

SOUTH MIDDLETON TOWNSHIP

EARNED INCOME TAX ORDINANCE #05-02

AN ORDINANCE OF THE SOUTH MIDDLETON TOWNSHIP, CUMBERLAND COUNTY, PENNSYLVANIA, REIMPOSING AND AMENDING TAX FOR THE GENERAL REVENUE PURPOSES ON EARNED INCOME OF THE RESIDENTS AND NON-RESIDENTS OF THE SOUTH MIDDLETON TOWNSHIP TO CONFORM WITH STATUTORY GUIDELINES BEGINNING JANUARY 1, 2005 AND ENDING DECEMBER 31, 2005, AND FOR EACH CALENDAR YEAR THEREAFTER, AND ON NET PROFITS EARNED FROM OPERATION OF A BUSINESS, PROFESSION OR OTHER ACTIVITIES DURING SAID PERIODS, 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 TAX AT THE SOURCE, PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF THE ORDINANCE, AND IMPOSING PENALTIES FOR THE VIOLATIONS THEREOF.

BE IT RESOLVED by the Board of Supervisors of the South Middleton Township, and it is hereby enacted pursuant to the authority granted by The Local Tax Enabling Act, the Act of December 31, 1965, P.L. 1257; 53 P.S. Section 6901, as amended, hereinafter known as the “Act”, as follows:

SECTION 1. This Ordinance shall be known as the “Earned Income Tax Ordinance”. The provisions hereof shall become effective on the 1st day of January, 2005 A.D., and the tax shall continue in force on a calendar year or a taxpayer fiscal year basis, without annual reenactment, unless the rate of the tax is subsequently changed. Changes in rate become effective on the date specified in the Amending Ordinance.

SECTION 2. DEFINITIONS:

The definitions of the following terms when used herein shall have the meanings assigned to them from time to time under the Act (53 P.S. Section 6913), as may be amended from time to time. “Association,” “Business,” “Corporation,” “Current Year,” “Domicile,” “Earned Income,” “Income Tax Officer or Officer,” “Employer,” “Net Profits” and “Tax Payer”.

“Board” - The Board of Supervisors of the Township of South Middleton.

“Non-resident” - 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.

“Taxing District” - The Township of South Middleton, Cumberland County, Pennsylvania.

“Township” – South Middleton Township

SECTION 3. IMPOSITION OF TAX: A tax for general revenue purposes is hereby reimposed in the amount of one half of one (.5%) percent earned income received and to net profits earned by residents and non-residents of the Township of South Middleton, beginning on the first day of January, 2005, and continuing for each taxable year thereafter.

Except as otherwise provided in Section 14 of the Local Tax Enabling Act, 53 P.S. Section 6914, as amended, allowing for crediting or deductions for duplication of taxes, in the event the School District in which the Township is situate, shall impose, or continue to impose,

an earned income tax under the authority of the Act on residents or businesses domiciled within that Township during the same year or part of year, then the tax herein imposed shall be subject to the sharing provision from the day such duplication becomes effective.

SECTION 4. 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 (4) quarterly installments, as nearly equal as possible, 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, September 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 installments, as nearly equal as possible, 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 and reconciliation 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 the 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.

(4) The officer is hereby 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, anticipated 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. Such final return shall also show the total amount of tax due thereon, the amount of tax paid thereon, and 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 returns, shall, at the time of filing thereof, pay to the officer the amount of tax shown as due thereon.

C. Death of Taxpayer.

In the event of the death of a taxpayer during a taxable period, his personal representative shall file his return on or before the 15th day of April of the year following the date of death and on or before such date shall pay any tax due from such deceased taxpayer under this Ordinance or demand refund in the case of over-payment.

D. Guardian of Taxpayer

Should a guardian of the estate be appointed for a taxpayer such guardian shall be imputed with the same duties and responsibilities as the taxpayer would have regarding the reporting and paying of taxes under this Ordinance.

SECTION 5. COLLECTION AT SOURCE:

A. Every employer having an office, factory, workshop, branch, warehouse, or other place of business within the 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 (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 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 employment, 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 the 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 complete address of each and every employee subject to withholding, the total earned income of all such employees during such preceding three month period, and the total tax deducted there from 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 employee 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 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, and the amount of tax paid to the officer. Every employer shall furnish two 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. Except as otherwise provided herein, every employer who willfully 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.

Notwithstanding the foregoing, no employer shall be held liable for failure to withhold earned income taxes or for the payment of such withheld tax money to a political subdivision other than the Township if such failure to withhold or such incorrect transmittal of withheld taxes arises from incorrect information as to the employee's place of residence submitted by the employee, nor shall an employer be liable for failure to withhold earned income taxes, or to make reports of wages, salaries, commissions or other compensation of his/its employees, unless the official continuing register of all earned income taxes levied under the authority of the Local Tax Enabling Act, as amended, maintained and supplemented annually by the Department of Community and Economic Development, lists the Township's levying of the earned income tax.

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 tax or from complying with the

requirements of the Ordinance relating to the filing of declarations and returns.

