

**UPPER DARBY TOWNSHIP
DELAWARE COUNTY,
PENNSYLVANIA**

ORDINANCE 3169

AN ORDINANCE OF UPPER DARBY TOWNSHIP, IMPOSING A TAX FOR GENERAL REVENUE PURPOSES ON EARNED INCOME OF RESIDENTS OF UPPER DARBY TOWNSHIP, DELAWARE COUNTY, PENNSYLVANIA AND ON EARNED INCOME BY NON-RESIDENTS OF UPPER DARBY TOWNSHIP, DELAWARE COUNTY, PENNSYLVANIA, FOR WORK ON, OR SERVICES PERFORMED OR RENDERED IN SAID TOWNSHIP, REQUIRING THE FILING OF DECLARATIONS AND RETURNS, AND THE GIVING OF INFORMATION BY EMPLOYERS 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; PROVIDING FOR A SEVERABILITY CLAUSE; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Upper Darby Township (“Township”) is a Home Rule municipality organized and operating in accordance with the Charter of Upper Darby Township (“Charter”) as permitted by the Home Rule Charter and Optional Plans Law, 53 Pa. C.S. § 2901 *et seq.* (“Home Rule Law”); and

WHEREAS, Section 2962(b) of the Home Rule Law, 53 Pa C.S. § 2962(b), provides, in relevant part, “[a] municipality which has adopted a home rule charter shall have the power and authority to enact and enforce local tax ordinances upon any subject of taxation granted by statute to the class of municipality of which it would be a member but for the adoption of a home rule charter at any rate of taxation determined by the governing body.”; and

WHEREAS, Section 2962(h) of the Home Rule Law, 53 Pa C.S. § 2962(h), further provides that, “This section does not limit or take away any right of a municipality which adopts a home rule charter from levying any tax which it had the power to levy had it not adopted a home rule charter.”; and

WHEREAS, the Township is authorized by the Act of General Assembly of the Commonwealth of Pennsylvania of December 31, 1965, No. 511, 53 P.S. § 6924.101-6924.901, as amended, known as “The Local Tax Enabling Act” (hereafter “Act 511”), to adopt and implement an Earned Income Tax; and

WHEREAS, Township Council desires to levy an Earned Income Tax on income earned by Township residents and by nonresidents of the Township who work in the Township and are not subject to a similar tax in their home municipalities, to be used for general Township purposes; and

WHEREAS, Township Council finds that by levying an Earned Income Tax the Township will not interfere with or reduce revenues earned by the School District of Upper Darby; and

WHEREAS, Township Council determines that it is in the best interests of the Township to impose and collect an Earned Income Tax of 1% pursuant to and under its powers under the Township Charter, the Home Rule Law, and Act 511.

NOW, THEREFORE, be it, and it is hereby **ORDAINED** by the Upper Darby Township Council, and it is hereby **ENACTED** and **ORDAINED** by authority of same as follows:

SECTION 1.

Chapter 489, entitled "Taxation," of the Code of Upper Darby Township is hereby amended by adding a new Article VII thereto, entitled "Earned Income Tax," which shall read as follows:

ARTICLE VII Earned Income Tax

§ 489-71 Definitions.

The following words and terms used in this article shall have the meanings as defined herein:

ASSOCIATION - A partnership, limited partnership, limited liability company or any unincorporated group of two or more persons.

BUSINESS - An enterprise, activity, profession or any other undertaking of an unincorporated nature conducted for profit or ordinarily conducted for profit, whether by a person, partnership, association or any other entity.

CORPORATION - A corporation or joint-stock association organized under the laws of the United States, the Commonwealth of Pennsylvania or any other state, territory, foreign country or dependency. The term shall include an entity which is classified as a corporation for Federal income tax purposes.

CURRENT YEAR - The calendar year for which the tax is levied.

DEPARTMENT - The Department of Community and Economic Development of the Commonwealth.

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 association, the domicile is considered as the center of business affairs and the place where functions are discharged.

