

ORDINANCE NO. 218 OF 1967

EARNED INCOME TAX ORDINANCE OF THE BOROUGH
OF BENTLEYVILLE

AN ORDINANCE IMPOSING AN ANNUAL TAX FOR GENERAL REVENUE PURPOSES ON EARNED INCOME RECEIVED AND NET PROFITS EARNED BY RESIDENTS OF THE BOROUGH OF BENTLEYVILLE AND NON-RESIDENTS WHO RECEIVE THE PRINCIPAL PART OF SUCH INCOME FROM EMPLOYMENT, BUSINESS OR OTHER ACTIVITY CONDUCTED WITHIN THE BOROUGH DURING THE PERIOD BEGINNING JULY 1, 1967, AND ENDING DECEMBER 31, 1967, AND CONTINUING ANNUALLY THEREAFTER; REQUIRING THE FILING OF DECLARATIONS AND RETURNS AND GIVING OF INFORMATION BY EMPLOYERS AND BY THOSE SUBJECT TO THE TAX; IMPOSING ON EMPLOYERS THE DUTY OF COLLECTING THE TAX AT SOURCE; PROVIDING FOR THE ADMINISTRATION, COLLECTION, ENFORCEMENT OF THE TAX; AND IMPOSING PENALTIES FOR VIOLATION THEREOF.

BE IT ENACTED AND ORDAINED, and it is hereby enacted and ordained by the Council of the Borough of Bentleyville, Washington County, Pennsylvania, pursuant to the authority granted under Act No. 511 of 1965, of the General Assembly of the Commonwealth of Pennsylvania, known as "The Local Tax Enabling Act", and its amendments, as follows:

ARTICLE 1
DEFINITIONS

SECTION 1. The following words and phrases, when used in this Ordinance shall have the meanings ascribed to them in this article, except, where the context clearly indicates or requires a different meaning:

"ASSOCIATION." - A partnership, limited partnership, or any other unincorporated group of two or more persons.

"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.

"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.

"CURRENT YEAR." - The calendar year for which the tax is levied.

"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.

"EARNED INCOME." - Salaries, wages, commissions, 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.

"INCOME TAX OFFICER" or "OFFICER". - Person, public employee or private agency designated by governing body to collect and administer the tax on earned income and net profits.

"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.

"NET PROFITS". - The net gain 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 deductions of taxes based on income.

"NONRESIDENT." - 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 Borough of Bentleyville.

"SUCCEEDING YEAR". - The calendar year following the current year.

"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.

"BOROUGH". - The Borough of Bentleyville, Washington County, Pennsylvania.

SECTION 2. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

ARTICLE II IMPOSITION OF TAX

SECTION 1. A tax for General revenue purposes of one-half of one per centum (1/2%) is hereby levied and imposed upon the earned income received and net profits earned by each resident of the Borough of Bentleyville and by each non-resident who or which receives the principal part of such income and/or profit from employment, a business, or other activity conducted within the Borough or having its base of operations within the Borough.

SECTION 2. The Tax levied herein shall relate to and be imposed upon earned income paid by an employer or on his behalf to any person who is employed by or renders services to him or to the net profits of any business as defined in Article 1, Section 1.

SECTION 3. The tax levied and imposed by this Ordinance shall be applicable to earned income received and net profits earned during the period beginning July 1, 1967, and ending December 31, 1967, and thereafter, continuing annually, that is year to year on a calendar year of taxpayer fiscal year basis.

ARTICLE III DECLARATION AND PAYMENT OF TAX

A. NET PROFITS

SECTION 1. For 1967, every taxpayer making a net profit shall, on or before September 15, 1967, make and file with the officer on the form prescribed or approved by the officer, a Declaration of his estimated net profits during the period beginning July 1, 1967 and ending December 31, 1967, and pay to the offices in two equal quarterly installments the tax due thereon as follows:

The first installment at the time of filing the Declaration and the second installment on or before January 15, 1968; and on or before April 15, 1968, shall file a return showing the amount of net profits earned during the period beginning July 1, 1967 and ending December 31, 1967, the total tax due thereon and the total amount 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.

