

ALBURTIS CODIFIED ORDINANCES

Chapter 82

Earned Income Tax (1966-2011)

Chapter 82 — Earned Income Tax (1966-2011)

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Article I — Title, Authority, Duration, and Definitions

§ 82-101 Short Title.

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

[Ord. 415 10-29-2003]

§ 82-102 Authority.

This Chapter is enacted under the authority granted by the Local Tax Enabling Act, 53 PA. STAT. ANN. § 6901 *et seq.*

[Ord. 415 10-29-2003]

§ 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received or earned, and net profits earned or made, by a taxpayer on or after January 1, 2012, this Chapter has been superseded by Chapter 80 and shall be of no further force or effect.

[Ords. 415 10-29-2003, 498 11-30-2011]

§ 82-104 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. However, if any of the definitions contained in part I of 53 PA. STAT. ANN. § 6913 are changed, or new definitions are added, corresponding changes and additions shall be deemed to have been made to this Chapter.

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

[Ords. 415 10-29-2003, 419 01-28-2004]

§ 82-105 Association.

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

[Ord. 419 01-28-2004]

§ 82-106 Business.

The term “business” shall mean an enterprise, activity, profession, or any other undertaking of an unincorporated nature conducted for profit or ordinarily conducted for profit whether by a person, partnership, association, or any other entity.

[Ord. 419 01-28-2004]

§ 82-107 Corporation.

The term “corporation” shall mean a corporation or joint stock association organized under the laws of the United States, the Commonwealth of Pennsylvania, or any other state, territory, foreign country, or dependency.

[Ord. 419 01-28-2004]

§ 82-108 Current Year.

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

[Ord. 419 01-28-2004]

§ 82-109 Domicile.

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

[Ord. 419 01-28-2004]

§ 82-110 Earned Income.

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

(b) **Individuals on Active Military Service.** Notwithstanding subsection (a), the term “earned income” shall not include wages or compensation paid to individuals on active military service.

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

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

(e) **Effective Date.** The definition of “earned income” under this section as added by Ordinance 419 and amended by Ordinance 423 shall apply to taxable years beginning after December 31, 2002.

[Ords. 419 01-28-2004, 423 06-30-2004]

§ 82-111 Income Tax Officer or Officer.

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

[Ord. 419 01-28-2004]

§ 82-112 Employer.

The term “employer” shall mean a person, partnership, association, corporation, institution, governmental body or unit or agency, or any other entity employing one or more persons for a salary, wage, commission, or other compensation.

[Ord. 419 01-28-2004]

§ 82-113 Net Profits.

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

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

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

(c) **Effective Date.** The definition of “net profits” under this section as added by Ordinance 419 shall apply to taxable years beginning after December 31, 2002.

[Ords. 419 01-28-2004, 423 06-30-2004]

§ 82-114 Nonresident.

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

[Ord. 419 01-28-2004]

§ 82-115 Person or Individual.

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

[Ord. 419 01-28-2004]

§ 82-116 Preceding Year.

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

[Ord. 419 01-28-2004]

§ 82-117 Resident.

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

[Ord. 419 01-28-2004]

§ 82-118 Succeeding Year.

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

[Ord. 419 01-28-2004]

§ 82-119 Taxpayer.

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

[Ord. 419 01-28-2004]

Article II — Imposition of Tax

§ 82-201 In General.

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

(a) Earned income received on and after January 1 of the current year by individual residents of the Borough.

(b) Earned income received on and after January 1 of the current year by individual non-residents of the Borough in the Borough.

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

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

[Ords. 415 10-29-2003, 419 01-28-2004]

§ 82-202 Items Taxed.

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

[Ords. 415 10-29-2003, 419 01-28-2004]

§ 82-203 Corporations Exempt.

Every corporation which is subject to the Pennsylvania Corporate Net Income Tax or exempt from the Pennsylvania Corporate Net Income Tax, and every foreign corporation which is subject to the Pennsylvania Franchise Tax or exempt from the Pennsylvania Franchise Tax, shall be exempt from the tax imposed by this Chapter.

[Ord. 415 10-29-2003]

§ 82-204 Other Exemptions.

