

ORDINANCE NO. 1968-1

LEVYING AND ASSESSING A TAX FOR GENERAL REVENUE PURPOSES ON INDIVIDUALS FOR THE PRIVILEGE OF ENGAGING IN AN OCCUPATION WITHIN THE CORPORATE LIMITS OF THE BOROUGH OF LILLY AT THE FLAT RATE OF FIVE (\$5.00) DOLLARS FOR EACH CALENDAR YEAR; PROVIDING FOR ITS COLLECTION; 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 BOROUGH TAX COLLECTOR; CONFERRING AND IMPOSING POWERS AND DUTIES OF ADMINISTRATION; AND IMPOSING PENALTIES FOR THE VIOLATION THEREOF.

BE IT ORDAINED AND ENACTED by the Council of the Borough of Lilly, under the authority of the "Local Tax Enabling Act" of 1965, Act No. 511, being adopted December 31, 1965, as amended as follows:

SECTION 1. 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 or profession of any nature, type or kind whatsoever within the corporate limits of the Borough of Lilly, Cambria County, Pennsylvania, from which said individual derives one thousand dollars (\$1,000) or more in income per year.

b. Occupation shall mean any trade, profession, business or undertaking of any type, kind or character, including services, domestic or other, carried on or performed within the corporate limits of the Borough of Lilly, for which compensation is charged or received whether by means of salary, wages, commissions or if the individual is self-employed by payment for services rendered. Occupation shall include one or more employments and also self-employment.

c. "Employer" shall mean an individual, partnership, limited partnership, association, corporation, institution, governmental body, or unit or 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 Occupation Privilege Tax in the flat annual amount of Five (\$5.00) Dollars levied by this Ordinance on each individual

engaged in an occupation within the corporate limits of Lilly Borough.

e. "Tax Collector" shall mean the person designated by the Council of the Borough of Lilly to collect the occupational privilege tax.

f. "Council" shall mean the Council of the Borough of Lilly, under whose direction this tax shall be enforced.

g. "Borough of Lilly" shall mean the area within the corporate limits of the Borough of Lilly, Cambria County, Pennsylvania.

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

SECTION 2. LEVY OF TAX. The Borough of Lilly hereby levies and assesses on each individual engaged in an occupation within its corporate limits an annual occupational privilege tax beginning from the effective date of this Ordinance in the calendar year 1968, and continuing for each calendar year thereafter. This tax is in addition to all other taxes of any kind or nature heretofore levied by the Borough of Lilly.

SECTION 3. AMOUNT OF TAX. Beginning with the effective date of the Ordinance in the calendar year 1968, each individual engaged in an occupation or occupations within the corporate limits of the Borough of Lilly shall be required to pay an Occupational Privilege Tax at the flat rate of Five (\$5.00) Dollars per annum, said tax to be paid by the individual so engaged.

SECTION 4. WHEN PAYABLE. The occupational privilege tax shall be due and payable on the first day of March of each year, beginning with March 1, 1968; provided that in the event any individual engages in an occupation for the first time within the Borough on or after the first day of March of any year, then such tax shall become due and payable one (1) month after such individual first engages in such occupation within the Borough.

SECTION 5. DUTY OF EMPLOYERS. Each Employer within the Borough of Lilly, as well as each employer situated outside the Borough of Lilly but who engages in business within the Borough of Lilly, is hereby charged with the duty of collecting from each of his employees engaged by him and performing for him within the Borough of Lilly the said tax of Five (\$5.00) Dollars per

annum, and making a return and payment thereof to the Tax Collector. Further, each employer is hereby authorized to deduct this 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 the Borough of Lilly.

SECTION 6. RETURNS. Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied by the Tax Collector for the Borough. 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 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 7. DATES FOR DETERMINING TAX LIABILITY AND PAYMENT. Each employer shall use his employment records for the month of February for the year 1968 and for the months of January and February of each succeeding year in determining the names and number of employees from whom said tax shall be deducted and paid over to the Tax Collector; and said tax shall be deducted and paid over to the Tax Collector on or before April 30th of each year. Each employer who engages the services of any individual in an occupation to be performed in the Borough on or after the first day of March of each year shall require said employee to furnish him with a certificate of payment from the Tax Collector showing that the occupational privilege tax has theretofore been paid, or that an occupational privilege tax has been paid to another political subdivision which has a priority of claim under the Local Tax Enabling Act of 1965, as amended. In the event such employee has not previously paid his or her occupational privilege tax in the Borough, or to another political

subdivision with priority of claim, the employer shall deduct the same and pay over the said tax to the Tax Collector in supplemental reports to be filed before the 31st day of July (for new employees hired from March 1 to May 31); the 31st day of October (for new employees hired from June 1 to August 31); and the 31st day of January for the following year (for new employees hired from September 1 to December 31).

SECTION 8. INDIVIDUALS ENGAGED IN MORE THAN ONE OCCUPATION. Each individual who shall have more than one occupation within the Borough of Lilly 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 said deduction on a form to be furnished to the employer by the Tax Collector, 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 employees' 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.

SECTION 9. SELF-EMPLOYED INDIVIDUALS. Each self-employed individual who performs services of any type or kind, or engages in any occupation within the Borough of Lilly, shall be compelled to comply with this ordinance, and pay the tax to the Tax Collector on the first day of March of each year (which shall be the due date), or in the event such self-employment begins on or after the first day of March of any calendar year, then the due date shall be one month after such self-employed person first engages in an occupation within the Borough. In addition, any self-employed individual who is an employer of employees within the Borough shall deduct and pay over the occupational privilege tax for such employees, as heretofore set forth.

