

TO: Franklin Township, Erie County, Pennsylvania

AN ORDINANCE

Imposing a tax for general revenue purposes on occupations engaged in by individuals for the privilege of engaging in said occupations within the corporate limits of Franklin Township at a flat rate of Ten (\$10.00) Dollars per year commencing with 1978 to be paid by each individual exercising such privilege; defining the term "occupation"; providing for the collection of said tax; imposing on employers the duty of collecting said tax from every individual in their employ subject to said tax and remitting and paying over the same to the Franklin Township Tax Collector; conferring and imposing power and duties of administration of said tax on the Franklin Township Tax Collector; and imposing penalties for the violation thereof.

BE IT ORDAINED, RESOLVED, AND ENACTED BY THE FRANKLIN TOWNSHIP SUPERVISORS UNDER THE AUTHORITY VESTED IN IT BY THE ACT OF DECEMBER 31, 1965, P.L. 1257, 53 P.S. 6901-6924, OF THE ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA KNOWN AND CITED AS "THE LOCAL TAX ENABLING ACT."

Section 1. This ordinance shall be known and cited as "The Franklin Township Occupational Privilege Tax Ordinance."

Section 2. Definitions.

The following words and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context or language clearly indicates or requires a different meaning.

(a) "Individual" shall mean any person, male or female, engaged in any occupation, trade, profession, business or undertaking of any type, kind or character, including services, within the corporate limits of Franklin Township.

(b) "Occupation" shall mean any trade, profession, or undertaking of any type, kind or character, including services, domestic or other, carried on or performed within the corporate limits of Franklin Township for which compensation is charged or received whether by means of salary, wages, commissions, or fees for services rendered.

(c) "Employer" shall mean any individual, partnership, association, corporation, governmental body, agency or other entity employing one or more persons on a salary, wage, commission or other compensation basis, including a self-employed person.

(d) "Tax" shall mean the Occupational Privilege Tax in the amount of Ten (\$10.00) Dollars levied on this ordinance.

(e) "Tax Collector" shall mean the Tax Collector of Franklin Township and/or such other person or persons who may be assigned part or all of the responsibilities imposed on the Tax Collector hereunder; which assignment shall be made by resolution of the governing body.

(f) "Fiscal Year" shall mean the twelve (12) month period beginning January 1, 1978 and ending December 31, 1978, and each such twelve (12) month period thereafter.

(g) "Franklin Township" shall mean the area within the corporate limits of Franklin Township.

(h) "He" or "His" or "Him" shall mean and indicate the singular and plural number as well as male, female, and neuter gender.

### Section 3. Levy and Amount of Tax.

For general revenue purposes, a tax is hereby levied upon the privilege of engaging in an occupation within the corporate limits of Franklin Township during the fiscal year. Each natural person who exercises such privilege for any length of time during the year shall pay a tax in the amount of Ten (\$10.00) Dollars, in accordance with the provisions of this ordinance. This tax is in addition to all the taxes of any nature heretofore levied by Franklin Township.

Provided, however, that any individual earning less than \$3,200 annually shall be exempt from the imposition of said tax.

### Section 4. Duty of Employers.

Each employer with Franklin Township as well as those employers situated outside Franklin Township, but who engage in business within Franklin Township, is hereby charged with the duty of collecting from each of his employees engaged by him and performing for him within Franklin Township, the said tax of Ten (\$10.00) Dollars per annum and making a return and payment thereof to the Tax Collector. Further, each employer is hereby authorized to deduct his tax from each employee in his employ, whether said employee is paid by salary, wages or commission and whether or not part or all such services are performed within Franklin Township.

### Section 5. Returns.

Each employer shall prepare and file a return showing a computation of the Tax on forms to be supplied to him by Franklin Township. Each employer in filing this return and making payment of the tax withheld from his employees shall be entitled to retain a commission calculated at the rate of two per centum (2%) of the gross tax due and payable, provided, that such a tax is collected and paid over by the employer on or before the dates hereinafter set forth. It is further provided that if the employer fails to file said return and pay said tax whether or not he makes collection thereof from the salary, wages or commissions paid by him to said employee, the employer shall be responsible for the payment of the tax in

full without deducting a commission and as though the tax had originally been levied against him.

Section 6. Dates for Determining Tax Liability and Payment.

Each employer shall use his employment records from the 1st day of July, 1978 to the 30th day of September 1978, for determining the number of employees from whom said tax shall be deducted and paid over to the Tax Collector on or before October 30, 1978.

For 1979 and subsequent years, unless this tax is amended or repealed, each employer shall use his employment records from the 1st day of January to the 31st day of March for determining the number of employees from whom said tax shall be deducted and paid over to the Treasurer on or before April 30.

Section 7. Self-employed Individuals.

Each self-employed individual who performs services of any type or kind, or is engaged in any occupation, trade, profession, business or undertaking of any type, kind or character within Franklin Township, shall be required to comply with this ordinance and pay the tax to the Tax Collector on August 31, 1978 or as soon thereafter as he engages in an occupation. For 1979 and subsequent years, the tax will be due on or before April 30.

Section 8. Individuals Engaged in More Than One Occupation.

(a) Each individual who shall have more than one occupation within Franklin Township shall be subject to the payment of this tax on his principal occupation and his principal employer shall deduct this tax and deliver to him evidence of the deduction on a form to be furnished to the employer by Franklin Township, which form shall be evidence of deduction having been made, and when presented to any other employer, shall be authority for such employer to NOT DEDUCT this tax from the employee's wages, but to include such employee on his return by setting forth his name, address and the name and account number of the employer who deducted this tax.