The tax imposed by this Article shall not apply:

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

(b) To the net profits of any institution or organization operated for public, religious, educational, or charitable purposes; to an institution or organization not organized or operated for private profit; or to a trust or a foundation established for any of said purposes.

[Ord. 415 10-29-2003]

§ 82-205 Exemption Not Apply To Employer Obligation To Collect Taxes From Employees.

The provisions of §§ 82-203 and 82-204 shall not be construed to exempt any person who is an employer from the duty of collecting the tax at source from his employees and paying the amount collected to the Borough of Albury under the provisions of § 82-305.

[Ord. 415 10-29-2003]

§ 82-206 Tax Period for Each Year.

The tax levied by this Chapter shall be applicable to salaries, wages, commissions, and other compensation, and to net profits, earned in the period beginning January 1 and ending December 31 of the current year.

[Ord. 415 10-29-2003]

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

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

(b) **Out-of-State Income Taxes.** Payment by a resident of any tax on income to the extent such income includes earned income and/or net profits, to any State other than Pennsylvania or to any political subdivision located outside the boundaries of this Commonwealth, shall be credited to and allowed as a deduction from the tax liability of the resident under § 82-201(a) and (c), *provided* that no such credit or deduction shall be allowed to the extent of the amount of credit or deduction taken for the same period by the taxpayer against any income tax imposed by the Commonwealth under section 314 of the Tax Reform Code of 1971, 72 PA. STAT. ANN. § 7314, on account of taxes imposed on income by other states or their political subdivisions.

[Ord. 419 01-28-2004]

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

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

[Ord. 419 01-28-2004]

Article III — Declaration, Payment, and Withholding of Tax

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

(a) **In General.** Every person, hereinafter called “taxpayer,” who reasonably expects that he will earn any taxable net profits during the period between January 1 and December 31 of the current year, shall, on or before April 15 of the current year, make and file with the Income Tax Officer, on a form prescribed by the Income Tax Officer, a declaration of his estimated net profits for the period beginning January 1 and ending December 31 of the current year, setting forth the estimated amount of net profits reasonably expected by him for the said period and subject to the tax, the amount of estimated tax imposed by this Chapter on such estimated net profits, and such other relevant information as the Income Tax Officer may require. The taxpayer making the declaration shall, at the time of filing thereof, pay to the Borough of Alburty one-fourth (1/4) of the estimated tax shown as due thereon, and such taxpayer shall thereafter pay one-fourth (1/4) of the estimated tax in each of three (3) installments, as follows: one (1) installment on or before June 15, one (1) installment on or before September 15 of the current year, and the last installment on or before January 15 of the succeeding year.

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

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

(d) **Final Quarterly Installment.** Any taxpayer required to make payments of estimated tax under this Section may elect, in lieu of paying the estimated tax installment due on January 15 of the succeeding year, to make and file with the Income Tax Officer the final return for the current year, and pay the balance due thereon, on or before January 31 of the succeeding year.

§ 82-302 Final Return and Payment of Tax on Net Profits.

(a) **In General.** On or before April 15 of the succeeding year, every taxpayer who has earned taxable net profits for the current year shall make and file with the Income Tax Officer, on a form prescribed by the Income Tax Officer, a final return showing all of such net profits for the period beginning January 1 and ending December 31 of the current year, the total amount of tax due, the amount of estimated tax paid under § 82-301, and the balance due. When the return is made for a fiscal year different from the calendar year, the return shall be made within one hundred five (105) days from the end of the said fiscal year. The percentage of the total net profits of any calendar year of a taxpayer beginning or ending within the period beginning January 1 and ending December 31 of the current year to which the tax imposed by this Chapter shall be applicable shall be equal to the same percentage of such total net profits as the number of days in any such year within such period bears to the total number of days in any such year. At the time of filing the final return, the taxpayer shall pay the balance of the tax due or shall make demand for refund or credit in the case of overpayment.

(b) **Discontinuance of Business.** 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, pay the tax due or demand refund or credit in the case of overpayment.

