

BOROUGH OF MILLVILLE

No. 82

AN ORDINANCE providing for the assessment, levy and collection of an annual tax for general Borough purposes, upon salaries, wages, commissions and other compensation earned by residents of said Borough, and on salaries, wages, commissions and other compensations earned by non-residents of the Borough for work done or services performed or rendered in the Borough and on the net profits of businesses, professions or other activities conducted by residents, and on the net profits of businesses, professions or their activities conducted in the Borough, by non-residents; requiring the filing of returns and the giving of information by employers, and those subject to said tax; imposing on employers the duty of collecting the tax at source; providing for the assessment, administration, collection and enforcement of said tax; and imposing penalties for violation of this Ordinance.

BE IT ORDAINED AND ENACTED BY THE BOROUGH COUNCIL OF THE BOROUGH OF MILLVILLE UNDER THE AUTHORITY OF THE ACT OF DECEMBER 31, 1965, P.L. 1257, KNOWN AS "THE LOCAL TAX ENABLING ACT", AND ITS AMENDMENTS, AND IT IS HEREBY ORDAINED AND ENACTED BY AUTHORITY OF THE SAME.

SECTION I-DEFINITIONS: The following words shall have the meaning prescribed by Section 13 of "The Local Tax Enabling Act", as follows:

- (1) Association. A partnership, limited partnership, or any other unincorporated group of two (2) or more persons.
- (2) Business. An enterprise, activity, profession or any other undertaking of an unincorporated nature, conducted for profit or ordinarily conducted for profit whether by a person, partnership, association or any other entity.
- (3) Corporation. A corporation or joint stock association organized under the laws of the United States, the Commonwealth of Pennsylvania, or any other state, territory, foreign country or dependency.
- (4) Current Year. The calendar year for which the tax is levied.
- (5) Domicile. The place where one lives and has his permanent home and to which he has the intention of returning whenever he is absent. Actual residence is not necessarily domicile, for domicile is the fixed place of abode which, in the intention of the taxpayer,

is permanent rather than transitory. Domicile is the place in which a man has voluntarily fixed the habitation of himself and his family, not for a mere special or limited purpose, but which the present intention of making a permanent home, until some event occurs to induce him to adopt some other permanent home. In the case of businesses or associations, the domicile is that place considered as the center of business affairs and the place where its functions are discharged.

(6) Earned Income. Salaries, wages, commissions, bonuses, incentive payments, fees, tips and other compensation received by a person or his personal representative for service rendered, whether directly or through an agent, and whether in cash or in property; not including, however, wages or compensation paid to persons on active military service, periodic payments for sickness and disability other than regular wages received during a period of sickness, disability or retirement or payments arising under workmen's compensation acts, occupational disease acts and similar legislation, or payment commonly recognized as old age benefits, retirement pay or pensions paid to persons retired from services after reaching a specific age or after a stated period of employment or payments commonly known as public assistance, or unemployment compensation payments made by any governmental agency or payments to reimburse expenses, or payments made by employers or labor unions for wage and salary supplemental programs, including, but not limited to, programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, social security and retirement.

(7) Income tax officer or officer. Person, public employee of private agency designated by the Borough to collect and administer the tax on earned income and net profits.

(8) Employer. A person, partnership, association, corporation, institution, governmental body or unit or agency, or any other entity employing one (1) or more person for a salary, wage, commission or other compensation.

(9) Net profits. The net income from the operation of a business, profession or other activity, except corporation, after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with the accounting system used in such business, profession or other activity, but without deduction of taxes based on income.

(10) Non-resident. A person, partnership, association or other entity domiciled outside the Borough.

(11) Person or Individual. A natural person.

(12) Preceding Year. The calendar year before the current year.

(13) Resident. A person, partnership, association or other entity domiciled in the Borough.

(14) Succeeding year. The calendar year following the current year.

(15) Taxpayer. A person, partnership, association or any other entity, required hereunder to file a return of earned income or net profits, or to pay a tax thereon.

(16) The singular shall include the plural, and the masculine shall include the feminine and the neuter.

SECTION II-Imposition of tax. (a) an annual tax for general revenue purposes of one percent (1%) is hereby imposed on (i) earned income received on and after August 1, 1978 by residents of the Borough; and on (ii) earned income received on and after August 1, 1978 by non-residents of the Borough for work done or services rendered or performed in the Borough; and on (iii) the net profits earned on and after August 1, 1978 in businesses by such residents; and on (iv) the net profits earned on and after August 1, 1978 in business conducted in the Borough by non-residents.

(b) Those taxes shall be levied, collected and paid with respect to earned income received and net profits earned to December 31 of the current year and the tax shall continue in force on a calendar year or taxpayer fiscal year basis without annual reenactment.

SECTION III-Income tax officer. Council shall designate a person, public employee or private agency to collect and administer the tax on earned income and net profits. The income tax officer shall collect and receive all such taxes, shall furnish a receipt for their payment, and shall keep a record showing the amount received by the income tax officer from such taxpayer and the date of each receipt. The income tax officer shall furnish a bond as required by "The Local Tax Enabling Act" and shall have such other duties and powers as are now provided or as may hereafter be provided by the "Local Tax Enabling Act."

