

GREENWICH TOWNSHIP

ORDINANCE NO. 2005-1

AN ORDINANCE TO AMEND GREENWICH TOWNSHIP'S EARNED INCOME TAX ORDINANCE, NO. 111 AND UPON THE EFFECTIVE DATE OF SUCH ORDINANCE SHALL REPEAL ORDINANCE 111, IN ORDER TO UPDATE THE CURRENT LEVY OF AN EARNED INCOME TAX, FOR GENERAL TOWNSHIP PURPOSES; UPDATING FILING REQUIREMENTS FOR DECLARATIONS AND RETURNS; UPDATING COLLECTION DUTIES AND PRESCRIBING PENALTIES FOR VIOLATION THEREOF.

WHEREAS, on December 3rd, 1966 through Ordinance No. 111 Greenwich Township adopted an ordinance imposing an earned income tax on the residents of Greenwich Township and based upon statutory changes, the Board of Supervisors seeks to update said Ordinance;

BE IT ENACTED AND ORDAINED by the Board of Supervisors of the Township of Greenwich, of the County of Berks and the Commonwealth of Pennsylvania, pursuant to the Local Tax Enabling Act, as amended, ordains as follows:

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

Association- a partnership, limited partnership or any other form of unincorporated enterprise owned by two or more persons.

Business - an enterprise, activity, profession, or undertaking of an unincorporated nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, or any other entity.

Collector - the elected Tax Collector of the Township of Greenwich, or appointed under the authority of the Local Tax Enabling Act.

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.

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 when, in the intention of the taxpayer, is

ATTORNEYS AT LAW

O'PAKE • ORWIG
A PROFESSIONAL CORPORATION

1940 N. 13th Street
Suite 215
Reading, PA 19604

(610) 939-9866

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 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, and tips and other compensation that may accrue or be received by an individual for services rendered, whether directly or through an agent and whether in cash or in property; but shall not include periodic payments for sick or disability benefits and those 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, nor public assistance or unemployment compensation payments, nor any wages or compensation paid by the United States to any person for active service in the Army, Navy, or Air Force of the United States nor any bonus or additional compensation paid by the United States nor any bonus or additional compensation paid by the United States or the Commonwealth of Pennsylvania or any other State for such service.

Employer - an individual, partnership, association, corporation, governmental body, unit or agency, or any other entity employing one or more persons on a salary, wage, commission or other compensation basis.

Net Profits - the net income from the operation of a business, profession, or enterprise, except corporations, after provision for all costs and expenses incurred in the conduct thereof, either paid or accrued in accordance with the accounting system used in such business, profession or enterprise, but without deduction of taxes based on income.

Non-Resident - an individual, partnership, association, or other entity domiciled outside of the Township of Greenwich.

Person - a natural person, partnership, corporation, fiduciary, or association. Whenever used in any section prescribing and imposing a penalty, the term "person" as applied to associations, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

Resident - an individual, partnership, association, or other entity domiciled in the Township of Greenwich.

Taxpayer - a person, whether an individual, partnership, association, or any other entity, required hereunder to file a return of earnings or net profits, or to pay a tax thereon.

ATTORNEYS AT LAW

O'PAKE • ORWIG

A PROFESSIONAL CORPORATION

1940 N. 13th Street
Suite 215
Reading, PA 19604

(610) 939-9866

For all terms used in this Ordinance, the singular shall include the plural, and the masculine shall include the feminine and the neuter.

SECTION 2. Imposition of Tax. A tax for general purposes of one (1%) percent is hereby imposed on the following:

- (A) Earned income, as defined by this ordinance, received by residents of the Township of Greenwich, on and after December 3, 1966.
- (B) Earned income, as defined by this Ordinance, received by non-residents of the Township of Greenwich for work done or services performed or rendered in the Township of Greenwich, on and after December 3, 1966.
- (C) Net profits earned on and after December 3, 1966; of businesses or professions, and other activities conducted in the Township of Greenwich by non-residents.

The taxes levied under (A) and (B) herein shall related to and be imposed upon salaries, wages, commissions, and other compensation paid by an employer or on his behalf to any person who is employed by or renders services to him. The tax levied under (C) and (D) herein shall relate to and be imposed on the net profits of any business, profession, or enterprise carried on by any person as owner or as proprietor, either individually or in association with some other person or persons.

SECTION 3.

(A) Declaration and Payment of Net Profits Tax.

