

ORDINANCE NO. 2021-02

AN ORDINANCE OF THE ABBOTTSTOWN BOROUGH, ADAMS COUNTY, PENNSYLVANIA, AMENDING ORDINANCE NO. 1969-A ADOPTING THE FOLLOWING LEGISLATION TO LEVY AND IMPOSE A TAX FOR GENERAL REVENUE PURPOSES ON EARNED INCOME AND NET PROFITS OF THE RESIDENTS AS WELL AS CERTAIN NON-RESIDENTS OF THE BOROUGH OF ABBOTTSTOWN; REQUIRING THE FILING OF INDIVIDUAL TAX RETURNS; REQUIRING EMPLOYERS TO REGISTER, WITHHOLD AND REMIT TAXES AND FILE TAX RETURNS, PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS ORDINANCE, INCLUDING COLLECTION OF AND PROSECUTION OF DELINQUENT ACCOUNTS; AND IMPOSING PENALTIES FOR VIOLATIONS OF SUCH ORDINANCE.

BE IT ENACTED AND ORDAINED by the Council of the Abbottstown Borough, Adams County, Pennsylvania, and it is hereby enacted and ordained by the authority of the same as follows:

WHEREAS, the Council of Abbottstown Borough is authorized to enact ordinances to levy a tax for general revenue purposes on earned income and net profits of residents of Abbottstown Borough and certain non-residents, to require the filing of tax returns, to provide for the administration and collection of such taxes, and to impose penalties for violations of such ordinances pursuant to the Local Tax Enabling Act, 53 P.S. §6924.101 et seq. (hereinafter the “Act”) and other applicable law.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Council of Abbottstown Borough, Adams County, Pennsylvania, by virtue of the power and authority vested in the same, as follows:

§ 190-18. Statutory authority.

This article is enacted under the authority of the Local Tax Enabling Act, 53 P.S. § 6924.101 et seq.

§ 190-19. Title.

This article shall be known and may be cited as the “Abbottstown Earned Income and Net Profits Tax Ordinance.”

§ 190-20. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ASSOCIATION — A partnership, limited partnership or any other unincorporated group of two or more persons.

BUSINESS — 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.

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.

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 voluntary 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 Part I, Subpart B, Article 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.

EARNED INCOME AND NET PROFITS TAX OFFICER or OFFICER — That person, public employee, private agency or other entity designated by the Borough Council to collect and administer the tax on earned income and net profits. The elected (or appointed) Real Property Tax Collector shall be and shall serve as the Earned Income and Net Profits Tax Officer of the Borough of Abbottstown.

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 Part I, Subpart B, Article 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:

- A. Any interest earnings generated from any monetary accounts or investment instruments of the farming business;
- B. Any gain on the sale of farm machinery;
- C. Any gain on the sale of livestock held 12 months or more for draft, breeding or dairy purposes; and
- D. Any gain on the sale of other capital assets of the farm.

NONRESIDENT — A person, partnership, association or other entity domiciled outside the Borough of Abbottstown.

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 Borough of Abbottstown.

SUCCEEDING YEAR — The calendar year following the current year.

TAXPAYER — 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.

§ 190-21. Imposition of tax.

The following taxes are hereby imposed, for general municipal purposes, under the authority of Act No. 511 of 1965, the Local Tax Enabling Act:

- A. One percent of all earned income earned during the current year by residents.
- B. One percent of all earned income earned during the current year by nonresidents for work done or services rendered in the Borough of Abbottstown.
- C. One percent of all net profits earned during the current year by businesses, professions and other activities conducted by residents.
- D. One percent of the net profits earned during the current year by businesses, professions and other activities conducted in the Borough of Abbottstown by nonresidents.

§ 190-22. Exemption.

Persons whose total income from all sources is less than \$12,000 per annum are hereby exempted from this tax.

§ 190-23. 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 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 tax due or shall make demand for refund or credit in the case of overpayment.

(4) 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.

(5) 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.

(6) Every taxpayer who discontinues business prior to December 31 of the current year shall, within 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. 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 earned 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 return shall at the time of filing thereof pay to the Officer the amount of tax shown as due thereon.

§ 190-24. Collection at source.

A. Every employer having an office, factory, workshop, branch, warehouse or other place of business within the Borough of Abbottstown 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 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 the Borough of Abbottstown 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 article on the earned income due to his employee or 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 period 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 employer shall show the name and social security number of each such employee, the earned income of such employee during said preceding three-month period, the tax deducted therefrom, the political subdivisions imposing the tax upon such employee, 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.

C. 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 Borough of Abbottstown, 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.

D. 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 copies of the individual return to the employee for whom it is filed.

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

F. Except as otherwise provided in Section 9 of Act 511 of 1965, 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.

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

§ 190-25. Powers and duties of Earned Income and Net Profits Tax Officer.

A. It shall be the duty of the Officer to collect and receive the taxes, fines and penalties imposed by this article. 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. The Officer, before entering upon his official duties, shall give and acknowledge a bond to the Borough of Abbottstown in such amount and with such surety as designated from time to time by the Borough Council.

C. The Officer is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this article, including provisions for the reexamination 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 six years subsequent to the date of payment of the sum involved, and to prescribe forms necessary for the administration of this article. No rule or regulation of any kind shall be enforceable unless it has been approved by resolution of the Borough 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 taxpayer's employer.

