

Chapter 24

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Part 1**Local Services Tax****§24-101. 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:

District—the area within the limits and jurisdiction of Nesquehoning Borough, Carbon County, Pennsylvania.

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

Fiscal year—the 12-month period beginning January 1 and ending December 31.

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

Individual—any person, male or female, who attains or is over the age of 18 years on the first day of January, engaged in any occupation, trade, or profession, within the limits of Nesquehoning Borough.

Local services tax officer or officer—the person, public employee, or private agency designated by Nesquehoning Borough to collect and administer the local services tax hereby imposed.

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

Salaries, wages, commissions, and other compensation—includes salaries, wages, commissions, bonuses, incentive payments, fees, and tips that may accrue or be received by an individual for services rendered, whether directly or through an agent and whether in cash or in property, but shall not include periodic payments for sick or disability benefits and those commonly recognized as old-age benefits, retirement pay, or pensions paid to persons retired from service after reaching a specific age or after a stated period of employment, nor public assistance or unemployment compensation payments, nor any wages or compensation paid by the United States to any person for active service in the Army, Navy, Air Force, or any other branch of the military of the United States, nor any bonus or additional compensation paid by the United States or the Commonwealth of Pennsylvania or any other state for such service.

Tax—the local services tax in the amount of \$52 levied by this Part.

(Ord. 2007-5, 12/19/2007, §1)

§24-102. Levy.

The Borough Council of the Borough of Nesquehoning hereby levies and imposes

on each individual engaged in any occupation within the territorial limits of Nesquehoning Borough during this fiscal year and each fiscal year thereafter, a local services tax. This tax is an addition to all other taxes of any kind or nature heretofore levied by Nesquehoning Borough; provided, that all individuals deriving less than \$12,000 per year from all sources of earned income and/or net profits shall be exempt from the local services tax hereby levied. The local services tax in the amount as herein levied may be subject to the sharing provisions as set forth in the applicable law.

(Ord. 2007-5, 12/19/2007, §2)

§24-103. Exemption.

Any individual who earns an annual gross salary of \$12,000 or less per year from all sources of earned income and/or net profits, or on active military duty, or who have been called to active military duty at any time within the taxing year, or any former/current member of the military who is a paraplegic, double and/or quadruple amputee or has any service related disability, as declared by the United States Veterans' Administration or its successor to be a total 100 percent disability shall be exempt from payment of the tax hereunder only upon filing of an exemption certificate, developed by the Department of Community and Economic Development, and completed by the employer that it anticipates earnings of less than such stated amount due to seasonal employment or otherwise.

(Ord. 2007-5, 12/19/2007, §3)

§24-104. Amount of Tax.

Beginning with the first day of January, each person engaged in an occupation as herein before defined, within the limits of Nesquehoning Borough, shall be subject to a local service tax in the amount of \$52 per annum, said tax to be paid by the individual so engaged.

(Ord. 2007-5, 12/19/2007, §4)

§24-105. Duty of Employers.

Each employer within Nesquehoning Borough, as well as those employers situated outside Nesquehoning Borough, is hereby charged with the duty of collecting from each of his employees engaged by him, and performing for him with Nesquehoning Borough, the said tax of \$52 per annum, and making a return and payment thereof to the tax officer. Further, each employer is hereby authorized to deduct this tax from each employee in his employ, whether the said employee is paid by salary, wages, or commission and whether or not part or all such services are performed within Nesquehoning Borough. Each employer shall deduct said tax from the first pay of each such employee as set forth in §24-106 herein, unless the tax has previously been withheld from the employee in the fiscal year by the employer or employee provides verification to the employer that the tax has previously been withheld for a like amount in the fiscal year. In the event the tax has been withheld in an amount less than the rate of tax herein levied, then, in such event, the employer shall deduct an amount equal to the difference between the amount previously withheld in such fiscal year and the tax levied by Nesquehoning Borough.

(Ord. 2007-5, 12/19/2007, §5)

§24-106. Returns.

Each employer within the Borough of Nesquehoning, as well as those employers situated outside the Borough but who engage in business within the Borough, is hereby charged with the duty of collecting from each of his/her employees engaged by him/her and performing for him/her within Nesquehoning Borough said tax of \$52 per year and making a return and payment thereof to the tax receiver. Each employee subject to the tax shall be assessed a pro rata share of the tax for each payroll period in which the employee is engaged in Nesquehoning Borough. The pro rata share of the tax assessed on an employee for a payroll period shall be determined by dividing the \$52 rate by the number of payroll periods established by the employer for a calendar year. Each employer is hereby authorized to deduct this tax from each employee who has not otherwise claimed an exemption from paying the tax, whether said employee is paid by salary, wages, or commission. Each employer shall be required to remit the tax within 30 days after the end of each quarter of a calendar year. The employer will provide the employee with evidence of deduction on a form to be furnished to the employer by the administrator.

