

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 498

(Duly Adopted November 30, 2011)

AN ORDINANCE RE-ADOPTING, RESTATING, AND AMENDING ITS EARNED INCOME TAX ORDINANCE (CODIFIED TO CHAPTER 82 OF THE ALBURTIS CODIFIED ORDINANCES FOR YEARS THROUGH 2011, AND TO CHAPTER 80 OF THE ALBURTIS CODIFIED ORDINANCES FOR YEARS BEGINNING ON OR AFTER JANUARY 1, 2012) TO ESTABLISH CONFORMITY WITH THE LOCAL TAX ENABLING ACT AS AMENDED BY ACT 32 OF 2008; LEVYING A TAX ON EARNED INCOME AND NET PROFITS; REQUIRING TAX RETURNS; REQUIRING EMPLOYERS TO WITHHOLD AND REMIT TAX; PROVIDING FOR COLLECTION; PROVIDING FOR INTEREST, PENALTIES, COSTS AND FINES FOR VIOLATIONS AND NON-PAYMENT OF TAX; PROVIDING FOR SEVERABILITY, REPEAL, CONSTRUCTION, AND EFFECTIVE DATE, AND RELATED PROVISIONS.

WHEREAS, the Borough of Alburdis, Lehigh County, Pennsylvania (“**Borough**”) previously enacted ordinances (codified to Chapter 82 of the Alburdis Codified Ordinances) (“**Prior Ordinance**”) imposing a tax at the rate of one percent (1%) for general revenue purposes on earned income and net profits; and

WHEREAS, on July 2, 2008, the Pennsylvania Legislature enacted Act No. 32 of 2008 (hereinafter “**Act 32**”), which provided, *inter alia*, for the consolidated collection of local income taxes within a tax collection district established in each county under Section 504 of Act 32 for tax years beginning not later than on and after January 1, 2012; and

WHEREAS, the Borough desires to re-enact, restate, and amend in its entirety the Prior Ordinance relating to the imposition and collection of an earned income and net profits tax by the Borough in order to conform with the provisions of Act 32, and codify the same to Chapter 80 of the Alburdis Codified Ordinances;

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Alburdis, Lehigh County, Pennsylvania, that its Prior Ordinance is hereby re-enacted, restated, and amended in its entirety as follows:

SECTION 1. The Alburdis Codified Ordinances are hereby amended by adding the following new Chapter 80:

Chapter 80 — Earned Income Tax (2012 and Succeeding Years)

Article I — Title and Definitions

§ 80-101 Short Title.

This Chapter shall be known, and may be cited, as the “Alburdis Earned Income Tax Ordinance.”

§ 80-102 Definitions.

(a) **In General.** 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.

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

§ 80-103 Article XIII Tax Officer.

The term “Article XIII tax officer” shall mean the tax officer authorized by the Borough to collect income taxes levied for periods prior to January 1, 2012.

§ 80-104 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.

§ 80-105 Business Entity.

The term “business entity” shall mean a sole proprietorship, corporation, joint-stock association or company, partnership, limited partnership, limited liability company, association, business trust, syndicate or other commercial or professional activity organized under the laws of this Commonwealth or any other jurisdiction.

§ 80-106 Certified Public Accountant or Public Accountant.

The terms “certified public accountant” and “public accountant” shall mean a certified public accountant, public accountant or firm, as provided for in the Act of May 26, 1947 (P.L. 318, No. 140), as amended and re-enacted, 63 PA. STAT. ANN. § 9.1 *et seq.*, known as the CPA Law.

§ 80-107 Claim.

The term “claim” shall mean a written demand for payment made by a tax officer or tax collection district for income taxes collected by another tax officer or tax collection district.

§ 80-108 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. The term shall include an entity which is classified as a corporation for Federal income tax purposes.

§ 80-109 Current Year.

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

§ 80-110 Department.

The term “Department” shall mean the Department of Community and Economic Development of the Commonwealth of Pennsylvania.

§ 80-111 Domicile.

The term “domicile” shall mean the place where a person lives and has a permanent home and to which the person has the intention of returning whenever 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 the person to adopt some other permanent home. In the case of a business, domicile is that place considered as the center of business affairs and the place where its functions are discharged.

§ 80-112 Earned Income.

The term “earned income” shall mean the compensation as required to be reported to or as determined by the Department of Revenue under Section 303 of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971, 72 PA. STAT. ANN. § 7303, and rules and regulations promulgated under that section (including, but not limited to, 61 Pa. Code ch. 101 through 125). Employee business expenses as reported to or determined by the Department of Revenue under Article III of the Tax Reform Code of 1971, 72 PA. STAT. ANN. § 7301 *et seq.*, shall constitute allowable deductions in determining earned income. The term does not

include offsets for business losses. The amount of any housing allowance provided to a member of the clergy shall not be taxable as earned income.

§ 80-113 Earned Income and Net Profits Tax.

