TABLED IN SEVENTH ORDER ON DECEMBER 7, 2021

FILE OF THE COUNCIL NO. 95

2021

#### AN ORDINANCE

REPEALING (1) FILE OF THE COUNCIL NO. 147, 1986, ENTITLED "AN ORDINANCE PROVIDING FOR THE GENERAL REVENUE BY IMPOSING A TAX AT THE RATE OF TWO (2) MILLS UPON THE PRIVILEGE OF OPERATING OR CONDUCTING BUSINESS IN THE CITY OF SCRANTON AS MEASURED BY THE GROSS RECEIPTS THEREFROM; REQUIRING REGISTRATION AND PAYMENT THE TAX AS CONDITION TO THE CONDUCTING OF SUCH BUSINESS: PROVIDING FOR THE LEVY AND COLLECTION OF SUCH TAX; PRESCRIBING SUCH REQUIREMENTS FOR RETURNS AND RECORDS; CONFERRING POWERS AND DUTIES UPON THE TAX COLLECTOR; AND IMPOSING PENALTIES" AND (2) FILE OF THE COUNCIL NO. 98, 1976, AS AMENDED, AND "IMPOSING A MERCANTILE LICENSE TAX OF 2 MILLS FOR THE YEAR 1987 AND ANNUALLY THEREAFTER UPON PERSONS ENGAGING IN CERTAIN OCCUPATIONS AND BUSINESSES THEREIN; PROVIDING FOR ITS LEVY AND COLLECTION AND FOR THE ISSUANCE OF MERCANTILE LICENSES; CONFERRING AND IMPOSING POWERS AND DUTIES UPON THE TAX COLLECTOR OF THE CITY OF SCRANTON; AND IMPOSING PENALTIES EFFECTIVE JANUARY 1, 1987" AND ADOPTING AN ORDINANCE FOR THE GENERAL REVENUE BY IMPOSING A PAYROLL TAX ON THE AMOUNT OF PAYROLL EXPENSE GENERATED AS A RESULT OF A BUSINESS CONDUCTING BUSINESS ACTIVITY WITHIN THE CITY AND TO BE LEVIED AT A RATE OF .2787%; REQUIRING REGISTRATION AND PAYMENT OF THE TAX AS CONDITION TO THE CONDUCTING OF SUCH BUSINESS; PROVIDING FOR THE LEVY AND COLLECTION OF SUCH TAX; PRESCRIBING SUCH REQUIREMENTS FOR RETURNS AND RECORDS; CONFERRING POWERS AND DUTIES UPON THE TAX COLLECTOR; AND IMPOSING PENALTIES.

WHEREAS, pursuant to 53 P.S. §11701.123(d)(2), on August 19, 2020, the City of Scranton Petitioned the Lackawanna County Court of Common Pleas requesting the court enter an order granting the City of Scranton permission to implement a Payroll Preparation Tax; and

WHEREAS, on November 8, 2020, the Lackawanna County Court of Common Pleas entered an order granting the City's petition, thus allowing the City to implement a Payroll Preparation Tax at the specified rate of .2787% (attached hereto as Exhibit "A" is a true and correct copy of the court's November 8, 2020 order); and

WHEREAS, the City cannot impose a business privilege tax and mercantile tax while imposing a Payroll Preparation tax which requires the repeal necessitating the need for the City to repeal File of the Council No. 147, 1986, entitled "An Ordinance Providing for the General Revenue by Imposing a Tax at the Rate of Two (2) Mills Upon the Privilege of Operating or Conducting Business in the City of Scranton as Measured by the Gross Receipts Therefrom; Requiring Registration and Payment of the Tax as Condition to the Conducting of Such Business; Providing for the Levy and Collection of Such Tax; Prescribing Such Requirements for Returns and Records; Conferring Powers and Duties Upon The Tax Collector; and Imposing Penalties,"

