

TOWNSHIP OF MIDDLESEX

ORDINANCE 5-88

BE IT ORDAINED AND ENACTED BY THE SUPERVISORS OF MIDDLESEX TOWNSHIP, CUMBERLAND COUNTY, PENNSYLVANIA, UNDER THE AUTHORITY OF "THE LOCAL TAX ENABLING ACT," ACT NO. 511 OF THE 1965 SESSION OF THE PENNSYLVANIA GENERAL ASSEMBLY, APPROVED DECEMBER 31, 1965, AS FOLLOWS:

SHORT TITLE AND EFFECTIVE DATE. This ordinance shall be known as the "MIDDLESEX TOWNSHIP EARNED INCOME TAX ORDINANCE." The provisions hereof shall first become effective July 1, 1966, imposing a tax for general revenue purposes in the amount of 1% on salaries, wages, commissions and other compensation earned during the period beginning July 1, 1966, and ending December 31, 1966, and continuing for each taxable year thereafter by resident of the Township of Middlesex, and on salaries, wages, commissions and other compensation earned during said period by nonresidents of the Township of Middlesex for work done, or services performed or rendered in the Township of Middlesex and on the net profits earned during said period from businesses, professions or other activities conducted by residents of the Township of Middlesex, and on the net profits earned during said period from businesses, professions or other activities conducted in the Township of Middlesex by nonresidents; requiring the filing of declarations and returns, and the giving of information by employers and by those subject to the tax, imposing on employers the duty of collection the tax at source, providing for the administration and enforcement of the ordinance, and imposing penalties for violation thereof.

SECTION 1. DEFINITIONS - Unless otherwise expressly stated, the following terms shall have, for the purposes of this Ordinance, the meanings indicated in this section: (a) Association - A partnership, limited partnership, joint venture or any other form of unincorporated group of two or more persons. (b) Business - An enterprise, activity, profession or any other undertaking of an unincorporated nature conducted for profit, or ordinarily conducted for profit, whether by an individual, partnership, association, or any other entity. (c) Corporation - A Corporation or joint stock association organized under the laws of the United States, the Commonwealth of Pennsylvania, or any other state, territory, or foreign country or dependency. (d) Current year - The calendar year for which the tax is levied. (e) 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. (f) 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. (g) Income tax officer, or officer - The person, official, public employee, private agency or firm designated by resolution of the Supervisors of the Township of Middlesex to collect and administer the tax on earned income and net profits, or any successor, or agent so appointed. (h) 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. (i) Net Profits - The net income 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 deduction of taxes based on income. (j) Nonresident - An individual, partnership, association, or other entity, domiciled outside of the Township of Middlesex. (k) Person or individual - Every natural person. Whenever used in any clause prescribing and imposing a penalty the term, "person" as applied to association, shall mean the partners or members thereof, and as applied to corporations, the officers thereof. (l) Preceding year - The calendar year before the current year. (m) Taxpayer - A person, whether an individual, partnership, association or any other entity, required hereunder to file a return of earned income or net profits, or to pay a tax thereon. (n) Employee - Any person who renders services to another for a financial consideration or its equivalent, under an express or implied contract, and who is under control and direction of said other person, and shall include persons employed on a temporary, provisional, casual or part-time basis. (o) Succeeding year - The calendar year following the current year. (p) Resident - An individual, partnership, association or other entity, domiciled in the Township of Middlesex. (q) Political subdivision - Shall mean any city, borough, town, township, or school district existing under the laws of the Commonwealth of Pennsylvania as they shall be deemed subject to this ordinance by the laws of the Commonwealth of Pennsylvania. (r) Middlesex or Township of Middlesex - The Township of Middlesex, Cumberland County, Pennsylvania. (s) 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 revenue purposes of one per cent (1%) is hereby imposed on the following:

