

NEW MILFORD BOROUGH

EARNED INCOME TAX ORDINANCE NO. 195

AN ORDINANCE OF THE NEW MILFORD BOROUGH, SUSQUEHANNA COUNTY, PENNSYLVANIA, LEVYING AND ASSESSING A TAX FOR GENERAL REVENUE PURPOSES ON EARNED INCOME OF THE RESIDENTS AND NON-RESIDENTS OF NEW MILFORD BOROUGH TO CONFORM WITH STATUTORY GUIDELINES BEGINNING JANUARY 1, 2013 AND ENDING DECEMBER 31, 2013, AND FOR EACH CALENDAR YEAR THEREAFTER, AND ON NET PROFITS EARNED FROM OPERATION OF A BUSINESS, PROFESSION OR OTHER ACTIVITIES DURING SAID PERIODS, 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 TAX AT THE SOURCE, PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF THE ORDINANCE, AND IMPOSING PENALTIES FOR THE VIOLATIONS THEREOF.

BE IT RESOLVED by the Borough Council of New Milford Borough, and it is hereby enacted pursuant to the authority granted by The Local Tax Enabling Act, the Act of December 31, 1965, P.L. 1257, as amended by Act 32 of 2008; 53 P.S. Section 6924.101 et. seq., hereinafter known as the "Act", as follows:

SECTION 1. This Ordinance shall be known as the "Earned Income Tax Ordinance". The provisions hereof shall become effective on the 1st day of January, 2013 A.D., and the tax shall continue in force on a calendar year or a taxpayer fiscal year basis, without annual reenactment, unless the rate of the tax is subsequently changed. Changes in rate become effective on the date specified in the Amending Ordinance.

SECTION 2. DEFINITIONS:

“Association” - A partnership, limited partnership, or any other unincorporated group of two or more persons.

“Business” - Any 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.

“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” – The New Milford Borough Council.

“Current Year” - The calendar year for which the tax is levied.

“Domicile” - The place where one lives and has his permanent home and to which he has the intention of returning whenever he is absent. Actual residence is not necessarily domicile, for domicile is the fixed place of abode which, in the intention of the taxpayer, is permanent rather than transitory. Domicile is the voluntarily fixed place of habitation of a person, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some event occurs to induce him to adopt some other permanent home. In the case of businesses, or associations, the domicile is that place considered as the center of business affairs and the place where its functions are discharged.

“Earned Income” - Compensation as determined under section 303 of the act of March 4, 1971 (P.L. 6, No. 2), known as the “Tax Reform Code of 1971,” and regulations in 61 Pa. Code Pt. I Subpt. B Art. V (relating to personal income tax), not including however, wages or compensation paid to individuals on active military service. Employee business expenses are allowable deductions as determined under Article III of the “Tax Reform Code of 1971.” The amount of any housing allowance provided to a member of the clergy shall not be taxable as

earned income.

“Income Tax Officer or Officer” - Person, public employee or private agency designated by governing body to collect and administer the tax on earned income and net profits.

“Employer” - A person, partnership, association, corporation, institution, governmental body or unit or agency, or any other entity employing one or more persons for a salary, wage, commission or other compensation.

“Net Profits” - 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 (P.L. 6, No. 2), known as the “Tax Reform Code of 1971,” and regulations in 61 Pa. Code Pt. I Subpt. B Art. V (relating to personal income tax). The term does not include income which is not paid for services provided and which is in the nature of earnings from an investment. For taxpayers engaged in the business, profession or activity of farming, the term shall not include:

- (1) any interest earnings generated from any monetary accounts 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 months or more for draft, breeding or dairy purposes; and
- (4) any gain on the sale of other capital assets of the farm.

“Non-resident” - A person, partnership, association or other entity domiciled outside the taxing district.

“Person or Individual” - A natural person.

“Preceding Year” - The calendar year before the current year.

“Resident” - A person, partnership, association or other entity domiciled in the taxing district.

“Succeeding Year” - The calendar year following the current year.

