

**ORDINANCE NO. 9
BOROUGH OF MILL VILLAGE
ERIE COUNTY, PENNSYLVANIA**

AN ORDINANCE OF THE BOROUGH OF MILL VILLAGE, ERIE COUNTY, PENNSYLVANIA, ENACTED UNDER THE AUTHORITY CONTAINED IN THE LOCAL TAX ENABLING ACT, ACT OF DECEMBER 31, 1965, P.L. 1257, 53 P.S. § 5101, as amended, RETURNS AND THE GIVING ON INFORMATION BY INDIVIDUALS, EMPLOYERS AND ALL OTHER SUBJECTS TO THE TAX IMPOSED; IMPOSING ON EMPLOYERS THE DUTY OF COLLECTING THE TAX AT SOURCE AND PROVIDING FOR THE ADMINISTRATION, COLLECTION AND PAYMENT OF THE TAX TO THE TOWNSHIP; AND ESTABLISHING PENALTIES FOR VIOLATION OF THE ORDINANCE.

NOW, THEREFORE, the Elected Officials of the Borough of Mill Village, Erie County, Pennsylvania, being authorized by the laws of the Commonwealth of Pennsylvania, do hereby **ORDAIN** and **ENACT** that:

**SECTION I
Short Title**

This Ordinance shall be known and may be cited as the “Borough of Mill Village Earned Income Tax Ordinance.”

**SECTION II
Definitions**

Unless otherwise expressly stated the usage of such terms in context requires otherwise, the following terms shall have for the purpose of this Ordinance the meanings indicated in this section.

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 voluntary fixed place of habitation of a person, not for a

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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 association, 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 person** or his personal representative for services rendered, whether directly or through an agent and whether in case of property; not including, however, wages a 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 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 by any governmental agency 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.

EMPLOYER: A person, partnership, association, corporation, institution, governmental body or unit or agency, or any other entity employing one or more persons on a salary, wage, commission or other compensation basis.

INCOME TAX OFFICER OR OFFICER: Person, public employee or private agency designated by the Borough of Mill Village to collect and administer the tax on earned income and net profits.

NET PROFITS: The net income from the operation of a business, profession, or other activity, except corporations, after provision has been made 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 on such business, profession or other activity, but without deduction of taxes based on income.

NONRESIDENT: A person, partnership, association or other entity domiciled outside of the Borough of Mill Village.

PERSON or INDIVIDUAL: A natural person.

RESIDENT: A person, partnership, association or other entity domiciled in the Borough of Mill Village.

SUCCEEDING YEAR: The calendar year following the current year.

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TAXPAYER: A person, partnership, association or other entity requiring hereunder to file a return of earned income or net profits or to pay a tax thereon.

**SECTION III
Imposition of Tax**

(A) Tax Imposed.

(1) There is hereby imposed, for general revenue purposes, an annual tax of one percent (1%) on: a) earned income received and/or net profits earned by residents; and b) on earned income received and/or net profits earned by nonresidents for work done, services performed or rendered, and other activities conducted by nonresidents within the Borough of Mill Village. The annual tax shall first be levied for the period beginning January 1st, 1991, and ending December 31st, 1991. The tax shall thereafter be levied on a calendar year basis so long as this Ordinance is reenacted annually.

**SECTION IV
Declaration and Payments of Taxes**

(B) Earned Income.

(1) Every taxpayer shall, on or before April 15th of the succeeding year, make and file a return with the Officer on a form prescribed and approved by the Officer and furnished by or obtainable from him, setting forth the amount of earned income received during the period beginning January 1st of the current year and ending December 31st 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 of this Ordinance relating to 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 on the case of overpayment.

(2) Every taxpayer who receives earned income not subject to the provisions of this Ordinance relating to collection at source shall, on or before April 15th of the succeeding year, make and file an annual return with the Officer on a form prescribed and approved by the Officer and furnished by or obtainable from him, setting forth the aggregate amount of earned income not subject to withholding from him during the period beginning January 1st of the current year and ending December 31st of the current year and such amount of information as the Officer may require, and pay to the Officer the amount of tax shown as due thereon.

