

**CITY OF HAZLETON**

**PAYROLL PREPARATION TAX**

**REGULATIONS**

Adopted Pursuant to  
City of Hazleton  
Resolution No. 2022-23

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# PAYROLL PREPARATION TAX REGULATIONS

## ARTICLE I

### GENERAL PROVISIONS

#### SECTION 101 – DEFINITIONS

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

**ASSOCIATION** – Partnership, limited partnership, business trust, limited liability company, or any other form of unincorporated business or enterprise owned or operated by two or more persons.

**BUSINESS** – Any activity, enterprise, profession, trade or undertaking of any nature conducted or engaged in, or ordinarily conducted or engaged in, with the object of gain, benefit or advantages, whether direct or indirect, to the taxpayer or to another or others. The term shall include subsidiary or independent entities which conduct operations for the benefit of others and at no profit to themselves, nonprofit businesses, and trade associations.

**BUSINESS WITHIN THE CITY** - A person shall be deemed to be conducting business within the City if one engages, hires, employs or contracts with one or more individuals as employees, Partners, or is self-employed and, in addition, does at least one of the following: (1) maintains a fixed place of business within the City; (2) owns or leases real property within the City for purposes of such business; (3) maintains a stock of tangible, personal property in the City for sale in the ordinary course of business; (4) conducts continuous solicitation within the City related to such business; or (5) utilizes the streets of the City in connection with the operation of such business, other than for the mere transportation from a site outside the City, through the City, to a destination outside of the City. A person shall not be deemed to be engaged in business solely by reason of the receipt of Passive Income for which no services are rendered. Local Tax Enabling Act, 53 P.S. § 6924.303(b). For persons who perform services within and without the City, Payroll Expense shall be apportioned in accordance with Section 102 of these regulations.

**CHARITY** – A charitable organization that qualifies for tax exemption pursuant to the act of November 26, 1997 (P.L. 508, No 55), known as the “Institutions of Purely Public Charity Act.”

**CITY** – The area within the city limits of the City of Hazleton.

**COMPENSATION** – Salaries, wages, commissions, bonuses, net earnings and incentive payments, whether based on profit or otherwise, fees, tips and any other form of remuneration earned for services rendered, whether paid directly or through an agent, and whether in cash or in property or the right to receive property.

**DISTRIBUTIONS** – Drawing account; the owner’s account for recording any withdrawals.

**DRAWING ACCOUNT** – A temporary capital account, set up in the name of a Partner or Self-employed person from which the individual can withdraw money or other assets in anticipation of profit of the business.

**EMPLOYEE** – Any individual in the service of an employer, under an appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. Individuals who may be classified as an independent contractor under the tax reporting rules associated with IRS Form 1099-MISC, can be re-classified as Employees for purposes of this tax. In addition, for purposes of this tax, and irrespective of the common law tests for determining the existence of an independent contractor relationship, an individual performing work or service for compensation shall be deemed to be an employee of the person for whom the work or service is performed unless: (1) such individual has been and will continue to be free from control or direction over the performance of such work or service, both under his/her appointment or contract of hire or apprenticeship; (2) such work or service is either outside the usual course of the business of the person for which such service is performed; or, (3) such individual is customarily engaged in an independently established trade, occupation, business or profession.

**EMPLOYER** – Any person or entity conducting Business within the City, except for a governmental entity. An Exempt Employer is not an Employer under these regulations. A Partnership and Limited Liability Company are Employers as to their Employees and as to any of their Partners providing service in the City. Likewise, a Limited Liability Company is an employer as to its members. A Partner, conducting one or more businesses within the City through a Partnership, where the Partnership does not file a Payroll Preparation Tax return with the City, is an Employer. Any Self-Employed Person conducting one or more Business within the City is an Employer.

**EXEMPT EMPLOYER** – any person that is a Governmental Entity. A contractor or consultant, classified as a Partner, a Self-employed person, or a person receiving Form 1099-MISC, providing services to an Exempt Employer is not itself exempt merely because he or she derives service revenue from a Governmental Entity.

**GUARANTEED PAYMENTS** – payments to Partners by the Partnership for services that are determined without regard to the net income of the Partnership. For example, health insurance premiums paid by the Partnership on behalf of any Partner are Guaranteed Payments because they are determined without regard to the net income of the Partnership.

**GOVERNMENTAL ENTITY** – any agency, authority, department, or instrumentality of the federal government or of another State, and any unit of government listed under 101 Pa. Code § 23.221.

