

**STATE COLLEGE AREA SCHOOL DISTRICT****Office of Finance and Operations**

240 VILLA CREST DRIVE • STATE COLLEGE PENNSYLVANIA • 16801

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To: Robert J. O'Donnell, Superintendent
From: Randy L. Brown and Donna Watson
Date: November 9, 2017
Subject: Local Taxing Authority Agreement Ratification

Prior to Act 32 of 2008, the Borough of State College Tax Office provided tax collection services for the Local Services Tax (LST) for the municipalities and public school facilities located within the confines of the State College Area School District. As Centre County member municipalities and school districts (Taxing Authorities) transitioned in compliance with Act 32, the Borough's Tax Office was retained to collect the Local Services Tax for all members of Centre County for which the tax was levied. This practice remains in effect today as the most cost conscious and efficient manner available to collect Local Services Taxes. The annual proceeds of this tax are approximately \$375,000 for the State College Area School District. Collection fees remain unchanged at 3% of collections, or approximately \$11,250 for the 2017-2018 year.

The district has been presented with a Tax Collection Agreement from the Borough of State College that if ratified, would continue this partnership through December 31, 2020 with the option to extend, on an annual basis, through December 31, 2022. The enclosed agreement has been reviewed by administration, the district's solicitor and insurance broker for content, form and potential liability. All have found the terms to be acceptable.

Given the above considerations, it is the recommendation of administration that the enclosed agreement be signed and the partnership with Borough of State College continued. In doing so, the district can continue what has been a very productive relationship while collecting Local Services Taxes in the most efficient and fiscally responsible manner possible.

Tax Collection Agreement

This Agreement is made January 1, 2018 (“**Effective Date**”) between the State College Area School District (“**Taxing Authority**”), and the Borough of State College, a Taxing Authority of the Commonwealth of Pennsylvania (“**Collector**”).

Background. Act 7 of 2007 amends the Local Tax Enabling Act (“**LTEA**”), Act 511 of 1965, 53 P.S. § 6924.101 et seq. 01 authorizing Municipalities and School Districts to impose the Local Service Taxes. These Municipalities and School Districts are referred to in this Agreement as “**Taxing Authorities**.” The Local Services Tax will be collected on persons employed within the Taxing Authority. This Tax Collection Agreement has designated the Borough of State College as the “Collector” of the Taxing Authority’s Local Services Taxes. The ordinances of the Taxing Authority that levy or otherwise relate to the taxes to be collect by Collector are referred to in this Agreement as the “**Enactments**.”

Intending to be legally bound, and in consideration of the mutual covenants contained in this Agreement and other valuable consideration, the parties agree as follows:

Section 1. Designation as Tax Collector.

- a. **Exclusive Tax Collector.** Except as otherwise expressly stated in this Agreement, the Taxing Authority designates Collector and its appropriate office as the exclusive collector of tax from individuals, entities, and employers required to pay or withhold tax (“**Taxpayers**”).
- b. **Commencement Date.** Collector will commence tax collection under this Agreement on the Effective Date shown above.

Section 2. Tax. The matters for which Collector is appointed as the exclusive collector is:

- a. **Tax Types.**
 1. **Local Services Tax.** All taxes imposed by Taxing Authority on residents or on nonresidents working within the Municipality.
- b. **Fines, Penalties, and Interest.** Collector will also collect all fines, penalties, and interest paid by a Taxpayer related to any of the taxes specified in this Section 2.
- c. **Tax Definition.** The taxes, fines, penalties, and interest specified in this Section 2 are collectively referred to in this Agreement as the “Tax.”

