

**CITY OF YORK**  
**YORK COUNTY, PENNSYLVANIA**

**OCCUPATION PRIVILEGE TAX ORDINANCE**

**AND**

**RULES AND REGULATIONS**

**Approved by York City Council**  
**June 16, 1998**

**Resolution Number 151**

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## SECTION A

### ORDINANCE 345

#### CROSS REFERENCES

Power to tax – see Act 511 of 12-31-65 (53 P.S. §6901-6924)

Limit of tax – see Act 511 of 12-31-65 (53 P.S. §6908(8))

Register - see Act 511 of 12-31-65 (53 P.S. § 6909)

#### 345.01 DEFINITIONS:

The following words and terms, when used in the article, shall have the following meanings, unless the context clearly indicates otherwise:

- (a) **“Employer”** means and individual, partnership, association, corporation, governmental body, agency or other entity employing one or more persons on salary, wage, commission or other compensation basis, including self-employed persons.
- (b) **“Fiscal year”** means the twelve month period beginning January 1 and ending December 31.
- (c) **“Individual”** means any person, male or female, engaged in any occupation, trade or profession within the corporate limits of the City of York.
- (d) **“Occupation”** means any trade, profession, business or undertaking of any type, kind, or character, including services, domestic or other, carried on or performed within the corporate limits of the City of York for which compensation is charged or received whether by means of salary, wages, commissions or fees for services rendered.
- (e) **“Occupation Privilege Tax Officer”** means the person, public employee or private agency designated by Council to collect and administer the provisions of this tax article.
- (f) **“Tax”** means the Occupation Privilege Tax in the amount of ten dollars (\$10.00) levied by this article.
- (g) **“Treasurer”** means the Treasurer of the City of York. (Ord. 35-1969 §5)
- (h) **“City” “City of York”** means the geographic area within the corporate limits of the City of York. (Ord. 35-1969 §2.)
- (i) **“He” “His” or “Him”** means and indicates the singular and plural number as well as male, female and neuter gender. (Ord. 35-1969 §2)

#### 345.02 TAX LEVIED:

The City hereby levies and imposes on each occupation engaged in by individuals within its corporate limits during the fiscal year an occupation privilege tax. This is in addition to all other taxes of any kind or nature heretofore levied by the City. (Ord. 35-1969 §3)

**345.03 EXEMPTION:**

Any person whose total income from all sources is less than two thousand dollars (\$2,000) per year is exempt from the levy of this tax. (Ord. 23-1971 §1)

**345.04 AMOUNT OF TAX:**

Beginning January 1 each occupation engaged in within the corporate limits of the City shall be subject to an occupation privilege tax in the amount of ten dollars (\$10.00) per year, such tax to be paid by the individual so engaged. (Ord. 35-1969 §4)

**345.05 DUTY OF EMPLOYERS:**

Each employer within the City as well as those employers situated outside the City but who engage in business within the City, is hereby charged with the duty of collecting from each of his employees engaged by him and performing for him within the City, the tax of ten dollars (\$10.00) per year and making a return and payment thereof to the Treasurer. It shall be the duty of the employer to deduct ten dollars (\$10.00) from the first pay of each employee in the beginning of the calendar year or at such time that the employee becomes employed, whether such employee is paid by salary, wages or commission and whether or not part or all such services are performed within the City. (Ord. 7-1982 §1. Passed 6-15-82.)

**346.06 RETURNS:**

Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied to him by the Occupation Privilege Tax Officer. Each employer in filing this return and making payment of the tax withheld from his employees shall be entitled to retain a commission calculated at the rate of two percent of the gross tax due and payable, provided that such tax is collected and paid over by the employer on or before the dates hereinafter set forth. If the employer fails to file such return and pay such tax, whether or not he makes collection thereof from the salary, wages or commissions paid by him to such employee, the employer shall be responsible for the payment of the tax in full without deducting a commission and as though the tax had originally been levied against him. (Ord. 35-1969 §6)

**345.07 DATES FOR DETERMINING LIABILITY:**

Each Employer shall use his employment records from January 1 to March 31 for determining the number of employees from whom such tax shall be deducted and paid over to the Treasurer, on or before April 30. A supplemental report shall be made for each employee on July 31, October 31, and January 31 of the following year for new employees as reflected on his employment records for each subsequent quarter. Payment on these supplemental reports shall be due at the time of filing the report. (Ord. 35-1969 §7; Ord. 5-1970 §1.)