[Ord. 415 10-29-2003]

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

(a) **Quarterly Return.** Every taxpayer who is employed for a salary, wage, commission, or other compensation and who receives any taxable earned income not subject to the provisions of § 82-305 (relating to the collection at source by employers) or similar withholding provisions of the income tax ordinances or resolutions of other taxing districts for which the taxpayer is entitled to credit for the tax under this Chapter by 53 PA. STAT. ANN. § 6914, shall make and file with the Income Tax Officer, on a form prescribed by the Income Tax Officer, a quarterly return on or before April 30 of the current year, July 31 of the current year, October 31 of the current year, and January 31 of the succeeding year, setting forth the aggregate amount of earned income not subject to withholding by him during the three-month periods ending March 31 of the current year, June 30 of the current year, September 30 of the current year, and December 31 of the current year, respectively, and subject to the tax under this Chapter, together with such other relevant information as the Income Tax Officer may require.

(b) **Payment.** Every taxpayer making a return under subsection (a) shall pay the amount of tax shown as due on the return to the Income Tax Officer at the time of filing the return.

[Ords. 415 10-29-2003, 419 01-28-2004]

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

On or before April 15 of the succeeding year, every taxpayer who has received taxable earned income for the current year shall make and file with the Income Tax Officer, on a form

prescribed by the Income Tax Officer, a final return showing the amount of earned income received during the period beginning January 1 and ending December 31 of the current year, the total amount of tax due thereon, the amount of tax thereon paid under the provisions of § 82-303 (relating to quarterly returns), if any, and the amount, if any, of tax thereon that has been withheld pursuant to the provisions of § 82-305 (relating to collection at source by employers) or similar withholding provisions of the income tax ordinances or resolutions of other taxing districts for which the taxpayer is entitled to credit for the tax under this Chapter by 53 PA. STAT. ANN. § 6914, and the balance of tax due. At the time of filing the final return, the taxpayer shall pay the balance of the tax due or shall make demand for refund or credit in the case of overpayment.

[Ords. 415 10-29-2003, 419 01-28-2004]

§ 82-305 Collection at Source By Employers.

(a) **In General.** Every person within the Borough who employs one (1) or more persons for a salary, wage, commission, or other compensation, other than domestic servants, shall deduct at the time of the payment thereof the tax imposed by this Chapter on the salaries, wages, commissions, and other compensation due to his employee or employees, and shall, on or before April 30, July 31, and October 31 of the current year, and January 31 of the succeeding year, respectively, make and file with the Income Tax Officer, on a form prescribed by the Income Tax Officer, a return setting forth the taxes so deducted, and pay to the Borough of Alburtis the amount of taxes deducted for the preceding quarter ending March 31, June 30, September 30, and December 31 of the current year, respectively. Such return, unless otherwise agreed upon between the Income Tax Officer and the employer, shall show the name and social security number of each such employee, the earned income of such employee during such preceding calendar quarter, the tax deducted therefrom, the political subdivisions imposing the tax upon such employee, the total earned income of all such employees during such preceding calendar quarter, and the total tax deducted therefrom and paid with the return.

(b) **Monthly Payments.** Any employer who for two of the preceding four quarterly periods has failed to deduct the proper tax, or any part thereof, or has failed to pay over the proper amount of tax to the taxing authority, may be required by the Income Tax Officer to file his return and pay the tax monthly. In such cases, payments of tax shall be made to the Income Tax Officer on or before the last day of the month succeeding the month for which the tax was withheld.

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

(d) **Employees Retain Responsibility For Tax.** 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 Chapter relating to the filing of declarations and returns.

(e) **Liability of Employer for Failure to Withhold Tax.** Every employer who willfully or negligently fails or omits to make the deductions required by this Section shall be liable for payment of the taxes which he was required to withhold to the extent that such taxes have not been recovered from the employee, unless the employer is excused from compliance under 53 PA. STAT. ANN. § 6909 (relating to state register of earned income taxes).

[Ords. 415 10-29-2003, 419 01-28-2004]

§ 82-306 Annual Returns By Employers.

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

(1) **Total Return.** An annual return showing the total amount of earned income paid, the total amount of tax deducted, and the total amount paid to the Income Tax Officer in respect of the earned income received by his employee or employees during the period beginning January 1 and ending December 31 of the current year.