“Taxpayer” - A person, partnership, association, or any other entity, required hereunder to file a return of earned income or net profits, or to pay a tax thereon.

SECTION 3. IMPOSITION OF TAX:

A tax for general revenue purposes is hereby imposed in the amount of one (1%) percent of all earned income received and to net profits earned by residents and non-residents of New Milford Borough, beginning on the first day of January, of the succeeding year, and continuing for each taxable year thereafter.

Except as otherwise provided in Section 317 of the Local Tax Enabling Act, 53 P.S. Section 6294.317, as amended, allowing for crediting or deductions for duplication of taxes, in the event the School District in which the Borough is situate, shall impose, or continue to impose, an earned income tax under the authority of the Act on residents or businesses domiciled within that Borough during the same year or part of a year, then the tax herein imposed shall be subject to the sharing provision from the day such duplication becomes effective, if any, and only if required by law.

SECTION 4. DECLARATION AND PAYMENT OF TAX:

A. Net Profits.

(1) Every taxpayer making net profits shall, on or before April 15 of the current year, make and file with the officer, on a form prescribed or approved by the officer, a declaration of his estimated net profits during the period beginning January 1, and ending December 31, of the current year, and pay to the officer in four (4) equal quarterly installments the tax due thereon as follows: the first installment at the time of filing the declaration, and the other installments on or before June 15, of the current year, September 15 of the current year, and January 15 of the succeeding year, respectively.

(2) Any taxpayer who first anticipates any net profit after April 15 of the current year, shall make and file the declaration hereinabove required on or before June 15 of the current year, September 15 of the current year, or December 31 of the current year, whichever of these dates next follows the date on which the taxpayer first anticipates such net profit, and pay to the officer in equal installments the tax due thereon on or before the quarterly payment dates which remain after the filing of the declaration.

(3) Every taxpayer shall, on or before April 15, of the succeeding year, make and file with the officer on a form prescribed or approved by the officer a final return showing the amount of net profits earned during the period beginning January 1, of the current year, and ending December 31, of the current year, the total amount of tax due thereon and the total amount of tax paid thereon. At the time of filing the final return, the taxpayer shall pay to the officer the balance of the tax due or shall make demand for refund or credit in the case of overpayment.

Any taxpayer may, in lieu of paying the fourth quarterly installment of his estimated tax, elect to make and file with the officer on or before January 31, of the succeeding year, the final return as hereinabove required.

(4) The officer is hereby authorized to provide by regulation 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, anticipates additional net profits not previously declared or finds that he has overestimated his anticipated net profits.

(5) Every taxpayer who discontinues business prior to December 31, of the current year, shall, within thirty (30) days after the discontinuance of business, file his final return as hereinabove required and pay the tax due.

B. Earned Income.

(1) **Annual Earned Income Tax Return** - Every taxpayer shall, on or before April 15, of the succeeding year, make and file with the officer on a form prescribed or approved by the officer a final return showing the amount of earned income received during the period beginning January 1, of the current year, and ending December 31, of the current year, the total amount of tax due thereon, the amount of tax paid thereon, the amount of tax thereon that has been withheld pursuant to the provisions relating to the collection at source and the balance of tax due and the balance of tax due. At the time of filing the final return, the taxpayer shall pay the balance of the tax due or shall make demand for refund or credit in the case of overpayment.

(2) **Earned Income Not Subject to Withholding** - Every taxpayer who is employed for a salary, wage, commission, or other compensation and who received any earned income not subject to the provisions relating to collection at source, shall make and file with the officer on a form prescribed or approved by the officer, a quarterly return on or before April 30, of the current year, July 31, of the current year, October 31, of the current year, and January 31, of the succeeding year, setting forth the aggregate amount of earned income not subject to withholding by him during the three-month periods ending March 31, of the current year, June 30, of the current year, September 30, of the current year, and December 31, of the current year, respectively, and subject to the tax, together with such other information as the officer may require. Every taxpayer making such returns shall, at the time of filing thereof, pay to the officer the amount of tax shown as due thereon.