**345.08 INDIVIDUALS ENGAGED IN MORE THAN ONE OCCUPATION:**

(a) Each individual who shall have more than one occupation within the City shall be subject to the payment of this tax on his principal occupation and his principal employer shall deduct this tax and deliver to him the evidence of deductions on a form to

be furnished to the employer by the Occupation Privilege Tax Officer, which form shall be evidence of deduction having been made and when presented to any other employer shall be authority for such employer to not deduct this tax from the employee's wages, but to include such employee on his return by setting forth his name, address and the name and account number of the employer who deducted this tax.

(b) If a person is engaged in more than one occupation, or an occupation which requires his working in more than one political subdivision during the calendar year, the priority of claim to collect such occupational privilege tax shall be in the following order: first, the political subdivision in which a person maintains his principal office or is principally employed; second, the political subdivision in which the person resides and works, if such tax is levied by that political subdivision; third, the political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home. The place of employment shall be determined as of the day the taxpayer first becomes subject to the tax during the calendar year. It is the intent of this provision that no person shall pay more than ten dollars (\$10.00) in any calendar year as an occupational privilege tax, irrespective of the number of political subdivisions within which such person may be employed within any given calendar year. In case of dispute, a tax receipt of the taxing authority for that calendar year declaring that the taxpayer has made prior payment which constitutes prima-facie certification of payment to all other political subdivisions.

(c) Deduction or nondeduction and reporting by employers shall be in accordance with subsections (a) hereof. (Ord. 35-1969 §8)

#### **345.09 SELF-EMPLOYED INDIVIDUALS:**

All self-employed individuals who perform services of any type or kind, engaged in any occupation or profession within the City, shall be required to comply with this article and pay the tax to the Treasurer on April 30 of that year, or as soon thereafter as he engages in an occupation.

In the event a self-employed person is engaged in more than one occupation within or without the City or any occupation which required his working in more than one political subdivision during the year, reporting priority of claims and prima-facie co-certification of payment shall be in accordance with Section 345.08 (a) and (b). (Ord. 35-1969 §8; Ord. 5-1970 §1.)

#### **345.10 NON-RESIDENT EMPLOYERS AND SELF-EMPLOYED INDIVIDUALS:**

All employers and self-employed individuals residing or having their place of business outside of the City, but who perform services of any type or kind, or engage in any occupation or profession within the City do by virtue thereof agree to be bound by and subject themselves to the provisions, penalties and regulations promulgated under this article with the same force and effect as though they were residents of the City. Any individual engaged in an occupation within the City and an employee of a nonresident employer may, for the purpose of this article, be considered a self-employed person, and in the event that this tax is not paid, the City shall have the option of proceeding against

either the employer or employee for the collection of this tax as hereinafter provided. (Ord. 35-1969 §10)

**345.11 ADMINISTRATION OF THE TAX:**

(a) It shall be the duty of the Occupation Privilege Tax Officer to accept and receive payments of this tax and to keep a record thereof showing the amount received by him from each employer or self-employed person together with the date the tax was received. (Ord. 13-1988 §1. Passed 7-19-88.)

(b) The Occupation Privilege Tax Officer is hereby charged with the administration and enforcement of this article and is hereby charged and empowered to prescribe, adopt, promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this article including provisions for the examination of the payroll records of any employer subject to this article; the examination and correction of any return made in compliance with this article 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 Occupation Privilege Tax Officer shall have the right to appeal to the Court of Common Pleas of York County as is provided in other cases.