- d. **Delinquent Tax.** The Tax for which Collector is the appointed collector includes tax currently owed and Delinquent Tax as defined below, except as otherwise expressly stated in this Agreement.
1. The Borough of State College has been the designated exclusive collector for prior years and is hereby charged with all delinquency enforcement actions.
 2. Delinquent amounts for tax years that become due after the commencement date shall be collected by the Collector. Unless otherwise directed by the Taxing Authority, following the end of the term of this agreement, Collector shall continue to be responsible for the collection of all amounts becoming delinquent between the commencement date and the end of the term of this Agreement, whether the end of the term occurs by the expiration of time as set forth in this agreement or by the unilateral or mutual act(s) of the parties to this agreement as permitted by this agreement.
- e. **Related Amounts.** Collection costs, investment earnings, and other miscellaneous amounts related to or derived from Tax and owed by Taxpayers or other tax collectors to Taxing Authorities or Collector are referred to in this Agreement as “**Related Amounts.**”
- f. **Fee(s)** (Detailed on Exhibit A). Fee or fees applicable as of the Effective Date of this Agreement are authorized in the amounts and nature as detailed. Revenue associated with a fee or fees shall be retained by the Collector to offset the cost of collecting the fee(s).

Section 3. Term of Agreement.

- a. **Term.** This agreement shall be for an initial three (3) year term beginning January 1, 2018 and continuing through December 31, 2020. Should either party wish to terminate this Agreement on December 31, 2020, that party shall give the other party written notice by U. S. Certified Mail, return receipt requested, postmarked no later than December 31, 2019. If neither party provides notice by the aforesaid date, this Agreement shall automatically be extended for an additional one-year term from January 1, 2021 through December 31, 2021. In addition, thereto, if neither party gives the other notice of intent to terminate this agreement by U.S. Certified Mail, return receipt requested, by December 31, 2020, this Agreement shall be extended from January 1, 2022 until December 31, 2022. In no event shall this agreement be extended beyond December 31, 2022 without a written agreement, signed by both parties.

The Collector shall, however, continue to be responsible for collecting and processing returns for the final calendar year for which this agreement is effective prior to its termination, notwithstanding the reason for the termination of this

agreement. The Collector shall be compensated for the cost of collecting and processing these returns based upon the rate as set forth hereinafter.

Section 4. Ongoing Duties and Covenants of Collector. Collector agrees to the following:

a. **General Duties.** Collector will collect, reconcile, administer, enforce, and receive the Tax and Related Amounts collected under this agreement. Collector will perform all duties and have all powers granted for this purpose by the LTEA, regulations promulgated by the Pennsylvania Department of Community and Economic Development (“DCED”) if applicable, other applicable law, the Enactments, and this Agreement.

b. **Collector Office, Staff, Technology, Resources, and Safeguards.**

Office and Staff. Collector’s principal office is at the location of 243 South Allen Street, State College, Pennsylvania. Collector will at all times maintain an office at this location that is open to Taxpayers and the public and has sufficient staff, technology, and resources to allow Collector to interact in person or by telephone with Taxpayers, to receive returns and payments in person and by other means, and to fulfill its obligations under this Agreement. The Collector’s office will maintain reasonable hours, being open at least 35 hours each week (except for weeks with holidays that are officially recognized by the Borough of State College) and continuing until the Collector has completed its responsibility for collecting tax returns as defined in this agreement.

Technology and Resources. Subject to the tax collector compensation provisions set forth below, Collector will perform all necessary work and supply all forms, postage, equipment, computer hardware and software, facilities, and other materials necessary to efficiently fulfill its obligations under this Agreement.

Taxpayer Assistance and Filing Options. Collector will provide assistance to Taxpayers through operation of a telephone number during normal business hours, counter/walk-in assistance at Collector’s principal office, and a website to provide information to Taxpayers. Collector’s website will include the Taxpayer Bill of Rights and copies of tax returns and all other forms applicable to Taxpayers. Collector will also maintain the infrastructure and provide information necessary to receive tax returns and payments electronically.

Collector Warranties and Safeguards. Collector warrants to the Taxing Authority that: (i) Collector will at all times have adequate technology to comply with all requirements of the LTEA and this Agreement; (ii) Collector will at all times have technology, policies, and procedures in place for the purpose of ensuring the security and confidentiality of information relating to and provided by Taxpayers, including social security numbers and other information, and to take steps recognized as industry standards to prevent a data breach or other improper disclosure of confidential information.

