

ORDINANCE NO. 244

AN ORDINANCE OF THE BOROUGH OF CLYMER, COUNTY OF INDIANA AND COMMONWEALTH OF PENNSYLVANIA IMPOSING A TAX FOR GENERAL BOROUGH REVENUE PURPOSES IN THE AMOUNT OF TEN DOLLARS (\$10.00) UPON THE PRIVILEGE OF ENGAGING IN AN OCCUPATION WITHIN THE BOROUGH OF CLYMER, PENNSYLVANIA, TO BE PAID BY ANY INDIVIDUAL EXERCISING SUCH PRIVILEGE, PROVIDING FOR ITS COLLECTION, REQUIRING THE FILING OF RETURNS: IMPOSING ON EMPLOYERS THE DUTY OF COLLECTING SAID TAX FROM EVERY INDIVIDUAL IN THEIR EMPLOY SUBJECT TO SAID TAX CONFERRING AND IMPOSING POWERS AND DUTIES OF ADMINISTRATION IN THE BOROUGH COUNCIL: AND IMPOSING PENALTIES FOR THE VIOLATION THEREOF.

BE IT ORDAINED AND ENACTED by the Borough Council of the Borough of Clymer, and it is hereby enacted and ordained as follows:

Section 1. Title. This ordinance and any supplements and amendments thereto, shall be known and may be cited as "Occupation Privilege Tax Ordinance."

Section 2. Definitions. The following words and phrases, when used in this ordinance, shall have the meanings ascribed to them in this sections, except where the context or language clearly indicates or requires a different meaning.

(a) Individual shall mean any person, male, or female, engaged in any occupation, trade or profession within the corporate limits of the Borough of Clymer, Indiana County, Pennsylvania.

(b) Occupation shall mean any trade, profession, business or undertaking of any type, kind or character, including services domestic or other, carried on or performed within the corporate limits of the Borough of Clymer for which compensation is charged or received whether by means of salary, wages, commissions or fees for services rendered.

(c) Employer shall mean an individual, partnership, association, corporation, governmental body, agency or other entity employing one or more persons on a salary, wage, commission or other compensation basis, including a self-employed person.

(d) Tax shall mean the occupation privilege tax in the amount of ten dollars (\$10.00) levied by this ordinance.

(e) Tax Receiver shall mean the person designated by the Borough of Clymer for the collection of occupation privilege taxes imposed by this ordinance.

(f) Council shall mean the Council of the Borough of Clymer, Indiana County, Pennsylvania.

(g) Fiscal Year shall mean the twelve (12) month period beginning January 1 and ending December 31 in any tax year.

(h) Borough of Clymer shall mean the area within the corporate limits of the Borough of Clymer, Indiana County, Pennsylvania.

(i) He, his or him shall mean and indicate the singular and plural number as well as male and female and neuter gender.

Section 3. Levy. For general revenue purposes the Borough of Clymer hereby levies a tax upon the privilege of engaging in an occupation during the fiscal year. Each individual who exercise such privilege shall pay the tax in the amount of ten dollars (\$10.00) in accordance with this ordinance. This tax in addition to all other taxes of any kind or nature heretofore levied by the Borough of Clymer; provided, however, that there is hereby exempted from this tax any person whose total income from all source is less than Two Thousand Dollars (\$2,000.00) per annum as provided by Act No. 33 of the General Assembly approved July 9, 1971.

Section 4. Self-Employed Individuals. Every self-employed individual who

performs services of any kind or engages in any occupation within the Borough of Clymer during the fiscal year shall be required to comply with this ordinance and shall pay the tax to the Tax Receiver on or before July 15 of the fiscal year or as soon thereafter as he first performs such services or engages in such occupation during such year within the Borough of Clymer.

Section 5. Duty of Employers. Each employer within the Borough of Clymer, as well as each employer outside the Borough of Clymer but engaging in business within the Borough of Clymer, is hereby charged with the duty of collecting the said tax of ten dollars (\$10.00) per year from each of his employees who is engaged in an occupation, as herein defined, for the benefit of said employer or in the service of said employer within the Borough of Clymer during the fiscal year. Such employer shall make a return and payment of said tax to the Tax Receiver, and each such employer is hereby authorized to deduct said tax from each such employee, whether such employee is paid by salary, wages, commission, and whether or not part or all of such service are performed within the Borough of Clymer.

Section 6. Returns. Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied to him by the Tax Receiver of the Borough of Clymer. If the employer fails to file said return and pay said tax, whether or not he makes collection thereof from the salary, wages or commissions paid by him to said employee, the employer shall be responsible for the payment of the tax in full as though the tax had originally been levied against him.

Section 7. Dates for Determining Tax Liability and payment.

