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PART 1

PER CAPITA TAX

§101. AUTHORITY FOR ENACTMENT.

This Part is enacted under authority of the Local Tax Enabling Act, P.L. 1257, No. 511, December 31, 1965, 53 P.S. §6901 *et seq.*, as hereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania.

(Res. 080486, 8/4/1986; as revised by Ord. 261, 7/1/2002, §1)

§102. "RESIDENT" DEFINED.

The word "resident" as used in this Part shall mean every adult eighteen (18) years of age or older who lives within the Borough of Cleona.

(Res. 080486, 8/4/1986; as revised by Ord. 261, 7/1/2002, §1)

§103. IMPOSITION OF TAX.

Every resident shall pay \$5 for the present calendar year and each year hereafter.

(Res. 080486, 8/4/1986; as revised by Ord. 261, 7/1/2002, §1)

§104. COLLECTION.

All taxes, interests, costs and penalties imposed by this Part shall be collected by the Borough Tax Collector.

(Res. 080486, 8/4/1986; as revised by Ord. 261, 7/1/2002, §1)

§105. PENALTY.

Any resident or inhabitant who fails or refuses to pay the tax or to render accurate information to an assessor concerning his residence or age shall, upon conviction thereof, be sentenced to pay a fine not more than \$600 plus costs and, in default of payment of said fine and costs, to imprisonment for a term not to exceed 30 days.

(Res. 080486, 8/4/1986; as revised by Ord. 261, 7/1/2002, §1)

PART 2

LOCAL SERVICES TAX

§201. TITLE.

The title and text of this Part is the Local Services Tax of Cleona Borough, Lebanon County, Pennsylvania and provides as follows:

(Ord. 277, 12/3/2007, §1)

§202. DEFINITIONS.

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

COLLECTOR - the person, public employee or private agency designated by the political subdivision to collect and administer the tax herein imposed.

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

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

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

HE, HIS or HIM - indicates the singular and plural number, as well as male, female and neuter genders.

INDIVIDUAL - any person, male or female, engaged in any occupation, trade or profession within the corporate limits of Cleona Borough.

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

OCCUPATION - any trade, profession, business or undertaking of any type, kind or character, including services, domestic or other, carried on or performed within the

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corporate limits of Cleona Borough for which compensation is charged or received; whether by means of salary, wages, commissions, fees or net profits for services rendered.

POLITICAL SUBDIVISION - the area within the corporate limits of Cleona Borough, Lebanon County, Pennsylvania.

TAX - the local services tax at the rate levied in this Part.

TAX YEAR - the period from January 1 until December 31 in any year.

(Ord. 277, 12/3/2007, §2)

§203. LEVY OF TAX.

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

(Ord. 277, 12/3/2007, §3)

§204. EXEMPTIONS AND REFUNDS.

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

A. Any person who has served in any war or armed conflict in which the United States was engaged and is honorably discharged or released under honorable circumstances from active service if as a result of military service, the person is blind, paraplegic or a double or quadruple amputees or has a service-connected

disability declared by the United States Veterans' Administration or its successor to be a total 100% disability.

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

2. Procedure to Claim Exemption.

- A. A person seeking to claim an exemption from the local services tax may annually file an exemption certificate with Cleona Borough and with the person's employer affirming that the person reasonably expects to receive earned income and net profits from all sources within Cleona Borough of less than \$12,000 in the calendar year for which the exemption certificate is filed. In the event Cleona Borough utilizes a tax collection officer, it shall provide a copy of the exemption certificate to that officer. The exemption certificate shall have attached to it a copy of all the employee's last pay stubs or W-2 forms from employment within Cleona Borough for the year prior to the fiscal year for which the employee is requesting to be exempted from the local services tax. Upon receipt of the exemption certificate and until otherwise instructed by the collector of the local services tax for Cleona Borough or except as required by paragraph (B), the employer shall not withhold the tax from the person during the calendar year or the remainder of the calendar year for which the exemption certificate applies. Employers shall ensure that the exemption certificate forms are readily available to employees at all times and shall furnish each new employee with a form at the time of hiring. The exemption certificate form shall be the uniform form provided by Cleona Borough.
- B. With respect to a person who claimed an exemption for a given calendar year from the local services tax, upon notification to an employer by the person or by Cleona Borough that the person has received earned income and net profits from all sources within Cleona Borough equal to or in excess of \$12,000 in that calendar year or that the person is otherwise ineligible for the tax exemption for that calendar year, or upon an employer's payment to the person of earned income within Cleona Borough in an amount equal to or in excess of \$12,000 in that calendar year, an employer shall withhold the local services tax from the person under paragraph (C).
- C. If a person who claimed an exemption for a given calendar year from the local services tax becomes subject to the tax for the calendar year under paragraph (B), the employer shall withhold the tax for the remainder of that calendar year. The employer shall withhold from the person, for the first payroll period after receipt of the notification under paragraph (B), a lump sum equal to the amount of tax that was not withheld from the person due to the exemption claimed by the person under this subsection, plus the per payroll amount due for that first payroll period.

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The amount of tax withheld per payroll period for the remaining payroll periods in that calendar year shall be the same amount withheld, for other employees. In the event the employment of a person subject to withholding of the local services tax under this paragraph is subsequently severed in that calendar year, the person shall be liable for any outstanding balance of tax due, and Cleona Borough may pursue collection under this Part.

- D. Except as provided in paragraph (B), it is the intent of this subsection that employers shall not be responsible for investigating exemption certificates, monitoring tax exemption eligibility or exempting any employee from the local services tax.
 - E. Employers shall be responsible for retaining a copy of all exemption certificates filed by employees within a given calendar year for a minimum of 3 years.
 - F. Employers who have failed to withhold the local services tax from an employee or employees, and do not have copies of the employee exemption certificate or certificates, will be held responsible for the payment of the local services tax as if the tax had been originally levied against the employer.
3. **Refunds.** The Borough of Cleona in consultation with the collector and DCED, shall establish procedures for the processing of refund claims for any tax paid by any person who is eligible for exemption, which procedures shall be in accord with provisions of the general municipal law relating to refunds of overpayments and interest on overpayments. Refunds made within 75 days of a refund request or 75 days after the last day the employer is required to remit the tax for the last quarter of the calendar year, whichever is later, shall not be subject to interest. No refunds shall be made for amounts overpaid in a calendar year that do not exceed \$1. The Borough of Cleona or the collector shall determine eligibility for exemption and provide refunds to exempt persons.