(Ord. 2007-5, 12/19/2007, §6)

§24-107. Dates for Determining Tax Liability and Payment.

As to each taxpayer employed for any length of time on or before the end of each quarter of the fiscal year each employer shall deduct the tax from the compensation payable to the employee, file the return on a form prescribed by the tax officer and pay such tax officer the pro rata amount of the tax on or before the end of each quarter of the fiscal year, except where otherwise provided herein. As to each taxpayer for whom no prior deduction has been made, who is employed for any length of time in any 3-month period ending March 31, June 30, September 30, and December 31 of the fiscal year, each employer shall deduct the tax from the compensation paid to each such employee and file a return on or before the last day of April, July, October, and January, on a form prescribed by the tax officer and pay to such collector the full amount of tax deducted for each 3-month period. Thereafter, quarterly returns shall be filed and payments made accordingly except as otherwise provided herein. Except that where the employer has in their possession local services taxes in excess of \$500 then, and in such event, the taxes shall be forwarded to the designated officer 30 days after the end of the month the tax was withheld, and in no event beyond the designated due dates, whichever first occurs.

(Ord. 2007-5, 12/19/2007, §7)

§24-108. Individuals Engaged in More than One Occupation.

Each individual who shall have more than one occupation within Nesquehoning Borough shall be subject to the payment of this tax on his principal occupation, and his principal employer shall deduct this tax and deliver to him evidence of deduction on a form to be furnished by the employer and acceptable to the officer, which form shall be evidence of deduction having been made, and when presented to any other employer shall be authority for such other employer to not deduct this tax from the employee's wages. However, the name of the employee shall not be included in a quarterly return of the employee to the local services tax officer by setting forth the name and address of such employee, and the name, address, and account number of the employer who

actually deducted the tax.

(*Ord. 2007-5, 12/19/2007, §8*)

§24-109. Self-Employed Individuals.

All self-employed individuals who perform services of any kind or type, engaged in any occupation or profession within Nesquehoning Borough shall be required to comply with this Part and pay the tax to the officer on or before the end of each quarter for the fiscal year, or 30 days after the month as he is engaged in an occupation subjecting him to the tax, and in no event after the designated due dates as set forth in §24-106 herein whichever first occurs, the failure to receive notice shall not relieve any person subject to this Part from the payment of any taxes imposed by Nesquehoning Borough, and such taxpayer shall be charged with the taxes as though he had received notice.

(*Ord. 2007-5, 12/19/2007, §9*)

§24-110. Employers and Self-Employed Individuals Residing Beyond the Limits of Nesquehoning Borough.

All employers and self-employed individuals residing and having their place of business outside Nesquehoning Borough, but who perform services of any type or kind, or engage in any occupation or profession with Nesquehoning Borough are by virtue thereof bound by and subject to the provisions, penalties, and regulations promulgated under this Part. Further, any individual engaged in an occupation with Nesquehoning Borough, and an employee of a nonresident employer may, for the purpose of this Part, be considered a self-employed person, and in the event this tax is not paid, Nesquehoning Borough shall have the option of proceeding against either the employer or employee for the collection of this tax as hereinafter provided. Each such employer and individual as the case may be shall be subject to the provision of this Part as it applies to payment, reporting, and any other applicable provision of this Part.

(*Ord. 2007-5, 12/19/2007, §10*)

§24-111. Administration of Tax.

1. It shall be the duty of the local services tax officer to accept and receive payments of this tax and to keep a record thereof showing the amount received from each employer or self-employed person, together with the date the tax was received.

2. The local services tax officer is hereby charged with the administration and enforcement of this Part, and is hereby charged and empowered 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 the 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 to which overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the local services tax officer shall have the right to appeal in accordance with the provisions of the local Taxpayers Bill of Rights or to the court of competent jurisdiction, as in other cases provided.

3. The local services tax officer is hereby authorized to examine the books and payroll 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 local services tax officer the means, facilities and opportunity to examine such books and payroll of the employer, and to ascertain the tax due, if any.