EARNED INCOME - Salaries, wages, commissions, bonuses, incentive payments, fees, tips 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 and 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 employment or payments commonly known as public assistance or unemployment compensation payments 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.

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. The term includes the Commonwealth, a political subdivision and an instrumentality or public authority of either. For purposes of penalties under this Ordinance, the term includes a corporate officer.

INCOME TAX OFFICER or OFFICER - The Chief Administrative Officer (or another official designated by the Administrative Code, under the direction of the Chief Administrative Officer) as provided in Section C-504 of the Township Charter.

NET PROFITS - The net income from the operation of a business, profession or other activity, except corporations, after provision 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.

NONRESIDENT - A person domiciled outside of the limits of Upper Darby Township or a partnership, association or other entity maintaining as a center of its business affairs a place outside of Upper Darby Township.

OFFICIAL REGISTER - The part of the tax register that includes withholding tax rates as provided in section 511 (a) (3) of the Local Tax Enabling Act.

PERSON or INDIVIDUAL - A natural person.

PRECEDING YEAR - The calendar year before the current year.

RESIDENT - A person, corporation, association or other entity domiciled in Upper Darby Township.

SUCCEEDING YEAR- The calendar year following the current year.

TAX RECORDS - Tax returns, supporting schedules, correspondence with auditors or taxpayers, account books and other documents, including electronic records, obtained or created by the tax officer to administer or collect a tax under this Ordinance. The term includes documents required by section 509(e) of the Local Tax Enabling Act. The term "electronic records" includes data and information inscribed on a tangible medium or stored in an electronic or other medium and which is retrievable in perceivable form.

TAX COLLECTION DISTRICT - A tax collection district established under section 504 of the Local Tax Enabling Act, encompassing political subdivisions in Delaware County, including Upper Darby Township.

TAXABLE - A person, business, corporation, fiduciary or association subject to the tax imposed by this article.

TAXABLE INCOME - Includes earned income and net profits.

TAXPAYER - A person, business, corporation, association or any other entity required hereunder to file a return of earned income or net profits or to pay a tax thereon.

§489-72 Tax imposed.

A. A tax for general revenue purposes in the amount of one percent (1%) is hereby imposed, effective January 1, 2025, and continuing thereafter, on the following:

- (1) Earned income earned by residents of Upper Darby Township.
- (2) Earned income earned by nonresidents of Upper Darby Township for work done or services performed or rendered within the limits of Upper Darby Township.
- (3) Net profits from unincorporated business activities conducted by residents of Upper Darby Township.
- (4) Net profits from unincorporated business activities conducted by nonresidents within the limits of Upper Darby Township.

B. The tax levied hereunder shall relate to and be imposed upon salaries, wages, commissions and other compensation herein defined as earned income paid by an employer or on his behalf to a person employed by him subject to the tax as well as upon any resident person of Upper Darby Township. The tax levied hereunder also relates to and is imposed upon the net profits of any business, profession or other activity carried on by any corporation, association or person in Upper Darby Township.

§ 489-73 Declaration and payment of tax.

A. **Net profits.**

- (1) Every taxpayer earning net profits shall, on or before April 15 of the current year, make and file with the Income Tax Officer on a form prescribed or approved by the Income Tax Officer a declaration of his estimated net profits during the period beginning January 1, and ending December 31, of the current year and to pay to the Income Tax Officer in four equal quarterly installments the tax due thereon as follows: The first installment at the time of filing the declaration, and the other installments on or before July 31, of the current year, October 31 of the current year, and January 31 of the succeeding year, respectively.
- (2) Any taxpayer who first anticipates any net profit after April 30 of the current year shall make and file the declaration hereinabove required on or before July 31 of

the current year, October 31 of the current year or January 31 of the succeeding year, whichever of these dates next follows the date on which the taxpayer first anticipates such net profit, and pay to the Income Tax Officer in equal installments the tax due thereon on or before the quarterly payment dates which remain after the filing of the declaration.

