

ORDINANCE NO. 78

Imposing a tax for general revenue purposes on salaries, wages, commissions and other compensation earned during the period beginning January 1, 1959, and ending December 31, 1959, by residents of the Borough of Alburtis, and on salaries, wages, commissions and other compensation earned during said period by nonresidents of the Borough of Alburtis for work done, or services performed or rendered in the Borough of Alburtis, and on the net profits earned during said period from businesses, professions or other activities conducted by residents of the Borough of Alburtis, and on the net profits earned during said period from businesses, professions or other activities conducted in the Borough of Alburtis 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 collecting the tax at source, providing for the administration and enforcement of the ordinance, and imposing penalties for violation thereof.

THE BOROUGH OF ALBURTIS HEREBY ORDAINES UNDER THE AUTHORITY OF THE ACT OF JUNE 25, 1947 (P. L. 1145) AS AMENDED AS FOLLOWS:

SECTION I. Definitions.

The following words and phrases, when used in this ordinance shall have the meanings 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 unincorporated group of two or more persons.

"Business" - An enterprise, activity, profession, or undertaking of any 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.

"Council" - Borough Council of Alburtis.

"Earnings" - Salaries, wages, commissions and other compensation as defined in this Ordinance.

"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.

"Income Tax Officer" - person designated by Borough Council of Alburtis to administer the provisions of the Earned Income Tax Ordinance.

"Net Profits" - The net income from the operation of a business, profession or other activity, 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 other activity, but without deduction of taxes based on income.

"Nonresident" - An individual, partnership, association or other entity domiciled outside the Borough of Alburtis.

"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 Borough of Alburtis.

"Salaries, Wages, Commissions and other Compensation" - Salaries wages, commissions, bonuses, incentive payments, fees and tips 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; not including 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 made by any governmental agency, 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 United States or the Commonwealth of Pennsylvania or any other State for such service.

"Taxable" - Subject to the tax imposed by this ordinance.

"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 tax thereon.

Personal pronouns shall include the singular as well as the plural number and the male, neuter and female, gender.

SECTION II. Imposition of Tax.

A tax for general revenue purposes of one per cent (1%) is hereby imposed on the following:

(a) Salaries, wages, commissions and other compensation earned on and after January 1, 1959, by individual residents of the Borough of Alburtis.

(b) Salaries, wages, commissions and other compensation earned on and after January 1, 1959, by individual nonresidents of the Borough of Alburtis in the Borough of Alburtis.

(c) Net profits, earned on and after January 1, 1959, by residents of the Borough of Alburtis.

(d) Net profits, earned on and after January 1, 1959, in the Borough of Alburtis by nonresidents of the Borough of Alburtis.

The tax levied under (a) and (b) herein shall relate to and be imposed upon salaries, wages, commissions and other compensation 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.

(3)

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 salaries, wages, commissions and other compensation and to net profits earned in the period beginning January 1, 1959 and ending December 31, 1959.

SECTION III. Declaration and Payment of Tax.

(a) Net profits.

(1) Every person hereinafter called "Taxpayer", who reasonably expects that he will earn any taxable net profits during the period between January 1, 1959 and December 31, 1959, shall on or before April 15, 1959, make and file with the Income Tax Officer on a form prescribed by the Income Tax Officer, a declaration of his estimated net profits for the period beginning January 1, 1959, and ending December 31, 1959, setting forth the estimated amount of net profits reasonably expected by him for the said period and subject to the tax, the amount of estimated tax imposed by this ordinance on such estimated net profits, and such other relevant information as the Income Tax Officer may require. The taxpayer making the declaration shall at the time of filing thereof, pay the Borough of Alburtis one-fourth (1/4) of the estimated tax shown as due thereon and such taxpayer shall thereafter pay one-fourth (1/4) of the estimated tax in each of two (2) installments, as follows: One installment on or before June 15, 1959, one installment on or before September 15, 1959, and the last installment on or before January 15, 1960.

(2) A person who on April 15, 1959, did not reasonably expect that he would earn any taxable net profits during the period between January 1, 1959 and December 31, 1959, and who subsequent to April 15, 1959 reasonably expects that he will earn taxable net profit on or before December 31, 1959, shall make and file on or before (June 15, 1959, September 15, 1959 or January 15, 1960), whichever of these dates next follows the date on which the taxpayer first reasonably expects such net profits, a declaration similar to that required under the foregoing paragraph (1). The taxpayer making the declaration shall, at the time of filing thereof, pay to the Borough of Alburtis the estimated tax shown as due thereon, provided, however, that the taxpayer shall have the right to pay the estimated tax in equal installments on or before the quarterly installment payment dates which remain after the filing of the declaration.

(3) The Income Tax Officer is hereby authorized to provide by regulation, subject to approval of Council, for the making and filing of adjusted declarations of estimated net profits, and for the payments of the estimated tax in cases where a taxpayer who has filed the declaration hereinabove required shall thereafter either reasonably expect additional net profits not previously declared or find that he has overestimated his net profits.

