



Guidance on Act 172 of 2016

The Pennsylvania State Association of Boroughs, Pennsylvania Municipal League, the Pennsylvania State Association of Township Commissioners, and the Pennsylvania State Association of Township Supervisors prepared this guidance in consultation with the Pennsylvania State Fire Commissioner and the Department of Community and Economic Development. The guidance includes a sample ordinance.

Act 172 of 2016 provides municipalities with the option to offer a real estate or earned income tax credit to active members of volunteer fire companies and nonprofit emergency medical service agencies through a volunteer service credit program. Active volunteers who meet the service credit criteria established by the municipality in consultation with the fire chief or supervisor of the EMS agency would be eligible for the tax credit. Each municipality may choose whether to offer the earned income tax credit, the real estate tax credit, or both.

Real Estate Tax Credit: The real estate tax credit is limited to 20 percent of the municipal real estate tax liability for residential real property owned and occupied as the domicile of an active volunteer.

- The real estate tax credit will work as follows: an active volunteer would pay their municipal real estate tax bill and then file an application for the real estate tax credit with the municipality. If approved, the municipality would issue a check to the active volunteer as a real estate tax credit rebate. The municipality would need to approve the application if it was for residential real property owned and occupied by the applicant and they met the criteria required by the municipality to be considered an active volunteer for the prior year.
- The credit will **not** be printed on real estate tax bills.
- The municipality should verify with the county that an active volunteer is an owner-occupant of property within its jurisdiction by verifying that the property is registered for the Homestead Exemption. The tax bill that is submitted with the application may contain this documentation.

Earned Income Tax Credit: The municipal earned income tax credit must be set at a flat amount.

- If a volunteer's tax liability is less than the flat amount, their credit is limited to their total tax liability.

- The credit only applies to an earned income tax levied by the municipality under the Local Tax Enabling Act.
- It does **not** apply to an earned income tax levied for open space purposes or to replace the occupational assessment tax.
- Only residents of the municipality who are active volunteers could apply for the tax credit. A nonresident option is not available.
- The state Department of Community and Economic Development will update the statewide earned income tax form to account for the new flat rate tax credit for municipalities that choose to implement the credit and will provide for separation of the school earned income tax liability from the municipality's earned income tax liability. Note that under Act 150 of 2016, DCED is responsible for developing statewide forms for earned income tax collection, which all tax officers must accept.
- The active volunteer would apply for the credit when they file their EIT taxes for 2017 in 2018 and in later years and will provide documentation from the municipality that they are entitled to the tax credit.

Ordinance Adoption Process: At least 30 days prior to adoption of the ordinance, the municipality must place a legal advertisement of its intent to adopt an ordinance implementing the tax credit and then must conduct at least one public hearing on the issue. Once adopted, the ordinance would need to be sent to the Office of the State Fire Commissioner, as well as the county law library and the tax officer for the municipality's tax collection district (*if adopting an EIT tax credit.*)

Who would qualify for the tax credit? A member of a volunteer fire company or a nonprofit emergency medical services agency identified by the municipality that meets service criteria established by the municipality in consultation with the VFC and EMS companies. Members who are volunteer emergency responders would qualify, as well as volunteers who are members, but serve in other roles, such as ladies auxiliary. The municipality should set criteria or participation levels for the different classes of membership.

What happens if many of our volunteers live outside of our municipality? Since each municipality can only offer the credits to volunteers who are residents, we recommend working with the neighboring municipalities that are also served by the same VFC or EMS agency to see if they would be willing to implement the program and consider using the same tax credit levels and requirements for all municipalities served.

Eligibility period: If implementing the tax credit, it may be set up so that the service is earned in 2017 and the credit would apply toward the 2018 real estate tax or the 2017 earned income tax liability when filing tax forms in 2018. These timeframes could be adjusted for future years.

How will the volunteers earn credit? While the tax credit program must be established by ordinance, program criteria for earning the credit should be set by the municipality by resolution.

