

DELAWARE TOWNSHIP

under workmen's compensation acts and similar legislation, or payments commonly recognized as old age benefits, retirement pay or pensions paid to persons retired from service.

ORDINANCE #7

An Ordinance providing for the levy, assessment and collection of a tax for general revenue purposes upon the earned income received on and after July 1, 1966, by residents of the Township of Delaware and on the earned income received on and after July 1, 1966 by nonresidents of the Township of Delaware, Mercer County, Pennsylvania and on the net profits earned on and after July 1, 1966 of businesses, professions or other activities conducted by such residents and on the net profits earned on and after July 1, 1966 of businesses, professions or other activities conducted in the Township of Delaware, Mercer County, Pennsylvania, by nonresidents; requiring the filing of returns and the giving of information by employer and those subject to the said tax; imposing on employers the duty of collecting the tax at source; providing for the administration; collection and enforcement of said tax and imposing penalties.

Be it ordained and enacted by the Supervisors of the Township of Delaware, Mercer County, Pennsylvania, and it is hereby ordained and enacted by the authority of the same:

I. DEFINITIONS

Unless otherwise expressly stated, the following terms shall have, for the purpose of this Ordinance, the meaning herein indicated, except where context 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." 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 business, 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 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 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 provisions 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.

II. IMPOSITION OF TAX

An annual tax for general revenue purposes of ten mills on each dollar is hereby imposed on:

- (a) Earned income received on and after July 1, 1966, by residents of the Township of Delaware, Mercer County, Pennsylvania and on
- (b) Earned income received on and after July 1, 1966, by nonresidents of the Township of Delaware, Mercer County, Pennsylvania, for work done or services performed or rendered in the Township of Delaware, Mercer County, Pennsylvania; and on
- (c) Net profits earned on and after July 1, 1966 of businesses, professions or other activities conducted by such residents; and on
- (d) Net profits earned on and after July 1, 1966, of businesses, professions or other activities conducted in the Township of Delaware, Mercer County, Pennsylvania, by nonresidents.

The tax levied under this act 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, except the taxes imposed for the first time under this

ordinance shall become effective from July 1, 1966, and the tax shall continue in force on a calendar year or taxpayer fiscal year basis without annual reenactment.

III. DECLARATION AND PAYMENT OF TAX
A. Net Profits

(1) Every taxpayer making net profits shall pay to the Income Tax 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 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 the Income Tax 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 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 overpayment.

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 make and file with the Income Tax Officer on a form prescribed or approved by the Income Tax 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 Income Tax Officer may require, and pay to the Income Tax Officer the amount of tax shown as due thereon on or before April 15, of the succeeding year.

IV. COLLECTION AT SOURCE
(a) Every employer having an office, factory, workshop, branch, warehouse, or other place of business within the taxing jurisdiction of Delaware Township 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 Income Tax Officer, his name and address and such other information as the Income Tax Officer may require.
(b) Every employer having an office, factory, workshop, branch, warehouse, or other place of business within the taxing jurisdiction of Delaware Township 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 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 Income Tax 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 Income Tax Officer and employer shall show the name and social security number of each 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 Income Tax Officer to file his return and pay the tax monthly. In such cases, payments of tax shall be made to the Income Tax 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 Income Tax 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 Income Tax 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, and the amount of tax paid to the Income Tax 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 in Section 9 of "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 declarations and returns.

V. POWERS AND DUTIES OF OFFICER

The duly elected Township Tax Collector or such other person, or persons, as may be hereafter designated by the Supervisors of Delaware Township, Mercer County, Pennsylvania, is hereby designated the INCOME TAX OFFICER with the following powers and duties:

(a) 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 each person or business paying the tax and the date of such receipt.

(b) The Income Tax Officer, before entering upon his official duties shall give and acknowledge a bond to the Township of Delaware appointing him. If the Board shall by resolution designate any bond previously given by the Income Tax Officer as adequate, such bond shall be sufficient to satisfy the requirement of the sub-section.

Said 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.

Said bond shall be conditioned upon the faithful discharge by the Income Tax Officer, his clerks, assistants and appointees of all trusts confided in him by virtue of his office, upon 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 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.

Said bond shall be taken in the name of the Township of Delaware and shall be for its use and for the use of such other person or 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 Township of Delaware, or any person may sue upon the said bond in its or his own name for its or his own use.

Said bond shall contain the name or names of the surety company or companies bound thereon. The amount of the bond shall be fixed at an amount equal to the maximum amount of taxes which may be in the possession of the Income Tax Officer at any given time and the secretary shall be the custodian of the said bond.

Delaware Township may, at any time, upon cause shown and due notice to the Income Tax Officer, and his surety or sureties, require or allow the substitution or the addition of a surety company acceptable to it 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.

(c) The Income Tax 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 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 Township of Delaware. A copy of such rules and regulations currently in force shall be available for public inspection.

(d) The Income Tax 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 Income Tax 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 Income Tax Officer reasonably believes to be an employer or taxpayer, in order to verify the accuracy of any declaration or return was filed, to ascertain the tax due. Every employer and every taxpayer and every person whom the Income Tax Officer reasonably believes to be an employer or taxpayer, is hereby directed and required to give to the Income Tax 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 Income Tax Officer, his agent, 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 this ordinance shall be confidential, except for official purposes and except in accordance with a proper judicial order, or as otherwise provided by law.