C. Death of Taxpayer.

In the event of the death of a taxpayer during a taxable period, his personal

representative shall file the decedent taxpayer's return on or before April 15, of the succeeding year, of the date of death and on or before such date shall pay any tax due from such deceased taxpayer under this Ordinance or demand refund in the case of overpayment.

D. Guardian of Taxpayer

In the event that a guardian of the estate of a taxpayer be appointed, such guardian shall be imputed with the same duties and responsibilities as the taxpayer regarding the reporting and paying of taxes under this Ordinance.

SECTION 5. COLLECTION AT SOURCE:

A. Every employer having an office, factory, workshop, branch, warehouse, or other place of business within New Milford Borough who employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, who has not previously registered, shall, within fifteen (15) days after becoming an employer, register with the officer, his name and address and such other information as the officer may require.

B. Every employer having an office, factory, workshop, branch, warehouse, or other place of business within New Milford Borough who employs one or more persons, other than domestic servants, for a salary, wage, commission, or other compensation, shall deduct at the time of payment thereof, the tax imposed by this Ordinance on the earned income due to his employee and employees, and shall, on or before April 30, of the current year, July 31, of the current year, October 31 of the current year, and January 31, of the succeeding year, file a return and pay to the officer the amount of taxes deducted during the preceding three-month periods ending March 31, of the current year, June 30, of the current year, September 30, of the current year, and December 31, of the current year, respectively. Such return unless otherwise agreed upon between the officer and the employer shall show the name and social security number of each such employee, the earned income of such employee during such preceding three-month

period, the tax deducted therefrom, the political subdivisions imposing the tax upon such employee, the complete address of each and every employee subject to withholding, the total earned income of all such employees during such preceding three-month period, and the total tax deducted therefrom and paid with the return.

Any employer who for two of the preceding four quarterly periods has failed to deduct the proper tax, or any part thereof, or has failed to pay over the proper amount of tax to New Milford Borough, may be required by the officer to file his return and pay the tax monthly. In such cases, payments of tax shall be made to the officer on or before the last day of the month succeeding the month for which the tax was withheld.

C. On or before February 28, of the succeeding year, every employer shall file with the officer:

(1) An annual return showing the total amount of earned income paid, the total amount of tax deducted, and the total amount of tax paid to the officer for the period beginning January 1, of the current year and ending December 31, of the current year.

(2) A return withholding statement for each employee employed during all or any part of the period beginning January 1, of the current year, and ending December 31, of the current year, setting forth the employee's name, address and social security number, the amount of earned income paid to the employee during said period, the amount of tax deducted, the political subdivisions imposing the tax upon such employee, and the amount of tax paid to the officer. Every employer shall furnish two (2) copies of the individual return to the employee for whom it is filed:

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

E. Except as otherwise provided in 53 P.S. §6924.312, 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.

F. The failure or omission of any employer to make the deductions required by this section shall not relieve any employee from the payment of tax or from complying with the requirements of the Ordinance relating to the filing of declarations and returns.

SECTION 6. POWERS AND DUTIES OF OFFICER:

A. It shall be the duty of the officer to collect and receive the taxes, fines and penalties imposed by this Ordinance. It shall also be his duty to keep a record showing the amount received by him from each person or business paying the tax and the date of such receipt.

B. Each officer, before entering upon his official duties shall give and acknowledge a bond to New Milford Borough. If New Milford Borough shall by Ordinance, designate any bond previously given by the officer as adequate, such bond shall be sufficient to satisfy the requirements of this subsection.

Each such 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 duly licensed by the Insurance Commissioner of this Commonwealth.

Each bond shall be conditioned upon the faithful discharge by the officer, his clerks, assistants, and appointees of all trusts confided in him by virtue of his office, upon the faithful execution of all duties required of him by virtue of his office, upon the just and faithful accounting or payment over, according to law, of all monies and all balances thereof paid to, received or held by him by virtue of his office and upon the delivery to his successor or successors in office of all books, papers, documents, or other official things held in right of his

office.