Act 172 states that the municipality must consider the following activities when creating its tax credit program:

- the number of emergency calls to which a volunteer responds;
- the level of training and participation in formal training and drills for a volunteer;
- the total amount of time expended by a volunteer on administrative and other support services, including, but not limited to: fundraising, providing facility or equipment maintenance, financial bookkeeping; and
- the involvement in other events or projects that aid the financial viability, emergency response, or operational readiness of a volunteer fire company or a nonprofit emergency medical services agency.

Other considerations for earning credit:

- Municipalities should also consider the total number of years the volunteer has served.
- If the fire company has a Length of Service Award Program (LOSAP) in place, the municipality should consider using the criteria for that program for consistency and to limit recordkeeping for the fire chief.
 - For existing LOSAP programs, most require a participation level of 20 to 35 percent of activities for volunteer firefighters to qualify for the program benefits. This could include participation in emergency calls, meetings, training, certifications earned, work detail, time spent on standby, and holding an elected or appointed position within the organization.
 - Non-firefighter members are usually required to have a higher participation level, often at 30-35 percent participation. This could include meetings, fundraisers, administrative support, equipment maintenance, and holding an elected or appointed position within the organization.
- The municipality will determine the guidelines and criteria for participation in its program in consultation with the chief of a volunteer fire company and the supervisor of a nonprofit emergency medical services agency. The required criteria should be adopted by resolution and reference or include forms and applications necessary to implement the program.
- Social members should not be eligible for the tax credit.

Injured Volunteer: If a volunteer who is an emergency responder is injured during a response to an emergency response call and can no longer serve as an active volunteer because of the injury, he or she is entitled to receive the tax credit under Act 172. The injured volunteer must submit self-certification and an application with documentation from a licensed physician. An injured emergency responder may receive the credit for up to five consecutive tax years.

Tracking Service Activities: The chief of a volunteer fire company and the supervisor of a nonprofit emergency medical services agency are responsible for logging service records of

active volunteers to document the activities of each volunteer that qualifies for credit and the calculation of total credits earned for each volunteer in their organization. These records are subject to periodic review by the State Fire Commissioner, the Auditor General, and the municipality enacting the ordinance.

Notarized List: The chief and supervisor must provide a notarized list of volunteers that qualify for the tax credit each year, no later than 45 days before the tax notices are distributed. Note that tax notices are distributed between January 15 and March 1 of each year. In order to comply with the 45 day notice timeframe, the annual credit period may need to end as early as November 30.

Application Process: An active volunteer who wants to take advantage of the credit must sign and submit an application for certification to their chief or supervisor, who will sign and attest that the active volunteer meets the qualifications of the program or can no longer serve due to an injury. The application is then forwarded to the municipality for review.

Review Process: The municipality cross-references the application with the notarized eligibility list. If the active volunteer is on the notarized list, they should be approved by the governing body at a public meeting and the municipality then issues a tax credit certificate to the active volunteer. If adopting an EIT tax credit, the municipality should work with the tax officer for its tax collection district to develop a certificate acceptable to the tax officer, which the active volunteer would include with their EIT return. The municipality maintains an official tax credit register of all active volunteers that were issued tax credit certificates for a particular year and provides the list and any updates to the fire chief, EMS supervisor, and the tax officer for the tax collection district (*if applicable*).

Appeals: The municipality must provide a process for appealing a denial of an earned income tax credit and/or real property tax credit. Appeals of the earned income tax credit denials should be made under municipality's procedure in its Local Taxpayer Bill of Rights ordinance. Appeals of real estate tax credit denials should be made under the Local Agency Law.

Please keep in mind that this guidance document is intended to be an informational resource only. PSAB does not guarantee its legal effectiveness nor its appropriateness to any particular situation. PSAB encourages borough officials to review and discuss all proposed ordinances and resolutions with their solicitor.