

AN ORDINANCE IMPOSING A TAX FOR GENERAL REVENUE PURPOSES UPON SALARIES, WAGES, COMMISSIONS AND OTHER COMPENSATION EARNED DURING THE PERIOD BEGINNING JANUARY 1, 1968, BY RESIDENTS OF YOE BOROUGH AND UPON THE NET PROFITS EARNED DURING SAID PERIOD FROM BUSINESSES, PROFESSIONS AND OTHER ACTIVITIES CONDUCTED BY SUCH RESIDENTS; REQUIRING THE FILING OF DECLARATIONS AND RETURNS AND THE FURNISHING OF INFORMATION BY THOSE SUBJECT TO THE TAX; PROVIDING FOR THE PAYMENT AND COLLECTION OF SAID TAX; PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS AND THE PROMULGATION OF RULES AND REGULATIONS RELATING THERETO; PROVIDING FOR EXEMPTIONS ALLOWED BY LAW AND REFUNDS; AND IMPOSING PENALTIES FOR VIOLATION THEREOF; AND CONTAINING DEFINITIONS.

Section I - Short Title.

This ordinance shall be known as the Yoe Borough Earned Income Tax.

Section II - Definitions.

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.

"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" - The 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 associations, the domicile is that place considered as the center of business affairs and the place where 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 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 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 compensa-

tion 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.

"Income Tax Officer or Officer" - Person, public employee or private agency designated by governing body to collect and administer the tax on earned income and net profits.

"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.

"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 the taxing district.

"Person or Individual" - A natural person.

"Preceding Year" - The calendar year before the current year.

"Resident" - A person, partnership, association or other entity domiciled in the taxing district.

"Succeeding Year" - The calendar year 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.

Section III - A tax of ( 1 % ) - ~~of~~ one percent for general revenue purposes is hereby imposed on salaries, wages, commissions, net profits and other compensation earned by residents of *Yoe Borough*.

The tax levied under this ordinance shall be applicable to earned income received and to net profits earned in the period beginning January 1 of the current year, and ending December 31, of the current year or for taxpayer fiscal years beginning in the current year. The tax shall continue in force on a calendar year or taxpayer fiscal year basis without annual enactment.

#### Section IV - Declaration and Payment of Tax

##### A. Net Profits

1. Every taxpayer making net profits shall pay to the officer an annual payment of tax due on or before April 15, of the succeeding year for the period beginning January 1, and ending December 31, of the current year.

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

##### B. Earned Income

Annual Earned Income Tax Return

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 make and file with the officer on a form prescribed or approved by the officer, an annual return setting forth the aggregate amount of earned income not subject to withholding from him during the period beginning January 1, 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.

Section V - (A) Every employer having an office, factory, workshop, branch, warehouse, or other place of business within the taxing jurisdiction imposing a tax on earned income or net profits within the taxing district 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 taxing jurisdiction imposing a tax on earned income or net profits within the taxing district 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 ordinance or resolution on the earned income due to his employe 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 unless otherwise agreed upon between the officer and employer shall show the name and social security number of each such employee, the earned income of such employee during such preceding three-month period, the tax deducted therefrom, the political sub-divisions imposing the 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 the taxing authority, 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 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 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 period, the amount of tax deducted, the political sub-divisions imposing the tax upon such employee, 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.

(d) Every employer who discontinues business prior to December 31, of the current 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 X, 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 the ordinance or resolution relating to the filing of declarations and returns.

#### Section VI - Powers and Duties of Officer

(a) It shall be the duty of the officer to collect and receive the taxes, fines and penalties imposed by the ordinance or resolution. 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 the date of such receipt.

(b) Each officer, before entering upon his official duties shall give and acknowledge a bond to the political subdivision or political subdivisions appointing him. If such subdivision or political subdivisions shall by resolution designate any bond previously given by the officer as adequate, such bond shall be sufficient to satisfy the requirements of the subsection.

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 the Commonwealth.

