

ORDINANCE NO. 286

AN ORDINANCE

ENTITLED "AN ORDINANCE PROVIDING GENERAL REVENUE FOR THE BOROUGH OF SOUTHMONT BY IMPOSING A TAX ON OCCUPATIONS AND OCCUPATIONAL PRIVILEGES OF TEN DOLLARS (\$10.00) PER YEAR ON EACH INDIVIDUAL ENGAGED IN ANY OCCUPATION WHATSOEVER WITHIN THE BOROUGH OF SOUTHMONT; PROVIDING FOR ITS LEVY AND COLLECTION FOR THE YEAR 1976 AND EACH SUCCEEDING YEAR; IMPOSING UPON EMPLOYERS WITHIN THE BOROUGH OF SOUTHMONT THE DUTY OF COLLECTING SAID TAX FROM EVERY INDIVIDUAL IN THEIR EMPLOYMENT SUBJECT TO SAID TAX, AND REMITTING AND PAYING OVER THE SAME TO THE BOROUGH SECRETARY; CONFERRING AND IMPOSING POWERS AND DUTIES ON THE COLLECTOR AND IMPOSING PENALTIES FOR FAILURE TO PAY SAID TAX AND FOR VIOLATION OF THE ORDINANCE.

BE IT ENACTED AND ORDAINED by the Council of the Borough of Southmont, and it is hereby enacted and ordained by the authority of the same, and pursuant to "The Local Tax Enabling Act," 1965, Dec. 31, P.O. 1257, for the purpose of providing general revenue as follows:

SECTION 1. Definitions.

The following words and phrases, when used in this Ordinance, shall have the meanings set forth in this section unless the context clearly indicates a different meaning:

(a) "Individual" shall mean any person, male or female, engaged in any occupation of any nature, type or kind whatsoever within the Borough of Southmont, whether in the employ of another or self-employed.

(b) "Occupation" shall mean any trade, profession, business, service or undertaking of any kind carried on or performed in the Borough of Southmont for which payment is received, whether by salary, wages, commission or other things of value.

(c) "Employer" shall mean an individual, partnership, limited partnership, association or corporation that engages the services of any individual and makes payment to said individual, whether by salary, wage or commission or other things of value. An employer shall include a self-employed person who engages in his employ the services of one or more individuals other than himself.

(d) "Collector" shall mean the Borough Secretary who is herein designated the Collector of the Occupation and Occupational Privilege Tax.

(e) "Place of business" shall mean any premises wherein a business or profession or service is carried on or offered to the public.

(f) "Tax on Occupation" or "Occupational Privilege Tax" shall mean a tax of Ten Dollars (\$10.00) per year levied on each individual engaged in any occupation as hereinabove defined, within the Borough of Southmont during the year 1976 and in each succeeding year.

SECTION 2. Levy and Collection of Tax.

For the year 1976, and annually thereafter, without reenactment, there is hereby imposed on each individual engaged in an occupation within the Borough of Southmont an occupation and occupational privilege tax in the manner and amount hereinafter set forth.

SECTION 3. Amount of tax.

Beginning on the 12th day of January, 1976, and on the first day of January of each succeeding year, each individual engaged in an occupation, as hereinbefore defined, within the Borough of Southmont, shall be required to pay an annual occupation and occupational privilege tax of \$10.00

SECTION 4. Discount, Flat Rate and Penalty Periods.

(a) The tax shall be paid to the Borough Secretary and shall be due and payable on the first day of April, 1976, and in each succeeding year, and if payment of the tax be made within the sixty (60) days following the first day of April, a discount of two per cent (2%) shall be allowed to each individual paying the tax, and after the expiration of the sixtieth (60th) day following the said first day of April, the \$10.00 tax hereby levied upon each individual engaged in an occupation within the Borough of Southmont shall be paid at the face amount for the next ensuing sixty (60) days and after the expiration of the said sixty (60) days, a penalty of five per cent (5%) of the tax is hereby imposed; and

(b) If the said tax is not paid within in each calendar year, interest thereon shall begin to accrue at the rate of six per cent (6%) per annum on the amount of said tax remaining unpaid. The interest is to be calculated beginning on the first day of January of the next year, and to be calculated thereafter until said tax is paid in full, together with penalty as hereinbefore provided.

