

**Chapter 118****TAXATION****ARTICLE I****Real Estate Transfer Tax**

- § 118.1. **Title.**
- § 118.2. **Definitions.**
- § 118.3. **Imposition of Tax.**
- § 118.4. **Exempt Parties.**
- § 118.5. **Excluded Transactions.**
- § 118.6. **Documents Relating to Associations or Corporations and Members, Partners, Stockholders or Shareholders Thereof.**
- § 118.7. **Acquired Company.**
- § 118.8. **Credits Against Tax.**
- § 118.9. **Extension of Lease.**
- § 118.10. **Administration.**
- § 118.11. **Recorder of Deeds as Agent.**
- § 118.12. **Evidence of Tax Payment.**
- § 118.13. **Statement of Value.**
- § 118.14. **Interest and Civil Penalties.**
- § 118.15. **Unlawful Acts.**
- § 118.16. **Determination and Notice of Tax; Review.**
- § 118.17. **Refunds.**
- § 118.18. **Enforcement.**

- § 118.19. Lien.
- § 118.20. Proceeds of Judicial Sale.
- § 118.21. Payment Under Protest; Refunds.
- § 118.22. Criminal Prosecution.

**ARTICLE II**  
**Local Services Tax**  
[Amended 12-3-07 by Ord. No. 1985]

- § 118.23. Definitions.
- § 118.24. Levy of tax.
- § 118.25. Duty of employers to collect.
- § 118.26. Returns.
- § 118.27. Dates for determining tax liability and payment.
- § 118.28. Self-employed individuals.
- § 118.29. Individuals engaged in more than one occupation or employed in more than one political subdivision.
- § 118.30. Nonresidents subject to tax.
- § 118.31. Administration of tax.
- § 118.32. Suits for collection.
- § 118.33. Violations and penalties.
- § 118.34. Interpretation.

**ARTICLE III**  
**Earned Income Tax**

- § 118.35. Imposition of tax.
- § 118.36. Rules and regulations.

**ARTICLE IV**  
**Additional Tax on Earned Income**

- § 118.37. **Statement of intent.**
- § 118.38. **Levy of tax.**
- § 118.39. **Authority.**
- § 118.40. **Finding of tax to be illegal or invalid.**
- § 118.41. **Refund of tax.**

**ARTICLE V**  
**Additional Realty Transfer Tax of the Township of Upper St. Clair**

- § 118.42. **Title.**
- § 118.43. **Definitions.**
- § 118.44. **Imposition of tax.**
- § 118.45. **Exempt parties.**
- § 118.46. **Excluded transactions.**
- § 118.47. **Documents Relating to Associations or Corporations and Members, Partners, Stockholders or Shareholders Thereof.**
- § 118.48. **Acquired Company.**
- § 118.49. **Credits Against Tax.**
- § 118.50. **Extension of Lease.**
- § 118.51. **Administration.**
- § 118.52. **Recorder of Deeds as Agent.**
- § 118.53. **Evidence of Tax Payment.**
- § 118.54. **Statement of Value.**

- § 118.55. **Interest and Civil Penalties.**
- § 118.56 **Unlawful Acts.**
- § 118.57. **Determination and Notice of Tax; Review.**
- § 118.58. **Refunds.**
- § 118.59. **Enforcement.**
- § 188.60. **Lien.**
- § 188.61. **Proceeds of Judicial Sale.**
- § 118.62. **Payment Under Protest; Refunds.**
- § 118.63. **Criminal Prosecution.**
- § 118.64. **Statement of Intent.**

**ARTICLE VI  
Real Estate Tax**

- § 118.65. **Discounts, Face and Penalty.**
- § 118.66. **Liened Real Estate.**
- § 118.67. **Interest Rate.**
- § 118.68. **Penalty Imposed.**
- § 118.69. **Costs.**

**ARTICLE VII  
Property Tax Relief Program**

- § 118.70. **Property Tax Relief Program.**

**ARTICLE VIII  
Video Programming Tax**

- § 118.71. **Definitions.**
- § 118.72. **Imposition of Tax on Gross Receipts of Video Programming Providers.**

- § 118.73.     **Exemption From Certain Taxes.**
- § 118.74.     **Tax Credits.**
- § 118.75.     **Procedures and Regulations.**
- § 118.76.     **Exemption for Industrial Satellite Services.**

**ARTICLE IX**  
**Interim Tax Assessment**

- § 118.77.     **Interim Tax Assessment.**

**[HISTORY: Adopted by the Board of Commissioners of the Township of Upper St. Clair. Art. I, 10-6-86 as Ord. No. 1230; Art. II, 12-17-73 as Ord. No. 529; Art. III, at time of adoption of Code 8-2-76 by Ord. No. 632 (see Ch. 1, Adoption of Township Code); Art. IV, 12-17-79 as Ord. No. 879; Art. V, 10-6-86 as Ord. No. 1231; Art. VI, 12-2-85 as Ord. No. 1175. Section 118.10 amended at time of adoption of Code 8-2-76 by Ord. No. 632; see Ch. 1, Adoption of Township Code. Other amendments noted where applicable.]**

**GENERAL REFERENCES**

**Definitions and rules of interpretation - See Ch. 3.**

**ARTICLE I****Real Estate Transfer Tax<sup>1</sup>**  
**[Adopted 10-6-86 as Ord. No. 1230<sup>2</sup>;**  
**Amended 3-02-98 by Ord. No. 1760]****§ 118.1. Title. [Added 3-02-98 by Ord. No. 1760]**

This Article shall be known, and may be cited as, the Realty Transfer Tax of the Township of Upper St. Clair.

**§ 118.2. Definitions.**

The following words, when used in this Article, shall have the meanings ascribed to them in this section:

**ACQUIRED COMPANY** - Defined and described in § 118.7 of this Article. **[Added 3-02-98 by Ord. No. 1760]**

**ACT 50** - Act 50 of 1998, Subchapter C (53 P.S. §§ 8421 - *et seq.*) **[Added 5-03-99 by Ord. No. 1802]**

**ACT 77** - Act 77 of 1986 (72 P.S. § 8101-C, *et seq.*) **[Added 3-02-98 by Ord. No. 1760]**

**ASSOCIATION** - A partnership, limited partnership, or any other form of unincorporated enterprise, owned or conducted by two (2) 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 or foreign country or dependence. **[Amended 3-02-98 by Ord. No. 1760]**

**DECLARATION OF ACQUISITION** - Defined and described in § 118.13 of this Article. **[Added 3-02-98 by Ord. No. 1760]**

**DEPARTMENT** - The Department of Revenue of the Commonwealth of Pennsylvania. **[Added 3-02-98 by Ord. No. 1760]**

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<sup>1</sup>Editor's Note: See also Article V, Additional Real Estate Transfer Tax.

<sup>2</sup>Editor's Note: This ordinance also superseded former Article I, Real Estate Transfer Tax, adopted 11-19-66 as Ord. No. 337, as amended, and provided that it shall become effective retroactive to August 1, 1986.

**DOCUMENT** - Any deed, instrument or writing which conveys, transfers, demises, vests, confirms or evidences any transfer or demise of **TITLE TO REAL ESTATE**, but does not include wills, mortgages, deeds of trust or other instruments of like character given as security for a debt and deeds of release thereof to the debtor, land contracts whereby the legal title does not pass to the grantee until the total consideration specified in the contract has been paid or any cancellation thereof unless the consideration is payable over a period of time exceeding thirty (30) years or instruments which solely grant, vest or confirm a public utility easement. "DOCUMENT" shall also include a **DECLARATION OF ACQUISITION** required to be presented for recording under § 118.13 of this Article. **[Amended 3-02-98 by Ord. No. 1760]**

**FAMILY FARM CORPORATION** - A CORPORATION of which at least seventy-five percent of its assets are devoted to the business of agriculture and at least seventy-five percent of each class of stock of the CORPORATION is continuously owned by **MEMBERS OF THE SAME FAMILY**. The business of agriculture shall not be deemed to include:

- (1) Recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;
  - (2) The raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;
  - (3) Fur-farming;
  - (4) Stockyard and slaughterhouse operations; or
  - (5) Manufacturing or processing operations of any kind.
- [Added 3-02-98 by Ord. No. 1760]**

**HEARING OFFICER** - The Township Official, who pursuant to Act 50, coordinates the petition and appeal process of the Real Estate Transfer Tax. **[Added 5-03-99 by Ord. No. 1802]**

**LIVING TRUST** - Any trust, other than a business trust, intended as a will substitute by the settlor which becomes effective during the lifetime of the settlor, but from which trust distributions cannot be made to any beneficiaries other than the settlor prior to the death of the settlor. **[Added 3-02-98 by Ord. No. 1760]**

**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. **[Added 3-02-98 by Ord. No. 1760]**  
ORDINARY TRUST - Any trust, other than a business trust or a LIVING TRUST, which takes effect during the lifetime of the settlor and for which the trustees of the trust take title to property primarily for the purpose of protecting, managing or conserving it until distribution to the named beneficiaries of trust. An ORDINARY TRUST does not include a trust that has an objective to carry on business and divide gains nor does it either expressly or impliedly have any of the following features: the treatment of beneficiaries as associates, the treatment of the interests in the trust as personal property, the free transferability of beneficial interests in the trust, centralized management by the trustee or the beneficiaries, or continuity of life. **[Added 3-02-98 by Ord. No. 1760]**

PERSON - Every natural PERSON, ASSOCIATION, or CORPORATION. Whenever used in any clause prescribing and imposing a penalty, fine or imprisonment, the term "PERSON" as applied to ASSOCIATIONS, shall include the responsible members or general partners thereof, and as applied to CORPORATIONS, the officers thereof. **[Added 3-02-98 by Ord. No. 1760]**

REAL ESTATE **[Amended 3-02-98 by Ord. No. 1760]**

- (1) Any lands, tenements or hereditaments within this TOWNSHIP, including, without limitation, buildings, structures, fixtures, mines, minerals, oil, gas, quarries, spaces with or without upper or lower boundaries, trees and other improvements, immovables or interests which by custom, usage or law, pass with a conveyance of land, but excluding permanently attached machinery and equipment in an industrial plant.
- (2) A condominium unit.
- (3) A tenant-stockholder's interest in a cooperative housing CORPORATION, trust or ASSOCIATION under a proprietary lease or occupancy agreement.

REAL ESTATE COMPANY - A CORPORATION or ASSOCIATION which is primarily engaged in the business of holding, selling or leasing REAL ESTATE ninety percent (90%) or more of the ownership interest in which is held by thirty-five (35) or fewer PERSONS and which:

- (1) derives sixty percent (60%) or more of its annual gross receipts from the ownership or disposition of REAL ESTATE; or
- (2) holds REAL ESTATE, the Value of which comprises ninety percent (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.

**[Amended 3-02-98 by Ord. No. 1760]**

RECORDER OF DEEDS - The Recorder of Deeds of Allegheny County, Pennsylvania.  
**[Added 3-02-98 by Ord. No. 1760]**

STATEMENT OF VALUE - Defined and described at § 118.5.2 and § 118.13 of this Article. **[Added 3-02-98 by Ord. No. 1760]**

## TITLE TO REAL ESTATE:

- (1) Any interest in REAL ESTATE which endures for a period of time, the termination of which is not fixed or ascertained by a specific number of years, including, without limitation, an estate in fee simple, life estate or perpetual leasehold; or
- (2) Any interest in REAL ESTATE enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consists of a group of rights approximating those of an estate in fee simple, life estate or perpetual leasehold, including, without limitation, a leasehold interest or possessory interest under a lease or occupancy agreement for a term of thirty (30) years or more or a leasehold interest or possessory interest in REAL ESTATE in which the lessee has equity.

**[Amended 3-02-98 by Ord. No. 1760]**

TOWNSHIP - The Township of Upper St. Clair.

