

**BOROUGH OF ALBURTIS  
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 419

(Duly Adopted January 28, 2004)

AN ORDINANCE AMENDING CHAPTER 82 OF THE ALBURTIS CODIFIED ORDINANCES (RELATING TO EARNED INCOME TAX) TO CONFORM TO THE PROVISIONS OF THE PENNSYLVANIA LOCAL TAX ENABLING ACT, AS AMENDED THROUGH ACT 2002-166 (WHICH BY STATUTE ARE CONSTRUED TO BE PART OF THE BOROUGH'S ORDINANCE IN ANY EVENT), BUT MAKING NO CHANGE IN THE RATE OF TAXATION (1.0% OF EARNED INCOME AND NET PROFITS).

**WHEREAS**, Borough Council has enacted and maintained an earned income tax under the authority of the Local Tax Enabling Act, 53 PA. STAT. ANN. § 6901 *et seq.*, since 1966, under ordinances codified to Chapter 82 of the Alburtis Codified Ordinances; and

**WHEREAS**, 53 PA. STAT. ANN. § 6913 states that the provisions of that section shall be included in or construed to be a part of each tax levied and assessed upon earned income by any political subdivision imposing such a tax under the Local Tax Enabling Act; and

**WHEREAS**, Council desires that the Borough's earned income tax ordinance be updated to conform to changes in the Local Tax Enabling Act through Act 2002-166, even though those changes are deemed to be part of the Borough's ordinance, and that the definitions in the Act be included in the ordinance rather than merely incorporated by reference; and

**WHEREAS**, there is to be no change in the rate of taxation under the earned income tax ordinance (1.0% of earned income and net profits); and

**WHEREAS**, on January 7, 14, and 21, 2004, the Borough published a public notice in the *East Penn Press*, a newspaper of general circulation in the Borough of Alburtis, of

its intention to consider and adopt on this Ordinance on January 28, 2004. The notice stated the substantial nature of the tax, the reason which, in the judgment of the Borough officials, necessitates the imposition of the tax, and the amount of revenue estimated to be derived from the tax; and

**NOW, THEREFORE,** be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Alburdis, Lehigh County, Pennsylvania, as follows:

**SECTION 1.** Codified Ordinances § 82-104 (relating to Earned Income Tax—Definitions) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

**§ 82-104 Definitions.**

(a) **In General.** ~~The definitions contained in the Local Tax Enabling Act of Subdivision I, Definitions, of 53 Pa. Stat. Ann. § 6913, earned income taxes, are hereby adopted by reference as the definitions applicable to this Chapter.~~ For purposes of this Chapter, the terms defined in the remaining Sections of this Article I shall have the meanings indicated, whether with or without initial capital letters, unless the context in which they are used clearly indicates a different meaning. However, if any of the definitions contained in part I of 53 PA. STAT. ANN. § 6913 are changed, or new definitions are added, corresponding changes and additions shall be deemed to have been made to this Chapter.

(b) **Usage.** Personal pronouns shall include the singular as well as the plural number and the male, neuter and female genders.

**SECTION 2.** Article I of Chapter 82 of the Codified Ordinances (relating to Earned Income Tax—Title, Authority, Duration, and Definitions) is amended by adding the following new §§ 82-105 through 82-119:

**§ 82-105 Association.**

The term “association” shall mean a partnership, limited partnership, or any other unincorporated group of two or more persons.

**§ 82-106 Business.**

The term “business” shall mean 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.

**§ 82-107 Corporation.**

The term “corporation” shall mean 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.

**§ 82-108 Current Year.**

The term “current year” shall mean the calendar year for which the tax is levied.

**§ 82-109 Domicile.**

The term “domicile” shall mean 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.

**§ 82-110 Earned Income.**

(a) **In General.** The term “earned income” shall mean “compensation” as determined under section 303 of the act of March 4, 1971 (Pa. Laws 6, No. 2), known as the “Tax Reform Code of 1971,” 72 PA. STAT. ANN. § 7303, and regulations in 61 Pa. Code Pt. I, Subpt. B, Art. V (relating to personal income tax) [61 Pa. Code ch. 101 through 125].