E. The Officer and agents 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 opportunity for such examination and investigations, as are hereby authorized.

F. Any information gained by the Officer, his agents or by any other official or agent of the Borough of Abbottstown, as a result of any declarations, returns, investigations, hearings or verifications required or authorized by this article 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 appropriate political subdivisions within 60 days of the deadline for payment by an employer as set forth in § 190-24B. The political subdivisions shall not be required to request the Officer to distribute the funds collected but shall at least annually reconcile their receipts with the records of the Officer and return to or credit the Officer with any overpayment. A political subdivision shall not be required to pay a fee or commission to the other political subdivision or its tax officer for tax revenue distributed under this subsection. If the Officer, within one year after receiving a tax payment, cannot identify the taxing jurisdiction entitled to a tax payment, he shall make payment to the municipality in

which the tax was collected. If earned income taxes are not distributed to the appropriate political subdivision within one year of receipt, the political subdivision may make a written demand on a tax officer or political subdivision for tax revenues collected and attributable to residents of the political subdivision making the demand. If the taxes attributable to residents of the political subdivision making the demand are not paid within 30 days from the date of the demand, the political subdivision, person, public employee or private agency designated by the political subdivision may enter into an arbitration agreement with the officer under 42 Pa.C.S.A. Ch. 73, Subch. A (relating to statutory arbitration), or bring an action in an appropriate court of common pleas in the name of the taxing district for the recovery of taxes not distributed in accordance with this subsection. The action must be brought within seven years of the collection of the taxes.

§ 190-26. Compensation of Officer.

The Officer shall receive such compensation for his services and expenses as determined by the Borough Council.

§ 190-27. Suit for collection of tax.

A. The Officer may sue in the name of the Borough of Abbottstown for the recovery of taxes due and unpaid under this article.

B. Any suit brought to recover the tax imposed by this article shall be begun within three years after such tax is due, or within three 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 this article 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 25% or more and no fraud, suit shall be begun within six years.

(4) Where any person has deducted taxes under the provision of this article 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 § 190-24, there shall be no limitation.

C. This section shall not be construed to limit the Borough Council from recovering delinquent taxes by any other means provided by law.

D. The Officer may sue for recovery of an erroneous refund provided such suit is begun two years after making such refund, except that the suit may be brought within five years if it appears that any part of the refund was induced by fraud or misrepresentation of material fact.

§ 190-28. Interest and penalties.

A. If for any reason the tax is not paid when due, interest at the rate of 6% per annum on the amount of said tax and an additional penalty of 1/2 of 1% of the amount of the said 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.

B. Notwithstanding the provisions of Subsection A, the governing body may, by ordinance or resolution, establish a one-time period during which interest or interest and penalties that would otherwise be imposed for the nonreporting or underreporting of earned income tax liabilities or for the nonpayment of earned income taxes previously imposed and due shall be waived in total or in part if the taxpayer voluntarily files delinquent returns and pays the taxes in full during the period so established. The governing body may adopt regulations to implement the provisions of this subsection.

C. The provisions of § 190-28B shall not affect or terminate any petitions, investigations, prosecutions or other proceedings pending under the provisions of this article or prevent the commencement or further prosecution of any proceedings by the proper authorities for violations of this article. No proceedings shall, however, be commenced on the basis of delinquent returns filed pursuant to § 190-28B if the returns are determined to be substantially true and correct and the taxes are paid in full within the prescribed time.

§ 190-29. Violations and penalties.

A. Any person who fails, neglects or refuses to make any declaration or return required by this article, 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 and 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 article shall, upon conviction thereof before any Magisterial District Judge or court of competent jurisdiction, be sentenced to pay a fine of not more than \$500 for each offense and costs and, in default of payment of said fine and costs, to be imprisoned for a period not exceeding 30 days.

B. Any person who divulges any information which is confidential under the provisions of this article shall, upon conviction thereof before any Magisterial District Judge or court of competent jurisdiction, be sentenced to pay a fine of not more than \$500 for each offense and costs and, in default of payment of said fines and costs, to be imprisoned for a period not exceeding 30 days.

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

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

§ 190-30. Applicability.

This article shall not apply to any person or property as to whom or which it is beyond the legal power of the Borough of Abbottstown to impose the tax or duties herein provided for.

§ 190-31 Repealer.

All other Ordinances, including Ordinance No. 1969-A, or parts of laws in conflict herewith are hereby repealed to the extent of the conflict.

§ 190-32 Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Abbottstown Borough hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of that fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

§ 190-33 Savings.

Nothing in this legislation hereby adopted shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

§ 190-34 Codification.

This Ordinance shall become a part of code of the Abbottstown Borough, Adams County, Pennsylvania upon enactment.

§ 190-35 Effective Date.

This Ordinance shall take effect and be in full force and effect in accordance with Section 3301.3 (b) of the Borough Code.

ENACTED AND ORDAINED this ____ day of _____ 2021.

ATTEST:

**BOROUGH COUNCIL OF THE
ABBOTTSTOWN BOROUGH**

Secretary

By: _____
Dennis Posey, Council President

APPROVED this ____ day of _____ 2021.

Daniel Watkins, Mayor