SECTION IV>Returns and payment of tax. Every person whose earned income or net profits are subject to the tax imposed by this article shall on or before April 15 of the succeeding year, make and file with the income tax officer, on a form prescribed or approved by that officer, a final return showing his or her business or employment and employer, the aggregate amount of his or her earned income received and net profits earned during the preceding year, the amount of tax due thereon, the amount of like tax paid thereon to any other political subdivision of the commonwealth or elsewhere, the amount of tax thereon that has been withheld at source by employer, and the balance of tax due, together with such other pertinent information as may be required. Further, at the time of filing such a final return, (sic) person shall pay to the income tax officer the tax or balance of tax due, and provided, further, that every taxpayer who discontinues business prior to December 31 of the current year shall within 30 days after the discontinuance of business, file his final return as above required and pay the tax due.

SECTION V-Collection at source.

(a) Every employer having an office, factory, workshop, branch, warehouse or other place of business within the Borough 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 15 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 Borough who employs one (1) 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 article 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 and 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, June 30, September 30 and December 31 of the current year, respectively. The return unless otherwise agreed upon between the officer and employer, shall show the name and social security number of each employee, the earned income of each employee during the preceding three-month period, the tax deducted, the political subdivisions imposing the tax upon the employee, the total earned income of all such employees during such preceding three-month period, and the total tax deducted and paid with the return. And (sic) employer who for two (2) of the preceding four (4) quarterly periods has failed to deduct the proper tax, or any part of it, or has failed to pay over the proper amount of tax to the Borough, may be required by the officer to file his return and pay the tax monthly. In such cases, payments of tax shall be made to the officer on or before the last day 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 earned 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, and ending December 31 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 said periods; the amount of tax deducted; and the amount of tax paid to the officer. Every employer shall furnish two (2) copies of the individuals return to the employee for whom it is filed.

(d) Every employer who discontinues business prior to December 31, of the current year shall, within 30 days after the discontinuance of business, file the returns and withholding statements hereinabove required and pay the tax due.

(e) Except as otherwise provided by "The Local Tax Enabling Act" every employer who wilfully or negligently fails or omits to make the deductions required by the section shall be liable for payment of the taxes which he was required to withhold to the extent that those 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 requirement of this article relating to the filing of returns.

SECTION VI-Enforcement.

(a) The income tax officer may sue in the name of the Borough for the recovery of taxes due and unpaid under this article.

(b) Any suit brought to recover the tax imposed by this article shall be begun within three (3) years after the tax is due, or within three (3) years after the 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 no return was filed by a person although a return was required to be filed by him under the provisions of this article.

(2) Where an examination of the return filed by any person, or other evidence relating to such return in the possession of the income tax officer, reveals a fraudulent evasion of taxes.

(3) In the case of substantial understatement of tax liability of 25 percent or more, and no fraud, suit shall be begun within six (6) years.

(4) Where any person had deducted taxes under the provisions of this article, and has failed to pay the amounts so deducted to the income tax officer, or where any person has wilfully failed or omitted to make the deductions required by this section, there shall be no limitation.

(5) This section shall not be construed to limit the Borough from recovering delinquent taxes by any other means provided by the Local Tax Enabling Act.

(c) The income tax officer may sue for recovery of an erroneous refund provided suit is begun within two (2) years after making such refund, except that the suit may be brought within five (5) years if it appears that any part of the refund was induced by fraud or misrepresentation of material fact.

SECTION VII-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 (1%) 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 any such tax, the person liable for the tax shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

SECTION VIII-Fines and penalties. (a) Any person who fails, neglects or refuses to make any return required by this article; any employer who fails, neglects or refuses to register or to pay the tax deducted from his employees, or fails, neglects or refuses to deduct or withhold the 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 net profits or earned income in order to avoid the payment of the whole or any part of the tax imposed by this article, shall, upon conviction thereof before a district justice, or court of competent jurisdiction, be sentenced to pay a fine of not more than \$500 for each offense and costs, and in default of payment of the fine and costs to be imprisoned for a period not exceeding 30 days.

(b) Any person who divulges any information which is confidential under the provisions of this article, shall, upon conviction thereof before a district justice or court of competent jurisdiction, be sentenced to pay a fine of not more than \$500 for each offense and costs, and in default of payment of the fine and costs to be imprisoned for a period not exceeding 30 days.

(c) The penalties imposed under this section shall be in addition to any other penalty imposed by any other section of this article.

(d) The failure of any person to receive or procure forms required for making the returns required by this article shall not excuse him from making such return.

SECTION IX-Authority for tax. This article is enacted under the authority of "The Local Tax Enabling Act." being Act. No 511 of 1965, effective January 1, 1966, and any amendments or supplements thereto.

SECTION X-Incorporation of statute. The provisions of Section 13 and 14 of the "The Local Tax Enabling Act" are incorporated herein by reference.

SECTION XI- 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 Borough of Millville that this Ordinance would have been adopted had such unconstitutional, (sic) illegal herein.

Section XII- This Ordinance shall go into effect August 1, 1978

Enacted into an Ordinance this 19th day of June, 1978.

THE BOROUGH COUNCIL OF THE
BOROUGH OF MILLVILLE

Glenn T. Gordner
Mayor
John B. Gordner
Chairman

(SEAL)

Attest: Janet Weeks
Secretary

Passed: June 19, 1978

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