CHAPTER 24

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Realty Transfer Tax

§101. Short Title. This Part shall be known as the "Realty Transfer Tax Ordinance" of the Borough of East Rochester. (Ord. 248, 4/14/1987, §1)

§102. Authority. A realty transfer tax for general revenue purposes is hereby imposed upon the transfer of real estate or interest in real estate situate 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," 72 P.S. §8101-D et seq. (Ord. 248, 4/14/1987, §2)

§103. Definitions.

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

BOROUGH - the Borough of East Rochester, Beaver County, Pennsylvania.

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

DOCUMENT - any deed, instrument or writing which conveys, transfers, demises, vests, confirms or evidences any transfer or demise of title to real estate, but does not include wills, mortgages, deeds of trust or other instruments of like character given as security for a debt and deeds of release thereof to the debtor, land contracts whereby the legal title does not pass to the grantee until the total consideration specified in the contract has been paid or any cancellation thereof unless the consideration is payable over a period of time exceeding thirty (30) years, or instruments which solely grant, vest or confirm a public utility easement. "Document" shall also include a declaration of acquisition required to be presented for recording under §108 of this Part.

FAMILY FARM CORPORATION - a corporation of which 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:

(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 or sisters, the brothers and sisters of such individual's parents and grandparents, the ancestors and lineal descendents 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 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 business partners thereof, and as applied to corporations, the officers thereof.

REAL ESTATE -

(1) All lands, tenements or hereditaments within the 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.

(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, ninety (90%) percent or more of the ownership interest in which is held by thirty-five (35) or fewer persons and which:

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

(2) 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 -

(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 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 -

(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 therefore, 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 ration 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 Subsections (1) and (2), the actual monetary worth of such interest.

(4) The actual consideration for and 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. 248, 4/14/1987, §3)

§104. 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 of 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 of East Rochester under the authority of that Act shall during the time such duplication of the tax exists, except as hereinafter otherwise provided, be one-half (½) of the rate and such one-half (½) rate shall become effective without any action on the part of the Borough 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 (½) 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. 248, 4/14/1987, §4)

§105. 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. 248, 4/14/1987, §5)

§106. Excluded Transactions. The tax imposed by §104 of this Part 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 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 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 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 brother or sister or the spouse of a brother or sister, and between a grandparent and grandchild or the spouse of such grandchild, except that a subsequent transfer by the grantee within one (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 (1) for no or nominal actual consideration between principal and agent or straw party; or (2) 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 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:

(1) 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.

(2) 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 seventy-five (75%) percent 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 one ($1.00) dollar or less.

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

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. 248, 4/14/1987, §6)

§107. Documents Relating to Associations or Corporations and Members, Partners, Stockholder or Shareholders Thereof. Except as other provided in §106 of this Part, documents which make, confirm or evidence any transfer or demise of title to real estate between associations or corporations and

the members, partners, shareholders or stockholders thereof are fully taxable. For the purposes of this Part, corporations and associations are entities separate from their members, partners, stockholders or shareholders. (Ord. 248, 4/14/1987, §7)

§108. Acquired Company.

1. A real estate company is an acquired company upon a change in the ownership interest in the company, however effected, if the change does not affect the continuity of the company; and of itself or together with prior changes has the effect of transferring, directly or indirectly, ninety (90%) percent or more of the total ownership interest in the company within a period of three (3) years.

2. With respect to real estate acquired after February 16, 1986, a family farm corporation is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm corporation or when, because of issuance or transfer of stock or because of acquisition or transfer of assets that are devoted to the business of agriculture, it fails to meet the minimum requirements of a family farm corporation under this Part.

3. Within thirty (30) days after becoming an acquired company, the company shall present a declaration of acquisition with the recorder of each county in which it holds real estate for the affixation of documentary stamps and recording. Such declaration shall set forth the value of real estate holding 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. 248, 4/14/1987, §8)

§109. 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, previous 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 solid 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. 248, 4/14/1987, §9)

§110. Extension of Lease. In determining the term of a lease, it shall be presumed that a right or option to renew or extend a lease will be exercised if the rental charge to the lessee is fixed or if a method of calculating the rental charge is established. (Ord. 248, 4/14/1987, §10)

§111. 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 obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made except the State realty transfer tax, and the sheriff, or other officer conducting said sale, shall pay the tax herein imposed out of the first monies 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. 248, 4/14/1987, §11)

§112. 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 East Rochester 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 East Rochester.