TRANSACTION - The making, executing, delivering, accepting or presenting for recording of a DOCUMENT. **[Amended 3-02-98 by Ord. No. 1760]**

TRANSFER TAX ADMINISTRATOR - The TOWNSHIP Director of Finance. **[Added 3-02-98 by Ord. No. 1760]**

## VALUE:

- (1) In the case of any bona fide sale of REAL ESTATE at arm's length for actual monetary worth, the amount of the actual consideration 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;

- (2) In the case of a gift, sale by execution upon a judgment or upon the foreclosure of a mortgage by a judicial officer, TRANSACTIONS without consideration or for consideration less than the actual monetary worth of the REAL ESTATE, a taxable lease, an occupancy agreement, a leasehold or possessory interest, any exchange of properties or the REAL ESTATE of an ACQUIRED COMPANY, the actual monetary worth of the REAL ESTATE for local REAL ESTATE tax purposes for the common level ratio of assessed VALUES to market VALUES of the taxing district as established by the State Tax Equalization Board, or a commensurate part of the assessment where the assessment includes other REAL ESTATE;
- (3) In the case of an easement or other interest in REAL ESTATE the VALUE of which is not determinable under clause (1) or (2), the actual monetary worth of such interest; or
- (4) 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 principal of the grantor or a related CORPORATION, ASSOCIATION or partnership and the grantee existing before or effective with the transfer.

**[Amended 3-02-98 by Ord. No. 1760]**

### **§ 118.3. Imposition of Tax.**

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, or for or in respect of the vellum parchment or paper upon which such DOCUMENT is written or printed, a tax at the rate of one-half of one percent (1/2%) of the VALUE of the REAL ESTATE represented by such DOCUMENT (such rate being subject to the limitations prescribed in the Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, 53 P.S. § 6901, *et seq.*), which tax shall be payable at the earlier of the time the DOCUMENT is presented for recording or within thirty days of acceptance of such DOCUMENT or within thirty days of becoming an ACQUIRED COMPANY. **[Amended 3-02-98 by Ord. No. 1760]**

### **§ 118.4. Exempt Parties.**

The United States, the Commonwealth or any of their instrumentalities, agencies or political subdivisions shall be exempt from payment of the tax imposed by this Article. The exemption of such governmental bodies shall not, however, relieve any other party to a TRANSACTION from liability for the tax. **[Amended 3-02-98 by Ord. No. 1760]**

**§ 118.5. Excluded TRANSACTIONS.**

118.5.1. Subject to the requirements of paragraph 118.5.2, below, the tax imposed by § 118.3 shall not be imposed upon:

118.5.1.1. A transfer to the Commonwealth or to any of its instrumentalities, agencies or political subdivisions by gift, dedication or deed in lieu of condemnation or deed of confirmation in connection with condemnation proceedings, or a reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation, which reconveyance may include property line adjustments, provided said reconveyance is made within one (1) year from the date of condemnation.

118.5.1.2. A DOCUMENT which the TOWNSHIP is prohibited from taxing under the Constitution or statutes of the United States or the Commonwealth of Pennsylvania.

118.5.1.3. 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.

118.5.1.4. 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.

118.5.1.5. A transfer or division in kind for no or nominal actual consideration of property passed by testate or intestate succession and held by co-tenants; however, if any of the parties take shares greater in VALUE than their undivided interest, tax is due on the excess.

118.5.1.6. A transfer between husband and wife, between PERSONS who were previously husband and wife who have since been divorced, provided the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, between parent and child or the spouse of such child, between brother or sister or spouse of a brother or sister and brother or sister or the spouse of a brother or sister and between a grandparent and grandchild or the spouse of such grandchild, except that a subsequent transfer by the grantee within one (1) year shall be subject to tax as if the grantor were making such transfer.

118.5.1.7. 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.

118.5.1.8. 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 that are entitled to receive the property or proceeds from the sale of the property under the trust, whether or not such beneficiaries are contingent or specifically named. A trust clause which identifies the contingent beneficiaries by reference to the heirs of the trust settlor as determined by the laws of the intestate succession shall not disqualify a transfer from the exclusion provided by this clause. 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.

118.5.1.8.1. A transfer for no or nominal actual consideration to a trustee of a LIVING TRUST from the settlor of the LIVING TRUST. No such exemption shall be granted unless the RECORDER OF DEEDS is presented with a copy of the LIVING TRUST instrument.

118.5.1.9. A transfer for no or nominal actual consideration from a trustee of an ORDINARY TRUST to a specifically named beneficiary that is entitled to receive the property under the recorded trust instrument or to a contingent beneficiary where the transfer of the same property would be exempt if the transfer was made by the grantor of the property into the trust to that beneficiary. However, any transfer of REAL ESTATE from a LIVING TRUST during the settlor's lifetime shall be considered for the purposes of this Article as if such transfer were made directly from the settlor to the grantee.

118.5.1.9.1. A transfer of no or nominal actual consideration from a trustee of a LIVING TRUST after the death of the settlor of the trust or from a trustee of a trust created pursuant to the will of a decedent to a beneficiary to whom the property is devised or bequeathed.

118.5.1.9.2. A transfer for no or nominal actual consideration from the trustee of a LIVING TRUST to the settlor of the LIVING TRUST if such property was original conveyed to the trustee by the settlor.

118.5.1.10. A transfer for no or nominal actual consideration from trustee to successor trustee.

118.5.1.11. A transfer:

118.5.1.11.1. for no or nominal actual consideration between principal and agent or straw party; or

118.5.1.11.2. from or to an agent or straw party where, if the agent or straw party was his principal, no tax would be imposed under this Article.

Where the DOCUMENT by which title is acquired by a grantee or STATEMENT OF VALUE fails to set forth that the property was acquired by the grantee from, or for the benefit of, his principal, there is a rebuttable presumption that the property is the property of the grantee in his individual capacity if the grantee claims an exemption from taxation under this

clause.

118.5.1.12. A transfer made pursuant to the statutory merger or consolidation of a CORPORATION or statutory division of a nonprofit CORPORATION, except where it is determined that the primary intent for such merger, consolidation or division is avoidance of the tax imposed by this Article.

118.5.1.13. A transfer from a CORPORATION or ASSOCIATION of REAL ESTATE held of record in the name of the CORPORATION or ASSOCIATION where the grantee owns stock of the CORPORATION or an interest in the ASSOCIATION in the same proportion as his interest in or ownership of the REAL ESTATE being conveyed and where the stock of the CORPORATION or the interest in the ASSOCIATION has been held by the grantee for more than two years.

118.5.1.14. 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 of the grantee or a transfer to a nonprofit industrial development agency or authority.

118.5.1.15. A transfer from a nonprofit industrial development agency or authority to a grantee purchasing directly from it, but only if:

118.5.1.15.1. 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

118.5.1.15.2. the agency or authority has the full ownership interest in the REAL ESTATE transferred.

118.5.1.16. 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.

118.5.1.17. 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 transferrer for commercial purposes.

118.5.1.18. A transfer to a conservancy which possesses a tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954 (68AStat. 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; or a transfer from such a conservancy to the United States, the Commonwealth or to any of their instrumentalities, agencies or political subdivisions; or any transfer from such a conservancy where the REAL ESTATE is encumbered by a perpetual

agricultural conservation easement as defined by the Act of June 30, 1981 (P.L. 128, No. 43) known as the "Agricultural Area Security Law," and such conservancy has owned the REAL ESTATE for at least two years immediately prior to the transfer.

118.5.1.19. A transfer of REAL ESTATE devoted to the business of agriculture to a FAMILY FARM CORPORATION by a MEMBER OF THE SAME FAMILY which directly owns at least seventy-five percent of each class of the stock thereof.

118.5.1.20. A transfer between MEMBERS OF THE SAME FAMILY of an ownership interest in a REAL ESTATE COMPANY or FAMILY FARM CORPORATION.

118.5.1.21. A TRANSACTION wherein the tax due is one dollar (\$1) or less.

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

118.5.2. In order to exercise any exclusion provided in this Section, the true, full and complete VALUE of the transfer shall be shown on a STATEMENT OF VALUE furnished to the TOWNSHIP. A copy of the Pennsylvania Realty Transfer Tax STATEMENT OF VALUE presented pursuant to ACT 77 in accordance with the regulations and requirements of the DEPARTMENT shall be sufficient for this purpose provided such STATEMENT OF VALUE shall separately set forth the VALUE of the REAL ESTATE in the TOWNSHIP when such REAL ESTATE is located in more than one political subdivision. For leases of coal, oil, natural gas or minerals, the STATEMENT OF VALUE may be limited to an explanation of the reason such DOCUMENT is not subject to tax under this Article.

**[Amended 3-02-98 by Ord. No. 1760]**

**§ 118.6. DOCUMENTS Relating to ASSOCIATIONS or CORPORATIONS and Members, Partners, Stockholders or Shareholders Thereof.**

Except as otherwise provided in Section 118.5, DOCUMENTS which make, confirm or evidence any transfer or demise of TITLE TO REAL ESTATE between ASSOCIATIONS or CORPORATIONS and the members, partners, shareholders or stockholders thereof are fully taxable. For the purposes of this Article, CORPORATIONS and ASSOCIATIONS are entities separate from their members, partners, stockholders or shareholders. **[Amended 3-02-98 by Ord. No. 1760]**

**§ 118.7. ACQUIRED COMPANY.**

118.7.1. A REAL ESTATE COMPANY is an ACQUIRED COMPANY upon a change in the ownership interest in the company, however, if the change:

118.7.1.1. does not effect the continuity of the company; and

118.7.1.2. of itself or together with prior changes has the effect of transferring, directly or indirectly, ninety percent or more of the total ownership interest in the company within a period of three years.

118.7.2. With respect to REAL ESTATE acquired after December 10, 1984, 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 Article.

118.7.3. Within thirty days after becoming an ACQUIRED COMPANY, the company shall present a DECLARATION OF ACQUISITION with the RECORDER OF DEEDS for the affixation of documentary stamps and recording. Such DECLARATION OF ACQUISITION shall set forth the VALUE of REAL ESTATE holdings of the ACQUIRED COMPANY in the TOWNSHIP. A copy of the DECLARATION OF ACQUISITION submitted pursuant to ACT 77 in accordance with the regulations and requirements of the DEPARTMENT shall be sufficient for this purpose provided such declaration shall separately set forth the VALUE of such REAL ESTATE holdings in the TOWNSHIP when such REAL ESTATE is located in more than one political subdivision.

**[Amended 3-02-98 by Ord. No. 1760]**

**§ 118.8. Credits Against Tax.**

118.8.1. 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.

118.8.2. 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.

118.8.3. Where there is a transfer of REAL ESTATE which is demised by the grantor, a credit for the amount of tax paid at the time of the demise shall be given the grantor toward the tax due upon the transfer.

118.8.4. 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.

118.8.5. 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.

**[Added 3-02-98 by Ord. No. 1760]**

**§ 118.9. 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. **[Added 3-02-98 by Ord. No. 1760]**

**§ 118.10. Administration.**

The TRANSFER TAX ADMINISTRATOR shall be responsible for the administration, the redetermination and (except as hereinafter provided) the enforcement and collection of the tax, and he is authorized and empowered to prescribe, adopt, promulgate, enforce regulations and make rulings with respect thereto using any regulations promulgated by the DEPARTMENT with respect to the Pennsylvania Realty Transfer Tax Law as a guide insofar as he shall deem the same to be appropriate. Procedures followed shall be in accordance with Township Rules and Regulations adopted pursuant to Act 50 of 1998. **[Amended 3-02-98 by Ord. No. 1760; Amended 5-03-99 by Ord. No. 1802, retroactive effective to January 1, 1999]**

**§ 118.11. RECORDER OF DEEDS as Agent.**

It is recognized that the RECORDER OF DEEDS of Allegheny County, Pennsylvania, is currently designated the collection agent for the tax imposed by this Article pursuant to the Act of July 7, 1983, P.L. 40 (16 P.S. § 11011-6). **[Added 3-02-98 by Ord. No. 1760]**

**§ 118.12. Evidence of Tax Payment.**

118.12.1. The payment of the tax imposed by this Article shall be evidenced by the affixing of a documentary stamp or stamps or receipt to every DOCUMENT by the PERSON making, executing, delivering, accepting or presenting for recording such DOCUMENT. Such stamps or receipts shall be affixed in such manner that their removal will require the continued application of steam or water, and the PERSON using or affixing such stamps or receipts shall write or stamp or cause to be written or stamped thereon the initials of his name and the date upon which such stamps are affixed or used so that such stamps may not again be used: Provided, that the TRANSFER TAX ADMINISTRATOR may prescribe such other method of cancellation as he may deem expedient.

