



County of Lackawanna

Lackawanna County
Administration Building
200 Adams Avenue
Scranton, Pennsylvania
18503

Certified Copy

Ordinance: 14-0234

File Number: 14-0234

Ordinance #238

Second Reading

Authorizing the issuance of Tax Anticipation Notes

First Reading: December 3, 2014

Second Reading: December 17, 2014

BOARD OF COMMISSIONERS
OF THE
COUNTY OF LACKAWANNA, PENNSYLVANIA

ORDINANCE #238

AUTHORIZING THE ISSUANCE OF TAX ANTICIPATION NOTES IN AMOUNTS NOT TO EXCEED \$6,800,000.00 IN AGGREGATE PRINCIPLE AMOUNT OUTSTANDING AT ANY GIVEN TIME; PROVIDING FOR THE DATE, DENOMINATION, INTEREST RATE, MATURITY DATE AND PLACE OF PAYMENT PROVISIONS IN RESPECT OF THE NOTES; ACCEPTING THE PROPOSAL OF A LOCAL LENDING INSTITUTION FOR THE PURCHASE OF THE NOTES; PROVIDING THE SECURITY FOR THE NOTES, AUTHORIZING AND DIRECTING THE PREPARATION, CERTIFICATION AND FILING OF THE PROCEEDINGS WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; ESTABLISHING A SINKING FUND IN RESPECT OF THE NOTES; PROVIDING FOR A SINKING FUND DEPOSITORY AND PAYING AGENT; SETTING FORTH A FORM OF NOTE; REPEALING INCONSISTENT ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the County of Lackawanna (the “county”) anticipates receiving, in fiscal year 2015, tax revenues, such revenues being as yet unreceived; and

WHEREAS, the County has estimated such expected tax revenues and expenditures for the fiscal year 2015 and, on a monthly basis, will experience a cash flow deficit during some portions of such year; and

WHEREAS, the County has therefore determined to borrow for the purpose of meeting current expenses by issuing a note to be repaid from said anticipated tax revenues (the “Note”), all in accordance with the Local Government Unit Debt Act (the “Debt Act”) being Act No. 185 of the

1972 General Assembly of the Commonwealth of Pennsylvania, approved July 12, 1972, as amended and re-enacted by Act No. 52 of the 1978 General Assembly of the Commonwealth of Pennsylvania; and

WHEREAS, the County has received an acceptable proposal for the purchase of the Note, as hereinafter described; and

WHEREAS, as required by Section 8126 of the Debt Act, the authorized officers of the County have heretofore made an estimate of the tax revenues during the period when the Note will be outstanding and, by their execution of a certificate with respect thereto dated within 30 days of, but no later than the date of, this Ordinance (the "Certificate as to Taxes and Revenues") have certified said estimate, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, Section 8121 of the Debt Act provides, with regard to tax and revenue anticipation notes, that "the power to borrow from time to time shall include the power to make a single authorization and then issue and sell portions of such amount of authorized notes whenever desired during the fiscal year; and

WHEREAS, it is the intent of the County to authorize the issuances and sale of its tax anticipation Note in amounts not to exceed \$6,800,000.00 in aggregate principle amount outstanding at any given time, such Notes to be completely repaid on or before December 31, 2015; and

WHEREAS, such borrowing in anticipation of tax revenues shall be pursuant to and evidenced by the Note, the form which is as substantially specified herein.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Board of County Commissioners of the County of Lackawanna, Pennsylvania, that:

SECTION 1. For the reasons and purposes recited above, the County hereby authorizes the issuance of the Notes in amounts not to exceed \$6,800,000.00 in aggregate principle amount outstanding at any given time in anticipation of the receipt of tax revenues, said Note to be sold and delivered as hereinafter provided.

SECTION 2. At least two of the members of the Board of Commissioners, Chief of Staff, Controller and/or Treasurer of the County, or any duly appointed successor, as the case may be, are hereby authorized and directed to prepare and verify a certified copy of this Ordinance and a true copy of the accepted proposal for the purchase of the Note, all as required by Section 8128 of the Debt Act and to file all of the above, together with an executed copy of the Certificate as to Taxes and Revenues, the contents of which are hereby approved, with the Department of Community and Economic Development of the Commonwealth of Pennsylvania.