(3) Every employer having as office, factory, workshop, branch, warehouse, or other place of business within the Borough of Mill Village, 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 Ordinance on the earned income due his **empolyee** or employees, and shall on or before April 30th of the current year, July 31st of the current year, October 31st of the current year and January 31st of the following year file a return and pay to the Officer the amount of taxes deducted

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during the **preceeding** three month period ending March 31st, June 30th, September 30th, and December 31st of the year in question. The tax shall thereafter be levied in accordance with this provision so long as this Ordinance is reenacted annually.

(4) On or before February 28th of the succeeding year, every employer shall file with the Officer, for each employee, whether employed all or part of the year, and annual return showing the total amount of earned income paid, the total amount of taxes deducted, and the total amount of tax paid to the Officer, for the period beginning January 1st of the current year and ending December 31st of the current year.

(C) Net Profits.

(1) Every taxpayer making net profits shall, on or before April 15th of the succeeding year, make and file an annual return with the Officer on a form prescribed and approved by the Officer and furnished by or obtainable from him, setting forth the amount of net profits earned during the period beginning January 1st of the current year and ending December 31st of the current year, and the amount of tax due thereon, and any other information as the Officer may require.

(2) Where required by the Borough of Mill Village, a taxpayer shall, on or before April 15th of the current year, on a form prescribed and approved by the Officer and furnished by or obtainable from him, make and file with the Officer a declaration of his estimated net profits during the period beginning January 1st of the current year and ending December 31st of the current year. The taxpayer may then pay in four (4) equal quarterly installments the tax due on the estimated net profits as follows: The first quarterly installment due and payable at the time of filing the declaration; and the other installments due and payable on or before June 15th of the current year, September 15th of the current year and January 15th of the succeeding year, respectively.

Any taxpayer may, in lieu of paying the fourth quarterly installment on his estimated tax, elect to make and file with the Officer, on or before January 31st of the succeeding year, the final return as hereinabove required.

(3) Where a taxpayer **make** a declaration of estimated net profits and makes quarterly payments thereon under the provisions of paragraph (2) of subsection (B) of this section, the taxpayer shall, on or before April 15th of the succeeding year, make and file with the Officer, on a form prescribed and approved by the Officer and furnished by or obtainable from him, a final return, setting forth the amount of net profits earned during the period beginning January 1st of the current year and ending December 31st of the current year, a total amount of tax due thereon and the total amount of tax paid thereon. At the time of filing said return, the taxpayer shall pay to the Officer the balance of the tax due or shall make demand for refund or credit in the case of overpayment.

(4) The Officer is authorized to provide by regulation for the making and filing of adjusted declarations of estimated net profits and for the payments of estimated taxes in cases where a taxpayer who has filed a declaration of estimated net profits as prescribed herein anticipated additional net profits not previously declared or finds that he has overestimated this anticipated net profit.

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(5) Every taxpayer who discontinues business prior to December 31st of the current year shall file his final return as required herein within thirty (30) days after the discontinuance of business.

SECTION V
Collection At Source/Payment of Tax Collected

(A) Collection and Payment.

(1) Every employer within the Borough of Mill Village shall deduct at the time of the payment of salary, wages, commissions or other compensation to his employees, the tax imposed by the Ordinance on the earned income due to his employee or employees. On or before April 30th of the current year, July 31st of the current year, October 31st of the current year, and January 31st of the succeeding year the employer shall make and file a return with the Officer on a form prescribed and approved by the Officer and furnished by or obtainable from him, and shall pay to the Officer the amount of taxes deducted during the preceding three (3) month period ending March 31st of the current year and December 31st of the current year, respectively. Unless otherwise agreed upon by the Officer and the employer, such returns shall show the name, address and social security number of each employee, the earned income of such employee during the preceding three (3) month period, the tax deducted therefrom, the political subdivisions imposing the tax upon such employees, the total earned income of all such employees during such preceding three (3) month period, and the total tax deducted therefrom and paid with the returns.