118.12.2. The TOWNSHIP shall cause such stamps or receipt to be supplied, and the

TRANSFER TAX ADMINISTRATOR shall specify or approve the form and contents of the same.

**[Amended 3-02-98 by Ord. No. 1760]**

**§ 118.13. STATEMENT OF VALUE.**

Every DOCUMENT lodged with or presented to any RECORDER OF DEEDS in this Commonwealth 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 Article. The provisions of this Section shall not apply to any excludable REAL ESTATE transfers which are exempt from taxation based on family relationship. Other DOCUMENTS presented for the affixation of stamps or receipts shall be accompanied by a certified copy of the DOCUMENT and STATEMENT OF VALUE executed by a responsible PERSON connected with the TRANSACTION showing such connection and setting forth the true, full and complete VALUE thereof or the reason, if any, why such DOCUMENT is not subject to tax under this Article. A copy of the STATEMENT OF VALUE presented pursuant to ACT 77 in accordance with the regulations and requirements of the DEPARTMENT shall be sufficient for this purpose provided such statement shall separately set forth the VALUE of the REAL ESTATE in the TOWNSHIP when such REAL ESTATE is located in more than one political subdivision. **[Amended 3-02-98 by Ord. No. 1760]**

**§ 118.14. Interest and Civil Penalties.**

118.14.1. If for any reason any tax imposed by this Article is not paid when due, interest at the rate of six percent (6%) per year on the amount of such tax shall be added and collected.

118.14.2. If for any reason any tax imposed by this Article is not paid when due a penalty of one-half of one percent (0.5%) of the amount of such tax for each month or fraction thereof during which the tax remains unpaid shall be added and collected.

118.14.3. If any part of any underpayment of tax imposed by this Article is due to fraud or if any PERSON liable for the tax shall participate in or do any of the acts described as unlawful acts in Section 118.15 below, there shall be added to the tax an amount equal to fifty percent of the underpayment.

118.14.4. In the case of failure to record an accurate DECLARATION OF ACQUISITION required under this Article on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause, there shall be added to the tax five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding fifty percent

in the aggregate.

118.14.5. Where suit is brought for any tax, interest or penalty imposed by this Article, the PERSONS liable therefor shall, in addition, be liable for costs of collection of the same.

**[Amended 3-02-98 by Ord. No. 1760]**

**§ 118.15. Unlawful Acts.**

It shall be unlawful for any PERSON to:

118.15.1. accept or present for recording or cause to be accepted or presented for recording any DOCUMENT, without the full amount of tax thereon being duly paid; or

118.15.2. make use of any documentary stamp or receipt to denote payment of any tax imposed by this Article without canceling such stamp or receipt as required by this Article or as prescribed by the TRANSFER TAX ADMINISTRATOR; or

118.15.3. fail, neglect or refuse to comply with or violate the rules and regulations prescribed, adopted and promulgated by the TRANSFER TAX ADMINISTRATOR under the provisions of this Article; or

118.15.4. fraudulently cut, tear or remove from a DOCUMENT any documentary stamp or receipt; or

118.15.5. fraudulently affix to any DOCUMENT upon which tax is imposed by this Article any documentary stamp or receipt which has been cut, torn or removed from any other DOCUMENT upon which tax is imposed by this Article, or any documentary stamp or receipt of insufficient VALUE, or any forged or counterfeited stamp or receipt, or any impression of any forged or counterfeited stamp or receipt, die, plate or other article; or

118.15.6. willfully remove or alter the cancellation marks of any documentary stamp or receipt, or restore any such documentary stamp or receipt, with intent to use or cause the same to be used after it has already been used, or knowingly buy, sell, offer for sale, or give away any such altered or restored stamp to any PERSON for use, or knowingly use the same; or

118.15.7. knowingly have in his possession any altered or restored documentary stamp or receipt which has been removed from any DOCUMENT upon which tax is imposed by this Article: Provided, That the possession of such stamps or receipts shall be prima facie evidence of an intent to violate the provisions of this clause; or

118.15.8. knowingly or willfully prepare, keep, sell, offer for sale, or have in his possession, any forged or counterfeited documentary stamps or receipts; or

118.15.9. make a false STATEMENT OF VALUE or DECLARATION OF

ACQUISITION, when he does not believe the statement or declaration to be true.

AND any PERSON responsible for any such unlawful act shall, in addition to any other penalties provided for under this Article, pay the TOWNSHIP a penalty of \$500.00 for each such unlawful act.

**[Amended 3-02-98 by Ord. No. 1760]**

**§ 118.16. Determination and Notice of Tax; Review.**

118.16.1. If any PERSON shall fail to pay when due any tax imposed by this Article for which he is liable, the TRANSFER TAX ADMINISTRATOR is hereby authorized and empowered to make a determination and assessment of additional tax, interest and penalties due by such PERSON based upon any information within his possession or that shall come into its possession. All of such determinations and assessments shall be made no more than three (3) years after the date the tax should have been paid except where a fraudulent DOCUMENT, STATEMENT OF VALUE or DECLARATION OF ACQUISITION is recorded or furnished or any such DOCUMENT, STATEMENT OF VALUE or DECLARATION OF ACQUISITION is not recorded or furnished.

118.16.2. Promptly after the date of such determination, the TRANSFER TAX ADMINISTRATOR shall send by mail a copy thereof to the PERSON against whom it was made. Within ninety days after the date upon which the copy of any such determination was mailed, such PERSON may file with the HEARING OFFICER a petition for Appeal of such taxes. Every petition for Appeal shall state specifically the reasons which the petitioner believes entitle him to such Appeal, and it shall be supported by affirmation that it is not made for the purpose of delay and that the facts set forth therein are true. It shall be the duty of the HEARING OFFICER within sixty days after the date of filing of any petition for Appeal to dispose of the petition. Notice of the action taken upon any petition for Appeal shall be given to the petitioner promptly after the date of Appeal by the HEARING OFFICER. **[Amended 5-03-99 by Ord. No. 1802, retroactive effective 1-1-99]**

**§ 118.17. Refunds**

118.17.1. Whenever the amount due upon determination or review is less than the amount paid to the TOWNSHIP on account thereof, the TOWNSHIP shall enter a credit in the amount of such difference to the account of the PERSON who paid the tax. **[Amended 5-03-99 by Ord. No. 1802, retroactive effective 1-1-99]**

118.17.2. Where there has been no determination of unpaid tax, the TOWNSHIP shall have the power, and its duty shall be, to hear and decide any application, to enter a credit in the amount of the overpayment to the account of the PERSON who paid the tax. Such application must be filed under Article VIII. **[Added 3-02-98 by Ord. No. 1760]**

118.17.3. Interest shall be paid at the same rate as the Commonwealth is required to pay pursuant to Section 806.1 of the State Fiscal Code. Interest shall accrue from the date of overpayment until the date of resolution. No interest shall be allowed if an overpayment is refunded or applied against any other tax, interest or penalty due to the Township within 75 days after the last date prescribed for filing the report of the tax liability or within 75 days after the date the tax return or report of liability due is filed, whichever is later. Overpayments of interest or penalties shall not bear any interest. The terms "date of overpayment" and "date of resolution" shall be those as defined in 53 P.S. §§ 8426 **[Added 5-03-99 by Ord. No. 1802, retroactive effective 1-1-99]**

**§ 118.18. Enforcement.**

All taxes imposed by this Article together with interest and penalties prescribed herein, shall be recoverable as other debts of like character are recovered. **[Amended 3-02-98 by Ord. No. 1760]**

**§ 118.19. Lien.**

The tax imposed by this Article 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 the TOWNSHIP, which lands, tenements, hereditaments, or interest therein, are described in or conveyed by or transferred by the DOCUMENT which is the subject of the tax imposed, assessed and levied by this Article, said lien to begin at the time when the tax under this Article is due and payable, and continue until discharge by payment, or in accordance with the law, and the TOWNSHIP Attorney is authorized to file a municipal or tax claim in the Court of Common Pleas of Allegheny County, in accordance with the provisions of the Municipal Claims and Liens Act of 1923, 53 P.S. §7101, *et seq.*, its supplements and amendments. **[Added 3-02-98 by Ord. No. 1760]**

**§ 118.20. Proceeds of Judicial Sale.**

The tax herein imposed shall be fully paid, and have priority out of the proceeds of any judicial sale of REAL ESTATE before any other obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made, and the sheriff, or other officer, conducting said sale, shall pay the tax therein 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. **[Added 3-02-98 by Ord. No. 1760]**

**§ 118.21. Payment Under Protest; Refunds.**

A PERSON shall have the right to pay any tax, interests or penalties required under this Article under written protest. When payment is made under written protest and the amount due upon determination, redetermination, review or upon judicial determination is less than the amount paid on account thereof, the TOWNSHIP shall refund the overpayment to the PERSON who paid under protest. **[Amended 3-02-98 by Ord. No. 1760]**

**§ 118.22. Criminal Prosecution.**

Any PERSON violating the provisions of this Article or who intentionally obstructs, impairs or perverts the administration of this Article or the regulations promulgated hereunder shall be subject to criminal prosecution to the full extent permitted by law. **[Added 3-02-98 by Ord. No. 1760]**

**ARTICLE II**  
**Local Services Tax**  
**[Adopted 12-17-73 by Ord. No. 529;**  
**Amended 3-02-98 by Ord. No. 1760; 12-20-04 by Ord. No. 1927;**  
**12-3-07 by Ord. No. 1985]**

**§ 118.23. Definitions.**

The following words and phrases, when used in this article, 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 Section 13 [relating to earned income taxes] of the Local Tax Enabling Act, the Act of Dec. 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 the political subdivision.

**NET PROFITS** -The net income from the operation of a business, profession; or other activity, as this term is defined in Section 13 [relating to earned income taxes] of the Local Tax Enabling Act, the Act of Dec. 31, 1965, P.L. 1251, § 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, earned on or performed within the corporate limits of the political subdivision for which compensation is charged or received; whether by means of salary, wages, commission or fees for services rendered.

**POLITICAL SUBDIVISION** – The area within the corporate limits of the Township of Upper St. Clair.

TAX - The local services tax at the rate fixed in § 118.24 of this article.

TAX YEAR - The period from January 1 until December 31 in any year; a calendar year.

**§ 118.24. 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 with a primary place of employment within the Township of Upper St. Clair during the TAX YEAR. Each natural person who exercises such privilege for any length of time during any TAX YEAR shall pay the TAX for that year in the amount of \$52.00, assessed on a pro rata basis, in accordance with the provisions of this article. This TAX may be used solely for the following purposes as the same may be allocated by the Board of Commissioners from time to time: (1) emergency services, which shall include emergency medical services, police services and/or fire services; (2) road construction and/or maintenance; (3) reduction of property taxes; or (4) 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). The POLITICAL SUBDIVISION shall use no less than twenty-five percent 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 the POLITICAL SUBDIVISION. The TAX shall be no more than \$52.00 on each person for each calendar year, irrespective of the number of POLITICAL SUBDIVISIONS within which a person may be employed.

**118.24.1. Exemption and refunds.**

A. Exemption. Any person whose total EARNED INCOME and NET PROFITS from all sources within the POLITICAL SUBDIVISION is less than twelve thousand (\$12,000) dollars for any calendar year in which the 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:

(1) 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 amputee or has a service-connected disability declared by the United States Veterans' Administration or its successor to be a total one hundred percent disability.

(2) 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 subparagraph, "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.

B. Procedure to Claim Exemption.

(1) A person seeking to claim an exemption from the local services TAX may annually file an exemption certificate with the POLITICAL SUBDIVISION and with the person's EMPLOYER affirming that the person reasonably expects to receive EARNED INCOME and NET PROFITS from all sources within the POLITICAL SUBDIVISION of less than twelve thousand dollars (\$12,000) in the calendar year for which the exemption certificate is filed. In the event the POLITICAL SUBDIVISION 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 the POLITICAL SUBDIVISION for the year prior to the fiscal year for which the employee is requesting to be exempted from the TAX. Upon receipt of the exemption certificate and until otherwise instructed by the POLITICAL SUBDIVISION or except as required by clause (2), 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 the POLITICAL SUBDIVISION.