(c) The Occupation Privilege Tax Officer is hereby authorized to examine the books and payroll records of any employer in order to verify the accuracy of any return made by an employer, or, if no return was made, to ascertain the tax due. Each employer is hereby directed and required to give the Occupation Privilege Tax Officer the means, facilities and opportunity for such examination. (Ord. 35-1969 §11; Ord. 23-1971 §1)

**345.12 SUITS FOR COLLECTION:**

(a) If any tax under this article remains due or unpaid thirty days after the due dates above set forth, the Occupation Privilege Tax Officer may sue for the recovery of any such tax due or unpaid under this article together with interest and penalty. (Ord. 35-1969 §12)

(b) If for any reason the tax is not paid when due, interest at the rate of six percent on the amount of such tax shall be calculated beginning with the due date of such tax and a penalty of ten percent shall be added to the flat rate of such tax for nonpayment thereof. Where suit is brought for the recovery of this tax, the individual liable therefore shall, in addition, be responsible and liable for the costs of collection. (Ord. 8-1994 §1. Passed 8-2-94.)

**345.13 REFUNDS:**

(a) Refunds of the occupation privilege tax will, under normal circumstances, not be considered until after the close of the tax year, where such refund is based upon the claim that the taxpayer did not earn two thousand dollars (\$2,000) or more by employment by employment within the City as provided in Section 345.11 (b).

(b) Refund claims based upon non-earning of two thousand dollars (\$2,000) or more within the City must be accompanied by appropriate documentary evidence, such as

W-2s or a statement from the employer where the w-2 issued contains both earnings within and outside the City.

- (c) Claims for refunds representing duplicate deductions made by two or more separate employers on the same employee, which represents an obvious overpayment of the limit of the tax, will be considered timely and acted upon even though the tax year has not terminated, or refunds of tax deductions made erroneously by an employer where there is documentary evidence presented that the employee was not and will not be employed within the City during the tax year, will also be considered timely even though the year has not terminated. (Revenue Ruling 1971-1 of July 23, 1971.)

**345.14 REFUNDS IN EXCESS OF ANNUAL LIMIT:**

(a) Public Law 1257, December 31, 1965, limits the annual rate of occupational privilege tax on any one individual to ten dollars (\$10.00) per year.

(b) If, at any time, two political subdivisions shall impose the above tax on the same person, subject, or “privilege” located within both political subdivisions, during the same year or part of the same year, under authority of P.L. 1257 during the time such duplication of the tax exists, the tax shall be one-half the rate as above limited, and such one-half rate shall become effective by virtue of the requirements of P.L. 1257 without any action on the part of the political subdivision imposing the tax.

(c) Any person whose place of employment is located in another political subdivision imposing the occupation privilege tax, but who performs his services for such employer within the City limits, shall be taxable to the City only to the limit of five dollars (\$5.00) per year, and if an amount in excess of this limit is paid to the City for such occupation privilege, any such excess shall be refunded to such employee upon the filing of a claim for refund, accompanied by sufficient documentary evidence to support such overpayment, such as occupation privilege tax receipts showing the payments to both subdivisions. (Revenue Ruling 1971-2 of July 23, 1971.)

**345.99 PENALTY:**

Whoever makes any false or untrue statement on any return required by this article, or who refuses inspection of his books, records or accounts in his custody and control setting forth the number of employees subject to this tax who are in his employment, or whoever fails or refuses to file any return required by this article, shall upon conviction be sentenced and fined not more that six hundred dollars (\$600.00) for each offense and in default of payment thereof shall be imprisoned for not more that ninety days for each offense. It is further provided that the action to enforce the fine and penalty hereby provided may be instituted against any person in charge of the business of any employer who has failed or refused to file a return required by this article. (Ord. 10-1989 §1. Passed 2-07-89.)

## SECTION B

### RULES AND REGULATIONS

#### **ARTICLE 1. INTRODUCTION:**

A. City of York Ordinance Number 345 requires the filing of an occupation privilege tax return and payment of the tax by all businesses not otherwise exempted from the tax by the Constitution of the United States, the Constitution of the Commonwealth of Pennsylvania or the City of York Ordinance Number 345. These Rules and Regulations are for the purpose of helping businesses recognize and fulfill these requirements.

B. Questions may be directed to the York Area Earned Income Tax Bureau, 1415 North Duke Street, PO Box 15627, York, PA, 17405. Telephone (717) 843-3113. Fax (717) 854-6376. Hours 8:00 AM to 4:00 PM.