The term “earned income and net profits tax” shall mean the tax levied by the Borough on earned income and net profits. (*See* this Chapter and Chapter 82.)

§ 80-114 Employer.

The term “employer” shall mean a person, business entity or other entity, employing one or more persons for a salary, wage, commission or other compensation. The term includes the Commonwealth, a political subdivision, and an instrumentality or public authority of either. For purposes of penalties under this Chapter, the term includes a corporate officer.

§ 80-115 Income Tax.

The term “income tax” shall mean, except as set forth in section 511(b) of the LTEA, 53 PA. STAT. ANN. § 6924.511(b), an earned income and net profits tax, personal income tax, or other tax that is assessed on the income of a taxpayer levied by the Borough under the authority of the LTEA or any other act.

§ 80-116 Joint Tax Collection Committee.

The term “joint tax collection committee” shall mean an entity formed by two or more tax collection committees for the purpose of income tax collection in more than one tax collection district.

§ 80-117 LTEA.

The term “LTEA” shall mean the Pennsylvania Local Tax Enabling Act, P.L. 1257, 1965, as amended, 53 PA. STAT. ANN. § 6924.101 *et seq.*

§ 80-118 Net Profits.

The term “net profits” shall mean the net income from the operation of a business, other than a corporation, as required to be reported to or as determined by the Department of Revenue under section 303 of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971, 72 PA. STAT. ANN. § 7303, and rules and regulations promulgated under that section (including, but not limited to, 61 Pa. Code ch. 101 through 125). The term does not include income under any of the following subsections:

(a) Income which:

- (1) is not paid for services provided; and
- (2) is in the nature of earnings from an investment.

(b) Income which represents:

- (1) any gain on the sale of farm machinery;
- (2) any gain on the sale of livestock held for 12 months or more for draft, breeding, or dairy purposes; or
- (3) any gain on the sale of other capital assets of a farm.

§ 80-119 Nonresident.

The term “nonresident” shall mean a person or business domiciled outside the Borough levying the tax.

§ 80-120 Nonresident Tax.

The term “nonresident tax” shall mean an income tax levied by the Borough on nonresidents.

§ 80-121 Official Register.

The term “official register” shall mean the part of the tax register that includes withholding tax rates as provided in section 511(a)(3) of the LTEA, 53 PA. STAT. ANN. § 6924.511(a)(3).

§ 80-122 Person.

The term “person” shall mean a natural person.

§ 80-123 Preceding Year.

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

§ 80-124 Private Agency.

The term “private agency” shall mean a business entity or person appointed as a tax officer by a tax collection committee.

§ 80-125 Resident.

The term “resident” shall mean a person or business domiciled in the Borough levying the tax.

§ 80-126 Resident Tax.

The term “resident tax” shall mean an income tax levied by the Borough.

§ 80-127 Resident Tax Officer.

The term “resident tax officer” shall mean the tax officer administering and collecting income taxes for the tax collection district in which a taxpayer is domiciled

§ 80-128 Succeeding Year.

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

§ 80-129 Tax Bureau.

The term “tax bureau” shall mean a public nonprofit entity established for the administration and collection of taxes.

§ 80-130 Tax Collection Committee.

The term “tax collection committee” shall mean the committee established to govern the Lehigh Tax Collection District for the purpose of income tax collection. The term shall include a joint tax collection committee.

§ 80-131 Tax Collection District.

The term “tax collection district” shall mean the Lehigh Tax Collection District established under section 504 of the LTEA, 53 PA. STAT. ANN. § 6924.504, or, where applicable, another such district so established for another portion of the Commonwealth of Pennsylvania.

§ 80-132 Tax Officer.

The term “tax officer” shall mean a political subdivision, public employee, tax bureau, county (except a county of the first class), or private agency which administers and collects income taxes for one or more tax collection districts. Unless otherwise specifically provided, for purposes of the obligations of an employer, the term shall mean the tax officer for the tax collection district within which the employer is located, or, if an employer maintains workplaces in more than one tax collection district, the tax officer for each such district with respect to employees principally employed therein.

§ 80-133 Tax Records.

The term “tax records” shall mean tax returns, supporting schedules, correspondence with auditors or taxpayers, account books, and other

documents, including electronic records, obtained or created by the tax officer to administer or collect a tax under this Chapter. The term includes documents required by section 509(e) of the LTEA, 53 PA. STAT. ANN. § 6924.509(e). The term “electronic records” includes data and information inscribed on a tangible medium or stored in an electronic or other medium and which is retrievable in perceivable form.

§ 80-134 Tax Register.

The term “tax register” shall mean a database of all county, municipal, and school tax rates available on the Internet as provided in section 511(a)(1) of the LTEA, 53 PA. STAT. ANN. § 6924.511(a)(1).

§ 80-135 Taxable Income.

