

CHAPTER 24

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Part 1
Per Capita Tax

§101. Imposition of Tax. A per capita tax of ten (\$10.00) dollars per fiscal year be, and the same is, hereby levied and assessed upon each and every resident or inhabitant of this political subdivision, in the County of Cameron, Commonwealth of Pennsylvania, of the age of twenty-one (21) years or over; which tax each and every resident or inhabitant shall annually pay for the use of this political subdivision, beginning on July 1, 1977. (Ord. 351, 1/3/1977, §1)

§102. Special Tax Act and Local Tax Collection Law. The preparation of the list of residents or inhabitants and return thereof, the assessment, the duplicate, the collection, the notices, the exonerations, the reports of omitted names, the collector, the rights, powers, duties, bond and compensation of the collector, the payment of expenses, audits, and the penalties for refusal or failure to pay the tax, shall all be as provided in the special Tax Act of Cameron County, No. 286, of 1867, P.L. 306, approved March 1, 1867, and the Local Tax Collection Law, its supplements and amendments. It is the intent and purpose of this Part that the collection and enforcement of this tax and all matters in connection therewith, shall be subject to and controlled by all of the provisions of the afore-said Special Tax Act of Cameron County and Local Tax Collection Law, as are other taxes. (Ord. 351, 1/3/1977, §2)

§103. Special Collection Remedies.

1. All provisions pertaining to distress and sale of goods and chattels of taxpayers, as now set forth in the Local Tax Enabling Act, §53 P.S. 6901 et seq., or as hereafter amended, are included herein; the same now permitting distress and sale of the goods and chattels of a delinquent taxpayer.

2. All provisions pertaining to collection of delinquent per capita taxes from employers, as now set forth in Sections 19 and 20.1 of The Local Tax Enabling Act, 53 §6901 et seq., or as hereafter amended, are included herein; the same now requiring the employer of a taxpayer whose taxes are delinquent, or whose spouse's taxes are delinquent, to deduct and pay over the same after notice.

3. All provisions pertaining to collection of delinquent per capita taxes from the Commonwealth, as now set forth in Section 20 of the Local Tax Enabling Act, or as hereafter amended, are included herein.

4. All provisions pertaining to collection of taxes by suit, as now set forth in Section 20 of the Local Tax Enabling Act, or as hereafter amended, are included herein; the same now permitting execution without stay or benefit of exemption.

(Ord. 351, 1/3/1977, §3)

§104. Severability. If any section, clause, sentence or part of this Part is, for any reason, found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or

impair any of the remaining Sections, clauses, sentences or parts hereof.
(Ord. 351, 1/3/1977, §4)

§105. Effective Date. This Part shall be and become effective on July 1, 1977, at 12:01 A.M. Eastern Standard Time. (Ord. 351, 1/3/1977, §5)

§106. Authority. This Part is enacted under the authority of Act No. 511 of 1965, known as "The Local Tax Enabling Act," 53 P.S. §6901 et seq. (Ord. 351, 1/3/1977, §6)

Part 2

Earned Income and Net Profits Tax

§201. Definitions. All definitions pertaining to earned income taxes, as now set forth in the Local Tax Enabling Act, 53 P.S. §6901 et seq., or as hereafter amended, are included herein; the same now defining "association," "business," "corporation," "current year," "domicile," "earned income," "income tax officer or officer (collector)," "employer," "net profits, non-resident," "person or individual," "preceding year," "resident," "succeeding year" and "taxpayer." (Ord. 303, 4/4/1966, §1)

§202. Imposition of Tax.

1. There is hereby levied on and after July 1, 1966, a tax of one (1) percent of all earned income and net profits earned by residents.

2. There is hereby levied on and after July 1, 1966, a tax of one (1) percent of all earned income and net profits earned within this political subdivision by nonresidents.

(Ord. 303, 4/4/1966, §2)

§203. Declaration and Payment of Tax; Refunds.

1. Every resident and non-resident making net profits subject to the aforesaid tax shall:

A. On or before April 15 of the succeeding year, make and file with the officer on a form prescribed or approved by the officer a final return for the period beginning January 1 and ending December 31 of the current year, which final return shall show such information as is reasonably necessary to disclose such net profits.

B. On or before said date of April 15, shall pay to the officer an annual payment of the tax due for said current year period.

C. Provided however, as to fiscal year taxpayers, such final return and payment shall be due and paid within one hundred five (105) days after the close of the fiscal year, for such fiscal year.