(*Ord. 2007-5, 12/19/2007, §11*)

§24-112. Suits for Any Collection.

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

2. If said tax is not paid when due, interest at the rate of 6 percent per annum shall be calculated, beginning with the due date of said tax, and a penalty of 10 percent shall be added to the flat rate of said tax for the non-payment thereof. Where suit is brought for the recovery of this tax, the individual liable therefor shall, in addition, be responsible and liable for the costs of collection and reasonable attorney fees.

(*Ord. 2007-5, 12/19/2007, §12*)

§24-113. Fine and Penalty.

Whoever makes false and untrue statements on any return required by this Part, or who refuses inspection of the books, records, and accounts in his custody and control setting forth the number of employees in his employment subject to this tax, or whoever fails or refuses to file any return required by this Part, upon being found liable therefor in a civil enforcement proceeding commenced by the Borough, shall pay a judgment of not more than \$600 plus all court costs and reasonable attorney fees. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by a magisterial district judge. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues or each Section of this Part which shall be found to have been violated shall constitute a separate violation. It is further provided that the action to enforce the fine and penalty herein provided may be instituted against any person in charge of the business of any employer who has failed or refused to file a return required by this Part.

(*Ord. 2007-5, 12/19/2007, §13; as amended by Ord. 2013-1, 6/26/2013*)

§24-114. Authority.

The tax herein imposed and this Part herein enacted is in pursuance of authority granted by the provisions of the Local Tax Enabling Act, 53 P.S. §6924.101 *et seq.*, approved by the General Assembly of the Commonwealth of Pennsylvania December 31, 1965, as amended.

(*Ord. 2007-5, 12/19/2007, §16*)

§24-115. Intent.

The tax imposed by this Part is anticipated to generate \$52,000 in revenue to be used for the reduction of property taxes, road construction and maintenance, police, fire, and/or emergency services.

(*Ord. 2007-5, 12/19/2007, §18*)

Part 2**Realty Transfer Tax****§24-201. Short Title.**

This Part shall be known and may be cited as the “Borough of Nesquehoning Real Estate Transfer Tax.”

(*Ord. 68-5, 3/21/1968, §1*)

§24-202. Definitions.

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

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

Deed—any deed, document, instrument, or writing, other than a lease, agreement of sale, mortgage, ground rent, or testamentary writing whereby the legal title to lands, tenements, or hereditaments, or any real estate therein, shall be granted, bargained, sold, transferred, conveyed, assigned, or otherwise vested in the grantee purchaser, or any other person or corporation.

Person—every natural person, copartnership, association, or corporation. Whenever used in any clause prescribing or imposing a penalty, or both, the term “person,” as applied to co-partnerships or limited partnerships, shall mean the partners or members thereof, and as applied to corporations, the officers thereof. [*Ord. 95-1*]

Transaction or transfer—any act, settlement, proceeding, or process whereby the legal title to any lands, tenements, or hereditaments or other real property, or any real interest therein, situate wholly or in part within the boundaries of the Borough of Nesquehoning, shall by deed be granted, bargained, sold, transferred, conveyed, assigned, or otherwise vested. There are exempt from this tax such transactions as are made exempt by said Act No. 511 of the General Assembly of the Commonwealth of Pennsylvania, known as the “Local Tax Enabling Act,” 53 P.S. §6924.101 *et seq.*, as amended.

Value—in the case of any transaction transfer or privilege, the actual monetary worth or value of the property granted, bargained, sold, or otherwise conveyed at the time of said grant, bargain, sale, or conveyance. The actual consideration for the said sale or conveyance shall be prima facie evidence of the actual monetary worth or value of the property granted, bargained, sold, or conveyed and shall be construed to mean, for the purpose of this Part, the cash agreed to be paid or paid for the execution and delivery of the deed, together with the face value of all liens, mortgages or other encumbrances secured on the lands, tenements, or hereditaments, or interest therein conveyed, or transferred by the said deed, together with any other evidence of indebtedness or promises, either oral or written, given by or on behalf of the grantee to grantor, or anyone on his behalf, as full or part consideration for the said deed, provided that where such deed shall set forth a

small or nominal consideration, the “value” thereof shall be determined from the price set forth in the contract or agreement of sale, or in the case of a gift, from the actual monetary worth or value of the property granted, bargained, sold, or otherwise conveyed, at the time of such grant, bargain, sale, or conveyance, which in either event shall not be less than the amount of the highest assessment of such lands, tenements, or hereditaments for the Borough of Nesquehoning purposes.

