

AN ORDINANCE OF THE TOWNSHIP OF TILDEN, BERKS COUNTY, PENNSYLVANIA, IMPOSING A TAX EFFECTIVE ON THE FIRST DAY OF JANUARY, 1967, UPON SALARIES, WAGES, COMMISSIONS, AND OTHER INCOME EARNED BY RESIDENTS OF THE TOWNSHIP OF TILDEN, AND ON THE NET PROFITS EARNED BY RESIDENTS OF THE SAID TOWNSHIP ENGAGED IN BUSINESS, FARMING, PROFESSIONS, AND OTHER ACTIVITIES FOR PROFIT; REQUIRING THE FILING OF RETURNS AND PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF THE SAID TAX; AND IMPOSING PENALTIES FOR VIOLATION.

The Supervisors of Tilden Township, Berks County, Pennsylvania, hereby enact and ordain as follows:

ARTICLE I - ENABLING LEGISLATION, SHORT TITLE AND EFFECTIVE DATE.

101. This Ordinance is enacted pursuant to the authority granted by the Act of the General Assembly of the Commonwealth of Pennsylvania approved December 31, 1965, P.L. 511, known as The Local Tax Enabling Act, and shall be known and may be cited as The Earned Income Tax Ordinance. The provisions hereof shall become effective on the first day of January, 1967, and shall continue in effect for the remainder of the calendar year 1967 and from year to year thereafter without annual re-enactment until altered, amended, or rescinded by appropriate action of the Board of Supervisors of the Township of Tilden.

ARTICLE II - DEFINITIONS.

201. The following words and phrases when used in this Ordinance, including the various portions of this Section thereof, shall have the meanings ascribed to them in this Section, except where the context clearly indicates or requires a different meaning:

"Association" - A partnership, limited partnership, or any other unincorporated group of two or more persons.

"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.

"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.

"Current Year" - At any given time, the then current calendar year for which the tax is levied.

"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 with 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 governmental body or unit or agency, or any other entity employing one or more associations, the domicile is that place regarded as the center of business affairs and at which its functions are discharged.

"Earned Income" - Salaries, wages, commissions, bonuses, incentive payments, fees, tips and other compensation received by a person or his personal representative for services 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

a period of sickness, disability or retirement or payments arising under workmen's compensation acts, occupational disease acts and similar legislation, or payments commonly recognized as old age benefits, retirement pay or pensions paid to persons retired from service 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

"Employer" - A person, partnership, association, corporation, institution, governmental body or unit or agency, or any other entity employing one or more persons for a salary, wage, commission or other compensation.

"Income Tax Officer" or "Officer" - The person, public employee or private agency designated by the Township of Tilden to collect and administer the tax on earned income and net profits.

"Net Profits" - The net income from the operation of a business, profession, or other activity, except corporations, 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.

"Non-Resident" - A person, partnership, association or other entity domiciled outside Tilden Township.

"Person" or "Individual" - A natural person

"Preceding Year" - The calendar year immediately preceding the current year.

"Resident" - A person, partnership, association or other entity domiciled in Tilden Township.

"Succeeding Year" - The calendar year next following the current year.

"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.

"Township" - The Township of Tilden, Berks County, Pennsylvania.

#### ARTICLE III - IMPOSITION OF TAX.

301. A tax for general revenue purposes at the rate of one percent (1%) is hereby imposed on the following:

A. Earned income received by residents of the Township on and after January 1, 1967.

B. Net profits received by residents of the Township on or after July 1, 1967.

#### ARTICLE IV - DECLARATION AND PAYMENT OF TAX.

401. Every taxpayer who receives earned income or net profits during the current year shall make and file with the Income Tax Officer on or before April 15 of succeeding year on a form prescribed and approved by the Office a return setting forth the amount of all earned income and net profits received by the taxpayer during the current year, the total amount of tax due thereon, the total amount of tax paid or withheld previously, and the balance of tax due. At the time of filing the return, the taxpayer shall pay the balance of the tax due or make demand for refund or credit of any overpayment.

402. In lieu of filing the return required by Section 401, the taxpayer may elect to file his returns on the basis of his fiscal year, in which case he shall make and file with the

Income Tax Officer on or before the 105th day after the close of his fiscal year on a form prescribed and approved by the officer a return setting forth the amount of all earned income and net profits received by the taxpayer during his fiscal year ending within the current year, the total amount of tax due thereon, the total amount of tax paid or withheld previously, and the balance of tax due. At the time of filing the return, the taxpayer shall pay the balance of tax due or make demand for refund or credit of any overpayment.

403. In the event of the death of a taxpayer during the current year, his personal representative, or in the absence of a personal representative, the person or persons inheriting or otherwise acquiring his Estate, shall file the return required by this Ordinance to be filed by the taxpayer on or before the date the same is due and pay the tax due.

404. Every taxpayer who discontinues business prior to December 31 of the current year shall, within thirty (30) days after the discontinuance of business, file his return as hereinabove required and pay the tax due.