(c) If any individual becomes subject to the tax hereby levied by obtaining employment at any time after the effective date hereof, said individual shall be entitled to two (2%) per cent discount provided for herein if the said tax is paid within sixty (60) days after said individual obtains such employment within the Borough of Southmont, and if paid after one hundred twenty (120) days, shall pay the same at face, and if paid after the period of one hundred eighty (180) days, a penalty shall be added in the amount of five (5%) per cent. This section shall apply to those who are not within the provisions of Section 4 (a) of the Ordinance.

SECTION 5. Duty of Employers.

(a) Each employer within the Borough of Southmont is hereby charged with the duty of collecting and paying over to the Borough Secretary from each employee engaged in his services the said tax of \$10.00 per year upon each individual employed by said employer who performs services on behalf of said employer within the Borough of Southmont, or who is engaged in an occupation, as hereinbefore defined, for the benefit of the said employer or in the service of said employer within the Borough of Southmont. Each employer shall make a return and payment of said tax and is authorized to deduct the said occupation and occupational privilege tax at the rates hereby imposed from each employee in his service, whether said employee is paid by salary, wages or commission. Each employer within the Borough of Southmont shall prepare and file a return showing a computation of the tax on a form to be obtained by him from the Borough Secretary. Each employer in filing a return and making payment by deduction from the salary, wages, commissions or other compensation payable by him to his employees, shall be entitled to retain a commission calculated at two (2%) per cent on the gross tax due and payable by each individual provided that such tax is collected and paid over by the employer sixty (60) days as to each taxpayer employed for any length of time on or before March 31, and pay to the Borough Secretary the full amount of all such taxes on or before May 31st of each year. Thereafter, as to each taxpayer for whom no prior payment has been made, who is employed for any length of time in any of the three-month periods ending June 30, September 30, and December 31 of each year, each employer shall deduct the tax from compensation payable to the taxpayer, file a return on a form prescribed by the Borough Secretary, and pay to the Secretary the full amount of all such taxes deducted for each three-month period on or before July 31, October 31 and January 31 of each year respectively. It is further provided that if the employer fails to file said return and pay said tax, but makes collection thereof from the salary, wages or commissions paid by him to said employee, the employer shall be responsible for payment of the tax in full without any deductions or commissions as though the tax had originally been levied against him.

SECTION 6. Individuals engaged in more than one occupation.

Each individual who shall have more than one occupation within the Borough of Southmont shall be subject to the payment of the annual occupation and occupational privilege tax solely upon his principal occupation and his principal employer shall deliver to him a certificate of payment in a form to be furnished to the employer by the Borough Secretary certifying to any other employer of such individual that the said occupation and occupational privilege tax has been paid by the employee to the employer and in turn remitted by said employer to the Borough Secretary. Any employer receiving such certificate of payment of the occupation and occupational privilege tax by another employer by deduction from the said individual shall not be required to deduct or collect the tax imposed by this Ordinance from such employee.

SECTION 7. Self-employed Individuals and Employers Outside the Borough of Southmont

Each self-employed individual in the Borough of Southmont who performs any services of any type or kind in a place of business within the Borough of Southmont, whether same be regarded either as a profession or as a business, shall be required to pay an occupation and occupational privilege tax of \$10.00 for himself and shall further be required to deduct and pay over in the manner hereinbefore set forth in Section 5, an annual occupation and occupational privilege tax of \$10.00 for every individual in his employ who is engaged in the performance in any occupation or profession for him within the Borough of Southmont. Any individual engaged in any occupation within the Borough who is an employee of another shall be liable for the payment of the occupation and occupational privilege tax of \$10.00 for himself and shall be treated and regarded as a self-employed individual if the location of the business of his employer is outside the Borough of Southmont.

SECTION 8. Domestics and Self-employed.

Every taxpayer who is self-employed or whose tax for any other reason is not collected under Section 5 of this Ordinance shall file a return on a form prescribed by the Secretary and shall pay the tax directly to the Secretary. Each such taxpayer who first becomes subject to this tax on or before March 31, shall file said return and pay this tax on or before May 31 of each year, as provided in Section 4, and each such person (taxpayer) who first becomes subject to this tax after March 31, shall file said return and pay this tax on or before July 31, October 31 and January 31 of each year, whichever of such payment dates first occurs at least thirty (30) days after the taxpayer first becomes subject to this tax.