The term “taxable income” shall include:

(a) In the case of an earned income and net profits tax, earned income and net profits;

(b) In the case of a personal income tax, income enumerated in section 303 of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971, 72 PA. STAT. ANN. § 7303, as reported to and determined by the Department of Revenue, subject to correction for fraud, evasion or error, as finally determined by the Commonwealth.

§ 80-136 Taxpayer.

The term “taxpayer” shall mean a person or business required under this Chapter to file a return of an income tax or to pay an income tax.

§ 80-137 Withholding Tax.

The term “withholding tax” shall mean an income tax levied by a political subdivision under the authority of this Chapter or any other ordinance or resolution, or any other tax levied by a municipality or school

district for which employer withholding may be required under this Chapter.

Article II — Imposition of Tax

§ 80-201 In General.

The tax levied under this Chapter shall be applicable to earned income received and to net profits earned in the period beginning January 1, of the current year, and ending December 31, of the current year or for taxpayer fiscal years beginning in the current year, except that taxes imposed for the first time shall become effective from the date specified in the ordinance or resolution, and the tax shall continue in force on a calendar year or taxpayer fiscal year basis, without annual reenactment, unless the rate of the tax is subsequently changed. Changes in rate shall become effective on the date specified in the ordinance.

§ 80-202 Tax Imposed.

A tax for general revenue purposes of one percent (1.0%) is hereby imposed on the following:

(a) Earned Income, as defined by this Chapter, received by residents of the Borough on or after January 1, 2012;

(b) Earned income, as defined by this Chapter, received by non-residents of the Borough for work done or services performed or rendered in the Borough on or after January 1, 2012;

(c) Net profits, as defined by this Chapter, earned on or after January 1, 2012, of businesses, professions, and other activities conducted by residents in the Borough; and

(d) Net profits, as defined by this Chapter, earned on or after January 1, 2012, of businesses, professions, and other activities conducted by non-residents in the Borough.

§ 80-203 Items Taxed.

The tax levied under § 80-202(a) and (b) shall relate to and be imposed upon salaries, wages, commissions, and other compensation paid by an employer or on its behalf to any person who is employed by or renders services to it. The tax levied under § 80-202(c) and (d) shall relate to and be imposed on the net profits of any business, profession, or enterprise carried on by any person as owner or as proprietor, either individually or in association with some other person or persons.

§ 80-204 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 LTEA, so that if the East Penn School District shall impose or hereafter shall impose an earned income and net profits tax on the same person such that the total of the Borough and school district taxes shall exceed the limitations prescribed in the LTEA, then the tax levied by the Borough under the authority of the LTEA 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 LTEA.

Article III – Declaration and Payment of Tax

§ 80-301 Application.

Income taxes shall be applicable to taxable income earned or received based on the method of accounting used by the taxpayer in the pe-

riod beginning January 1 of the current year and ending December 31 of the current year, except that taxes imposed for the first time and changes to existing tax rates shall become effective on January 1 or July 1, as specified in the ordinance, and the tax shall continue in force on a calendar year or taxpayer fiscal year basis, without annual reenactment, unless the rate of the tax is subsequently changed.

§ 80-302 Fiscal Year Taxpayers.

For a taxpayer whose fiscal year is not a calendar year, the tax officer shall establish deadlines for filing, reporting and payment of taxes which provide time periods equivalent to those provided for a calendar year taxpayer.

§ 80-303 Partial Domicile.

The taxable income subject to tax of a taxpayer who is domiciled in the Borough for only a portion of the tax year shall be an amount equal to the taxpayer's taxable income multiplied by a fraction, the numerator of which is the number of calendar months during the tax year that the individual is domiciled in the Borough and the denominator of which is 12. A taxpayer shall include in the numerator any calendar month during which the taxpayer is domiciled for more than half the calendar month. A day that a taxpayer's domicile changes shall be included as a day the individual is in the new domicile and not the old domicile. If the number of days in the calendar month in which the individual lived in the old and new domiciles are equal, the calendar month shall be included in calculating the number of months in the new domicile.

§ 80-304 Declaration and Payment.

Except as provided in § 80-302 (relating to Fiscal Year Taxpayers), taxpayers shall declare and pay income taxes as follows:

(a) **Final Return.** Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the resident tax officer, a final return showing the amount of taxable income received during the period be-

ginning January 1 of the current year and ending December 31 of the current year, the total amount of tax due on the taxable income, the amount of tax paid, the amount of tax that has been withheld under section 512 of the LTEA, 53 PA. STAT. ANN. § 6924.512, and the balance of tax due. All amounts reported shall be rounded to the nearest whole dollar. At the time of filing the final return, the taxpayer shall pay the resident tax officer the balance of the tax due or shall make demand for refund or credit in the case of overpayment.

(b) Declaration of Estimated Net Profits; Quarterly Payments.