Each such bond shall be taken in the name of New Milford Borough, and shall be for the use of the Borough, and for the use of such other person or persons for whom money shall be collected or received, or as his or her interest shall otherwise appear, in case of a breach of any of the conditions thereof by the acts or neglect of the principal of the bond.

The Borough, or any person, may sue upon the said bond in its own or his own name for its or his own use.

Each such bond shall contain the name or names of the surety company or companies bound thereon. The Borough shall fix the amount of the bond at an amount equal to the maximum amount of taxes which may be in the possession of the officer at any given time.

The Borough may, at any time, upon cause shown and due notice to the officer, and his surety or sureties, require or allow the substitution or the addition of a surety company acceptable to the Borough for the purpose of making the bond sufficient in amount, without releasing the surety or sureties first approved from any accrued liability or previous action on such bond.

The Borough shall designate the custodian of the bond required to be given by the officer.

C. The officer charged with the administration and enforcement of the provisions of the Ordinance is hereby empowered to prescribe, adopt, promulgate, and enforce, rules and regulations relating to any matter pertaining to the administration and enforcement of this Ordinance, including provisions for the re-examination and correction of declarations and returns, and of payments alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred, and to make refunds in case of overpayment, for any period of time not to exceed three (3) years subsequent to the date of payment of the sum involved, and to prescribe forms necessary for the administration of the Ordinance. No rule or regulation of

any kind shall be enforceable unless it has been approved by Ordinance of the Council. A copy of such rules and regulations currently in force shall be available for public inspection.

D. The officer shall refund, on petition of, and proof by the taxpayer, earned income tax paid on the taxpayer's ordinary and necessary business expenses, to the extent that such expenses are not paid by the taxpayer's employer.

E. The officer and agent designated by him are hereby authorized to examine the books, papers, and records of any employer or of any taxpayer or of any person whom the officer reasonably believes to be an employer or taxpayer, in order to verify the accuracy of any declaration or return, or if no declaration or return was filed, to ascertain the tax due. Every employer and every taxpayer and every person whom the officer reasonably believes to be an employer or taxpayer, is hereby directed and required to give to the officer, or to any agent designated by him, the means, facilities and opportunities for such examination and investigation as hereby authorized. The officer shall have such power to subpoena books, records and papers of the employer or taxpayer as granted by the laws of the Commonwealth of Pennsylvania.

F. Any information gained by the officer, his agents, or by any other official or agent of the Borough as a result of any declarations, returns, investigations, hearings or verifications required or authorized by the Ordinance, shall be confidential, except for official purposes and except in accordance with a proper judicial order, or as otherwise provided by law.

G. The officer is authorized to establish different filing, reporting and payment dates for taxpayers whose fiscal years do not coincide with the calendar year.

H. The officer shall distribute earned income taxes to the Borough within sixty (60) days of the deadline for payment by an employer as set forth herein at Section 5(B).

SECTION 7. SUIT FOR COLLECTION OF TAX:

A. The officer may sue in the name of New Milford Borough for the recovery of

taxes due and unpaid under this Ordinance.

B. Any suit brought to recover the tax imposed by this Ordinance shall be begun within three (3) years after such tax is due, or within three (3) years after the declaration or return has been filed, whichever date is later: Provided, however, That this limitation shall not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:

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

(2) Where an examination of the declaration or return filed by any person, or of other evidence relating to such declaration or return in the possession of the officer, reveals a fraudulent evasion of taxes, there shall be no limitation.

(3) In the case of substantial understatement of tax liability of twenty-five (25%) percent 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 Ordinance, and has failed to pay the amounts so deducted to the officer, or where any person has willfully failed or omitted to make the deductions required by this Ordinance, there shall be no limitation.

(5) This section shall not be construed to limit the Council from recovering delinquent taxes by any other means provided by the Act.