**INTERNAL REVENUE CODE** – the Internal Revenue Code of 1986 (Public Law 99- 514), as amended, 26 U.S.C. § 1, and following, as it was in effect on January 1, 2020. Any citation to regulations issued under the Internal Revenue Code of 1986, 26 C.F.R. § 1, and following, refers to the regulations in effect on January 1, 2020.

**NET INCOME** -- The net income from the operation of a business, other than a corporation, as required to be reported to or as determined by the Department of Revenue under section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and rules and regulations promulgated under that section. The term does not include income which (1) is not paid for services provided; and (2) is in the nature of earnings from an investment.

**PARTNER** – an individual owner or member in a Partnership. A Partner will owe tax based on Taxable Income. A Partner is not taxed on his or her Passive Income.

**PARTNERSHIP** – an unincorporated entity, joint venture, business trust, general partnership, limited partnership, limited liability company, syndicate, or any other unincorporated association, with two or more owners that is taxed for Pennsylvania state income purposes as a pass-through entity. Tax Reform Act of 1971, 72 P.S. § 7401 (definition of a “Corporation”). An unincorporated entity, with one owner, that is treated under the federal “check-the-box” as a disregarded entity is not a Partnership. 26 C.F.R. § 301.7701-3 (as it was in effect on January 1, 2020). See, Tax Reform Act of 1971, 72 P.S. § 7307.21. An unincorporated entity, with one or more owners, that has made the federal “check-the-box” election to be taxed as a “corporation” is not a Partnership but it may be an Employer.

**PASSIVE INCOME** – Items of income earned by a Partner or Self-employed person from interest (not derived from working capital investments), dividends, capital gains (except for an individual who is considered a trader and not an investor), ground rents, royalties associated with the development of natural resources through a non-operating interest, retirement income earned after retirement, and real estate rental income where substantial services are not provided to tenants, is non-taxable Passive Income. However rental income reported on Schedule C or 1120 or K-1 where the taxpayer is shown as a general partner is considered taxable. In determining whether any portion of net profits from a Business may constitute Compensation or non-taxable Passive Income, the Tax Administrator shall follow the guidance issued under Tax Reform Code

of 1971, 72 P.S. § 7303(a), and the PA Personal Income Tax Return Guide, except where such guidance is inconsistent with the purposes of the Payroll Preparation Tax. Income earned by a Partner or by a Self-employed person, is not Passive Income if the business provides professional services (e.g. law, accounting, architectural, professional engineering, actuarial, or medical services) or personal services to customers. Guaranteed Payments made to a Partner are not Passive Income. Payments made to a retiring Partner under Section 736 of the Internal Revenue Code, 26 U.S.C. § 736, are Passive Income. The Passive Income exclusion only applies to Partners and Self-employed persons, but not to Employees whose Compensation is reported to the taxing authorities on a Form W-2 or Form 1099-MISC.

**PAYROLL EXPENSE OR AMOUNTS** – The total Compensation paid, including salaries, wages, net distributions, commissions, bonuses, stock options and other compensation to all individuals who during any tax year, perform work or render services in whole or in part in the City of Hazleton. Employee contributions and deductions resulting from an employee election, whether deferred or otherwise, to qualified cash or deferred arrangements, such as an Internal Revenue Code Section 401(k) retirement plan or Internal Revenue Code Section 125 “cafeteria plan”, do not reduce total Compensation. Compensation meeting the definition of earned income would be part of the Payroll Expense Tax associated with a particular Employee who is not a Partner or a Self-employed person. See Local Tax Enabling Act, 53 P.S. § 6924.501 (“Earned Income”). The Payroll Preparation Tax is on gross payroll of the Employer. The Employers’ portions of federal and state Payroll Preparation Taxes, health insurance premiums, retirement plan contributions, etc., are not part of taxable gross payroll.

The Payroll Expense of a Partner or Self-employed person is the cumulative annual Taxable Income associated with each separate Business carried on within the City rather than “Earned Income” as defined in 53 P.S. § 6924.501.

**PERSON** – A corporation, Partnership, Partner, Self-employed individual, business trust, association, unincorporated entity, estate, trust, foundation or natural person. Whenever used in any provision prescribing a fine or penalty the word “person” as applied to Partnerships, shall mean the Partners thereof, and as applied to corporations and unincorporated associations, shall mean the officers thereof. A Governmental Entity is not a Person.