(a) Earned income earned on and after July 1, 1966, by residents of the Township of Middlesex. (b) Earned income, earned on and after July 1, 1966, by nonresidents of the Township of Middlesex in the Township of Middlesex. (c) Net profits, earned on and after July 1, 1966, by residents of the Township of Middlesex. (d) Net profits earned on and after July 1, 1966, in the Township of Middlesex, by nonresidents of the Township of Middlesex. The tax levied under (a) and (b) herein shall relate to, but is not limited to, and is imposed upon earned income paid by an employer or on his behalf to a person who is employed by him. The tax levied under (c) and (d) herein shall relate to and be imposed on the net profits of any business, profession or other activity carried on by any person or persons. Every corporation which is subject to the Pennsylvania Corporate Net Income Tax or exempt from the Pennsylvania Corporate Net Income Tax and every foreign corporation which is subject to the Pennsylvania Franchise Tax or exempt from the Pennsylvania Franchise Tax, shall be exempt from the tax imposed by this Ordinance. The tax levied by this ordinance, shall be applicable to earned income and to net profits earned beginning July 1, 1966, which are subject to this tax, and shall continue on a calendar year basis. The first year shall end December 31, 1966, however, the tax shall remain effective for each full calendar year thereafter until the same is repealed.

SECTION 3. DECLARATION AND PAYMENT OF TAX - (A) Net Profits

(1) 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, except in the case of the current year of 1966 said period shall be beginning July 1, 1966 and ending December 31, 1966, 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.

(2) Any taxpayer who first anticipates any net profit 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 15, 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.

(3) Every taxpayer making net profits 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 profit earned during the period beginning January 1, of the current year and ending December 31, of the current year, except that the period for 1966 shall be beginning July 1, 1966 and ending December 31, 1966. 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. Any taxpayer may, in lieu of paying the fourth quarterly installment 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.

(4) The officer may be authorized to provide by regulation for the making and filing of adjusted declarations 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.

(5) Every taxpayer who discontinues business prior to the 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.

(6) If, subject to the regulations of the officer, a return is made for a fiscal year different from the calendar year, such return shall be made within 105 days from the end of the fiscal year and the quarterly installments shall be duly fixed according to the dates herein set forth as related to the fiscal year.

(B) Earned Income

(1) 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 earned income received during the period beginning January 1, of the current year, and ending December 31, of the current year, except this period for the year 1966 shall be between July 1 and December 31, 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 relating to the 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 in the case of overpayment.

(2) Every taxpayer who is employed for a salary wage, commission, or other compensation and who received any earned income not subject to the provisions relating to collection at source, shall:

(a) Make and file with the officer on a form prescribed or approved by the officer, an annual return setting forth the aggregate amount of earned income not subject to withholding from him during the period beginning January 1, and ending December 31, of the current year, and such other information as the officer may require, and pay to the officer the amount of tax shown as due thereon on or before April 15, of the succeeding year or

(b) 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 by him 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.

SECTION 4. COLLECTION AT SOURCE - (a) Every employer having an office, factory, workshop, branch, warehouse or other place of business within the Township of Middlesex 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. (b) Every employer having an office,

factory, workshop, branch, warehouse, or other place of business within the Township of Middlesex 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 subdivision 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 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 tax was withheld.

(c) on or before February 28, of the succeeding year, every employer shall file with the officer:

(1) 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 the said period the amount of tax deducted, the political subdivisions imposing the tax upon such employee, 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.

(d) 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.

(e) Except as otherwise provided in Section 9, every employer who wilfully or negligently fails or omits to make the deductions required by this section 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.

(f) 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.

(g) If an employer makes a deduction for the tax as required

by this section, all amounts so deducted shall constitute funds held by such employer for the account of the Township of Middlesex as the beneficial owner thereof.

SECTION 5. POWERS AND DUTIES OF THE INCOME TAX OFFICER

(a) It shall be the duty of the Income Tax 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, if paid by such person in respect of another person, the name of such person, and the date of such receipt.

(b) Each officer, before entering his official duties, shall give and acknowledge, a bond to the Township of Middlesex which shall be conditioned, and shall provide for all rights and obligations on the respective parties as set forth in the Act of 1965, Act No. 511, P.L., as amended. Said Bond shall be delivered to the Secretary of the Township of Middlesex and maintained with the Township records, or at such place as is required by law.