(2) With respect to a person who claimed an exemption for a given calendar year from the TAX, upon notification to an EMPLOYER by the person or by the POLITICAL SUBDIVISION that the person has received EARNED INCOME and NET PROFITS from all sources within the POLITICAL SUBDIVISION equal to or in excess of twelve thousand dollars (\$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 the municipality in an amount equal to or in excess of twelve thousand dollars (\$12,000) in that calendar year, an EMPLOYER shall withhold the local services TAX from the person under clause (3).

(3) If a person who claimed an exemption for a given calendar year from the TAX becomes subject to the TAX for the calendar year under clause (2), 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 clause (2), 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. 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 TAX under this clause is subsequently severed in that calendar year, the person shall be liable for any outstanding balance of TAX due, and the POLITICAL SUBDIVISION may pursue collection under this article.

(4) Except as provided in clause (2), 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.

C. Refunds. The Township of Upper St. Clair, 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 seventy-five days of a refund request or seventy-five 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 one dollar (\$1): The Township of Upper St. Clair or the COLLECTOR shall determine eligibility for exemption and provide refunds to exempt persons.

**§ 118.25. Duty of employers to collect.**

A. Each EMPLOYER within the POLITICAL SUBDIVISION, as well as those EMPLOYERS situated outside the POLITICAL SUBDIVISION but who engage in business within the POLITICAL SUBDIVISION, is hereby charged with the duty of collecting the TAX from each of his employees engaged by him or performing for him within the POLITICAL SUBDIVISION and making a return and payment thereof to the COLLECTOR. Further, each EMPLOYER is hereby authorized to deduct this TAX for each employee in HIS or her employ, whether said employee is paid by salary, wage or commission and whether or not all such services are performed within the POLITICAL SUBDIVISION.

B. A person subject to the TAX shall be assessed by the EMPLOYER a pro rata share of the TAX or 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 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 shall be made on a payroll period basis for each payroll period in which the person

is engaging in an OCCUPATION, except as provided in Paragraph D of this Section, for purposes of this paragraph, combined rate shall mean the aggregate annual rate of the TAX levied by the school district and the municipality.

C. No person shall be subject to the payment of the local services TAX by more than one POLITICAL SUBDIVISION during each payroll period.

D. 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 two weeks of its occurrence. The employee's statement shall be provided on the form approved by DCED.

E. The TAX shall be no more than fifty-two dollars (\$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 a receipt of payment upon request by the taxpayer.

F. No EMPLOYER shall be held liable for failure to withhold the TAX or for the payment of the withheld TAX money to the POLITICAL SUBDIVISION 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 EMPLOYER complies with the provisions of Paragraph B of Section 231-9.1 of this article and this section and remits the amount so withheld in accordance with this article.

G. EMPLOYERS shall be required to remit the local services TAXES thirty days after the end of each quarter of a calendar year.

#### **§ 118.26. Returns.**

Each EMPLOYER shall prepare and file a return showing a computation of the TAX on forms to be supplied to the EMPLOYER by the COLLECTOR. 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 article, the EMPLOYER shall be responsible for the payment of the TAX in full as though the TAX had been originally levied against the EMPLOYER.

#### **§ 118.27. 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.

**§ 118.28. Self-employed individuals.**

Each self-employed INDIVIDUAL who performs services of any type or kind or engages in any OCCUPATION or profession within a primary place of employment within the POLITICAL SUBDIVISION shall be required to comply with this article 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.

**§ 118.29. Individuals engaged in more than one occupation or employed in more than one political subdivision.**

A. The situs of the 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:

- (1) First, the POLITICAL SUBDIVISION in which a person maintains HIS or her principal office or is principally employed;
- (2) Second, the POLITICAL SUBDIVISION in which the person resides and works if the TAX is levied by that POLITICAL SUBDIVISION;
- (3) Third, the POLITICAL SUBDIVISION in which a person is employed and which imposes the TAX nearest in miles to the person's home.

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.

**§ 118.30. Nonresidents subject to tax.**

All EMPLOYERS and self-employed INDIVIDUALS residing or having their places of business outside of the POLITICAL SUBDIVISION but who perform services of any type or kind or engage in any OCCUPATION or profession within the POLITICAL SUBDIVISION 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 POLITICAL SUBDIVISION. Further, any INDIVIDUAL engaged in an OCCUPATION within the POLITICAL SUBDIVISION and an employee of a nonresidential EMPLOYER may, for the purpose of this article, be considered a self-employed person, and in the event HIS or her TAX is not paid, the POLITICAL SUBDIVISION shall have the option of proceeding against either the EMPLOYER or employee for the collection of this TAX as hereinafter provided.

**§ 118.31. Administration of tax.**

A. The COLLECTOR shall be appointed by resolution of the POLITICAL SUBDIVISION. It shall be the duty of the COLLECTOR to accept and receive payments of this TAX and to keep a record thereof showing the amount received by HIM from each EMPLOYER of self-employed person, together with the date the TAX was received.

B. The COLLECTOR is hereby charged with the administration and enforcement of this article and is hereby charged and empowered, subject to municipal approval, to proscribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this article, including provisions for the examination of 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 COLLECTOR shall have the right to appeal consistent with the Local Taxpayers Bill of Rights under Act 50 of 1998 (municipalities may detail their appeal processes).

C. The COLLECTOR 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 COLLECTOR the means, facilities and opportunity for such examination.

**§ 118.32. Suits for collection.**

A. In the event that any TAX under this article remains due or unpaid 30 days after the due dates above set forth, the COLLECTOR may sue for the recovery of any such TAX due or unpaid under this article, together with interest and penalty.

B. 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 5% 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.

**§ 118.33. Violations and penalties.**

Whoever makes any false or untrue statement on any return required by this article, 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 required by this article shall be guilty of a violation and, upon conviction thereof, shall be sentenced to pay a fine of not 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 article.

**§ 118.34. Interpretation.**

A. Nothing contained in this article shall be construed to empower the POLITICAL SUBDIVISION to levy and collect the TAX hereby imposed on any OCCUPATION not within the taxing power of the POLITICAL SUBDIVISION under the Constitution of the United States and the laws of the Commonwealth of Pennsylvania.

B. If the TAX hereby imposed under the provisions of this article 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.

**ARTICLE III****Earned Income Tax**

**[Adopted at time of adoption of Code 8-2-76 by Ord. No. 632;  
Amended 3-02-98 by Ord. No. 1760; 12-20-04 by Ord. No. 1927]**

**§ 118.35<sup>3</sup>. Imposition of tax. [Amended 6-12-78 by Ord. No. 780]**

Under the authority of the Local Tax Enabling Act of the Commonwealth of Pennsylvania, Act 511 of 1965 (53 P.S. § 6901 et seq.), a tax for general revenue purposes of one-half of one percent (1/2 of 1%) per year is hereby imposed on all earned income and net profits, as defined in Section 13 of the Local Tax Enabling Act (53 P.S. § 6913), earned by residents of the Township of Upper St. Clair and on earned income and net profits earned by nonresidents of the Township of Upper St. Clair for work done or services performed or rendered in the township.

**§ 118.36. Rules and regulations.**

Rules and regulations governing the imposition, collection and enforcement of the earned income tax, including provisions pertaining to declarations, returns and payment of the tax are hereby incorporated by reference, and such rules and regulations shall be considered a part of this Article as though set forth herein at length. Any and all amendments to the rules and regulations shall be adopted by resolution of the Board of Commissioners.<sup>4</sup> Copies of such rules and regulations and any amendments thereto shall be kept on file in the office of the Township Manager.

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<sup>3</sup>Editor's Note: Due to revision of Article II, which was amended 12-3-07 by Ord. No. 1985, the numbers of all sections for the remainder of Chapter 118 have been amended.

<sup>4</sup>Editor's Note: The Earned Income Tax and Net Profits Tax Regulations of the Township of Upper St. Clair were adopted by the Board of Commissioners on July 7, 1975.

**ARTICLE IV****Additional Tax on Earned Income**

[Adopted 12-17-79 as Ord. No. 879;

Amended 10-2-84 by Ord. No. 1102; 3-02-98 by Ord. No. 1760;

12-23-02 by Ord. No. 1878; 12-20-04 by Ord. No. 1927; 12-04-06 by Ord. No. 1964]

**§ 118.37. Statement of intent.**

The preambles set forth above are incorporated in the body of this Article by this reference as an expression of the legislative intent of the Commissioners in the consideration and enactment thereof.<sup>5</sup> It is the Commissioners' intent that the tax levied hereby will be collected and administered in the same manner, under the same procedures, at the same time and by the same municipal employees as the tax presently imposed pursuant to § 118.17 of the Township Code and the Earned Income Tax and Net Profits Tax Regulations (hereinafter the "regulations") adopted by § 118.18 of the Township Code. The regulations are to be read in conjunction with this Article (as well as § 118.17. of the Township Code) and are intended to elaborate upon and interpret these ordinances. In the event that a situation should arise which is not specifically covered by the regulations, the township reserves the right to review each individual case and, based upon the facts presented, to make a determination of liability. References to Act 511 in the regulations, when referring to this Article, shall be read as Act 62; and references to a one-percent tax shall be read as two-tenths percent (0.2%) tax when referring to this Article. The regulations as so modified are hereby

**§ 118.38. Levy of tax.**

118.38.1. A tax for general revenue purposes of three-tenths percent (0.3%) is hereby imposed upon: [Amended 12-23-02 by Ord. No. 1878; 12-04-06 by Ord. No. 1964]

118.38.1.1. Earned income received beginning January 1, 2007, and ending December 31, 2007, by residents of the township; and on [Amended 12-23-02 by Ord. No. 1878; 12-04-06 by Ord. No. 1964]

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<sup>5</sup>Editor's Note: The preamble of this ordinance reads as follows:

"WHEREAS, as been determined by the Board of Commissioners (hereinafter "the Commissioners") that additional revenues are needed for the operation of the Township of Upper St. Clair (hereinafter "the Township"); and  
 "WHEREAS, the Township, pursuant to the "Home Rule Charter and Optional Plans Law," Act of April 13, 1972, No. 62, as amended (hereinafter "Act 62"), is empowered and authorized to increase the rates of tax on persons, transactions, occupations, privileges, and personal property already the subject of local taxation; and  
 "WHEREAS, the Township presently imposes a tax on the earned income and net profits earned or received by residents of the Township; and  
 "WHEREAS, the requirements of Act 62 and the Home Rule Charter of the Township with respect to consideration and enactment of such an ordinance have been met."

118.38.1.2. The net profits earned beginning January 1, 2007, and ending December 31, 2007, of businesses, professions or other activities conducted in the township by such residents, regardless of where the same were earned. **[Amended 12-23-02 by Ord. No. 1878; 12-4-06 by Ord. No. 1964]**

118.38.2. The tax herein levied and imposed shall continue in force on a calendar-year basis following December 31, 2007, without annual reenactment, until such time as the Commissioners of the township shall change the rate of tax or, by appropriate ordinance, repeal such tax. **[Amended 12-23-02 by Ord. No. 1878; 12-4-06 by Ord. No. 1964]**

**§ 118.39. Authority.**

This Article, the regulations and the tax imposed hereunder is adopted under and by virtue of the authority contained in Act 62, the provisions of which are hereby accepted and adopted by the Commissioners of the township, and where the interpretation or terms or provisions of this Article and/or the regulations are not in accord with, or in compliance with, the provisions of Act 62, the provisions of Act 62 are intended to be ordained and enacted by this Article and its regulations as fully as though incorporated, set forth and made part of this Article and its regulations.<sup>6</sup>

**§ 118.40. Finding of tax to be illegal or invalid. [Added 10-2-84 by Ord. No. 1102]**

If a court of competent jurisdiction rules and finds the additional tax levied by the township to be invalid or illegal so as to preclude the collection thereof, then the real estate millage shall be raised in an amount sufficient to recoup the amount of revenue which, in the reasonable judgment of the Township Manager, would have been collected by the Township.

**§ 118.41. Refund of tax. [Added 10-2-84 by Ord. No. 1102]**

If a court of competent jurisdiction orders the township to refund moneys collected as additional tax, then the real estate millage shall be raised in an amount sufficient to recoup the amount required to be refunded. The township budget shall provide for a contingent levy of real estate taxes on all real estate located in the township so as to effect the recoupment of such lost revenues.