(*Ord. 68-5, 3/21/1968, §2; as amended by Ord. 95-1, 2/8/1995, §125-13*)

§24-203. Imposition of Tax.

On and after the effective date of this Part, on every transaction, transfer, or privilege arising therefrom, whereby any lands, tenements, or hereditaments, or any interest therein, lying, being, and situate wholly or in part within the boundaries of the Borough of Nesquehoning, shall be granted, bargained, sold, or otherwise conveyed, a tax for general revenue purposes of the Borough of Nesquehoning, at the rate of 1 percent of the value of the property, as herein above defined, within the territorial limits of the Borough of Nesquehoning, is hereby assessed, imposed, and levied.

(*Ord. 68-5, 3/21/1968, §3*)

§24-204. Payment.

This tax shall be due and payable and shall be paid by the grantee or grantees named in the said deed at the time of the making and execution thereof and shall be paid by said grantee or grantees prior to the recording of said deed or conveyance.

(*Ord. 68-5, 3/21/1968, §4*)

§24-205. Certification.

1. The payment of the tax imposed by this Part shall be evidenced by the affixing of a documentary stamp or stamps to every document by the person making, executing, delivering, or presenting for recording such document. The stamp shall be affixed in such a manner that their removal will require the continued application of steam or water, and the person using or affixing the stamps shall write, stamp, or cause to be written or stamped thereon the initials of that person’s name and the date upon which the stamps are affixed or used so that the stamps may not again be used.

2. The Pennsylvania Department of Revenue is hereby authorized to prescribe such other method of cancellation of the stamps as it may deem appropriate.

(*Ord. 68-5, 3/21/1968, §5; as amended by Ord. 2006-2, 7/26/2006*)

§24-206. Other Means of Collection.

The Pennsylvania Department of Revenue may from time to time provide such other means of collecting the tax imposed by virtue hereof of evidencing the payment thereof as may be considered appropriate under the circumstances and as provided by the Local Tax Enabling Act, 53 P.S. §6924.101 *et seq.*

(*Ord. 68-5, 3/21/1968, §6; as amended by Ord. 2006-2, 7/26/2006*)

§24-207. Authorized Authority; Enforcement.

The Recorder of Deeds shall be the collection agent for the Borough of Nesquehon-

ing for the realty transfer tax levied hereunder. The Recorder of Deeds shall pay the tax, interest, and penalty collected hereunder over to the Borough of Nesquehoning in accordance with §6(c) of the November 1, 1971, P. L. 495, No. 113, 16 P.S. §11011-6(c). The Pennsylvania Department of Revenue may make, promulgate, and enforce regulations for the collection of this tax. If any person fails to pay any tax imposed under this Part for which the person is liable, the Borough Council of Nesquehoning hereby authorizes the Pennsylvania Department of Revenue to make a determination of additional tax, penalty, and interest due under this Section. Persons aggrieved by the determination of the Department of Revenue may ask for a re-determination thereof or, if not satisfied by the result of such re-determination, appeal thereafter to the Board of Finance.

(*Ord. 68-5, 3/21/1968, §7; as amended by Ord. 2006-2, 7/26/2006*)

§24-208. Valuation; Affidavit.

Every deed upon which a tax is imposed by this Part shall set forth therein the true, full, complete, and actual value thereof, or shall be accompanied by an affidavit, executed by a responsible person connected with the transaction, showing such connection and setting forth the true, full, complete, and actual value thereof, or the reason for exemption which may be claimed as to such instrument.

(*Ord. 68-5, 3/21/1968, §8*)

§24-209. Failure to Comply; Falsification.

It shall be unlawful if any person shall:

A. Accept or present for recording or cause to be accepted or presented for recording any document without the full amount of tax thereon being duly paid.

B. Make use of any documentary stamp to denote payment of any tax imposed under this Part without canceling such stamp as required by this Part or as presented by the Department of Revenue.

C. Fail, neglect, or refuse to comply with or violate the rules and regulations prescribed, adopted, and promulgated by the Department of Revenue under this Part.

(*Ord. 68-5, 3/21/1968, §9; as amended by Ord. 2006-2, 7/26/2006*)

§24-210. Violations and Penalties.

