ORDINANCE NO. 548 OF 2011

EARNED INCOME AND NET PROFITS TAX (EIT)

AN ORDINANCE OF THE BOROUGH COUNCIL OF BENTLEYVILLE BOROUGH, WASHINGTON COUNTY, PENNSYLVANIA, LEVYING A TAX ON EARNED INCOME AND NET PROFITS; REQUIRING TAX RETURNS; REQUIRING EMPLOYERS TO WITHHOLD AND REMIT TAX; AND RELATED PROVISIONS.

ENACTED, by the Borough of Bentleyville, Washington County, Pennsylvania under authority of the Local Tax enabling Act, 53 P.S. § 6924.101 et seq., and other applicable law, as follows:

SECTION 1. DEFINITIONS

All terms defined in the Local Tax Enabling Act, 53 P.S. § 6924.101 et seq., shall have the meanings set forth therein. The following terms shall have the meanings set forth herein:

a. 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.

b. Collector. The person or entity appointed as tax officer pursuant to the Local Tax Enabling Act to collect the tax.

c. Combined Tax Rate Applicable to Residents. The total rate applicable to residents of the Taxing Authority, including the tax imposed by the School District and by the municipality in which the individual resides, is one percent (1%).

d. Domicile. The place where a person lives and has a permanent home and to which the person has the intention of returning whenever 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 voluntarily fixed place of habitation of a person, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some event occurs to induce the person to adopt some other permanent home. In the case of a business, domicile is that place considered to be the center of business affairs and the place where its functions are discharged.

e. Earned Income. The compensation required to be reported as determined by the Pennsylvania Department of Revenue under Section 303 of the Tax Reform Code of 1971, as amended, and rules and regulations promulgated thereunder. Employee business expenses as reported to or determined by the Department of Revenue under Article III of the Tax Reform Code shall constitute allowable deductions in determining earned income. The term does not include offsets for business losses. The amount of any housing allowance provided to a member of the clergy shall not be taxable as earned income.

f. Effective date. January 1, 2012.

g. Employer. A person, business entity or other entity, employing one or more person for a salary, wage, commission or other compensation. The term includes the Commonwealth, a political subdivision, and an instrumentality or public authority of either. For purpose of penalties under this Ordinance, the term includes a corporate officer.

h. Governing Body. The Borough Council of the Borough of Bentleyville, Washington County, Pennsylvania.

i. Local Tax Enabling Act. The Local Tax Enabling Act, 53 P.S. § 6924.101 et seq., and any amendments thereto.

j. Net Profits. The net income from the operation of a business, other than a corporation, as required to be reported to or as determined by the Pennsylvania Department of Revenue under section 303 of the Tax Reform Code of 1971, as amended and rules and regulations promulgated thereunder. The term does not include income under any of the following paragraphs:
   (1) Income which:
      (i) is not paid for services provided; and
      (ii) is in the nature of earnings from an investment.
   (2) Income which represents:
      (i) any gain on the sale of farm machinery;
      (ii) any gain on the sale of livestock held for 12 months or more for draft, breeding or dairy purposes; or
      (iii) any gain on the sale of other capital assets of a farm.

k. Nonresident. A person or business domiciled outside the Taxing Authority.

l. Resident. A person or business domiciled in Bentleyville Borough

m. Person. A natural person.

n. TCD. Any Tax Collection District to which the Taxing Authority or any part of the Taxing authority is assigned under the Local Tax Enabling Act.

o. TCC. The Washington County Tax Collection Committee, which has been established to govern and oversee the collection of earned income tax within the TCD under the Local Tax Enabling Act.

p. Tax. The tax imposed by this Ordinance.

q. Tax Return. A form prescribed by the Collector for reporting the amount of Tax or other amount owed or required to be withheld, remitted, or reported under this Ordinance or the Local Tax Enabling Act.

r. Tax Year. The period from January 1 to December 31.

s. Taxing Authority. The Borough of Bentleyville, Washington County, PA

t. Taxpayer. A person or business required under this Ordinance and the Local Tax Enabling Act to file a return of the earned income and net profits tax or to pay the earned income and net profits tax.