(b) **Employee Business Expenses.** Employee business expenses are allowable deductions as determined under Article III of the “Tax Reform Code of 1971,” 72 PA. STAT. ANN. § 7301 *et seq.*

(c) **Clergy Housing Allowances.** The amount of any housing allowance provided to a member of the clergy shall not be taxable as earned income.

**§ 82-111 Income Tax Officer or Officer.**

The term “Income Tax Officer” or “Officer” shall mean the person, public employee, or private agency designated by Council to collect and administer the tax on earned income and net profits imposed under this Chapter.

**§ 82-112 Employer.**

The term “employer” shall mean 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.

**§ 82-113 Net Profits.**

(a) **In General.** The term “net profits” shall mean the net income from the operation of a business, profession, or other activity, except corporations, determined under section 303 of the act of March 4, 1971 (Pa. Laws 6, No. 2), known as the “Tax Reform Code of 1971,” 72 PA. STAT. ANN. § 7303, and regulations in 61 Pa. Code Pt. I, Subpt. B, Art. V (relating to personal income tax) [61 Pa. Code ch. 101 through 125]. The term does not include income which is not paid for services provided and which is in the nature of earnings from an investment.

(b) **Farming.** For taxpayers engaged in the business, profession, or activity of farming, the term “net profits” shall not include:

- (1) any interest earnings generated from any monetary amounts or investment instruments of the farming business;
- (2) any gain on the sale of farm machinery;
- (3) any gain on the sale of livestock held twelve (12) months or more for draft, breeding, or dairy purposes; and
- (4) any gain on the sale of other capital assets of the farm.

**§ 82-114 Nonresident.**

The term “nonresident” shall mean a person, partnership, association, or other entity domiciled outside the Borough.

**§ 82-115 Person or Individual.**

The terms “person” or “individual” shall mean a natural person.

**§ 82-116 Preceding Year.**

The term “preceding year” shall mean the calendar year before the current year.

**§ 82-117 Resident.**

The term “resident” shall mean person, partnership, association, or other entity domiciled in the Borough.

**§ 82-118 Succeeding Year.**

The term “succeeding year” shall mean the calendar year following the current year.

**§ 82-119 Taxpayer.**

The term “taxpayer” shall mean a person, partnership, association, or any other entity, required under this Chapter to file a return of earned income or net profits, or to pay a tax thereon.

**SECTION 3.** Codified Ordinances §§ 82-201 and 82-202 (relating to Earned Income Tax—Imposition of Tax—In General and Items Taxed) are amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

**§ 82-201 In General.**

A tax for general revenue purposes of one percent (1.00%) is hereby imposed on the following:

(a) ~~Salaries, wages, commissions, and other compensation earned~~ Earned income received on and after January 1 of the current year by individual residents of the Borough of Albury.

(b) ~~Salaries, wages, commissions, and other compensation earned~~ Earned income received on and after January 1 of the current year by individual nonresidents of the Borough of Albury in the Borough.

(c) Net profits earned on and after January 1 of the current year (or for taxpayer fiscal years beginning in the current year) by residents of the Borough of Albury.

(d) Net profits earned on and after January 1 of the current year (or for taxpayer fiscal years beginning in the current year) in the Borough of ~~Alburtis~~ by nonresidents of the Borough of ~~Alburtis~~.

**§ 82-202 Items Taxed.**

The tax levied under § 82-201(a) and (b) shall relate to and be imposed upon salaries, wages, commissions, and other compensation earned income paid by an employer or on his behalf to a person who is employed by him. The tax levied under § 82-201(c) and (d) shall relate to and be imposed on the net profits of any business, profession, or other activity carried on by any person or persons.

