

ORDINANCE 74

An Ordinance of the Township of Pymatuning, Mercer County, Pennsylvania providing for the levy, assessment and collection of a 1% earned income tax on earned income received by residents of the Township of Pymatuning, on earned income received by non-residents of the Township of Pymatuning, on net profits earned in businesses by such residents, and on the net profits earned in businesses conducted in the Township by non-residents; requiring the filing of returns and the giving of information by employers and by residents and non-residents subject to the tax; imposing upon employers the duty of collecting the tax at source; providing for the administration, collection and enforcement of the tax by income tax officer; and imposing interest and penalties for non-payment of the tax when due and payable;

Be It Enacted and Ordained by the Board of Supervisors of the Township of Pymatuning, and it is hereby enacted and ordained by and with the authority of the same, pursuant to the authority granted by "The Local Tax Enabling Act", being Act No. 511 of 1966, approved December 31, 1965, as follows:

SECTION 1: DEFINITIONS. The following words shall have the meaning prescribed by Section 13 of "The Local Tax Enabling Act" 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 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 services after reaching a specified 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.

"Income tax officer or officer." Person, public employe or private agency designated by the Township 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.

"Nonresident." 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.

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

SECTION 2. IMPOSITION OF TAX. An annual tax for general revenue purposes of 1% is hereby imposed on (a) earned income received on and after January 1, 1967 by residents of the Township of Pymatuning; and on (b) earned income received on and after January 1, 1967 by non-residents of the Township of Pymatuning for work done or services rendered or performed in the Township of Pymatuning; and on (c) the net profits earned on and after January 1, 1967 in businesses by such residents; and on (d) the net profits earned on and after January 1, 1967 in businesses conducted in the Township of Pymatuning by non-residents.

Said taxes shall be levied, collected and paid with respect to earned income received and net profits earned to December 31 of the current year and said tax shall continue in force on a calendar year or taxpayer fiscal year basis without annual re-enactment.

SECTION 3: INCOME TAX OFFICER. The Board of Supervisors shall designate a person, public employee or private agency to collect and administer the tax on earned income and net profits. The Income Tax Officer shall collect and receive all such taxes, shall furnish a receipt for their payment, and shall keep a record showing the amount received by the Income Tax Officer from such taxpayer and the date of each receipt. The Income Tax Officer shall

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furnish a bond as required by "The Local Tax Enabling Act" and shall have such other duties and powers as are now provided or as may hereafter be provided by "The Local Tax Enabling Act."

SECTION 4: RETURNS AND PAYMENT OF TAX. Every person whose earned income or net profits are subject to the tax imposed by this ordinance shall on or before April 15 of the succeeding year, make and file with the Income Tax Officer, on a form prescribed or approved by such officer, a final return showing his or her name and address, name and place of his or her business or employment and employer, the aggregate amount of his or her earned income received and net profits earned during the preceding year, the amount of tax due thereon, the amount of like tax paid thereon to any other political subdivision of the Commonwealth of Pennsylvania or elsewhere, the amount of tax thereon that has been withheld at source by employer, and the balance of tax due, together with such other pertinent information as may be required. Further, at the time of filing such a final return, such person shall pay to the Income Tax Officer the tax or balance of tax due, and provided, further, that every taxpayer who discontinues business prior to December 31 of the current year shall within thirty (30) days after the discontinuance of business file his final return as hereinbefore required and pay the tax due.

SECTION 5: COLLECTION AT SOURCE.

(a) Every employer having an office, factory, workshop, branch,

warehouse, or other place of business within the Township of Pymatuning, 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 Township of Pymatuning, 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 on the earned income due to his employe or employes, 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, June 30, September 30, 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 employe, the earned income of such employe during such preceding three-month period, the tax deducted therefrom, the political subdivisions imposing the tax upon such employe, the total earned income of all such employes 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 employe 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 employe's name, address and social security number, the amount of earned income paid to the employe during said period, the amount of tax deducted, the political subdivisions imposing the tax upon such employe, the amount of tax paid to the officer. Every employer shall furnish two copies of the individual return to the employe 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 by "The Local Tax Enabling Act"

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 employe.

(f) The failure or omission of any employer to make the deductions required by this section shall not relieve any employe from the payment of the tax or from complying with the requirements of this ordinance relating to the filing of returns.

SECTION 6: ENFORCEMENT.

(a) The Income Tax Officer may sue in the name of the Township for the recovery of taxes due and unpaid under this ordinance.

(b) Any suit brought to recover the tax imposed by this ordinance shall be begun within three years after such tax is due, or within three years after the return has been filed, whichever date is later: Provided, however, That this limitation shall not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:

(1) Where no return was filed by any person although a return was required to be filed by him under provisions of this ordinance, there shall be no limitation.

(2) Where an examination of the return filed by any person, or of other evidence relating to such return in the possession of the Income Tax 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 per cent or more, and no fraud, suit shall be begun within six years.

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

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

(c) The Income Tax Officer may sue for recovery of an erroneous refund provided such suit is begun within 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 7: INTEREST AND PENALTIES. If for any reason the tax is not paid when due, interest at the rate of 6% per annum on the amount of said

tax, and an additional penalty of one-half of 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 8: FINES AND PENALTIES.

(a) Any person who fails, neglects, or refuses to make any 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 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 of the Township, or court of competent jurisdiction, be sentenced to pay a fine of not more than five hundred dollars (\$500) 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 this ordinance, shall, upon conviction thereof before any justice of the peace of the Township or court of competent jurisdiction, be sentenced to pay a fine of not more than five hundred dollars (\$500) 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 this ordinance.

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

SECTION 9: AUTHORITY FOR TAX.

This ordinance is enacted under the authority of "The Local Tax Enabling Act", being Act No. 511 of 1965, effective January 1, 1966, and any amendments or supplements thereto.

SECTION 10: INCORPORATION OF STATUTE.

The provisions of Sections 13 and 14 of "The Local Tax Enabling Act" are incorporated herein by reference.

SECTION 11: CONSTRUCTION.

The provisions of this ordinance are severable and if any section, clause, sentence, part or provision of this ordinance shall be held illegal, invalid or unconstitutional, such illegality, invalidity or unconstitutionality, shall not affect or impair any of the remaining sections, clauses, sentences, parts or provisions of this ordinance. It is hereby declared to be the intent of the Board of Supervisors of the Township of Pymatuning that this ordinance would have been adopted had such illegal, invalid or unconstitutional section, sentence, clause, part or provision not been included herein.

Enacted and Ordained this 10 day of November, 1966.

TOWNSHIP OF PYMATUNING

By Herbert E. Johnson

Lawrence E. McKnight

Robert E. Small

Supervisors