

BOROUGH OF ORWIGSBURG

Schuylkill County, Pennsylvania

ORDINANCE NO. 196

AN ORDINANCE OF THE BOROUGH OF ORWIGSBURG, SCHUYLKILL COUNTY, PENNSYLVANIA, IMPOSING A TAX FOR GENERAL PURPOSES ON SALARIES, WAGES, COMMISSIONS AND OTHER COMPENSATION EARNED DURING THE CALENDAR YEAR BEGINNING JANUARY 1, 1970, AND ENDING DECEMBER 31, 1970, BY RESIDENTS OF THE BOROUGH OF ORWIGSBURG AND ON THE NET PROFITS EARNED DURING SAID PERIOD FROM BUSINESSES, PROFESSIONS OR OTHER ACTIVITIES CONDUCTED BY RESIDENTS OF SAID BOROUGH, REQUIRING THE FILING OF DECLARATIONS AND RETURNS AND THE GIVING OF INFORMATION BY EMPLOYERS AND BY THOSE SUBJECT TO THE TAX, IMPOSING ON EMPLOYERS THE DUTY OF COLLECTING THE TAX AT THE SOURCE, PROVIDING FOR COLLECTION OF THE TAX, FOR THE ADMINISTRATION AND ENFORCEMENT OF THE ORDINANCE AND IMPOSING PENALTIES FOR VIOLATION THEREOF.

SECTION I. SHORT TITLE.

This ordinance shall be known as the Borough of Orwigsburg Earned Income Tax Ordinance.

SECTION II. DEFINITIONS.

The following words and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

- (a) "Association". A partnership, limited partnership, or any other unincorporated group of two or more persons.
- (b) "Business". An enterprise, activity, profession, or undertaking of any nature, conducted for profit, or ordinarily conducted for profit, whether by a person, partnership, association, or any other entity.
- (c) "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.

- (d) "Current year". The calendar year for which the tax is levied.
- (e) "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.
- (f) "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 compensation payments 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.
- (g) "Income Tax Officer or Officers". The person, public employee or private agency designated by the Borough of Orwigsburg to collect and administer the tax on earned income and net profits.
- (h) "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.
- (i) "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.
- (j) "Non-resident". A person, partnership, association or other entity domiciled outside the taxing district.

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 declaration hereinabove required on or before June 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) 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 net profits 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 the case of overpayment.
- (4) The officer shall be 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 (30) days after the discontinuance of business, file his final return as hereinabove required and pay the tax due.

(b) Earned Income.

(1) Annual Earned 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 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, 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 (Section 5 of this ordinance) 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 demand for refund or credit in the case of overpayment.

- (k) "Person or Individual". A natural person.
- (l) "Preceding Year". The Calendar year before the current year.
- (m) "Resident". A person, partnership, association or other entity domiciled in the taxing district.
- (n) "Succeeding Year". The calendar year following the current year.
- (o) "Taxable". Subject to the tax imposed by this ordinance.
- (p) "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.
- (q) The singular shall include the plural, and the masculine shall include the feminine and the neuter.

SECTION III. IMPOSITION OF TAX.

- (a) A tax for general revenue purposes of one-half of one percent ($1/2$ of 1%) is hereby imposed on:
 - (1) Earned income received during any calendar year this tax is in effect by individual residents of the Borough of Orwigsburg; and on
 - (2) Net profits earned or received during the calendar year by the residents of the Borough of Orwigsburg.
- (b) 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, and the tax shall continue in force on a calendar year or taxpayer fiscal year basis, without annual reenactment, unless the rate of the tax is subsequently changed. Changes in rate shall become effective on the date specified in the ordinance.

SECTION IV. 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

(2) 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 of Section 5 of this ordinance relating to collection at source, shall 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.

SECTION V. COLLECTION AT SOURCE.

- (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 (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 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 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-months period 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 subdivisions 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 tax 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 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.

- (d) 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.
- (e) Unless excused by the provisions of Section 9 of the Enabling Legislation, 1965 Dec. 31, P. L. 1257, Sec. 9, 53 P. S., Sec. 6909, every employer who wilfully 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 relating to the filing of declarations and returns.