(4) On or before April 15, 1960, every taxpayer who has earned taxable net profits shall make and file with the Income Tax Officer, on a form prescribed by the Income Tax Officer, a final return showing all of such net profits for the period beginning January 1, 1959

and ending December 31, 1959, the total amount of tax due, the amount of estimated tax paid under the provisions of this Section, and the balance due. When the return is made for a fiscal year different from the calendar year, the return shall be made within one hundred and five (105) days from the end of the said fiscal year. The percentage of the total net profits of any calendar year of a taxpayer beginning or ending within the period beginning January 1, 1959 and ending December 31, 1959, to which the tax imposed by this ordinance shall be applicable shall be equal to the same percentage of such total net profits as the number of days in any such year within such period bears to the total number of days in any such year.

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.

(5) Every taxpayer who discontinues business prior to December 31, 1959, shall within thirty (30) days after the discontinuance of business, file his final return as hereinabove required pay the tax due, or demand refund or credit in the case of overpayment.

(b) Salaries, Wages, commissions and Other Compensation.

(1) Every taxpayer who is employed on a salary, wage, commission or other compensation basis and who reasonably expects to earn any taxable earnings not subject to the provisions of Section 4 of this ordinance relating to the collection at source, shall, on or before April 15, 1959, make and file with the Income Tax Officer, a declaration of his estimated total amount of taxable salaries, wages, commissions and other compensation for the period beginning January 1, 1959, and ending December 31, 1959, the estimated amount of the tax thereon that will be deducted therefrom pursuant to Section 4 of this ordinance, the estimated amount of tax imposed by this ordinance that will not be deducted therefrom pursuant to Section 4 and such other relevant information as the Income Tax Officer may require. In preparing his declaration of estimated taxable salaries, wages, commissions, and other compensation taxable under this ordinance, the taxpayer shall use the same amounts with respect to such items as he shall have used in preparing his declaration of estimated tax for the year 1959 for federal income tax purposes, if such taxpayer shall be required to file any such lastmentioned declaration.

(2) A person who on April 15, 1959 did not reasonably expect that he would earn any salaries, wages, commissions and other compensation not subject to the provisions of Section 4 of this ordinance relating to the collection at source, during the period between January 1, 1959, and December 31, 1959, and who subsequent to April 15, 1959, reasonably expects that he will earn salaries, wages, commissions and other compensation, not subject to the provisions of Section 4 of this ordinance, on or before December 31, 1959, shall make and file on or before (June 15, 1959, September 15, 1959, or January 15, 1960), whichever of these dates next follows the date on which the taxpayer first reasonably expects that he will earn such salaries, wages, commissions and other compensation, a declaration similar to that required under the immediately foregoing paragraph (1). The taxpayer making the declaration shall at the time of filing thereof pay to the Borough of Alburdis the estimated tax shown as due thereon, provided, however, that the taxpayer shall have the right to pay the estimated tax in equal installments on or before the quarterly installment payment dates which remain after the filing of the declaration.

(3) The Income Tax Officer is hereby authorized to provide by regulation, subject to approval of Council, for the making and filing of adjusted declaration of estimated salaries, wages, commissions and other compensation, and for the payments of the estimated tax in case where a taxpayer who has filed the declaration hereinabove required shall thereafter either reasonably expect additional salaries, wages, commissions and other compensation not previously declared or find that he has overestimated his salaries, wages, commissions and other compensation.

(4) On or before April 15, 1960, every taxpayer who has received taxable salaries, wages, commissions and other compensation shall make and file with the Income Tax Officer on a form prescribed by the Income Tax Officer a final return showing all such salaries, wages, commissions and other compensation earned during the period beginning January 1, 1959, and ending December 31, 1959, the total amount of tax due thereon, the amount of estimated tax thereon paid under the provision of this Section, if any, and the amount, if any, of tax thereon that has been withheld pursuant to the provisions of Section 4 of this ordinance 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.

SECTION IV. Collection at Source.

(a) Every person within the Borough of Alburtis who employs one or more persons on a salary, wage, commission or other compensation basis, other than domestic servants, shall deduct at the time of the payment thereof, the tax imposed by this ordinance on the salaries, wages, commissions and other compensation due to his employee or employees, and shall on or before (April 30, 1959, July 31, 1959, October 31, 1959 and January 31, 1960), respectively, make and file with the Income Tax Officer on a form prescribed by the Income Tax Officer a return setting forth the taxes so deducted and pay to the Borough of Alburtis the amount of taxes deducted for the preceding quarter ending (March 31, 1959, June 30, 1959, September 30, 1959 and December 31, 1959) respectively.

The Income Tax Officer is hereby authorized to provide by regulations approved by Council for payments on a monthly basis where an aggregate amount of tax in excess of Fifty (\$50.00) Dollars per month is deducted.