Introduced in Council on above date and referred to Committee on Etnance

anion, PA December 14, 2021 nmittee on Finance reports saugrably on the

SIXTH ORDER: November 30, 2021

CERTIFIED COPY

City Clerk

as well as the repeal of File of the Council No. 98, 1976, as Amended, and "Imposing a Mercantile License, Tax of 2 Mills For the Year 1987 and Annually Thereafter Upon Persons Engaging In Certain Occupations and Businesses Therein"; and

WHEREAS, the City of Scranton desires to replace the Business Privilege Tax and the Mercantile Tax with a Payroll Preparation Tax levied at a rate of .2787%.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SCRANTON that the following will be and ordained to wit "Payroll Tax" for the City of Scranton.

### PAYROLL TAX

### SECTION 1. DEFINITIONS.

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

- BUSINESS means any activity, enterprise, profession, trade or undertaking of any nature conducted or engaged in, or ordinarily conducted or engaged in, with the object of gain, benefit or advantages, whether direct or indirect, to the taxpayer or to another or others. The term shall include subsidiary or independent entities which conduct operations for the benefit of others and at no profit to themselves, nonprofit businesses, and trade associations. A person shall be deemed to be conducting business within the City who engages, hires, employs or contracts with one (1) or more individuals as employees or is self-employed and, in addition, does at least one (1) of the following: (1) maintains a fixed place of business within the City; (2) owns or leases real property within the City for purposes of such business; (3) maintains a stock of tangible, personal property in the City for sale in the ordinary course of business; (4) conducts continuous solicitation within the City related to such business; or (5) utilizes the streets of the City in connection with the operation of such business, other than for the mere transportation from a site outside the City, through the City, to a destination outside of the City. A person shall be deemed to be engaged in business who, in return for rental income, rents, leases or hires real or personal property to others. A person shall not be deemed to be engaged in business solely by reason of the receipt of income from passive investments for which no services were rendered.
- (b) CHARITY means a charitable organization that qualifies for tax exemption pursuant to the act of November 26, 1997 (P.L. 508, No 55), known as the "Institutions of Purely Public Charity Act" 10 P.S. § 371, et seq.
- (c) COMPENSATION means salaries, wages, commissions, bonuses, net earnings and incentive payments, whether based on profit or otherwise, fees, tips and any other form of remuneration earned for services rendered, whether paid directly or through an agent, and whether in cash or in property or the right to receive property.
- (d) EMPLOYEE means any individual in the service of an employer, under an appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. In addition, for purposes of this tax, and irrespective of the common law tests for determining the existence of an independent contractor relationship, an individual performing work or service for compensation shall be deemed to be an employee of the person for whom the work or service is performed unless: (1) such individual has been and will continue to be free from control or direction over the performance of such work or service, both under his/her appointment of contract of hire or apprenticeship; (2) such work or service is either outside the usual course of the business of the person for which such service is performed; or, (3) such individual is customarily engaged in an independently established trade, occupation, business or profession.

- (e) EMPLOYER means any person conducting business activity within the City, except for a governmental entity.
- (f) INTERNAL REVENUE CODE means the Internal Revenue Code of 1986 (P.L. No. 99-514), 26 U.S.C. § 1 et seq., as amended.
- (g) PAYROLL EXPENSE OR AMOUNTS means all compensation earned by an employee or by a self-employed individual.
- (h) PERSON means a corporation, partnership, business trust, other association, estate, trust, foundation or natural person.
- (i) PROFITS means a share of net income earned for services rendered from a partnership, a limited liability company, a business trust or S corporation, after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with accepted accounting principles and practices, and including, but not limited to, any amount treated as net earnings from self-employment for services rendered.
- (j) TAX YEAR means a twelve-month period beginning on January 1 and ending on December 31.
- (k) TEMPORARY SEASONAL OR ITINERANT BUSINESS shall mean an employer whose presence in the City is of a duration of one hundred twenty (120) days or less.