SECTION VI. POWERS AND DUTIES OF EARNED INCOME TAX OFFICER.

- (a) It shall be the duty of the officer to collect and receive the taxes, fines and penalties imposed by the 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.
- (b) The officer, before entering upon his official duties, shall give and acknowledge a bond to the political subdivisions appointing him. If such 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 this subsection.

Each such bond shall be as provided in Section 13 of the Act of 1965, December 31, P. L. 1257, Subsection V, Clause (b), or any amendment thereto or similar provisions in future legislation.

- (c) The officer charged with the administration and enforcement of the provisions of the ordinance 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 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 the ordinance. No rule or regulation of any kind shall be enforceable unless it has been approved by resolution by 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. Every employer and every taxpayer and every person whom the officer reasonably believes to be an employer or taxpayer, is hereby directed and

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. 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 (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:
 - (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, there shall be no limitation.
 - (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 limitation.

- (3) In the case of substantial understatement of tax liability of twenty-five (25%) percent or more and no fraud, suit shall be begun within six (6) 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 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 governing body from recovering delinquent taxes by any other means provided by law or this ordinance.
- (c) The 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.

SECTION VIII. INTEREST AND PENALTIES.

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 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 or penalties herein imposed.

SECTION IX. FINES AND PENALTIES FOR VIOLATION OF ORDINANCES.

- (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 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 (30) days.

- (b) Any person who divulges any information which is confidential under the provisions of the 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.
- (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 X. DESIGNATION OF EARNED INCOME TAX OFFICER.

The presently acting earned income tax officer for the Blue Mountain School District is hereby designated income tax officer and single collector of the tax imposed by this ordinance. He or his successor shall receive such compensation for his services

and expenses as shall from time to time be determined by the governing body employing him. The various taxing jurisdictions so employing him as single collector shall share in his compensation and the expenses of his office according to the proportionate share that the total annual collections for each jurisdiction bears to the total annual collection for all political subdivisions in the single collection district.

SECTION XI. 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 Borough of Orwigsburg to impose the tax, either under the constitution or laws of the United States, or of the Commonwealth 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 or 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 source, from his employees and paying the amount collected to the Borough of Orwigsburg under the provisions of Section V of this ordinance.

SECTION XII. SEVERABILITY.

The provisions of this ordinance are severable. If any sentence, clause or section of this ordinance, for any reason, is 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 Council of the Borough of Orwigsburg that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause or section not been included herein.

SECTION XIII. AUTHORIZATION.

