

## ORDINANCE NO. 148

AN ORDINANCE IMPOSING A TAX FOR GENERAL REVENUE PURPOSES OF ONE-HALF OF ONE (1/2 of 1% ) PER CENT ON SALARIES, WAGES, COMMISSIONS AND OTHER COMPENSATION EARNED BY RESIDENTS OF THE BOROUGH OF CLYMER, AND ON SALARIES, WAGES, COMMISSIONS AND OTHER COMPENSATION EARNED BY NON-RESIDENTS OF CLYMER BOROUGH, AND ON NET PROFITS EARNED BY BUSINESSES, PROFESSIONS, OR OTHER ACTIVITIES CONDUCTED BY RESIDENTS OF THE BOROUGH OF CLYMER, AND ON THE NET PROFITS EARNED BY BUSINESSES, PROFESSIONS, OR OTHER ACTIVITIES CONDUCTED IN THE BOROUGH OF CLYMER BY NON-RESIDENTS: IMPOSING UPON EMPLOYERS THE DUTY OF COLLECTING THE TAX AT SOURCE AND PAYING THE SAME TO THE DULY APPOINTED EARNED INCOME TAX COLLECTOR OF THE BOROUGH OF CLYMER; REQUIRING THE FILING OF RETURNS AND GIVING OF INFORMATION BY EMPLOYERS AND THOSE SUBJECT TO SAID TAX: CONFERRING AND IMPBOSING THE POWER AND DUTIES OF THE TAX COLLECTOR, AND IMPOSING PRNALTIES.

BE IT ENACTED AND ORDAINED by the Borough Council of the Borough of Clymer, Indiana County, Pennsylvania, and it id hereby enacted by authority of the same, and by virtue of the authorthty granted by an act of general assembly approved December 31, 1965, effective January 1, 1966, being known as "The Local Tax Enabling Act", amd being Act No. 511 of 1965:

Section 1. DEFINITIONS: The following words and phases, when used in the ordinance, shall have the meaning ascribed to them in this section, except where the context indicates or requires a different meaning, or where otherwise provided by Act of Assembly.

(a) "Association" - A partnership, ldmited 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, weather by a person, partnership, association, or any other entity.

(c) "Corporation" - A corporation of joint stock associat@on organixed under the laws of the United States, the Commonwealth of Pennsylvania, or any other state, territory, foreign country or dependency.

(d) - "Current year" - The calendar year which the tax is levied (and the initial period of six months beginning July 1, 1967 and ending December 31, 1967.)

(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 necessary domicile, for domicile is the fixed place of abode, which, in the intention of the taxpayer, is permanent rather than transitory. Domicile is the palce in which a man has coluntarily 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 case of business, or associationsm 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, commissions, incentive payments, fees, ~~tax~~ tips and other compensation received by a person or his personal representative for services rendered, wether directly or through an agent, and whether in cash or in property; not including, however, wages or compensation paid to persons in active military service, periodic payments for sickness and disability other than regular wages received during a peroid of sickness, disability or retirement or paymens 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 person 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 payment made ~~emple~~ by employers or labor unions for wages or salary supplemental programs, including, but not limited to, programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, stricke benefits, social security and retirement.

(g) "income tax officer", "officer", or "tax collector" - Person, public employee, or private agency designated by the Borough Council to collect and adminster 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 p 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.

(j) "Non-resident" - A person, partnership, association, or other entry domiciled outside the taxing district.

(k) "Person" - or "individual" - A natural person.

(l) "preceeding year" - The calendar year before the current year.

(m) "Resident" - A person, partnership, association, or other entity domiciled in the taxing district.

(n) "Succeeding year" - The calendar year following the current year.

(o) "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 neuter.

SECTION 2. IMPOSITION OF TAX: The tax leci~~ed~~ under this ordinance shall be initially applicable to earned income received and to net profits earned during the period beginning July 1, 1967, and ending December 31, 1967, and the tax shall continue in force and effect on a calendar year basis, without annual re-enactment unless the rate of tax is subsequently changed.

A tax for general revenue purposes of one-half of one (1/2 of 1%) per cent is hereby imposed upon the earned income and net profits of residents of the Borough of Clymer, and a tax for general revenue purposes of one-half of one (1/2 of 1%) per cent is hereby imposed ~~upon~~ the earned income and net profit of non-residents of the Borough of Clymer for work done or services rendered in the Borough of Clymer.