# SECTION 2. LEVY AND RATE.

For general revenue purposes a tax is hereby levied at the rate of .2787 percent on the amount of payroll expense generated as a result of an employer conducting business activity within the City.

### SECTION 3. COMPUTATION OF TAX.

- (a) For purposes of computation of the tax imposed in Section 2, above, the payroll amount attributable to the City shall be determined by applying an apportionment factor to total payroll expense based on that portion of payroll which the total number of days an employee, partner, member, shareholder or other individual works within the City bears to the total number of days such employee or person works both within and outside the City.
- (b) Tax base. The tax shall be computed on the payroll expense of the previous quarter attributable to the City.
- (c) An employer, which conducts business in the City on a temporary, seasonal or itinerant basis, shall calculate the tax on the total compensation earned while in the City.
- (d) A charitable organization, as defined above, shall calculate the tax that would otherwise be attributable to the City, but shall only pay the tax on that portion of its payroll expense attributable to business activity for which a tax may be imposed pursuant to Section 511 of the Internal Revenue Code. If the charity has purchased or is operating branches, affiliates, subsidiaries or other business entities that do not independently meet the standards of the "Institutions of Purely Public Charity Act", the tax shall be paid on the payroll attributable to such for-profit branches, affiliates or subsidiaries, whether or not the employees are leased or placed under the auspices of the charity's umbrella or parent organization.

### SECTION 4. PAYMENTS.

An employer subject to the tax shall make a return and shall pay the tax quarterly at such time or times and in such manner as provided in Section 6.

# SECTION 5. REGISTRATION.

Registration. Every person having an office, factory, workshop, branch, warehouse, or other place of business, including banks, schools, hospitals, non-profit, and trade associations,

located in the City or outside the City, who, during any tax year, performs work or renders services in whole or in part in the City, who has not previously registered, shall within fifteen (15) days, register with the Treasurer its name and address and shall provide such other information as the Treasurer may require.

### SECTION 6. RETURNS.

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

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

# SECTION 7. PENALTIES AND INTEREST.

If for any reason the tax is not paid when due, interest at the rate of six (6) percent per annum on the amount of said tax and an additional penalty of one (1) percent of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid shall be added and collected.

In addition to any other penalties or enforcement proceedings provided for by ordinance for the collection and enforcement of taxes:

- (1) Any employer who willfully makes any false or untrue statement on the employer's return shall be guilty of a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not more than two thousand dollars (\$2,000.00) or to a term of imprisonment of not more than two years, or both;
- (2) Any employer who willfully fails or refuses to file a return required by this chapter shall be guilty of a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than one thousand dollars (\$1,000.00) or to a term of imprisonment of not more than one (1) year, or both; and
- (3) Any person who willfully fails or refuses to appear before the Treasurer or his agent in person with the employer's books, records or accounts for examination when required under the provisions of this Title to do so, or who willfully refuses to permit inspection of the books, records or accounts of any employer in the person's custody or control when the right to make such inspection by the Treasurer or his agent is requested, shall be guilty of a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than five hundred dollars (\$500.00) or to a term of imprisonment of not more than six (6) months, or both.

### SECTION 8. REPEALS.

All ordinances and parts of ordinances are repealed to the extent they are inconsistent with this ordinance including FILE OF THE COUNCIL NO. 147, 1986 and FILE OF THE COUNCIL NO. 98, 1976.

SECTION 9. Any Ordinance or part of an Ordinance conflicting with the provisions of this Ordinance shall be subordinate to this Ordinance to the extent of such conflict, and the language contained in the Ordinance shall control.

SECTION 10. If any section, clause, provision or portion of this Ordinance shall be held invalid or unconstitutional by any Court of competent jurisdiction, such decision shall not affect

any other section, clause, provision or portion of this ordinance so long as it remains legally enforceable minus the invalid portion. The City reserves the right to amend this ordinance or any portion thereof from time to time as it shall deem advisable in the best interests of the promotion of the purposes and intent of this ordinance, and the effective administration thereof.