- c. **Tax Collector Funds Not to Be Commingled.** All deposits and investments made by Collector of funds subject to this policy will be deposited, invested, and held in one or more separate accounts with a financial institution or local government investment trust, holding in the account only funds held by Collector in its capacity as tax collector under the Tax Collection Agreement between the Taxing Authority and Collector. Collector may not commingle such funds by placing such funds in the same account together with funds that belong to Collector.
- d. **Distributions.** Collector will distribute Tax and Related Amounts as follows:
1. **Distributions to Taxing Authority.** Collector will make distributions of all Tax and Related Amounts legally due to the Taxing Authority, within thirty (30) days following the end of the month. Distributions of tax revenue shall be net of collection fees.
 2. **Manner of Making Distributions.** Collector shall take all necessary actions and sign all necessary documents to authorize initiation of Automated Clearing House (ACH) electronic debit and credit entries to the accounts in which it deposits tax funds collected and payable to the Taxing Authority. Any such fees associated with this manner of distribution are considered a cost of collection under this Agreement. To facilitate the implementation of this provision it is understood that the Taxing Authority shall take all necessary actions and signing of all necessary documents to authorize Automated Clearing House (ACH) electronic debit and credit entries to the accounts at its financial institutions to facilitate the receipt of tax monies, as necessary.
 3. **Corrections to Distributions.** If Collector at any time, based on annual reconciliation of returns or otherwise, determines that a distribution was incorrect, Collector will make adjustments to future distributions as required to make corrections and also provide an explanation of the reasons for and amounts of the adjustment to the appropriate Taxing Authority. An overall annual reconciliation will be completed to ensure that the school district and member municipality received the correct share of the revenue. This reconciliation will be completed no later than April 30th of the following calendar year. In the event that collections are not sufficient to cover adjustments that result from the annual reconciliation, the adjustment will be completed in the month of May, prior to the accounting close of that period. To lessen the financial impact that results from the reconciliation process, it is the option of the Collector to complete the reconciliation process throughout the course of the current tax year in lieu of completing the annual reconciliation in the succeeding year.
 4. **Reserve Policy.** Collector shall establish a reserve policy to ensure that sufficient funds are in place to meet anticipated refund obligations. Prior

notice that a reserve is being established shall be provided to the Taxing Authority. Since the Commonwealth of Pennsylvania governs the length of time that is allowed to process refunds, a timely response to refunds will be required to avoid an interest accrual. The Taxing Authority will be notified that a reserve is being made and monthly reports will identify the reserved amount deducted from the current month settlement.

e. Reports to Taxing Authority.

1. Monthly Reports. At the time that each monthly distribution occurs, the Tax Office will provide detail that supports the payment to the Taxing Authority. It should be noted that additional report requests will be evaluated to determine if the special request can be completed. This reporting will include the names of all subjects of the tax along with employer information when applicable. If the taxing authority's data request requires supplemental programming, the cost to obtain this additional programming will be a cost to the Taxing Authority making the request. If all Taxing Authorities have submitted a request for the requested item, the annual maintenance fee charged by the software vendor may eliminate the need for additional costs.
2. Revenue Projection Assistance. Upon request from the Taxing Authority, Collector will provide historic data to assist the Taxing Authority in developing its revenue estimates for budget purposes.
3. Data Breach Report. If at any time Collector experiences a "breach of the security of the system" requiring notice of breach to affected Taxpayers under the Pennsylvania Breach of Personal Information Notification Act, 73 P.S. § 2301 et seq., Collector will provide notice of the breach to the Taxing Authority. The notice shall be provided as promptly as possible and no later than the date when the notice is given to the affected Taxpayers.

- f. Tax Records. Collector will maintain at all times an updated Individual Taxpayer List and an Employer List and other Tax Records. All Tax Records are the property of the Taxing Authority where the tax revenue was earned (referred to as the work site of the Taxpayer). On an as needed basis, an authorized representative of the Taxing Authority can make arrangements to inspect records retained by Collector. Accommodations can be pre-arranged for the removal of records from the Collectors archives. Due to the inter-relationship between Taxpayer records that span multiple Taxing Authorities, if supplemental programming is required to respond to a Taxing Authority's request for each listing, the costs associated with this work will be the cost of the Taxing Authority. Requests for special data reports and/or physical inspections of taxpayer records must be fulfilled during time periods when there are no critical taxpayer deadlines occurring.