(Ord. 277, 12/3/2007, §4)

§205. DUTY OF EMPLOYER TO COLLECT TAX.

- 1. Each employer within Cleona Borough, as well as those employers situated outside Cleona Borough but who engage in business within Cleona Borough, is hereby charged with the duty of collecting the tax from each of the employees engaged by the employer or performing work for the employer within Cleona Borough and making a return and payment thereof to the collector. Further, each employer is hereby authorized to deduct this tax for each employee who is employed by the employer, whether said employee is paid by salary, wage or commission and whether or not all such services are performed within Cleona Borough.
- 2. Each person subject to the tax shall be assessed by the employer a pro rata share of the tax for each payroll period in which the person is engaging in an occupation. The pro rata share of the tax assessed on the person for a payroll period shall be determined by

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

3. No person shall be subject to the payment of the local services tax by more than one political subdivision during each payroll period.
4. In the case of concurrent employment, an employer shall refrain from withholding the tax if the employee provides a recent pay statement from a principal employer that includes the name of the employer, the length of the payroll period and the amount of the tax withheld and a statement from the employee that the pay statement is from the employee's principal employer and the employee will notify other employers of a change in principal place of employment within 2 weeks of its occurrence. The employee's statement shall be provided on the form approved by DCED.
5. The tax shall be no more than \$52 on each person for each calendar year, irrespective of the number of political subdivisions within which a person may be employed. The political subdivision shall provide a taxpayer with a receipt of payment upon request by the taxpayer.
6. No employer shall be held liable for failure to withhold the local services tax or for the payment of the withheld tax money to Cleona Borough if the failure to withhold taxes arises from incorrect information submitted by the employee as to the employee's place or places of employment, the employee's principal office or where the employee is principally employed. Further, an employer shall not be liable for payment of the local services tax in an amount exceeding the amount withheld by the employer if the employee complies with the provisions of subsection (2) of §204 of this Part and this Section and remits the amount so withheld in accordance with this Part.
7. Employers shall be required to remit the local services taxes 30 days after the end of each quarter of a calendar year.

(Ord. 277, 12/3/2007, §5)

§206. RETURNS.

1. Employers and self-employed individuals are required to make and file a local services tax quarterly return 30 days after the end of each quarter of a calendar year. The local services tax quarterly return shall list the name, address, Social Security number of the employee; the physical address of the employee's place of employment; the number of

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payroll periods for which the local services tax was withheld and the amount of local services tax being remitted for each employee.

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

(Ord. 277, 12/3/2007, §6)

§207. DATES FOR DETERMINING TAX LIABILITY AND PAYMENT.

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

(Ord. 277, 12/3/2007, §7)

§208. SELF-EMPLOYED INDIVIDUALS AND EMPLOYERS.

All self-employed individuals and individuals whose employer is not required to withhold the local services tax (certain State and Federal agencies) who perform services of any type or kind or engages in any occupation or profession with a primary place of employment within the political subdivision shall be required to comply with this Part and pay the pro rata portion of the tax due to the collector on or before the thirtieth day following the end of each quarter.

(Ord. 277, 12/3/2007, §8)

§209. INDIVIDUALS ENGAGED IN MORE THAN ONE OCCUPATION OR EMPLOYED IN MORE THAN ONE POLITICAL SUBDIVISION.

1. The situs of the local services tax shall be the place of employment on the first day the person becomes subject to the tax during each payroll period. In the event a person is engaged in more than one occupation, that is, concurrent employment, or an occupation which requires the person working in more than one political subdivision during a payroll period, the priority of claim to collect the local services tax shall be in the following order when each of the municipalities imposes a local services tax:
 - A. First, the political subdivision in which a person maintains his or her principal office or is principally employed.
 - B. Second, the political subdivision in which the person resides and works if the tax is levied by that political subdivision.

- C. Third, the political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home.
2. In case of dispute, a tax receipt of the taxing authority for that calendar year declaring that the taxpayer has made prior payment constitutes prima facie certification of payment to all other political subdivisions. The final determination of priority payment shall be made under the provisions of this Part and the provisions of the law.
3. In the event that a person is engaged in an occupation which requires the person working in more than one political subdivision during the payroll period, in a case where only one of the political subdivisions imposes the Local services tax, the priority of the claim to collect the tax shall be in the following order:
 - A. If the political subdivisions have entered into an agreement that provides for payment to a specific political subdivision, that political subdivision shall receive payment of the tax.
 - B. If only one of the political subdivisions impose the local services tax, the payment shall be made to that municipality.

(Ord. 277, 12/3/2007, §9)

§210. NONRESIDENTS SUBJECT TO TAX.

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

(Ord. 277, 12/3/2007, §10)

§211. ADMINISTRATION OF TAX.

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

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by employers relating to the number of employees exempt from the tax, the employee exemption certificates and refunds of the tax paid to individuals and employers.

2. The collector is hereby charged with the administration and enforcement of this Part and is hereby charged and empowered, subject to municipal approval, to prescribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this Part, including provisions for the examination of payroll records of any employer subject to this Part, the examination and correction of any return made in compliance with this Part and any payment alleged or found to be incorrect or as to which overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the collector shall have the right to appeal consistent with the Local Taxpayers Bill of Rights under Act 50 of 1998.
3. The collector and Cleona Borough are hereby authorized to examine the books and payroll records of any employer in order to verify the accuracy of any return made by an employer or, if no return was made, to ascertain the tax due. Each employer is hereby directed and required to give the collector and Cleona Borough the means, facilities and opportunity for such examination.

(Ord. 277, 12/3/2007, §11)

§212. SUITS FOR COLLECTION.

1. In the event that any tax under this Part remains due or unpaid 30 days after the due dates as provided herein, the collector or Cleona Borough may sue for the recovery of any such tax due or unpaid under this Part, together with interest and penalty.
2. If for any reason the tax is not paid when due, interest at the rate of 6% on the amount of such tax shall be calculated beginning with the due date of the tax and a penalty of 10% shall be added to the flat rate of such tax for nonpayment thereof. Where suit is brought for the recovery of this tax or other appropriate remedy undertaken, the individual liable therefor shall, in addition, be responsible and liable for the costs of collection, including but not limited to administrative expenses and attorneys fees.