C. The authority for the enactment of these taxes is the Local Tax Enabling Act of December 31, 1965, P.L. 1257 (53 P.S. 6901 et.seq.) and the Third Class City Code, Act of June 23, 1931, P.L. 932 as amended and reenacted by Act of August 24, 1953, P.L. 1337 (53 P.S. 37403(60)).

#### **ARTICLE 2. HOW TO REGISTER:**

Contact the York Area Earned Income Tax Bureau and request a business owner questionnaire for the City of York Occupation Privilege Tax. Complete the questionnaire in its entirety, sign, date and return the completed document in the return envelope provided with the questionnaire. Upon being approved by the City's Zoning Officer, this Bureau will issue the Tax Return Form.

#### **ARTICLE 3. TAX AMOUNT:**

Beginning with the first day of January each year, each occupation as referenced in the Ordinance, engaged in within the Corporate limits of the City of York, shall be subject to an Occupation Privilege Tax in the amount of ten (\$10.00) dollars per annum with said tax to be paid by the individual so engaged.

#### **ARTICLE 4. FIDUCIARY STATUS:**

Employers who withhold the occupation privilege tax from employee earnings, and the person responsible for the transmission of occupation privilege tax by a corporate employer, shall be a fiduciary charged with all the responsibilities of a fiduciary with respect to taxes withheld, and shall be subject to all duties imposed by law on fiduciaries, including criminal penalties for breach of duties.

**ARTICLE 5. REGISTRATION OF EMPLOYERS:**

A. Each employer withholding or required to withhold tax pursuant to City of York Ordinance, Article 345, shall register with the York Area Earned Income Tax Bureau the employer's name and address and such other information as the Bureau may require within fifteen (15) days after becoming a withholding employer.

B. All employers who have a place of business located within the Taxing Authority shall maintain complete records of all employees for a period of six (6) years in such form as to enable the Bureau to determine the employers' liability to withhold for each employee, the actual amount withheld, the actual amount transmitted to the Bureau and such other information available to such employers as will enable the Bureau to carry out its responsibilities.

**ARTICLE 6. LIABILITY OF EMPLOYEE:**

Failure of any employer to withhold tax shall not relieve the employee from payment of such tax, or from complying with the requirements of the ordinance or these rules and regulations relating to the filing of declarations and tax returns.

**ARTICLE 7. RETURNS – O.P.T.-2 FORM:**

A. The occupation privilege tax return form (O.P.T.-1) shall be due at the York Area Earned Income Tax Bureau on or prior to the date specified on the OPT-1 form for the applicable period of the calendar year. Payment of the withheld occupation privilege tax for the period is required to be remitted along with form OPT-1, in addition to one occupation privilege tax form OPT-2 for each person for whom the tax is being remitted.

B. The form OPT-2 shall contain the name and address of the employer, plus the full name, social security number and address of the employee.

C. Employers may submit the form OPT-2 information to the York Area Earned Income Tax Bureau on pre-approved written/printed reports or on magnetic media utilizing a format acceptable to and pre-approved by the Bureau, in lieu of submitting paper records.

D. Signature of the appropriate corporate officer or the business owner is required on form OPT-1 when submitting this form to the bureau.

E. Every return shall be made upon a form furnished by the License Tax Officer. Every person making a return shall certify the correctness thereof by affidavit.

F. The fact that an individual's name is signed on the return shall be prima-facie evidence that such individual is authorized to sign the return on behalf of the taxpayer.

G. Any unsigned tax return form received by the Bureau shall be considered as incomplete and unacceptable until it is properly signed.

**ARTICLE 8. REMITTANCES:**

Remittances shall be made payable to the York Area Earned Income Tax Bureau or YAEITB.

**ARTICLE 9. BAD CHECKS:**

A \$20.00 penalty will be levied if a check is returned unpaid by the bank.

**ARTICLE 10. QUARTERLY TAX PERIODS AND TAX REMITTANCE DUE DATES**

A. **1<sup>st</sup> tax period per calendar year: January 1 through March 31**  
**Due Date:** On or before April 30

**2<sup>nd</sup> tax period per calendar year: April 1 through June 30**  
**Due Date:** On or before July 31

**3<sup>rd</sup> tax period per calendar year: July 1 through September 30**  
**Due Date:** On or before October 31

**4<sup>th</sup> tax period per calendar year: October 1 through December 31**  
**Due Date:** On or before January 31 of subsequent calendar year

B. Employers who discontinue business prior to the completion of the calendar year/tax year, shall within thirty (30) days after discontinuance of business file and furnish the returns required by the Ordinance and these Rules and Regulations, covering all periods between the last such returns and date of discontinuing business and transmit to the Bureau all tax remaining due.

