

Ordinance No. 1

BERWICK TOWNSHIP ORDINANCE IMPOSING A TAX AT THE RATE OF 1% ON NET PROFITS AND ON EARNED INCOME OF RESIDENTS OF THE ABOVE TOWNSHIP EARNED ON OR AFTER SEPTEMBER 1, 1979. PRESCRIBING METHODS OF COLLECTION AND REPORTING AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE ORDINANCE.

BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE TOWNSHIP OF BERWICK, ADAMS COUNTY, PENNSYLVANIA, PURSUANT TO THE AUTHORITY GRANTED BY ACT NO. 511, APPROVED DECEMBER 31, 1965, AND KNOWN AS THE "LOCAL TAX ENABLING ACT", AS FOLLOWS:

Section I: Incorporation of Statute.

101. The provisions of Section 12 of the Local Tax Enabling Act (Act No. 511 of 1965) are incorporated herein by reference, and in the event that the provisions of this Ordinance are interpreted as being in conflict with the said Section 13 the provisions of Section 13 shall be controlling.

Section II: Definitions.

201. In accordance with the provisions of the above-mentioned Act, the following words and phrases when used in this Ordinance shall have the meaning ascribed to them in this section as follows:

"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 dependence.

"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 where 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 representatives 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 compensation benefits or 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, program covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, social security and retirements.

“Income Tax Officer or Officers” – Persons, public employee or private agency designated by the Board of Supervisors of Berwick Township to collect and administer the tax on earned income and 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 area of the Township of Berwick.

“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 area of the Township of Berwick.

“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: Imposition of Tax.

301. A tax for general revenue purposes at the rate of one percent (1%) is hereby imposed on earned income and net profits to the full extent permitted by the Local Tax Enabling Act (Act No. 511 of 1965), including net profits and earned income as herein defined, earned by residents of Berwick Township on and after January 1, 1983. The tax hereby imposed shall be and become effective on the first day of January, 1983, and shall continue in force and effect from year to year thereafter.

Section IV: Payment of Tax.

401. Net Profits and Earned Income – Annual Income Tax Return. 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 or net profits received during that period beginning January 1 of the current year, and ending on December 31 of the current year, the total amount of tax due thereon, the amount of tax paid thereon, the amount of tax thereon, that has been withheld pursuant to the provisions relating to the collection at source and the balance of the tax due. At the time of filing the final return, the taxpayer shall pay the balance of the tax due or shall make demand for refund or credit in the case of over payments.

402. 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 in 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 profit after April 15 of the current year, shall make and file the decision 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 first anticipates such net profit, and pay to the officer in equal installments the tax due thereon on or before the quarterly payment dates which remain after the filing of the declaration.
- (3) 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 31 of the succeeding year, the final return as hereinabove required.
- (4) The officer is hereby authorized to provide by regulation for the making and filing of adjusted declarations of 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 after the discontinuance of business, file his final return as hereinabove required and pay the tax due.

403. Earned Income Not Subject to Withholding. 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:

- (1) 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 may to the officer the amount of tax shown as due thereon on or before April 15 of the succeeding year, or
- (2) 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 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 return shall, at the time of filing thereof, pay to the officer the amount of tax shown as due thereon.

As provided under Section 201 of the Ordinance, the term “current year” as applied to the year 1983 shall mean the period commencing January 1, 1983 and ending December 31, 1983.

#### Section V: Collection At Source.

501. Every employer having an office, factory, workshop, branch, warehouse or other place of business within the Township of Berwick 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 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 Berwick who employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, shall deduct at the time thereof, from resident employees the tax imposed by this Ordinance on the earned income due to his employee or employees, and shall, on or before the fifteenth of every month if withheld taxes exceed fifty (\$50.00) dollars monthly, shall pay to the officer the amount of taxes deducted during the preceding period. Employers deducting less than fifty (\$50.00) dollars monthly shall pay to the officer the amount of taxes deducted on or before the fifteenth of the month following the end of each quarter. Such return, unless otherwise agreed upon between the officer and the employer, shall show the total earned income of all such employees during such period, and the total tax deducted therefrom and paid with the return.

503. On or before February 28 of the succeeding year, every employer shall file with the 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 subdivisions imposing the tax upon such employee, the amount of tax paid to the officer. Every employer shall furnish two (2) 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.

505. Every employer who willfully or negligently fails to or omits to make the

deductions required by this section shall be liable for payment of 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 declarations and returns.

Section VI: Powers and Duties of Officer.

601. It shall be the duty of the 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 the date of such receipt.

602. The income tax officer, before entering upon his official duties under this Ordinance, shall give and acknowledge a bond to Township of Berwick such as will comply with the provisions of Section 13 (B) (b) of Act No. 511 of the 1965 Session of the Pennsylvania General Assembly approved December 31, 1965, as amended.

603. The officer charged with the administration and enforcement the provisions of this Ordinance is hereby empowered to prescribe, adopt, promulgate and enforce, rules and regulations relating to any matter pertain to the administration and enforcement of this Ordinance, including provision 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 (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 ordinance by the Board of Supervisors of Township of Berwick. 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 employee's (taxpayer's) ordinary and necessary business expenses, to the extent that such expenses are not paid taxpayer's employer.

605. 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

reasonable believes to be an employer or taxpayer, is hereby directed and required to give the officer, or to any agent designated by him, the names, facilities, and opportunity for such examination and investigation, as hereby authorized.

606. Any information gained by the officer, his agents or by any other official or agent of Berwick Township, as a 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.

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

608. The officer shall, at least quarterly, distribute earned income taxes to the appropriate political subdivisions. The political subdivisions shall not be required to request the officer to distribute the funds collected but shall at least annually reconcile their receipts with the records of the officer and return to or credit the officer with any overpayment. If the officer, within one year after receiving a tax payment, cannot identify the taxing jurisdiction entitled to a tax payment, he shall make payment to the municipality in which the tax was collected. Within 120 days of the passage of this act, any present accumulated funds that are unclaimed shall be distributed on the same basis.

Section VII: Suit for Collection of Tax.

701. The officer may sue in the name of Berwick 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, which ever 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 of return was filed by any persons 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 any 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 substantial understatement of tax liability of twenty-five (25%) percent or more, but no fraud, suite shall be begun within six (6) years.

(d) 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.

(e) This section shall not be construed to limit the Township of Berwick from recovering delinquent taxes by any other means provided by law.

703. The officer may sue for recovery of an erroneous refund provided such suit is made or 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 the misrepresentation of material fact.

#### Section VIII: Interest and Penalties.

801. If for any reason the tax is not paid when due, interest at the rate of six (6%) percent per annum on the amount of said tax, and an additional penalty of one-half (1/2) 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 therefor shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

#### Section IX: Fines and Penalties for Violation of Ordinance.

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 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 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 (\$500.00) Dollars for each offense, and costs, and in default of payment of said fine and costs to be imprisoned for a period of 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 (\$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 failure of any person to receive or procure forms required for making the return required by this Ordinance shall not excuse him from making such return.

Section X: Credit or Deduction for Payment of Tax to Other Political Subdivisions or States.

1001. Taxpayers under this Ordinance shall be allowed such credit or deduction from their liability for the tax imposed by this Ordinance for taxes paid to other taxing authorities as is provided by the Local Tax Enabling Act, Act No. 511 of the 1965 Session of the Pennsylvania General Assembly, approved December 31, 1965, as amended.

Section XI: Severability.

1101. 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 nor 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 Berwick Township that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, or section had not been included therein.

ADOPTED by the Board of Supervisors of Berwick Township this 13<sup>th</sup> day of December, 1982.