(Ord. 277, 12/3/2007, §12)

§213. VIOLATIONS AND PENALTIES.

Whoever makes any false or untrue statement on any return required by this Part, or whoever refuses inspection of the books, records or accounts in his or her custody and control setting forth the number of employees subject to this tax who are in his or her employment, or whoever fails or refuses to file any return or to pay the tax required by this Part shall be guilty of a violation and, upon conviction thereof, shall be sentenced to pay a fine of not less than \$100 nor more than \$600 and costs of prosecution, and, in default of payment of such fine and costs, to imprisonment for not more than 30 days. The action to enforce the penalty herein prescribed

may be instituted against any person in charge of the business of any employer who shall have failed or who refuses to file a return required by this Part. Each day or portion thereof that such violation continues, or is permitted to continue, shall constitute a separate offense. Each Section of this Part that is violated shall constitute a separate offense. Cleona Borough may file a suit in equity in the Court of Common Pleas of Lebanon County, Pennsylvania, to require compliance with this Part.

(Ord. 277, 12/3/2007, §13)

§214. INTERPRETATION.

1. Nothing contained in this Part shall be construed to empower Cleona Borough to levy and collect the tax hereby imposed on any occupation not within the taxing power of Cleona Borough under the Constitution of the United States and the laws of the Commonwealth of Pennsylvania.
2. If the tax hereby imposed under the provisions of this Part shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United States or of the laws of the Commonwealth of Pennsylvania as to any individual, the decision of the court shall not affect or impair the right to impose or collect said tax or the validity of the tax so imposed on other persons or individuals as herein provided.

(Ord. 277, 12/3/2007, §14)

§215. SAVING CLAUSE.

Except as set forth hereafter, all ordinances or parts of ordinances inconsistent herewith are hereby repealed. Nothing herein shall be construed to repeal the imposition and collection of an occupation privilege tax, plus applicable penalties and interest, for calendar year 2006 and all prior calendar years, or of an emergency and municipal services tax, plus applicable penalties and interest, for calendar year 2007, as the same exist prior to this amendment.

(Ord. 277, 12/3/2007, §15)

§216. EFFECTIVE DATE.

The tax imposed by this Part shall be effective on January 1, 2008, and all calendar years thereafter unless repealed or modified by ordinance of the Borough of Cleona.

(Ord. 277, 12/3/2007, §16)

PART 3

REALTY TRANSFER TAX

§301. SHORT TITLE.

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

(Ord. 276, 5/7/2007, §X)

§302. AUTHORITY.

A realty transfer tax for general revenue purposes is hereby imposed upon the transfer of real estate or interest in real estate situated with Cleona Borough, regardless of where the documents making the transfer are made, executed or delivered, or where the actual settlements on such transfer took place as authorized by Article XI-D, "Local Real Estate Transfer Tax," 72 P.S. §8101-D *et seq.*

(Ord. 276, 5/7/2007, §X)

§303. DEFINITIONS.

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

CORPORATION - a corporation, joint-stock association, business trust, or banking institution which is organized under the laws of this Commonwealth, the United States, or any other state, territory, foreign 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 or like character given as security for a debt or deeds or release thereof to the debtor, land contracts where 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 years, or instruments which solely grant, vest or confirm a public utility easement. "Document" shall also include a declaration of acquisition required to be presented for recording under §308 of this Part.

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

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

MEMBERS OF THE SAME FAMILY - any individual, such individual's brothers and sisters, the brothers and sisters of such individual's parents and grandparents, the ancestors and lineal descendants of any of the foregoing, a spouse of any of the foregoing, and the estate of any of the foregoing. Individuals related by the half-blood or legal adoption shall be treated as if they were related by the whole-blood.

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

REAL ESTATE -

- A. All lands, tenements or hereditaments within Cleona 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 or land, but excluding permanently attached machinery and equipment in an industrial plant.
- B. A condominium unit.
- C. A tenant-stockholder's interest in an cooperative housing corporation, trust or association under a proprietary lease or occupancy agreement.

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

- A. Derives 60% or more of its annual gross receipts from the ownership or disposition of real estate.
- B. Hold real estate, the value of which comprises 90% or more of the value of its entire tangible asset holdings exclusive of tangible assets which are freely transferable and actively traded on an established market.

TITLE TO REAL ESTATE -

- A. Any interest in real estate which endures for a period of time, the termination of which is not fixed or ascertained by a specific number of years including, without limitation, an estate in fee simple, life estate, or perpetual leasehold.
- B. Any interest in real estate enduring for a fixed period of years but which, either by reason of the length of the term of 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 lease or occupancy agreement for a term of 30 years or more or a leasehold interest or possessory interest in real estate in which the lessee has equity.

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

VALUE -

- A. In the case of any bona fide sale of real estate at arm's length for actual monetary worth, the amount of the actual consideration therefor, paid or to be paid, including liens or other encumbrances thereon existing before the transfer and not removed thereby, whether or not the underlying indebtedness is assumed, and ground rents, or a commensurate part thereof where such liens or other encumbrances and ground rents also encumber or are charged against 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.
- B. In the case of a gift, sale by execution upon a judgment or upon the foreclosure of a mortgage by a judicial officer, transactions without consideration or for consideration less than the actual monetary worth of the real estate, a taxable lease, an occupancy agreement, a leasehold or possessory interest, any exchange of properties, or the real estate of an acquired company, the actual monetary worth of the real estate determined by adjusting the assessed value of the real estate for local real estate tax purposes for the common level ratio factor developed by the Pennsylvania Department of Revenue for Pennsylvania real transfer tax base calculations.
- C. In the case of an easement or other interest in real estate the value of which is not determinable under paragraph (A) or (B), the actual monetary worth of such interest.
- D. The actual consideration for or actual monetary worth of any executory agreement for the construction of buildings, structures or other permanent improvements to real estate between the grantor and other persons existing before the transfer and not removed thereby or between the grantor, the agent or principle of the grantor

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of a related corporation, association or partnership and the grantee existing before or effective with the transfer.

(Ord. 276, 5/7/2007, §X)

§304. IMPOSITION OF TAX, INTEREST.