Every taxpayer making net profits shall, by April 15 of the current year, make and file with the resident tax officer a declaration of the taxpayer's estimated net profits during the period beginning January 1 and ending December 31 of the current year, and shall pay to the resident tax officer in four equal quarterly installments the tax due on the estimated net profits. The first installment shall be paid at the time of filing the declaration, and the other installments shall be paid on or before June 15 of the current year, September 15 of the current year and January 15 of the succeeding year, respectively.

(c) Net Profits: Declaration and Payment After April 15. Any taxpayer who first anticipates any net profit after April 15 of the current year shall make and file the declaration required on or before June 15 of the current year, September 15 of the current year, or December 31 of the current year, whichever date next follows the date on which the taxpayer first anticipates such net profit, and shall pay to the resident tax officer in equal installments the tax due on or before the quarterly payment dates that remain after the filing of the declaration.

(d) Net Profits: Final Return. Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the resident tax officer a final return showing the amount of net profits earned or received based on the method of accounting used by the taxpayer during the period beginning January 1 of the current year, and ending December 31 of the current year, the total amount of tax due on the net profits and the total amount of tax paid. At the time of filing the final return, the taxpayer shall pay to the resident tax 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 the estimated tax, elect to make and file with the resident tax officer on or before January 31 of the succeeding year, the final return.

(e) Net Profits: Adjusted Declarations. The Department, in consultation with the Department of Revenue, shall provide by regulation for the 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 required under this subsection anticipates additional net profits not previously declared or has overestimated anticipated net profits.

(f) Discontinuance of Business. Every taxpayer who discontinues business prior to December 31 of the current year, shall, within 30 days after the discontinuance of business, file a final return as required under this paragraph and pay the tax due.

(g) Declaration and Payment of Quarterly Tax on Other Income Not Subject to Withholding. Every taxpayer who receives any other taxable income not subject to withholding under section 512(3) of the LTEA, 53 PA. STAT. ANN. § 6924.512(3) shall make and file with the resident tax officer a quarterly return on or before April 15 of the current year, June 15 of the current year, September 15 of the current year, and January 15 of the succeeding year, setting forth the aggregate amount of taxable income not subject to withholding by the taxpayer 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 income tax, together with such other information as the department may require. Every taxpayer filing a return shall, at the time of filing the return, pay to the resident tax officer the amount of income tax due. The department shall establish criteria under which the tax officer may waive the quarterly return and payment of the income tax and permit a taxpayer to file the receipt of taxable income on the taxpayer's annual return and pay the income tax due on or before April 15 of the succeeding year.

Article IV — Withholding and Remittance

§ 80-401 In General.

For taxable years commencing on and after January 1, 2012, or earlier taxable years if specified by a tax collection district, income taxes shall be withheld, remitted and reported as set forth in the remaining sections of this Article IV.

§ 80-402 Registration by Employers.

Every employer having an office, factory, workshop, branch, warehouse, or other place of business within the Tax Collection District which 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 tax officer the name and address of the employer and such other information as the officer may require.

§ 80-403 Employee Certificate of Residency.

An employer shall require each new employee to complete a certificate of residency form, which shall be an addendum to the Federal Employee's Withholding Allowance Certificate (Form W-4). An employer shall also require any employee who changes his/her address or domicile to complete a certificate of residency form. Upon request, certificate of residency forms shall be provided by the department. The certificate of residency form shall provide information to help identify the political subdivision where an employee lives and works.

§ 80-404 Employer Withholding from Employee Compensation.

Every employer having an office, factory, workshop, branch, warehouse or other place of business within a tax collection district that employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, shall, at the time of payment,

deduct from the compensation due each employee employed at such place of business the greater of the employee's resident tax or the employee's nonresident tax as released in the official register under section 511 of the LTEA, 53 PA. STAT. ANN. § 6924.511.

§ 80-405 Employer Quarterly Returns: In General.

Except as set forth in § 80-406, within 30 days following the end of each calendar quarter, every employer shall file a quarterly return and pay the amount of income taxes deducted during the preceding calendar quarter to the tax officer for the place of employment of each employee. The form shall show the name, address, and Social Security number of each employee, the compensation of the employee during the preceding three-month period, the income tax deducted from the employee, the political subdivision imposing the income tax upon the employee, the total compensation of all employees during the preceding calendar quarter, the total income tax deducted from the employees and paid with the return, and any other information prescribed by the department.

§ 80-406 Employers With Multiple Places of Employment.

Notwithstanding § 80-405, the provisions of this section shall apply if an employer has more than one place of employment in more than one tax collection district. Within 30 days following the last day of each month, the employer may file the return required by § 80-405 and pay the total amount of income taxes deducted from employees in all work locations during the preceding month to the tax officer for either the tax collection district in which the employer's payroll operations are located or as determined by the department. The return and income taxes deducted shall be filed and paid electronically. The employer must file a notice of intention to file combined returns and make combined payments with the tax officer for each place of employment at least one month before filing its first combined return or making its first combined payment. This paragraph shall not be construed to change the location of an employee's place of employment for purposes of nonresident tax liability.