Section 5. Tax Collector Bond. The Borough of State College Tax Office carries a tax collection bond in an amount and format that provides coverage adequate to allow the tax office to fulfill its obligations related to the collection of the Local Services Tax. The tax office will monitor the collection activities to determine if coverage is adequate and increase the coverage if potential for risk warrants the purchase of additional coverage. As of the date of this agreement, the current bond amount is \$3,000,000.

Section 6. Confidentiality. All information obtained by Collector as a result of Taxpayer returns, investigations, hearings, or verifications related to Tax collection is confidential. Collector will not divulge to any third party any confidential information. This prohibition does not include disclosure of otherwise confidential information for official purposes as authorized by any law, including without limitation disclosure to a lawyer or accountant retained by Collector or disclosure in a legal proceeding. Collector by this Agreement is authorized to maintain the cost of collecting delinquent Tax and Related Amounts through services of outside collection entities. The sharing of Taxpayer information needed for the outside sources to pursue delinquent Taxpayers is not deemed to be a disclosure of confidential information.

Section 7. Liability and Indemnification.

- a. **Enactment Compliance.** Collector will not be liable or responsible for failure of an Enactment to comply with applicable legal requirements.
- b. **Collector Indemnification.** To the extent permitted by the Pennsylvania Political Subdivision Tort Claims Act and other applicable law, the Taxing Authority will hold harmless and indemnify Collector, its directors, officers, employees, agents, and consultants, and any insurance company providing insurance to any of them, from and against any claim, loss, damage, liability, or expense (including reasonable attorney fees) arising from or relating to: (1) Taxing Authority failure to comply with any applicable law or regulation; (2) Taxing Authority breach of this Agreement; (3) Taxing Authority failure to take action when the failure constitutes a breach of a legal duty; (4) Collector's compliance with a Taxing Authority notice to withhold and pay to the Taxing Authority amounts that would otherwise be distributed to the Taxing Authority; (5) Any investigation, legal proceeding, administrative action, or other action relating to or alleging any of the matters referred to in items (1) to (4) set forth in this Section. The Taxing Authority will have no obligation to indemnify for loss, damage, liability, or expense relating to any investigation, legal proceeding, administrative action, or other action by any person, entity, or government body to the extent the loss, damage, liability, or expense is attributable to a Taxing Authority or Collector action or omission.
- c. **Taxing Authority Indemnification.** To the extent permitted by the Pennsylvania Political Subdivision Tort Claims Act and other applicable law, the Collector will hold harmless and indemnify Taxing Authority, its directors, officers, employees, agents, and consultants, and any insurance company providing insurance to any of

them, from and against any claim, loss, damage, liability, or expense (including reasonable attorney fees) arising from or relating to: (1) Collector failure to comply with any applicable law or regulation; (2) Collector breach of this Agreement; (3) Collector failure to take action when the failure constitutes a breach of a legal duty; (4) Collector's compliance with a Taxing Authority notice to withhold and pay to the Taxing Authority amounts that would otherwise be distributed to the Taxing Authority; (5) Any investigation, legal proceeding, administrative action, or other action relating to or alleging any of the matters referred to in items (1) to (4) set forth in this Section. The Collector will have no obligation to indemnify for loss, damage, liability, or expense relating to any investigation, legal proceeding, administrative action, or other action by any person, entity, or government body to the extent the loss, damage, liability, or expense is attributable to a Taxing Authority or Taxing Authority action or omission.

- d. ***Collector Insurance.*** Collector shall purchase from and maintain with a company lawfully authorized to do business in Pennsylvania the following types and amounts of insurance:

Commercial General Liability - \$5,000,000 per occurrence; \$5,000,000 aggregate

Vehicle Liability - \$5,000,000 per occurrence

Employee Dishonesty - \$250,000 per loss

Public Officials Liability - \$2,000,000 in aggregate

Cyberfraud Computer Crime - \$5,000,000 per occurrence

Excess Employee Dishonesty Bond - \$250,000 excess per loss

Collector shall make available upon requests certificates of insurance acceptable to the Taxing Authority and available from the insurer. These certificates shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least 30 days prior to written notice has been given to the Taxing Authority. If a change of insurer results in this written notice not being available on or before 30 days prior to the occurrence, it shall be made available at the earliest date possible.