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<sup>6</sup>Editor's Note: Original Section 6 of this ordinance also stated that § 118.17 of the Township Code is specifically not repealed and remains in full force and effect.

**ARTICLE V****Additional Realty Transfer Tax of the  
Township of Upper St. Clair<sup>7</sup>**

**[Adopted 12-2-85 as Ord. No. 1175;  
Amended 1-7-91 by Ord. No. 1478; 3-2-98 by Ord. No. 1760;  
Amended and Restated in its Entirety 6-1-98 by Ord. No. 1771;  
Amended 12-20-04 by Ord. No. 1927]**

**§ 118.42. Title.**

This Article shall be known, and may be cited as, the Additional Realty Transfer Tax of the Township of Upper St. Clair.

**§ 118.43. Definitions.**

The following words, when used in this Article, shall have the meanings ascribed to them in this section:

ACQUIRED COMPANY - Defined and described in § 118.48 of this Article.

ACT 77 - Act 77 of 1986 (72 P.S. § 8101-C, *et seq.*).

ASSOCIATION - A partnership, limited partnership, or any other form of unincorporated enterprise, owned or conducted by two (2) 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 or foreign country or dependence.

DECLARATION OF ACQUISITION - Defined and described in § 118.48.3 of this Article.

DEPARTMENT - The Department of Revenue of the Commonwealth of Pennsylvania.

DOCUMENT - Any deed, instrument or writing which conveys, transfers, demises, vests, confirms or evidences any transfer or demise of TITLE TO REAL ESTATE, but does not include wills, mortgages, deeds of trust or other instruments of like character given as security for a debt and deeds of release thereof to the debtor, land contracts whereby the legal title does not pass to the grantee until the total consideration specified in the contract has been paid or any cancellation thereof unless the consideration is payable over a period of time exceeding thirty (30) years or instruments which solely grant, vest or confirm a public utility easement. "DOCUMENT" shall also include a DECLARATION OF

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<sup>7</sup>Editor's Note: See also Article I, Real Estate Transfer Tax.

ACQUISITION required to be presented for recording under § 118.48.3 of this Article.

FAMILY FARM CORPORATION - A CORPORATION of which at least seventy-five percent of its assets are devoted to the business of agriculture and at least seventy-five percent of each class of stock of the CORPORATION is continuously owned by MEMBERS OF THE SAME FAMILY. The business of agriculture shall not be deemed to include:

- (1) Recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;
- (2) The raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;
- (3) Fur-farming;
- (4) Stockyard and slaughterhouse operations; or
- (5) Manufacturing or processing operations of any kind.

LIVING TRUST - Any trust, other than a business trust, intended as a will substitute by the settlor which becomes effective during the lifetime of the settlor, but from which trust distributions cannot be made to any beneficiaries other than the settlor prior to the death of the settlor.

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.

ORDINARY TRUST - Any trust, other than a business trust or a LIVING TRUST, which takes effect during the lifetime of the settlor and for which the trustees of the trust take title to property primarily for the purpose of protecting, managing or conserving it until distribution to the named beneficiaries of trust. An ORDINARY TRUST does not include a trust that has an objective to carry on business and divide gains nor does it either expressly or impliedly have any of the following features: the treatment of beneficiaries as associates, the treatment of the interests in the trust as personal property, the free transferability of beneficial interests in the trust, centralized management by the trustee or the beneficiaries, or continuity of life.

PERSON - Every natural PERSON, ASSOCIATION, or CORPORATION. Whenever used in any clause prescribing and imposing a penalty, fine or imprisonment, 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

- (1) Any lands, tenements or hereditaments within this TOWNSHIP, including, without limitation, buildings, structures, fixtures, mines, minerals, oil, gas, quarries, spaces with or without upper or lower boundaries, trees and other improvements, immovables or interests which by custom, usage or law, pass with a conveyance of land, but excluding permanently attached machinery and equipment in an industrial plant.
- (2) A condominium unit.
- (3) A tenant-stockholder's interest in a cooperative housing CORPORATION, trust or ASSOCIATION under a proprietary lease or occupancy agreement.

REAL ESTATE COMPANY - A CORPORATION or ASSOCIATION which is primarily engaged in the business of holding, selling or leasing REAL ESTATE ninety percent (90%) or more of the ownership interest in which is held by thirty-five (35) or fewer PERSONS and which:

- (1) derives sixty percent (60%) or more of its annual gross receipts from the ownership or disposition of REAL ESTATE; or
- (2) holds REAL ESTATE, the Value of which comprises ninety percent (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.

RECORDER OF DEEDS - The Recorder of Deeds of Allegheny County, Pennsylvania.

STATEMENT OF VALUE - Defined and described at § 118.46.2 and § 118.54 of this Article.

#### TITLE TO REAL ESTATE:

- (1) Any interest in REAL ESTATE which endures for a period of time, the termination of which is not fixed or ascertained by a specific number of years, including, without limitation, an estate in fee simple, life estate or perpetual leasehold; or
- (2) Any interest in REAL ESTATE enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consists of a group of rights approximating those of an estate

in fee simple, life estate or perpetual leasehold, including, without limitation, a leasehold interest or possessory interest under a lease or occupancy agreement for a term of thirty (30) years or more or a leasehold interest or possessory interest in REAL ESTATE in which the lessee has equity.

TOWNSHIP - The Township of Upper St. Clair.

TRANSACTION - The making, executing, delivering, accepting or presenting for recording of a DOCUMENT.

TRANSFER TAX ADMINISTRATOR - The TOWNSHIP Director of Finance.

VALUE:

- (1) In the case of any bona fide sale of REAL ESTATE at arm's length for actual monetary worth, the amount of the actual consideration 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;
- (2) In the case of a gift, sale by execution upon a judgment or upon the foreclosure of a mortgage by a judicial officer, TRANSACTIONS without consideration or for consideration less than the actual monetary worth of the REAL ESTATE, a taxable lease, an occupancy agreement, a leasehold or possessory interest, any exchange of properties or the REAL ESTATE of an ACQUIRED COMPANY, the actual monetary worth of the REAL ESTATE for local REAL ESTATE tax purposes for the common level ratio of assessed VALUES to market VALUES of the taxing district as established by the State Tax Equalization Board, or a commensurate part of the assessment where the assessment includes other REAL ESTATE;
- (3) In the case of an easement or other interest in REAL ESTATE the VALUE of which is not determinable under clause (1) or (2), the actual monetary worth of such interest; or
- (4) 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 principal of the grantor or a related CORPORATION, ASSOCIATION or partnership and the grantee existing before or effective with the transfer.

**§ 118.44. Imposition of Tax.**

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, or for or in respect of the vellum parchment or paper upon which such DOCUMENT is written or printed, a tax at the rate of one-half of one percent (1/2%) of the VALUE of the REAL ESTATE represented by such DOCUMENT, which tax shall be payable at the earlier of the time the DOCUMENT is presented for recording or within thirty days of acceptance of such DOCUMENT or within thirty days of becoming an ACQUIRED COMPANY.

**§ 118.45. Exempt Parties.**

The United States, the Commonwealth or any of their instrumentalities, agencies or political subdivisions shall be exempt from payment of the tax imposed by this Article. The exemption of such governmental bodies shall not, however, relieve any other party to a TRANSACTION from liability for the tax.

**§ 118.46. Excluded TRANSACTIONS.**

118.46.1. Subject to the requirements of paragraph 118.46.2, below, the tax imposed by § 118.44 shall not be imposed upon:

118.46.1.1. A transfer to the Commonwealth or to any of its instrumentalities, agencies or political subdivisions by gift, dedication or deed in lieu of condemnation or deed of confirmation in connection with condemnation proceedings, or a reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation, which reconveyance may include property line adjustments, provided said reconveyance is made within one (1) year from the date of condemnation.

118.46.1.2. A DOCUMENT which the TOWNSHIP is prohibited from taxing under the Constitution or statutes of the United States or the Commonwealth of Pennsylvania.

118.46.1.3. 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.

118.46.1.4. 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.

118.46.1.5. A transfer or division in kind for no or nominal actual consideration

of property passed by testate or intestate succession and held by co-tenants; however, if any of the parties take shares greater in VALUE than their undivided interest, tax is due on the excess.

118.46.1.6. A transfer between husband and wife, between PERSONS who were previously husband and wife who have since been divorced, provided the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, between parent and child or the spouse of such child, between brother or sister or spouse of a brother or sister and brother or sister or the spouse of a brother or sister and between a grandparent and grandchild or the spouse of such grandchild, except that a subsequent transfer by the grantee within one (1) year shall be subject to tax as if the grantor were making such transfer.

118.46.1.7. 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.

118.46.1.8. 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 that are entitled to receive the property or proceeds from the sale of the property under the trust, whether or not such beneficiaries are contingent or specifically named. A trust clause which identifies the contingent beneficiaries by reference to the heirs of the trust settlor as determined by the laws of the intestate succession shall not disqualify a transfer from the exclusion provided by this clause. 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.

118.46.1.8.1. A transfer for no or nominal actual consideration to a trustee of a LIVING TRUST from the settlor of the LIVING TRUST. No such exemption shall be granted unless the RECORDER OF DEEDS is presented with a copy of the LIVING TRUST instrument.

118.46.1.9. A transfer for no or nominal actual consideration from a trustee of an ORDINARY TRUST to a specifically named beneficiary that is entitled to receive the property under the recorded trust instrument or to a contingent beneficiary where the transfer of the same property would be exempt if the transfer was made by the grantor of the property into the trust to that beneficiary. However, any transfer of REAL ESTATE from a LIVING TRUST during the settlor's lifetime shall be considered for the purposes of this Article as if such transfer were made directly from the settlor to the grantee.

118.46.1.9.1. A transfer of no or nominal actual consideration from a trustee of a LIVING TRUST after the death of the settlor of the trust or from a trustee of a trust created pursuant to the will of a decedent to a beneficiary to whom the property is devised or bequeathed.

118.46.1.9.2. A transfer for no or nominal actual consideration from the

trustee of a LIVING TRUST to the settlor of the LIVING TRUST if such property was original conveyed to the trustee by the settlor.

118.46.1.10. A transfer for no or nominal actual consideration from trustee to successor trustee.

118.46.1.11. A transfer:

118.46.1.11.1. for no or nominal actual consideration between principal and agent or straw party; or

118.46.1.11.2. 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 Article.

Where the DOCUMENT by which title is acquired by a grantee or STATEMENT OF VALUE fails to set forth that the property was acquired by the grantee from, or for the benefit of, his principal, there is a rebuttable presumption that the property is the property of the grantee in his individual capacity if the grantee claims an exemption from taxation under this clause.

118.46.1.12. A transfer made pursuant to the statutory merger or consolidation of a CORPORATION or statutory division of a nonprofit CORPORATION, except where it is determined that the primary intent for such merger, consolidation or division is avoidance of the tax imposed by this Article.

118.46.1.13. 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 its interest in or ownership of the REAL ESTATE being conveyed and where the stock of the CORPORATION or the interest in the ASSOCIATION has been held by the grantee for more than two years.

118.46.1.14. 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 of the grantee or a transfer to a nonprofit industrial development agency or authority.

118.46.1.15. A transfer from a nonprofit industrial development agency or authority to a grantee purchasing directly from it, but only if:

118.46.1.15.1. 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

118.46.1.15.2. the agency or authority has the full ownership interest in the REAL ESTATE transferred.

118.46.1.16. 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.

118.46.1.17. 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 transferror for commercial purposes.

118.46.1.18. A transfer to a conservancy which possesses a tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954 (68AStat. 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; or a transfer from such a conservancy to the United States, the Commonwealth or to any of their instrumentalities, agencies or political subdivisions; or any transfer from such a conservancy where the REAL ESTATE is encumbered by a perpetual agricultural conservation easement as defined by the Act of June 30, 1981 (P.L. 128, No. 43) known as the "Agricultural Area Security Law," and such conservancy has owned the REAL ESTATE for at least two years immediately prior to the transfer.

118.46.1.19. A transfer of REAL ESTATE devoted to the business of agriculture to a FAMILY FARM CORPORATION by a member of the same family which directly owns at least seventy-five percent of each class of the stock thereof.