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

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

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

(Ord. 248, 4/14/1987, §12)

§113. 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. 248, 4/14/1987, §13)

§114. Civil Penalties.

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

2. In the case of failure to record a declaration required under this Part on the date prescribed therefore, unless it is shown that such failure is due to reasonable cause, there shall be added to the tax five (5%) percent of the amount of such tax if the failure is for not more than one (1) month, with an additional five (5%) percent for each additional month or fraction thereof during which such failure continues, not exceeding fifty (50%) percent in the aggregate.

(Ord. 234, 4/14/1987, §14)

§115. Lien. The tax imposed by this Part shall become a lien upon the lands, tenements or hereditaments, or any interest therein, wholly or in part with the boundaries of the Borough, 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 Beaver 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. 248, 4/14/1987, §15)

§116. Enforcement. All taxes imposed by this Part together with interest and penalties prescribed herein, shall be recoverable as other debts of like character are recovered. (Ord. 248, 4/14/1987, §16)

§117. Regulations. The Secretary of the Borough is charged with enforcement and collection of tax and is empowered to promulgate and enforce reasonable regulations for enforcement and collection of the tax. The regulations which have been promulgated by the Pennsylvania Department of Revenue under 72 P.S. §8101-D et seq., are incorporated into and made a part of this Part. (Ord. 248, 4/14/1987, §17)

§118. Effective Date. This Part shall be effective on April 6, 1987. (Ord. 248, 4/14/1987, §18)

Part 2

Resident Occupation Tax

§201. Title. This Part shall be known as and may be cited as the "Resident Occupation Tax Ordinance." (Ord. 169, 12/10/1968, §1)

§202. Definitions. As used in this Part, unless the context indicates clearly a different meaning, the following words shall have the meanings set forth below:

BOROUGH - the Borough of East Rochester.

COMPENSATION - salaries, wages, commissions, tips, bonuses, fees, gross receipts, or any other income.

EMPLOYER - any person, partnership, limited partnership, unincoporated association, institution, trust, corporation, governmental agency, or any other body engaged in business or situated in the Borough, employing one (1) or more employees engaged in any occupation other than domestic servants who reside in the Borough of East Rochester.

OCCUPATION - any livelihood, job, trade, profession, business or enterprise of any kind, including services, domestic or other, for which any compensation is received.

TAX - the tax imposed by this Part.

TAX COLLECTOR - the person or persons appointed by the Borough of East Rochester to collect the occupation tax levied by this Part.

(Ord. 169, 12/10/1968, §2)

§203. Levy. For general revenue purposes, a tax is hereby levied upon all residents of the Borough of East Rochester performing occupations during the fiscal year 1969; from the effective date of this Part. Each natural person residing in the Borough and performing an occupation for any length of time shall pay a tax in the amount of five dollars ($5.00) in accordance with the provisions of this Part. (Ord. 169, 12/10/1968, §3)

§204. Direct Payment by Taxpayers. Every taxpayer who is self-employed or whose tax for any other reason is not collected under this Part shall file a return on a form prescribed by the Tax Collector and shall pay the tax directly to the Tax Collector. Each taxpayer who first becomes a subject to the tax on or before March 15, 1969, shall file the return and pay the tax on or before April 15, 1969, and each taxpayer who first becomes subject to the tax after March 15, 1969, shall file the return and pay the tax on or before June 30, 1969, September 30, 1969 or December 31, 1969, whichever of such payment dates first occurs at least thirty (30) days after the taxpayer first becomes subject to the tax. (Ord. 169, 12/10/1968, §4)