Section 8. Tax Collector Compensation.

Compensation. The Collector shall receive compensation for its services rendered under this Agreement at a rate of 3% of the tax revenue collected for the accounting period and will be deducted from each remittance. Taxing Authorities entering into this collection agreement as a new member will be charged 4% commission in the initial year to provide remuneration for set-up and informational mailings to Taxpayers in the Taxing Authority.

Section 9. Tax Collector Financial Statements

- a. ***Required Annual Financial Statements, Management Letter and Reports.*** As soon as available, but in any event no later than June 30 of each year following the year being audited, Collector will deliver to the Taxing Authority, Collector's annual audit and financial statements. These financial statements will be based on an independent audit. The audit will be conducted in accordance with auditing standards generally accepted in the United States of America.
- b. ***Review of Collector Financial Records.*** The Taxing Authority may at any time and at its sole expense engage an accounting firm to examine Collector's financial records relating to collection of funds received or held by Collector under this Agreement or received or held on behalf of or under an agreement with any customer for which Collector collects funds, reconciliation of Collector monthly and annual reports, or any other matter the accounting firm deems relevant to verifying compliance with this Agreement. If the Taxing Authority exercises this right, Collector will make requested records available for examination, arrange for review of Collector CPA audit work papers, and provide other cooperation as reasonably requested by the Taxing Authority. It should be noted that this additional financial audit work should be performed outside the tax collection deadlines allowing the Collector's staff to respond in a timely manner.

Section 10. Dispute Resolution.

- a. ***Choice of Law.*** This Agreement shall be governed by Pennsylvania law.
- b. ***Jurisdiction.*** Any dispute between the Taxing Authority and Collector arising from or related to this Agreement that is not resolved by discussion or mediation will be submitted to the jurisdiction of the Centre County Court of Common Pleas in Bellefonte, Pennsylvania.

Section 11. Notices under this Agreement. All communications and notices under this Agreement shall be in writing and will be deemed given at the earlier of the time when actually delivered, when mailed by first class or express mail, postage prepaid, or other courier service with charges prepaid, or when sent by facsimile or email transmission (with confirmation from the recipient) addressed as set forth after each party's signature at the end of this Agreement (or to such other address as a party has substituted or added by notice pursuant to this Section).

Section 12. Miscellaneous.

- a. ***Entire Agreement.*** This Agreement represents the entire Agreement between the Taxing Authority and Collector and supersedes any prior agreements between the Taxing Authority and Collector.
- b. ***Modification.*** Any modification of this Agreement must be in writing and signed by the Taxing Authority and Collector to be valid.

- c. **Successors**. This Agreement is binding upon the parties' successors and assigns.
- d. **Severability**. If any portion of this Agreement is invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected or impaired thereby.
- e. **Section Headings**. The headings contained in this Agreement are for convenience of reference only and are not to be used in interpreting the Agreement.
- f. **Interpretation**. The parties are equally responsible for the consummation of this Agreement. Alleged ambiguity in this Agreement shall not be construed against either party.

Section 13. Definitions.

- a. **Collector** – the Borough of State College.
- b. **CPA** – a Certified Public Accountant licensed by the Commonwealth of Pennsylvania.
- c. **DCED** – the Pennsylvania Department of Community and Economic Development.
- d. **Effective Date** – January 1, 2018.
- e. **Employer List** – list detailing employers that have business operations within the Taxing Authority. It should be noted that employers find it beneficial for reporting purposes to have one local employer account (DBA doing business as account) that may or may not span more than one Taxing Authority. Revenue associated for employers with more than one Taxing Authority work site will be accounted for and distributed based on the work site assignment provided by the Employer.
- f. **Enactments** – as defined in ***Background*** above.
- g. **Individual Taxpayer List** – list detailing individual employees having a work site within the Taxing Authority. This listing is generated by each taxpayer's social security number. It should be noted that individual taxpayers may or may not have more than one Taxing Authority in which they work. For these taxpayers, the taxpayer will designate his/her primary work site and all additional work site(s) will be referred to as secondary work site(s).
- h. **LTEA** – as defined in ***Background*** above.
- i. **Person** – any individual, entity, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint

venture, estate, trust, association, organization, labor union, or other governmental body.