SECTION 11. This Ordinance shall be effective January 1, 2022.

SECTION 12. This Ordinance is enacted by the Council of the City of Scranton under the authority of the Act of Legislature, April 13, 1972, Act No. 62, known as the "Home Rule Charter and Optional Plans Law", and any other applicable law arising under the laws of the State of Pennsylvania.

Passed by the Council
December 14, 2021

Receiving the Affirmative votes of Council Persons Schuster, McAndrew, Rothchild, Donahue, Gaughan

Negative NON

Davidas 202

Mayo

City Clerk

### **CAPTION**

• What Department is this legislation originating from? Where did the initiative for this legislation originate?

Department of Business Administration

Summary and Facts of the legislation

The legislation authorizes the conversion of Business Privilege and Mercantile Taxes to the Payroll Preparation Tax. Presently, the City receives annual revenue from Business Privilege and Mercantile Taxes levied on businesses operating within City limits. The Business Privilege & Mercantile Tax (BPM) was born out of the Pennsylvania Local Tax Enabling Act of 1965. BPM taxes are based on gross receipts of retailers, wholesalers, and some services. Businesses that fall under the scope of BPM include retail businesses; exempt businesses include manufacturers and financial firms. The City presently collects approximately \$2.5 million in annual revenue. Payment is submitted on a quarterly basis. Approximately 200 businesses, excluding non-profit entities, are currently paying BPM taxes.

As authorized by 53 Pa. C.S.A. § 11701.123 of the Municipalities Financial Recovery Act (colloquially known as "Act 47"), the City and School District, respectively, are authorized to convert BPM taxes to Payroll Preparation Taxes for the 2022 calendar year. This tax will be levied on a percentage of a business's total payroll and would broaden the tax base to include manufacturers and financial firms, who were previously exempt. The rate of taxation has been approved by the Lackawanna County Court of Common Pleas and is budgeted to remain revenue neutral with prior year BPM tax revenue.

- Purpose please include the following in the explanation:
  - What does the legislation do what are the specific goals/tasks the legislation seek to accomplish?

The legislation replaces the archaic Business Privilege and Mercantile Taxes with the more progressive Payroll Preparation Tax.

What are the benefits of doing this/Down-side of doing this?

Benefits - The City anticipates improved collections resulting from the conversion.

Downside -N/A

o How does this legislation relate to the City's Vision/Mission/Priorities

The legislation will promote equity in fairness in the taxation of its businesses, as well as improve collections of business-based taxes.

• Financial Impact – please include the following in the explanation:

# o Cost (initial and ongoing)

The conversion will remain revenue neutral in accordance with applicable law.

### o Benefits (initial and ongoing)

The Payroll Preparation Tax will improve collectability, broaden the tax base, and promote fairness in taxation.

Funding Sources - please include the following in the explanation:
 If transferring funds, please ensure specific accounts are noted; if appropriating funds from a grant, list the agency awarding the grant.

N/A

# • Priority Status/Deadlines, if any

The Ordinance must be approved by Council prior to the City's exit from Distressed Status pursuant to Act 47, tentatively scheduled for January of 2022.

### • Why should the Council unanimously support this legislation?

To promote equity and fairness in taxation of City-based businesses, and to improve collections of business taxes.

• Include any other pertinent details and/or relevant information that the Council should be aware of:

See attached.

IN RE: CITY OF SCRANTON REQUEST TO TRANSITION TO PAYROLL PREPARATION TAX IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY

2020 CV 3260

**ORDER** 

AND NOW, this day of WEMBER 2020 upon consideration of the GIF of Scranton's Petition for Approval to Introduce Payroll Preparation Tax Ordinance and Approval at Which Tax Will Be Levied, with no opposition filed thereto, and testimony having been heard on November 30, 2020, it is hereby ORDERED and DECREED that the City of Scranton's Petition is hereby GRANTED.