1. Every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, a tax at the rate of 1% of the value of the real estate represented by such document, which tax shall be payable at the earlier of the time the document is presented for recording or within 30 days of acceptance of such document or within 30 days of becoming an acquired company.
2. The payment of the tax imposed herein shall be evidenced by the affixing of an official stamp or writing by the recorder 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.*, its supplements or amendments, so that if any other political subdivision shall impose or hereafter shall impose such a tax on the same person or transfer then the tax levied by the Cleona Borough under the authority of that Act shall during the time such duplication of the tax exists, except as hereinafter otherwise provided, be one-half of the rate and such one-half rate shall become effective without any action the part of the Borough Council of the Borough of Cleona; provided, however, that the Borough Council of the Borough of Cleona and any other political subdivision which imposes such tax on the same person or transfer may agree that, instead of limiting their respective rates to one-half of the rate herein provided, they will impose respectively different rates, the total of which shall not exceed the maximum rate permitted under the Local Tax Enabling Act.
4. Any tax imposed under §301 that is not paid by the date the tax is due shall bear interest as prescribed for interest on delinquent municipal claims under the Act of May 16, 1923, P.L. 207, No. 153, 53 P.S. §7101 *et seq.*, as amended, known as the "Municipal Claims and Tax Liens Act." The interest rate shall be the lesser of the interest rate imposed upon delinquent Commonwealth taxes as provided in §806 of the Act of April 9, 1929, P.L. 343, No. 176, 72 P.S. §806, as amended, known as the "Fiscal Code," or the maximum interest rate permitted under the Municipal Claims and Tax Liens Act for tax claims.

(Ord. 276, 5/7/2007, §X)

§305. EXEMPT PARTIES.

The United States, the Commonwealth, or any of their instrumentalities, agencies or political subdivisions shall be exempt from payment or 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. 276, 5/7/2007, §X)

§306. EXCLUDED TRANSACTIONS.

The tax imposed in §304 shall not be imposed upon:

- A. A transfer to the Commonwealth, or to any of its instrumentalities, agencies or political subdivisions, by gift, dedication or deed in lieu of condemnation or deed of confirmation in connection with condemnation proceedings, or a reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation which reconveyance may include property fine adjustments provided said reconveyance is made within one year from the date of condemnation.
- B. A document which the Borough Council of Cleona 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 tenants; 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 and sister or spouse of a brother or sister, and between a grandparent and grandchild or the spouse of such grandchild, except that a subsequent transfer by the grantee within one year shall be subject to tax as if the grantor were making such transfer.

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- 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 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 paragraph.

- L. A transfer made pursuant to the statutory merger or consolidation of a corporation or statutory division of a nonprofit corporation, except where the Department reasonably determines that the primary intent for such merger, consolidation or division is avoidance of the tax imposed by this Part.
- M. A transfer from a corporation or association of real estate held of record in the name of the corporation or association where the grantee owns stock of the corporation or an interest in the association in the same proportion as his interest in or ownership of the real estate being conveyed and where the stock of the corporation or the interest in the association has been held by the grantee for more than 2 years.
- N. A transfer from a nonprofit industrial development agency or authority to a grantee of property conveyed by the grantee to that agency or authority as security for a debt or the grantee or a transfer to a nonprofit industrial 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 conversion, energy production, pollution control, warehousing or agriculture; and

(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 75% of each class of the stock thereof.
- T. A transfer between members of the same family of an ownership interest in a real estate company or family farm corporation.
- U. A transaction wherein the tax due is \$1 or less.
- V. Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof.

(Ord. 276, 5/7/2007, §X)

§307. DOCUMENTS RELATING TO ASSOCIATIONS OR CORPORATIONS AND MEMBERS, PARTNERS, STOCKHOLDERS OR SHAREHOLDERS THEREOF.

Except as otherwise provided in §306, documents which make, confirm or evidence any transfer or demise of title to real estate between associations or corporations and the members, partners, shareholders or stockholders thereof are fully taxable. For the purpose of this Part, corporations and associations are entities separate from their members, partners, stockholders or shareholders.

(Ord. 276, 5/7/2007, §X)

§308. ACQUIRED COMPANY.

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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, 90% or more of the total ownership interest in the company within a period of 3 years.
2. With respect to real estate acquired after February 16, 1986, a family farm corporation is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm corporation or when, because of issuance or transfer of stock or because of acquisition or transfer of assets that are devoted to the business of agriculture, it fails to meet the minimum requirements of a family farm corporation under this Part.
3. Within 30 days after becoming an acquired company, the company shall present a declaration of acquisition with the recorder of each county in which it holds real estate for the affixation of documentary stamps and recording. Such declaration shall set forth the value of real estate holdings of the acquired company in such county. A copy of the Pennsylvania Realty Transfer Tax Declaration of Acquisition may be submitted for this purpose.

(Ord. 276, 5/7/2007, §X)

§309. CREDITS AGAINST TAX.

1. Where there is a transfer of a residential property by a licensed real estate broker which property was transferred to him within the preceding year as consideration for the purchase of other residential property, a credit for the amount of the tax paid at the time of the transfer to him shall be given to him toward the amount of the tax due upon the transfer.
2. Where there is a transfer by a builder of residential property which was transferred to the builder within the preceding year as consideration for the purchase of new, previously unoccupied residential property, a credit for the amount of the tax paid at the time of the transfer to the builder shall be given to the builder toward the amount of the tax due upon the transfer.
3. Where there is a transfer of real estate which is leased by the grantor, a credit for the amount of tax paid at the time of the lease shall be given the grantor toward the tax due upon the transfer.
4. Where there is a conveyance by deed of real estate which was previously sold under a land contract by the grantor, a credit for the amount of tax paid at the time of the sale shall be given the grantor toward the tax due upon the deed.
5. If the tax due upon the transfer is greater than the credit given under this Section, the difference shall be paid. If the credit allowed is greater than the amount of tax due, no refund or carryover credit shall be allowed.

(Ord. 276, 5/7/2007, §X)

§310. 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 for calculating the rental charge is established.

(Ord. 276, 5/7/2007, §X)

§311. PROCEEDS OF JUDICIAL SALE.

The tax herein imposed shall be fully paid, and have priority out of the proceeds on any judicial sale or 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 moneys paid to him in connection therewith. If the proceeds of the sale are insufficient to pay the entire tax herein imposed, the purchaser shall be liable for the remaining tax.