**SECTION 4.** Article II of Chapter 82 of the Codified Ordinances (relating to Earned Income Tax—Imposition of Tax) is amended by adding the following new §§ 82-207 and 82-208:

**§ 82-207 Coordination With Other Political Subdivisions and States.**

(a) **Tax on Nonresidents.** Payment by a nonresident of any tax on earned income and/or net profits, or any tax on income to the extent such income includes earned income and/or net profits, enacted by any other political subdivision of this Commonwealth under the authority of the Local Tax Enabling Act, 53 PA. STAT. ANN. § 6901 *et seq.*, to a political subdivision in which the nonresident resides, shall be credited to and allowed as a deduction from the tax liability of the nonresident under § 82-201(b) and (d).

(b) **Out-of-State Income Taxes.** Payment by a resident of any tax on income to the extent such income includes earned income and/or net profits, to any State other than Pennsylvania or to any political subdivision located outside the boundaries of this Commonwealth, shall be credited to and allowed as a deduction from the tax liability of the resident under § 82-201(a) and (c), *provided* that no such credit or deduction shall be al-

lowed to the extent of the amount of credit or deduction taken for the same period by the taxpayer against any income tax imposed by the Commonwealth under section 314 of the Tax Reform Code of 1971, 72 PA. STAT. ANN. § 7314, on account of taxes imposed on income by other states or their political subdivisions.

**§ 82-208 Tax Also Imposed by East Penn School District.**

It is the intent of this Chapter that the entire burden of the tax imposed herein on a person shall not exceed the limitations prescribed in the Local Tax Enabling Act, 53 PA. STAT. ANN. § 6901 *et seq.*, so that if the East Penn School District shall impose or hereafter shall impose an earned income tax on the same person, then the tax levied by the Borough under the authority of that Act shall, during the time such duplication of the tax exists, be one-half (1/2) of the maximum rate permitted by law, and such one-half (1/2) rate shall become effective without any action on the part of the Borough; *provided*, however, that the Borough and the East Penn School District may agree that, instead of limiting their respective rates to one-half (1/2) of the maximum rate permitted by law, they will impose respectively different rates, the total of which shall not exceed the maximum rate permitted under the Local Tax Enabling Act.

**SECTION 5.** Codified Ordinances § 82-301 (relating to Earned Income Tax—Declaration and Payment of Estimated Tax on Net Profits—In General) is amended by adding the following new subsection (d):

**§ 82-301 Declaration and Payment of Estimated Tax on Net Profits.**

\* \* \*

**(d) Final Quarterly Installment.** Any taxpayer required to make payments of estimated tax under this Section may elect, in lieu of paying the estimated tax installment due on January 15 of the succeeding year, to make and file with the Income Tax Officer the final return for the current



year, and pay the balance due thereon, on or before January 31 of the succeeding year.

**SECTION 6.** Codified Ordinances §§ 82-303 and 82-304 (relating to Earned Income Tax—earned income quarterly and final returns and payment of tax) are amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

**§ 82-303 Declaration and Payment of Estimated Quarterly Tax on Compensation Earned Income Not Subject to Withholding.**

(a) ~~In General.~~ Quarterly Return. Every taxpayer who is employed ~~on~~ for a salary, wage, commission, or other compensation basis and who ~~reasonably expects to earn~~ receives any taxable ~~earnings~~ earned income not subject to the provisions of § 82-305 (relating to the collection at source by employers) or similar withholding provisions of the income tax ordinances or resolutions of other taxing districts for which the taxpayer is entitled to credit for the tax under this Chapter by 53 PA. STAT. ANN. § 6914, shall, ~~on or before April 15 of the current year,~~ make and file with the Income Tax Officer, on a form prescribed by the Income Tax 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 under this Chapter, together with a declaration of his estimated total amount of taxable salaries, wages, commissions and other compensation for the period beginning January 1 and ending December 31 of the current year, the estimated amount of the tax thereon that will be deducted therefrom pursuant to § 82-305, the estimated amount of tax imposed by this Article that will not be deducted therefrom pursuant to § 82-305, 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 Chapter, 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 current year for federal income tax purposes if such taxpayer shall be required to file any such last mentioned declaration.