SECTION 3. The Note shall be designated "Tax and Revenue Anticipation Note, Series A of 2015" and the Note shall be issued in denominations to be agreed upon by the County and the Purchaser (as herein defined), shall be subject to repayment prior to maturity, shall be payable to the registered owner thereof, shall be dated the date of delivery thereof, shall bear interest on the unpaid principle balance hereof from the date hereof at a rate not to exceed **1.123% fixed**. Said principle and interest shall be payable on December 31, 2015 at the place in the manner and be otherwise in substantially the same form recited in Section 10 hereof.

SECTION 4. The Note shall be executed by the Chairman of the Board of Commissioners, and shall have the corporate seal of the County affixed thereto, duly attested by the Interim Chief of Staff. Those officers are further authorized and directed to deliver the Note to the Purchaser upon the terms and conditions hereinafter provided for such delivery and to execute and deliver such other documents and to take action as may be necessary or appropriate in order to effectuate the issuance and sale of Notes, all in accordance with the Debt Act.

SECTION 5. The Note shall be secured by a pledge of, first security interest in, and a lien and charge on, the tax revenues received by the County during the period when the Note is outstanding; and the Chief of Staff is hereby authorized and directed to prepare and file such financing statements as may be necessary under the Pennsylvania Uniform Commercial Code and Section 8125 of the Debt Act to fully perfect said pledge, security interest, lien and charge.

SECTION 6. There is hereby established a Sinking Fund to be known as "Sinking Fund, County of Lackawanna Tax Note, Series A of 2015" into which the County covenants to deposit and into which the Treasurer is hereby authorized and directed to deposit, on or before December 31, 2015, from taxes and revenues received by the County, amounts sufficient to pay the interest due on that date and the principle on the Notes as provided in Section 3 hereof. All sums in the sinking Fund shall be applied exclusively to the payment of said principle and interest. Said Sinking Fund shall be kept in a separate account at the principle office of the Sinking Fund Depository provided for in Section 7 hereof, until such time as the County and the Treasurer thereof shall provide for a similar separate account in another bank or trust company or bank and trust company located and lawfully conducting a bank or trust business in the Commonwealth of Pennsylvania. The said Sinking Fund Depository, without further authorization than is herein contained, shall pay from all moneys in the Sinking Fund the interest on the Principle of the Notes, when the same shall become due.

SECTION 7. The Treasurer is hereby authorized and directed to contract with a commercial bank for its services and Sinking Fund Depository (the " Sinking Fund depository") and paying agent (the "Paying Agent") said bank being hereby appointed to such positions in respect to the Notes.

SECTION 8. The Note shall be sold at private, negotiated sale upon receipt of an acceptable proposal for the purchase thereof, which proposal shall be in compliance with the provisions of the Debt Act. The County Commissioners hereby find that such private, negotiated sale is in the best

financial interest of the County.

SECTION 9. The Proposal of **PNC Bank, National Association**, (the "Purchaser"), presented to the Board of Commissioners at a public meeting on the date of the first reading of this Ordinance, such proposal being in conformity with the requirements of Section 8 of this Ordinance for the purchase at private sale by negotiation of the Notes, is hereby accepted and the Notes are hereby awarded to the Purchaser. The Chief of Staff is hereby authorized and directed to notify the Purchaser of such action and to file the original of said proposal with the records of the County. The officers of the County are hereby authorized to deliver the Notes to the Purchaser upon receipt of the principle amount thereof and upon compliance with all conditions precedent to such delivery required by the Debt Act, this Ordinance, the County Home Rule Charter and said proposal, and the officers of the County are hereby authorized and directed to prepare, verify and deliver to the Purchaser, concurrently with the delivery of the Notes, the certificate required by Section 8127 of the Debt Act, a copy of which certificate shall be retained in the records of the County during the fiscal year ending on December 31, 2015, shall have been paid in full.

SECTION 10. The forms of the Note shall be substantially, as contained in Exhibit B, attached hereto and made a part of hereof (with necessary language changes, as approved by counsel), The terms and conditions set forth in such form being hereby incorporated by reference and enacted as if fully recited at length herein and said form is hereby approved.

SECTION 11. The County does hereby designate the Note as a "Qualified Tax-exempt Obligation" as the same is defined in §265 of the U.S. Internal Revenue Code of 1986, as amended.

SECTION 12. All prior Ordinances or resolutions or parts thereof inconsistent herewith are hereby repealed.

SECTION 13. This ordinance shall be in full force and effect ten (10) days after publication, as required by law.