(2) **Return for Each Employee.** A return withholding statement for each person who was an employee during all or any part of the period beginning January 1 and ending December 31 of the current year, 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, the amount of tax paid to the Income Tax Officer, and such relevant information as the Income Tax Officer may require. Every employer shall furnish two copies of the individual return to the employee for whom it was filed.

(b) **Discontinuance of Business.** 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 hereinabove required and pay the tax due.

[Ords. 415 10-29-2003, 419 01-28-2004]

§ 82-307 Failure to Receive or Procure Forms.

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

[Ord. 415 10-29-2003]

Article IV — Administration

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

(a) **Receiver of Taxes.** The Income Tax Officer is hereby designated receiver of the taxes imposed by this Chapter. He shall be bonded, in such principal amount as Council shall designate, by a good and reliable bonding company at all times for all money coming into his hands for Borough purposes under this Chapter in accordance with the requirements of 53 PA. STAT. ANN. § 6913, part V(b), the costs of which bond shall be paid by the Borough. It shall be the duty of the Income Tax Officer to collect and receive the taxes, fines, and penalties imposed by this Chapter. It shall also be his duty to keep a record showing the amount received by him from each person paying the tax and, if paid by such person in respect to another person, the name of such other person and the date of such receipt.

(b) **Administration, Enforcement, Regulations.** The Income Tax Officer is hereby charged with the administration and enforcement of the provisions of this Chapter, and is hereby empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this Chapter, subject to approval of Council, 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 for the reasonable extension of time, upon proper cause shown, for filing declarations or returns, and to prescribe forms necessary for the administration of this Chapter.

(c) **Examinations and Investigations.** The Income Tax Officer and agents designated in writing by him are hereby authorized to examine the books, papers, and records of any person in order to verify the accuracy of any declaration or return or, if no declaration or return was filed, to ascertain the tax due. Every person is hereby directed and required to give to the Income Tax Officer or to any agent so designated by him the opportunity for such examinations and investigations as are hereby authorized.

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

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

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

§ 82-402 Joint Agreements With Other Political Subdivisions.

Council is hereby authorized, if it deems it advisable, to enter into a joint agreement with any other political subdivision or subdivisions for the employment of the same person or agency to collect any taxes imposed under this Chapter and imposed by such subdivision under authority of the Local Tax Enabling Act, 53 PA. STAT. ANN. § 6901 *et seq.*

[Ord. 415 10-29-2003]

§ 82-403 Suit for Collection of Tax.

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

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

(1) Where no declaration or return was filed by any person, although a declaration or return was required to be filed by him under the provisions of this Chapter, 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 Income Tax Officer, reveals a fraudulent evasion of taxes, there shall be no limitation.

(3) In the case of substantial understatement of tax liability of twenty-five percent (25%) or more and no fraud, suit shall be begun within six (6) years.

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

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

(c) **Erroneous Refund.** The Income Tax Officer may sue for recovery of an erroneous refund provided such suit is begun two (2) years after making such refund, except that the suit may be brought within five (5) years if it appears that any part of the refund was induced by fraud or misrepresentation of material fact.

[Ords. 415 10-29-2003, 419 01-28-2004]

§ 82-404 Payment Under Protest; Refunds.

The Income Tax Officer is hereby authorized to accept payment of the amount of tax claimed by the Borough in any case where any person disputes the validity or amount of the Borough's claim for the tax. If it is thereafter judicially determined by a court of competent jurisdiction that there has been an overpayment to the Income Tax Officer, the amount of the overpayment shall be refunded to the person who paid.

[Ord. 415 10-29-2003]

§ 82-405 Collection by Distress and Sale.

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

[Ord. 419 01-28-2004]

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

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

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

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

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

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

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

[Ord. 419 01-28-2004]

Article V — Violations, Interest, and Penalties

§ 82-501 Penalties Are Cumulative.

The penalties imposed under this Article shall be cumulative, and shall be in addition to any other penalty imposed by any other provision of this Chapter.

[Ord. 415 10-29-2003]

§ 82-502 Interest, Civil Penalties, and Collection Costs.