§ 80-407 Monthly Returns and Payments.

Any employer who, for two of the preceding four quarterly periods, has failed to deduct the proper income tax, or any part of the income tax, or has failed to pay over the proper amount of income tax as required by §§ 80-404, 80-405, and/or 80-406 to the tax collection district, may be required by the tax officer to file returns and pay the income tax monthly. In such cases, payments of income tax shall be made to the tax officer on or before the last day of the month succeeding the month for which the income tax was withheld.

§ 80-408 Final Returns.

On or before February 28 of the succeeding year, every employer shall file with the tax officer where income taxes have been deducted and remitted pursuant to §§ 80-404, 80-405, and/or 80-406:

(a) An annual return showing, for the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of compensation paid, the total amount of income tax deducted, the total amount of income tax paid to the tax officer and any other information prescribed by the department.

(b) An individual withholding statement, which may be integrated with the Federal Wage and Tax Statement (Form W-2), 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 address and Social Security number, the amount of compensation paid to the employee during the period, the amount of income tax deducted, the amount of income tax paid to the tax officer, the numerical code prescribed by the department representing the tax collection district where the payments required by §§ 80-405 and 80-406 were remitted, and any other information required by the department. Every employer shall furnish one copy of the individual withholding statement to the employee for whom it is filed.

§ 80-409 Discontinuance of Business.

Any employer who discontinues business prior to December 31 of the current year shall, within 30 days after the discontinuance of business, file returns and withholding statements required under this section and pay the income tax due.

§ 80-410 Employer Liability for Failure to Withhold.

Except as otherwise provided in section 511 of the LTEA, 53 PA. STAT. ANN. § 6924.511, an employer who willfully or negligently fails or omits to make the deductions required by this Article IV shall be liable for payment of income taxes which the employer was required to withhold to the extent that the income taxes have not been recovered from the employee. The failure or omission of any employer to make the deductions required by this Article IV shall not relieve any employee from the payment of the income tax or from complying with the requirements for filing of declaration and returns.

Article V — Powers, Duties, and Compensation of Tax Officer

§ 80-501 Tax Collection.

In addition to any other power and duty conferred upon a tax officer in this Chapter, it shall be the duty of the tax officer:

(a) To collect, reconcile, administer and enforce income taxes imposed on residents and nonresidents in the Borough included in the tax collection district.

(b) To receive and distribute income taxes and to enforce withholding by employers located in the tax collection district.

(c) To receive income taxes distributed by tax officers for other tax collection districts.

(d) To distribute income taxes to the Borough as required by section 513 of the LTEA, 53 Pa. Stat. Ann. § 6924.513.

(e) To comply with all regulations adopted by the Borough under this Chapter and all resolutions, policies and procedures adopted by the tax collection committee.

(f) To invest all income taxes in the custody of the tax officer in authorized investments, subject to the approval of the tax collection committee. The tax officer shall observe the standard of care that would be observed by a prudent person dealing with property of another. For the purposes of this paragraph, the term “authorized investment” shall include all of the following:

(1) Short-term obligations of the United States Government or its agencies or instrumentalities which are backed by the full faith and credit of the United States or are rated in the highest category by a nationally recognized statistical rating organization.

(2) Deposits in savings accounts, time deposits, share accounts or certificates of deposit of institutions, insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, or their successor agencies, to the extent that the accounts are insured and, for the amount above the insured maximum, that collateral, free from other liens, for the amount is pledged by the depository institution.

(3) Deposits in investment pools established by the State Treasurer or established by local governments pursuant to 53 PA. CONS. STAT. ch. 23, subch. A (relating to intergovernmental cooperation) and related statutes, *provided* that the investment pools are rated in the highest category by a nationally recognized statistical rating organization.

(4) Repurchase agreements which are fully collateralized by obligations of the United States Government or its agencies or instrumentalities, which are free from other liens and backed by the full faith and credit of the United States or are rated in the highest category by a nationally recognized statistical rating organization.

(g) To distribute income generated from investments authorized under subsection (f) as determined by the tax collection committee.

§ 80-502 Monthly Reports.

The tax officer shall, within 20 days after the end of each month, provide a written report, on forms prescribed by the department, to the secretary of the tax collection committee and to the secretary of the Borough for which taxes were collected during the previous month. The report shall include a breakdown of all income taxes, income generated from investments under § 80-501(f), penalties, costs, and other money received, collected, expended, and distributed for each political subdivision served by the tax officer and of all money distributed to tax officers for other tax collection districts.

§ 80-503 Overpayments.

A tax officer shall refund, under 53 PA. CONS. STAT. § 8425 (relating to refunds of overpayments) and § 8426 (relating to interest on overpayment), on petition of and proof by the taxpayer, income taxes paid in excess of income taxes rightfully due.

§ 80-504 Bonds.