**PROFITS** – A share of net income earned for services rendered from a partnership, a limited liability company, a business trust or S corporation, after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with generally accepted accounting principles and practices, and including, but not limited to, any amount treated as net earnings from self-employment for services rendered.

**REQUEST FOR REASSESSMENT** – Is a formal written request to the Tax Administrator for reassessment of the Payroll Preparation Tax.

**SELF-EMPLOYED** – An individual who earns Compensation from one or more separate Businesses carried on within the City, other than as an Employee or as a Partner. The single member owner of an unincorporated entity that is treated as disregarded entity under the federal “check-the-box” regulations, 26 C.F.R. § 301.7701-3 (as it was in effect on January 1, 2020), is treated as Self-Employed and not as a Partner. The Compensation of a Self-employed individual shall be that person’s Taxable Income from each separate business reported on Schedules C, E, or F of the Pennsylvania individual income tax Form PA-40, as well as any other non-employee Compensation, which is not otherwise reported on Internal Revenue Service Schedules C, E, or F. Passive Income of a Self-employed person is not subject to the Payroll Preparation Tax. If the Self-Employed person does not keep records of Taxable Income, the entire net income of each separate Business is presumed to be a Taxable Income. Any individual who is classified as an Employee, because of the control exercised by the Employer, is not Self-Employed as to any Compensation associated with that particular Business.

**TAX ADMINISTRATOR** – References to the Tax Administrator in these regulations refer to the third-party organization appointed by the City of Hazleton to administer the Payroll Preparation Tax.

**TAX ADMINISTRATOR’S APPEAL** – Is a taxpayer appeal of a decision made by the Tax Administrator of a taxpayer’s request for reassessment or applicability of the Payroll Preparation Tax. Joel Wolff or Samantha Hazen of Wolff Law, P.C. shall serve as the Hearing Officer pursuant to Section 602.

**TAXABLE INCOME** -- If you are an employer operating a business within the City, the business payroll consisting of the compensation earned by employees, including salaries, wages, commissions, bonuses, and other compensation is taxable income for the Payroll Preparation Tax. The tax is on gross payroll of the Employer. The Employers’ portions of federal and state payroll taxes, health insurance premiums, retirement plan contributions, etc., are not part of taxable gross payroll.

If you are self-employed and/or receiving income from rental property located within the City, the Net Income received is taxable income. The Net Income received by a self-employed individual from their business for services performed in the City during the reporting period is taxable income for the Payroll Preparation Tax, as well. A partner or a self-employed individual is taxed only on the draws and distributions received by him or her during the year from his or her business. Any draws and distributions that exceed the net income of the partnership or self-employed for the calendar year are not subject to tax. In calculating net income from the business, partners and self-employed are not allowed to deduct the following items: IRA, pension, or Section 401(k) contributions, or Section 125 benefits, or health insurance premiums allocable to that partner or to that self-employed person. Moreover, special federal tax

deductions that are not allowed for Pennsylvania personal income tax purposes are not allowed for the Payroll Preparation Tax.

**TAX YEAR** – A twelve-month period from January 1 to December 31.

**TAXPAYER** – A person, partnership, association, corporation, or other entity required hereunder to file a return of payroll expense, or to pay a tax thereon. An Employer, Partner, or Self-Employed person is a Taxpayer. An Exempt Employer is not a Taxpayer.

**TEMPORARY SEASONAL OR ITINERANT BUSINESS** – An Employer whose presence in the City is of a duration of one hundred twenty (120) days or less.

### **SECTION 102 – WHO MUST FILE A RETURN**

- a. The City of Hazleton, pursuant to Ordinance 2021-24, imposes a Payroll Preparation Tax on the amount of Payroll Expense generated as a result of conducting business activity within the City of Hazleton and to be levied at a rate of .26% (or .0026); requires registration and payment of the Tax as condition to the conducting of such business; provides for the levy and collection of such tax; prescribes such requirements for returns and records; confers powers and duties upon the Tax Administrator, and; imposes penalties. See 53 P.S. § 11701.123.
- b. For purposes of computation of the tax imposed, the payroll amount attributable to the City shall be determined by applying an apportionment factor to total payroll expense based on that portion of payroll which the total number of days an employee, partner, member, shareholder or other individual works within the City bears to the total number of days such employee or person works both within and outside the City. See 53 P.S. § 6924.303(a).
- c. One hundred percent of a Partner's or Self-employed person's Taxable Income are attributable to the City of Hazleton for person(s) who have net income from sales or services rendered exclusively in the City of Hazleton.
- d. Employers who have payroll expense consisting of work done within and outside of the boundaries of the City of Hazleton, but who do not regularly maintain records showing hours worked so as to be able to use the apportionment method under subsection (d) of this regulation, may use a representative test period or conduct a survey based on factual data to arrive at a formula with which to calculate the percentage of payroll expense attributable to the City of Hazleton. Any formula so established will be subject to review and correction by the Tax Administrator. A thorough description explaining the formula shall be attached to the first return each year. The data supporting the formula shall be maintained for at least three (3) years as a part of office records for audit and review purposes.

