trustee to successor trustee.

K. A transfer for no or nominal actual consideration between principal and agent or straw party, or from or to an agent or straw party where, if the agent or straw party were his principal, no tax would be imposed under this Part. 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 subsection.

L. A transfer made pursuant to the statutory merger or consolidation of a corporation or statutory division of a nonprofit 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.

M. 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 2 years.

N. 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.

O. A transfer from a nonprofit industrial development agency or authority to a grantee purchasing directly from it, but only if the grantee shall directly use such real estate for the primary purpose of manufacturing, fabricating, compounding, processing, publishing, research and development, transportation, energy conservation, energy production, pollution control, warehousing or agriculture; and the agency or authority has the full ownership interest in the real estate transferred.

P. 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.

Q. 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.

R. A transfer to a conservancy which possesses a tax-exempt status pursuant to §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.

S. 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.

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

U. A transaction wherein the tax due is \$1 or less.

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

2. 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. 4-1987, 5/11/1987)

§24-307. Transfers Between Associations or Corporations and Members Thereof.

Except as otherwise provided in §24-306, 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 purpose of this Part, corporations and associations are entities separate

from their members, partners, stockholders or shareholders.

(Ord. 4-1987, 5/11/1987)

§24-308. Acquired Companies.

1. A real estate company is an acquired company upon a change in the ownership interest in the company, however effective, if the change does not affect the continuity of the company and, if itself or together with prior changes, the change has the effect of transferring, directly or indirectly, 90% or more of the total ownership interest in the company within a period of 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 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. 4-1987, 5/11/1987)

§24-309. Credits Against Tax.

1. Where there is a transfer of a residential property by a licensed real estate broker, which property was transferred to him within the preceding year as consideration for the purchase of other residential property, a credit for the amount of the tax paid at the time of the transfer to him shall be given to him toward the amount of the tax due upon the transfer.

2. Where there is a transfer by a builder of residential property which was transferred to the builder within the preceding year as consideration for the purchase of new, previously unoccupied residential property, a credit for the amount of the tax paid at the time of the transfer to the builder shall be given to the builder toward the amount of the tax due upon the transfer.

3. Where there is a transfer of real estate which is leased by the grantor, a credit for the amount of tax paid at the time of the lease shall be given the grantor toward the tax due upon the transfer.

4. Where there is a conveyance by deed of real estate which was previously sold under a land contract by the grantor, a credit for the amount of tax paid at the time of the sale shall be given the grantor toward the tax due upon the deed.

5. If the tax due upon the transfer is greater than the credit given under this 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. 4-1987, 5/11/1987)

§24-310. Extension of Leases.

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. 4-1987, 5/11/1987)

§24-311. Proceeds of Judicial Sale.

The tax herein imposed shall be fully paid and have priority out of the proceeds of any judicial sale of real estate before any other obligations, 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. 4-1987, 5/11/1987)

§24-312. 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 the Borough of Clarks Green based on a redetermination of the amount of tax due by the Commonwealth of Pennsylvania of the Pennsylvania realty transfer tax, without compensation from the Borough of Clarks Green.

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

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

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

(Ord. 4-1987, 5/11/1987)

§24-313. Statement of Value.

Every document lodged with or presented to the Recorder of Deeds for recording shall set forth therein and as a part of such document the true, full and complete value thereof or shall be accompanied by a statement of value executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this Part. 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. 4-1987, 5/11/1987*)

§24-314. 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 50% 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 5% of the amount of such tax if the failure is for not more than 1 month, with an additional 5% for each additional month or fraction thereof during which such failure continues, not exceeding 50% in the aggregate.

(*Ord. 4-1987, 5/11/1987*)

§24-315. Unpaid Taxes to Become 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 of Clarks Green, Lackawanna County, Pennsylvania, which lands, tenements, hereditaments or interest therein are described in or conveyed by or transferred by the deed which is the subject of the tax imposed, assessed and levied by this Part, 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 Lackawanna 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. 4-1987, 5/11/1987*)

§24-316. Enforcement and Collection of Taxes.

1. All taxes imposed by this Part, together with interest and penalties prescribed herein, shall be recoverable as other debts of like character are recovered.

2. The Treasurer of the Borough of Clarks Green, or his designee, is charged with the 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, or in the future will be, 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.

3. If the current amount of the tax is not paid by the last date prescribed for timely payment, the Borough of Clarks Green, pursuant to §1102-D of the Tax Reform Code of 1971, 72 P.S. §8102-D, authorizes the Pennsylvania Department of Revenue to determine, collect and enforce the tax and all interest and penalties thereon. [*Ord. 3-*

2006]

(*Ord. 4-1987, 5/11/1987; as amended by Ord. 3-2006, 9/11/2006, §2*)

§24-317. Refunds.

Whenever the Commonwealth of Pennsylvania shall determine that there has been an overpayment to it of realty transfer tax due under the Local Realty Transfer Tax Act, 72 P.S. §8108-C *et seq.*, the Treasurer of the Borough of Clarks Green, or his designee, may accept that determination as evidence of an overpayment of the tax hereunder sufficient to allow a refund to the taxpayer of the amount of the overpayment. No interest shall be paid upon any such overpayment.

(*Ord. 4-1987, 5/11/1987*)

Part 4**Delinquent Taxes****§24-401. Definitions.**

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

Borough permit - any permit or license issued by the Borough or by any Borough officer, employee, authority, board or commission.

Delinquent - any name and property listed on the real estate tax report of liens prepared by the Lackawanna County Tax Claim Bureau, or listed on the delinquent account rolls by the Clarks Green Borough Sewer Tax Collector.

Interested person - any person or legal entity applying for a Borough permit or on whose behalf or for whose benefit an application for a Borough permit is made.

Official debt - Any delinquent or overdue tax, fee, assessment or other debt owed to the Borough of Clarks Green including, but not limited to, any deficiency in any financial security posed pursuant to §509 of the Municipalities Planning Code, 53 P.S. §10509, as adjusted in accordance with that section, and any escrow or other security posted by a developer to secure payment of engineering, legal and administrative costs of review in connection with a subdivision or land development plan. The amount of official debt shall include all accumulated penalties and interest.

(Ord. 5-1996, 6/10/1996)

§24-402. Issuance of Permit Restricted.

Except as provided in the preceding Section, no Borough permit shall be issued if an interested person owes any official debt. Upon full payment of the official debt, the Borough permit shall be issued upon compliance with all other applicable requirements.

(Ord. 5-1996, 6/10/1996)

§24-403. Exceptions.

This Part does not forbid issuing a Borough permit when the validity of, obligation to pay or the amount of the official debt is currently the subject of any appeal or other formal legal protest, contest or proceeding by the interested person.

(Ord. 5-1996, 6/10/1996)

