ORDINANCE NO. 253

PROVIDING FOR THE LEVYING, ASSESSMENT AND COLLECTION OF A TAX FOR GENERAL REVENUE PURPOSES AT THE RATE OF ONE-HALF OF ONE PER CENT ($\frac{1}{2}$ of 1%) UPON EARNED INCOME AND NET PROFITS RECEIVED BY RESIDENTS OF AND BUSINESSES CONDUCTED IN THE BOROUGH OF SOUTHMONT DURING THE YEAR 1968, UNDER AUTHORITY OF "THE LOCAL TAX ENABLING ACT", AND PROVIDING FOR CONTINUANCE IN FORCE OF SUCH TAX.

THE COUNCIL OF THE Borough of Southmont, Cambria County, Pennsylvania, hereby ordains, under authority of The Local Tax Enabling Act, 1965, Dec. 31, Act. No. 511, as follows:

SECTION 1. DEFINITIONS:

(a) "Association." A partnership, limited partnership, or any other unincorporated group of two or more persons.

(b) "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.

(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 year 1968 and thereafter, 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, commission, 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.

(g) "Income tax offices" or "officer." Person, public employe or private agency designated by Borough Council 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.

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(j) "Nonresident." A person, partnership, association or other entity domiciled outside the taxing district.

(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 Borough of Southmont.

(n) "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 II. IMPOSITION OF TAX:

(a) The following taxes are hereby levied and imposed for general Borough purposes.

1. One-half of one per cent ($\frac{1}{2}$ of 1%) of all Earned Income of residents of the Borough of Southmont.

2. One-half of one per cent ($\frac{1}{2}$ of 1%) of all Net Profits of residents of the Borough of Southmont.

(b) The tax levied hereby 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.

SECTION III. 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) 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.

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.

(3) The officer may 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.

(4) 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

(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 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.

(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 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 IV. COLLECTION AT SOURCE

(a) Every employer having an office, factory, workshop, branch, warehouse or other place of business within the Borough of Southmont 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 Borough of Southmont 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 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 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.

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(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, 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 the ordinance or resolution relating to the filing of declarations and returns.

SECTION V. POWERS AND DUTIES OF OFFICER.

(a) 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.

(b) Each officer before entering upon his official duties shall give and acknowledge bond to the Borough of Southmont in accordance with the provisions of Section V (b) of The Local Tax Enabling Act under authority of which this ordinance is enacted.

(c) The officer charged with the administration and enforcement of the provisions of this ordinance 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 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 cases 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 Borough Council. 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, or if no declaration or return was filed, to ascertain the tax due. Every employer and every taxpayer and every person whom the officer reasonably believes to be an employer or taxpayer, is hereby directed 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 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 officer is authorized to establish different filing, reporting and payment dates for taxpayers whose fiscal years do not coincide with the calendar year.

SECTION VI. COMPENSATION OF INCOME TAX OFFICER

The Borough Council shall by resolution from time to time appoint and determine the compensation of an Income Tax Officer, herein referred to as "officer" whose duties shall be the assessment and collection of taxes imposed by this Ordinance.

SECTION VII. SUIT FOR COLLECTION OF TAX

(a) The officer may sue in the name of the Borough of Southmont 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 this 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 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 officer, or where any person has wilfully failed or omitted to make the deductions required by this section, there shall be no limitation.

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(5) This section shall not be construed to limit the Borough Council from recovering delinquent taxes by any other means provided by law.

(c) The 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 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 per cent per annum on the amount of said tax, and an additional penalty of one-half of one per cent 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 OR RESOLUTIONS.

(a) 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 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 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 in Cambria County, 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 declaration or returns required by this ordinance shall not excuse him from making such declaration or return.

SECTION X. SEVERABILITY

The provisions of this Ordinance are severable and, if any section, sentence, clause or part hereof shall be held unconstitutional, illegal or invalid, such fault shall not impair or affect the other sections, sentences, clauses or parts hereof, and it is hereby declared as the intent of Council that this Ordinance would have been enacted had such unconstitutional, illegal or invalid part not been included herein, and it is further declared as the intent of Council that this Ordinance shall be construed and interpreted so as to comply fully with "The Local Tax Enabling Act."

SECTION XI. REPEALER

All prior ordinances or parts of ordinances in conflict or inconsistent with this ordinance are hereby repealed.

SECTION XII. EFFECTIVE DATE

This Ordinance shall take effect on January 1, 1968.

Passed finally in Council this eleventh day of December, 1967.

Paul L. Weir
President of Council

ATTEST:

[illegible]
Secretary

APPROVED this 15th day of January 1968.

[illegible]
Mayor