Prior to initiating any official duties, each tax officer shall give and acknowledge a bond to the appointing tax collection committee as follows:

(a) The tax collection committee shall fix the amount of the bond in an amount equal to the maximum amount of taxes that may be in the possession of the tax officer at any given time or an amount sufficient, in combination with fiscal controls, insurance, and other risk management and loss prevention measures used by the tax collection district, to secure the financial responsibility of the tax officer in accordance with guidelines adopted by the department. The amount of the bond shall be revised annually by the tax collection committee based upon the annual examination required under section 505(h) of the LTEA, 53 PA. STAT. ANN. § 6924.505(h).

(b) Each bond shall be joint and several, with one or more corporate sureties, which shall be surety companies authorized to do business in this Commonwealth and licensed by the Insurance Department.

(c) Each bond shall be conditioned upon the completion of all of the following by the tax officer's employees and appointees:

(1) The faithful execution of all duties required of the tax officer.

(2) The just and faithful accounting or payment over of all moneys and balances paid to, received, or held by the tax officer by virtue of the office in accordance with law.

(3) The delivery of all tax records or other official items held in right as the tax officer to the tax officer's successor in office.

(d) Each bond shall be taken in the name of the tax collection district and shall be for the use of the tax collection district appointing the tax officer, and for the use of any other political subdivision or tax collection district for which income taxes shall be collected or distributed in case of a breach of any conditions of the bond by the acts or neglect of the principal on the bond.

(e) The tax collection committee or any political subdivision may sue upon the bond for the payment or distribution of income taxes.

(f) Each bond shall contain the name of the surety company bound on the bond.

(g) The tax collection committee may, upon cause shown and due notice to the tax officer and the tax officer's sureties, require or allow the substitution or the addition of a surety company acceptable to the tax collection committee for the purpose of making the bond sufficient in amount, without releasing the sureties first approved from any accrued liability or previous action on the bond.

(h) The tax collection committee shall designate the custodian of the bond.

(i) The tax officer shall file copies of all bonds in effect with the Borough.

(j) A copy of all bonds in effect shall be made available upon request and at no cost to the department or to a tax collection district or political subdivision seeking payment or distribution of income taxes authorized by this Chapter.

§ 80-505 Records.

It shall be the duty of the tax officer to keep a record showing the amount of income taxes received from each taxpayer or other tax officer, the date of receipt, the amount and date of all other moneys received or distributed, and any other information required by the department. All tax records shall be the property of the Borough and the tax collection district in which the taxes were collected. The tax collection district and tax officer shall retain all tax records as directed by the tax collection committee and, when applicable, in accordance with retention and disposition schedules established by the Local Government Records Committee of the Pennsylvania Historical and Museum Commission under 53 PA. CONS. STAT. ch. 13, subch. F (relating to records). Tax records under this section may be retained electronically as permitted by law.

§ 80-506 Employer and Taxpayer Audits.

(a) In order to verify the accuracy of any income tax declaration or return or, if no declaration or return was filed, to ascertain the income tax due, the tax officer and the tax officer's designated employees may examine or audit the records pertaining to income taxes due of any of the following:

- (1) An employer;
- (2) A taxpayer; and/or
- (3) A person whom the tax officer reasonably believes to be an employer or taxpayer.

(b) The examination or audit conducted by the tax officer and the tax officer's designated employees shall conform to the requirements set forth in 53 PA. CONS. STAT. ch. 84, subch. C (relating to local taxpayers bill of rights).

(c) Every employer and taxpayer or other person whom the tax officer reasonably believes to be an employer or taxpayer shall provide to the tax officer and the tax officer's designated employees the means, facilities and opportunity for the examination and investigation authorized under subsection (a).

(d) For purposes of this section, the term "records" shall include any books, papers, and relevant Federal or State tax returns and accompanying schedules, or supporting documentation for any income taxable under this Chapter.

§ 80-507 Exchange of Information.

(a) The tax officer shall ensure that the tax collection district enters into an agreement with the Department of Revenue for the exchange of information as necessary for the collection of income taxes.

(b) The Department of Revenue may enter into agreements with each tax collection district and shall establish procedures under which tax collection, filing and other taxpayer and locality information in its custody will be made available to tax officers for purposes of collection, reconciliation and enforcement no later than one year after the deadline for filing returns for the tax year in question.

§ 80-508 Actions for Collection of Income Taxes.

The tax officer may file an action in the name of the Borough for the recovery of income taxes due to the Borough and unpaid. Nothing in this section shall affect the authority of the Borough to file an action in its own name for collection of income taxes under this Chapter. This section shall not be construed to limit a tax officer, a tax collection district, or the Borough from recovering delinquent income taxes by any other means provided by this Chapter. Actions for collection of income taxes shall be subject to the following:

(a) Except as set forth in subsections (b) or (d), an action brought to recover income taxes must be commenced within three years of the *later* of the date:

- (1) the income taxes are due;
- (2) the declaration or return has been filed; or
- (3) of a redetermination of compensation or net profits by the

Department of Revenue.