D. Provided, further, that for the year 1966 such net profits shall be reported only for that portion of such current year or fiscal year beginning July 1, 1966.

2. Every resident and non-resident receiving earned income subject to the aforesaid tax shall:

A. On or before April 15 of the succeeding year, make and file with the officer on a form prescribed or approved by the officer a final return for the period beginning January 1 and ending December 31 of the current year, which final return shall show such information as is now required by Section 13 (III)(B) of the Local Tax Enabling Act, 53 P.S. §6901 et seq., or as hereafter amended.

B. On or before said date of April 15, shall pay to the officer the amount of tax shown due on such final return which remains unpaid.

C. Provided, however, that if the full amount of tax due on all earned income received by a taxpayer during such current year shall have been withheld by the employer or employers of such taxpayer, such taxpayer shall not be required to file a final return unless specifically notified so to do by the officer.

3. Any resident or non-resident who makes no net profits, or receives no earned income, subject to the aforesaid tax, shall nevertheless file an annual return if specifically notified so to do by the officer.

4. No taxpayer shall receive any refund for any overpayment of the aforesaid tax:

A. Unless such taxpayer shall have first filed an annual return on or before April 15 of the succeeding year, claiming such refund and with a full explanation of such claim.

B. After one (1) year after the date of filing such annual return.

C. For any sum less than one (\$1.00) dollar.

(Ord. 303, 4/4/1966, §3)

§204. Collection at Source. All provisions pertaining to collection at source, as now set forth in subsections (a) to (f), inclusive of Section 13 (IV) of the Local Tax Enabling Act, or as hereafter amended, are included herein; the same not requiring registration by a new employer, withholding of the tax, quarterly returns except for monthly returns on failure to pay over taxes withheld, an annual summary return, individual returns to employees, duties on discontinuance of business, employer's liability in the event of willful or negligent omission to withhold, and over-riding duties of employees. (Ord. 303, 4/4/1966, §4)

§205. Powers and Duties of Officer; Bond.

1. All provisions pertaining to the power and duties of the officer, as now set forth in subsections (a) to (g), inclusive of Section 13 (V) of the Local Tax Enabling Act, 53 P.S. §6901 et seq., or as hereafter amended, are included herein; the same now concerning collection of the tax and record keeping, officer's bond, rules and regulations, refunds involving business expenses, examination of records, confidential nature of information and fiscal year taxpayers.

2. The officer's bond shall be:

A. In addition to any other bond required to be furnished under any other law of this Commonwealth.

B. In the amount of one hundred fifty thousand (\$150,000.00) dollars.

C. In the custody of the Borough of Emporium, kept by said Borough at its City Hall and made available for inspection at any time said City Hall is regularly open by any political subdivision named in said bond.

(Ord. 303, 4/4/1966, §5)

§206. Compensation of Officer.

1. All provisions pertaining to compensation of the income tax officer, as now set forth in Section 13 (VI) of the Local Tax Enabling Act, or as hereafter amended, are included herein; the same now concerning amount of compensation and sharing of expenses.

2. The officer shall receive such compensation for his services and expenses as shall be determined from time to time by this political subdivision in accordance with the joint agreement described in §210 of this Part.

(Ord. 303, 4/4/1966, §6)

§207. Suit for Collection of Tax.

1. All provisions pertaining to suit for collection of tax as now set forth in subsections (a), (b) and (c) of Section 13 (VII) of the Local Tax Enabling Act, or as hereafter amended, are included herein; the same now concerning rights to sue, limitations, and erroneous refunds.

2. All provisions pertaining to distress and sale of goods and chattels of taxpayers, as now set forth in Section 18 of the Local Tax Enabling Act, or as hereafter amended, are included herein; the same now permitting distress and sale of the goods and chattels of a delinquent taxpayer.

3. All provisions pertaining to collection of delinquent earned income taxes from employers, as now set forth in Section 19 of the Local Tax Enabling Act, or as hereafter amended, are included herein; the same now requiring the employer of a taxpayer whose taxes are delinquent, or whose spouse's taxes are delinquent, to deduct and pay over the same after notice.

4. All provisions pertaining to collection of delinquent earned income taxes from the Commonwealth, as now set forth in Section 20 of the Local Tax Enabling Act, or as hereafter amended, are included herein.

5. All provisions pertaining to collection of taxes by suit, as now set forth in Section 21 of the Local Tax Enabling Act, 53 P.S. §6901 et seq., or as hereafter amended, are included herein; the same now permitting execution without stay or benefit of exemption.