**(b) Declaration and Payment after April 15<sup>th</sup>. Payment.** Every taxpayer making a return under subsection (a) shall pay the amount of tax shown as due on the return to the Income Tax Officer at the time of filing the return. A person who on April 15 of the current year did not reasonably expect that he would earn any salaries, wages, commissions, and other compensation not subject to the provisions of § 82-305 (relating to the collection at source by employers) during the period between January 1 and December 31, and who subsequent to April 15 reasonably expects that he will earn salaries, wages, commissions, and other compensation not subject to the provisions of § 82-305 on or before December 31, shall make and file on or before June 15 or September 15 of the current year or January 15 of the succeeding year, 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 subsection (a). The taxpayer making the declaration shall, at the time of filing thereof, pay to the Borough of Alburts 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.

**(c) Adjusted Declarations.** 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 salaries, wages, commissions, and other compensation, 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 salaries, wages, commissions and other compensation not previously declared or find that he has overestimated his salaries, wages, commissions, and other compensation.

**§ 82-304 Final Return and Payment of Tax on Net Profits Earned Income.**

On or before April 15 of the succeeding year, every taxpayer who has received taxable salaries, wages, commissions, and other compensation ~~on~~ earned income for the current year 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~~ the amount of earned income received during the period beginning January 1 and ending December 31 of the current year, the total amount of tax due thereon, the amount of ~~estimated~~ tax thereon paid under the provisions of § 82-303 (relating to quarterly returns), if any, and the amount, if any, of tax thereon that has been withheld pursuant to the provisions of § 82-305 (relating to collection at source by employers) or similar withholding provisions of the income tax ordinances or resolutions of other taxing districts for which the taxpayer is entitled to credit for the tax under this Chapter by 53 PA. STAT. ANN. § 6914, 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 7.** Codified Ordinances § 82-305 (relating to Earned Income Tax—Collection at Source by Employers) is amended by making changes to subsections (a) and (b) and adding a new subsection (e) as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

**§ 82-305 Collection at Source by Employers.**

(a) **In General.** Every person within the Borough of ~~Alburtis~~ who employs one (1) or more persons ~~on~~ for 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 Chapter on the sala-

ries, wages, commissions, and other compensation due to his employee or employees, and shall, on or before April 30, July 31, and October 31 of the current year, and January 31 of the succeeding year, 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 Alburty the amount of taxes deducted for the preceding quarter ending March 31, June 30, September 30, and December 31 of the current year, respectively. Such return, unless otherwise agreed upon between the Income Tax Officer and the employer, shall show the name and social security number of each such employee, the earned income of such employee during such preceding calendar quarter, the tax deducted therefrom, the political subdivisions imposing the tax upon such employee, the total earned income of all such employees during such preceding calendar quarter, and the total tax deducted therefrom and paid with the return.

**(b) Monthly Payments.** ~~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 Dollars (\$50.00) per month is deducted.~~ 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 Income Tax Officer to file his return and pay the tax monthly. In such cases, payments of tax shall be made to the Income Tax Officer on or before the last day of the month succeeding the month for which the tax was withheld.

\* \* \*

**(e) Liability of Employer for Failure to Withhold Tax.** Every employer who willfully 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, unless the employer is excused from compliance under 53 PA. STAT. ANN. § 6909 (relating to state register of earned income taxes).

**SECTION 8.** Codified Ordinances § 82-306(a) (relating to Earned Income Tax—annual returns by employers) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

**§ 82-306 Annual Returns by Employers.**

(a) **In General.** On or before ~~January 31~~ February 28 of the succeeding year, every employer required to withhold taxes under § 82-305 shall file with the Income Tax Officer, on forms prescribed by the Income Tax Officer:

(1) **Total Return.** 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 Chapter,~~ earned income paid, the total amount of tax deducted, and the total amount paid to the ~~Borough of Alburdis~~ Income Tax Officer in respect of ~~salaries, wages, commissions, and other compensation earned~~ the earned income received by his employee or employees during the period beginning January 1 and ending December 31 of the current year.