1. On or before June 15 of the current year, September 15 of the current year, and January 15 of the succeeding year, every taxpayer who receives net profits or any earnings shall make and file with the Collector, on a form prescribed to him, a return or declaration showing his estimated net profits or earnings for the period commencing January 1 and ending December 31 of the current tax year.
2. The declaration or return shall show the amount of tax imposed by this Ordinance on such estimated net profits or earned income received by the taxpayer and the balance due. The taxpayer making the declaration or return shall, at the time of filing thereof, pay to the Collector the amount of tax shown as due thereon.

ATTORNEYS AT LAW

O'PAKE•ORWIG

A PROFESSIONAL CORPORATION

1940 N. 13th Street
Suite 215
Reading, PA 19604

(610) 939-9866

3. On or before April 15 of the succeeding year, every tax payer shall make and file with the Collector, on a form prescribed by him, a final return or declaration showing the amount of net profits or earned income received during the period commencing January 1 of the current year and ending on 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 Collector 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 Collector on or before January 31 of the succeeding year the final return as hereinabove required and pay the tax due.
4. Every taxpayer who discontinues business prior to December 31 of a given tax year shall, within fifteen (15) days after the discontinuance of business, file his final return as hereinabove required and pay the tax due.

B. Declaration and payment of Earned Income Tax -

1. Every taxpayer who is employed for a salary, wage, commission or other compensation and who received any earned income not subject to the provisions of Section 4 herein 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 make and file with the Collector, on a form prescribed by him, a return or declaration showing his aggregate amount of income not subject to withholding tax by him during the three-month periods ending March 31 of the current year, respectively, together with such other information that the Collector may require. Every taxpayer making such return shall, at the time of filing thereof, pay to the Collector the amount of tax shown as due thereon.
2. On or before April 15 of the succeeding year, every taxpayer shall make and file with the Collector, on a form prescribed by him, a final return or declaration showing the amount of earned income received during the period commencing January 1 of the current year ending on December 31 of the current year, the total amount of tax paid thereon. At the time of filing the final return, the taxpayer shall pay to the Collector 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

ATTORNEYS AT LAW

O'PAKE • ORWIG

A PROFESSIONAL CORPORATION

1940 N. 13th Street
Suite 215
Reading, PA 19604

(610) 939-9866

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.

3. Every employee receiving any earnings which are not subject to the provisions of Section 4 of this Ordinance relating to collection at source, whose liability to the Township of Greenwich ceases prior to December 31 of a given tax year, shall, within fifteen (15) days after such termination, file his final return as hereinabove required and pay the tax due.

SECTION 4 - Collection at Source.

- (A) Every person within the Township of Greenwich who employs one or more persons on a salary, wage, commission, or other compensation basis. Other than domestic servants, shall on or before April 15 of the subsequent year, or with (15) days after becoming an employer, register with the Collector his name and address and such other information as the Collector may require.
- (B) Every person within the Township of Greenwich who employs one or more persons on a salary, wage, commission, or other compensation basis, other than domestic servants, shall have the right of appeal as provided by law.
- (C) Any person aggrieved by any action of the Collector shall have the right of appeal as provided by law.

SECTION 5 -

- (A) SUIT FOR COLLECTION OF TAX -
 - (1) The Collector may sue for the recovery of taxes due and unpaid during the applicable time frame as set by this Ordinance.
 - (2) 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 a 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 in the following cases:

ATTORNEYS AT LAW

O'PAKE•ORWIG

A PROFESSIONAL CORPORATION

1940 N. 13th Street

Suite 215

Reading, PA 19604

(610) 939-9866

- (4) Where no declaration or return was filed by any person, although a declaration or return was required by him under the provisions of this Ordinance, there shall be no limitation.
- (5) Where an examination of the declaration or return in the possession of the Collector, or any other evidence relating to such declaration or return, reveals a fraudulent evasion of taxes, there shall be no limitation.
- (6) Where any person has deducted taxes under the provisions of this Ordinance and has failed to pay the amounts so deducted to the Collector, or where any person has willfully failed or omitted to make deductions required by this Ordinance, there shall be no limitation.
- (7) In the case of substantial understatement of tax liability of twenty-five percent (25%) or more and no fraud, suit should be filed within six(6) years.
- (8) The Collector may file suit for the recovery of an erroneous refund provided that such civil action is filed within two (2) years that such refund is made. However, if it appears that any such refund was induced by fraud or misrepresentation of material fact, that such action may be brought within five (5) years of same. The Township shall also be entitled to employ all other means of collection authorized by law.

