

ORDINANCE NO. 570

AN ORDINANCE IMPOSING A TAX FOR GENERAL REVENUE PURPOSES ON EARNED INCOME AND NET OPERATING PROFITS AS DEFINED THEREIN, EARNED EACH YEAR BEGINNING JULY 1, 1970, BY RESIDENTS OF THE TOWNSHIP OF PENN, AND ON EARNED INCOME AND NET PROFITS DURING SAID PERIODS BY NONRESIDENTS OF THE TOWNSHIP OF PENN FOR WORK DONE OR SERVICES PERFORMED OR RENDERED IN OR NET PROFITS EARNED WITHIN THE TOWNSHIP OF PENN: REQUIRING THE FILING OF DECLARATIONS AND RETURNS AND THE MANNER OF PAYMENT OF SAID TAX: GIVING OF INFORMATION BY EMPLOYERS THE DUTY OF COLLECTING THE TAX AT THE SOURCE: PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF THE ORDINANCE: IMPOSING PENALTIES FOR VIOLATION THEREOF.

IT IS HEREBY ENACTED AND ORDAINED by the Supervisors of the Township of Penn, Cumberland County, Pennsylvania, as follows:

SECTION 1. DEFINITIONS See the official copy of the Ordinance available at the Township office for the applicable definitions

SECTION 2. IMPOSITION OF TAX A tax for general revenue purposes of one-half of one percent (1/2 of 1%) is hereby imposed on the following:

- a. Earned income earned on or after July 1, 1970, by residents of the Township of Penn.
- b. Earned income, earned on and after July 1, 1970, by non residents of the Township of Penn in the Township of Penn.
- c. Net profits, earned on or after July 1, 1970, by residents of the Township of Penn.
- d. Net profits, earned on or after July 1, 1970, by non residents of the Township of Penn in the Township of Penn.

The tax levied under a & b herein shall relate to, but not be limited to, and is imposed upon earned income paid by an employer or on his behalf to a person who is employed by him. The tax levied under c & d herein shall relate to and be imposed on the net profits of any business, profession or other activity carried on by any person or persons.

Every corporation which is subject to the Pennsylvania Corporate Income Tax or exempt from the Pennsylvania Corporate Income Tax and every foreign corporation which is subject to the Pennsylvania Franchise Tax or exempt from the tax, shall be exempt from the tax imposed by this Ordinance.

The tax levied by this ordinance, shall be applicable to earned income and to net profits earned beginning July 1, 1970, which are subject to this tax, and shall continue on a calendar year basis starting January 1, 1971. The first year shall end December 31, 1970, however, the tax shall remain effective for each full calendar year thereafter until the same is repealed.

SECTION 3 DECLARATION AND PAYMENT OF TAX

A. Net Profits

1. Every taxpayer making net profits shall on or before April 15, of the current year, make and file with the Officer on a form prescribed or approved by the Officer, a declaration of his estimated net profits during the period beginning January 1, and ending December 31 of the current year, and pay to the Officer four equal quarterly installments the tax due thereon as follows: the first installment at the time of filing the declaration, and the other installments on or before June 15 of the current year, September 15 of the current year, and January 15 of the succeeding year, respectively.
2. Any taxpayer who first anticipates any net profits after April 15, of the current year, shall make and file the declaration hereinabove required on or before June 15, of the current year, September 15 of the current year, or December 31, of the current year, whichever of these dates next follows the date on which the taxpayer anticipates such net profit, and pay to the Officer in equal installments the tax due thereon or before the quarterly payment dates which remain after the filing declaration.
3. Every taxpayer making net profits shall on or before April 15, of the succeeding year, make and file with the Officer on a form prescribed or approved by the Officer a final return showing the amount of net profit earned during the period beginning January 1, of the current year and ending December 31, of the current year, the total amount of tax due thereon and the total amount of tax paid thereon, at the time of filing the final return, the taxpayer shall pay to the Officer the balance of tax due or shall make demand for refund or credit in case of overpayment. Any taxpayer may, in lieu of paying the fourth quarterly installment of his estimated tax, elect to make and file with the Officer on or before January 1 of the succeeding year, the final return as hereinabove required.
4. The Officer may be authorized to provide by regulation of the making and filing of adjusted declarations estimated net profits, and for the payments of the estimated tax in cases where a taxpayer who has filed the declaration hereinabove required anticipates additional net profits not previously declared or finds that he has overestimated his anticipated net profits.
5. Every taxpayer who discontinues business prior to December 31, of the current year, shall within thirty days of discontinuance of business, file his final return as hereinabove required and pay the tax due.