SECTION 2. After 1967, 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.

SECTION 3. Any taxpayer who first anticipates any net profits 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 equal installments the tax due thereon on or before the quarterly payment dates which remain after the filing of the declaration.

SECTION 4. 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.

SECTION 5. The officer shall 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.

SECTION 6. 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

SECTION 7. For 1967, every taxpayer shall on or before April 15, 1968, make and file with the officer a final return showing the amount of earned income (other than net profits) received during the period beginning July 1, 1967 and ending December 31, 1967, the total tax due thereon, the amount of tax paid thereon, the amount of tax paid thereon that has been withheld pursuant to the provisions relating to collection at the source, and the balance of tax due thereon. At the time of filing said final return, the taxpayer shall pay the balance of the tax due, or shall make demand for refund or credit in the case of over payment; and thereafter every taxpayer shall, on or before April 15, of the succeeding year, make and file with the officer a similar return with respect to the period beginning January 1 of the current year, and ending December 31 of the current year: provided, however, that no such final return shall be required to be filed by a taxpayer who receives no reearned income other than income subject to the provisions of this Article relating to collection at the source. 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 over payment.

SECTION 8. Every taxpayer who is employed for a salary, wage, commission, or other compensation and who receives any earned income not subject to the provisions of this Article, 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 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.

ARTICLE IV COLLECTION AT SOURCE

SECTION 1. Every employer having an office, factory, workshop, branch, warehouse or other place of business within the Borough, 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.

SECTION 2. Every employer having an office, factory, workshop, branch, warehouse, or other place of business within the Borough, 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 employee or employees, 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 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 total earned income of all such employees 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 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.

SECTION 3. On or before February 28, of the succeeding year, every employer shall file with the officer:

(1) A final or 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.

SECTION 4. 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.

SECTION 5. Every employer who willfully or negligently fails or omits to make the deductions required by this Article 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.

SECTION 6. The failure or omission of any employer to make the deductions required by this section shall not relieve any employee from the payment of the tax or from complying with the requirements of this Ordinance relating to the filing of declarations and returns.

ARTICLE V
POWERS AND DUTIES OF OFFICER

SECTION 1. 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.

SECTION 2. The officer, before entering upon his official duties shall give and acknowledge a Bond to the Borough of Bentleyville in the principal amount to be determined by resolution of Council, which bond shall remain in the custody of the Borough Secretary and 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; shall be conditioned upon the faithful discharge by the officer, his clerks, assistants and appointees of all trust 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 moneys 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 shall be taken in the name of the Borough of Bentleyville and shall be for the use of the Borough 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 on the bond.

The Borough or any person may sue upon the said bond in its or his own name for its or his own use; and such bond shall contain the name or names of the surety company or companies bound thereon.

The Borough shall have the right, upon cause shown and due notice to the officer, and his surety or sureties, to require or allow the substitution or the addition of a surety company acceptable to the Borough 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.

SECTION 3. 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 of the Borough Council. A copy of such rules and regulations currently in force shall be available for public inspection.

SECTION 4. 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.

SECTION 5. 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 and required to give to the officer, or to any agent designated by him, the means, facilities and opportunity for such examination and investigations, as are hereby authorized.

SECTION 6. 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, hearing 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.

SECTION 7. The officer is authorized to establish different filing, reporting and payment dates for taxpayers whose fiscal years do not coincide with the calendar year.

ARTICLE VI COMPENSATION OF INCOME TAX OFFICER

SECTION 1. The income tax officer shall receive such compensation for his service and expenses as determined by the Borough of Bentleyville.

ARTICLE VII SUIT FOR COLLECTION OF TAX

SECTION 1. The officer may sue in the name of the Borough for the recovery of taxes due and unpaid under this Ordinance.

SECTION 2. 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:

(a) Where no declaration or return was filed, although a declaration or return was required to be filed under provisions of this Ordinance, there shall be no limitation.