- e. Partners and Self-Employed individuals who have Taxable Income generated from intrastate sales or services partly within the City of Hazleton or partly outside the City of Hazleton shall report on the Taxable Income associated with sales or services rendered within the City of Hazleton. Where it is impractical to determine the exact Taxable Income, an apportionment formula may be used. Any formula so established will be subject to review and correction by the Tax Administrator. The data supporting the formula must be maintained as a part of office records for audit and review purposes. A thorough description explaining the formula shall be attached to the first return each year. The data supporting the formula shall be maintained for at least three (3) years as a part of office records for audit and review purposes.
- f. Partners and Self-employed individuals who have Compensation from sources within and without Pennsylvania, may apportion their Compensation to the City using the formula used to report personal income tax on Form PA-40, 61 Pa. Code § 109.5, by substituting the word “City” for the “Commonwealth” where necessary. In making that calculation, all intrastate sales and services within Pennsylvania are deemed allocated to the City if the Partner’s or Self-employed individual’s sole office in Pennsylvania is located in the City.
- g. An employer which conducts business in the City of Hazleton on a temporary, seasonal or itinerant basis shall file a return and pay the tax within ten (10) days of the completion of the temporary, seasonal, or itinerant business.

## **ARTICLE II**

### **IMPOSITION OF TAX**

#### **SECTION 201 – LEVY AND RATE**

The tax levied pursuant to Ordinance 2021-24 is known as the Payroll Preparation Tax. The rate of tax is .26 percent on the amount of Payroll Expense generated as a result of an employer conducting business activity within the City.

#### **SECTION 202 – COMPUTATION OF TAX**

- a. The Payroll Preparation Tax is a tax that is levied on Employers. This tax is separate and distinct from the earned income tax withheld from employees. Under no circumstance should the Payroll Preparation Tax be deducted from the employees’ compensation or benefits. Local Tax Enabling Act, 53 P.S. § 6924.303(f).
- b. The payroll amount apportioned to the City shall be determined as set forth in Section 102 of the Regulations.

- c. **Tax Base** – The tax shall be computed on the payroll expense of the previous quarter attributable to the City.
- d. An employer which conducts Business in the City of Hazleton on a temporary, seasonal or itinerant basis shall calculate the tax on the total compensation earned while in the City of Hazleton.
- e. **Discontinuing Business** – Every person who ceases to carry on a Business during any tax quarter after having paid the Payroll Preparation Tax for the entire quarter shall, upon making proper application on a form obtained from the Tax Administrator, be entitled to receive a prorated refund of the tax paid based upon the period of time he or she was not in Business during the tax quarter. In the event that a person who discontinues Business during any tax quarter does so before payment of the tax becomes due for such tax quarter, said person may apportion the tax and pay an amount to be computed by multiplying the Payroll Preparation Tax for the preceding tax quarter by a fraction whose numerator shall be the number of days such person was in Business during the current tax quarter and whose denominator shall be the total number of days in the current quarter. The final return shall be due ten (10) days after the discontinuation of Business. Self-employed individuals and Partners are considered to have discontinued their Business only if all separate Businesses of the individual are discontinued.
- f. A charitable organization, as defined above, shall calculate the tax that would otherwise be attributable to the City of Hazleton and file a return, but only shall pay the tax on that portion of its Payroll Expense attributable to business activity for which a tax may be imposed pursuant to Section 511 of the Internal Revenue Code. 26 U.S.C. § 511. That section imposes a federal tax on unrelated business taxable income of a charity that is exempt from federal tax under Section 501(c) of the Internal Revenue Code. 26 U.S.C. § 501(c). If the charity has purchased or is operating branches, affiliates, subsidiaries or other business entities that do not independently meet the standards of the “Institutions of Purely Public Charity Act”, the tax shall be paid on the payroll attributable to such for-profit branches, affiliates or subsidiaries, whether or not the employees are leased or placed under the auspices of the charity’s umbrella or parent organization. Local Tax Enabling Act, 53 P.S. § 6924.303(a.1).
- g. Any person, other than an Exempt Employer, that believes that it is exempt from paying the Payroll Preparation Tax, because of a tax exemption granted under federal, state, or local law shall file its return, caption the return “EXEMPT,” and provide a short citation to the legal basis for its exemption.