The tax levied under this Part shall go into effect immediately after its adoption. All person, firm, or corporation who shall violate or contribute to the violations of the provisions of this Part or permitting their agents or representatives while within their control or under their direction to do so, upon being found liable therefor in a civil enforcement proceeding commenced by the Borough, shall pay a judgment of not more than \$600 plus all court costs and reasonable attorney fees. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by a magisterial district judge. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues or each Section of this Part which shall be found to have been violated shall constitute a separate

violation.

(*Ord. 68-5*, 3/21/1968, §12; as amended by *Ord. 2006-2*, 7/26/2006; and by *Ord. 2013-1*, 6/26/2013)

Part 3**Per Capita Tax****§24-301. Statutory Authority.**

Pursuant to the authority granted by the Local Tax Enabling Act, 53 P.S. §6924.101 *et seq.*, the Borough Council of the Borough of Nesquehoning hereby imposes a per capita tax for general revenue purposes, to be levied and assessed as hereinafter provided.

(*Ord. 69-2, 4/17/1969; as added by Ord. 95-1, 2/8/1995, §125-22*)

§24-302. Establishment.

There is hereby levied an annual per capita tax in the sum of \$5, beginning with the calendar year 1969 and for all calendar years thereafter until repealed, upon all inhabitants of the Borough of Nesquehoning above the age of 18 years, under the provisions of the Local Tax Enabling Act, 53 P.S. §6924.101 *et seq.*, and the amendments and supplements thereto.

(*Ord. 69-2, 4/17/1969, §1; as amended by Ord. 95-1, 2/8/1995, §125-23*)

§24-303. Collection of Tax.

Said per capita tax shall be collected by the Tax Collector of the Borough of Nesquehoning.

(*Ord. 69-2, 4/17/1969, §2*)

§24-304. Discount.

Said tax shall be subject to a discount of 2 percent from the amount thereof if payment thereof is made within the 2 months of the notice of the same.

(*Ord. 69-2, 4/17/1969, §3*)

§24-305. Penalty for Late Payment.

Said tax shall be subject to a penalty of 5 percent to be added to the amount of said tax in the event that payment of the same shall not be made within 4 months after the date of the notice of the same.

(*Ord. 69-2, 4/17/1969, §4*)

Part 4**Earned Income Tax****§24-401. Definitions.**

1. *Definitions.* As used in this Part, the following terms shall have the meanings indicated:

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

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

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

Current year—the calendar year for which the tax is levied.

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

Earned income— compensation as determined under §303 of the Act of March 4, 1971, P.L. 6, No. 2, known as the “Tax Reform Code of 1971,” and regulations in 61 Pa.Code, Part. I, Subpart. B, Article V (relating to personal income tax), not including, however, wages or compensation paid to individuals on active military service. Employee business expenses are allowable deductions as determined under Article III of the “Tax Reform Code of 1971.” The amount of any housing allowance provided to a member of the clergy shall not be taxable as earned income. [Ord. 2013-1]

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

Income Tax Officer or officer—a person, public employee, or private agency designated by the governing body to collect and administer the tax on earned income and net profits.

Net profits—the net income from the operation of a business, profession, or other activity, except corporations, determined under §303 of the Act of March 4, 1971, P.L. 6, No. 2, known as the “Tax Reform Code of 1971,” and regulations in 61 Pa.Code, Part I, Subpart B, Article V (relating to personal income tax). The term does not include income which is not paid for services provided and which is in the

nature of earnings from an investment. For taxpayers engaged in the business, profession or activity of farming, the term shall not include:

- (1) Any interest earnings generated from any monetary accounts or investment instruments of the farming business.
- (2) Any gain on the sale of farm machinery.
- (3) Any gain on the sale of livestock held 12 months or more for draft, breeding or dairy purposes.
- (4) Any gain on the sale of other capital assets of the farm.

[*Ord. 2013-1*]

Nonresident—a person, partnership, association, or other entity domiciled outside the Borough of Nesquehoning.

Other activities—investments in real or personal property of whatever nature or character.

Person or individual—a natural person.

Preceding year—the calendar year before the current year.

Resident—a person, partnership, association, or other entity domiciled in the Borough of Nesquehoning.

Succeeding year—the calendar year following the current year.

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

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

(*Ord. 95-1, 2/8/1995, §125-27; as amended by Ord. 2013-1, 6/26/2013*)

§24-402. Imposition of Tax.

1. The following taxes are hereby imposed for general borough purposes:

A. One-half of 1 percent on all earned income earned on and after the first day of January, 1990, by residents of the Borough of Nesquehoning.