If for any reason the tax is not paid when due, interest at the rate of six percent (6.00%) per annum on the amount of said tax, and an additional penalty of one-half of one percent (0.50%) 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 imposed under this Chapter.

[Ord. 415 10-29-2003]

§ 82-503 Criminal Penalties—In General.

Any person who fails, neglects, or refuses to make any declaration or return required by this Chapter; any employer who fails, neglects, or refuses to pay the tax deducted from his employees, or fails, neglects, or refuses to deduct or withhold the tax from his employees; any person who refuses to permit the Income Tax Officer or any agent properly designated by him to examine his books, records, and papers; and any person who knowingly makes any incomplete, false, or fraudulent return, or attempts to do anything whatsoever to avoid the full disclosure of the amount of his net profits or earned income in order to avoid the payment of the whole or any part of the tax imposed by this Chapter, shall, upon conviction thereof before a District Justice or court of competent jurisdiction in Lehigh County, be sentenced to pay a fine of not more than Five Hundred Dollars (\$500.00) for each offense and costs, and, in default of payment of said fine and costs, to be imprisoned in the Lehigh County Jail for a period not exceeding thirty (30) days.

[Ords. 415 10-29-2003, 419 01-28-2004]

§ 82-504 Breach of Confidentiality.

Any person who, except as permitted by the provisions of § 82-401(d), divulges any information which is confidential under the provisions of § 82-401(d), shall, upon conviction thereof before a District Justice, be sentenced to pay a fine of not more than Five Hundred Dollars (\$500.00) for each offense and costs, and, in default of payment of said fine and costs, to be imprisoned in the Lehigh County Jail for a period not exceeding thirty (30) days.

[Ord. 415 10-29-2003]

Appendix

¶ 82-A Disposition of Ordinance 121.

Ordinance 121 was the last Earned Income Tax Ordinance enacted under the authority of the 1947 “Tax-Anything” Act, which required annual ordinances. Ordinance 121 was enacted for calendar year 1966. Ordinance 127 re-enacted the provisions of Ordinance 121 under the authority of the Local Tax Enabling Act for calendar year 1967 and succeeding years.

<u>Ordinance 121</u>	<u>1981 Code</u>	<u>2003 Codified Ordinances</u>
§ I	§ 117-38	§ 82-104
§ II (1 st paragraph, including its subparagraphs (a) through (d))	§ 117-39(A)	§ 82-201
§ II (2 nd paragraph)	§ 117-39(B)	§ 82-202
§ II (3 rd paragraph)	§ 117-39(C)	§ 82-203
§ II (4 th paragraph)	§ 117-39(D)	§ 82-206
§ III(a)(1)	§ 117-40(A)(1)	§ 82-301(a)
§ III(a)(2)	§ 117-40(A)(2)	§ 82-301(b)
§ III(a)(3)	§ 117-40(A)(3)	§ 82-301(c)
§ III(a)(4)	§ 117-40(A)(4)	§ 82-302(a)
§ III(a)(5)	§ 117-40(A)(5)	§ 82-302(b)
§ III(b)(1)	§ 117-40(B)(1)	§ 82-303(a)
§ III(b)(2)	§ 117-40(B)(2)	§ 82-303(b)
§ III(b)(3)	§ 117-40(B)(3)	§ 82-303(c)
§ III(b)(4)	§ 117-40(B)(4)	§ 82-304
§ IV(a) (1 st paragraph)	§ 117-41(A) (except last sentence)	§ 82-305(a)
§ IV(a) (2 nd paragraph)	§ 117-41(A) (last sentence)	§ 82-305(b)
§ IV(b)	§ 117-41(B)	§ 82-306(a)
§ IV(c)	§ 117-41(C)	§ 82-306(b)
§ IV(d)	§ 117-41(D)	§ 82-305(d)
§ IV(e)	§ 117-41(E)	§ 82-305(c)
§ V	§ 117-42	§ 82-401
§ VI	§ 117-43	§ 82-402
§ VII	§ 117-44	§ 82-403
§ VIII	§ 117-45	§ 82-502
§ IX	§ 117-46	§ 82-404
§ X (except last paragraph)	§ 117-47(A)	§ 82-204
§ X (last paragraph)	§ 117-47(B)	§ 82-205
§ XI(a)	§ 117-48(A)	§ 82-503
§ XI(b)	§ 117-48(B)	§ 82-504
§ XI(c)	§ 117-48(C)	§ 82-501
§ XI(d)	§ 117-48(D)	§ 82-307
§ XII (severability)		
§ XIII (repealer)		
§ XIV	§ 117-49	§ 82-103

¶ 82-B Disposition of 1981 Code, Chapter 117, Article IV.