As stated by Petitioner, "[ a]pproval of this petition would *not* implement the payroll preparation tax; rather, it would permit the City to introduce an ordinance for City Council's consideration that would transition the City from levying a business privilege tax and mercantile tax to a payroll preparation tax at the rate approved by this Honorable Court. (see Petition for Approval to Introduce Payroll Preparation Tax Ordinance and Approve Rate at Which Tax Will Be Levied at ,¶ 20) (emphasis added) Pursuant to the Municipalities Financial Recovery Act, 53 P.S. §110701.101 et seq., the City of Scranton, having duly obtained an order of court, may proceed by way of its executive and legislative authorities to introduce and publicly deliberate an ordinance that would see the City of Scranton switch to the Business Privilege Tax and Mercantile Tax to a Payroll Preparation Tax. If such a switch in taxing is implemented, the rate the Payroll Preparation Tax shall be .2787%.

BY THE COURT:

Hon. Thomas J. Munley.

**EXHIBIT** 



November 16, 2021

To the Honorable Council Of the City of Scranton Municipal Building Scranton, PA 18503

Dear Honorable Council Members:

ATTACHED IS AN ORDINANCE REPEALING (1) FILE OF THE COUNCIL NO. 147, 1986, ENTITLED "AN ORDINANCE PROVIDING FOR THE GENERAL REVENUE BY IMPOSING A TAX AT THE RATE OF TWO (2) MILLS UPON THE PRIVILEGE OF OPERATING OR CONDUCTING BUSINESS IN THE CITY OF SCRANTON AS MEASURED BY THE GROSS RECEIPTS THEREFROM; REQUIRING REGISTRATION AND PAYMENT OF THE TAX AS CONDITION TO THE CONDUCTING OF SUCH BUSINESS; PROVIDING FOR THE LEVY AND COLLECTION OF SUCH TAX; PRESCRIBING SUCH REQUIREMENTS FOR RETURNS AND RECORDS; CONFERRING POWERS AND DUTIES UPON THE TAX COLLECTOR; AND IMPOSING PENALTIES" AND (2) FILE OF THE COUNCIL NO. 98, 1976, AS AMENDED, AND "IMPOSING A MERCANTILE LICENSE TAX OF 2 MILLS FOR THE YEAR 1987 AND ANNUALLY THEREAFTER UPON PERSONS ENGAGING IN CERTAIN OCCUPATIONS AND BUSINESSES THEREIN; PROVIDING FOR ITS LEVY AND COLLECTION AND FOR THE ISSUANCE OF MERCANTILE LICENSES; CONFERRING AND IMPOSING POWERS AND DUTIES UPON THE TAX COLLECTOR OF THE CITY OF SCRANTON; AND IMPOSING PENALTIES EFFECTIVE JANUARY 1, 1987" AND ADOPTING AN ORDINANCE FOR THE GENERAL REVENUE BY IMPOSING A PAYROLL TAX ON THE AMOUNT OF PAYROLL EXPENSE GENERATED AS A RESULT OF A BUSINESS CONDUCTING BUSINESS ACTIVITY WITHIN THE CITY AND TO BE LEVIED AT A RATE OF .2787%; REQUIRING REGISTRATION AND PAYMENT OF THE TAX AS CONDITION TO THE CONDUCTING OF SUCH BUSINESS; PROVIDING FOR THE LEVY AND COLLECTION OF SUCH TAX; PRESCRIBING SUCH REQUIREMENTS FOR RETURNS AND RECORDS; CONFERRING POWERS AND DUTIES UPON THE TAX COLLECTOR; AND IMPOSING PENALTIES.