(b) Where an examination of the declaration or return filed, 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.

(c) In the case of substantial understatement of tax liability of twenty-five percent or more, and no fraud, suit shall be begun within six years.

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

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

SECTION 3. 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.

ARTICLE VIII INTEREST AND PENALTIES

SECTION 1. 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.

ARTICLE IX FINES AND PENALTIES FOR VIOLATION OF ORDINANCE

SECTION 1. 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 Washington County, Pennsylvania, be sentenced to pay a fine of not more than Five Hundred (\$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 days.

SECTION 2. Any person who divulges any information which is confidential under the provisions of this Ordinance, shall, upon conviction thereof before any justice of the peace, alderman or magistrate or court of competent jurisdiction, be sentenced to pay a fine of not more than Five Hundred (\$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 days.

SECTION 3. The penalties imposed under this Article shall be in addition to any other penalty imposed by any other Article of this Ordinance.

SECTION 4. 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.

ARTICLE X DISTRESS AND SALE OF GOODS AND CHATTELS OF TAXPAYERS

SECTION 1. Every tax collector shall have power, in case of the neglect or refusal of any person, copartnership, association, or corporation, to make payment of the amount of any tax due by him, after two months from the date of the tax notice, to levy the amount of such tax, any penalty due thereon and costs, not exceeding costs and charges allowed constables for similar services by distress and sale of the goods and chattels of such delinquent, wherever situate or found, upon giving at least ten day's public notice of such sale, by posting ten written or printed notices, and by one advertisement in a newspaper of general circulation published in the county.

No failure to demand or collect any taxes by distress and sale of goods and chattels shall invalidate any return made, or lien filed for nonpayment of taxes, or any tax sale for the collection of taxes.

ARTICLE XI
COLLECTION OF DELINQUENT TAXES

SECTION 1. The Borough of Bentleyville may empower the Income Tax Officer to collect delinquent taxes imposed under this Ordinance, or it may appoint and empower another person to serve as the Borough Delinquent Income Tax Officer. In case of the appointment of a person other than the Borough Income Tax Officer to collect the delinquent taxes, the person appointed shall be bonded in accordance with this Ordinance.

SECTION 2. Insofar as the collection of delinquent income taxes are concerned, the Borough Delinquent Income Tax Officer shall have the powers and duties applicable to him as set forth in this Ordinance and in Sections, 19, 20, 21 and 22 of Act 511 of 1965 Session of the General Assembly.

ARTICLE XII
APPLICABILITY

SECTION 1. This Ordinance shall not apply to any person or property as to whom or which it is beyond the legal power of the Borough of Bentleyville to impose the tax or duties herein provided for.

ARTICLE XIII
AUDITS OF EARNED INCOME TAXES

SECTION 1. The Borough of Bentleyville shall contract for the services of a certified public accountant or a competent independent public accountant to examine the books, accounts and records of the Borough Income Tax Officer in March of each year for the Preceeding year, or more frequently, if necessary in the judgment of the Borough. The report of the accountant shall be sent to the Borough when completed. No further or additional audit shall be performed by elected or appointed auditors.

ARTICLE XIV
SEVERABILITY

SECTION 1. 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 any of the remaining provisions, sentences, clauses or sections, of this Ordinance. It is hereby

declared to be the intent of the Borough that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause or section not been included herein.

ARTICLE XV
INCORPORATION BY REFERENCE

SECTION 1. All the terms, conditions and provisions of Act No. 511 of 1965, of the General Assembly of the Commonwealth of Pennsylvania, known as "The Local Tax Enabling Act" and its Amendments, are incorporated herein by reference with the same effect as if the same were expressly set forth herein.

Enacted and Ordained this 6th day of March, 1967.

ATTEST:

Arno Di Nardo
Borough of Bentleyville
President of Council

ATTEST:

Stephen Malick
Borough Secretary

EXAMINED AND APPROVED BY ME, THIS 6th DAY OF
March, 1967.

Jess Blaser
Mayor