§205. Administration and Enforcement. The Tax Collector, on behalf of the Borough, shall collect and receive the taxes, fines and penalties imposed by this Part, and shall maintain records showing the amounts received and the dates such amounts were received. The Tax Collector shall

prescribe and issue all forms necessary for the administration of the tax and may adopt and enforce regulations relating to any matter pertaining to the administration of this Part including, but not limited to, requirements for collections through employers, requirements for deductions, requirements for evidence and records, and provisions for the examination and correction of returns. The Tax Collector and agents designated by him may examine the records of any employer or supposed employer or of any taxpayer or supposed taxpayer in order to ascertain the tax due or verify the accuracy of any return. Every employer or supposed employer and every taxpayer or supposed taxpayer shall give the Tax Collector and any agent designated by him all means, facilities and opportunity for the examinations hereby authorized. (Ord. 169, 12/10/1968, §5)

§206. Collection. The Tax Collector shall collect, by suit, appropriate wage attachment directed to the employer or otherwise, all taxes, costs, fines and penalties due under this Part and unpaid. If for any reason, the tax is not paid within one hundred twenty (120) days after the applicable date as set forth in §204 hereof, a penalty of five (5%) percent of the amount of the tax remaining unpaid shall be added and collected. Whenever suit is brought for the recovery of unpaid tax, the taxpayer shall, in addition, be liable for the costs of collection as well as for penalties. The Tax Collector may accept payment under protest of the tax claimed by the Borough in any case where any person disputes the Borough's claim for the tax. If a court of competent jurisdiction thereafter decides that there has been overpayment to the Tax Collector, the Tax Collector shall refund the amount of the overpayment to the person who paid under protest. (Ord. 169, 12/10/1968, §6)

§207. Violations. Any person who violates any provision of this Part or any regulation adopted pursuant to it shall, upon conviction thereof, be subject to a fine not to exceed six hundred dollars ($600.00) and costs and in default of payment of said fines and costs shall be sentenced to a term of imprisonment not to exceed thirty (30) days. (Ord. 169, 12/10/1968, §7; as amended by Ord. 263, 4/7/1992)

§208. Applicability and Severability. The tax shall not apply to any subject of tax or person not within the taxing power of the Borough under the Constitution of the United States and the laws and Constitution of the Commonwealth of Pennsylvania. If a final decision of a court of competent jurisdiction holds any provisions of this Part, or the application of any provisions to any circumstances, to be illegal or unconstitutional, the other provisions of this Part, or the application of such provisions to other circumstances, shall remain in full force and effect. The intention of the Council of the Borough of East Rochester is that the provisions of this Part shall be severable and that this Part would have been adopted if any such illegal or unconstitutional provisions had not been included. (Ord. 169, 12/10/1968, §8)

§209. Effective Date. This Part shall become effective in accordance with the Act of December 31, 1965, Act No. 511, and its amendments, and shall remain in effect thereafter for the fiscal year beginning on the tenth (10th) day of January 1969, and shall continue on a calendar year basis, thereafter, without annual reenactment. (Ord. 169, 12/10/1968, §9; as amended by Ord. 263, 4/7/1992)

§210. Exemptions. The foregoing resident occupation tax imposed by this Part shall be applicable only to those persons earning through their respective occupations a gross sum in excess of one thousand dollars ($1,000.00) per calendar year. All persons earning a total or gross income of less than one thousand dollars ($1,000.00) in any calendar or fiscal year year is hereby exempted from the provisions of this Part. (Ord. 169, 12/10/1968, §10)

Part 3

Earned Income Tax

§301. Incorporation of Statute. The provisions of §6913 of the Local Tax Enabling Act, P.L. 1257, No. 511, December 31, 1965, 53 P.S. §16901-24 (1982), as hereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania, are incorporated herein by reference thereto; except to the extent that options are provided in said §6913, this Part designates the option selected, and except as and where hereinafter specifically provided otherwise. (Ord. 100, 12/6/1950; as revised by Ord. 263, 4/7/1992)

§302. Imposition of Tax.

1. A tax for the general revenue purposes of four-tenths (4/10%) percent is hereby imposed on:

A. Salaries, wages, commissions and other compensation earned or paid after January 1, of any year by residents of the Borough; and on

B. The net profits earned after January 1 of any year, of businesses, professions or other activities conducted by such residents.

2. Imposition of Tax on Nonresidents. A tax for the general revenue purposes of one-half (1/2%) percent is hereby imposed on:

A. Salaries, wages, commissions and other compensation earned or paid after January 1, of any year, by nonresidents of the Borough for work done or services performed or rendered in the Borough; and on

B. Net profits earned after January 1 of any year, of businesses, professions or other activities conducted in the Borough by nonresidents.