(Ord. 276, 5/7/2007, §X)

§312. DUTIES OF RECORDER OF DEEDS.

1. As provided in 16 P.S. §11011-6, as amended by Act of July 7, 1983, P.L. 40, No. 21, its supplements and amendments, the Recorder of Deeds shall be the collection agent for the local realty transfer tax, including any amount payable to Cleona Borough based on a redetermination of the amount of tax due by the Commonwealth of Pennsylvania of the Pennsylvania realty transfer tax, without compensation from Cleona Borough.
3. In order to ascertain the amount of taxes due when the property is located in more than one political subdivision, the Recorder shall not accept for recording such a deed unless it is accompanied by a statement of value showing what taxes are due each municipality.
4. On or before the tenth of each month, the Recorder shall pay over to the Council of the Borough of Cleona all local realty transfer taxes collected, less 2% for use of the County, together with a report containing the information as is required by the Commonwealth of Pennsylvania in reporting collections of the Pennsylvania realty transfer tax. The 2% commission shall be paid to the County.
5. Upon a redetermination of the amount of realty transfer tax due by the Commonwealth of Pennsylvania, the Recorder shall rerecord the deed or rerecord the additional realty transfer tax form only when both the State and local amounts and a rerecording or recording fee has been tendered.

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(Ord. 276, 5/7/2007, §X)

§313. STATEMENT OF VALUE.

Every document lodged with or presented to the Recorder of Deeds for recording, shall set forth therein and as a part of such document the true, full and complete value thereof, or shall be accompanied by a statement of value executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this Part. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. The provisions of this subsection 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 an complete value thereof or the reason, if any, why such document is not subject to tax under this Part.

(Ord. 276, 5/7/2007, §X)

§314. CIVIL PENALTIES.

1. If any part of any underpayment of tax imposed by this Part is due to fraud, there shall be added to the tax an amount equal to 50% of the underpayment.
2. In the case of failure to record a declaration required under this Part on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause, there shall be added to the tax 5% of the amount of such tax if the failure is for not more than one month, with an additional 5% for each additional month of fraction thereof during which such failure continues, not exceeding 50% in the aggregate.

(Ord. 276, 5/7/2007, §X)

§315. LIEN.

The tax imposed by this Part shall become a lien upon the lands, tenements, or hereditaments or any interest therein, lying, being situated, wholly or in part within the boundaries of Cleona 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 Lebanon County, in accordance with the provisions of the Municipal Claims and Lien Act of 1923, 53 P.S. §7101 *et seq.*, its supplements and amendments.

(Ord. 276, 5/7/2007, §X)

§316. 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. 276, 5/7/2007, §X)

§317. REGULATIONS AND ENFORCEMENT BY THE PENNSYLVANIA DEPARTMENT OF REVENUE.

1. The Pennsylvania Department of Revenue 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. §8108-C *et seq.* are incorporated into and made a part of this Part.
2. The tax imposed herein and all applicable interest and penalties shall be administered, collected and enforced under the Act of December 31, 1965, P.L. 1257, No. 511, as amended, known as "The Local Tax Enabling Act"; provided, that if the correct amount of the tax is not paid by the last date prescribed for timely payment, the Borough of Cleona, pursuant to §1102-D of the Tax Reform Code of 1971, 72 P.S. §8102-D, authorizes and directs the Department of Revenue of the Commonwealth of Pennsylvania to determine, collect and enforce the tax, interest and penalties.

(Ord. 276, 5/7/2007, §X)

PART 4

EARNED INCOME AND NET PROFITS TAX

§401. TITLE.

This Part shall be known and may be cited as the “Cleona Borough Earned Income and Net Profits Tax Ordinance.”¹

(Ord. 296, 11/7/2011, §1)

§402. DEFINITIONS.

All terms defined in the Local Tax Enabling Act shall have the meanings set forth therein. The following terms shall have the meanings set forth herein:

COLLECTOR - the person or entity appointed as tax officer pursuant to the Local Tax Enabling Act to collect the tax.

EFFECTIVE DATE - January 1, 2010.

ENACTMENT - this Part.

GOVERNING BODY - the Borough Council of Cleona Borough, Lebanon County, Pennsylvania.

LOCAL TAX ENABLING ACT - the Local Tax Enabling Act, as set forth in 53 P.S. §6901 *et seq.* while such numbering and provisions remain in effect under Act 32 of 2008, and as set forth in 53 P.S. §6924.101 *et seq.*, when such numbering and provisions become effective under Act 32, and as amended in the future.

TAX - the tax imposed by this Enactment.

TAX RETURN - a form prescribed by the collector for reporting the amount of tax or other amount owed or required to be withheld, remitted, or reported under this Enactment or the Local Tax Enabling Act.

TAX YEAR - the period from January 1 to December 31.

TAXING AUTHORITY - Cleona Borough, Lebanon County, Pennsylvania.

¹Editor’s Note: Ord. 296, as enacted, read “Swatara Township Earned and Net Profits Tax Ordinance.” Corrected to “Cleona Borough Earned Income and Net Profits Tax Ordinance.”

TCC - the tax collection committee established to govern and oversee the collection of earned income tax within the TCD under the Local Tax Enabling Act.

TCD - any tax collection district to which the Taxing Authority or any part of the Taxing Authority is assigned under the Local Tax Enabling Act.

(Ord. 296, 11/7/2011, §2)

§403. IMPOSITION OF TAX.

1. **General Purpose Resident Tax.** The Taxing Authority hereby imposes a tax for general revenue purposes at the rate of 0.5% on earned income and net profits of individual residents of the Taxing Authority.
2. **Ongoing Tax.** The tax shall continue at the above rates during the current tax year and each tax year thereafter, without annual re-enactment, until this Enactment is repealed or the rate is changed.
3. **Local Tax Enabling Act Applicable.** The tax is imposed under authority of the Local Tax Enabling Act, and all provisions thereof that relate to a tax on earned income or net profits are incorporated into this Enactment. Any future amendments to the Local Tax Enabling Act that are required to be applied to a tax on earned income or net profits will automatically become part of this Enactment upon the effective date of such amendment, without the need for formal amendment of this Enactment, to the maximum extent allowed by 1 Pa.C.S. §1937.
4. **Applicable Laws, Regulations, Policies, and Procedures.** This tax shall be collected and administered in accordance with: (A) all applicable laws and regulations; and (B) regulations, policies and procedures adopted by the TCC or by the collector. This includes any regulations, policies, and procedures adopted in the future to the maximum extent allowed by 1 Pa.C.S. §1937.