(Ord. 303, 4/4/1966, §7)

§208. Interest and Penalties. All provisions pertaining to interest and penalties, as now set forth in Section 13 (VIII) of the Local Tax Enabling Act, or as hereafter amended, are included herein; the same now providing for interest at six (6) percent per year and penalties of one-half of one (1) percent per month. (Ord. 303, 4/4/1966, §8)

§209. Fines and Penalties for Violation of Ordinance. All provisions pertaining to fines and penalties for violation of ordinances, as now set forth in subsections (2) to (d) of Section 13 (IX) of the Local Tax Enabling Act, 53 P.S. §6901 et seq., or as hereafter amended, are included herein; the same now concerning fines for violations with imprisonment for non-payment, and requiring returns even if forms are not received. (Ord. 303, 4/4/1966, §9)

§210. Income Tax Bureau; Joint Agreement.

1. There is hereby authorized the creation jointly by agreement with all other political subdivisions of Cameron County which impose earned income taxes similar to those imposed hereunder, or with so many of such political subdivisions as shall agree thereto, of an Income Tax Bureau for the assessment and collection of all such taxes imposed hereunder and by all other political subdivisions so agreeing and for the proper administration of the same.

2. There is hereby appointed and employed as officer of this political subdivision that person or agency so designated in said joint agreement, or failing any such joint agreement, that person or agency hereafter designated by this political subdivision.

3. The compensation of the officer, and the number and compensation of such other clerks, collectors and other assistants and employees as may be necessary, shall be as set forth in said joint agreement; or failing any such joint agreement, as hereafter approved by this political subdivision.

4. For each current year, the books, accounts and records of the officer shall be examined once during the succeeding year, as soon as possible after the end of the current year, by that accountant or firm of accountants so selected in said joint agreement; or failing any such joint agreement, by that accountant or firm of accountants now to be designated pursuant to Section 11 of the Local Tax Enabling Act, 53 P.S. §6901 et seq., or as hereafter amended.

5. All other matters necessary for the collection of the taxes hereby imposed and for the proper enforcement and administration hereof shall be as set forth in said joint agreement; or if not set forth therein or failing any such joint agreement, as set forth in rules and regulations prescribed by the officer and approved by this political subdivision.

(Ord. 303, 4/4/1966, §10)

§211. Severability. If any Section, clause, sentence or part of this Part is, for any reason, found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining Sections, clauses, sentences or parts hereof. (Ord. 303, 4/4/1966, §11)

§212. Effective Date. This Part shall be and become effective on July 1, 1966, at 12:01 A.M., Eastern Standard Time. (Ord. 303, 4/4/1966, §12)

§213. Authority. This Part is enacted under the authority of Act No. 511 of 1965, known as the "Local Tax Enabling Act," 53 P.S. §6901 et seq. (Ord. 303, 4/4/1966, §12)

Part 3

Realty Transfer Tax

§301. Short Title. This Part shall be known as the "Realty Transfer Tax Ordinance of the Borough of Emporium." (Ord. 349, 9/13/1976; as revised by Ord. 412, 10/4/1993)

§302. 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, 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 et seq. (Ord. 349, 9/13/1976; as revised by Ord. 412, 10/4/1993)

§303. Definitions.

ASSOCIATION - a partnership, limited partnership or any other form of unincorporated enterprise owned or conducted by two (2) or more persons other than a private trust or decedent's estate.

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

DOCUMENT - any deed, instrument or writing which conveys, transfers, demises, vests, confirms or evidences any transfer or demise of title of real estate, but does not include wills, mortgages, deeds of trust or other instruments of like character given as security for a debt and deeds of release thereof to the debtor, land contracts whereby the legal title does not pass to the grantee until the total consideration specified in the contract has been paid or any cancellation thereof unless the consideration is payable over a period of time exceeding thirty (30) years, or instruments which solely grant, vest or confirm a public utility easement. "Document" shall also include a declaration of acquisition required to be presented for recording under §308.

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

- A. Recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;
- B. The raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;
- C. Fur farming;
- D. Stockyard and slaughterhouse operations; or
- E. Manufacturing or processing operations of any kind.

MEMBERS OF THE SAME FAMILY - any individual, such individual's brothers and sisters, the brothers and sisters of such individual's parents 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.

MUNICIPALITY - the Borough of Emporium.