### SECTION 3. DECLARATION AND PAYMENT OF TAX:

#### (a) Net Profits:

1. Every taxpayer making net profits shall, on or before September 15, 1967, make and file with the officer on a form prescribed or approved by the officer, a declaration of his net profits, during the period beginning July 1, 1967, and ending December 31, 1967, and pay to the officer, in two wqual qaterly installments, the tax theron as follows: The first installment at the time of filing the declaration and the second installment on or before January 15, 1968. Thereafter 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 qaterly indtallments, the tax due theron as follows: The first installment at the time of filling 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. Subsequent to the year 1967, any taxpayer who first anticipates any net profit after April 15, of the then current year, shall make and file a declaration hereinabove required on or before June 15, of the current year, September 15, of the current year, or December 15, of the current year, which ever of these dates next follows the date on which the taxpayer anticipates such net profit, and pay to the officer, in equal installments, the tax due thereon or before the quarterly payment dates which remain after the filing of the declaration.

3. Every taxpayer shall, on or before April 15, 1968, 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 July 1, 1967, and ending December 31, 1967, the total amount of tax due thereon and the total amount of tax paid thereon. For each current year thereafter 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 return on April 15, 1968, and in each subsequent year, 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. Likewise, in lieu of paying the second quarterly installment for the initial period, the taxpayer may elect to make and file the final return on or before January 31, 1968.

4. The officer, subject to the approval of the Borough Council as hereinafter required, is hereby authorized to provide by regulation for the making and filing of adjusted declarations of estimated net profits, and for the payment 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.

5. Every taxpayer who discontinues business prior to December 31, 1967, or prior to December 31, of any subsequent 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. Every taxpayer who has received earned income in the period beginning July 1, 1967, and ending December 31, 1967, shall, on or before April 15, 1968, 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 July 1, 1967, and ending December 31, 1967, the total amount of tax thereon, the total 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.

For each current year thereafter every taxpayer who has received earned income in the current year, 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 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.

EARNED INCOME TAX NOT SUBJECT TO WITHHOLDING

Every taxpayer who is employed for a salary, wage, commission or other compensation and who received any income not subject to the provisions relating to the collection at source shall:

1. 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 and January 31, of the succeeding year, setting forth the aggregate amount of earned income not subject to withholding from him during the three month

ADAG07

period 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. As to the initial period beginning July 1, 1967 and ending December 31, 1967, and the quarterly returns and payments shall be filed on or before October 31, 1967, and January 31, 1968, covering the aggregate amount of earned income not subject to withholding from him during the three-month period ending September 30, 1967, and the three-month period ending December 31, 1967.

#### SECTION 4. COLLECTION AT SOURCE:

(a) Every employer having an office, factory, workshop, branch, warehouse or other place of business within the Borough of Clymer 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 Borough of Clymer, 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 the officer the amount of taxes deducted during the preceding three-month period 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 name of the taxing jurisdiction or district, the total earned income of all such employes during such preceding three-month period, the total tax deducted therefrom and paid with the return. As to the initial period beginning July 1, 1967, and ending December 31, 1967, the returns and payments shall be due on October 31, 1967, and January 31, 1968, respectively.

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 the 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, beginning February 28, 1968, 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: provided, however, that the initial return due on February 28, 1968, shall cover the period from July 1, 1967, to December 31, 1967.

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; provided, however, that the initial return shall relate to the period beginning July 1, 1967, and ending December 31, 1967.

(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 return and withholding statements hereinabove required and pay the tax due.

ADAG07

(e) Except as otherwise provided by law, every employer who wilfully or negligently fails or omits to make the deductions required by this section shall be liable to and 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 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.

#### Section 5. POWERS AND DUTIES OF OFFICER:

(a) The Borough Council, by Ordinance, shall appoint the officer and shall in such ordinance fix the term of his office and his compensation. Before entering upon his duties the officer shall furnish to Clymer Borough Council his bond, with approved corporate surety and made payable to the Clymer Borough Council in an amount fixed by the Borough Council and conditioned for the faithful performance of his duties as officer and the power prompt payment to the Treasurer of Clymer Borough Council of all taxes collected by him hereunder.

(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 record showing the amount received by him from each person paying the tax and the date of such receipt.

(c) The officer is hereby charged with the administration and enforcement of the provisions of this ordinance and is hereby empowered to prescribe, adopt, promulgate and enforce the 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 payment alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred, to prescribe forms necessary for the administration of this ordinance, and to establish different filing, reporting and payment dates for taxpayers, whose fiscal years do not coincide with the calendar year.

(d) The officer and agents designated by him are hereby authorized to examine the books, papers and records of any employer or supposed employer, or of any taxpayer or supposed taxpayer, in order to verify the accuracy of tax declarations or returns, or if no declaration or return was filed, to ascertain the tax due. Every employer or supposed employer and every taxpayer or supposed taxpayer is hereby directed to and required to give the officer or to any agent designated by him the means, facilities and opportunity for such examination, and investigations as are hereby authorized:

(e) The officer shall deposit all collections of taxes imposed hereunder with the Treasurer of Clymer Borough Council within ten (10) days after the receipt thereof and shall make a detailed report of all amounts received and by whom paid, to the Secretary of Clymer Borough Council at the end of each calendar month.