**ARTICLE 11. WITHHELD TAXES ARE HELD IN TRUST:**

A. Local occupation privilege taxes withheld from employee wages by an employer or business entity or a corporation are held in trust for the taxing authority and its tax collector, even in the event of a bankruptcy; nor shall these withheld funds be the “property of the bankrupt estate.” These withheld taxes shall not be commingled in the employer’s general cash or other accounts.

B. (1) **TRUSTEE EX MALEFICIO:** One who collects the occupation privilege tax as agent for the taxing authority or the taxing authority’s tax collector and fails to pay same over to the appointed collector for the taxing authority is a trustee ex maleficio.

**EXAMPLE:** An officer of a company that fails to remit the occupation privilege tax withheld from the company’s employees may be held personally liable for the occupation privilege tax withheld as a trustee ex maleficio, where the officer has been active and/or in control over the collection of remitting the taxes.

(2) Businesses and Corporations must act through individuals and where such individuals are the acting and controlling officers and agents of the corporation or

business, and they fail to administer the trust responsibilities, liabilities are imposed upon the individuals who are responsible for the performance of the trust duty.

EXAMPLE: A corporation which files a tax return form, or the forms or pay check stubs document collections from employees, but remits only part of these collections to this Bureau shall be liable for the withheld taxes as a trustee through wrong doing, to the extent that this officer failed, permitted and/or directed the corporation not to remit the withheld tax.

EXAMPLE: An officer and/or director of a corporation or business who has knowledge that the corporation has failed to pay over withheld occupation privilege tax shall be personally liable for the tax withheld because the person did not try to prevent the corporation or business from spending its funds without first paying the withheld tax to this Bureau.

(3) LIABILITIES OF CORPORATIONS AND OFFICERS: Where a corporation does not remit the occupation privilege tax withheld from its employees and subsequently is dissolved in bankruptcy, the corporate officers shall be held personally liable, jointly or severally, for the payment of the occupation privilege tax withheld.

EXAMPLE: The officers are the sole owners of the shares of stock and/or are the “guiding force” of the corporation. The officers are trustees of the occupation privilege tax collected since they are responsible for the corporation’s failure to remit the tax and for the misappropriation of the funds. The doctrine of separate entity of the corporation shall not defeat this Bureau’s claims.

C. The employer, the business, the corporation shall not characterize the tax withheld simply as creating a debtor-creditor relationship between the employer or business or corporation and this Bureau as collector for the taxing authority, therefore the employer is the conduit for its employees’ tax payments. Consequently, these taxes are withheld in “express trust” or in “constructive trust” for the taxing authority and its collector of these taxes.

D. LOWEST INTERMEDIATE BALANCE TEST (L.I.B.T.): This is a judicial test which this Bureau will apply to ease the burden of the beneficiary (the tax collector, in this case the Bureau) to trace the funds if or when a trustee commingles trust funds due this Bureau with other monies in a single account. The L.I.B.T. allows trust beneficiaries to assume that trust funds are withheld last from a commingled account. Therefore the lowest intermediate balance in an account represents trust funds that have never been dissipated and which are reasonably identifiable. The Bureau will take the position that the Court will keep in mind a broad policy against allowing a party unilaterally to make a trust unenforceable by commingling assets. Also, in the event of a bankruptcy filing the L.I.B.T. is intended to provide a method for this Bureau to demonstrate that amounts of withheld taxes were/are still in the possession of the debtor at the commencement of the case.

See: 300-227 City of Farrell VS Sharon Steel Corp.; United States Office; Mueller Industries, Inc.; Citibank, N.A. United States Court of Appeals, Third Circuit, No. 94-3130, November 14, 1994 case.