ADOPTED at a regular meeting of the Board of Commissioners of Lackawanna

County held on December 17, 2014.

COUNTY OF LACKAWANNA


JIM WANSACZ


COREY D. O'BRIEN


PATRICK M. O'MALLEY

ATTEST:


STEVEN M. BARCOSKI
INTERIM CHIEF OF STAFF

Approved as to form and legality:


DONALD J. FREDERICKSON, ESQUIRE
COUNTY SOLICITOR

TERMS OF PROPOSAL

I, a duly authorized officer of PNC Bank, National Association, do hereby certify in connection with the Tax and Revenue Anticipation Note, Series 2014-2015 that this Proposal was duly made and delivered to the Local Government Unit not later than the date of adoption of the Resolution and that its exact Terms are:

Interest Rate: 1.123%

Principal Amount \$ 6,800,000

Price: Par

Dated: January 5, 2015

Maturity Date: December 31, 2015

Early Redemption or Prepayment:

Not permitted.

Permitted, subject to the provisions of the Proposal

Origination Fee: 0 % of the
Principal Amount of the Note

PNC BANK, NATIONAL ASSOCIATION



Authorized Officer
Michael E. Dennen
Senior Vice President

*This Proposal is conditioned on the following:

- a) PNC's internal credit approval subsequent to the receipt of the most recent financial information as well as the cash flow calculation supporting this request.
- b) Repayment of all outstanding tax and revenue anticipation notes for 2013-2014 prior to funding this Note.

EXHIBIT B

Numbered 1

**TAX AND REVENUE ANTICIPATION NOTE
SERIES 2015**

Issuance Date: January 5, 2015
Maturity Date: December 31, 2015
Interest Rate: 1.123% Principal Amount: \$6,800,000.00

COUNTY OF LACKAWANNA, Pennsylvania (the "Local Government Unit"), for value received and intending to be legally bound, hereby acknowledges itself indebted and promises to pay to the Registered Owner hereof (as identified on the attached Registration Form incorporated herein by reference) the principal sum of **SIX MILLION EIGHT HUNDRED THOUSAND and 00/100 DOLLARS (\$6,800,000.00)**, together with interest thereon from the Issuance Date hereof at the stated Interest Rate, per 30/360 day year, on the Maturity Date hereof, upon presentation and surrender of this Note at the office of the Local Government Unit, in the coin or currency of the United States of America that is, at the time and place of payment, legal tender for the payment of public and private debts. This Note is subject to prepayment prior to the Maturity Date in accordance with the terms hereof.

This Note is issued under and pursuant to the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, as codified by the Act of December 19, 1996 (P.L. 1158, No. 177), as amended (the "Debt Act"). The indebtedness evidenced hereby is a borrowing in anticipation of taxes and revenues to be received by the Local Government Unit during the period in which this Note is outstanding and is to be repaid from such taxes and revenues once received. In the event of any default hereunder, the Local Government Unit will pay the Registered Owner's reasonable costs and expenses incurred in collection of the amounts due hereunder. The Local Government Unit hereby pledges and grants (equally and ratably with all other tax and revenue anticipation notes issued by the Local Government Unit for the current fiscal year) to the Registered Owner of this Note, a first lien and charge on, and security interest in, its taxes, accounts and general intangibles, including "Total Revenues" (as defined in the Debt Act) to be received during the period when this Note is outstanding (including any period of default) in order to secure the payment of the principal indebtedness evidenced hereby and the interest hereon.

This Note is executed and delivered pursuant to an Ordinance adopted by the Local Government Unit upon the affirmative vote of at least a majority of the members of its Governing Body at a public meeting duly and regularly held, and after filing with the Department of Community and Economic Development of the Commonwealth of Pennsylvania the documents required by Section 8128 of the Debt Act.