SECTION 10. LIABILITY FOR TAX IMPOSED ON EMPLOYEES. In the event the employer fails to withhold and make the return of the tax due and owing on his employee, or in the event the tax is not paid by the employer then the Tax Collector shall have the option of proceeding against either the employer or the employee for the collection of this tax.

SECTION 11. REFUNDS.

(a) In the event a person is engaged in an occupation which requires his working in more than one political subdivision during the calendar year, and he has paid the occupational privilege tax, or it has been withheld from him, he may apply for a refund of the tax from the Tax Collector and furnish proof of payment of an occupational privilege tax to another political subdivision which has priority of claim for such tax under the Local Tax Enabling Act of 1965, Act No. 511, as amended.

(b) The Tax Collector shall receive each application for refund and make his recommendation to the Councilmen thereupon as soon as possible thereafter. In the event the applicant is entitled to a refund, the Councilmen shall by resolution direct the refund to be made by the Treasurer of the Council of the Borough.

SECTION 12. EMPLOYERS AND SELF-EMPLOYED INDIVIDUALS RESIDING BEYOND THE CORPORATE LIMITS OF THE BOROUGH OF LILLY. All employers and self-employed individuals residing or having their place of business outside of the Borough of Lilly, but who perform services of any type or kind, or engage in any occupation or profession within the Borough of Lilly 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 the Borough of Lilly. Further, any individual engaged in an occupation within the Borough of Lilly 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 the Borough shall have the option of proceeding against either the employer or employee for the collection of this tax as hereinafter provided.

SECTION 13. ADMINISTRATION.

(a) The Council shall designate a person who shall be the Tax Collector to collect the occupational privilege taxes. It shall be the duty of the Tax Collector to collect and receive the taxes, fines and penalties imposed by this ordinance. It shall also be his duty to keep a record showing

the amount received by him from each employer or self-employed person paying the tax, together with the date of such receipt.

(b) The Tax Collector shall have all the powers and duties pertaining to the collection of delinquent occupational privilege taxes set forth in the Local Tax Enabling Act of 1965, as amended.

(c) The Tax Collector is hereby charged with the administration and enforcement of the provisions of this ordinance, 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 ordinance, including provisions for the examining of the payroll records of any employer subject to this ordinance; and further, for the examination and correction of any returns made in compliance with this ordinance as to any payment alleged or found to be incorrect, or as to which overpayment is claimed or found to have occurred.

(d) 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 to the Tax Collector the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

(e) The Tax Collector shall make reports to the Borough Council monthly of all funds received by him, and with each report shall make a return of the funds in his accounts.

(f) The Tax Collector shall provide a bond for the faithful performance of his duties in an amount to be fixed by the Borough Council.

(g) For his services in collecting the occupational privilege tax, the Tax Collector shall be entitled to a commission of five (5%) per cent on all taxes, penalties and interest collected by him; and shall be reimbursed for any reasonable expenses, including costs for printing, postage and furnishing bond.

SECTION 14. INTEREST, PENALTY AND COLLECTION.

(a) In the event any tax under this ordinance remains due and unpaid four (4) months after the due dates above set forth, the Tax Collector may sue for the recovery of any such tax due and unpaid under this ordinance, together with penalty, interests and costs, as may be appropriate.

(b) If there are delinquent occupational privilege taxes owed by any individual employed by any employer, or by the Commonwealth, the Tax Collector may present a written notice and demand under oath or affirmation to such employer and proceed to collect the said delinquent occupational privilege taxes in the manner provided for by the Local Tax Enabling Act of 1965, Act No. 511, as amended. Taxes which are not paid within four (4) months after the due dates above set forth shall be considered as delinquent occupational privilege taxes.

SECTION 15. FINES AND PENALTIES. Whoever makes any false or untrue statement on any return required by this ordinance or who refuses inspection of his books, records or accounts in his custody and control setting forth the number of employees subject to this tax who are in his employment, or whoever fails or refuses to file any return required by this ordinance shall, upon conviction, before any Justice of the Peace or Magistrate, be sentenced to pay a fine of not more than One Hundred (\$100.00) Dollars for each offense, and in default of payment of said fine be imprisoned in the Borough of Cambria County Jail for a period not exceeding thirty (30) days for each offense. It is further provided that the action to enforce the fine and penalty herein 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 16. SEVERABILITY. 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 provisions had not been included herein.

SECTION 17. SAVING CLAUSE.

(a) Nothing contained in this ordinance shall be construed to empower the Borough of Lilly to levy and collect the tax hereby imposed on any occupation not within the taxing power of the Borough 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 as herein provided.

SECTION 18. EFFECTIVE DATE. The tax levied under this ordinance shall go into effect thirty days from the time of adoption of the within ordinance.

SECTION 19. REPEALER. All ordinances or parts of ordinances conflicting with the provisions of this Ordinance be and the same are hereby repealed.

ORDAINED AND ENACTED at a regular meeting held on the 26th day of January, 1968.

Clair A. McLaughlin
President of Council

Joseph P. McCabe
Secretary

APPROVED this 26th day of January, 1968.

Michael A. Krumenaker
Mayor