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

REAL ESTATE -

A. All lands, tenements or hereditaments within this Borough, including without limitation, buildings, structures, fixtures, mines, minerals, oil, gas, quarries, spaces with or without upper or lower boundaries, trees and other improvements, immovables or interests which by custom, usage or law pass with a conveyance of land, but excluding permanently attached machinery and equipment in an industrial plant.

B. A condominium unit.

C. A tenant-stockholder's interest in a cooperative housing corporation, trust or association under a proprietary lease or occupancy agreement.

REAL ESTATE COMPANY - a corporation or association which is primarily engaged in the business of holding, selling or leasing real estate, ninety (90) percent or more of the ownership interest in which is held by thirty-five (35) or fewer persons and which:

A. Derives sixty (60) percent or more of its annual gross receipts from the ownership or disposition of real estate; or

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

TITLE TO REAL ESTATE -

A. Any interest in real estate which endures for a period of time, the termination of which is not fixed or ascertained by a specific number of years, including without limitation an estate in fee simple, life estate or perpetual leasehold; or

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

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

VALUE -

A. In the case of any bona fide sale of real estate at arm's length for actual monetary worth, the amount of the actual consideration therefor, paid or to be paid, including liens or other encumbrances thereon existing before the transfer and not removed thereby, whether or not the underlying indebtedness is assumed, and ground rents, or a commensurate part thereof where such liens or other encumbrances and ground rents also encumber or are charged against real estate; provided, where such documents shall set forth a nominal consideration, the "value" thereof shall be determined from the price set forth in or actual consideration for the contract of sale;

B. In the case of a gift, sale by execution upon a judgment or upon the foreclosure of a mortgage by a judicial officer, transactions without consideration or for consideration less than the actual monetary worth of the real estate, a taxable lease, an occupancy agreement, a leasehold or possessory interest, any exchange of properties, or the real estate of an acquired company, the actual monetary worth of the real estate determined by adjusting the assessed value of the real estate for local real estate tax purposes for the common level ratio factor developed by the Pennsylvania Department of Revenue for Pennsylvania realty transfer tax base calculations;

C. In the case of an easement or other interest in real estate, the value of which is not determinable under Subsection (A) or (B), the actual monetary worth of such interest; or

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

(Ord. 349, 9/13/1976; as revised by Ord. 412, 10/4/1993)

§304. Imposition of Tax; Interest.

1. Every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, a tax at the rate of one (1) percent of the value of the real estate represented by such document, which tax shall be payable at the earlier of the time the document is presented for recording or within thirty (30) days of acceptance of such document or within thirty (30) days of becoming an acquired company.

2. The payment of the tax imposed herein shall be evidenced by the affixing of an official stamp or writing by the recorder of deeds whereon the date of the payment of the tax, amount of the tax and the signature of the collecting agent shall be set forth.

3. It is the intent of this Part that the entire burden of the tax imposed herein on a person or transfer shall not exceed the limitations prescribed in the Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, 53 P.S. §6901 et seq., so that if any other political subdivision shall impose or hereafter shall impose such tax on the same person or transfer then the tax levied by the Borough Council under the authority of that Act shall during the time such duplication of the tax exists, except as hereinafter otherwise provided, be one-half ($\frac{1}{2}$) of the rate and such one-half ($\frac{1}{2}$) shall become effective without any action on the part of the Borough Council provided, however, that the Borough 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 ($\frac{1}{2}$) of the rate herein provided, they will impose respectively different rates, the total of which shall not exceed the maximum rate permitted under "The Local Tax Enabling Act."

4. If for any reason the tax is not paid when due, interest at the rate in effect at the time the tax is due, shall be added and collected.

(Ord. 349, 9/13/1976; as revised by Ord. 412, 10/4/1993)

§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. 349, 9/13/1976; as revised by Ord. 412, 10/4/1993)

§306. Excluded Transactions. The tax imposed by §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 or confirmation in connection with condemnation proceedings, or a reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation which reconveyance may include property line adjustments provided said reconveyance is made within one (1) year from the date of condemnation.

B. A document which the Borough 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 of 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 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.

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

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 (i) for no or nominal actual consideration between principal and agent or straw party; or (ii) from or to an agent or straw party where, if the agent or straw party were his principal, no tax would be imposed under this Part.

Where the document by which title is acquired by a grantee or statement of value fails to set forth that the property was acquired by the grantee from, or for the benefit of, his principal, there is a rebuttable presumption that the property is the property of the grantee in his individual capacity if the grantee claims an exemption from taxation under this clause.

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 two (2) years.

N. A transfer from a nonprofit industrial development agency or authority to a grantee of property conveyed by the grantee to that