SECTION 9.

The tax imposed by this Ordinance shall be in addition to all other taxes of any kind or nature heretofore or hereafter levied by the Borough of Southmont for the purposes of providing general revenue.

SECTION 10. Powers and Duties of Collector.

(a) It shall be the duty of the Borough Secretary, who is hereby appointed Collector of the taxes imposed by this Ordinance, to collect and receive the taxes, fines or penalties imposed hereby. He shall keep an accurate record showing the amounts received by him from each person paying the tax and the date of such receipt; and to keep a record showing the amount received by him from every employer paying the tax on behalf of his employees by deduction made by such employer from the salary, wages, commissions or other forms of payment.

ORDINANCE 286 (continued)

(b) The Secretary is hereby charged with the administration and enforcement of the provisions of this Ordinance, and is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this Ordinance, including the examination of the payroll records of any employer within the Borough of Southmont; and further, for the re-examination and correction of any returns made in compliance with this Ordinance and any payment alleged or found to be incorrect, or as to which over-payment is claimed, or found to have occurred. Any person aggrieved by any decision of the Secretary shall have the right to appeal to the Borough Council or to the Court of Common Pleas of Cambria County, as in other cases provided.

(c) The Secretary is hereby authorized to examine the books and payroll records of any employer in order to verify the accuracy of any return made by any employer on behalf of his employees or, if no return was made, to ascertain the occupation and occupational privilege tax due. Each employer in the Borough of Southmont is hereby directed and required to give to the Secretary the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

(d) The Secretary shall make a regular deposit of all funds received by him in the Bank or Banks designated by the Borough Council, and report to the Borough Treasurer the amount of such deposit not later than the fifth (5th) day of each month for all funds received by him during the preceding month.

(e) The Secretary shall provide a bond at the expense of the Borough for the faithful performance of his duties in an amount to be fixed by the Borough Council.

SECTION 11. Suit on Collections.

(a) The Secretary may sue for the recovery of any tax due or unpaid under this Ordinance, or otherwise enforce payment of the tax imposed hereby as provided by law. Where suit is brought for the recovery of any occupation and occupational privilege tax, the individual liable therefor shall, in addition to the tax penalty and interest due, be required to pay for the costs of collection.

SECTION 12. Fines and Penalties.

Whoever makes any false or untrue statements on any return required by this Ordinance, or who refuses inspection of books, records or accounts in his custody or control, required to determine the number of employees subject to the occupation and occupational privilege tax who are in his employment, or whoever fails or refuses to file any return required by this Ordinance shall, upon conviction before any Magistrate, be sentenced to pay a fine of not more than One Hundred (\$100.00) Dollars for each offense, and in default of payment of said fine, to be imprisoned for a period of not exceeding thirty (30) days for each offense.

SECTION 13. Saving Clause.

(a) Nothing contained in this Ordinance shall be construed to empower the Borough to levy and collect the occupation and occupational privilege tax hereby imposed on any occupation not within the taxing power of the Borough under the laws and Constitution of the Commonwealth of Pennsylvania, or of the United States of America.

ORDINANCE 286 (continued)

(b) If the occupation and occupational privilege tax hereby imposed under the provisions of this Ordinance shall be held by any Court of competent jurisdiction to be in violation of the laws or the Constitution of the United States or of the Commonwealth of Pennsylvania, as to any individual, the decision of the Court shall not affect or impair the right to impose or collect said tax, or the validity of the tax so imposed upon other persons or individuals as herein provided.

SECTION 14. Severability Clause.

The provisions hereof are severable and if any of its sections, clauses or sentences shall be held illegal, invalid or unconstitutional, such decision shall not affect or impair any of the remaining sections, clauses or sentences. It is hereby declared to be the intent of the Borough of Southmont that this Ordinance would have been adopted if such illegal, invalid or unconstitutional section, clause of sentence had not been included therein.

ENACTED this 12th day of January, 1976.

BOROUGH OF SOUTHMONT

By *G. Edward Smith*
President of Council

ATTEST:

John K. M... ..
Secretary

APPROVED January 12, 1976

By *Robert Moore*
Mayor