SECTION 2. IMPOSITION OF TAX

a. General Purpose Resident Tax. The Taxing Authority hereby imposes a Tax for general revenue purposes at the rate of one percent (1%) on earned income and net profits of residents of the Taxing Authority.

b. Ongoing Tax. The Tax shall continue at the above rates during the current Tax Year and each Tax Year thereafter, without annual re-enactment, until this Ordinance is repealed or the rate is changed.

c. Local Tax Enabling Act Applicable. The Tax is imposed under authority of the Local Tax Enabling Act, and all provisions thereof that relate to a tax on earned income or net profits are incorporated into this Ordinance. Any future amendments to the Local Tax Enabling Act that are required to be applied to a tax on earned income or net profits will automatically become part of this Ordinance upon the effective date of such amendment, without the need for formal amendment of this Ordinance, to the maximum extent allowed by 1 Pa. C.S.A. §1937.

d. Applicable Laws, Regulations, Policies, and Procedures. The Tax shall be collected and administered in accordance with: (1) all applicable laws and regulations; and (2) policies and procedures adopted by the TCC or by the Collector. This includes any regulations, policies, and procedures adopted in the future to the maximum extent allowed by 1 Pa.C.S.A. § 1937.

SECTION 3. INDIVIDUAL TAX RETURNS AND PAYMENTS

Every resident receiving earned income or earning net profits in any Tax Year shall file Tax Returns and pay Tax in accordance with the Local Tax Enabling Act and this Ordinance.

SECTION 4. EMPLOYER WITHHOLDING, REMITTANCE, AND TAX RETURNS

Every employer shall register, withhold, and remit Tax, and file Tax Returns in accordance with the Local Tax Enabling Act and this Ordinance.

SECTION 5. TAX COLLECTOR

The Tax will be collected from residents and employers by the Collector.

SECTION 6. INTEREST, PENALTIES, COSTS, AND FINES

Residents and employers are subject to interest, penalties, costs, and fines in accordance with the Local Tax Enabling Act, including costs imposed by the Collector in accordance with authorization by the TCC having jurisdiction.

SECTION 7. SEVERABILITY

The provisions of the Ordinance are severable and if any of its provisions are ruled by a court invalid or unconstitutional, such decision shall not affect or impair any of the remaining provisions of this Ordinance. It is declared to be the intention of Bentleyville Borough that this Ordinance would have been adopted if such invalid or unconstitutional provision had not been included.

SECTION 8. PURPOSE/REPEAL

The primary purpose of this Ordinance is to conform the earned income and net profits tax currently imposed by the Taxing Authority to the Local Tax Enabling Act, as amended and restated by Act 32 of 2008, and to do so within the time frame required by Act 32. Any prior Ordinance imposing a tax on earned income or net profits of individuals is amended and restated in its entirety to read as stated in this Ordinance. Any other prior Ordinance or part of any prior Ordinance conflicting with the provisions of this Ordinance is rescinded insofar as the conflict exists. To the extent that this Ordinance is the same as any Ordinance in force immediately prior to adoption of this Ordinance, the provisions of this Ordinance are intended as a continuation of such prior Ordinance and not as a new Ordinance. If this Ordinance is declared invalid, any prior Ordinance levying a similar tax shall remain in full force and effect and shall not be affected by adoption of this Ordinance. If any part of this Ordinance is declared invalid, the similar part of any prior Ordinance levying a similar tax shall remain in effect and shall not be affected by adoption of this Ordinance. The provisions of this Ordinance shall not affect any act done or liability incurred, nor shall such provisions affect any suit or prosecution pending or to be initiated to enforce any right or penalty or to punish any offense under the authority of any Ordinance in force prior to adoption of this Ordinance. Subject to the foregoing provisions of the Section, this Ordinance shall amend and restate on the Effective Date any Ordinance levying a tax on earned income or net profits in force immediately prior to the Effective Date.

SECTION 9. EFFECTIVE DATE

The provisions of the Ordinance shall become effective on January 1, 2012, and all calendar years thereafter unless repealed or modified by an Ordinance of the Borough.

DULY ENACTED AND ORDAINED this 6th day of December 2011, by the Borough Council of the Borough of Bentleyville, Washington County, Pennsylvania.

BENTLEYVILLE BOROUGH

ATTEST: BY: _____
Joseph R. Kurilko/Council President

_____
Sheryl M. Hreha/Secretary-Treasurer

EXAMINED AND APPROVED the day and year as set forth above.

BY: _____
Thomas Brown/Mayor