B. One-half of 1 percent on all earned income earned on and after the first day of January, 1990, by nonresidents of the Borough of Nesquehoning for work done or services performed or rendered in the Borough of Nesquehoning.

C. One-half of 1 percent on all net profits of businesses, professions or other activities earned on and after the first day of January, 1990, conducted by residents of the Borough of Nesquehoning.

D. One-half of 1 percent on all net profits of businesses, professions, or other activities earned on or after the first day of January, 1990, conducted in the Borough of Nesquehoning by nonresidents of the Borough of Nesquehoning.

2. The taxes levied under this Part shall be applicable to earned income received and to net profits earned in the period beginning January 1 of the current year and ending December 31 of the current year or for taxpayer fiscal years beginning in the current year, except that taxes imposed for the first time shall become effective from the date specified in this Part, and the tax shall continue in force on a calendar-year or taxpayer-fiscal-year basis, without annual re-enactment, unless the rate of the tax is

substantially changed. Changes in rate shall become effective on the date specified in the ordinance.

3. Such taxes shall be levied with respect to the earned income or net profits earned during the calendar year for which the tax is levied; provided, however, that when the fiscal year of a business, profession, or other activity differs from the calendar year, the tax shall be applicable to the net profits of the fiscal year, but for the levies on net profits in the year 1990, the tax shall be applicable only to the portion of the net profits of the fiscal year 1990 as were earned on and after January 1, 1990.

4. The Borough Tax Collector is hereby designated receiver of the taxes imposed by this Part. He shall collect and receive all such taxes, shall furnish a receipt for their payment and shall keep a record showing the amount received by him from each taxpayer under this Part and the date of such receipt. The Borough Solicitor is empowered to prescribe rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this Part. Such rules and regulations shall be inscribed by the Borough Tax Collector in a book for that purpose and open to the inspection of the public.

(Ord. 95-1, 2/8/1995, §125-28)

§24-403. Declaration and Payment of Tax.

1. *Net Profits.*

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

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

C. Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the Borough Tax Collector on a form prescribed or approved by the Borough Tax Collector a final return showing the amount of net profits earned during the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of tax due thereon and the total amount of tax paid thereon. At the time of filing the final return, the taxpayer shall pay to the Borough Tax Collector the balance of tax due or shall make demand for refund or credit in the case of overpayment. Any taxpayer may, in lieu of paying the fourth quarterly installment of his estimated tax, elect to make and file with the officer on or before January 31 of the succeeding year the final return as herein above required.

D. The Borough Tax Collector is hereby authorized to provide by regulation for the making and filing of adjusted declarations of estimated net profits and for the payments of the estimated tax in cases where a taxpayer who has filed the declaration herein above required anticipates additional net profits not previously declared or finds that he has overestimated his anticipated net profits.

E. Every taxpayer who discontinues business prior to December 31 of the current year shall, within 30 days after the discontinuance of business, file his final return as herein above required and pay the tax due.

2. *Earned Income.*

A. Annual earned income tax return. Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the Borough Tax Collector on a form prescribed or approved by the Borough Tax Collector a final return showing the amount of earned income received during the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of tax due thereon, the amount of tax paid thereon, the amount of tax thereon that has been withheld pursuant to the provisions relating to the collection at source and the balance of tax due. At the time of filing the final return, the taxpayer shall pay the balance of the tax due or shall make demand for refund or credit in the case of overpayment.

B. Earned income not subject to withholding. Every taxpayer who is employed for a salary, wage, commission, or other compensation and who received any earned income not subject to the provisions relating to collection at source shall make and file with the Borough Tax Collector on a form prescribed by the Borough Tax Collector a quarterly return on or before April 30 of the current year, July 31 of the current year, October 31 of the current year and January 31 of the succeeding year, setting forth the aggregate amount of earned income not subject to withholding by him during the 3-month periods ending March 31 of the current year, June 30 of the current year, September 30 of the current year and December 31 of the current year, respectively, and subject to the tax, together with such other information as the Borough Tax Collector may require. Every taxpayer making such return shall, at the time of filing thereof, pay to the officer the amount of tax shown as due thereon.

(Ord. 95-1, 2/28/1995, §125-29)

§24-404. Collection at Source.