SECTION 7 - INTEREST AND PENALTIES - If for any reason the tax is not paid, when due, interest at the rate of six percent (6%) per annum on the amount of the tax, and an additional penalty of one-half percent (.5%) 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 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, together with attorneys fees when authorized by law.

SECTION 8 - PAYMENT UNDER PROTEST AND REFUNDS -The collector is hereby authorized to accept payment under protest of the amount of tax claimed by the Township for the tax. If it is thereafter judicially determined by a court of competent jurisdiction that there has been an over-payment, it shall be refunded to the person who paid under protest.

ATTORNEYS AT LAW

O'PAKE • ORWIG
A PROFESSIONAL CORPORATION

1940 N. 13th Street
Suite 215
Reading, PA 19604

(610) 939-9866

SECTION 9 - APPLICABILITY - The tax imposed by this Ordinance shall not apply:

- (A) To any person as to whom it is beyond the legal power of the Township of Greenwich to impose the tax herein provided for under the Constitution of the United States and the Constitution and laws of the Commonwealth of Pennsylvania.
- (B) To institutions or organizations not organized or operated for private profit, or to trusts and foundations established for any of the said purposes. This section shall not be construed to exempt any person who is an employer from the duty of collecting the tax at source from his employees and paying the amount collected to the Collector under the provisions on Section 4 of this Ordinance.

SECTION 10 -

- (A) 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; and person who refuses to permit the Collector or any agent designated by him to examine his books, records, and papers; and any person who 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 earnings to avoid the payment of the whole or any part of the tax imposed by the Ordinance shall, upon conviction thereof before any District Justice or court of competent jurisdiction, be sentence to pay a fine of not more than Five Hundred Dollars (\$500.00) for each offense and costs, and in default of payment of said fine and costs, to be imprisoned in the County Jail for a period not exceeding thirty (30) days.
- (B) Any person who divulges any information which is confidential under the provisions of subsection (d) of section 5 of this Ordinance shall, upon conviction thereof before any District Justice or court of competent jurisdiction, be sentence to pay a fine of not more than Five Hundred Dollars (\$500.00) for each offense and costs, and in default of payment of said fine and costs, to be imprisoned in the Berks County Jail 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 this Ordinance.

ATTORNEYS AT LAW

O'PAKE•ORWIG
A PROFESSIONAL CORPORATION

1940 N. 13th Street
Suite 215
Reading, PA 19604

(610) 939-9866

- (D) The failure of any person to receive or procure the forms required for making the declarations or returns required by this Ordinance shall not excuse him from making such declaration or return.

SECTION 11 - As of the effective date of this Ordinance, Ordinance No. 111 shall be amended in part and this Ordinance shall take the place of all conflicting sections; all taxes owed and owing under Ordinance No. 111 shall remain owed and owing and the amount of taxes prescribed by Ordinance No. 111 shall remain in full force;

SECTION 12- SEVERABILITY - The provisions of the 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 intent of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, or section not to be included herein.

SECTION 13 - CONFLICT - Any ordinance or any part of any Ordinances conflicting with the provisions of this Ordinance, is hereby repealed, so far as the same affects this Ordinance. Further it is the intention of the Board of Supervisors that this Ordinance be interpreted in a manner consistent with the Act, and that any conflict between the provisions of this Ordinance and the Act be resolved so that the provisions of the Act control. The provisions of the Act that are inconsistent with this Ordinance (if any) are incorporated herein and though set forth at length.

SECTION 14 - EFFECTIVE DATE - This Ordinance shall become effective 5 days after its adoption and shall continue on a calendar basis, thereafter, without annual reenactment. Up to the effective date of this Ordinance the Earned Income and Net Profits tax then in place is intended to remain in effect.

ATTORNEYS AT LAW


O'PAKE•ORWIG
A PROFESSIONAL CORPORATION


1940 N. 13th Street
Suite 215
Reading, PA 19604

(610) 939-9866

ORDAINED AND ENACTED into law this 4TH day of APRIL, 2005.

BOARD OF SUPERVISORS OF GREENWICH
TOWNSHIP, BERKS COUNTY, PA


Victor M. Berger, Chairman


Oscar E. Kleinsmith, Supervisor


Laurie Ann Baker, Supervisor

Attest:


Township Secretary

ATTORNEYS AT LAW

O'PAKE • ORWIG
A PROFESSIONAL CORPORATION

1940 N. 13th Street
Suite 215
Reading, PA 19604

(610) 939-9866