### **ARTICLE III**

#### **EMPLOYER’S RESPONSIBILITY**

## **SECTION 301 – PAYROLL PREPARATION TAX LEVIED ON EMPLOYERS**

- a. Every Employer not registered with the City of Hazleton shall, within fifteen (15) days, register with the Tax Administrator the Employer's name, address and such other information as the Tax Administrator may require. The first return for a new business is calculated on the Payroll Expense for the portion of the quarter it was in business.
- b. The Payroll Preparation Tax is a tax that is levied on Employers. Under no circumstance may the Payroll Preparation Tax be deducted from the Employees' wages.
- c. It may be necessary to include Form 1099's issued to individuals in the Employer's calculations of the Payroll Preparation Tax. See "Employee" definition.
- d. It shall be the Employer's responsibility, upon request from the City of Hazleton or the tax administrator, to provide a list of sub-contractors which includes their name, address, Federal Employer Identification Number (EIN), contact person and their phone number.

**EFFECTIVE FOR 2022 AND THEREAFTER, THE PAYROLL PREPARATION TAX FOR THE FIRST QUARTER IS DUE ON MAY 31 BASED ON PAYROLL EXPENSE IN JANUARY, FEBRUARY, AND MARCH OF THAT YEAR.**

- e. The Payroll Preparation Tax is to be paid as follows:

**Effective for tax year 2022 and thereafter**, the first quarterly return, which is due May 31 of the current year, shall be filed and the tax shall be paid based on the amount of payroll expense during the months of January, February, and March of the current year; the second quarterly return, which is due August 31 of the current year, shall be filed and the tax shall be paid based on the amount of payroll expense during the months of April, May, and June of the current year; the third quarterly return, which is due November 30 of the current year, shall be filed and the tax shall be paid based on the amount of payroll expense during the months of July, August, and September of the current year; the fourth quarterly return, which is due February 28 of the succeeding year, shall be filed and the tax shall be paid based on the amount of payroll during the months of October, November, and December of the current year.

- f. An employer which conducts business in the City on a temporary, seasonal or itinerant basis shall file a return and pay the tax within ten (10) days of the completion of the temporary, seasonal, or itinerant business.

## **ARTICLE IV**

## **ADMINISTRATION AND ENFORCEMENT**

### **SECTION 401 – POWERS AND DUTIES OF TAX ADMINISTRATOR**

- a. It shall be the duty of the Tax Administrator to collect and receive the taxes, fines, and penalties pursuant to Ordinance 2021-24. It shall also be the duty of the Tax Administrator to keep a record showing the date of such receipt.
- b. The Tax Administrator is charged with the administration and enforcement of the provisions for the reexamination and corrections of declarations and returns, and of payments alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred, and to prescribe forms necessary for the administration of the Ordinance 2021-24.
- c. The Tax Administrator is authorized to issue a ruling upon written request of a taxpayer.

### **SECTION 402 – EXAMINATION OF BOOKS AND RECORDS OF TAXPAYERS AND EMPLOYERS**

- a. Agents designated by the Tax Administrator are hereby authorized to examine the books, papers and records of any Employer or supposed employer, or of any Taxpayer or supposed taxpayer, in order to verify the accuracy of any declaration or return, or if no declaration or return was filed, to ascertain the tax due. Every Employer or supposed employer, and every Taxpayer or supposed taxpayer, is hereby directed and required to give to the Tax Administrator, or to any agent designated by him/her, the means, facilities and opportunity for such examinations and investigations, as are hereby authorized. Local Tax Enabling Act, 53 P.S. §§ 6924.315; 6924.303(c).
- b. If records are not available in the City of Hazleton to support the returns which were filed or which should have been filed, the Taxpayer will be required to make them available to the Tax Administrator either by producing them in a City of Hazleton location or by paying for the expenses incurred by the Tax Administrator in traveling to the place where the records are regularly kept.
- c. Any information gained by the Tax Administrator, by designated agents, or by any other official or agent of the City of Hazleton, as a result of any declarations, returns, investigations, hearings or verifications required or authorized by Ordinance 2021-24 shall be confidential except for official purposes and shall not be released except in accordance with a proper judicial order, or as otherwise provided by law. Local Taxpayers Bill of Rights, 53 Pa.C.S. § 8437.