3. The tax levied under subsections (1)(A) and (2)(A) of this Section 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. The tax levied under subsections (1)(B) and (2)(B) of this Section will relate to and be imposed on the net profits of any business, profession or enterprise carried on by any person as owner or proprietor, either individually or in association with some other person or persons.

(Ord. 100, 12/6/1950; as revised by Ord. 263, 4/7/1992)

§303. Declarations, Returns and Payment of Tax.

1. Every taxpayer whose net profits are subject to the tax imposed by this Part shall file a declaration of his estimated net profits for the current year and shall pay the tax due thereon in quarterly installments, all as provided in §6913, III. A. (1)(ii) of the Local Tax Enabling Act.

2. Every taxpayer whose earnings are subject to the tax imposed by this Part shall make and file final returns and pay to the officer the balance of the tax due, as provided in §6913, III., B., first paragraph of the Local Tax Enabling Act.

3. Every taxpayer whose earnings are not subject to collection at the source, shall make and file with the officer quarterly returns and shall pay quarter-annually the amount of tax shown as due on such returns all as provided in §6913, III., B. (2) of the Local Tax Enabling Act.

4. The officer is hereby authorized to provide by regulation, subject to the approval of the Borough Council, that the return of an employer or employers, showing the amount of tax deducted by said employer or employers from the salaries, wages, or commissions of any employee, and paid by him or them to the officer shall be accepted as the return required of any employee whose sole income, subject to the tax or taxes under this Part, is such salary, wages or commissions.

(Ord. 159, 12/6/1950; as revised by Ord. 263, 4/7/1992)

§304. Collection at Source. Every employer having an office, factory, workshop, branch, warehouse, or other place of business within the Borough who employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, shall register with the officer, deduct the tax imposed by this Part on the earned income of his employee or employees and shall make and file quarterly returns and final returns and pay quarterly to the officer the amount of taxes deducted, all as provided in §6913, IV. of the Local Tax Enabling Act. (Ord. 100, 12/6/1950; as revised by Ord. 263, 4/7/1992)

§305. Administration. The earned income tax officer shall be selected from time to time by resolution of, and shall receive such compensation for his services and expenses as determined from time to time by the Borough Council. Such officer shall have the powers and duties, and shall be subject to the penalties as provided in §6913, V., VI., VII of the Local Tax Enabling Act. (Ord. 100, 12/6/1950; as revised by Ord. 263, 4/7/1992)

§306. Interest and Penalties for Late Payment. If for any reason the tax is not paid when due, interest at the rate of six (6%) percent per annum on the amount of said tax, and an additional penalty of one-half of one (1/2%) percent of the amount of the unpaid tax for each month or fraction thereto 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. (Ord. 100, 12/6/1950; as revised by Ord. 263, 4/7/1992)

§307. Penalties or Violations.

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 of the peace, or court of competent jurisdiction, be sentenced to pay a fine of not more than five hundred ($500.00) dollars for each offense, and costs, and in default of payment, to be imprisoned for a period not exceeding thirty (30) days.

2. Any person who divulges any information which is confidential under the provisions of this Part, shall, upon conviction therefor, before any district justice of the peace, or court of competent jurisdiction, be sentenced to pay a fine of not more than five hundred ($500.00) dollars for each offense, and costs, and in default of payment, to be imprisoned for a period not exceeding thirty (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. 100, 12/6/1950; as revised by Ord. 263, 4/7/1992)

Part 4

Discounts and Penalties

§401. Coverage. The terms of this Part shall apply to all taxes levied and assessed by this Borough, except for those levied under the authority of the Local Tax Enabling Act, Act No. 511 of 1965, P.L. 1257, as amended, 53 P.S. §§6901 et seq. As used herein, the word "taxes" shall mean those taxes to which this Part applies. (Ord. 240, 12/4/1985, §1)

§402. Discount on Taxes. All taxpayers subject to the payment of taxes assessed by this Borough shall be entitled to a discount of two (2%) percent from the face amount of such taxes upon making payment of the entire amount due within two (2) months of the date of the tax notice. (Ord. 240, 12/4/1985, §2)