- (3) Succeeding year. Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the Income Tax Officer on a form prescribed or approved by the Income Tax Officer a final return showing the amount of net profits earned during the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of tax due thereon and the total amount of tax paid thereon. At the time of filing the final return, the taxpayer shall pay to the Income Tax Officer the balance of 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.
- (4) Any taxpayer may, in lieu of paying the fourth quarterly installment of the estimated tax, elect to make and file with the Income Tax Officer on or before January 31 of the succeeding year, the final return as hereinabove required.
- (5) The Income Tax Officer is authorized to provide by regulation for the making and filing of adjusted declarations of estimated net profits, and for the payments of the estimated tax in cases where a taxpayer who has filed the declaration hereinabove required anticipates additional net profits not previously declared or finds that there has been an overestimation of anticipated net profits.
- (6) Every taxpayer who discontinues business prior to December 31 of the current year shall, within 30 days after the discontinuance of business, file a final return as hereinabove required and pay the tax due.

B. Earned income.

- (1) Annual earned income tax return. Every taxpayer shall, on or before April 15 of the succeeding year, make and file with the Income Tax Officer on a form prescribed or approved by the Income Tax Officer a final return showing the amount of earned income received during the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of tax due thereon, the amount of tax paid thereon, the amount of tax thereon that has been withheld pursuant to the provisions relating to the collection at source and the balance of tax due. At the time of filing the final return, the taxpayer shall pay the balance of the tax due or shall make demand for refund or credit in the case of overpayment. Each final return shall be submitted and supported by such United States Federal Income 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 earned income taxable, and Schedule C of the Federal Return as to a net profits taxable.
- (2) Earned income not subject to withholding. Every taxpayer who is employed for a salary, wage, commission or other compensation and who received any earned

income not subject to the provisions hereunder relating to collection at source shall make and file with the Income Tax Officer on a form prescribed or approved by the Income Tax Officer, a quarterly return on or before April 15 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 during the three-month periods ending March 31 of the current year, June 30 of the current year, September 30 of the current year and December 31 of the current year, respectively, and subject to the tax together with such other information as the Income Tax Officer may require. Every taxpayer making such return shall, at the time of filing thereof, pay to the Income Tax Officer the amount of tax shown as due thereon.

§ 489-74 Employer's collection at source duties and responsibilities.

For taxable years commencing on and after January 1, 2025, or earlier taxable years if specified by a tax collection district, income taxes shall be withheld, remitted and reported as follows:

A. Registration.

- (1) Every employer having an office, factory, workshop, branch, warehouse or other place of business within Upper Darby Township who employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, who has not previously registered, shall within 15 days after becoming an employer, register with the Income Tax Officer his name and address and such other information as the Income Tax Officer may require.
- (2) An employer shall require each new employee to complete a certificate of residency form, which shall be an addendum to the Federal Employee's Withholding Allowance Certificate (Form W-4). An employer shall also require any employee who changes their address or domicile to complete a certificate of residency form. Upon request, certificate of residency forms shall be provided by the department. The certificate of residency form shall provide information to help identify the political subdivision where an employee lives and works.

B. Employer to withhold and remit.

- (1) Every employer having an office, factory, workshop, branch, warehouse or other place of business within Upper Darby Township who employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, shall deduct at the time of payment thereof, the tax imposed by this article on the earned income due to his employee or employees, and shall, on or before April 30 of the current year, July 31 of the current year, October 31 of the current year, and January 31 of the succeeding year, file a return and pay to the Income Tax Officer the amount of taxes deducted during the preceding 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. Such return, unless otherwise agreed upon between the Income Tax

Officer and employer shall show the name, address, and social security number of each such employee, the earned income of such employee during such preceding three-month period, the tax deducted therefrom, the political subdivision imposing the tax upon such employee, the total earned income of all such employees during such preceding three-month period, and the total tax deducted therefrom and paid with the return.

- (2) 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. Succeeding year.

On or before February 28 of the succeeding year, every employer shall file with the Income Tax 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 Income Tax Officer for the period beginning January 1 of the current year and ending December 31 of the current year.
- (2) A return withholding statement for each employee employed during all or any part of the period beginning January 1 of the current year and ending December 31 of the current year, setting forth the employee's name, address, and social security number, the amount of earned income paid to the employee during said period, the amount of tax deducted, the political subdivision imposing the tax upon such employee, and the amount of tax paid to the Income Tax Officer. Every employer shall furnish two copies of the individual return to the employee for whom it is filed.