(Ord. 296, 11/7/2011, §3)

§404. EXEMPTION FROM TAX - INDIVIDUALS UNDER AGE 16.

No exemption from tax. Although credits and deductions against the tax are permitted under certain circumstances as provided in applicable law and regulations, no individuals are exempt from the tax based on age, income or other factors.

(Ord. 296, 11/7/2011, §4)

§405. INDIVIDUAL TAX RETURNS AND PAYMENTS.

Every individual receiving earned income or earning net profits in any tax year shall file tax returns and pay tax in accordance with the Local Tax Enabling Act.

(Ord. 296, 11/7/2011, §5)

§406. EMPLOYER WITHHOLDING, REMITTANCE, AND TAX RETURNS.

Every employer shall register, withhold, and remit tax, and file tax returns in accordance with the Local Tax Enabling Act.

(Ord. 296, 11/7/2011, §6)

§407. TAX COLLECTOR.

The tax will be collected from individuals and employers by the collector.

(Ord. 296, 11/7/2011, §7)

§408. INTEREST, PENALTIES, COSTS, AND FINES.

Individuals and employers are subject to interest, penalties, costs, and fines in accordance with the Local Tax Enabling Act, including costs imposed by the collector in accordance with the Local Tax Enabling Act.

(Ord. 296, 11/7/2011, §8)

§409. PURPOSE/AMENDMENT AND RESTATEMENT/REPEAL.

The primary purpose of this Enactment is to conform the earned income and net profits tax currently imposed to the Local Tax Enabling Act, as amended and restated by Act 32 of 2008, and to do so within the time frame required by Act 32. Any prior enactment imposing a tax on earned income or net profits of individuals is amended and restated in its entirety to read as stated in this Enactment. Any other prior enactment or part of any prior enactment conflicting with the provisions of this Enactment is rescinded insofar as the conflict exists. To the extent the same as any enactment in force immediately prior to adoption of this Enactment, the provisions of this Enactment are intended as a continuation of such prior enactment and not as a new enactment. If this Enactment is declared invalid, any prior enactment levying a similar tax shall remain in full force and effect and shall not be affected by adoption of this Enactment. If any part of this Enactment is declared invalid, the similar part of any prior enactment levying a similar tax shall remain in effect and shall not be affected by adoption of this Enactment. The provisions of this shall not affect any act done or liability incurred, nor shall such provisions affect any suit or prosecution pending or to be initiated to enforce any right or penalty or to

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punish offense under the authority of any enactment in force prior its adoption of this Enactment. Subject to the foregoing provisions of this Section, this Enactment shall amend and restate on the effective date any enactment levying a tax on earned income or net profits in force immediately prior to the effective date.

(Ord. 296, 11/7/2011, §9)

§410. EFFECTIVE DATE.

This Part shall take effect and be in force on January 1, 2012.

(Ord. 296, 11/7/2011, §11)

PART 5

TAXPAYERS' BILL OF RIGHTS

§501. ADOPTION OF THE TAXPAYERS' BILL OF RIGHTS NOTICE.

1. The Borough Council is appointed as the Local Tax Appeals Board to receive and make determinations on petitions from taxpayers relating to assessment, determination or refund of taxes covered by disclosure statement. The Borough Council's regular duties include functioning as the Local Tax Appeals Board and will receive no compensation for performing such duties.
2. The Borough Secretary or someone designated by the Borough Secretary is appointed as the Borough representative to receive and resolve taxpayer complaints.
3. The Borough Secretary shall take all steps necessary or appropriate to ensure Borough compliance with the requirements of the Local Taxpayers' Bill of Rights.

(Res. 040599, 4/5/1999)

§502. TAXPAYERS' BILL OF RIGHTS DISCLOSURE STATEMENT.

Every taxpayer is obligated to pay all taxes levied by the Borough to which the taxpayer is subject. When taxes are not paid or the Borough has questions about whether a taxpayer has fulfilled all tax obligations, the Borough has legal rights to enforce taxpayer obligations. In conjunction with taxpayer obligations and Borough rights, the Commonwealth of Pennsylvania has enacted a Local Taxpayers' Bill of Rights which grants legal rights to taxpayers and creates obligations for boroughs so that equity and fairness control how boroughs collect taxes. This document is the Borough Disclosure Statement required by the Bill of Rights. This document is merely a summary of your rights. For a complete statement of your rights and the obligations of the Borough, see 53 P.S. §§8421-8438.

(Res. 040599, 4/5/1999)

§503. ELIGIBLE TAXES/APPLICABILITY.

Eligible taxes include any tax levied by the Borough other than the real estate tax. The specific eligible taxes levied by the Borough are: (A) the \$5 per capita tax; (B) the earned income tax of 1% which is shared equally with school districts; (C) the real estate transfer tax of 1% which is shared equally with school districts; and (D) the \$10 occupational privilege tax. This Disclosure Statement applies to the per capita tax and the real estate transfer tax. The earned income tax is collected and administered by the Earned Income Tax Bureau of Lebanon County. A separate disclosure statement relating to the earned income tax is available from that office.

This Disclosure Statement does not apply to the earned income tax. Unless expressly provided in the Local Taxpayers Bill of Rights, the failure of any Borough representative to comply with any provision of this Disclosure Statement, related regulations or the Local Taxpayers Bill of Rights will not excuse the taxpayer from paying the taxes owed.

(Res. 040599, 4/5/1999)

§504. TAXPAYER RIGHTS AND BOROUGH OBLIGATIONS WHEN THE BOROUGH REQUESTS INFORMATION OR AUDITS TAXPAYER RECORDS.

1. Minimum Time Periods for Taxpayer Response.

- A. The taxpayer has 30 calendar days from the mailing date to respond to Borough requests for tax information.
- B. Upon written request, the Borough will grant reasonable time extensions for good cause.
- C. The Borough will notify the taxpayer of the procedures to obtain an extension in its initial request for tax information.

