

**WESTFALL TOWNSHIP  
ORDINANCE NO. 164**

**EARNED INCOME/NET PROFITS TAX ORDINANCE**

**AN ORDINANCE OF THE TOWNSHIP OF WESTFALL, COUNTY OF PIKE  
COMMONWEALTH OF PENNSYLVANIA**

**IMPOSING** a tax for general revenue purposes on earned income, received by residents of the Township of Westfall , and on earned income received by non-residents of the Township of Westfall for work done, or services performed or rendered in the Township of Westfall, and on the net profits earned during said period from businesses, professions, or other activities conducted by residents of the Township of Westfall, and on the net profits earned from businesses, professions, or other activities conducted in the Township of Westfall by non-residents, 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 collecting the tax at source; providing for the administration and enforcement of the ordinance, and imposing penalties for violation thereof

The Supervisors of the Township of Westfall under the authority of Act of 1965, (Act No. 511) 53 P.S. §6924.101, and its amendments, the Local Tax Enabling Act, hereby enacts as follows:

**SECTION 1 – DEFINITIONS** - The following words and phases, 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.

**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 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 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, Air Force and Marines of 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, or 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. The term shall not include any gain on the sale of farm machinery, livestock held twelve months or more for draft, breeding or dairy purposes and any gain on the sale of other capital assets of the farm.

**NON-RESIDENT** - An individual, partnership, association, or other entity domiciled outside the Township of Westfall.

**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 Westfall.

**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.

**COLLECTOR** - The elected Tax Collector of the Township of Westfall, appointed under the authority of the Local Tax Enabling Act, Act 511.

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 percent (1%) is hereby imposed on the following:

(a) Earned income, as defined by this ordinance, received by residents of the Township of Westfall, on and after May 15, 2015 and ending December 31, 2015, and January 1 of the subsequent year and ending December 31 of the subsequent year and continue in force on a calendar year basis

thereafter without annual reenactment.

(b) Earned income, as defined by this ordinance, received by non-residents of the Township of Westfall for work done or services performed or rendered in the Township of Westfall on and after May 15, 2015 and ending December 31, 2015, and January 1 of the subsequent year and ending December 31 of the subsequent year and continue in force on a calendar year basis thereafter without annual reenactment.

(c) Net profits earned on and after May 15, 2015 and ending December 31, 2015, and January 1 of the subsequent year and ending December 31 of the subsequent year and continue in force on a calendar year basis thereafter without annual reenactment of businesses, professions, and other activities conducted by residents of the Township of Westfall, and;

(d) Net profits, earned on and after May 15, 2015 and ending December 31, 2015, and January 1 of the subsequent year and ending December 31 of the subsequent year and continue in force on a calendar year basis thereafter without annual reenactment; of businesses, professions, and other activities conducted in the Township of Westfall by non-residents.

**SECTION 3 - (A) DECLARATION AND PAYMENT OF NET PROFITS TAX –**

(a) 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 by 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.

(b) 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.

(c) 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 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.

(d) 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 –**

(a) 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 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, 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.

(b) 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 and 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 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.

(c) 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 Westfall 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 Westfall 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 within (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 Westfall who employs one or more persons on a salary, wage, commission, or other compensation basis, other than domestic servants, shall deduct monthly, or more often than monthly, at the time of payment thereof, the tax imposed by this Ordinance on the earned income, as defined by this ordinance, due to his employee or employees, and shall on or before April 15 of the subsequent year and on or before the fifteenth (15) day of each succeeding calendar quarter, file a return of taxes deducted on a form prescribed by the Collector and pay to the Collector the amount of tax deducted for the preceding quarter.

(c) On or before February 28 of the succeeding year, every such employer shall file with the Collector on forms prescribed by him: (1) an annual return showing the total amount of earned income paid, and total amount of tax deducted, and the total amount of tax paid to the Collector during the period commencing January 1 of the current tax year and ending December 31 of the current tax year; and (2) a return for each employee employed during all or any part of the period commencing January 1 of the current tax year and ending December 31 of the current tax 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 amount of tax paid to the Collector, and such other information as the Collector may require. Every employer shall furnish a copy 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 tax year shall, within fifteen (15) days after the discontinuance of business, file the returns hereinabove required and pay the tax due.

(e) 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.

#### **SECTION 5 - POWERS AND DUTIES OF COLLECTOR –**

(a) It shall be the duty of the Collector 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 paying the tax and the date of such receipt.

(b) The Collector 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 of payments alleged or found to be incorrect, or as to which an over-payment is claimed or found to have occurred, and to prescribe forms necessary for the administration of this Ordinance.

(c) The Collector and agents designated by him are hereby authorized to examine the books, papers, and records of any employer or supposed employer or of any taxpayer or supposed 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 or supposed employer and every taxpayer or supposed taxpayer is hereby directed and required to give to the Collector or to any agent designated by him the means, facilities, and opportunity for such examinations and investigations as are hereby authorized.

(d) Any information gained by the Collector, his agents, or by any other official or agent of the Township of Westfall as a result of any declarations, returns, investigations, hearings, or verifications required or authorized by this Ordinance shall be confidential except in accordance with a proper judicial order or as otherwise provided by law.

(e) Any person aggrieved by any action of the Collector shall have the right of appeal as provided by law.

**SECTION 6 - SUIT FOR COLLECTION OF TAX** – (a) The Collector may sue 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 (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 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 the provisions of this Ordinance, there shall be no limitation.

(2) 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.

(3) 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 the deductions required by this Ordinance, there shall be no limitation.

(4) In the case of substantial understatement of tax liability of twenty-five percent (25%) or more and no fraud, suit shall be instituted within six (6) years.

(5) The Collector may file suit for the recovery of an erroneous refund provided that such civil action is filed within two (2) years of the date such refund is made. However, if it appears that any such refund was induced by fraud or misrepresentation of material fact, then 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 per cent (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 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, 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 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 over-payment to the Collector, the amount of over-payment shall be refunded to the person who paid under protest.

**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 Westfall 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 operated for public, religious, educational, or charitable purposes, 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 of Section 4 of this Ordinance.

**SECTION 10 - 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; any 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 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 Pike 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 Pike 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.

(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 – 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 Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, or section not be included herein.


**SECTION 12 – 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 as though set forth at length.

**SECTION 13 - EFFECTIVE DATE** - This Ordinance shall become effective 30 days after its adoption and shall continue on a calendar basis, thereafter, without annual reenactment.

**ORDAINED AND ENACTED** into law this 6<sup>th</sup> day of April, 2015 by the Westfall Township Supervisors of the Township of Westfall, County of Pike, and Commonwealth of Pennsylvania in lawful session duly assembled.

  
ROBERT MELVIN, Chairman

  
JERRY DOTEY, Vice-Chairman

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RAYMOND BANACH, Supervisor

  
LESTER BUCHANAN, Supervisor

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ROBERT BOSTINTO, Supervisor

ATTEST:

  
JODI HULSE, SECRETARY