§403. Penalty on Taxes. All taxpayers subject to the payment of taxes assessed by this Borough who shall fail to make payment of the entire amount due within four (4) months of the date of the tax notice shall be charged a penalty of ten percent (10%) percent of the face amount of such taxes. Such penalty shall be added to the taxes by the Tax collector and collected by him or her. (Ord. 240, 12/4/1985, §3)

§404. Authority. This Part is enacted under the authority conferred by §10 of the Local Tax Collection Law of 1945, P.L. 1050, as amended, 72 P.S. §5511.10. (Ord. 240, 12/4/1985, §4)

Part 5

Occupational Privilege Tax

§501. Title. This Part shall be known and may be cited as the "Occupational Privilege Tax." (Ord. 159, 7/5/1966, §1)

§502. Definitions. As used in this Part the following words and phrases shall have the meaning ascribed to them in this Section, except where the context clearly indicates or requires a different meaning:

BOROUGH - the Borough of East Rochester.

COMPENSATION - salaries, wages, commissions, tips, receipts, bonuses, fees, or any other income.

EMPLOYER - any person, partnership, unincorporated association, institution, trust, corporation or governmental agency that engages the individual, whether by salary, wages, bonuses or commissions. Employer shall include a self-employed person who engages in his employ the services of one (1) or more individuals besides himself.

INDIVIDUAL - any person, male or female, who exercises the privilege of engaging in any occupation of any nature, type or kind whatsoever, within the corporate limits of the Borough of East Rochester, whether in the employ of another or self-employed, from the effective date of this Part. [Ord. 263]

OCCUPATION - any livelihood, job, trade, profession, business or enterprise of any kind which compensation is received.

OCCUPATIONAL PRIVILEGE TAX or TAX - a tax of ten dollars ($10.00) per year levied on each individual exercising the privilege of engaging in any occupation as hereinbefore defined, from the effective date of this Part, for which annual compensation is received in the amount of one thousand dollars ($1,000.00) or more. [Ord. 263]

TAXPAYER - any individual required hereunder to pay the Occupational Privilege Tax levied by this Part.

TAX COLLECTOR - the person appointed by the Borough Council of the Borough of Each Rochester to collect the Occupational Privilege Tax levied by this Part.

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

(Ord. 159, 7/5/1966, §2; as amended by Ord. 263, 4/7/1992)

§503. Levy. For general revenue purposes a tax is hereby levied upon the privilege of engaging in an occupation within the limits of the Borough of East Rochester in the year 1966, from and after the effective date of this Part, for which annual compensation is received in the amount of one thousand dollars ($1,000.00) or more. Each individual who exercises such privilege shall pay an occupational privilege tax in the amount of ten dollars ($10.00) per year in accordance with the provisions of this Part. (Ord. 159, 7/5/1966, §3)

§504. Collection Through Employers.

1. Every employer presently located within the limits of the Borough of East Rochester shall register with the tax collector within fifteen (15) days after the effective date of this Part, and thereafter every employer not registered under provisions of this Part shall register within fifteen (15) days after the first becoming an employer. Registration with the tax collector shall include the employer's name, address and such other information as the tax collector may require or request relative to collection of the occupational privilege tax.

2. Each employer within the Borough of East Rochester is hereby charged with the duty of collecting and paying over to the tax collector the said occupational privilege tax of ten dollars ($10.00) per year levied upon each individual employed by said employer who exercises the privilege of engaging in an occupation, as hereinbefore defined, for the benefit or in the service of said employer within the limits of the Borough of East Rochester, and who receives annual compensation in the amount of one thousand dollars ($1,000.00) or more. As to each individual employed by each employer on the effective date of this Part, each employer shall deduct the tax from the compensation payable to the taxpayer, file a return on a form prescribed by the tax collector and pay to the tax collector the full amount of all such taxes on or before September 30, 1966. As to each individual thereafter employed in any of the quarterly periods ending September 30, 1966 and December 31, 1966, each member shall deduct the said tax from the compensation payable to the individual, file a return on the form prescribed by the tax collector and pay to the tax collector the full amount of all such taxes deducted for each of said quarterly periods on or before October 31, 1966, and January 31, 1967, respectively.