6. If, subject to the regulations of the Officer, a return is made for a fiscal year different from the calendar year, such return shall be made within 105 days from the end of the fiscal year and the quarterly installments shall be duly fixed according to the dates herein set forth as related to the fiscal year.

B. Earned Income

1. Every taxpayer shall, on or before April 15, of the succeeding year, make and file with the Officer on a form prescribed or approved by the Officer a final return showing the amount of earned income received during the period beginning January 1, of the current year and ending December 31, of the current year, the total amount of tax due thereon that has been withheld pursuant to the provisions relating to the collection at source and the balance of tax due. At the time of filing the final return, the taxpayer shall pay the balance of the tax due or shall make demands for refund or credit in the case of overpayment.
2. Every taxpayer who is employed for a salary, wage, commission, or other compensation and who received any earned income not subject to the provisions relating to collection at source, shall:
 - (a) Make and file with the Officer on a form prescribed or approved by the Officer, and annual return setting forth the aggregate amount of earned income not subject to withholding from him during the period January 1, of the current year and ending December 31, of the current year, and such other information as the Officer may require, and pay to the Officer the amount of tax shown as due thereon or before April 15, of the succeeding year or
 - (b) Make and file with the Officer on a form prescribed or approved by the Officer, a quarterly return on or before April 30, of the current year, July 31 of the current year, October 31 of the current year, and January 31, of the succeeding year, setting forth the aggregate amount of the earned income not subject to withholding by him during the three month periods ending March 31, of the current year, June 30, of the current year, September 30, of the current year, and December 31, of the current year, respectively, and subject to the tax, together with such other information as the Officer may require. Every taxpayer making such a return shall, at the time of filing thereof, pay to the Officer the amount of tax shown as due thereon.

SECTION 4 COLLECTION AT SOURCE

- A. Every employer having an office, factory, workshop, branch, warehouse or other place of business within the Township of Penn who employs one or more persons, other than domestic servants for a salary, wage, commission or other compensation, who has not previously registered shall, within fifteen days after becoming an employer, register with the Officer his name and address and such other information as the Officer may require.

- B. Every employer having an office, factory, workshop, branch, warehouse or other place of business within the Township of Penn who employs one or more persons, other than domestic servants for a salary, wage, commission or other compensation, shall deduct at the time of payment thereof, the tax imposed by this ordinance on the earned income due to his employee or employees, and shall, on or before April 30, of the current year, July 31, of the current year, October 31, of the current year, and January 31, of the succeeding year, file a return and pay to the Officer the amount of taxes deducted during the preceding three month periods, ending March 31, of the current year, June 31, of the current year, September 30, of the current year, and December 31, of the current year, respectively. Such return unless otherwise agreed upon between the Officer and employer, shall show the name and social security number of each such employee, the total income of all such employees during such preceding three month period, and the total tax deducted therefrom and paid with the return. Any employer who for two of the preceding four quarterly periods has failed to deduct the proper tax or any part thereof, or has failed to pay over the proper amount of tax to the taxing authority, may be required by the Officer to file his return and pay the tax monthly. In such cases, payments of the tax shall be made to the Officer on or before the last day of the month succeeding the month for which the tax was withheld.

- C. On or before February 28, of the succeeding year, every employer shall file with the Officer:
 - 1. An annual return showing the total amount of income paid, the total amount of tax deducted, and the total amount of tax paid to the Officer for the period beginning January 1, of the current year.

 - 2. A return withholding statement for each employee employed during all or any part of the period beginning January 1 of the current year, and ending December 31 of the current year, setting forth the employee's name, address and social security number, the amount of earned income paid to the employee during the said period, the amount of tax deducted, the political subdivisions imposing the tax upon the employee, the amount paid to the Officer. Every employer shall furnish two copies of the individual return to the employee for whom it is filed.