2. Requests for Prior Year Returns.

- A. An initial Borough request may cover only taxes required to be paid or tax returns required to be filed no more than 3 years prior to the mailing date of the request.
- B. The Borough may take a subsequent request after the initial request, the Borough determines that the taxpayer failed to file a tax return, or failed to pay a tax for one or more of the tax periods covered by the initial request.
- C. If the Borough has sufficient information to indicate that the taxpayer failed to file a required return or pay an eligible tax which was due more than 3 years prior to the date of the notice, then the rules set forth in the preceding 2 subsections are not applicable.

- 3. Use of Federal Tax Information.** The Borough may require a taxpayer to provide copies of Federal tax returns if the Borough can show that the information is reasonably necessary for enforcement or collection of a tax and the information is not available from the Pennsylvania Department of Revenue or other available sources.

(Res. 040599, 4/5/1999)

§505. TAX OVERPAYMENT REFUNDS.

A taxpayer may file a written request with the Borough for a refund or credit. The filing of a written request will not preclude a taxpayer from later filing a tax appeal petition as discussed below. The request must be made within 3 years of the due date for filing the return or 1 year after payment of the tax, whichever is later. If no return is required, the request must be made within 3 years after the payment due date or within 1 year after payment, whichever is later. A tax return filed by the taxpayer showing a tax overpayment will be considered a written request for a cash refund unless the return indicates otherwise. If the taxpayer pays a tax as a result of receiving a notice of underpayment, the taxpayer must file a written request for a refund within 1 year of the payment date. Subject to certain exceptions, the Borough will pay interest at the rate determined pursuant to State law, from the date of overpayment until the date of resolution.

(Res. 040599, 4/5/1999)

§506. TAX ASSESSMENT/UNDERPAYMENT/REQUIRED NOTICE.

The Borough must notify the taxpayer in writing of the basis for any underpayment determined by the Borough.

(Res. 040599, 4/5/1999)

§507. TAX APPEALS.

1. Tax Appeal Petitions.

- A. To appeal a tax assessment of denial of a refund request, the taxpayer must file a tax appeal petition with the Borough Council. The petition must be mailed or delivered to the attention of the Borough Council at the following address:

140 West Walnut Street
Cleona, PA 17042

- B. Tax appeal petitions requesting a refund must be filed within the time set forth above under "tax overpayment refunds."
- C. Tax appeal petitions appealing a tax assessment or notice of underpayment must be filed within 90 days after the date of the tax assessment or underpayment notice.
- D. Regulations regarding the form and content of petitions, as well as practice and procedure for tax appeals may be obtained in person, or by mailing a request to the above address, or by calling the Borough Secretary at (717) 272-7167 during the hours of 8:00 a.m. to 3:30 p.m. on any weekday other than a holiday. The regulations are entitled "tax appeal information and regulations."

2. **Borough Decision.**

- A. The Borough will issue a decision on tax appeal petitions within 60 days after receipt of a complete and accurate petition.
- B. If the petition was complete and accurate when filed, the Borough's failure to render a decision within 60 days will result in the petition being deemed approved.

3. **Appeals to Court.**

- A. Any person aggrieved by a decision of the Borough who has a direct interest in the decision has the right to appeal to the County Court of Common Pleas.
- B. Appeals to court must be filed with the court within 30 days after the date of the Borough's adverse decision.

(Res. 040599, 4/5/1999)

§508. BOROUGH ENFORCEMENT PROCEDURES.

Depending on the type of tax involved and the specific circumstances, if a taxpayer has not paid a tax liability determined to be due or which the Borough has reason to believe might be due, possible Borough enforcement options include:

- A. The Borough may inquire directly to the taxpayer.
- B. The Borough may audit the taxpayer's records.
- C. The Borough may contact the taxpayer and attempt to resolve the liability through payment in full, an installment payment plan or compromise.
- D. The Borough may employ private collection agencies to collect the tax.
- E. The Borough may file a lien against the taxpayer, and in some cases, against an employer or other person responsible for payment of the tax.
- F. The Borough may attach or require an employer to make reductions in the wages or earnings of the taxpayer.
- G. The Borough may file suit against the taxpayer before a district justice or in the County Court of Common Pleas.
- H. The Borough may execute upon and attach taxpayer bank accounts, sell taxpayer vehicles, other person property or real estate, based on a judgment or lien obtained through legal proceedings.

I. The Borough may seek criminal prosecution of the taxpayer.

(Res. 040599, 4/5/1999)

§509. TAX INFORMATION CONFIDENTIALITY.

Information gained by the Borough as a result of any audit, return, report, investigation, hearing or verification shall be confidential. However, confidentiality will not preclude disclosure for official purposes, whether in connection with legal proceedings or otherwise, and will not preclude disclosure to the extent require by any applicable law.

(Res. 040599, 4/5/1999)

§510. TAXPAYER COMPLAINTS.

If a taxpayer has a complaint about a Borough action relating to taxes, the Borough Secretary may be contacted in writing at the address listed above under "tax appeal petitions." The Borough Secretary or another person designated by the Borough Secretary will facilitate resolution of the complaint by working with the appropriate Borough personnel.

(Res. 040599, 4/5/1999)

§511. TAXPAYERS' BILL OF RIGHTS NOTICE.

You are entitled to receive a written explanation of your rights with regard to the assessment, audit, appeal, enforcement, refund and collection of certain Borough taxes. The written explanation is entitled "Borough of Cleona Taxpayers' Bill of Rights Disclosure Statement." Upon receiving a request from you, the Borough will give you a copy of the disclosure statement at no charge. You may request a copy in person, or by mailing a request to the following address:

Cleona Borough
140 West Walnut Street
Cleona, PA 17042

A copy will be mailed to you if you call the Borough Secretary at the following number:

(717) 272-7167

You may call the above telephone number or appear in person at the above address to request a copy during the hours of 8:00 a.m. to 3:30 p.m. on any weekday other than a holiday.

(Res. 040599, 4/5/1999)

§512. INFORMATION REQUEST TIME EXTENSION PROCEDURE NOTICE.