405. Every taxpayer receiving earned income or net profits during the current year and every person engaged in conducting a business, whether or not resulting in net profits during the current year shall file a return in accordance with the provisions of this Ordinance, even though all of the earned income received by the taxpayer during the current year is subject to withholding by his employer.

#### ARTICLE V - COLLECTION AT SOURCE.

501. Every employer having an office, factory, workshop, branch, warehouse, or other place of business within the

Township of Tilden 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 (15) days after becoming an employer, register with the Income Tax Officer his name and address and such other information as the Officer may require.

502. Every employer having an office, factory, workshop, branch, warehouse or other place of business within the Township of Tilden 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 30 of the current year, September 30 of the current year, and December 31 of the current year, respectively. Such return shall show the name and social security number of each such employee, the earned income received by such employee during such preceding three-month period, the tax deducted therefrom, the political sub-divisions imposing a tax upon such employee, the total earned 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 Tilden Township, may be required by the Income Tax 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 of the month succeeding the month for which the tax was withheld.

503. On or before February 28 of the succeeding year, every employer shall file with the Income Tax Officer:

A. 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.

B. 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 period, the amount of tax deducted, the political sub-divisions imposing a tax upon such employee, and the amount of tax paid to the Officer. Every employer shall furnish two copies of the individual return to the employee for whom it is filed.

504. Every employer who discontinues business prior to December 31 of the current year shall, within thirty (30) days after the discontinuance of business, file the returns and withholding statements hereinabove required and pay the tax due. Where discontinuance of business is due to the death of the employer, his personal representative, or in the absence of a personal representative the person or persons inheriting or otherwise acquiring his Estate, shall within sixty (60) days after the death of the employer file the returns and withholding statements hereinabove required and pay the tax due.

505. Except as otherwise provided in Article IX, every employer who willfully or negligently fails or omits to make the deductions required by this Article 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.

506. 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 returns.

507. The amounts deducted by an employer as required by this Article shall constitute a trust fund in the hands of such employer held for the account of the Township as beneficial owner thereof, and the employee from whose earnings such tax was deducted shall be deemed to have paid such tax.

#### ARTICLE VI - POWERS, DUTIES AND COMPENSATION OF INCOME TAX OFFICER.

601. 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 or on behalf of each person or business paying the tax and the date of such receipt; and to keep a record showing the amount of each refund made by him, the date of such refund, and the name and address of the person to whom the refund is made.

602. Each Income Tax Officer, before entering upon his official duties shall give and acknowledge a bond to Tilden Township in an amount equal to the maximum amount of taxes which may be in his possession at any given time, such amount to be determined by the Township from time to time. Each such bond shall be joint and several, with one or more corporate sureties

which shall be surety companies authorized to do business in this Commonwealth and duly licensed by the insurance commissioner of this Commonwealth. Each such bond shall be conditioned upon the faithful discharge by the officer, his clerks, assistants and appointees, of all trusts confided in him by virtue of his office, upon the faithful execution of all duties required of him by virtue of his office, upon the just and faithful accounting or payment over, according to law, of all monies and all balances thereof paid to, received or held by him by virtue of his office, and upon the delivery to his successor or successors in office of all books, papers, documents or other official things held in right of his office. Each such bond shall be taken in the name of and for the use of Tilden Township and for the use of such other person or persons for whom money shall be collected or received, as their interests shall appear, in case of a breach of any of the conditions thereof by the acts or neglect of the principal on the bond. Each such bond shall contain the name or names of the surety company or companies bound thereon. The Township may at any time, upon cause shown and after due notice to the Officer and his surety or sureties, require or allow the substitution or the addition of a surety company or companies acceptable to the Township for the purpose of making the bond sufficient in amount, without releasing the surety or sureties first approved from any accrued liability or previous action on such bond. The Township shall designate the custodian of the bond required to be given by the Officer.

603. The Income Tax Officer is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and

enforcement of this Ordinance, including provisions for the re-examination and correction of 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 (6) years subsequent to the date of payment of the sum involved, and to prescribe forms necessary for the administration of this Ordinance. No rule or regulation of any kind shall be enforceable unless it has been approved by the Board of Supervisors of Tilden Township. A copy of such rules and regulations currently in force shall be available for public inspection.

604. 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, not including the cost of transportation to and from the taxpayer's place of employment, to the extent that such expenses are not paid by the taxpayer's employer.

605. The Officer and Agents designated by the Officer are hereby authorized to examine the books, papers and records of any employer or of any taxpayer or 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 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.