- D. Every employer who discontinues business prior to December 31, in any year, shall, within thirty days after the discontinuance of business, file the returns and withholding statements hereinabove required and pay the tax due.
- E. Except as otherwise provided in Section 9, every employer who willfully or negligently fails or omits to make the deductions required by this section shall be liable for payment of the taxes which he was required to withhold to the extent that such taxes have not been recovered from the employee.
- F. The failure or omission of any employer to make the deductions required by this section shall not relieve any employee from the payment of the tax or from complying with the requirements of this ordinance relating to the filing of declarations and returns.
- G. If an employer makes a deduction for the tax as required by this section, all amounts so deducted shall constitute funds held by such employer for the account of Township of Penn as the beneficial owner thereof.

SECTION 5 POWERS AND DUTIES OF THE INCOME TAX OFFICER

- A. It shall be the duty of the Income Tax Officer to collect and receive the taxes, fines and penalties imposed by this ordinance. It shall also be his duty to keep a record showing the amount received by him from each person or business paying the tax and, if paid by such person in respect of another person, the name of such person, and the date of such receipt.
- B. Each officer, before entering his official duties, shall give and acknowledge a bond to the Township of Penn which shall be conditioned, and shall provide for all rights and obligations on the respective parties as set forth in the Act No. 511, known as "The Local Tax Enabling Act", as amended. Said bond shall be delivered to the Secretary of the Township of Penn and maintained with the township records, or at such place as is required by law.
- C. The Income Tax Officer is hereby charged with the Administration and enforcement of the provisions of this ordinance and is hereby empowered to prescribe, adopt, promulgate and enforce, rules and regulations relating to any matter pertaining to the administration and enforcement of the ordinance, including provisions for the reexamination and corrections of declarations and returns, and of payments alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred, and to make refunds in cases of overpayment, for any period of time not to exceed six years subsequent to the date of payment of the sum involved, and to prescribe forms necessary for the administrations of this ordinance. No rule or any regulation of any kind shall be enforceable unless it has

been approved by resolution by the Supervisors of the Township of Penn. A copy of such rules and regulations currently enforced shall be available for public inspection.

- D. The Officer shall refund, on petition of, and proof by the taxpayer, earned income tax paid on the taxpayer's ordinary and necessary business expenses, to the extent that the taxpayer's employer does not pay such expenses.
- E. The Officer, and agents designated by him, are hereby authorized to examine the books, papers, and records of any employer or of any taxpayer or of any person whom the Officer reasonably believes to be an employer or taxpayer, in order to verify the accuracy of any declaration or return, or if no declaration or return was filed, to ascertain the tax due. Every employer and every taxpayer and every person whom the Officer reasonably believes to be an employer or taxpayer, is hereby directed and required to give to the Officer, or to any agent designated by him, the means, facilities and opportunity for such examination and investigations, as are hereby authorized.
- F. Any information gained by the Officer, his employees, agents, or by any other official or agent of the taxing district and as the result of any declarations, returns, investigations, hearings or verifications required or authorized by this Ordinance, shall be confidential, except for official purposes and except in accordance with a proper judicial order, or as otherwise provided by law.
- G. Any person aggrieved by any action of the Income Tax Officer shall have the right of appeal as provided by law.

SECTION 6 COMPENSATION OF INCOME TAX OFFICER

The Income Tax Officer shall receive such compensation for his services and expenses as shall be determined and fixed by the Supervisors of the Township of Penn and as shall be permitted by law. In fixing such compensation, said supervisors may, pursuant to a resolution, enter into such written agreements for such compensation as shall be deemed necessary.

SECTION 7 SUIT FOR COLLECTION OF TAX

- A. The Income Tax Officer may sue in the name of the Township of Penn for the recovery of taxes due and unpaid under this ordinance.
- B. Any suit brought to recover the tax imposed by this Ordinance shall be begun within three years after such tax is due, or within three years after the declaration or return has been filed, whichever date is later: Provided, however, that this limitation shall not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:

1. Where any person filed no declaration or return although a declaration or return was required to be filed by him under provisions of this ordinance, there shall be no limitation.
2. Where an examination of who paid the declaration or return filed by any person, or of other evidence relating to such declaration or return in the possession of the Officer, reveals a fraudulent evasion, reveals a fraudulent evasion of taxes, there shall be no limitation.
3. In the case of substantial understatement of tax liability of twenty five percent or more, and no fraud, suit shall begun within six years
4. Where any person has deducted taxes under the provisions of this Ordinance, and has failed to pay the amounts so deducted to the Officer or where any person has willfully failed or omitted to make the deductions required by this Ordinance, there shall be no limitation.
5. This section shall not be construed to limit the governing body from recovering delinquent taxes by any other means provided by this act.
6. This Officer may sue for recovery of an erroneous refund provided such suit has begun two years after making such refund, except that the suit may be brought within five years if it appears any part of the refund was induced by fraud or misrepresentation of material fact.