118.46.1.20. A transfer between MEMBERS OF THE SAME FAMILY of an ownership interest in a REAL ESTATE COMPANY or FAMILY FARM CORPORATION.

118.46.1.21. A TRANSACTION wherein the tax due is one dollar (\$1) or less.

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

118.46.2. In order to exercise any exclusion provided in this Section, the true, full and complete VALUE of the transfer shall be shown on a STATEMENT OF VALUE furnished to the TOWNSHIP. A copy of the Pennsylvania Realty Transfer Tax STATEMENT OF VALUE presented pursuant to ACT 77 in accordance with the regulations and requirements of the DEPARTMENT shall be sufficient for this purpose provided such STATEMENT OF VALUE shall separately set forth the VALUE of the REAL ESTATE in the TOWNSHIP when such REAL ESTATE is located in more than one political subdivision. For leases of coal, oil, natural gas or minerals, the STATEMENT OF VALUE may be limited to an explanation of the reason such DOCUMENT is not subject to tax under this Article.

**§ 118.47. DOCUMENTS Relating to ASSOCIATIONS or CORPORATIONS and**

**Members, Partners, Stockholders or Shareholders Thereof.**

Except as otherwise provided in Section 118.5, DOCUMENTS which make, confirm or evidence any transfer or demise of TITLE TO REAL ESTATE between ASSOCIATIONS or CORPORATIONS and the members, partners, shareholders or stockholders thereof are fully taxable. For the purposes of this Article, CORPORATIONS and ASSOCIATIONS are entities separate from their members, partners, stockholders or shareholders.

**§ 118.48. ACQUIRED COMPANY.**

118.48.1. A REAL ESTATE COMPANY is an ACQUIRED COMPANY upon a change in the ownership interest in the company, however effected, if the change:

118.48.1.1. does not effect the continuity of the company; and

118.48.1.2. of itself or together with prior changes has the effect of transferring, directly or indirectly, ninety percent or more of the total ownership interest in the company within a period of three years.

118.48.2. With respect to REAL ESTATE acquired after December 10, 1984, 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 Article.

118.48.3. Within thirty days after becoming an ACQUIRED COMPANY, the company shall present a DECLARATION OF ACQUISITION with the RECORDER OF DEEDS for the affixation of documentary stamps and recording. Such DECLARATION OF ACQUISITION shall set forth the VALUE of REAL ESTATE holdings of the ACQUIRED COMPANY in the TOWNSHIP. A copy of the DECLARATION OF ACQUISITION submitted pursuant to ACT 77 in accordance with the regulations and requirements of the DEPARTMENT shall be sufficient for this purpose provided such declaration shall separately set forth the VALUE of such REAL ESTATE holdings in the TOWNSHIP when such REAL ESTATE is located in more than one political subdivision.

**§ 118.49. Credits Against Tax.**

118.49.1. 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.

118.49.2. 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.

118.49.3. Where there is a transfer of REAL ESTATE which is demised by the grantor, a credit for the amount of tax paid at the time of the demise shall be given the grantor toward the tax due upon the transfer.

118.49.4. 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.

118.49.5. 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.

**§ 118.50. 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.

**§ 118.51. Administration.**

The TRANSFER TAX ADMINISTRATOR shall be responsible for the administration, the redetermination and (except as hereinafter provided) the enforcement and collection of the tax, and he is authorized and empowered to prescribe, adopt, promulgate, enforce regulations and make rulings with respect thereto using any regulations promulgated by the DEPARTMENT with respect to the Pennsylvania Realty Transfer Tax Law as a guide insofar as he shall deem the same to be appropriate.

**§ 118.52. RECORDER OF DEEDS as Agent.**

It is recognized that the RECORDER OF DEEDS of Allegheny County, Pennsylvania, is currently designated the collection agent for the tax imposed by this Article pursuant to the Act of July 7, 1983, P.L. 40 (16 P.S. § 11011-6).

**§ 118.53. Evidence of Tax Payment.**

118.53.1. The payment of the tax imposed by this Article shall be evidenced by the affixing of a documentary stamp or stamps or receipt to every DOCUMENT by the PERSON

making, executing, delivering, accepting or presenting for recording such DOCUMENT. Such stamps or receipts shall be affixed in such manner that their removal will require the continued application of steam or water, and the PERSON using or affixing such stamps or receipts shall write or stamp or cause to be written or stamped thereon the initials of his name and the date upon which such stamps are affixed or used so that such stamps may not again be used: Provided, that the TRANSFER TAX ADMINISTRATOR may prescribe such other method of cancellation as he may deem expedient.

118.53.2. The TOWNSHIP shall cause such stamps or receipt to be supplied, and the TRANSFER TAX ADMINISTRATOR shall specify or approve the form and contents of the same.

#### **§ 118.54. STATEMENT OF VALUE.**

Every DOCUMENT lodged with or presented to any RECORDER OF DEEDS in this Commonwealth 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 Article. The provisions of this Section shall not apply to any excludable REAL ESTATE transfers which are exempt from taxation based on family relationship. Other DOCUMENTS presented for the affixation of stamps or receipts shall be accompanied by a certified copy of the DOCUMENT and STATEMENT OF VALUE executed by a responsible PERSON connected with the TRANSACTION showing such connection and setting forth the true, full and complete VALUE thereof or the reason, if any, why such DOCUMENT is not subject to tax under this Article. A copy of the STATEMENT OF VALUE presented pursuant to ACT 77 in accordance with the regulations and requirements of the DEPARTMENT shall be sufficient for this purpose provided such statement shall separately set forth the VALUE of the REAL ESTATE in the TOWNSHIP when such REAL ESTATE is located in more than one political subdivision.

#### **§ 118.55. Interest and Civil Penalties.**

118.55.1. If for any reason any tax imposed by this Article is not paid when due, interest at the rate of six percent (6%) per year on the amount of such tax shall be added and collected.

118.55.2. If for any reason any tax imposed by this Article is not paid when due a penalty of one-half of one percent (0.5%) of the amount of such tax for each month or fraction thereof during which the tax remains unpaid shall be added and collected.

118.55.3. If any part of any underpayment of tax imposed by this Article is due to fraud or if any PERSON liable for the tax shall participate in or do any of the acts described as unlawful acts in Section 118.15 below, there shall be added to the tax an amount equal to fifty percent of the

underpayment.

118.55.4. In the case of failure to record an accurate DECLARATION OF ACQUISITION required under this Article on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause, there shall be added to the tax five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding fifty percent in the aggregate.

118.55.5. Where suit is brought for any tax, interest or penalty imposed by this Article, the PERSONS liable therefor shall, in addition, be liable for costs of collection of the same.

**§ 118.56. Unlawful Acts.**

It shall be unlawful for any PERSON to:

118.56.1. accept or present for recording or cause to be accepted or presented or recording any DOCUMENT, without the full amount of tax thereon being duly paid; or

118.56.2. make use of any documentary stamp or receipt to denote payment of any tax imposed by this Article without canceling such stamp or receipt as required by this Article or as prescribed by the TRANSFER TAX ADMINISTRATOR; or

118.56.3. fail, neglect or refuse to comply with or violate the rules and regulations prescribed, adopted and promulgated by the TRANSFER TAX ADMINISTRATOR under the provisions of this Article; or

118.56.4. fraudulently cut, tear or remove from a DOCUMENT any documentary stamp or receipt; or

118.56.5. fraudulently affix to any DOCUMENT upon which tax is imposed by this Article any documentary stamp or receipt which has been cut, torn or removed from any other DOCUMENT upon which tax is imposed by this Article, or any documentary stamp or receipt of insufficient VALUE, or any forged or counterfeited stamp or receipt, or any impression of any forged or counterfeited stamp or receipt, die, plate or other article; or

118.56.6. willfully remove or alter the cancellation marks of any documentary stamp or receipt, or restore any such documentary stamp or receipt, with intent to use or cause the same to be used after it has already been used, or knowingly buy, sell, offer for sale, or give away any such altered or restored stamp to any PERSON for use, or knowingly use the same; or

118.56.7. knowingly have in his possession any altered or restored documentary stamp or receipt which has been removed from any DOCUMENT upon which tax is imposed by this Article: Provided, That the possession of such stamps or receipts shall be prima facie evidence of an

intent to violate the provisions of this clause; or

118.56.8. knowingly or willfully prepare, keep, sell, offer for sale, or have in his possession, any forged or counterfeited documentary stamps or receipts; or

118.56.9. make a false STATEMENT OF VALUE or DECLARATION OF ACQUISITION, when he does not believe the statement or declaration to be true.

AND any PERSON responsible for any such unlawful act shall, in addition to any other penalties provided for under this Article, pay the TOWNSHIP a penalty of \$500.00 for each such unlawful act.

**§ 118.57. Determination and Notice of Tax; Review.**

118.57.1. If any PERSON shall fail to pay when due any tax imposed by this Article for which he is liable, the TRANSFER TAX ADMINISTRATOR is hereby authorized and empowered to make a determination and assessment of additional tax, interest and penalties due by such PERSON based upon any information within his possession or that shall come into its possession. All of such determinations and assessments shall be made no more than three (3) years after the date the tax should have been paid except where a fraudulent DOCUMENT, STATEMENT OF VALUE or DECLARATION OF ACQUISITION is recorded or furnished or any such DOCUMENT, STATEMENT OF VALUE or DECLARATION OF ACQUISITION is not recorded or furnished.

118.57.2. Promptly after the date of such determination, the TRANSFER TAX ADMINISTRATOR shall send by mail a copy thereof to the PERSON against whom it was made. Within ninety days after the date upon which the copy of any such determination was mailed, such PERSON may file with the TRANSFER TAX ADMINISTRATOR a petition for redetermination of such taxes. Every petition for redetermination shall state specifically the reasons which the petitioner believes entitle him to such redetermination, and it shall be supported by affirmation that it is not made for the purpose of delay and that the facts set forth therein are true. It shall be the duty of the TRANSFER TAX ADMINISTRATOR within six months after the date of filing of any petition for redetermination to dispose of the petition. Notice of the action taken upon any petition for redetermination shall be given to the petitioner promptly after the date of redetermination by the TRANSFER TAX ADMINISTRATOR.

118.57.3. Any PERSON shall have the right to review by the TOWNSHIP Manager by requesting, in writing, a hearing by such TOWNSHIP Manager within thirty (30) days after receipt of notice of the action taken by the TRANSFER TAX ADMINISTRATOR on the petition for redetermination. Such hearing shall be conducted in accordance with the requirements of the Local Agency Law then in effect.

**§ 118.58. Refunds.**

118.58.1. Whenever the amount due upon determination, redetermination or review is less than the amount paid to the TOWNSHIP on account thereof, the TOWNSHIP shall enter a credit in the amount of such difference to the account of the PERSON who paid the tax.

118.58.2. Where there has been no determination of unpaid tax, the TOWNSHIP shall have the power, and its duty shall be, to hear and decide any application, to enter a credit in the amount of the overpayment to the account of the PERSON who paid the tax. Such application must be filed under Article VIII.

**§ 118.59. Enforcement.**

All taxes imposed by this Article together with interest and penalties prescribed herein, shall be recoverable as other debts of like character are recovered. Procedures followed shall be in accordance with Township Rules and Regulations adopted pursuant to Act 50 of 1998. **[Amended 5-03-99 by Ord. No. 1802, retroactive effective 1-1-99]**

**§ 118.60. Lien.**

The tax imposed by this Article 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 the TOWNSHIP, which lands, tenements, hereditaments, or interest therein, are described in or conveyed by or transferred by the DOCUMENT which is the subject of the tax imposed, assessed and levied by this Article, said lien to begin at the time when the tax under this Article is due and payable, and continue until discharge by payment, or in accordance with the law, and the TOWNSHIP Attorney is authorized to file a municipal or tax claim in the Court of Common Pleas of Allegheny County, in accordance with the provisions of the Municipal Claims and Liens Act of 1923, 53 P.S. §7101, *et seq.*, its supplements and amendments.

**§ 118.61. Proceeds of Judicial Sale.**

The tax herein imposed shall be fully paid, and have priority out of the proceeds of any judicial sale of REAL ESTATE before any other obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made, 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.