3. Any employer who discontinues business or ceases operations on or before December 31, 1966, shall, within fifteen (15) days after discontinuing business, or ceasing operations, file the returns hereinabove required and pay over to the tax collector the full amount of all occupational privilege taxes deducted as required by the provisions of this Part.

4. The failure or omission of any employer to deduct the occupational privilege tax shall not relieve an individual required to pay such tax from the duty to file a return and pay such tax to the tax collector.

5. An individual who presents an official receipt evidencing prior payment of the occupational privilege tax for 1966, either directly or by collection through another employer, shall not have said tax deducted by his employer but the employer shall include taxpayer's name in the proper return, together with such information as the tax collector may prescribe.

6. Any employer who fails to deduct the occupational privilege tax as required by this Section, or who fails to pay such tax to the tax collector, shall be liable for payment of such tax in full just as though the tax had originally been levied against such employer.

(Ord. 159, 7/5/1966, §4)

§505. Direct Payment by Taxpayers. Every individual subject to the payment of the occupational privilege tax for the year 1966 who is self-employed, or whose tax for any reason is not collected under §504 of

this Part, shall file a return on a form prescribed by the tax collector and shall pay said occupational privilege tax directly to the tax collector. Each such individual who becomes subject to such tax on the effective date of this Part shall file his return and pay the tax on or before September 31, 1966. Each such individual who first becomes subject to such tax after the effective date of this Part shall file his return and pay such tax on or before October 31, 1966 and January 31, 1967, whichever payment date first occurs at least thirty (30) days after the individual first becomes subject to the tax. (Ord. 159, 7/5/1966, §5)

§506. Taxpayers. Both resident and non-resident individuals shall, by virtue of engaging in an occupation within the Borough of East Rochester, become taxpayers and shall be subject to pay the occupational privilege tax in accordance with the provision of this Part. (Ord. 159, 7/5/1966, §6)

§507. Administration and Enforcement. The tax collector appointed by the Borough Council of the Borough of East Rochester to collect the occupational privilege tax shall, on behalf of the Borough, collect and receive the taxes, interest, fines and penalties imposed by this Part, and shall maintain records showing the amounts received, the dates such amounts were received, the names, occupations and addresses of each taxpayer and the names and addresses of all employers subject to the provisions of this Part. The tax collector shall prescribe and issue all forms necessary for the proper administration of the occupational privilege tax and may adopt and enforce rules and regulations relating to any matter pertaining to the administration of this Part, including, but not limited to, requirements for deductions, requirements for evidence and records, and provisions for the examination and correction of returns. The tax collector and agents designated by him may examine the records of any employer, or supposed employer, or of any taxpayer or supposed taxpayer, in order to ascertain the tax due, or verify the accuracy of any return. Every employer, supposed employer, taxpayer, or supposed taxpayer, shall give the tax collector and agents designated by him all means, facilities and opportunities for the examinations hereby authorized. (Ord. 159, 7/5/1966, §7)

§508. Penalties. If for any reason a tax due under the provisions of this Part is not paid within two (2) months, or sixty (60) days, from the date said tax becomes due and payable, interest at the rate of six (6%) percent per year on the amount of the unpaid tax due, beginning as of the date said tax first became due and payable, and an additional penalty of one-half of one percent (1/2 of 1%) of the amount of the unpaid tax, for each month, or fraction of a month, during which the tax remains unpaid, shall be added and collected. Whenever suit is brought for the recovery of an unpaid tax, or a levy is made by distress and sale of goods and chattels, the taxpayer shall, in addition, be liable for the costs of collection as well as for interest and penalties. The provisions of this Section shall apply equally to delinquent taxpayers and to employers who are subject to the provisions of §504(6) of this Section. (Ord. 159, 7/5/1966, §8)

§509. Collections.

1. The tax collector shall collect, by suit or other appropriate remedy, all taxes, interest, penalties, fines and costs due under the provisions of this Part and unpaid, and for such purposes of the tax collector is hereby authorized to pursue any or all of the various procedures and remedies set forth in Sections 18, 19, 20 and 21 of Act No. 511 of the 1965 General Assembly of the Commonwealth of Pennsylvania, approved on December 31, 1965, just as though said Sections were in fact a part of this Part.