(c) The Income Tax Officer is hereby charged with the administration and enforcement of the provisions of this ordinance and 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 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 this ordinance. No rule or regulation of any kind shall be enforceable unless it has been approved by resolution by the Supervisors of the Township of Middlesex. A copy of such rules and regulations currently in force shall be available for public inspection.

(d) 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.

(e) 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.

(f) Any information gained by the officer, his employees, agents, or by any other official or agent of the taxing district, 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.

(g) Any person aggrieved by any action of the Income Tax Officer shall have the right of appeal as provided by law.

SECTION 6. COMPENSATION OF INCOME TAX OFFICER

The income tax officer shall receive such compensation for his services and expenses as shall be determined and fixed by the Supervisors of Middlesex Township and as shall be permitted by law, In fixing such compensation, said Supervisors may pursuant to a resolution, enter into such written agreements for such compensation as shall be deemed necessary.

SECTION 7. SUIT FOR COLLECTION OF TAX

(a) The Income Tax Officer may sue in the name of the Township of Middlesex for the recovery of taxes due and unpaid under this ordinance.

(b) 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:

(1) Where no declaration or return was filed by any person although a declaration or return was required to be filed by him under provisions of this ordinance, there shall be no limitation.

(2) Where an examination of the declaration or return filed by any person, 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.

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

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

(5) This section shall not be construed to limit the governing body from recovering delinquent taxes by any other means provided by this act.

(c) 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.

SECTION 8. INTEREST AND PENALTIES

If for any reason the tax is not paid when due interest at the rate of six per cent (6%) per annum on the amount of said tax, and an additional penalty of one-half of one per cent (.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 therefor shall in addition, be liable for the costs of collection and the interest and penalties herein imposed.

SECTION 9. 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 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 in-

complete, 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 the ordinance or resolution, shall, upon conviction thereof before any justice-of-the-peace, or the Cumberland County Court in event of appeal, be sentenced 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 for a period not exceeding thirty days in the Cumberland County Prison.

(b) Any person who divulges or permits to be divulged, any information which is confidential under the provisions of this ordinance shall, upon conviction thereof before any justice-of-the-peace, or the Cumberland County Court in the event of appeal, be sentenced 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 for a period not exceeding thirty days in the Cumberland County Prison.

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

(d) The failure of any person to receive or procure forms required for making the declaration or returns required by the ordinance or resolution shall not excuse him from making such declaration or return.

SECTION 10. PAYMENT AND REFUNDS

The Income Tax Officer is hereby authorized to accept payments of the amount of tax claimed by the Township in any case where any person disputes the validity or amount of the Township's claim for the tax. If it is thereafter judicially determined by a court of competent jurisdiction that there has been an overpayment to the Income Tax Officer, the amount of the overpayment shall be refunded to the person who paid.

SECTION 11. 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 Middlesex to impose the tax provided for under the Constitution of the United States and the Constitution and Laws of the Commonwealth of Pennsylvania.

(b) To the net profits of any institution or organization operated for public, religious, educational or charitable purposes, to an institution or organization not organized or operated for private profit, or to a trust or a foundation 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 the source from his employees and paying the amount collected to the Township of Middlesex under the provisions of Section 4 of this ordinance.

SECTION 12. TITLE AND AUTHORITY

This ordinance shall be known as the "Township of Middlesex Earned Income Tax Ordinance" and is enacted pursuant to the procedures and authority of and as set forth in, the Act of the

General Assembly of December 31, 1965, P.L., Act No. 511, known as
"The Local Tax Enabling Act."

SECTION 13. SEVERABILITY

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 Township of Middlesex that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause or section not been included herein.

ENACTED AND PASSED this 4th day of May, 1966.

To be finally PASSED, ENACTED AND ORDAINED the 1st day of June, 1966, at 8:00 P.M., E.S.T. at the Township Building, N. Middlesex Rd., RD #2, Carlisle, Pa.

ATTEST:

SUPERVISORS OF MIDDLESEX TOWNSHIP

Robert E. D. [Signature]
Secretary

[Signature]

[Signature]

[Signature]