(2) The Officer may require any employer to file his return and pay the tax monthly if such employer should, for two (2) of the proceeding four (4) quarterly periods fail to deduct the proper tax amount of tax. 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.

(3) Every employer shall file an annual return with the Officer on or before February 28th of the succeeding year 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 1st of the current year and ending December 31st of the current year; and a return withholding statement for each employee employed during all or any part of the period beginning January 1st of the current year and ending December 31st 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 (2) copies of the individual return to the employee for who it is filed.

(4) Except as otherwise provided in this Ordinance, every employer who willfully or negligently fails or omits to make the deductions required by this section shall be liable

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for payment of the taxes which he was required to withhold to the extent that such taxed have not been recovered from the employee.

(5) The failure or omission of any employer to make the deductions required by this section shall not relieve any taxpayer from the payment of the tax or from complying with the requirements of this Ordinance relating to the filing of declarations or returns.

(B) Discontinuance of Business During Current Year.

(1) Every employer who discontinues business prior to December 31st of the current year shall, within thirty (30) days after the discontinuance of business, file the tax returns and withholding statements herein required and pay the tax due.

(C) Employers to Register.

(1) Every employer within the Borough of Mill Village who has not previously registered, shall, within fifteen (15) days after becoming an employer within the Borough of Mill Village, register with the Officer his name and address and such other information as the Officer may require.

SECTION VI
Powers and Duties of Tax Officer

(A) Officer to Collect and Receive Taxes.

(1) The Officer shall collect and receive taxes, fines and penalties imposed by this Ordinance. The Officer shall also keep a record showing the amount received from each person or business paying the tax, fines or penalties, and the date of such receipts..

(B) Officer to Promulgate Rules and Regulations.

(1) The Officer 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 reexamination 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 case of overpayments, for a period of time not to exceed six (6) years subsequent to the date of payment of the sum involved, and to prescribe and approve forms necessary for the administration of this Ordinance. No rules or regulations of any kind shall be enforceable unless the same have been approved by a resolution of the Elected Officials of the Borough of Mill Village. A copy of rules and regulations currently in force shall be available for public inspection.

(2) The Officer is authorized to establish different filing, reporting and payment dates for taxpayers whose fiscal years do not coincide with the calendar year.

(C) Officer Empowered to Examine Books and Records.

(1) The Officer and/or any agents designated by him are hereby authorized to examine the books, papers and records of any employer or of any taxpayer or any person

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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 who the Officer, or any agent designated by him, the means, facilities and opportunity for such examination and investigations, as are hereby authorized.

(D) Confidentiality of Information.

(1) Any information acquired by the Officer, his agents, or by any other official or agent of the Borough of Mill Village as a result of any declarations, returns, investigations, hearings, 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 VII
Interest and Penalties**

(A) Interest and Penalty.

(1) If for any reason the tax imposed by this Ordinance is not paid when due, interest at the rate of six percent (6%) per annum on the amount of said tax plus an additional penalty of one-half of one 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 the recovery of any such tax, the person liable therefore shall, in addition, be liable for the costs of collection and the interest penalties herein imposed.

(B) Amnesty Provisions.

(1) The Elected Officials of the Borough of Mill Village, by resolution, establish a one-time period during which interest of interest and penalties that would otherwise be imposed for the **nonreporting** or underreporting of tax liabilities imposed hereunder or for the nonpayment of taxes previously imposed and due shall be waived in total or in part if the taxpayer voluntarily files delinquent returns and pays the taxes in full during the period so established..

**SECTION VIII
Suit for Collection of Tax**

(A) Officer May Sue.

(1) The Officer may sue in the name of the Borough of Mill Village for the recovery fo taxes and unpaid taxes under this Ordinance.

(B) Limitations on Time for Filing Suit.