Upon at least five (5) business days prior written notice to the holder, the Local Government Unit has the right to prepay all or part of the outstanding principal and interest hereunder. Notwithstanding anything contained herein to the contrary, upon any prepayment by or on behalf of the Local Government Unit (whether voluntary, on default or otherwise), the Registered Owner may require, if it so elects, the Local Government Unit to pay the Registered Owner as compensation for the costs of being prepaid an amount equal to the Cost of Prepayment. "Cost of Prepayment" means an amount equal to the present value, if positive, of the product of (a) the difference between (i) the yield, on the beginning date of the applicable interest period, of a U.S. Treasury obligation with a maturity similar to the applicable interest

period, minus (ii) the yield on the prepayment date, of a U.S. Treasury obligation with a maturity similar to the remaining maturity of the applicable interest period, and (b) the principal amount to be prepaid, and (c) the number of years, including fractional years, from the prepayment date to the end of the applicable interest period. The yield on any U.S. Treasury obligation shall be determined by reference to Federal Reserve Statistical Release H.15(519) "Selected Interest Rates." For purposes of making present value calculations, the yield to maturity of a similar maturity U.S. Treasury obligation on the prepayment date shall be deemed the discount rate. The Costs of Prepayment shall also apply to any payments made after acceleration of the maturity of this Note.

If the Local Government Unit fails to make any payment of principal, interest or other amount coming due pursuant to the provisions of the Note within 15 calendar days of the date due and payable, the Local Government Unit also shall pay to the Purchaser a late charge equal to the lesser of five percent (5%) of the amount of such payment or \$100.00 (the "Late Charge"). Such fifteen-day period shall not be construed in any way to extend the due date of any such payment. Upon maturity, whether by acceleration, demand or otherwise, and at the Purchaser's option upon the occurrence of any Event of Default (as hereinafter defined) and during the continuance thereof, the Note shall bear interest at a rate per annum (based on a year of 360 days and actual days elapsed) which shall be equal to the rate stated in the Terms of Proposal, plus three percent (3.00%) but not more than the maximum rate allowed by law (the "Default Rate"). The Default Rate shall continue to apply whether or not judgment shall be entered on the Note. Both the Late Charge and the Default Rate are imposed as liquidated damages for the purposes of defraying the Purchaser's expenses incident to the handling of delinquent payments, but are in addition to, and not in lieu of, the Purchaser's exercise of any rights and remedies thereunder, or under applicable law, and any fees and expenses of any agents or attorneys which the Purchaser may employ. In addition, the Default Rate reflects the increased credit risk to the Purchaser of carrying a loan that is in default. The Local Government Unit agrees that the Late Charge and Default Rate are reasonable forecasts of just compensation for anticipated and actual harm incurred by the Purchaser, and that the actual harm incurred by the Purchaser cannot be estimated with certainty and without difficulty.

The Note is being purchased on the assumption that interest paid on the Note is excludable from the gross income of the Registered Owner for Federal income tax purposes. If interest on the Note shall be declared by the Internal Revenue Service or an agent thereof to be, or shall otherwise be determined or required to be includable in the income of the Registered Owner for purposes of Federal income taxation, including pursuant to any amendment to the Internal Revenue Code of 1986, as amended, the indebtedness evidenced thereby shall thereafter bear interest at an annual rate (the "Taxable Rate") which shall be the Prime Rate of PNC Bank, National Association, such Taxable Rate to change as of the dates of changes in the Prime Rate without notice to the Local Government Unit; the Local Government Unit will pay to the Registered Owner on demand the difference between the amount of interest which the Registered Owner would have received in interest at the Taxable Rate if the indebtedness evidenced by the Note had borne interest at the Taxable Rate during the entire period that interest on the Note is so declared, determined or required to be taxable, together with such penalties and interest, if any, due and payable because of non-payment of Federal income taxation less interest paid at the rate stated in the Terms of Proposal notwithstanding that the indebtedness evidenced by this Note may have been paid in full prior to such declaration or determination. In the event of any such declaration or determination, the Registered Owner shall promptly give written notice of the same to the Local Government Unit who shall have the privilege of contesting such declaration or determination in the name of the Registered Owner by any available administrative or judicial proceedings, provided that it does so at its own expense and pays all costs, interest and/or penalties resulting therefrom. In the event that any such declaration or determination is reversed pursuant to the entry of a final determination, order, ruling or decree, all amounts theretofore paid to the Registered Owner in excess of the rate stated in the Terms of Proposal shall be promptly refunded to the Local Government Unit and the rate of interest shall revert to the rate stated in the Terms of Proposal.