(g) 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.

VI. SUIT FOR COLLECTION OF TAX

(a) The Income Tax 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 this Ordinance 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, 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 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 the ordinance, and has failed to pay the amounts so deducted to the Income Tax 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 Township of Delaware 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 two years after making such refund, except that the suit may be brought within five years if it

Payment of any tax on salaries, wages, commissions, other compensation or on net profits of business, professions or other activities to a political subdivision by residents thereof pursuant to an ordinance or resolution passed or adopted under the authority

of "The Local Tax Enabling Act" shall be credited to and allowed as a deduction from the liability of such persons for any other like tax respectively imposed by any political subdivision by residents thereof pursuant to an ordinance or resolution passed or adopted under the authority of the Local Tax Enabling Act shall.

appears that any part of the refund was induced by fraud or misrepresentation of material fact.

VII. INTEREST AND PENALTIES

If for any reason the tax is not paid when due, interest at the rate of six per cent 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.

VIII. FINES AND PENALTIES FOR VIOLATION OF ORDINANCE

(a) Any person who fails, neglects, or refuses to make any declaration or return required by the ordinance, any employer who fails, neglects or refuses to register or to pay the tax deducted from his employes, or fails, neglects or refuses to deduct or withhold the tax from his employes, 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 the ordinance, shall upon conviction thereof before and 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 dollars (\$500.00) 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, 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 dollars (\$500.00) 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.

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

IX. PAYMENT OF TAX TO OTHER POLITICAL SUBDIVISIONS OR STATES AS CREDIT OR DEDUCTION: WITHHOLDING TAX

Payment of any tax to any political subdivision pursuant to an ordinance or resolution passed or adopted prior to the effective date of this ordinance shall be credited to and allowed as a deduction from the liability of taxpayers for any like tax respectively on salaries, wages, commissions, other compensation or on net profits of businesses, professions or other activities and for any income tax imposed by this ordinance.

Payment of any tax on salaries, wages, commissions, other compensation or on net profits of business, professions or other activities to a political subdivision by residents thereof pursuant to an ordinance or resolution passed or adopted under the authority

of "The Local Tax Enabling Act" shall be credited to and allowed as a deduction from the liability of such persons for any other like tax respectively on salaries, wages, commissions, other compensation or on net profits of business, professions or other activities imposed by this ordinance.

Payment of any tax on income to any political subdivision by residents thereof pursuant to an ordinance or resolution passed or adopted under the authority of "The Local Tax Enabling Act", shall, to the extent that such income includes salaries, wages, commissions, other compensation or net profits of businesses, professions or other activities, but in such proportion as hereinafter set forth, be credited to and allowed as a deduction from the liability of such persons for any other tax on salaries, wages, commissions, other compensation or on net profits of businesses, professions, or other activities imposed by this Ordinance.

Payment of any tax on income to any state or to any political subdivision thereof by residents thereof, pursuant to any State or local law, shall to the extent that such income includes salaries, wages, commissions, or other compensation or net profits of business, professions or other activities but in such proportions as hereinafter set forth, be credited to and allowed as a deduction from the liability of such person for any other tax on salaries, wages, commissions, other compensation or net profits of businesses, professions or other activities imposed by this Ordinance, if residents of Delaware Township, Mercer County, Pennsylvania, receive credits and deductions of a similar kind to a like degree from the tax on income imposed by the other state or political subdivision thereof.

Payment of any tax on income to any state other than Pennsylvania or to any political subdivision located outside the boundaries of this Commonwealth by residents of Delaware Township, Mercer County, Pennsylvania, shall, to the extent that such income includes salaries, wages, commissions, or other compensation or net profits of businesses, professions or other activities but in such proportions as hereinafter set forth, be credited to and allowed as a deduction from the liability of such person for any other tax on salaries, wages, commissions, other compensation or net profits of businesses, professions or other activities imposed by this Ordinance.

Where a credit or a deduction is allowable in any of the several cases hereinabove provided, it shall be allowed in proportion to the concurrent periods for which taxes are imposed by the other state or respective political subdivisions, but not in excess of the amount previously paid for a concurrent period.

X. APPLICABILITY

This Ordinance shall not apply to any person or property as to whom or which it is beyond the legal power of the Board of Supervisors to impose the tax or duties herein provided for.

XI. CONSTRUCTION

If any section, clause, or sentence 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 or sections or parts of this Ordinance. It is hereby declared as the intent of the Board Of Township Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

XII. REPEAL

Any ordinance or part of any ordinance conflicting with this Ordinance is hereby repealed insofar as the same affects this Ordinance.

XIII. EFFECTIVE DATE

This Ordinance shall go into effect on the first day of July, 1966.

This ordinance is enacted pursuant to The Local Tax Enabling Act also known as Act No. 511, approved December 31, 1965, and any supplements or amendments thereto.

ORDAINED AND ENACTED into law this 3rd day of May, 1966.

Arden L. Saul
Chairman and President of the Board
of Supervisors of Delaware Township,
Mercer County, Pennsylvania.

Attest:

Lester Kaufman
Secretary of the Board of Supervisors
Delaware Township, Mercer County,
Pennsylvania.

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Note- This ordinance was typed from the original document exactly as written.

June 23, 1987
Shari J. Ray
Secretary/Treasurer

Shari J. Ray