606. If any person shall fail to file a return as required by the provisions of this Ordinance, or shall fail to

include in any return all of his earned income and net profits, or shall fail to compute and pay the tax due to the Township as required by this Ordinance, the Income Tax Officer shall make an assessment of tax against such person of the amount of tax for which such person is liable, or for which he is reasonably believed by the Income Tax Officer to be liable, together with the penalty and interest hereinafter provided for. Promptly thereafter, the Officer shall give notice to such person by personal service or certified mail of such assessment, together with notice of the contents of this Section. If such person is dissatisfied with the assessment so made, he shall file a return and compute and pay the tax due the Township as required by this Ordinance, together with the penalty and interest hereinafter provided for, or if a return has previously been filed by the taxpayer, shall furnish the Officer with proof that such return contained a correct and complete report of all his earned income and net profits, within twenty (20) days from the date of service upon him of the notice of assessment. Failure to respond to such assessment within said twenty (20) day period shall constitute acquiescence by such person in the correctness of such assessment, and upon the expiration of said twenty (20) day period such assessment shall be conclusive of the amount of tax due; and such person shall not thereafter be permitted, in a suit for the recovery of the tax, to set up any ground of defense which might have been determined by the Income Tax Officer.

607. Any information gained by the Officer, his agents, or by any other official or agent of Tilden Township, as a result of any return, investigation, hearing or verification 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.

608. The Income Tax Officer is authorized to establish different filing, reporting and payment dates for taxpayers whose fiscal years do not coincide with the calendar year.

609. The Income Tax Officer shall receive such compensation for his service and expenses as the Board of Supervisors of Tilden Township may from time to time determine. In the case of an Income Tax Officer collecting taxes for one or more other political sub-divisions located within the geographical limits of Tilden Township, the Township shall share in the compensation and expenses of such officer according to the proportionate share that the total annual collections for the Township bears to the total annual collections for all such political sub-divisions.

#### ARTICLE VII - SUIT FOR COLLECTION OF TAX.

701. The Income Tax Officer may sue in the name of the Township for the recovery of taxes due and unpaid under this Ordinance.

702. Any suit brought to recover the tax imposed by this Ordinance shall be begun within three (3) years after such tax is due, or within three (3) 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:

A. Where no declaration or return was filed by any person although a declaration or return was required to be filed by him under the provisions of this Ordinance, there

shall be no limitation.

B. Where an examination of 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 of taxes, there shall be no limitation.

C. In the case of understatement of tax liability by twenty-five percent (25%) or more without fraud, suit shall be begun within six (6) years.

D. Where any person had deducted taxes under the provisions of this Ordinance and has failed to pay the amount 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.

E. This Section shall not be construed to limit the Township from recovering delinquent taxes by any other means provided by law.

703. The Income Tax Officer may sue for recovery of an erroneous refund, provided such suit is begun 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.

#### ARTICLE VIII - INTEREST AND PENALTIES ON UNPAID TAXES.

801. 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 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 therefor shall in addition be liable for the costs

of collection and the interest and penalties herein imposed.

ARTICLE IX - FINES AND PENALTIES FOR VIOLATION.

901. 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 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 Income Tax 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 Ordinance, shall upon conviction thereof before any Justice of the Peace, Alderman or Magistrate, or Court of competent jurisdiction, be sentenced to pay a fine of not more than FIVE HUNDRED AND 00/100 (\$500.00) DOLLARS for each offense together with costs, and in default of payment of said fine and costs to be imprisoned for a period not exceeding thirty (30) days.

902. Any person who divulges any information which is confidential under the provisions of this Ordinance, shall upon conviction thereof before any Justice of the Peace, Alderman or Magistrate, or Court of competent jurisdiction, be sentenced to pay a fine of not more than FIVE HUNDRED AND 00/100 (\$500.00) DOLLARS for each offense and costs, and in default of payment of said fines and costs to be imprisoned for a period not exceeding thirty (30) days.

903. The penalties imposed under this Article shall

be in addition to any other penalty imposed by any other part of this Ordinance.

904. The failure of any person to receive or procure forms required for making the declaration or returns required by this Ordinance shall not excuse him from making such declaration or returns.

#### ARTICLE X - PAYMENT AND REFUNDS.

1001. The Income Tax Officer is hereby authorized to accept payment 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 of tax, the amount of the overpayment shall be refunded to the person entitled thereto.

#### ARTICLE XI - APPLICABILITY.

1101. The tax imposed by this Ordinance shall not be levied upon the earned income or net profits of any person, association or corporation as to whom or which it is beyond the power of the Township to impose said tax under the Constitution of the United States of America or the Constitution and laws of the Commonwealth of Pennsylvania. This Article shall not be construed to exempt any person, association or corporation who is an employer from the duty of collecting the tax from his or its employees or paying the amount collected to the Township under the provisions of Article V of this Ordinance.

#### ARTICLE XII - SEVERABILITY.

1201. 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 Board of Supervisors of Tilden Township that this Ordinance would have been adopted even if such unconstitutional, illegal or invalid sentence, clause or section had not been included herein.

ENACTED AND ORDAINED this 12<sup>th</sup> day of December,

1966.

Harold B. Stunt  
Supervisor

George B. George  
Supervisor

Lester F. Epting  
Supervisor

ATTEST:

Carrie M. Kellaher  
Secretary