**§ 118.62. Payment Under Protest; Refunds.**

A PERSON shall have the right to pay any tax, interests or penalties required under this Article under written protest. When payment is made under written protest and the amount due upon determination, redetermination, review or upon judicial determination is less than the amount paid on account thereof, the TOWNSHIP shall refund the overpayment to the PERSON who paid

under protest. Interest shall be paid at the same rate as the Commonwealth is required to pay pursuant to Section 806.1 of the State Fiscal Code. Interest shall accrue from the date of overpayment until the date of resolution. No interest shall be allowed if an overpayment is refunded or applied against any other tax, interest or penalty due to the Township within 75 days after the last date prescribed for filing the tax return or report of liability due is filed, whichever is later. Overpayments of interest or penalties shall not bear any interest. The terms "date of overpayment" and "date of resolution" shall be those as defined in 53 P.S. § 8426. **[Amended 5-03-99 by Ord. No. 1802, retroactive effective 1-1-99]**

**§ 118.63. Criminal Prosecution.**

Any PERSON violating the provisions of this Article or who intentionally obstructs, impairs or perverts the administration of this Article or the regulations promulgated hereunder shall be subject to criminal prosecution to the full extent permitted by law.

**§ 118.64. Statement of Intent.**

The preambles set forth above are incorporated into the body of this Article by this reference as an expression of the legislative intent of the Commissioners in the consideration and enactment thereof. It is the Commissioners intent that the tax levied hereby will be collected and administered in the same manner, under the same procedures, at the same time, and by the same municipal employees as the tax presently imposed pursuant to Ordinance 1230, as amended by Ordinance 1760, Article I of this Chapter.

**ARTICLE VI**  
**Real Estate Tax**  
[Adopted 12-2-85 as Ord. No. 1175;  
Amended 1-7-91 by Ord. No. 1478; 3-02-98 by Ord. No. 1760;  
12-20-04 by Ord. No. 1927]

**§ 118.65.<sup>8</sup> Discounts, Face, and Penalty.**

118.65.1. Discount. For 1986, and each year thereafter, the discount period, the time during which the taxes can be paid at a two-percent discount from the full amount, shall extend from the tax bill date through sixty (60) days from the tax bill date.

118.65.2. Face. The face period, the time during which taxes can be paid at the face amount, shall extend from sixty-one (61) days from the tax bill date through ninety (90) days from the tax bill date.

118.65.3. Penalty. Any taxes paid more than ninety (90) days after the tax bill date shall be subject to a penalty charge of ten percent (10%).

**§ 118.66.<sup>9</sup> Liened Real Estate.** The Township or its designated agent shall lien any and all Township and School District properties for unpaid real estate taxes after the ending date of the face period.

**§ 118.67.<sup>9</sup> Interest Rate.** There shall be imposed an interest charge of ten percent (10%) per annum, simple interest, on the lien amount of the real estate tax, calculated from the date of the lien to the end of the month of the date of payment of the lien.

**§ 118.68.<sup>9</sup> Penalty Imposed.** There shall be imposed a penalty of ten percent (10%) on the lien amount of the real estate tax.

**§ 118.69.<sup>9</sup> Costs.** The property owner or their agent shall be responsible for all costs associated with the placement and the removal of liens.

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<sup>8</sup> Editor's Note: These section numbers were redesignated to correct a numbering error in the adoption of Ord. No. 1478.

## ARTICLE VII

**Property Tax Relief PROGRAM**

[Adopted 12-4-94 as Ord. No. 1648;

Amended 3-02-98 by Ord. No. 17; 10-01-01 by Ord. No. 1849

12-20-04 by Ord. No. 1927]

**§ 118.70. Property Tax Relief PROGRAM.**

## 118.70.1. Definitions.

ACT 77 - The Act of December 22, 1993, Public Law 529, NO. 77, codified as the ALLEGHENY REGIONAL ASSET DISTRICT LAW, 16 P.S., §§6101-B et seq.

ALLEGHENY REGIONAL ASSET DISTRICT LAW - See the definition of ACT 77 above.

BOARD OF PROPERTY ASSESSMENT - The Board of Property Assessment Appeals and Review of Allegheny COUNTY as set forth in Chapter 207 of the Administrative Code of Allegheny COUNTY.

COUNTY – The County of Allegheny.

ELIGIBLE TAXPAYER - A LONGTIME OWNER/OCCUPANT of a PRIMARY PERSONAL RESIDENCE in the COUNTY: (1) a single PERSON aged sixty (60) or older during a calendar year in which COUNTY real property taxes are due and payable and whose HOUSEHOLD INCOME does not exceed \$30,000.00 or (2) married PERSONS if either spouse is sixty (60) or older during a calendar year in which COUNTY real property taxes are due and payable whose combined HOUSEHOLD INCOME does not exceed \$30,000.00 or (3) an unmarried widow or widower aged fifty (50) or older during the calendar year in which COUNTY real property taxes are due and payable and whose HOUSEHOLD INCOME does not exceed \$30,000.00; or (4) a permanently disabled PERSON aged eighteen (18) or older during the calendar year in which COUNTY real property taxes are due and payable and whose HOUSEHOLD INCOME does not exceed \$30,000.00.

HOUSEHOLD INCOME - All INCOME received by an ELIGIBLE TAXPAYER while residing in his or her PRIMARY PERSONAL RESIDENCE during a calendar year.

INCOME - All income from whatever source derived, including but not limited to salaries, wages, dividends, interest, bonuses, commissions, income from self-employment. IRA distributions, alimony, support money, cash public assistance and relief, the gross amount of any pensions or annuities, including railroad retirement benefits for the calendar years prior to 1999, and fifty percent of railroad

retirement benefits for calendar years 1999 and thereafter, all benefits received under the Federal Social Security Act (except Medicare benefits) for calendar years prior to 1999, and fifty percent of all benefits received under the Federal Social Security Act (except medical benefits) for calendar years 1999 and thereafter, all benefits received under State Unemployment Insurance laws and Veteran's Disability payments, all interest received from the Federal or any state government or any instrumentality or political subdivision thereof, realized capital gains, net income from rentals, workers' compensation and the gross amount of loss of time insurance benefits, life insurance benefits and proceeds, except the first five thousand dollars (\$5,000.00) of the total death benefit payments, and gifts of cash or property, other than transfers by gift between members of a household, in excess of a total value of three hundred dollars (\$300.00), but shall not include surplus food or other relief in kind supplied by a governmental agency or property tax or rent rebate or inflation dividend.

**LONGTIME OWNER/OCCUPANT** – A property owner/occupant who, for at least ten (10) continuous years, has owned and occupied a dwelling place within the COUNTY as a PRIMARY PERSONAL RESIDENCE and domicile, or any PERSON who for at least five (5) years has owned and occupied the same dwelling as a PRIMARY PERSONAL RESIDENCE and domicile if that PERSON received assistance in the acquisition of the property as a part of a government or non-profit housing program.

**OFFICE OF PROPERTY ASSESSMENT** – The Office of Property Assessment of Allegheny COUNTY or such other entity performing the function of making valuations of real property for taxation purposes.

**PERSON** – A natural person.

**PRIMARY PERSONAL RESIDENCE** - The dwelling place and so much of the land or lots surrounding it as is reasonably necessary for use of the dwelling as a home, owned and occupied by a PERSON. The term primary personal residence shall also include premises occupied by reason of ownership in a cooperative housing corporation, mobile homes which are assessed as realty for local property tax purposes and the land upon which the mobile home is situated, and other similar living accommodations, as well as part of a multi-dwelling or multi-purposes building and a part of the land upon which it is built. It shall also include premises occupied by a PERSON and located on land owned by a non-profit incorporated association, of which the PERSON is a member, if the PERSON is required to pay a pro rata share of the property taxes levied against the association's land. It shall also include premises occupied by a PERSON if he is required by law to pay a property tax by reason of his or her ownership of rental (including a possessory interest) in the dwelling, the land, or both. An owner includes a PERSON in possession under a contract of sale, deed of trust, life estate, joint tenancy or tenancy in common or by reason of statutes of descent and distribution.

PROGRAM – See the definition of "SPECIAL TAX PROVISIONS" below.

SENIOR CITIZENS REBATE AND ASSISTANCE ACT - The Act of March 11, 1971, Public Law 104 No. 3, as amended, codified at 72 P.S. §§4751-1- et seq.

SPECIAL TAX PROVISIONS – A PROGRAM of tax relief for ELIGIBLE TAXPAYERS authorized under ACT 77, as amended, consisting of a discount on the payment of Allegheny COUNTY real property taxes.

TOWNSHIP – The Township of Upper St. Clair.

TOWNSHIP MANAGER – The Manager of the TOWNSHIP of Upper St. Clair, or his designated representative.

#### 118.70.2. SPECIAL TAX PROVISION.

118.70.2.1. All ELIGIBLE TAXPAYERS in the TOWNSHIP who are LONGTIME OWNER/OCCUPANTS of a PRIMARY PERSONAL RESIDENCE shall be deemed a separate class of subjects of taxation and shall be entitled to the benefit of the SPECIAL TAX PROVISIONS of this Article.

118.70.2.2. All ELIGIBLE TAXPAYERS in the TOWNSHIP who are LONGTIME OWNER/OCCUPANTS shall be entitled to apply for and receive a discount of ten percent (10%) on the gross or face amount of TOWNSHIP real property taxes then due and owing during a tax year on a PRIMARY PERSONAL RESIDENCE of an ELIGIBLE TAXPAYER(S); and this discount shall not be in derogation of the allowable two percent (2%) discount permitted to all taxpayers for early payment.

#### 118.70.3. Participation in the PROGRAM.

Any PERSON paying property taxes in the TOWNSHIP may apply to either the Office of the TOWNSHIP MANAGER or the OFFICE OF PROPERTY ASSESSMENT for certification as a participant in the PROGRAM authorized under this Article. In order to be eligible to participate in the PROGRAM, the PERSON must meet the following conditions:

118.70.3.1. The PERSON must be a single PERSON aged sixty (60) or older; or be married PERSONS with either spouse being sixty (60) years of age or older; or be an unmarried widow or widower aged fifty (50) years of age or older; or be a disabled PERSON aged eighteen (18) years of age or older; and,

118.70.3.2. The PERSON must be a LONGTIME OWNER/OCCUPANT; and

118.70.3.3. The property owned by the PERSON(S) must be the PRIMARY

## PERSONAL RESIDENCE of the PERSON(S)

118.70.3.4. The PERSON'S HOUSEHOLD INCOME must not exceed thirty thousand dollars (\$30,000.00).

## 118.70.4. Rules and Regulations.

The Office of the TOWNSHIP MANAGER shall promulgate rules and regulations for the administration of the PROGRAM established under this Article. Such rules and regulations shall include, but not be limited to: application procedures and deadlines; reasonable proof of HOUSEHOLD INCOME; proof of residence, ownership and occupancy of the PRIMARY PERSONAL RESIDENCE; provision of the tax bill or receipt for the TOWNSHIP real estate taxes owed or paid in connection with the PRIMARY PERSONAL RESIDENCE; and any other reasonable requirements and conditions as may be necessary to operate the property tax relief PROGRAM.

## 118.70.5. Appeals.

An appeal from any determination hereunder by the Office of the Treasurer or the OFFICE OF PROPERTY ASSESSMENT shall be in accordance with Pennsylvania Local Agency Law.

**ARTICLE VIII**  
**Video Programming Tax**  
**[Amended 3-02-98 by Ord. No. 1760; 12-20-04 by Ord. No. 1927]**

**§ 118.71. Definitions.**

The following words and phrases when used in this Article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**CABLE TELEVISION OPERATOR** - Any PERSON or group of PERSONS who provides cable service over a cable system and directly or through one or more affiliates owns an interest in such cable system or who otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system. The term does not include a provider of WIRELESS or DIRECT-TO-HOME SATELLITE TRANSMISSION service.

**DIRECT-TO-HOME SATELLITE TRANSMISSION** - The transmission, distribution or broadcasting of VIDEO PROGRAMMING or services by satellite directly to SUBSCRIBERS' premises without the use of ground receiving or distribution equipment, except at the site of the SUBSCRIBERS or in the uplink process to the satellite.