(b) In the event a person is engaged in more than one occupation, or an occupation which requires his working in more than one political subdivision during the calendar year, the priority of claim to collect such occupational privilege tax shall be in the following order: First, the political subdivision in which a person maintains his principal office or is principally employed; second, the political subdivision in which the person is employed and which imposes the tax nearest in miles to the person's home. The place of employment shall be determined as of the day the taxpayer first becomes subject to the tax during the calendar year. It is the intent of this provision that no person shall pay more than Ten (\$10.00) Dollars in any calendar year as an occupational privilege tax, irrespective of the number of political subdivisions within which such person may be employed within any given calendar year. In case of dispute, a tax receipt of the taxing authority for that calendar year declaring that the taxpayer has made prior payment shall constitute prima facie certification of payment to all other political subdivisions.

Section 9. Employers and Self-Employed Individuals,  
Residing Beyond the Corporate Limits of  
Franklin Township.

All the employers and self-employed persons residing or having their places of business outside Franklin Township, but who perform services of any type or kind, or engage in any occupation, trade, profession, business or undertaking or any type, kind or character, within Franklin Township do by virtue thereof agree to be bound by and subject themselves to the provisions, penalties and regulations promulgated under this ordinance with the same force and effect as though they were residents of Franklin Township. Further, any individual engaged in an occupation within Franklin Township, and an employee of a non-resident employer may, for the purpose of this ordinance, be considered a self-employed person, and in the event this tax is not paid, Franklin Township shall have the option of proceeding against either the employer or employee, or both, for the collection of this tax as hereinafter provided.

Section 10. Administration of Tax.

(a) It shall be the duty of the Tax Collector to accept and receive payments of this tax and to keep a record thereof showing the amount received by him from each employer or self-employed person together with the date the tax was received.

(b) The Tax Collector is further charged with the administration and enforcement of this ordinance and is hereby charged and empowered to prescribe, adopt, and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this ordinance including provisions for the examination of the payroll records of any employer subject to this ordinance; the examination and correction of any return made in compliance with this ordinance and any payment alleged or found to be incorrect, or as to which overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the Tax Collector shall have the right to appeal to the Court of Common Pleas of Erie County as in other cases provided.

(c) The Tax Collector is hereby authorized to examine the books and payroll records of any employer in order to verify the accuracy of any return made by an employer, or if no return was made, to ascertain the tax due. Each employer is hereby directed and required to give the Tax Collector the means, facilities and opportunity for such examination.

Section 11. Suits for Collection.

(a) In the event that any tax under this ordinance remains due or unpaid thirty (30) days after the due dates above set forth, the Tax Collector may sue for the recovery of any such tax due or unpaid under this ordinance together with interest and penalty, as provided by law.

(b) If for any reason the tax is not paid when due, interest at the rate of six (6%) per cent per annum on the amount of said tax shall be calculated beginning with the due date of said tax and a penalty of five (5%) per cent shall be added to the flat rate of said tax for non-payment thereof.

Where suit is brought for the recovery of this tax, the individual liable therefor shall, in addition, be responsible and liable for the costs of collection, including reasonable attorney fees of not less than \$25.00.

#### Section 12. Fine and Penalty.

Whoever makes any false or untrue statement on any return required by this ordinance, or who refuses inspection on his books, records or accounts in his custody and control setting forth the number of employees subject to this tax who are in this employment, or whosoever fails or refuses to file any return required by this ordinance, or who shall fail to pay the tax due, shall, upon summary conviction before any District Justice in the County of Erie, be sentenced to pay a fine not to exceed the sum of Three Hundred (\$300.00) Dollars for any one offense, recoverable with costs, or imprisonment not exceeding ninety (90) days, if the amount of said fine and costs shall not be paid. It is further provided that the action to enforce the fine and penalty therein provided may be instituted against any person in charge of the business of any employer who has failed or refuses to file a return required by this ordinance.

#### Section 13. Validity.

The provisions of this ordinance are severable and if any of its provisions shall be held invalid or unconstitutional, the decision of the Court shall not affect or invalidate any of the remaining provisions. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such illegal, invalid or unconstitutional provision had not been included herein.

#### Section 14. Savings Clause.

(a) Nothing contained in this ordinance shall be construed to empower Franklin Township to levy and collect the tax hereby imposed on any occupation not within the taxing power of Franklin Township under the Constitution of the United States and the laws of the Commonwealth of Pennsylvania.

(b) If the tax hereby imposed under the provisions of this ordinance shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United States or of the laws of the Commonwealth of Pennsylvania as to any individual, the decision of the Court shall not affect or impair the right to impose or collect said tax, or the validity of the tax so imposed on other persons or individuals provided.

(c) If any court of competent jurisdiction shall hold that the tax hereby imposed under the provisions of this ordinance cannot be collected in the full amount of \$10.00 for the year 1978, the decision of said Court shall not affect or invalidate the remaining provisions of this ordinance and it is hereby declared to be the legislative intent that this ordinance would have been adopted on a pro-rata basis for 1978 from the effective date thereof.

Section 15. Effective Date.

This ordinance shall become effective for the year 1978 thirty (30) days after passage by the Franklin Township Supervisors, and shall continue thereafter in full force and effect, without annual reenactment unless amended or repealed.

ENACTED AND ORDAINED THIS 24 DAY OF May, 1978.

Robert P. Beck  
Supervisor

April Rey  
Supervisor

Henry N. Horn  
Supervisor

ATTEST:

Doranne L. Horn  
Secretary