(1) Any suit brought to recover the tax imposed by this Ordinance shall be commenced within three (3) years after such tax is due or within three (3) years after the declaration of return has been filed, whichever is later. Notwithstanding the foregoing three (3) year limitation period:

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(a) Where no declaration or return was filed by any taxpayer although a declaration or return was required to be filed under the provisions of this Ordinance, there shall be no limitation on the time for commencing suit to recover such tax as is due.

(b) Where an examination of the declaration or return filed by any taxpayer 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 on the time for commencing suit to recover tax as is due.

(c) 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 of time for commencing suit.

(d) In cases of substantial understatement of tax liability of twenty-five percent (25%) or more, suit to recover such tax as is due shall be commenced within six (6) years after discovery of such understatement.

(2) The Officer may sue for recovery of an erroneous refund provided such suit is commenced within two (2) years after making such refund, except where it appears that any part of the refund was induced by fraud or misrepresentation of material fact, in which case suit shall be commenced within five (5) years of the discovery of such fraud or misrepresentations.

SECTION IX
Fines and Penalties for
Violation of Ordinance

(A) Fine/Imprisonment for Noncompliance.

(1) Any person who fails, neglects or refuses to make any declaration or return required by this Ordinance, or to pay any tax 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 withhold the tax from his employees; and taxpayer or employer who refuses to permit the Officer or any agent designated by him to examine such taxpayer's or employer's books, records and papers; and any taxpayer or employer 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 earned income or net profits 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 District Justice or the Court of Common Pleas of Erie County, Pennsylvania, be sentenced to pay a fine of not more than five hundred **dollards** (\$500.00) for each offense plus costs and in default of payment of said fine and costs, be imprisoned for a period not to exceed thirty (30) days.

(B) Disclosure of Confidential Information.

(1) Any person who divulges any information which, under the provisions of this Ordinance, is declared to be confidential shall, upon conviction therefore before any District justice of the Court of Common Pleas of Erie County, Pennsylvania, be sentenced to pay a fine of not more than five hundred **dollards** (\$500.00) for each offense plus costs, and, in default of payment of such fine and costs, be imprisoned for a period of not more than thirty (30) days.

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(C) Penalties Prescribed Are Cumulative.

(1) The penalties imposed under this section shall be in addition to any other penalty imposed by any other section of this ordinance.

**SECTION X
Failure to Receive or
Procure Forms No Defense**

(A) Taxpayers/Employers Duties.

(1) It shall be the duty of any taxpayer or employer required to make and file any declarations or returns under the provisions of this Ordinance to insure that he receives or obtains the forms necessary to make and file such declarations or returns. The failure of any taxpayer or employer to receive or obtain forms required for making and filing the declarations or returns required by the Ordinance shall not excuse such taxpayer or employer from making and filing such declaration or return.

**SECTION XI
Date for Assessment and Levy of Tax**

(A) Date of Assignment of Tax.

(1) The annual tax of one percent (1%) imposed herein on earned income and/or net profits shall be assessed upon and levied against taxpayers beginning with the calendar year starting January 1, 1991, and ending December 31, 1991, and the annual tax shall continue in force on a calendar year basis without reenactment, unless the rate of the annual tax is subsequently changed.

**SECTION XII
Effective Date**

This Ordinance shall take effect on March 4, 1991.

SECTION XIII

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 Mill Village to levy, assess and impose the tax or duties herein provided.

**SECTION XIV
Construction**

If any sentence, clause, section or part of this Ordinance is, for any reason, declared to be unconstitutional, illegal or invalid, the same shall not effect or impair any of the remaining sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Elected Officials of the Borough of Mill Village that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION XV

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Repealer

All ordinances or resolutions heretofore adopted by the Elected Officials of the Borough of Mill Village or any parts of such ordinances or resolutions which are in conflict with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance.

Borough of Mill Village

Attest:

Mary S Powell
Secretary

David D. Carnahan
President