<u>1981 Code</u>	<u>2003 Codified Ordinances</u>
§ 117-38	§ 82-104
§ 117-39(A)	§ 82-201
§ 117-39(B)	§ 82-202
§ 117-39(C)	§ 82-203
§ 117-39(D)	§ 82-206
§ 117-40(A)(1)	§ 82-301(a)
§ 117-40(A)(2)	§ 82-301(b)

<u>1981 Code</u>	<u>2003 Codified Ordinances</u>
§ 117-40(A)(3)	§ 82-301(c)
§ 117-40(A)(4)	§ 82-302(a)
§ 117-40(A)(5)	§ 82-302(b)
§ 117-40(B)(1)	§ 82-303(a)
§ 117-40(B)(2)	§ 82-303(b)
§ 117-40(B)(3)	§ 82-303(c)
§ 117-40(B)(4)	§ 82-304
§ 117-41(A) (except last sentence)	§ 82-305(a)
§ 117-41(A) (last sentence)	§ 82-305(b)
§ 117-41(B)	§ 82-306(a)
§ 117-41(C)	§ 82-306(b)
§ 117-41(D)	§ 82-305(d)
§ 117-41(E)	§ 82-305(c)
§ 117-42	§ 82-401
§ 117-43	§ 82-402
§ 117-44	§ 82-403
§ 117-45	§ 82-502
§ 117-46	§ 82-404
§ 117-47(A)	§ 82-204
§ 117-47(B)	§ 82-205
§ 117-48(A)	§ 82-503
§ 117-48(B)	§ 82-504
§ 117-48(C)	§ 82-501
§ 117-48(D)	§ 82-307
§ 117-49	§ 82-103

¶ 82-C Source Ordinances.

The following ordinances are the source of the text in this Chapter 82. This list does not include the annual ordinances prior to Ordinance 121 listed in ¶ 82-D, or the ordinances listed in ¶ 82-E which merely confirm the tax for a particular year.

Ordinance 121	03-07-1966
Ordinance 127	12-19-1966
Ordinance 215	11-11-1981
Ordinance 415	10-29-2003
Ordinance 419	01-28-2004
Ordinance 423	06-30-2004
Ordinance 498	11-30-2011

¶ 82-D Annual Ordinances Under The 1947 “Tax-Anything” Act.

1958	Ordinance 73	02-28-1958
1959	Ordinance 78	12-22-1958
1963	Ordinance 100	12-03-1962
1964	Ordinance 106	03-02-1964
1965	Ordinance 111	03-01-1965
1966	Ordinance 121	03-07-1966

¶ 82-E Annual Ordinances Confirming Tax.

1990	Ordinance 278	12-27-1989
1991	Ordinance 284	12-26-1990
1992	Ordinance 288	12-30-1991
1993	Ordinance 296	12-30-1992
1994	Ordinance 305	12-29-1993
1995	Ordinance 314	12-28-1994
1996	Ordinance 323	12-27-1995
1997	Ordinance 345	12-30-1996
1998	Ordinance 355	12-29-1997
1999	Ordinance 362	12-30-1998
2000	Ordinance 378	12-29-1999
2001	Ordinance 384	12-27-2000
2002	Ordinance 393	12-26-2001
2003	Ordinance 402	12-23-2002
2004	Ordinance 418	12-29-2003
2005	Ordinance 431	12-29-2004
2006	Ordinance 442	12-28-2005
2007	Ordinance 452	12-27-2006
2008	Ordinance 468	12-26-2007

2009	Ordinance 475	12-29-2008
2010	Ordinance 486	12-30-2009
2011	Ordinance 492	12-29-2010