**GROSS RECEIPTS** - The amount charged for or received by VIDEO PROGRAMMERS from sales of VIDEO PROGRAMMING, and related charges for bad check and late payment charges, installation, connection, additional outlets, repair services, digital audio services, radio services, programming guides and equipment rental services upon which the local CABLE TELEVISION OPERATOR pays a franchise fee, the amount charged for or received by common carriers from sales of access to VIDEO PROGRAMMING, and related charges for bad check and late payment charges, installation, connection, additional outlets, repair services, digital audio services, radio services, programming guides and equipment rental services upon which the local CABLE TELEVISION OPERATOR pays a franchise fee, and the amount charged for or received by PERSONS from sales of access to VIDEO PROGRAMMING by any means of transmission, other than WIRELESS or DIRECT-TO-HOME SATELLITE TRANSMISSION, directly to SUBSCRIBERS with service addresses in the TOWNSHIP. GROSS RECEIPTS shall not include:

- (1) Amounts charged for or received by PERSONS from sales of telephone access or service that entitles the SUBSCRIBER to the privilege of interactive telephonic quality telecommunications with substantially all PERSONS having telephone or radio telephone stations constituting a part of a particular system or in a specified area;
- (2) Any revenues received by PERSONS providing access to VIDEO PROGRAMMING from VIDEO PROGRAMMERS for the transport of VIDEO PROGRAMMING to a SUBSCRIBER'S premises or access to the video dial tone network;

- (3) The tax imposed under this Article if the tax is shown as a separate line charge to SUBSCRIBERS;
- (4) Any other taxes, fees or surcharges on services furnished by PERSONS providing access to VIDEO PROGRAMMING or VIDEO PROGRAMMERS which are imposed on SUBSCRIBERS by the Commonwealth, cities, incorporated towns, townships, boroughs, counties or home rule municipalities pursuant to statute, ordinance, resolution or regulation and which are collected on behalf of the governmental unit by the provider of their services;
- (5) Any portion of a debt related to the sale of VIDEO PROGRAMMING or the sale of access to a video network the gross charges for which are not otherwise deductible or excludable, that have become worthless or uncollectible, as determined under applicable Federal Income Tax standards. If the portion of the debt deemed to be bad is subsequently paid, the VIDEO PROGRAMMER or PERSON shall report and pay the excise tax on that portion during the reporting period in which the payment is made;
- (6) Amounts received from retail sales of tangible personal property that provides access to VIDEO PROGRAMMING;
- (7) Amounts charged for or received by PERSONS from sales of VIDEO PROGRAMMING which is delivered to SUBSCRIBERS through a Satellite Master Antenna Television (SMATV) System; or
- (8) Amounts received by a common carrier from PERSONS for related charges for bad check and late payment charges, installation, connection, additional outlets, repair services, digital audio services, radio services, programming guides and equipment rental services that are resold by such PERSONS to the ultimate consumer.

PERSON - An individual, partnership, association, joint stock company, trust, corporation, government entity, limited liability company or any other entity.

SUBSCRIBER - The ultimate consumer of the VIDEO PROGRAMMING provided by VIDEO PROGRAMMERS over any means of transmission, other than WIRELESS or DIRECT-TO-HOME-SATELLITE TRANSMISSION.

The term does not include a VIDEO PROGRAMMER that purchases VIDEO DIAL TONE transport SERVICE to provide VIDEO PROGRAMMING over a video dial tone system.

TOWNSHIP - The Township of Upper St. Clair.

TOWNSHIP MANAGER - The Manager of the TOWNSHIP.

VIDEO DIAL TONE SERVICE - A common carrier service for the transport of VIDEO PROGRAMMING to SUBSCRIBERS.

VIDEO PROGRAMMER - An individual, partnership, association, joint stock company, trust, corporation, governmental entity, limited liability company or any other entity that provides VIDEO PROGRAMMING to SUBSCRIBERS.

VIDEO PROGRAMMING - Video or information programming, whether in digital or analog format, that is provided by a cable operator or generally considered comparable to programming provided by a CABLE TELEVISION OPERATOR and upon which such CABLE TELEVISION OPERATOR pays a franchise fee. VIDEO PROGRAMMING does not include on-line, interactive information services to the extent that access to such services is accomplished via a dial-up or private telephone line or via WIRELESS or DIRECT-TO-HOME SATELLITE TRANSMISSION.

WIRELESS TRANSMISSION - The distribution of VIDEO PROGRAMMING using radio communications, including, but not limited to, terrestrial-based radio systems.

**§ 118.72. Imposition of tax on gross receipts of VIDEO PROGRAMMING providers.**

118.72.1. Authority. Under by virtue of authority of the Video Programming Municipal Tax Authorization Act, Act 37 of 1995 (72 P.S. §§ 6171 *et seq.*), a VIDEO PROGRAMMING tax is hereby imposed on and from, respectively, any PERSON who sells VIDEO PROGRAMMING to SUBSCRIBERS who are located within this TOWNSHIP by any means of transmission, other than WIRELESS or DIRECT-TO-HOME SATELLITE TRANSMISSION, or who provides such SUBSCRIBERS with access to VIDEO PROGRAMMING by any means of transmission, other than WIRELESS or DIRECT-TO-HOME SATELLITE TRANSMISSION, and who is not otherwise subject to Federally authorized or permitted local fees or taxes on the GROSS RECEIPTS received from the provision of cable television service or VIDEO PROGRAMMING services to customers in the TOWNSHIP. The tax imposed by the TOWNSHIP is imposed only on the GROSS RECEIPTS of such PERSONS from sales of VIDEO PROGRAMMING or sales of access to VIDEO PROGRAMMING directly to SUBSCRIBERS who are located within the TOWNSHIP.

118.72.2. Tax Rate. The tax rate under this Article shall be the franchise fee rate set in the agreement between the local cable television operator and the TOWNSHIP. In no event shall the rate imposed under this Article exceed 5%.

118.72.3. Calculation of tax. The tax authorized in this Article shall be determined by multiplying the tax rate as set forth in § 118.72.2, by the GROSS RECEIPTS of VIDEO

PROGRAMMERS from sales of VIDEO PROGRAMMING or of PERSONS from sales of access to VIDEO PROGRAMMING, of common carriers from sales of access to VIDEO PROGRAMMING, by any means of transmission, other than WIRELESS or DIRECT-TO-HOME SATELLITE TRANSMISSION, directly to SUBSCRIBERS who are located in the TOWNSHIP.

118.72.4. Election. Any PERSON subject to tax under this Article may elect at any time to pass through to SUBSCRIBERS as a separate itemized line charge on the SUBSCRIBER'S bill the tax imposed under this Article.

118.72.5. Penalty. A penalty of an amount equal to 10% of the taxes due, including all delinquent taxes due under this Article, shall be added to the tax levied under this Article for failure to pay the tax by the quarterly due dates set forth in this section.

118.72.6. Due dates. The tax imposed under this Article shall be paid to the TOWNSHIP by each PERSON quarterly on or before April 30, July 31, October 31 and January 31 and shall be calculated based on the GROSS RECEIPTS of each PERSON during the three months prior to the month of payment.

Any payment of tax shall be considered as timely made if the payment received by the TOWNSHIP is postmarked by the United States Postal Service on or prior to the final day on which payment is to be received.

### § 118.73. Exemption from certain taxes.

GROSS RECEIPTS are defined in this Article and subject to the tax imposed by this Article, as well as any revenues received by a PERSON providing access to VIDEO PROGRAMMING from VIDEO PROGRAMMERS for the transport of VIDEO PROGRAMMING to a SUBSCRIBER'S premises or from VIDEO PROGRAMMERS for access to the video dial tone network, shall not be subject to any tax under:

118.73.1. Article XI of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971 (72 P.S. § 8101 *et seq.*).

118.73.2. The act of December 31, 1965 (P.L. 1257, No. 511), known as The Local Tax Enabling Act (53 P.S. § 6901 *et seq.*), or any other local tax or fee imposed on the receipts of PERSONS providing VIDEO PROGRAMMING or access to VIDEO PROGRAMMING to SUBSCRIBERS who are located within the TOWNSHIP.

### § 118.74. Tax credits.

118.74.1. Credit for interstate transactions. Any PERSON subject to the tax imposed under this Article shall be entitled to a credit against the tax imposed by this Article equal in amount to any similar tax on GROSS RECEIPTS, other than a generally applicable sales or use tax or corporate income tax, that the PERSON has paid to another state or government entity thereof under

a lawful requirement of such state or government entity on sales by the person of the same VIDEO PROGRAMMING or sales of access to such VIDEO PROGRAMMING to SUBSCRIBERS located within the TOWNSHIP.

118.74.2. Credit for taxes paid under any franchise or similar fees. Any PERSON subject to the tax imposed under this Article shall be entitled to a credit against the tax imposed by this Article equal in amount to any fees on GROSS RECEIPTS that the PERSON has paid under any franchise fee or similar fee authorized or permitted by Federal, State or local law or imposed by ordinance in the TOWNSHIP or agreed to pursuant to a written franchise agreement between the PERSON and the municipality, with respect to any revenues received by a PERSON or VIDEO PROGRAMMER from SUBSCRIBERS for access to the PERSON'S video network or for VIDEO PROGRAMMING or from VIDEO PROGRAMMERS for the transport of VIDEO PROGRAMMING to a SUBSCRIBER'S premises or for access to a video network.

### **§ 118.75. Procedures and Regulations.**

118.75.1. Procedures. A PERSON may be audited by the TOWNSHIP MANAGER, provided, however, that any such dispute or controversy that results from such audit or imposition of tax under this Article shall be contested and resolved in accordance with a uniform set of procedures, rules and regulations, applicable to all municipalities, that shall be promulgated by the Department of Revenue. The TOWNSHIP shall provide the VIDEO PROGRAMMERS and PERSONS providing access to VIDEO PROGRAMMING with:

118.75.1.1. The rate that is lawfully imposed by the TOWNSHIP under this Article.

118.75.1.2. A list of the "zip plus 4's" or a comparable list of addresses located in the TOWNSHIP which will enable PERSONS to identify the SUBSCRIBERS located in the TOWNSHIP.

118.75.1.3. A copy of this Article and any amendments thereto within 30 days after enactment.

118.75.2. Enforcement. The TOWNSHIP MANAGER may enforce this Article in accordance with the Video Programming Municipal Tax Authorization Act, Act 37 of 1995 (72 P.S. §§ 6171 *et seq.*).

118.75.2.1. The TOWNSHIP MANAGER may sue for the recovery of taxes due and payable under this Article.

118.75.2.2. Any PERSON who violates any of the provisions of this Article shall be subject to the provisions of Chapter 5, Enforcement of Ordinances; Penalties. The penalties imposed under this section shall be in addition to any other penalty imposed by any other section of this Article.

**§ 118.76. Exemption for industrial satellite services.**

Nothing in this Article applies to industrial satellite services of any kind.

**ARTICLE IX****Interim Tax Assessment****(Adopted 7-3-00 as Ord. No. 1826; 12-20-04 by Ord. No. 1927)****§ 118.77. Interim Tax Assessment.**

Whenever there is substantial completion of the construction of a building, improvement to a building or other improvement made to real property (hereinafter collectively referred to as an "Addition") after the first day of any fiscal year of the TOWNSHIP and the Addition is not included in the tax duplicate of the TOWNSHIP of Upper St. Clair, the TOWNSHIP shall request the Allegheny COUNTY BOARD OF PROPERTY ASSESSMENT, Appeal and Review to inspect and reassess the real property upon which the Addition has been made, subject to the right of appeal and adjustment as provided under applicable laws of the Commonwealth of Pennsylvania. The Addition shall then be added to the Tax Duplicate of the TOWNSHIP and the real property shall be taxable for TOWNSHIP purposes at the reassessed value for that proportionate part of the fiscal year of the TOWNSHIP remaining after the substantial completion of the Addition. Any addition made during the month shall be computed as having been made on the first of the month. A certified copy of the revised Tax Duplicate shall be furnished to the TOWNSHIP MANAGER. The TOWNSHIP MANAGER or his designated representative shall notify the owner of the real property of the taxes due the TOWNSHIP. **[Added 7-3-00 by Ord. No. 1826]**