C. The 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 8. INTEREST AND PENALTIES:

If for any reason the tax is not paid when due, interest at the rate of six (6%) percent per annum on the amount of said tax, and an additional penalty of one-half of one percent (0.5%) of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid, shall be added and collected. Where suit is brought for the recovery of any such tax, the person liable therefor shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

SECTION 9. FINES AND PENALTIES FOR VIOLATION OF ORDINANCE:

A. Any person who fails, neglects, or refuses to make any declaration or return required by this Ordinance, any employer who fails, neglects or refuses to register or to pay the tax deducted from his employees, or fails, neglects or refuses to deduct or withhold the tax from his employees, any person who refuses to permit the officer or any agent designated by him to examine his books, records, and papers, and any person who knowingly makes any 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 Ordinance, shall, upon conviction thereof before any justice of the peace, alderman or magistrate, or court of competent jurisdiction in Susquehanna County, be sentenced to pay a fine of not more than Five Hundred and No/100 (\$500.00) Dollars for each offense, and costs, and in default of payment of said fine and costs to be imprisoned for a period not exceeding thirty (30) days.

B. Any person who divulges any information which is confidential under the provisions of the Ordinance, shall, upon conviction thereof before any justice of the peace, alderman or magistrate, or court of competent jurisdiction, be sentenced to pay a fine of not more

than Five Hundred and No/100 (\$500.00) Dollars for each offense, and costs, and in default of payment of said fines and costs to be imprisoned for a period not exceeding thirty (30) days.

C. The penalties imposed under this section shall be in addition to any other penalty imposed by any other section of the Ordinance.

D. The failure of any person to receive or procure forms required for making the declaration or returns required by the Ordinance shall not excuse him from making such declaration or return.

SECTION 10. 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 the other remaining provisions, sentences, clauses or sections of this Ordinance. It is hereby declared to be the intent of the Council that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause or section not been included herein.

SECTION 11. AUTHORITY:

This Ordinance is adopted pursuant to the authority conferred by the Act of December 31, 1965, P.L. 1257; 53 P.S. Section 6924.101, et. seq., as amended by Act 32 of 2008 and by 53 P.S. Section 6913, as amended.

SECTION 12. RECONCILIATION OF RE-ENACTED AND AMENDED ORDINANCE WITH PRIOR ORDINANCES.

It is hereby declared to be the intent of the Council that this Ordinance replace in its entirety all prior Ordinances adopted by, motions approved, or other actions taken by, the New

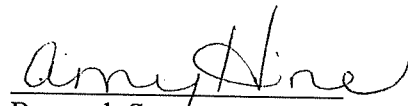
Milford Borough Council levying an earned income tax, and/or in any manner affecting the specific terms or provisions of said earned income tax as levied, the provisions of which shall remain in full force and effect for each year thereafter, without annual reenactment unless the rate of tax is subsequently changed.

SECTION 13. EFFECT ON OTHER ORDINANCES.

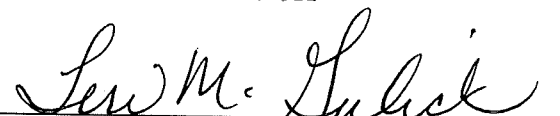
Any Ordinance or part of any Ordinance conflicting with the provisions of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

ADOPTED as an Ordinance of the New Milford Borough Council, Susquehanna County, Pennsylvania, this 15th day of **November 2012**.

ATTEST:


Borough Secretary

NEW MILFORD BOROUGH

By: 
Teri Gulick, Council President

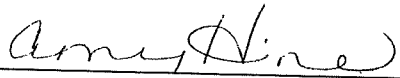
Read and approved to me this 15th day of **November, 2012**.

By: 
Joseph Taylor, Mayor

CERTIFICATE

I, the undersigned, Secretary of the Borough of New Milford, Susquehanna County, Pennsylvania (the "Borough"), certify that the foregoing is a true and correct copy of an Ordinance of the Council of the Borough which was duly adopted by affirmative vote of a majority of the members of the Council at a meeting duly held on November 15, 2012; and that said Ordinance remains in effect, unaltered and unamended, as of the date of this Certificate.

IN WITNESS WHEREOF, I set my hand and affix the official seal of the Borough, this 15th day of November, 2012.


Secretary

(SEAL)