- d. A Taxpayer shall have at least thirty (30) calendar days to respond to audit notices. A Taxpayer may request a reasonable extension of time in accordance with the Local Taxpayers Bill of Rights, 53 Pa.C.S. § 8424(a).

#### **SECTION 403 – RECORDS TO BE KEPT BY THE TAXPAYER**

Taxpayers and Employers liable for the Payroll Preparation Tax are required to keep such records as will enable the filing of true and accurate returns of the tax and such records shall be preserved for a period of not less than three (3) years from the filing date or due date whichever is later in order to enable the Tax Administrator or any agent designated by him to verify the correctness of the declarations or returns filed.

#### **SECTION 404 – AUDITS AND TIME FOR ASSESSMENTS**

A Taxpayer has thirty (30) calendar days to respond to audit notices. If additional time is necessary, the Taxpayer may request a reasonable extension of that time upon a showing of good cause. 53 Pa.C.S. § 8424(a).

If, as a result of an examination conducted by the Tax Administrator, a return is found to be incorrect, the Tax Administrator is authorized to assess and collect any underpayments of the Payroll Preparation Tax. If no return has been filed and a tax is found to be due, the tax actually due may be assessed and collected with or without the formality of obtaining a return from the Taxpayer. Deficiency assessments (i.e., where Taxpayer has filed a return but is found to owe additional tax) shall include taxes for up to three (3) years prior to the date when the deficiency is assessed. If the deficiency exceeds twenty-five percent or more of the tax originally self-reported, but no fraud is found, suit must be begun within six years. Where no return was filed, or a fraudulent return was filed, there shall be no limit to the period of assessment. Local Tax Enabling Act, 53 P.S. § 6924.303(g).

### **ARTICLE V**

#### **SUITS FOR TAX COLLECTIONS, VIOLATIONS, FINES, INTEREST & PENALTIES**

#### **SECTION 501 – REMEDIES NOT MUTUALLY EXCLUSIVE**

The remedies provided in Section 502 or Section 504 are not mutually exclusive. The utilization by the Tax Administrator of one remedy does not preclude utilization of the other.

Moreover, use of either or both of the remedies provided in these Sections does not preclude the use by the City of Hazleton of any other legal or administrative procedure which can bring about compliance by the taxpayer with the provisions of these regulations.

Any voluntary payment made by a Taxpayer, unless otherwise specified in writing, shall be applied first to tax, then to interest, then to penalty, then to any other fees or charges. Local Taxpayers Bill of Rights, 53 Pa.C.S. § 8429.

### **SECTION 502 – SUITS FOR RECOVERY OF UNPAID TAXES**

The Tax Administrator may sue in the name of the City of Hazleton, in law or in equity, for the recovery of those taxes due and unpaid under the provisions of the Payroll Preparation Tax, to compel the production of records or to enforce any other provisions of the law.

### **SECTION 503 – LIMITATIONS**

a. Pursuant to the Local Tax Enabling Act, 53 P.S. § 6924.303(g), the following periods of limitations shall apply to suits for collection of taxes:

1. When a return has been filed but no tax paid, any suit brought to recover the tax due and unpaid shall be filed within three (3) years after the return was due or filed, whichever is later. Where no return was filed, there shall be no limit to file suit for the collection of taxes.
2. In the case of a deficiency assessment, suit shall be filed within three (3) years after the assessment has been made.

b. The limitations set forth in paragraph (a) shall not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:

1. When no return was filed, there is no limitation.
2. When the return is fraudulent, there is no limitation.
3. When there is an understatement of tax liability of twenty-five (25%) or more, and not due to fraud, suit must be begun within six (6) years.
4. A return filed before the due date is deemed to be filed on the due date.