SECTION 6. POWERS AND DUTIES OF OFFICER:

A. The Board, by Resolution shall appoint the officer.

B. 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.

C. Each officer, before entering upon his official duties, shall give and acknowledge a bond to the Township. If the Township shall by Ordinance, 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 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. Each bond shall be conditioned upon the faithful discharge by the officer, his clerks, assistants, appointees of all trusts confided in him by virtue of his office, upon the 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 monies 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.

Each such bond shall be taken in the name of the South Middleton Township, and shall be for the use of the Township appointing the officer, 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 of the bond.

The Township, or any person, may sue upon the said bond in its own or his own name

for its or his own use.

Each such bond shall contain the name or names of the Surety Company or companies bound thereon. The Township shall fix the amount of the bond at an amount equal to the maximum amount of taxes which may be in the possession of the officer at any given time. The Township may at any time, upon cause shown and due notice to the officer, and his surety or sureties, require or allow the substitution or the addition of a surety company acceptable to the Township 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. The Township shall designate the custodian of the bond required to be given by the officer.

D. 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 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 any 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 Ordinance by the Board. A copy of such rules and regulations currently in force shall be available for public inspection.

E. 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.

F. The officer and agent 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 and required to give to the officer, or to any agent designated by him, the means, facilities and opportunities for such examination and investigation as hereby authorized. The officer shall have such power to subpoena books, records and papers of the employer or taxpayer as may be found in authority of the Commonwealth of Pennsylvania.

G. Any information gained by the officer, his agents, or by any other official or agent of the Township as a result of any declarations, returns, investigations, hearings or verifications required or authorized by the Ordinance, shall be confidential, except for official purposes and except in accordance with a proper judicial order, or as otherwise provided by law.

H. The officer is authorized to establish different filing, reporting and payment dates for taxpayers whose fiscal years do not coincide with the calendar year.

(1) The Officer shall, at least monthly, distribute earned income taxes to the Township. The Township shall not be required to request the officer to distribute the funds collected but shall at least annually reconcile their receipts with the records of the officer and return to or credit the officer with any overpayment. If the officer, within one (1) year after receiving a tax payment, cannot identify the taxing jurisdiction entitled to a tax payment, the officer shall make payment to the municipality in which the tax was collected.

SECTION 7. SUIT FOR COLLECTION OF TAX:

A. The 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 (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 begin within six (6) 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 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 Board from recovering delinquent taxes by any other means provided by the Act.

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 8. INTEREST AND PENALTIES:

(a) 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 therefore shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

(b) Notwithstanding the provisions of subsection (a), the Township may, by Ordinance, establish a one-time period during which interest or interest and penalties that would otherwise be imposed for the nonreporting or underreporting of earned income tax liabilities or for the nonpayment of earned income taxes previously imposed and due shall be waived in total or in part if the taxpayer voluntarily files delinquent returns and pay the taxes in full during the period so established. The Township shall adopt regulations to implement the provisions of this subsection.

(c) The provisions of subsection (b) shall not affect or terminate any petitions, investigations, prosecutions or other proceedings pending under the provisions of this Ordinance, or prevent the commencement or further prosecution of any proceedings by the proper authorities for violations of this Ordinance. No proceedings shall, however, be commenced on the basis of delinquent returns filed pursuant to subsection (b) if the returns are determined to be substantially true and correct and the taxes are paid in full within the prescribed time.

SECTION 9. FINES AND PENALTIES FOR VIOLATION OF ORDINANCE:

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 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, alderman or magistrate, or court of competent jurisdiction in Cumberland County, be

sentenced to pay a fine of not more than Five Hundred and no/100 (\$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 district justice, or court of competent jurisdiction, be sentenced to pay a fine of not more than Five Hundred and no/100 (\$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.

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.

SECTION 10. SEVERABILITY.

The provisions of this Ordinance are severable. If any sentence, clause or section of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair the other remaining provisions, sentences, clauses or sections of this Ordinance. It is hereby declared to be the intent of the Board that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause or section not been included herein.

SECTION 11. This Ordinance is adopted pursuant to the authority conferred by the Act of December 31, 1965, P.L. 1257; 53 P.S. Section 6901, as amended.

SECTION 12. RECONCILIATION OF RE-ENACTED AND AMENDED ORDINANCE WITH PRIOR ORDINANCES.

It is hereby declared to be the intent of the Board that this Ordinance replace in its entirety all prior Ordinances adopted by, motions approved, or other actions taken by, the Board of Supervisors of the South Middleton Township levying an earned income tax, and/or in any manner affecting the specific terms or provisions of said earned income tax as levied, the provisions of which shall remain in full force and effect for each year thereafter, without annual reenactment unless the rate of tax is subsequently changed.

SECTION 13. EFFECT ON OTHER ORDINANCES.

Any Ordinance or part of Ordinance conflicting with the provisions of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

ADOPTED as an Ordinance of the Board of Supervisors of the South Middleton Township, Cumberland County, Pennsylvania, this _____ day of _____ 2005.

ATTEST:

SOUTH MIDDLETON TOWNSHIP

Township Secretary

By: _____
Chairman, Board of Supervisors

Vice Chairman