2. The tax collector may accept payment under protest of the tax claimed by the Borough in any case where any individual or employer disputes the Borough's claim for the tax. If a court of competent jurisdiction thereafter decides that there has been overpayment to the tax collector, the Borough Council of the Borough of East Rochester shall direct the tax collector to refund the amount of the overpayment to the individual or employer who paid under protest.

(Ord. 159, 7/5/1966, §9)

§510. Violations.

1. Any person, firm or corporation who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than six hundred dollars ($600.00) plus costs and, in default of said fine and costs, to a term of imprisonment not to exceed thirty (30) days. Every day that a violation of this Part continues shall constitute a separate offense. [Ord. 263]

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

(Ord. 159, 7/5/1966, §10; as amended by Ord. 263, 4/7/1992)

§511. Effective Date. This Part shall become effective in accordance with the Act of December 31, 1965, Act No. 511, and its amendments, and shall remain in effect thereafter for the year 1966, and shall continue on a calendar year basis, thereafter, without annual re-enactment. (Ord. 159, 7/5/1966; as added by Ord. 263, 4/7/1992)

Part 6

Mercantile Tax

§601. Definitions. The following words and phrases when used in this Part shall have the meanings ascribed to them in this Section, unless the context clearly indicates a different meaning:

BOROUGH - the Borough of East Rochester, of the County of Beaver and Commonwealth of Pennsylvania.

GROSS VOLUME OF BUSINESS - the whole volume of business including both cash and credit transactions.

LICENSE YEAR - the twelve (12) month period corresponding to the fiscal year of the Borough.

PERSON - any individual, partnership, limited partnership, association or corporation. The singular shall include the plural, and the masculine shall include the feminine and neuter.

RETAIL DEALER or RETAIL VENDOR - any person who is a dealer in or vendor of goods, wares and merchandise who is not a wholesale dealer or vendor.

TAX COLLECTOR - the person appointed by the Borough Council of the Borough of East Rochester to collect the taxes imposed by this Part. [Ord. 263]

TEMPORARY, SEASONAL or ITINERANT BUSINESS - any business that is conducted at one (1) location for less than sixty (60) consecutive calendar days.

WHOLESALE DEALER or WHOLESALE VENDOR - any person who sells to dealers in, or vendors of, goods, wares and merchandise and to no other persons.

The terms "Persons," "Wholesale Dealer," or "Wholesale Vendor," "Retail Dealer," and "Retail Vendor," shall not include non-profit corporations or associations organized for religious, charitable or educational purposes, agencies of the government of the United States or of the Commonwealth of Pennsylvania, or any person vending or disposing of articles produced or manufactured for shipment or delivery from the place of such production or manufacture.

(Ord. 168, 12/10/1968, §I; as amended by Ord. 263, 4/7/1992)

§602. Levy and Collection. For the calendar year of 1969 beginning on the first day of January, 1969 and ending on the 31st day of December, 1969, the Borough hereby levies a mercantile license tax in the manner and the rate hereinafter set forth. (Ord. 168, 12/10/1968, §II)

§603. Licenses. Every person desiring to continue to conduct or engage in, or hereafter to begin to conduct or engage in a business as a wholesale or retail vendor, or dealer in goods, wares and merchandise, and any person conducting a restaurant or other place where food, drink or refreshments are sold in the Borough shall on or before the 1st day of March, 1969 procure a mercantile license for his place of business, or if more than one (1), for each of his places of business in the Borough from

the tax collector who shall issue the same upon the payment of a fee that is established from time to time by resolution of Borough Council for either a wholesale or a retail license, and a fee as established from time to time by resolution of Borough Council for both a wholesale and retail license for his place of business, or, if more than one (1), for each of his places of business in the Borough for each license year. Such license shall be conspicuously posted at the place of business of each of the places of business of every person at all times. (Ord. 168, 12/10/1968, §III; as amended by Ord. 263, 4/7/1992)

§604. Imposition and Rate of Tax. Every person engaging in or conducting any of the following businesses or occupations in the Borough shall pay a mercantile license tax at the following prescribed rates:

A. Wholesale vendors or dealers in goods, wares and merchandise shall pay a tax on the privilege of engaging in or conducting said business at the rate of one-half (1/2) mill on each dollar of the volume of the annual gross business transacted by him.