(f) Any information gained by the officer or agent of Clymer Borough Council, or agent of the officer, or any other officer or agent of the Clymer Borough Council, as a result of any declarations, returns, investigations, hearings or verifications required or authorized by this ordinance, shall be confidential, except for official purposes in accordance with a proper judicial order or as otherwise provided by law.

(g) Any person aggrieved by any action of the officer shall have the right of appeal as provided by law.

(h) No rule or regulation by the officer, of any kind, shall be enforceable unless it has been approved by resolution of the Borough Council.

#### Section 6. SUIT FOR COLLECTION OF TAX:

(a) The officer may sue 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 (3) years after a declaration or return has been filed, whichever

ADA007

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 the 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 a substantial understatement of tax liability of 25% or more in respect of any return, but without fraud, suit shall be begun within six years after the date of the actual filing of such return.

(4) Where any employer has deducted taxes under the provisions of this ordinance and has failed to pay the amount so deducted to the officer, or where any employer has wilfully failed or omitted to make the deductions required by this ordinance, there shall be no limitation.

(5) This section shall not be construed as a limitation on the rights of Clymer Borough Council or the officer to pursue any other remedy provided by law or this ordinance for the enforcement hereof and the recovery of delinquent taxes by means other than suits for collection.

#### 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 1/2% of the tax, unpaid, for each month or fraction thereof during which the tax remains unpaid, shall be added and collected. Where suit is brought for 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. PAYMENT UNDER PROTEST AND REFUNDS:

The officer is hereby authorized to accept payment under protest of the amount of tax claimed by Clymer Borough Council in any case where any person disputes the validity or amount of the claim of Clymer Borough Council for the tax. If it is thereafter judicially determined by a court of competent jurisdiction that there has been an overpayment to the officer, the amount of the overpayment shall be refunded to the person who paid under protest.

#### Section 9. APPLICABILITY:

The tax imposed by this ordinance shall not apply;

To any person as to whom it is beyond the legal power of Clymer Borough Council to impose the tax herein provided for, under the Constitution of the United States, and the Constitution of the laws of the Commonwealth of Pennsylvania, including persons excluded from the operation of this ordinance by the provisions of local Tax Enabling Act, ~~previ~~ Act No. 511~~1~~ of the General Assembly of the Commonwealth of Pennsylvania, approved December 31, 1965, effective January 1, 1966.

#### Section 10. FINES AND PENALTIES FOR VIOLATION OF ORDINANCE:

(a) Any person who fails to, or 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; 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 makes an incomplete, false or fraudulent return or attempts to do anything whatsoever to avoid the full disclosure of the amount of his net profits or earnings to avoid payment of the whole or any part of the tax imposed by this ordinance, shall, upon conviction thereof before any Justice of the Peace, be sentenced to pay a fine of not more than \$500.00 for each offense, and costs, and in default of payment of said fine and costs to be imprisoned in the Indiana County Jail for a period not exceeding 30 days.

AD16607

(b) Any person who divulges any information which is confidential under the provisions of subsection (f) of Section 5 of this ordinance, shall, upon conviction thereof before any Justice of Peace, be sentenced to pay a fine of not more than \$500.00 for each offense, and costs, and, in default ~~fee~~ of payment of said fine and costs to be imprisoned in the Indiana County Jail for a period not exceeding 30 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 the forms required for making the declaration or return required by this ordinance shall not excuse him from making such declaration or return.

Section 11. CONSTRUCTION:

Any provisions of these said Act No. 511 of the General Assembly of the Commonwealth of Pennsylvania, not herein enumerated, shall, nevertheless, be incorporated as a part of this ordinance by reference. If any sentence, clause or section or part of this ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not effect 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 Borough of Council of said Clymer Borough that this ordinance would have been adopted has such unconstitutional, illegal, or invalid sentence, clause section or any part hereof had not been included herin.

Section 12. The tax imposed by this ordinance shall be in addition to all other taxes levied or imposed by the Borough of Clymer, Indiana County, Pennsylvania.

Section 13. REPEALS:

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

Section 14. EFFECTIVE DATE:

This ordinance shall become effective July 1, 1967, and shall be regarded as a continuing tax and will not be re-enacted or re-advertosed on an annual basis hereafter, although it will be effectual on a calendar year basis, beginning January 1, 1968, and continuing thereafter.

BE IT ORDAINED AND ENACTED this 14th day of April, 1967, by the Council of the Borough of Clymer.

BOROUGH OF CLYMER, INDIANA COUNTY,  
PENNSYLVANIA

ATTESTE:

by-- Patrick Corrigan  
President of Council

C. L. Longwill  
Secretary

APPROVED this 14 day of April, 1967.

Norman Richardson  
Mayor

ADAG07