

**BOROUGH OF PLUM  
ORDINANCE NO. 555-95**

**AN ORDINANCE AMENDING ORDINANCE NO 459 IMPOSING TAX FOR GENERAL REVENUE PURPOSES ON EARNED INCOME AND NET PROFITS OF RESIDENTS OF THE BOROUGH OF PLUM, ALLEGHENY COUNTY, PENNSYLVANIA, FOR WORK DONE, OR SERVICES PERFORMED OR RENDERED, REQUIRING THE FILING OF DECLARATIONS AND RETURNS AND THE GIVING OF INFORMATION BY EMPLOYEES AND OTHERS SUBJECT TO THE TAX, IMPOSING ON EMPLOYERS THE DUTY OF COLLECTING THE TAX AT THE SOURCE, PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF THE ORDINANCE AND IMPOSING PENALTIES FOR VIOLATION THEREOF.**

The Council of the Borough of Plum, Allegheny County, Pennsylvania, pursuant to the provision of the Local Tax Enabling Act, Act. No. 511 of 1965, and amendments, does hereby ENACT AND ORDAIN as follows:

**SECTION 1. DEFINITIONS**

"Association". A partnership, limited partnership, or any other unincorporated group of two (2) 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 persons, partnerships, associations 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". Salaries, wages, commissions, bonuses, incentive payments, fees, tips, inactive military pay, and other compensation received by a person or his personal representative for services rendered, whether directly or through an agent, and whether in cash or in property; not including, however, wages or compensation paid to persons on active military service, periodic payments for sickness, disability other than regular wages received during a period of sickness, disability or retirement or payments arising under workmen's compensation acts, occupational disease acts and similar legislation, or payments commonly recognized as old age benefits, retirement pay or pensions paid to persons retired from service after reaching a specific age or after a stated period of employment or payments commonly known as public assistance or unemployment compensation payments made by any governmental agency, or payments to reimburse expenses or payments made by employers or labor unions for wage and salary supplemental programs, including, but not limited to, programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, Social Security and retirement.

"Income Tax Officer or Officers". 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, after provisions for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with the accounting system used in such business, profession, or other activity, but without deduction of taxes based on income.

"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 2. IMPOSITION OF TAX

A tax at the rate of one percent (1%) on each Dollar is hereby imposed on all earned income and net profits, as defined herein, earned by residents of the Borough of Plum. The tax became effective January 1, 1967 and shall remain in effect thereafter on a calendar year basis without annual reenactment unless the rate of tax is subsequently changed.

## SECTION 3. DECLARATION AND PAYMENT OF TAX

### A. Net Profits

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

2. On or before April 15th of the succeeding year, every taxpayer shall make and file a final return on a form prescribed by the officer showing the amount of net profits earned, the total amount of tax due 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. An incomplete or improperly completed tax return shall be considered as not having been filed. Each final return shall be substantiated and supported by such United States Federal Tax return forms as required by the officer, which shall at least include a copy of the Federal W-2 Form in the case of an earned income taxable, Schedule "C" of the State Return as to a net profits (loss) taxable, K-1 of the State Return as to net profits (loss) taxable, and RK-1S of the State Return.

### B. Earned Income

Every taxpayer shall, on or before April 15th of the succeeding year, make and file with the officer, a final return showing the amount of earned income received during the period beginning January 1st of the current year, and ending December 31st 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. An incomplete or improperly completed tax return shall be considered as not having been filed. Income Tax return

forms as required by the officer, which shall include a copy of the Federal W-2 Form in the case of an earned income taxable, Schedule "C" of the state return as to a net profits taxable, and K-1 of the State Return as to a net profit taxable.

C. 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 15th of the current year, July 15th of the current year, October 15th of the current year, and January 15th of the succeeding year, setting forth the aggregate amount of earned income not subject to withholding by him/her during the three (3) month periods ending March 31st of the current year, June 30th of the current year, September 30th of the current year, and December 31st 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.

