

**LOWER SAUCON TOWNSHIP
NORTHAMPTON COUNTY, PENNSYLVANIA**

ORDINANCE No. 2011-05

EARNED INCOME TAX ORDINANCE

AN ORDINANCE OF THE TOWNSHIP OF LOWER SAUCON, NORTHAMPTON COUNTY, PENNSYLVANIA, RE-ENACTING, RESTATING AND AMENDING ITS EARNED INCOME TAX ORDINANCE TO ESTABLISH CONFORMITY WITH THE LOCAL TAX ENABLING ACT AS AMENDED BY ACT 32 OF JULY 2, 2008; LEVYING A TAX ON EARNED INCOME AND NET PROFITS OF ONE PERCENT; LEVYING AN ADDITIONAL TAX OF ONE QUARTER OF ONE PERCENT ON TOWNSHIP RESIDENTS PURSUANT TO THE OPEN SPACE LANDS ACT; REQUIRING TAX RETURNS; REQUIRING EMPLOYERS TO WITHHOLD AND REMIT TAX; PROVIDING FOR INTEREST, PENALTIES, COSTS AND FINES FOR VIOLATIONS AND NON-PAYMENT OF TAX; PROVIDING FOR SEVERABILITY, PURPOSE/REPEAL, CONSTRUCTION AND EFFECTIVE DATE, AND RELATED PROVISIONS

WHEREAS, the Township of Lower Saucon – Optional Plan, Northampton County, Pennsylvania (hereinafter referred to as the “Township”) previously enacted its Ordinance No. 98-15 (hereinafter the “Prior EIT Ordinance”), imposing a tax at the rate of one percent (1%) for general revenue purposes on earned income and net profits under the authority of the Pennsylvania Local Tax Enabling Act, formerly 53 P.S. Section 6901, et seq., and now 53 P.S. Section 6924.101, et seq.; and

WHEREAS, the Township also previously enacted its Ordinance No. 2007-04 (hereinafter the “Prior Open Space EIT Ordinance”), imposing a tax at the rate of One Quarter of One percent (0.25 %) on earned income to purchase interests in real property and/or to make additional acquisitions of real property for the purpose of securing open space lands and all other purposes authorized pursuant to the Open Space Lands Act (32 P.S. § 5501 et seq.), as amended; and

WHEREAS, on November 8, 2011, a second (2nd) referendum question was approved by the voters of Lower Saucon Township, authorizing the imposition of the additional One Quarter of One percent (0.25%) Open Space Earned Income Tax for an additional five (5) year period; and

WHEREAS, on July 2, 2008, the Pennsylvania Legislature enacted Public Law 197, Act No. 32 (hereinafter “Act 32”), which Act 32, *inter alia*, provided for the consolidated collection of local income taxes within a tax collection district established in each county under Section 504 of Act 32 for tax years beginning not later than on and after January 1, 2012; and

WHEREAS, the Township desires to re-enact, restate and amend in their entirety the Prior EIT Ordinance and the Prior Open Space EIT Ordinance relating to the imposition and collection of an

earned income tax by the Township of Lower Saucon in order to conform with the provisions of Act 32, without a change in the rate of the tax.

NOW, THEREFORE, under the authority of the Local Tax Enabling Act, and the Open Space Lands Act, the Council of Lower Saucon Township does hereby ordain that the Township's Prior EIT Ordinance and the Prior Open Space EIT Ordinance are hereby re-enacted, restated and amended in their entirety to read as follows:

SECTION 1. DEFINITIONS

For purposes of this Ordinance, all terms defined in the Local Tax Enabling Act, 53 P.S. Sec. 6924.101, et seq., shall have the meanings set forth therein. In addition, the following terms shall have the meanings set forth herein, unless the context shall clearly indicate otherwise:

- a. Tax Officer. The person or entity appointed as tax officer pursuant to the Local Tax Enabling Act to collect the Tax in the TCD.
- b. Effective Date. January 1, 2012.
- c. Local Tax Enabling Act. The Local Tax Enabling Act, 53 P.S. Sec. 6924.101, et seq., and as amended in the future, including any regulations adopted by the Department of Community and Economic Development thereunder.
- d. TCD. The Northampton Tax Collection District, or any future tax collection district, to which the Township or any part of the Township is assigned under the Local Tax Enabling Act.
- e. TCC. The tax collection committee established to govern and oversee the collection of income tax within the TCD under the Local Tax Enabling Act.
- f. Tax. The taxes on earned income and net profits imposed by this Ordinance.
- g. Tax Return. A form or forms prescribed by the Department of Community and Economic Development, or by the Tax Officer with the approval of the TCC, for reporting the amount of Tax or other amount owed or required to be withheld, remitted, or reported under this Ordinance or the Local Tax Enabling Act.
- h. Tax Year. The period from January 1 to December 31 in a single calendar year.
- i. Taxpayer. A person or business required under this Ordinance or the Local Tax Enabling Act to file a Tax Return or to pay the Tax imposed pursuant to this Ordinance.

SECTION 2. IMPOSITION OF TAX

- a. General Purpose Resident Tax. The Township hereby imposes a Tax for general revenue purposes at the rate of one percent (1%) on earned income and net profits of residents of the Township.
- b. General Purpose Municipal Nonresident Tax. The Township also imposes a Tax for general revenue purposes at the rate of one percent (1%) on earned income and net profits derived by a

non-resident from any work, business, profession, or activity, of any kind engaged in within the boundaries of Township.

- c. Open Space Municipal Resident Tax. In addition to the Tax levied for general revenue purposes set forth in Section 2(a) hereinabove, the Township hereby imposes a Tax for acquisition and expenses related to open space lands under 32 P.S. Sec. 5007.1, at the rate of One Quarter of One percent (0.25%) on earned income and net profits of residents of the Township for a period of five (5) years. The revenue collected as a result of this additional tax shall be used to retire indebtedness of the Township incurred in purchasing interests in real property or in making additional acquisitions of real property for the purpose of securing open space and benefits under the provisions of the Open Space Lands Act, 32 P.S. § 5001, *et seq.* The revenue collected as a result of this additional tax may also be used for any and all related and/or incidental costs incurred in retiring indebtedness of the Township, incurred in purchasing interests in real property or making additional acquisitions of real property for the purpose of securing an open space benefit or benefits under the provisions of the Open Space Lands Act, including but not limited to any and all costs associated with preparation of a comprehensive Open Space Plan, attorneys' fees, closing costs, surveying expenses, engineering fees, financing costs, environmental cleanup costs, insurance premiums and fees of other consultants and professionals. Revenue from the additional tax shall be used in accordance with the Open Space Lands Act for the purposes stated therein, including but not limited to financing the acquisition, preservation and conservation of open space, acquiring agricultural conservation and forest easements, protecting and preserving recreation or historic lands, and protecting and conserving natural and scenic resources. The additional tax was authorized by voter referendum at the November 9, 2011 general election for a period of five (5) years.
- d. 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 Ordinance is repealed or the rate is changed.
- e. 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 Ordinance. Any future amendments to the Local Tax Enabling Act that are required to be applied to the Tax will automatically become part of this Ordinance upon the effective date of such amendment, without the need for formal amendment of this Ordinance, to the maximum extent allowed by 1 Pa.C.S.A. Sec. 1937.
- f. Applicable Laws, Regulations, Policies, and Procedures. The Tax shall be collected and administered in accordance with (1) all applicable laws and regulations; and (2) rules, regulations, policies and procedures adopted by the TCC or by the Tax Officer in conformity with the Local Tax Enabling Act. This includes any regulations, policies, and procedures adopted in the future to the maximum extent allowed by 1 Pa.C.S.A. Sec. 1937.

SECTION 3. EXEMPTION FROM TAX

Although credits and deductions against Tax are permitted under certain circumstances as provided in applicable law and regulations, no individuals are exempt from Tax based on age, income, or other factors; with the exception that all persons whose total income from all sources is less than Five

Thousand Dollars (\$5,000) in any given Tax Year shall be exempt from the Tax imposed by this Ordinance.

SECTION 4. TAXPAYER TAX RETURNS, DECLARATIONS AND PAYMENTS

Every Taxpayer receiving earned income or earning net profits in any Tax Year shall make and file Tax Returns and declarations and pay Tax in accordance with the Local Tax Enabling Act and the rules, regulations, policies and procedures of the TCC and Tax Officer. A Taxpayer is required to file timely an annual Tax Return even if no Tax payment is due and owing. In addition, even though a resident of the Township did not have earned income or net profits in the prior Tax Year, the resident must file an annual Tax Return, when requested to do so by the Tax Officer, stating the reason why there was no income or net profits to report.