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

2. *Withholding by Employer.*

A. Every employer having an office, factory or workshop, branch, warehouse, or other place of business who employs one or more persons, other than domestic servants, for a salary, wage, commission, or other compensation shall deduct at the

time of payment thereof the tax imposed by this Part on the earned income due to his employee or employees and shall, on or before April 20 of the current year, July 31 of the current year, October 31 of the current year and January 31 of the succeeding year, file a return and pay to the Borough Tax Collector the amount of taxes deducted during the preceding 3-month periods ending March 31 of the current year, June 30 of the current year, September 30 of the current year and December 31 of the current year, respectively. Such return, unless otherwise agreed upon between the Borough Tax Collector and employer, shall show the name and Social Security number of each such employee, the earned income of such employee during such preceding 3-month period, the tax deducted therefrom, the total earned income of all such employees during such preceding 3-month period and the total tax deducted therefrom and paid with the return.

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

3. On or before February 28 of the succeeding year, every employer shall file with the Borough Tax Collector:

A. An annual return showing the total amount of earned income paid, the total amount of tax deducted and the total amount of tax paid to the Borough Tax Collector for the period beginning January 1 of the current year and ending December 31 of the current year.

B. A return withholding statement for each employee employed during all or any part of the period beginning January 1 of the current year and ending December 31 of the current year, setting forth the employee's name, address, and social security number, the amount of earned income paid to the employee during said period, the amount of tax deducted and the amount of tax paid to the Borough Tax Collector. Every employer shall furnish two copies of the individual return to the employee for whom it is filed.

4. Every employer who discontinues business prior to December 31 of the current year shall, within 30 days after the discontinuance of business, file the returns and withholding statements herein above required and pay the tax due.

5. Except as otherwise provided in §24-408, every employer who willfully or negligently fails or omits to make the deductions required by this Section shall be liable for payment of the taxes which he was required to withhold to the extent that such taxes have not been recovered from the employee.

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

(Ord. 95-1, 2/8/1995, §125-30)

§24-405. Powers and Duties of Borough Tax Collector.

1. It shall be the duty of the Borough Tax Collector to collect and receive the

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

2. The Borough Tax Collector is hereby empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this Part, including provisions for the reexamination and correction of declarations and returns and of payments alleged or found to be incorrect or as to which an overpayment is claimed or found to have occurred, and to make refunds in case of overpayment for any period of time not to exceed 6 years subsequent to the date of payment of the sum involved and to prescribe forms necessary for the administration of this Part. No rule or regulation of any kind shall be enforceable unless it has been approved by resolution of Council for the Borough of Nesquehoning. A copy of such rules and regulations currently in force shall be available for public inspection.

3. The Borough Tax Collector shall refund, on petition of and proof by the taxpayer, earned income tax paid on the taxpayer's ordinary and necessary business expenses to the extent that such expenses are not paid by the taxpayer's employer.

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

5. Any information gained by the Borough Tax Collector, his agents or by any other official or agent of the taxing district, as a result of any declarations, returns, investigations, hearings, or verifications required or authorized by this Part, shall be confidential except for official purposes and except in accordance with a proper judicial order or as otherwise provided by law.

6. The Borough Tax Collector is authorized to establish different filing, reporting and payment dates for taxpayers whose fiscal years do not coincide with the calendar year.

(Ord. 95-1, 2/8/1995, §125-31)

§24-406. Suit for Collection of Tax.

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

2. Any suit brought to recover the tax imposed by this Part shall be begun within 3 years after such tax is due or within 3 years after the declaration or return has been filed, whichever date is later; provided, however, that this limitation shall not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:

A. Where no declaration or return was filed by any person although a declaration or return was required to be filed by him under provisions of this Part,

there shall be no limitation.

B. Where an examination of the declaration or return filed by any person or of other evidence relating to such declaration or return in the possession of the Borough Tax Collector reveals a fraudulent evasion of taxes, there shall be no limitation.

C. In the case of substantial understatement of tax liability of 25 percent or more and no fraud, suit shall be begun within 6 years.

D. Where any person has deducted taxes under the provisions of this Part and has failed to pay the amounts so deducted to the Borough Tax Collector or where any person has willfully failed or omitted to make the deductions required by this Section, there shall be no limitation.

3. This Section shall not be construed to limit the Borough Tax Collector from recovering delinquent taxes by any other means provided by this Part.

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

(Ord. 95-1, 2/8/1995, §125-32)

§24-407. Interest and Penalties.