(2) **Return for Each Employee.** A return withholding statement for ~~in respect of~~ each person who was an employee during all or any part of the period beginning January 1 and ending December 31 of the current year ~~and who earned during such period any salaries, wages, commissions, or other compensation subject to the tax imposed by this Chapter,~~ setting forth the employee's name, address, and social security number; the amount of ~~such salaries, wages, commissions, or other compensation earned by~~ earned income paid to the employee during said period; the amount of tax deducted ~~therefrom,~~ the political subdivisions imposing the tax upon such employee, the amount of tax paid to the Income Tax Officer, and such relevant information as the Income Tax Officer may require. Every employer shall furnish ~~a copy~~ two copies of the individual return to the employee ~~in respect of~~ for whom it was filed.

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**SECTION 9.** Codified Ordinances § 82-401 (relating to Earned Income Tax—Powers and Duties of the Income Tax Officer) is amended by changing subsection (a) and adding a new subsection (f) as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

**§ 82-401 Powers and Duties of the Income Tax Officer.**

(a) **Receiver of Taxes.** The Income Tax Officer is hereby designated receiver of the taxes imposed by this Chapter. 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 Chapter in accordance with the requirements of 53 PA. STAT. ANN. § 6913, part V(b), 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 Chapter. 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.

\* \* \*

(f) **Audit.** The books, accounts, and records of the Income Tax Officer shall be audited at least once each year in accordance with the provisions of 53 PA. STAT. ANN. § 6911.

**SECTION 10.** Codified Ordinances § 82-403 (relating to Earned Income Tax—Administration—Suit for Collection of Tax) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

**§ 82-403 Suit for Collection of Tax.**

(a) **In General.** The Income Tax Officer, ~~through the Borough Solicitor,~~ may sue in the name of the Borough of Albury for the recovery of taxes due and unpaid under this Chapter.

(b) **Statute of Limitations.** Any suit brought to recover the tax imposed by this Chapter shall be begun within ~~six (6)~~ three (3) years after such tax is due or within ~~six (6)~~ three (3) 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 Chapter, there shall be no limitation.

(2) ~~In the case of a false or fraudulent declaration or return with the intent to evade the tax.~~ 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 Income Tax 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 percent (25%) or more and no fraud, suit shall be begun within six (6) years.

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

This subsection (b) shall not be construed to limit Council from recovering delinquent taxes by any other means provided by the Local Tax Enabling Act, 53 PA. STAT. ANN. § 6901 et seq. or other applicable law.

(c) **Erroneous Refund.** The Income Tax Officer may sue for recovery of an erroneous refund provided such suit is begun two (2) years after making such refund, except that the suit may be brought within five

(5) years if it appears that any part of the refund was induced by fraud or misrepresentation of material fact.

**SECTION 11.** Article IV of Chapter 82 of the Codified Ordinances (relating to Earned Income Tax—Administration) is amended by adding the following new §§ 82-405 and 82-406:

**§ 82-405 Collection by Distress and Sale.**

In case of the neglect or refusal of any person, copartnership, association, or corporation, to make payment of the amount of any tax due by him under this Chapter, the Income Tax Officer shall have power, after two (2) months from the date of the tax notice, to levy the amount of such tax, any penalty due thereon, and costs (not exceeding costs and charges allowed constables for similar services), by distress and sale of the goods and chattels of such delinquent, wherever situate or found, upon giving at least ten (10) days' public notice of such sale, by posting ten (10) written or printed notices, and by one advertisement in a newspaper of general circulation published in Lehigh County. No failure to demand or collect any taxes by distress and sale of goods and chattels shall invalidate any return made, or lien filed for nonpayment of taxes, or any tax sale for the collection of taxes.