SECTION 5. EMPLOYER WITHHOLDING, REMITTANCE, AND TAX RETURNS

Every employer shall register, require employee residency certificates, withhold and remit Tax, and file Tax Returns and withholding statements in accordance with the Local Tax Enabling Act and the rules, regulations, policies and procedures of the TCC and Tax Officer.

SECTION 6. TAX OFFICER

- a. Collection of Tax. The Tax will be collected from Taxpayers and employers by the Tax Officer. The Tax Officer is authorized to file an action in the name of the Township for the recovery of the Tax due to the Township and unpaid. Nothing in this section shall affect the authority of the Township to file an action in its own name for collection of the Tax under the Local Tax Enabling Act.
- b. Criminal Complaints for Violations. The Tax Officer is authorized to file criminal complaints on behalf of the Township for violation of this Ordinance or the Local Tax Enabling Act. Nothing in this section shall affect the authority of the Township to file a criminal complaint on its own behalf for violation of this Ordinance or the Local Tax Enabling Act.

SECTION 7. INTEREST, PENALTIES, COSTS AND FINES

In the event of violation of this Ordinance or the Local Tax Enabling Act, or non-payment of Tax, Taxpayers and employers are subject to interest, penalties, costs, and fines in accordance with the Local Tax Enabling Act, including costs of collection imposed by the Tax Officer in accordance with authorization by the TCC. The Tax Officer may retain reasonable costs of collection in accordance with Local Tax Enabling Act and as approved by the TCC.

SECTION 8. SEVERABILITY

The provisions of this Ordinance are severable and if any of its provisions are ruled by a court invalid or unconstitutional, such decision shall not affect or impair any of the remaining provisions of this Ordinance. It is declared to be the intention of the governing body of the Township that this Ordinance would have been adopted if such invalid or unconstitutional provision had not been included.

SECTION 9. PURPOSE/REPEAL

The primary purpose of this Ordinance is to conform the Township's currently existing earned income and net profits tax 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 ordinance or part of any prior ordinance conflicting with the provisions of this Ordinance is rescinded insofar as the conflict exists. To the extent the provisions of this Ordinance are the same as any ordinance in force immediately prior to adoption of this Ordinance, the provisions of this Ordinance are intended as a continuation of such prior ordinance and not as a new ordinance. If this Ordinance is declared invalid, any prior ordinance levying a similar tax shall remain in full force and effect and shall not be affected in any manner by adoption of this Ordinance. The provisions of this Ordinance 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 punish any offense under the authority of any ordinance in force prior to adoption of this Ordinance. Subject to the foregoing provisions of this Section, this Ordinance shall supersede and repeal on the Effective Date any ordinance levying a tax on earned income or net profits in force immediately prior to the Effective Date. The Tax imposed by this Ordinance shall not apply to any person as to whom it is beyond the legal power of the Township to impose the Tax herein provided under the Constitution of the United States and the Constitution and laws of the Commonwealth of Pennsylvania.

SECTION 10. CONSTRUCTION

This Ordinance is intended to be consistent with the Local Tax Enabling Act. The Ordinance is intended to include all necessary authorizations to permit the Tax Officer to take all actions for the collection, administration, disbursement, and enforcement of the Tax and all other actions on behalf of the political subdivisions of the TCD as authorized by the Local Tax Enabling Act, subject to the policies and procedures of the TCC. To give full force and effect to this Ordinance, the authority of the Tax Officer shall be interpreted in the broadest permissible sense for the benefit of the Tax Officer's ability to perform its duties.

SECTION 11. EFFECTIVE DATE

The provisions of this Ordinance shall become effective on January 1, 2012, and shall apply to earned income received or earned and net profits earned or made by a taxpayer during calendar year 2012 and each year thereafter without annual re-enactment unless the rate of tax is subsequently changed. Changes in the rate of tax shall become effective on the date specified in the ordinance imposing such change.

DULY ENACTED AND ORDAINED this 21st day of December, 2011, by the Council of Lower Saucon Township.

Attest

Lower Saucon Township

Jack Cahalan
Township Manager

Glenn C. Kern
Council President