1. If, for any reason, the tax is not paid when due, interest at the rate of 10 percent per annum on the amount of said tax and an additional penalty of 1 percent of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid shall be added and collected. Where suit is brought for the recovery of any such tax, the person liable therefor shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

2. In addition to interest and penalties as imposed under subsection .1 above, there shall be imposed upon any employer who fails, neglects, or refuses to timely remit to the Borough of Nesquehoning the taxes deducted from its employees a penalty computed at the rate of 5 percent on the amount of said withheld taxes for the first month in which said taxes were not remitted to the Borough of Nesquehoning after the due date as herein provided, and 5 percent per month or any part of a month thereafter, with a maximum of 25 percent.

(Ord. 95-1, 2/8/1995, §125-33)

§24-408. Violations and Penalties.

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 Borough Tax Collector 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 thereof before any magisterial district judge,

Councilman or court of competent jurisdiction in Carbon County, be sentenced to pay a fine of not more than \$500 for each offense, and costs, and, in default of payment of said fine and costs, to be imprisoned for a period not exceeding 30 days. [*Ord. 2013-1*]

2. Any person who divulges any information which is confidential under the provisions of this Part shall, upon conviction thereof before any magisterial district judge, Councilman 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 of said fines and costs, to be imprisoned for a period not exceeding 30 days. [*Ord. 2013-1*]

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. 95-1, 2/8/1995, §125-34; as amended by Ord. 2013-1, 6/26/2013*)

§24-409. Continuing Effect.

This Part shall become effective on January 1, 1990, and shall continue in force on a calendar-year basis, without annual re-enactment, unless the rate of tax is subsequently changed. Changes in rate shall become effective on the date specified in the ordinance.

(*Ord. 95-1, 2/8/1995, §125-35*)

Part 5**Keystone Opportunity Zone****§24-501. Findings.**

1. Pursuant to the Pennsylvania Keystone Opportunity Zone Act, Act No. 1998-2, 73 P.S. §820.101 *et seq.*, the provisions of which are incorporated herein by reference (the “Act”), the Borough applied to the Pennsylvania Department of Community and Economic Development (“DCED”) for designation of an area within the Borough as a Keystone Opportunity Zone, which application was approved by DCED on February 28, 1999. The Borough recognizes the need to encourage investment in areas within defined geographic and political boundaries of certain properties within the Borough (the “Keystone Opportunity Zone”) that are experiencing economic distress characterized by high unemployment, low investment of new capital, blighted conditions and under-utilized, obsolete, or abandoned industrial and commercial structures, specifically properties designated as illustrated on the map attached hereto and made a part hereof as Exhibit 24-5-A. Enactment of such exemption will result in improving both the economic, physical, and social conditions within the Keystone Opportunity Zone by creating new employment and diminishing blight. It is expected that increased private and public sector investment will reverse the disinvestment and conditions of blight within the Keystone Opportunity Zone within the 12 years or the exemption hereinafter provided.

2. The boundaries of the real property currently highlighted and shown on the map attached hereto as Exhibit 24-5-A are hereby established as the boundaries of the Keystone Opportunity Zone. The Keystone Opportunity Zone is established pursuant to the Act and is subject to the genus and conditions of the Act and resolutions of the Borough, County, and School District including, and without limitations, qualifications and recapture provisions, and is entitled to all benefits contained and referred to therein. Unless the context clearly requires otherwise, all terms used herein that are defined in the Act shall have the respective meanings herein specified lift them in the Act.

(*Ord. 99-2, 7/28/1999, §1*)

§24-502. Exemption.

1. Subject to the terms and conditions of the Act and the relevant resolutions of the Borough of Nesquehoning, County of Carbon, and Panther Valley School District, the Borough hereby exempts from real property taxation all real property located within the boundaries of the Keystone Opportunity Zone in accordance with the Act for a period of 12 years, commencing January 1, 1999, such exemption to consist of 100 percent of the real property taxation on the assessed valuation of real property located within the Keystone Opportunity Zone.

2. Subject to the terms and conditions of the Act and the relevant resolutions of the Borough of Nesquehoning, County of Carbon, and Panther Valley School District the Borough hereby exempts for a period of 12 years commencing January 1, 1999; (A) taxation on business gross receipts for operations conducted by a qualified business located within the Keystone Opportunity Zone; (B) taxation on earned income received

by a resident of the Keystone Opportunity Zone attributable to business activity conducted within the Keystone Opportunity Zone; and/or (C) taxation on net profits of a qualified business received by a resident or nonresident of the Keystone Opportunity Zone attributable to business activity conducted within the Keystone Opportunity Zone.
(*Ord. 99-2, 7/28/1999, §1*)