- j. **Political Subdivision** – a city of the second class, city of the second class A, city of the third class, borough, town, township of the first class, township of the second class, township of the first class A, township of the second class, township of the third class, township of the fourth class, or municipal authority, located in the Commonwealth of Pennsylvania.
- k. **Related Amounts** – as defined in *Related Amounts* above.
- l. **Tax** – as defined in *Tax* above.
- m. **Taxing Authorities** – as defined in *Background* above.
- n. **Taxpayers** – as defined in Section 1(a).
- o. **Tax Records** – records maintained by the tax office in a paper or electronic format that supports the tax collection efforts conducted by the collector.
- p. **Taxing Authority** – as defined in the preface to this Agreement.
- q. **TCD** – as defined in *Background* above.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

COLLECTOR:

Attest:

By: _____

Title: _____

Street Address:
(principal office and mailing address)
243 South Allen Street

State College, PA 16801

Facsimile Number: 814 234-7148

Email Address: rdunlap@statecollegepa.us

TAXING AUTHORITY

Attest:

By: _____

Title: _____

Street Address:

Facsimile Number: _____

Email Address: _____

ACH DEPOSIT INFORMATION:

Bank Routing Number:

Bank Account Number:

Name of Bank:

EXHIBIT A

ACTIVITY	COST TO TAXPAYER
First notice to taxpayer of late payment, underpayment, non-payment, late filing, or failure to file. If applicable, first notice will appear on forms and/or returns.	\$25.00
Second notice to taxpayer of late payment, underpayment, non-payment, late filing, or failure to file.	\$50.00
Establishment of payment plan	\$5.00 per payment
Notice to taxpayer prior to wage attachment.	\$25.00
Notice to employer of wage attachment.	\$25.00
Fee for cancelled or bounced check or ACH payment(s).	\$25.00
First notice to employer of late payment, underpayment, non-payment, late filing, or failure to file.	\$25.00
Second notice to employer of late payment, underpayment, non-payment, late filing, or failure to file.	\$50.00
Preparation of District Justice complaint (civil or criminal)	\$100.00
Preparation for District Justice hearing (civil or criminal)	\$100.00
Attendance at District Justice hearing (civil or criminal)	\$100.00 per hour
Preparation for appeal to the Court of Common Pleas	\$150.00
Attendance at Court of Common Pleas proceeding or arbitration	\$100.00 per hour
Initiation of and attendance at execution sale	\$100.00 per hour
Preparation of filing of bankruptcy proof of claim	\$100.00 per hour
District Justice, Court of Common Pleas, and Bankruptcy Court filing fees and costs	Actual fees and costs incurred will be imposed on the taxpayer or employer
Fees and costs incurred for audit that results in the assessment of tax, interest, or penalties	Actual fees and costs incurred will be imposed on the taxpayer or employer
Fees and costs incurred to engage legal counsel to assist with collection efforts in District Court, Court of Common Pleas, or Bankruptcy Court	Actual fees and costs incurred will be imposed on the taxpayer or employer
Stop payment of check requested by taxpayer/employer	\$25.00 in addition to bank service fee if check has not reached effective stale-date
Replacement of lost or destroyed checks by taxpayer/employer	\$25.00 in addition to bank service fee if check has not reached effective stale-date
Generation of Employers' Local Service's Tax Return(s) from Earned Income Tax data for tax returns failed to be provided by employer	\$50.00 per hour
Coding of incomplete Employers' Quarterly Local Service Tax Returns (worksites allocations, incorrect account numbers, and/or employee detail missing)	\$50.00 per hour