(b) If there is substantial understatement of income tax liability of 25% or more and there is no fraud, an action must be commenced within six years.

(c) Except as set forth in subsection (d)(2), (d)(3), or (d)(4), an action by a tax officer for recovery of an erroneous refund must be commenced as follows:

(1) Except as set forth in paragraph (2), within two years after making the refund.

(2) If it appears that any part of the refund was induced by fraud or misrepresentation of material fact, within five years after making the refund.

(d) There is no limitation of action if any of the following apply:

(1) A taxpayer fails to file a declaration or return required under this Chapter.

(2) An examination of a declaration or return or of other evidence in the possession of the tax officer relating to the declaration or return reveals a fraudulent evasion of income taxes.

(3) An employer has deducted income taxes under section 512 of the LTEA, 53 PA. STAT. ANN. § 6924.512, and has failed to pay the amount deducted to the tax officer.

(4) An employer has intentionally failed to make deductions required by this Chapter.

§ 80-509 Interest and Penalties.

(a) Except as provided in subsection (b), if the income tax is not paid when due, interest at the rate the taxpayer is required to pay to the Commonwealth under section 806 of the act of April 9, 1929 (P.L. 343,

No. 176), known as The Fiscal Code, 72 PA. STAT. ANN. § 806, on the amount of the income tax, and an additional penalty of 1% of the amount of the unpaid income tax for each month or fraction of a month during which the income tax remains unpaid shall be added and collected, but the amount shall not exceed 15% in the aggregate. Where an action is brought for the recovery of the income tax, the taxpayer liable for the income tax shall, in addition, be liable for the costs of collection, interest, and penalties.

(b) The Department may establish conditions under which a tax officer, with the concurrence of the tax collection committee, may abate interest or penalties that would otherwise be imposed for the nonreporting or underreporting of income tax liabilities or for the nonpayment of income taxes previously imposed and due if the taxpayer voluntarily files delinquent returns and pays the income taxes in full.

(c) The provisions of subsection (b) shall not affect or terminate any petitions, investigations, prosecutions, or other proceedings pending under this Chapter, or prevent the commencement or further prosecution of any proceedings by the proper authorities for violations of this Chapter. No proceedings shall, however, be commenced on the basis of delinquent returns filed pursuant to § 80-508 if the returns are determined to be substantially true and correct and the income taxes are paid in full within the prescribed time.

§ 80-510 Fines and Penalties for Violations.

(a) Any taxpayer who fails, neglects or refuses to make any declaration or return required by this Chapter, any employer who fails, neglects, or refuses to register, keep or supply records or returns required by section 512 of the LTEA, 53 PA. STAT. ANN. § 6924.512, or to pay the income tax deducted from employees, or fails, neglects, or refuses to deduct or withhold the income tax from employees, any taxpayer or employer who refuses to permit the tax officer appointed by a tax collection committee or an employee or agent of the tax officer to examine books, records, and papers, and any taxpayer or employer who knowingly makes any incomplete, false, or fraudulent return, or attempts to do anything whatsoever to

avoid the full disclosure of the amount of income in order to avoid the payment of income taxes shall, upon conviction thereof, be sentenced to pay a fine of not more than \$2,500 for each offense and reasonable costs, and in default of payment of said fine and costs, to imprisonment for not more than six months.

(b) Any employer required under this Chapter to collect, account for, and distribute income taxes who willfully fails to collect or truthfully account for and distribute income taxes, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding \$25,000 or to imprisonment not exceeding two years, or both.

(c) The penalties imposed under this section shall be in addition to any other costs and penalties imposed by this Chapter.

(d) The failure of any person to obtain forms required for making the declaration or returns required by this Chapter shall not excuse the person from making the declaration or return.

§ 80-511 Costs.

The tax officer shall be entitled to impose and collect the reasonable costs incurred to provide notices of delinquency or to implement similar procedures utilized to collect delinquent taxes from a taxpayer as approved by the tax collection committee. Reasonable costs collected may be retained by the tax officer. An itemized accounting of all costs collected shall be remitted to the tax collection committee on an annual basis.

§ 80-512 Appeals and Tax Officer Actions.

A determination of the tax officer relating to the assessment, collection, refund, withholding, remittance, or distribution of income taxes may be appealed to the appeals board established by the tax collection committee by a taxpayer, employer, political subdivision, or another tax collection district pursuant to the provisions of section 505(j) of the LTEA, 53 PA. STAT. ANN. § 6924.505(j). Pursuant to section 505(k) of the LTEA, 53 Pa. Stat. Ann. § 6924.505(k), any dispute among the affected parties involving a 10% or greater deviation from taxes received in the previous

tax year shall be subject to mandatory mediation in accordance with regulations and guidelines adopted by the Department. A dispute involving less than a 10% threshold may be the subject of voluntary mediation in accordance with regulations and guidelines adopted by the Department.