This ordinance and the tax imposed hereby is adopted under and by virtue of the

property corner of land of Wilbur Miller; thence along the Orwigsburg Borough Line and along land of Wilbur Miller, North thirteen degrees and thirty minutes West (N. $13^{\circ} 30'$ W.) for a distance of eight hundred seventy-eight and thirty hundredths (878.30) feet to a concrete monument on line of lands of Kenneth Reynolds; thence along line of lands of Kenneth Reynolds and further along line of the Orwigsburg Borough and along line of lands of Orwigsburg Borough Albright's Woods Tract, North seventy-five degrees and thirty minutes East (N. $75^{\circ} 30'$ E.) for a distance of one thousand two hundred thirty-seven and twenty hundredths (1,237.20) feet to a concrete monument; thence along land of Phaon Herb, South eighty-seven degrees and thirty minutes East (S. $87^{\circ} 30'$ E.) for a distance of thirty-three and no hundredths (33.00) feet to a concrete monument; thence further along land of Phaon Herb, North seventy-seven degrees and fifteen minutes East (N. $77^{\circ} 15'$ E.) for a distance of five hundred fifteen and fifteen hundredths (515.15) feet to a concrete monument; thence along line of lands of E. Mac Troutman, South ten degrees and forty-five minutes East (S. $10^{\circ} 45'$ E.) for a distance of one thousand twenty and seventy-three hundredths (1,020.73) feet to a concrete monument on the North right-of-way line of P. D. H., L. R. #53014; thence along the North right-of-way line of P. D. H., L. R., #53014, the following eight (8) courses and distances to the place of beginning: (1) South seventy-eight degrees, twenty-seven minutes and fifty-nine seconds West (S. $78^{\circ} 27' 59''$ W.) for a distance of five hundred fourteen and ninety hundredths (514.90) feet to a concrete monument; (2) South seventy-seven degrees and twenty-four minutes West (S. $77^{\circ} 24'$ W.) for a distance of one hundred twelve and twenty hundredths feet (112.20) to a point; (3) South seventy-eight degrees and fifty-four minutes West (S. $78^{\circ} 54'$ W.) for a distance of four hundred fifty-five and forty hundredths (455.40) feet to a point; (4) South eighty degrees and thirty-three minutes West (S. $80^{\circ} 33'$ W.) for a distance of ninety-one and no hundredths feet (91.00) to a point; (5) South eighty-five degrees and thirty-nine minutes West (S. $85^{\circ} 39'$ W.) for a distance of ninety-one and no hundredths (91.00) feet to a point; (6) South eighty-seven degrees and sixteen minutes West (S. $87^{\circ} 16'$ W.) for a distance of two hundred thirty and thirty hundredths (230.30) feet to a point; (7) South eighty-six degrees and three minutes West (S. $86^{\circ} 03'$ W.) for a distance of one hundred two and fifty hundredths (102.50) feet to a point; and (8) South eighty-two degrees and forty-five minutes West (S. $82^{\circ} 45'$ W.) for a distance of one hundred forty-five and ninety hundredths (145.90) feet.

CONTAINING 39.870 Acres and being shown on a Plan laid out by Merlyn J. Jenkins, Registered Surveyor, dated October 7, 1969, and designated as Plan No. 5216."

Section 2. The territory hereinabove described is hereby annexed to and shall henceforth be a part of the Borough of Orwigsburg and the same shall, upon compliance with all legal requirements, be subject to the jurisdiction of the Borough of Orwigsburg and shall be entitled to all the privileges of said borough.

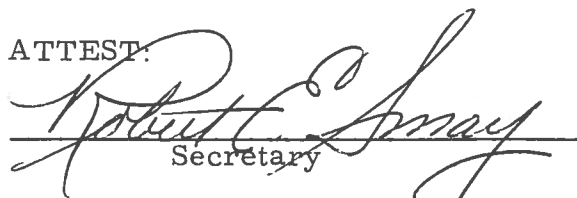
Section 3. The proper officials of the Borough of Orwigsburg are hereby authorized and directed to file a certified copy of this ordinance in the Court of Common Pleas of Schuylkill County, together with a description of the land hereby annexed and a map or drawing showing the courses and distances of the boundaries of the Borough of Orwigsburg, before and after such annexation. The proper officers of the Borough of Orwigsburg are hereby also authorized and directed to give notice of the filing thereof in the Court of Common Pleas of Schuylkill County to the Schuylkill County Board of Elections.

Section 4. Any ordinance or part of an ordinance conflicting with this ordinance is hereby repealed insofar as the same affects this ordinance.

Section 5. If any sentence, clause, section or part 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, sections or parts of this ordinance. It is hereby declared as the intent of the Borough Council and Mayor of the Borough of Orwigsburg that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

ENACTED and ORDAINED into an ordinance this 12th day of November, A. D., 1969, by the Council of the Borough of Orwigsburg, Schuylkill County, Pennsylvania, in lawful session duly assembled.

ATTEST:

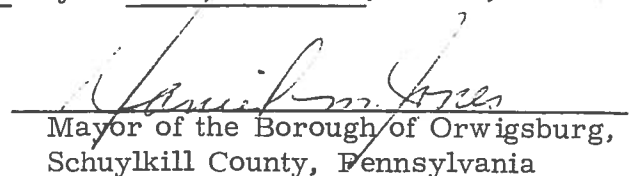

Secretary

BOROUGH OF ORWIGSBURG

By:


President of Council

EXAMINED and APPROVED this 12th day of November, A. D., 1969.


Mayor of the Borough of Orwigsburg,
Schuylkill County, Pennsylvania