### **SECTION 504 – FINES AND PENALTIES FOR VIOLATION OF ORDINANCE 2021-24**

a. Violations – No person shall:

1. Fail, neglect, or refuse to make any declaration or file a return required pursuant to Ordinance 2021-24;
2. Refuse to permit the Tax Administrator or his/her designee to examine the books, records or accounts of any business, taxable or otherwise, to determine liability;
3. Make any incomplete, false or fraudulent return or attempt to do anything to avoid full disclosure of the amount of tax due to avoid payment in whole or in part, of the Payroll Preparation Tax;
4. Divulge any confidential information, see 53 Pa.C.S. § 8437, or;
5. Fail to make any payment when it is due.

b. If for any reason the Payroll Preparation Tax is not paid when due, interest at the rate of six (6%) percent per annum on the amount of tax and a penalty of one (1%) percent per month for each month or fraction of a whole month during the period in which the tax remains unpaid shall be added to the tax. Local Tax Enabling Act, 53 P.S. § 6924.303(h).

c. Penalty and Interest on Deficiency Assessment:

1. On any additional tax determined to be due as a result of a deficiency assessment, penalty and interest will be assessed from the day the tax should have been paid to the date of payment. Penalty and interest is calculated as described above in the applicable portion of Section 504(B).
2. Where suit is brought for the recovery of such tax, the person liable therefore shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed. Local Tax Enabling Act, 53 P.S. § 6924.303(h). Once due and owing, penalty and interest become part of the tax and shall be collected as such. A person's belief that no tax is due and owing, or the failure of any person to receive or obtain the forms required for making the returns required under Ordinance 2021-24 is not a valid defense to the imposition of penalties herein for violation.
3. Good faith shall not be a defense to the imposition of penalty and interest. Penalty and interest may be abated only in accordance with the Local Taxpayers Bill of Rights, 53 Pa.C.S. § 8428.

d. Pursuant to the Local Tax Enabling Act, 53 P.S. § 6924.303(i), in addition to any other penalties or enforcement proceedings provided for by ordinance for the collection and enforcement of taxes:

1. Any employer who willfully makes any false or untrue statement on the employer's return shall be guilty of a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not more than two thousand dollars (\$2,000) or to a term of imprisonment of not more than two years, or both;

2. Any employer who willfully fails or refuses to file a return required by this chapter shall be guilty of a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than one thousand dollars (\$1,000) or to a term of imprisonment of not more than one year, or both; and

3. Any person who willfully fails or refuses to appear before the Tax Administrator or his agent in person with the Employer's books, records or accounts for examination when required under the provisions Ordinance 2021-24 to do so, or who willfully refuses to permit inspection of the books, records or accounts of any Employer in the person's custody or control when the right to make such inspection by the Tax Administrator or his agent is requested, shall be guilty of a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than five hundred dollars (\$500) or to a term of imprisonment of not more than six months, or both. The fines and terms of imprisonment, imposed under this Section shall be in addition to any other relief granted to the City of Hazleton of a monetary nature under the provisions of this Article. Local Tax Enabling Act, 53 P.S. § 6924.303(i).

4. Each and every day that the violation continues shall constitute a separate offense for which a fine may be imposed.

## **ARTICLE VI**

### **TAXPAYER REMEDIES**

#### **SECTION 601 – REQUEST FOR REASSESSMENT/APPLICABILITY**

a. Any Taxpayer aggrieved by an assessment by the Tax Administrator or the applicability of the Payroll Preparation Tax to the Taxpayer shall, within ninety (90) days after the date of notice of the assessment, submit a written request for reassessment on a form obtained from the Tax Administrator for that purpose. See 53 Pa.C.S. § 8431.

- b. The written request shall contain, at minimum:
1. The requester's name, address, and daytime telephone number;
  2. The requester's account and/or social security number.
  3. A copy of the assessment notice the party received from the Tax Administrator;
  4. A detailed explanation containing the reason(s) the requester disagrees with the assessment or applicability of the tax and any documentation necessary to support the requester's claims, and;
  5. The requester's signature.
- c. Any Taxpayer who fails to properly make a request for a reassessment within a timely manner waives the right to contest any element of the assessment, and that party's failure to challenge the Tax Administrator's adjudication will be construed as an admission by that party as to the propriety of the assessment.
- d. Any Taxpayer may request a reassessment so that his or her tax assessment can be reviewed.
- e. The Tax Administrator will abate any penalties and interest only in accordance with 53 Pa.C.S. § 8428.
- f. The Tax Administrator will issue its decision within thirty (30) days of the receipt of the requester's complete and accurate appeal form.