(a) As to all taxpayers employed by an employer on or before June 30th of any fiscal year, the employer shall deduct the tax from the compensation payable to each of the taxpayers, file a return on a form prescribed by Council, and pay to the Tax Receiver the full amount of all such taxes on or before July 31 of the fiscal year. Thereafter, as to all taxpayers for whom no prior deduction has been made, who are employed for any time by the said employer during either of the three-month periods ending on September 30, or on December 31 of the fiscal year, such employer shall deduct the tax from the compensation payable to each of the taxpayers, file a return on the form prescribed by Council and pay to the Tax Receiver the full amount of all such taxes on or before October 31 of the fiscal year and January 31, of the following year, respectively.

(b) Any employer who discontinues business or ceases operations shall, within thirty (30) days after discontinuing business or ceasing operations, file the return hereinabove required and pay the tax to the Tax Receiver.

Section 8. Individuals engaged in More Than One Occupation.

Each individual who shall have more than one occupation within the Borough of Clymer shall be subject to the payment of this tax levied only on the privilege of engaging in his principal occupation within said Borough, and his principal employer shall deduct this tax from his compensation and deliver to him evidence of such deduction on a form to be furnished by Council, which form shall be evidence of deduction having been made. When presented to any other employer, said form shall be authority for said employer not to deduct this tax from said employee's compensation, and not to pay over the same to the Tax Receiver. However, said employer shall nevertheless include said employee on his return. To be filed in accordance herewith by setting forth thereon the employee's name, address and the name and account number of the employer who issued the evidence of deduction aforesaid.

Section 9. Employers and Self-Employed individuals Residing Beyond the Corporate Limits of the Borough of Clymer. All employers and self-employed individuals residing or having their residence of business outside the Borough of Clymer, but who perform services of any type or kind, or engage in any occupation or profession within the Borough of Clymer, do by virtue thereof agree to be bound by and subject themselves to the provisions, penalties and regulations promulgated under this ordinance of the Borough of Clymer. Further any individual engaged in an occupation with the Borough of Clymer and an employee of a nonresident employee may, for the purpose of this ordinance, be considered a self-employed person, and in the event this tax is not paid, the Borough shall have the option of proceeding against either the employer or employee for the collection of this tax as hereinafter provided.

Section 10. Administration of tax.

(a) It shall be the duty of the Tax Receiver to accept and receive payments of this tax and to keep a record thereof showing the amount received by him from each employer or self-employed person, together with the date the tax was received.

(b) The Council of the Borough of Clymer is hereby charged with the administration and enforcement of this Part 1 and is hereby charged and empowered to prescribe, adopt, promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this ordinance, including provisions for the examination of the payroll records of any employer subject to this ordinance, the examination and correction of any return made in compliance with this ordinance and any payment alleged or found to be incorrect, or as to which overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the Council shall have the right to appeal to the Court of Common Pleas of Indiana County, as in other cases provided.

(c) The Tax Receiver is hereby authorized to examine the books and payroll records of any employer in order to verify the accuracy of any return made by an employer, or, if no return was made, to ascertain the tax due. Each employer is hereby directed and required to give the Tax Receiver the means, facilities and opportunity for such examination.

Section 11. Suits for Collection.

(a) In the event that any tax under this Part 1 remains due or unpaid thirty (30) days after the due dates above set forth, the Tax Receiver may sue for the recovery of any such tax due or unpaid under this ordinance, together with interest and penalty.

(b) If for any reason the tax is not paid when due, interest at the rate of six percent (6%) on the amount of said tax shall be calculated beginning with the due date of said tax, and a penalty of ten percent (10%) shall be added to the flat rate of said tax for nonpayment thereof. Where suit is brought for the recovery of this tax, the individual liable therefor shall, in addition, be responsible and liable for the costs of collection and the interest and penalties herein imposed.

Section 12. Fine and Penalty. Whoever makes any false or untrue statement on any return required by this ordinance, or who refuses inspection of his books, records and accounts in his custody and control setting forth the number of employees subject to this tax, who are in his employment, or whoever fails or refuses to file any return required by this ordinance shall be guilty of a violation, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one hundred dollars (\$100.00) and costs of prosecution, and, in default of payment of such fine and costs, to imprisonment for not more than thirty (30) days. Any action to enforce the fine and penalty hereof provided may be instituted against any officer of any corporate employer or against any person in charge of any place of business of any employer.

Section 13. Validity. The provision of this ordinance are severable and if any of its provisions shall be held invalid or unconstitutional, the decision of the court shall not affect or invalidate any of the remaining provisions. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such illegal, invalid or unconstitutional provisions has not been included herein.

Section 14. Saving Clause.

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

(b) If the tax hereby imposed under the provisions of this ordinance shall be held by any court of competent jurisdiction be in violation of the Constitution of the United States or of the laws 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 the said tax, or the validity of the tax so imposed on other persons or individuals as herein provided.

Section 15. All Ordinance or part of Ordinances conflicting with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 16. This Ordinance shall become effective immediately upon enactment.

ORDAINED AND ENACTED this 11th day of July, 1988.

ATTEST:

BOROUGH OF CLYMER

Connie L. Custer
Secretary

Norman Richardson
President of Council

APPROVED this 11th day of July, 1988

William Britsky
Mayor