B. Retail vendors, or dealers in goods, wares and merchandise, and all persons engaged in conducting restaurants or other places where food, drink or refreshments are sold, shall pay a tax on the privilege of engaging in or conducting said business at the rate of three-fourths (3/4) mill on each dollar of the volume of the annual gross business transacted by him.

C. Wholesale and retail vendors or dealers in goods, wares and merchandise, shall pay a tax on the privilege of engaging in or conducting said business at the rate of one-half (1/2) mill on each dollar of the volume of the annual gross wholesale business transacted by him, and three-fourths (3/4) mill on each dollar of the volume of the annual gross retail business transacted by him.

D. No such tax shall be levied on the dollar volume of business transacted by wholesale and/or retail dealers derived from the resale of goods, wares and merchandise taken by any dealer as a trade-in or as part payment for other goods, wares and merchandise, except to the extent that the resale price exceeds the trade-in allowance.

(Ord. 168, 12/10/1968, §IV)

§605. Computation of Volume of Business. Every person subject to payment of the tax hereby imposed shall compute his gross volume of business upon the actual amount of business transacted by him during the quarters ending March 31, 1969, and June 30, 1969, and September 30, 1969 and December 31, 1969. (Ord. 168, 12/10/1968, §V)

§606. Returns. Every person subject to payment of the tax hereby imposed shall on or before the 30th day of April, 1969, the 31st day of July, 1969, the 31st day of October, 1969 and the 31st day of January, 1970, file a return upon a form furnished by the tax collector setting forth the actual gross amount of business transactions made by him during the respective quarters ending next previous to April 30, 1969, July 31, 1969, [October 31, 1969] and January 31, 1970. (Ord. 168, 12/10/1968, §VI)

§607. Payment. At the time of filing a return, the person making the same shall pay the amount of tax shown as due thereon to the tax collector. (Ord. 168, 12/10/1968, §VII)

§608. Powers and Duties of Tax Collector.

1. It shall be the duty of the tax collector to collect and receive the taxes, fines and penalties imposed by this Part for payment over to the Borough Treasurer. It shall also be his duty to keep a record showing the amount received by him from each person paying the tax and the date of receipt.

2. The Borough may 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 re-examination and correction of returns, and payments alleged or found to be incorrect, or as to which an overpayment is claimed, or found to have occurred. Any person aggrieved by any decision of the Borough shall have the right to appeal to the Court of Common Pleas as provided by law.

3. The tax collector or any other person designated by the Borough is hereby authorized to examine the books, papers and records 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 due. Every such taxpayer, or supposed taxpayer, is hereby directed and required to give to the tax collector, or any other person designated by the Borough, the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

(Ord. 168, 12/10/1968, §VIII)

§609. Suit on Collection; Penalty.

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

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

(Ord. 168, 12/10/1968, §IX)

§610. Fines and Penalties. Whoever fails, neglects or refuses to file a return, or whoever makes any false or untrue statement on this return, or who refuses to permit inspection of the books, records or accounts of any business in his custody or control, when the right, to make such inspection by the tax collector, or any person designated by the Borough is requested, and whoever fails or refuses to procure a mercantile license when so required under this Part, or fails to keep his license conspicuously posted at his place of business as required herein, shall upon conviction thereof, be sentenced to pay a fine of not more than six

hundred dollars ($600.00) plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed thirty (30) days. Every day that a violation of this Part continues shall constitute a separate offense. (Ord. 168, 12/10/1968, §X; as amended by Ord. 263, 4/7/1992)

§611. Effective Date. This Part shall become effective in accordance with the Act of December 31, 1965, Act No. 511, and its amendments, and shall remain in effect thereafter for the fiscal year beginning on January 1, 1969, and shall continue on a calendar year basis, thereafter, without annual re-enactment. (Ord. 168, 12/10/1968; as added by Ord. 263, 4/7/1992)