SECTION 4. COLLECTION AT SOURCE

A. Every employer having an officer, factory, workshop, branch, warehouse or other place of business within the 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 the Council of the Borough of Plum on the earned income due to his employee or employees and shall, on or before April 30th of the current year, July 31st of the current year, October 31st of the current year, and January 31st of the succeeding year, file a return and pay to the officer the amount of taxes deducted during the preceding three (3) month periods ending March 31st of the current year, June 30th of the current year, September 30th of the current year, and December 31st of the current year, respectively. Such returns, 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 such preceding three (3) month period, the tax deducted therefrom, the political subdivision imposing the tax upon such employee and the political subdivision in which the employee resides, the total earned income of all such employees during such preceding three (3) month period, and the total tax deducted therefrom and paid with the return.

B. Any employer, who for two of the preceding four (4) 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 office 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 April 30th 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 1st of the current year, and ending December 31st of the current year.

2. A return showing withholding statement for each employee employed during all or part of the period beginning January 1st of the current year, and ending December 31st of the current year setting forth the employee's name, address, Social Security number, the amount of earned income paid for 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 31st 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, 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/she 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 the tax or from complying with the requirements of this Ordinance relating to the filing of declarations and returns.

#### SECTION 5. POWERS AND DUTIES OF OFFICER

A. It shall be the duty of the officer to collect and receive the taxes, fines, interest and penalties imposed by this Ordinance. It shall also be his duty to keep a record showing the amount received by him/her 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 the Borough of Plum. If the Council shall by Resolution 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 by him 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 the appointing authority or authorities, and shall be for the use of the political subdivision or political subdivisions appointing the officer, and for the use of such other person or persons for whom money shall otherwise appear, in case of a breach of any of the conditions thereof by the acts or neglect of the principle on the bond.

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 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 three (3) years subsequent to the date of payment of the sum involved, and to prescribe forms necessary for the administration of this Ordinance. No rule or regulation of any kind shall be enforceable unless it has been approved by the Council of the Borough of Plum. 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 agents designated by him/her 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/her, 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 taxing district, as a result of any declarations, returns, investigations, hearings or verifications required or authorized by this 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, at least quarterly, distribute Earned Income Taxes to the Borough and School District.

#### SECTION 6. SUIT FOR COLLECTION OF TAX

A. The officer may sue in the name of the Borough for recovery of taxes due and unpaid under this Ordinance.

B. Any suit brought to recover the tax imposed by this Ordinance shall begin 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 this 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 begin 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 section, there shall be no limitation.

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

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 7. 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 (1/2%) percent 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 therefore shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

## SECTION 8. 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 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 the County, be sentenced to pay a fine or not more than Five Hundred (\$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. Each violation shall constitute a separate offense, punishable by a like fine or imprisonment for each day of continued violation.

B. Any person who divulges any information which is confidential under the provisions of this 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 (\$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 this Ordinance.

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

## SECTION 9. SEVERABILITY

The provisions of this Ordinance are severable. If any sentence, clause or section of this Ordinance is, for any reason, declared to be unconstitutional, illegal or invalid, said unconstitutionality, illegality and invalidity shall not impair any of the remaining provisions or sections of this Ordinance. It is hereby declared to be the intent of the Council Members that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentences, clauses, or sections had not been included herein.

## SECTION 10. REPEALER

All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency. Should any part of this Ordinance be held unconstitutional, illegal or unenforceable by any court of competent jurisdiction,

such invalidity shall not affect, impair, nullify or otherwise prevent the enforcement of the remainder of this Ordinance. It is hereby declared that such parts as are legal would have been erected independently of the invalid portion had the invalidity of such part been known, and it is the intention of the Municipality that such remainder shall be and remain in full force and effect.

ENACTED AND ORDAINED this 11th day of December, 1995.

ATTEST:

BOROUGH OF PLUM

  
Borough Secretary

BY   
President of Council

EXAMINED AND APPROVED, this 11th day of December,  
1995.

BY   
Mayor

APPROVED AS TO FORM:

  
Solicitor