Each 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 just and faithful accounting or payment over, according to law, of all moneys 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 the appointing authority or authorities, and shall be for the use of the political subdivision or political persons for whom money shall be collected or received, or as his or her interest shall otherwise appear, in case of a breach of any of the conditions thereof by the acts or neglect of the principal on the bond.

The political subdivision or political subdivisions appointing the officer, or any person may sue upon the said bond in its or his own name for its or his own use.

Each bond shall contain the name or names of the surety company or companies bound thereon. The political subdivision or political subdivisions appointing the officer shall fix the amount of the bond at an amount equal to the maximum amount of taxes which may be in the possession of the officer at any given time.

The political subdivision or political subdivisions appointing the officer may, at any time, upon cause shown and due notice to the officer, and his surety or sureties, require or allow the substitution or the addition of a surety

company acceptable to such political subdivisions for the purpose of making the bond sufficient in amount, without releasing the surety first approved from any accrued liability or previous action on such bond.

The political subdivision or political subdivisions appointing the officer shall designate the custodian of the bond required to be given by the officer.

(c) The officer charged with the administration and enforcement of the provisions of the ordinance or resolution 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 or resolution, including provisions for the re-examination and correction 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 case 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 administration of the ordinance or resolution. No rule or regulation of any kind shall be enforceable unless it has been approved by resolution of the governing body. A copy of such rules and regulations currently in force 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 such expenses are not paid by the taxpayer's employer.

(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 agents, or by any other official or agent of the taxing district, as a result of any declarations returns, investigations, hearings or verifications required or authorized by the ordinance or resolution, shall be confidential, except for official purposes and except in accordance with a proper judicial order, or as otherwise provided by law.

(g) The officer is authorized to establish different filing, reporting and payment dates for taxpayers whose fiscal years do not coincide with the calendar year.

#### Section VII - Compensation of Income Tax Officer

The income tax officer shall receive such compensation for his services and expenses as shall be determined by the Board of Supervisors of

#### Section VIII - Suit for Collection of Tax

(a) The officer may sue in the name of the taxing district for the recovery of taxes due and unpaid under this ordinance.

(b) Any suit brought to recover the tax imposed by the ordinance or resolution 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 no declaration or return was filed by any person although a declaration or return was required to be filed by him under provisions of the ordinance or resolution, there shall be no limitations.

(2) 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 limitations.

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

(4) Where any person has deducted taxes under the provisions of the ordinance or resolution, 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 section, 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.

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

#### Section IX - Interest and Penalties

If for any reason the tax is not paid when due, interest at the rate of six percent 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 therefore shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

#### Section X - Fines and Penalties for Violation of Ordinance or Resolution

(a) Any person who fails, neglects, or refuses to make any declaration or return required by the ordinance or resolution, 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 the ordinance or resolution, shall, upon conviction thereof before any Justice of the Peace, Alderman, or Magistrate, or Court of competent jurisdiction in the county or counties in which the political subdivision imposing the tax is located, be sentenced to pay a fine of not more than five hundred (\$500.00) Dollars for each offense, and costs, and in default of payment of said fine and costs to be imprisoned for a period not exceeding thirty days.

(b) Any person who divulges any information which is confidential under the provisions of the ordinance or resolution, 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 (\$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 days.

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

(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 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 Yoe Borough Council that this ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause or section not been included herein.

Section XII - Applicability

This ordinance shall not apply to any person or property as to whom or which it is beyond the legal power of Yoe Borough Council to levy, assess and impose the tax or duties as herein provided.

Section XIII - Authorization

This ordinance and the tax imposed hereby is adopted under and by virtue of the authority contained in the Act of General Assembly, approved the 31st day of December, 1965, Act #511, known as the "Local Tax Enabling Act".

DULY ENACTED AND ORDAINED by the Yoe Borough Council, November 14, 1967.

Attest:

Miss Ruth Kreidler  
Secretary

By Charles G. Landis Jr.  
President