E. INTERLOCKING BUSINESS ENTITIES: A company that maintains separate payrolls for its employees on a separate checking account or general ledger system and reported to this Bureau that it has withheld payroll tax from its employees shall be liable for the occupation privilege tax, plus penalty, plus interest, when the tax has not been remitted to this Bureau.

EXAMPLE: The fact that a company is closely tied to a corporation and that together the company and corporation provide a single overall set of services does not excuse the corporation from liability for unremitted tax withheld where the entities have been kept separate for bookkeeping and operational purposes.

## **ARTICLE 12. ASSESSMENT AND COLLECTION OF UNDERPAYMENT OF THE TAX:**

A. If as a result of research or investigation conducted by or on behalf of the Administrator of the Bureau, a declaration or return is found or is reasonably believed to be incorrect, the Administrator is authorized to assess and collect underpayments of taxes withheld at the source, or any underpayments of taxes withheld at the source, or any underpayments of tax owed by any employer or taxpayer with respect to occupational privilege tax. If no declaration or return has been filed and a tax is found or determined to be due, the tax actually due may be assessed and collected without the formality of obtaining a delinquent declaration or return from the employer or taxpayer.

B. HEARINGS/MEETINGS: Any person aggrieved by an assessment made by the Administrator may, within thirty days after receipt of notice of the assessment, appeal the assessment by forwarding a letter to the Administrator stating in detail why the taxpayer believes the assessment to be incorrect and including documentation to support the appellant's position. A meeting or hearing will be arranged within thirty days of the receipt of the appeal notice. The appeal meeting or hearing may be recorded at the decision of the Administrator. A decision on the appeal shall be rendered by the Administrator within thirty days of the close of the meeting or hearing. The person aggrieved may also properly file all applicable returns and provide all needed supporting documentation if this was not previously done by the aggrieved person. This may also permit promptly amending the assessment to the satisfaction of both parties.

C. ADMINISTRATIVE REVIEW PROCEDURE: Upon receipt of a written request for an Administrative Review (hereinafter referred to as "the Review"), the review will be scheduled within thirty (30) days from the date such request is received by the Bureau Administrator.

(1) The review may be recorded at the option of the administrator and the appellant may be required to provide verification that all factual information presented, including oral statements, are true, correct and complete to the best of their knowledge and belief. If a record is made of the review, the appellant may obtain a copy of the record by paying a fee equal to 50% of all costs incurred in the preparation and transcription of the record.

(2) The purpose of the review shall include, but not be limited to a review of all documents, data and records produced by appellant and an opportunity for appellant to explain his or her position and be heard on issues directly relating to the filing of the tax return and payment of taxes. The Administrator, or his authorized representative, shall have ample opportunity to make such inquiries of appellant as will enable the Administrator to fully understand appellant's information and documents and to make other inquiries as may be appropriate in examining and understanding appellant's position.

(3) Appellant shall file with the Administrator properly completed and signed proposed tax returns for each tax year in question and such returns, along with any supporting data and documents, shall be reviewed. A reasonable effort shall be made to reach a fair and equitable accommodation with the appellant. In the event this can not be done, the Administrator, after a review of all the data and records submitted and of the record of the hearing, shall make such determination as he believes in his opinion to be appropriate and notify the appellant of his determination in writing on the form attached hereto and made a part hereof, which shall be sent to the appellant at appellant's last known address by ordinary mail and which shall then become appellant's formal notice of appellant's tax liability as of the date of that determination.

**ARTICLE 13. "PAID UNDER PROTEST":**

A check endorsement shall not qualify as a refund claim. The words "Paid Under Protest" handwritten, typed or otherwise placed on a taxpayer's check or money order, or the check or money order of an employer, shall not qualify as a refund claim as the words are not sufficient to appraise the Bureau's personnel of the taxpayer's intent to seek a refund or of the substance of their claim, or of facts sufficient to permit the Bureau to undertake an investigation of the person's claim.

**EFFECT OF RULES AND REGULATIONS:**

**Insofar as these Rules and Regulations may be found to conflict with Article 345 or other law, regardless of whether they purport to increase a taxpayer's responsibility to pay the tax, Article 345 or other applicable law shall prevail. Compliance with these Rules and Regulations shall be sufficient to bar imposition of penalty by the York Area Earned Income Tax Bureau.**