The occurrence of any of the following events shall be deemed an Event of Default under the Note:

(a) Default in the payment of principal or interest on the Note for a period in excess of fifteen (15) days or any other default under the terms of the Note; or

(b) Default in the performance of any covenant or agreement set forth in the Ordinance or in the Note or the occurrence of a default under any other agreement between the Local Government Unit and the Purchaser; or

(c) Any representation or warranty made by the Local Government Unit is untrue or incomplete in any material respect or any schedule, statement, report, warranty, representation, notice or writing furnished by the Local Government Unit pursuant to the Ordinance is untrue or incomplete in any material respect on the date as of which the facts set forth are stated or certified; or

(d) The Local Government Unit shall fail or refuse to comply with any provisions of the Debt Act, or shall for any reason be rendered incapable of fulfilling its obligations under the Note or thereunder; or

(e) The Local Government Unit shall become insolvent or shall be unable to pay its debts as they mature, or the Local Government Unit shall cease operations, file a voluntary petition in bankruptcy or a voluntary petition seeking reorganization or to effect a plan or other arrangement with creditors, or shall file an answer admitting the jurisdiction of the court and the material allegations of any involuntary petition pursuant to any Act of Congress relating to bankruptcy, or shall be the subject of any order for relief, or shall make an assignment for the benefit of creditors or make an assignment to an agent (authorized to liquidate any substantial amounts of the assets of the Local Government Unit), or shall apply for or consent to or suffer the appointment of a receiver or trustee for the Local Government Unit or a substantial part of its property; or

(f) An order for relief shall be entered pursuant to an Act of Congress or any law of the Commonwealth of Pennsylvania relating to bankruptcy with respect to an involuntary petition seeking reorganization of, or an order shall be entered appointing any receiver or trustee for, the Local Government Unit or a substantial part of its property, or a writ or warrant of attachment or any similar process shall be issued against a substantial part of the property of the Local Government Unit, or an order shall be entered at either the state court level enjoining or preventing the Local Government Unit from conducting all or any part of its business as it is usually conducted, or garnishment proceedings shall be instituted by attachment, levy or otherwise, against any deposit balance maintained, or any property deposited, with the Purchaser by the Local Government Unit.

Upon the occurrence of an Event of Default specified in clause (e) or (f) above, the outstanding principal balance and accrued interest under the Note, together with any additional amounts payable thereunder shall be immediately due and payable without demand and without notice of any kind, at the Purchaser's option. Further, at the Purchaser's option, the Note will bear interest at the Default Rate from the date of the occurrence of the Event of Default, and the Purchaser may exercise from time to time any of the rights and remedies available under the Ordinance or under applicable law.

No recourse shall be had for the payment of the principal of or the interest on this Note, or for any claim based hereon, against any officer, agent or employee, past, present or future, of the Local Government Unit, as such, either directly or through the Local Government Unit, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty, or

otherwise. All liability of such officers, agents or employees is hereby renounced, waived and released as a condition of and as consideration for the issuance, execution and acceptance of this Note.

It is hereby certified that all acts, conditions and things required to be done, to occur or be performed precedent to and in the issuance of this Note, or in the creation of the indebtedness of which this Note is evidence, have been done, have occurred and have been performed in regular and due form and manner as required by law, and that the repayment obligation represented by this Note is not in excess of any constitutional or statutory limitation.

This Note is a Qualified Tax-Exempt Obligation within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

IN WITNESS WHEREOF, the Local Government Unit has caused this Note to be signed in its name by its Chairman of the Governing Body and its corporate seal to be hereunto affixed, or a facsimile thereof to be printed hereon, duly attested, all as of the date set forth above.

ATTEST:

COUNTY OF LACAKWANNA



Steve Barcoski
Interim Chief of Staff

By



Jim Wansacz
Chairman

[SEAL]

REGISTRATION FORM

This Note can be validly negotiated only upon proper execution of the form set forth below, and upon notation of the same upon the books of the Local Government Unit, maintained for such purpose. The Local Government Unit shall treat the Registered Owner of this Note, as noted hereon and on said books, as the absolute owner hereof, and shall not be affected by any changed circumstances, nor by any notice to the contrary.

Original Registered Owner:

PNC Bank, National Association

<u>Date</u>	<u>Transferor</u>	<u>Subsequent Purchaser</u>	<u>Registrar</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

For value received, the last-named Transferor, by its due execution above, does hereby, on the above-stated date, sell, transfer and negotiate this Note unto the last-named Subsequent Purchaser, warranting that this transfer is effective and rightful; that this Note is genuine and has not been materially altered; and that it has no knowledge of any fact which might impair the validity of this Note, and further irrevocably authorizes and directs the Local Government Unit to make this transfer on its books maintained for such purpose.