### **SECTION 602 – APPEALS**

There shall be a two-level Appeal process as follows:

- a. **Tax Administrator's Appeal & Hearing:** Any taxpayer aggrieved by a decision of the Tax Administrator pursuant to Section 601 shall have the right to appeal to the Tax Administrator's Office for a hearing.
1. The completed appeal should be mailed, along with a check or money order in the amount of \$800.00 (non-refundable), to:

TAX ADMINISTRATOR HEARINGS  
TAX ADMINISTRATOR – CITY OF HAZLETON

HAB-PPT  
PO BOX 20087  
Lehigh Valley, PA 18002-0087

or dropped off in-person at:

TAX ADMINISTRATOR HEARINGS  
TAX ADMINISTRATOR – CITY OF HAZLETON  
City Hall, 1<sup>st</sup> Floor  
40 N. Church Street  
Hazleton, PA 18201

2. Any appeal must be commenced within thirty (30) days of the date of the notice of the Tax Administrator's decision pursuant to Section 601. If no such appeal is timely filed, the aggrieved party waives his/her right to contest any element of the Tax Administrator's adjudication, and that party's failure to challenge the same will be construed as an admission by that party as to the propriety of the Tax Administrator's decision.
  3. No hearing or appeal will operate to suspend the accrual of penalty and interest from the date the tax was due to the date it is actually paid.
  4. Formal rules of procedure do not apply but irrelevant, immaterial or unduly repetitious evidence may be excluded.
  5. The decision of the Tax Administration Hearing Officer must be made within thirty (30) days of the completion of the hearing.
- b. **Court of Common Pleas:** A taxpayer aggrieved by a decision following the Tax Administrator's hearing may appeal to the Luzerne County Court of Common Pleas within thirty (30) days of the hearing officer's decision.

#### **SECTION 603 – PAYMENT UNDER PROTEST**

The Tax Administrator will accept payments of disputed tax amounts under protest pending appeals; however, any request for refund of such monies must be filed in accordance with Section 604.

#### **SECTION 604 – REFUNDS**

- a. A Taxpayer who has overpaid the Payroll Preparation Tax, or who believes he/she is not liable for the Payroll Preparation Tax, may file a written request on an amended tax

return (ET-1) with the Tax Administrator for a refund or a credit of the tax. A request for refund or a credit shall be made within three (3) years of the due date for filing the report or one (1) year after actual payment of the tax, whichever is later. If no report is required, the request shall be made within three (3) years after the due date for payment of the tax or within one (1) year after actual payment of the tax, whichever is later. See 53 Pa.C.S. § 8425(a).

- b. For amounts paid as a result of a notice asserting or informing a Taxpayer of an underpayment, a written request for a refund shall be filed with the Tax Administrator within one (1) year of the date of the payment. See 53 Pa.C.S. § 8425(b).
- c. Erroneous Refund Recovery – The Tax Administrator may sue for recovery of an erroneous refund provided such suit is begun two (2) years after making such refund, except that the suit may be brought within five (5) years if any part of the refund was induced by fraud or misrepresentation of material fact.

#### **SECTION 605 – INSTALLMENT PAYMENT PLAN FOR ANY DEFICIENCY**

In the appropriate circumstances, the Tax Administrator will enter an installment payment plan and defer further collection action, if the Taxpayer enters into a written agreement with the Tax Administrator. The Tax Administrator will approve installment payment plans only if such a plan is in the best interests of the City. The Taxpayer must specifically request the installment payment plan from the Tax Administrator. For the required terms of any installment plan, see The Local Taxpayers Bill of Rights, 53 Pa.C.S. § 8436. If the Taxpayer fails to abide by the terms of the installment payment plan, the Tax Administrator may demand immediate payment of tax, penalty, and interest.

#### **SECTION 606 – SAVINGS CLAUSE AND SEVERABILITY**

If a final decision of a court of competent jurisdiction holds any provision of these regulations, or the application of any provision to any circumstances, to be illegal or unconstitutional, the other provisions in these regulations, or the application of such provision to other circumstances, shall remain in full force and effect.

The intent of the Tax Administrator is that the provisions of these regulations shall be severable and that they would have been adopted if any such illegal or unconstitutional provisions had not been included herein.

#### **SECTION 607 – TAXPAYER DISCLOSURE STATEMENT**

A copy of the Local Taxpayers Bill of Rights, 53 Pa.C.S.A. §§ 8421, et seq. can be requested in writing at the address below:

TAX ADMINISTRATOR – CITY OF HAZLETON  
City Hall, 1<sup>st</sup> Floor  
40 N. Church Street  
Hazleton, PA 18201