RECEIVED

OFFICE OF CITY
COUNCIL/CITY CLERK

Very truly yours,

Joseph A. O'Brien, Esquire City Solicitor

#### The Scranton Times (Under act P.L. 877 No 160. July 9,1976)

Commonwealth of Pennsylvania, County of Lackawanna

CARL DEELEY CITY OF SCRANTON 340 N WASHINGTON AVE **SCRANTON PA 18503** 



Account # 5194 Order # 82591531 Ad Price: 478.65

OFFICE OF CITY COUNCILICITY CLERK

#### PAYROLL PREP ORDINANCE

Sharon Venturi

Being duly sworn according to law deposes and says that (s)he is Billing clerk for The Scranton Times, owner and publisher of The Scranton Times, a newspaper of general circulation, established in 1870, published in the city of Scranton, county and state aforesaid, and that the printed notice or publication hereto attached is exactly as printed in the regular editions of the said newspaper on the following dates:

### 11/20/2021

Affiant further deposes and says that neither the affiant nor The Scranton Times is interested in the subject matter of the afogesaid notice or advertisement and that all allegations in the foregoing statement as time, place and character or publication are true SHUON VIMU

Sworn and subscribed to before me this 19th day of November A.D., 2021

(Notary Public)

Commonwealth of Pennsylvania - Notary Seal Kathleen Weaver, Notary Public Lackawanna County My commission expires June 14, 2025 Commission number 1314506

Member, Pennsylvania Association of Notarios

#### **PUBLIC NOTICE** CITY OF SCRANTON

Notice is hereby given that the Council of the City of Scranton (City Council) will meet on November 23, 2021 at 6:30 p.m. and will introduce 2021 at 6:30 p.m. and was made the following legislation relating to a payroll preparation tax (the ordinance"):

#### AN ORDINANCE

REPEALING (1) FILE OF THE COUNCIL NO. 147, 1986, ENTITLED "AN ORDINANCE PROVIDING FOR THE GENERAL REVENUE BY IMPOSING A TAX AT THE RATE OF TWO (2) MILLS UPON THE PRIVILEGE OF OPERATING OR CONDUCTING BUSINESS IN THE CITY OF SCRANTON AS MEASURED BY THE GROSS RECEIPTS THEREFROM; REQUIRING REGISTRATION AND PAYMENT OF THE TAX AS CONDITION TO THE CONDUCTING OF SUCH BUSINESS; PROVIDING FOR THE LEVY AND COLLECTION OF SUCH TAX; PRESCRIBING SUCH REQUIREMENTS FOR RETURNS AND RECORDS; CONFERRING POWERS AND DUTIES UPON THE TAX COLLECTOR; AND IMPOSING PENALTIES!" AND DUTIES UPON THE TAX COL-LECTOR; AND IMPOSING PENAL-TIES" AND (2) FILE OF THE COUN-CIL NO. 98, 1976, AS AMENDED, AND "IMPOSING A MERCANTLE LICENSE TAX OF 2 MILLS FOR THE YEAR 1987 AND ANNUALLY THEREAFTER UPON PERSONS EN-GAGING IN CERTAIN OCCUPA-TIONS AND BUSINESSES THEREIN; PROVIDING FOR ITS LEVY AND TIONS AND BUSINESSES HEREIN;
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An electronic copy of the tax ordinance is available at

https://scrantonpa.gov/

city-council meetings/
A hard copy of the tax ordinance
may be obtained by contacting the
office of City Council at telephone
number 570-348-4113. Members of number 570-348-4113. Members of the public will be afforded the opportunity to offer public comment regarding the tax ordinance at the regularly scheduled City Council Meetings held on November 23 and 30, 2021 and December 7, 2021 at 6:30 p.m. A final vote of the tax ordinance by City Council is expected to take place at City Council's December 7, 2021 public meeting. All City Council Meetings will take place in the Municipal Building located at 340 N. Washington Avenue in Scranton.

BY: FRANK J. VOLDENBERG SCRANTON, PENNSYLVANIA