§ 80-513 Confidentiality.

(a) **General Rule.** Any information gained by a tax officer or any employee or agent of a tax officer or of the tax collection committee as a result of any declarations, returns, investigations, hearings, or verifications shall be confidential tax information.

(b) **Prohibited Conduct.** It shall be unlawful, except for official purposes or as provided by law, for the Commonwealth, the Borough, tax collection committee member, tax officer or employee or agent of a tax officer, or tax collection committee to do any of the following:

(1) Divulge or make known confidential tax information.

(2) Permit confidential tax information or a book containing an abstract or particulars of the abstract to be seen or examined by any person.

(3) Print, publish or otherwise make known any confidential tax information.

(c) **Penalties.** A person who violates subsection (b) commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$2,500 or to imprisonment for not more than one year, or both. If the offender is a member of the tax collection committee, the member shall be removed from the tax collection committee. If the offender is an employee of a tax collection committee or the Borough, the employee shall be discharged from employment. The offender shall pay the costs of prosecution.

§ 80-514 Compensation of Tax Officer.

The tax officer shall receive such compensation for his services and expenses as determined by the tax collection committee. At the discretion

of the tax collection committee, the tax officer may be permitted to withhold the amount of the tax officer's compensation from income taxes collected if the monthly reports required by section 509(b) of the LTEA, 53 PA. STAT. ANN. § 6924.509(b), submitted by the tax officer include an accounting for all compensation withheld.

Article VI — Miscellaneous

§ 80-601 Applicability.

The tax imposed by this Chapter shall not apply to:

(a) any person as to whom it is beyond the legal power of the Borough to impose the tax herein provided under the Constitution of the United States and the Constitution and laws of the Commonwealth of Pennsylvania; or

(b) 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 tax officer under the provisions of Article IV of this Chapter.

§ 80-602 Severability.

The provisions of this Chapter are severable. If any sentence, clause, or section of this Chapter is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionally, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, or sections of this Chapter. It is hereby declared to be the intent of the Borough Council that this Chapter would have been adopted had such uncon-

stitutional, illegal, or invalid sentence, clause, or section not be included herein.

§ 80-603 Effective Date.

The provisions of this Chapter shall take effect on January 1, 2012 and shall apply to earned income received or earned and net profits earned or made by a taxpayer during calendar year 2012 and each year thereafter without annual reenactment unless the rate of tax is subsequently changed. Changes in the rate of tax shall become effective on the date specified in the ordinance.

§ 80-604 No Repeal of Prior Tax Ordinances for Prior Periods.

Nothing contained in this Chapter shall be considered to repeal by implication or otherwise the provisions of any earned income tax ordinances previously enacted or adopted (including Chapter 82 of the Codified Ordinances) as they may apply to the taxation of earned income and net profits of taxpayers for periods prior to the effective date of this Chapter; those ordinances shall remain in full force and effect with respect to such earned income and net profits.

§ 80-605 Conflict With Other Ordinances.

Subject to valid enactment of this Chapter by Ordinance No. 498 without appeal, all provisions of any prior ordinance or parts thereof inconsistent with this Chapter are hereby modified, amended, and repealed by the provisions of this Chapter, which shall thereafter govern the taxation of such earned income and net profits.

§ 80-606 Authority; Incorporation of LTEA Provisions.

This Chapter is enacted under the authority granted by the LTEA, and all provisions thereof that relate to a tax on earned income or net profits are incorporated into this Chapter. Any future amendments to the LTEA that are required to be applied to a tax on earned income or net

profits will automatically become part of this Chapter upon the effective date of such amendment, without the need for formal amendment of this Chapter, to the maximum extent allowed by 1 PA. CONS. STAT. § 1937.

SECTION 2. Section 82-103 of the Codified Ordinances (relating to Earned Income Tax—Title, Authority, Duration, and Definitions) is hereby amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 82-103 Duration.

This Chapter shall be effective on January 1, 1966, and shall continue in effect on a calendar or fiscal year basis without annual reenactment unless the rate of the tax is subsequently changed. Effective for earned income received or earned, and net profits earned or made, by a taxpayer on or after January 1, 2012, this Chapter has been superseded by Chapter 80 and shall be of no further force or effect.

SECTION 3. The title of Chapter 82 of the Codified Ordinances is hereby amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

Chapter 82 — Earned Income Tax (1966-2011)

DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Al-
burtis, this 30th day of November, 2011, in lawful session duly assembled.

**BOROUGH COUNCIL
BOROUGH OF ALBURTIS**

Steven R. Hill, President

Attest:

Sharon Trexler, Executive Secretary

AND NOW, this 30th day of November, 2011, the above Ordinance is hereby
APPROVED.

Robert W. Mader, Mayor