**§ 82-406 Collection from Employer of Taxpayer or Spouse.**

(a) **In General.** The Income Tax Officer shall have the power and authority to demand, receive, and collect earned income and net profits taxes from corporations, political subdivisions, associations, companies, firms, or individuals employing persons owing delinquent earned income or net profits taxes, or whose spouse owes delinquent earned income or net profits taxes, or if in possession of unpaid commissions or earnings belonging to any person owing delinquent earned income or net profits taxes or whose spouse owes delinquent earned income or net profits taxes,



upon the presentation of written notice and demand certifying that the information contained therein is true and correct and containing the name of the taxable or spouse thereof and the amount of tax due. Upon the presentation of such written notice and demand, it shall be the duty of such corporation, political subdivision, association, company, firm, or individual to deduct from the wages, commissions, or earnings of such individual employees then owing or that shall within sixty (60) days thereafter become due, or from any unpaid commissions or earnings of any taxable in its or his possession or that shall within sixty (60) days thereafter come into its or his possession, a sum sufficient to pay the respective amount of the earned income and net profits taxes and costs shown upon the written notice or demand, and to pay the same to the Income Tax Officer within sixty (60) days after such notice shall have been given. If the employer is the Commonwealth of Pennsylvania, or any of its boards, authorities, agencies, or commissions, the provisions of 53 PA. STAT. ANN. § 6920 shall apply.

**(b) Maximum Deduction.** No more than ten percent (10%) of the wages, commissions, or earnings of the delinquent taxpayer or spouse thereof may be deducted at any one time for delinquent taxes.

**(c) Employer Administrative Expenses.** The employer shall be entitled to deduct not more than two percent (2%) for his expenses for such moneys paid over to the Income Tax Officer.

**(d) Default by Employer.** Upon the failure of such employer to make such deduction when properly notified as herein provided, within the time required, such employer shall forfeit and pay the amount of such tax for each such taxable whose taxes are not withheld and paid over to the Tax Officer as herein provided, or that are withheld and not paid over, together with a penalty of ten percent (10%) added thereto, which amount may be recovered by a civil action in a suit to be instituted by the Income Tax Officer on behalf of the Borough.

**(e) Collection Against Spouse.** The Income Tax Officer shall not proceed against a spouse or his employer until he has pursued collection remedies against the delinquent taxpayer and his employer under this Section.

(f) **Prior Notice to Taxpayer.** At least fifteen (15) days prior to the presentation of a written notice to an employer under subsection (a), the Income Tax Officer shall notify the taxpayer owing the delinquent tax by registered or certified mail that a written notice and demand shall be presented to his employer unless such tax is paid. The return receipt card for certified or registered mail shall be marked delivered to addressee only, and the cost of notification by certified or registered mail shall be added to the costs for collecting taxes.

**SECTION 12.** Codified Ordinances § 82-503 (relating to Earned Income Tax—Criminal Penalties-In General) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

**§ 82-503 Criminal Penalties—In General.**

Any person who fails, neglects, or refuses to make any declaration or return required by this ~~Article~~ Chapter; any employer who fails, neglects, or refuses 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 Income Tax Officer or any agent properly designated by him to examine his books, records, and papers; and any person 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 net profits or earned income in order to avoid the payment of the whole or any part of the tax imposed by this Chapter, shall, upon conviction thereof before a District Justice or court of competent jurisdiction in Lehigh County, 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 in the Lehigh County Jail for a period not exceeding thirty (30) days.

**DULY ORDAINED** and **ENACTED** by the Borough Council of the Borough of Al-  
burtis, this 28<sup>th</sup> day of January, 2004, in lawful session duly assembled.

**BOROUGH COUNCIL  
BOROUGH OF ALBURTIS**

\_\_\_\_\_  
Steven R. Hill, President

Attest:

\_\_\_\_\_  
Melanie Hansen, Secretary

**AND NOW**, this 28<sup>th</sup> day of January, 2004, the above Ordinance is hereby AP-  
PROVED.

\_\_\_\_\_  
Russell J. Afflerbach, Mayor