1. Under Pennsylvania law, 53 P.S. §8424, you have 30 calendar days from the mailing date of this information request to respond by: (A) providing the requested information; or (B) requesting an extension of time in which to comply. If you need an extension, send a written request specifying the reasons for the extension and the facts supporting those reasons, to the following address:

Cleona Borough
140 West Walnut Street
Cleona, PA 17042

2. Reasonable time extensions will be granted for good cause. The Borough will notify you in writing of whether a time extension has been granted. If your request is granted, the Borough will inform you of the amount of the time extension. If your request is denied, the Borough will inform you of the basis for its denial and that you must immediately provide the requested information.

(Res. 040599, 4/5/1999)

§513. BOROUGH OF CLEONA TAX APPEAL INFORMATION AND REGULATIONS.

The Local Taxpayer Bill of Rights requires every borough to adopt regulations concerning the form and content of petitions, as well as practice and procedure for tax appeal petitions. This document contains the regulations required by the Bill of Rights. In addition, the Borough has published a Disclosure Statement required by the Bill of Rights.

(Res. 040599, 4/5/1999)

§514. ELIGIBLE TAXES/APPLICABILITY.

Eligible taxes include any tax other than real estate tax. Specific eligible taxes levied by the Borough are: (A) the \$5 per capita tax; (B) the earned income tax of 1% which is shared equally with school districts; (C) the real estate transfer tax of 1% which is shared equally with school districts; and (D) the \$10 occupational privilege tax. These regulations apply to the per capita taxes and real estate transfer tax only. The earned income tax is collected and administered by the Lebanon County Earned Income Tax Bureau. These regulations do not apply to the earned income tax. Separate regulations relating to the earned income tax are available from that office.

(Res. 040599, 4/5/1999)

§515. TAX APPEAL PETITIONS.

1. **Filing.**

- A. As explained more fully in the disclosure statement petitions should be filed with the Borough Council.
- B. Petitions must be filed with the time limits explained in the disclosure statement. Petitions received by the Borough Council are considered timely filed if received by the Borough Council by the required date or if mailed and postmarked by the U.S. Postal Service on or before the required date. The burden is on the taxpayer to present evidence sufficient to prove the petition was timely filed.

2. **Contents.** Petitions must be in writing, signed by the taxpayer (if the taxpayer is an entity, a partner or officer must sign) and must contain:

- A. Taxpayer's name, address and telephone number.
- B. If taxpayer is represented by an attorney, accountant or other qualified individual as explained below, the name, address and telephone number of the representative.
- C. Designation of the tax to which the petition relates, including the year or other period and tax amount. A copy of any tax bill, refund request denial or other essential document relating to the petition shall be attached.
- D. Taxpayer's license number, account number, employer identification number, social security number or other appropriate identifying designation.
- E. A detailed statement in separate numbered paragraphs of the reasons requiring a refund, or the objections to the assessment or notice of underpayment being appealed and the facts supporting such reasons or objections.
- F. A statement specifying whether a hearing is or is not requested.
- G. A statement specifying the relief requested by the taxpayer.
- H. A statement certifying that the facts contained in the petition are true and correct to the taxpayer's knowledge and belief, and that the petition is not filed for purposes of delay.

3. **Incomplete Petitions.** If the petition fails to satisfy the above requirements, the Borough Council may request the taxpayer to submit missing information or may make a decision based on the information in the petition. If additional information is requested, the taxpayer's failure to submit the requested additional information within 30 days of the date of the request shall result in dismissal of the petition.

(Res. 040599, 4/5/1999)

§516. TAX APPEAL PETITION PRACTICE AND PROCEDURE.

1. **General.** Practice and procedure before the Committee relating to tax appeal petitions is not governed by the Local Agency Law.
2. **Representation.**
 - A. A taxpayer or an officer or partner of an entity taxpayer may file a petition and appear at any hearing or may be represented by a person possessing appropriate education, training or experience to represent taxpayers in tax appeals. There is no requirement that a taxpayer be represented by an attorney or certified public accountant. A taxpayer's representative must be authorized in writing to represent the taxpayer. A letter signed by the taxpayer, or a listing as a representative in the petition signed by the taxpayer will be accepted as authorization for representation.
 - B. A notice or other written communication from the Borough to the taxpayer may be given to the taxpayer's authorized representative, and any such notice or other communication shall have the same effect as if given to the taxpayer directly. Action taken by taxpayer's authorized representative shall have the same force and effect as if taken by the taxpayer.
3. **Burden of Proof.** The taxpayer has the burden of proof on all issues.
4. **Hearings.**
 - A. **Waiver.** If a taxpayer does not request a hearing on the petition, the taxpayer will be deemed to have waived any right to a hearing and to have requested that the Borough Council decide the taxpayer's case solely based on the petition.
 - B. **Order to Schedule.** If the taxpayer requests a hearing, the Borough Council, in their discretion, will decide whether the taxpayer has a right to a hearing and whether a hearing is required. The Borough Council will thereafter either issue to a Borough employee an order to schedule a hearing or issue to the taxpayer the final decision incorporating an order denying a hearing.
 - C. **Notice of Hearing.** If the Borough Council schedules a hearing, reasonable notice will be given to the taxpayer, in writing, specifying the date, time and place.
 - D. **Continuances.** The Borough Council may grant a reasonable request for continuance of a scheduled hearing. The request shall be made in writing, shall state the reasons for the requested continuance, and shall be received by the Borough Council at least 5 days prior to the scheduled hearing.
 - E. **Presiding Officer.** Any Borough Council member may preside at a hearing.
 - F. **Transcripts or Recordings.** Transcripts or recordings of a hearing are not required, but may be made at the discretion of the presiding officer.

- G. **Authority of Presiding Officers.** Presiding officers have the authority to:
- (1) Regulate the conduct of hearings, including the scheduling, recessing, reconvening and adjournment of hearings, and all acts proper for the efficient conduct of hearings.
 - (2) Delegate scheduling hearings to any Borough employee.
 - (3) Administer oaths and affirmations.
 - (4) Receive evidence.
 - (5) Require production of books, records, documents and other data pertinent to the issues.
- H. **Evidence.** Hearings need not adhere to the technical rules of evidence. In cases involving issues of fact, oral testimony shall be under oath or affirmation. At the discretion of the Borough Council, depositions or affidavits may be received in lieu of oral testimony if the actual presence of a witness is not feasible.
- I. **Decision.** The Borough Council's final decision will be in writing signed by a Borough Council member.

(Res. 040599, 4/5/1999)