(b) On or before January 31, 1960, every such employer shall file with the Income Tax Officer on forms prescribed by the Income Tax Officer:

(1) An annual return showing the total amount of salaries, wages, commissions, and other compensation earned by his employee or employees, on which a tax is imposed by this ordinance, the total amount of tax deducted and the total amount paid to the Borough of Alburtis in respect of salaries, wages, commissions and other compensation earned by his employee or employees during the period beginning January 1, 1959 and ending December 31, 1959; and

(2) A return in respect of each person who was an employee during all or any part of the period beginning January 1, 1959 and ending December 31, 1959, and who earned during such period

any salaries, wages, commissions or other compensation subject to the tax imposed by this ordinance, setting forth the employee's name, address and Social Security number, the amount of such salaries, wages, commissions or other compensation earned by the employee during said period, the amount of tax deducted therefrom and such relevant information as the Income Tax Officer may require. Every employer shall furnish a copy of the individual return to the employee in respect of whom it was filed.

(c) Every employer who discontinues business prior to December 31, 1959, shall, within thirty (30) days after the discontinuance of business, file the returns hereinabove required and pay the tax due.

(d) 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.

(d) If an employer makes a deduction of tax as required by this Section 4, the amount deducted shall constitute in the hands of such employer a trust fund held for the account of the Borough of Alburdis as beneficial owner thereof and the employee from whose salaries, wages, commissions or other compensation such tax was deducted shall be deemed to have paid such tax.

SECTION V. Powers and Duties of the Income Tax Officer.

(a) The Income Tax Officer is hereby designated receiver of the taxes imposed by this Ordinance. He shall be bonded, in such principal amount as Council shall designate, by a good and reliable bonding company at all times for all money coming into his hands for Borough purposes under this Ordinance, the costs of which bond shall be paid by the Borough. 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 paying the tax and, if paid by such person in respect to another person, the name of such other person, and the date of such receipt.

(b) 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, subject to approval of Council, 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 overpayment is claimed or found to have occurred, reasonable extension of time upon proper cause shown for filing declarations or returns, and to prescribe forms necessary for the administration of this ordinance.

(c) The Income Tax Officer, and agents designated in writing by him, are hereby authorized to examine the books, papers and records of any person 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 person is hereby directed and required to give to the Income Tax Officer or to any agent so designated by him the opportunity for such examinations and investigations as are hereby authorized.

(d) Any information gained by the Income Tax Officer, his agents, or by any other official, agent or employee of the Borough of Alburdis as a result of any declarations, returns, investigations, hearings or verifications required or authorized by this ordinance shall be confidential and shall not be disclosed to any person except for official use in connection with the administration or enforcement of this ordinance or as otherwise provided by law.

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

SECTION VI. Joint Agreements with Other Political Subdivisions.

(a) Council is hereby authorized, if it deems it advisable, to enter into a joint agreement with any other political subdivision or subdivisions for the employment of the same person or agency to collect any taxes imposed under this Ordinance and imposed by such subdivision under authority of the Act of 1947, P.L. 1145 as amended.

SECTION VII. Suit for Collection of Tax.

(a) The Income Tax Officer through the Borough Solicitor may sue in the name of the Borough of Alburdis 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 six (6) years after such tax is due or within six (6) 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.

(2) In the case of a false or fraudulent declaration or return with the intent to evade tax.

(3) Where any person has deducted taxes under the provisions of this ordinance and has failed to pay the amounts so deducted to the Borough of Alburdis.

SECTION VIII. 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 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.

SECTION IX. Payment and Refunds.

The Income Tax Officer is hereby authorized to accept payment of the amount of tax claimed by the Borough in any case, where any person disputes the validity or amount of the Borough'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 over-payment shall be refunded to the person no paid.

(8)

SECTION X. 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 Borough of Alburdis 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 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 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 Borough of Alburdis under the provisions of Section 4 of this ordinance.

SECTION XI. 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 pay the tax deducted from his employees; any person who refuses to permit the Income Tax Officer or any agent properly designated by him to examine his books, records and papers; and any person who makes any incomplete, false or fraudulent return to avoid the payment of the whole or any part of the tax imposed by this ordinance shall, upon conviction thereof before any Justice of the Peace or the Burgess of Alburdis be sentenced to pay a fine of not more than Three Hundred Dollars (\$300.00) for each offense and costs, and, in default of payment of said fine and costs, to be imprisoned in the Lehigh County Jail for a period not exceeding ninety (90) days.

(b) Any person who, except as permitted by the provisions of Subsection (d) of Section 5 of this ordinance, divulges any information which is confidential under the provisions of said Subsection shall, upon conviction thereof before any Justice of the Peace or the Burgess of Alburdis, be sentenced to pay a fine of not more than Three Hundred Dollars (\$300.00) for each offense and costs, and, in default of payment of said fine and costs, to be imprisoned in the Lehigh County Jail for a period not exceeding ninety (90) 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 any declaration or return required by this ordinance shall not excuse him from making such declaration or return.

SECTION XII. 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 Council of the Borough of Alburdis that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause or section not been included herein.

(9)

SECTION XIII. All ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed.

SECTION XIV. This ordinance shall be effective on January 1, 1959.

Reinacted and ordained this 22nd day of December, 1958.

BOROUGH OF ALBURTIS

By: George F. Scherer
President of Council

Attest: Jane Schaller
Secretary

NOW, December 22, 1958, the foregoing Ordinance is hereby approved.

Richard Burgess
Burgess