SECTION 8 INTEREST AND PENALTIES

If for any reason the tax is not paid when due, interest at the rate of six percent (6%) per annum on the amount of said tax, and an additional penalty of one-half of one percent (.5%) of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid, shall be added and collected. Where suit is brought for the recovery of such tax, the person the person liable therefore shall, in addition, is liable for the costs of collection and the interest and penalties herein imposed.

SECTION 9 FINES AND PENALTIES FOR VIOLATION OF ORDINANCE

- A. Any person who fails, neglects, or refuses to make any declaration or return required by this ordinance, any employer who fails, neglects, or refuses to register or pay the tax deducted from his employees, or fails, neglects, or refuses to deduct or withhold this tax from his employees, any person who refuses to permit the Officer, or any agent designated by him, to examine his books, records and papers and any person who knowingly makes any incomplete, false or fraudulent return, or attempts to do anything whatsoever to avoid the full disclosure of the amount of his profits in order to avoid the payment of the whole or any part of the tax imposed by the Ordinance or resolution, shall, upon conviction thereof before any District Justice of the Peace, or the Cumberland County Court in event of appeal, be

sentenced to pay a fine of not more than five hundred dollars (\$500.00) for each offense, and costs, and, in default of payment of said fine and costs be imprisoned for a period not exceeding thirty days in the Cumberland County Prison.

- B. Any person who divulges or permits to be divulged, and information which is confidential under the provisions of this Ordinance, shall, upon conviction thereof before any District Justice of the Peace, or the Cumberland County Court in event of appeal, be sentenced to pay a fine of not more than five hundred dollars (\$500.00) for each offense, and costs, and, in default of payment of said fine and costs be imprisoned for a period not exceeding thirty days in the Cumberland County Prison.
- C. The penalties imposed under this section shall be in addition to any other penalty imposed by any other section of this Ordinance.
- D. The failure of any person to receive or procure forms required for making the declaration or returns required by the Ordinance or resolution shall not excuse him from making such declaration or return.

SECTION 10 PAYMENT AND REFUNDS

The Income Tax Officer is hereby authorized to accept payments of the amount of tax claimed by the Township in any case where any person disputes the validity or amount of the Township's claim for the tax. If it is thereafter judicially determined by a court of competent jurisdiction that there has been an overpayment to the Income Tax Officer, the amount of overpayment shall be refunded to the person.

SECTION 11 APPLICABILITY

The tax imposed by this Ordinance shall not apply:

- A. To any person as to whom it is beyond the legal power of the Township of Penn to impose the tax provided for under the Constitution of the United States and the Constitution and laws of Pennsylvania.
- B. To the net profits of any institution or organization operated for public, religious, educational or charitable purposes, to an institution or organization not organized or operated for private profit, or to a trust of a foundation established for any of the said purposes.

This section shall not be construed to exempt any person who is an employer from the duty of collecting the tax at the source from his employees and paying the amount collected to the Township of Penn under the provisions of Section 4 of this Ordinance.

SECTION 12 TITLE AND AUTHORITY

This Ordinance shall be known as the “Township of Penn Earned Income Tax Ordinance” and is enacted pursuant to the procedures and authority of, and as set forth in, the Act of the General Assembly of December 31, 1965, P.L. 1257, Act No. 511, known as “The Local Tax Enabling Act”, as amended.

SECTION 13 SEVERABILITY

The provisions of this Ordinance are severable. If any sentence, clause or section of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses or sections of this Ordinance. It is hereby declared to be the intent of the Township of Penn that this Ordinance would had been adopted had such unconstitutional, illegal or invalid sentence, clause or section not have been included herein.

ENACTED AND PASSED this 1st day of June, 1970.

ENACTED and ORDAINED and APPROVED this 1st day of June, 1970.