D. Discontinuance of business operations.

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

E. Remedies for Employer's failure to withhold.

- (1) Every employer who willingly 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.
- (2) The failure or omission of any employer to make the deductions required by this section shall not relieve any employee from the payment of the tax or from

complying with the requirements of this article.

§ 489-75 Powers and Duties of Income Tax Officer.

A. General Provisions.

It shall be the duty of the Income Tax Officer of Upper Darby Township to receive the taxes, fines and penalties imposed by this article. It shall also be the duty of the Officer to keep a record showing the amount received from each person paying the tax and, if paid by an employer for a person, the name of such person for whom the tax is paid and the date of such receipt.

B. Collection Responsibilities and Promulgation of Regulations.

The Income Tax Officer is hereby charged with the collection of the tax and payment over to the Tax Collector of Upper Darby Township as well as the administration and enforcement of the provisions of this article dealing with the declaration and payment of tax. The Income Tax Officer is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this article, subject to the approval of the Upper Darby Township 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, not to exceed six years, and for reasonable extension of time, upon proper cause shown, for filing declarations or returns, and to prescribe the forms necessary for the administration of this article. Nothing herein is intended to prevent the Upper Darby Township Council from itself promulgating such rules and regulations.

C. Authority to Audit Records.

- (1) The Income Tax Officer and such agents as may be designated in writing by the Income Tax Officer are hereby authorized to examine the books, papers and records of any taxpayer in order to verify the accuracy of any declaration or return or, if no declaration or return is filed, to ascertain the tax due. Every person or taxpayer is hereby directed and required to give to the Income Tax Officer or to any agent so designated by him the opportunity for examination and investigations as are hereby authorized.
- (2) The examination or audit conducted by the tax officer and the tax officer's designated employees shall conform to the requirements set forth in 53 Pa.C.S. Ch. 84 Subch. C (relating to Local Taxpayers Bill of Rights).
- (3) Every employer and taxpayer or other person whom the tax officer reasonably believes to be an employer or taxpayer shall provide to the tax officer and the tax officer's designated employees the means, facilities and opportunity for the examination and investigation authorized under paragraph (1).

D. Record-keeping.

It shall be the duty of the Income Tax Officer to keep a record showing the amount of income taxes received from each taxpayer or other tax officer, the date of receipt, the amount and date of all other moneys received or distributed and any other information required by the department. All tax records shall be the property of the Township. The Income Tax Officer shall retain all tax records as directed by the Township and, when applicable, in accordance with retention and disposition schedules established by the Local Government Records Committee of the Pennsylvania Historical and Museum Commission under 53 Pa.C.S. Ch. 13 Subch. F (relating to records). Tax records under this subsection may be retained electronically as permitted by law.

E. Exchange of Information.

The Income Tax Officer shall ensure that the Township enters into an agreement with the Department of Revenue for the exchange of information as necessary for the collection of income taxes.

F. Confidentiality.

- (1) Information obtained by the Income Tax Officer or his agents or by any other official or agent of Upper Darby Township as a result of any declaration, return, investigation, hearing or verification required or authorized by this article shall be confidential and shall not be disclosed except for official use in connection with the administration or enforcement of this article or as otherwise provided by law.
- (2) It shall be unlawful, except for official purposes or as provided by law, for the Commonwealth, the Township, Income Tax Officer, or employee or agent of an Income Tax Officer to do any of the following:
 - (i) Divulge or make known confidential tax information.
 - (ii) Permit confidential tax information or a book containing an abstract or particulars of the abstract to be seen or examined by any person.
 - (iii) Print, publish or otherwise make known any confidential tax information.

G. Overpayment.

The Income Tax Officer shall refund, under 53 Pa.C.S. §§ 8425 (relating to refunds of overpayments) and 8426 (relating to interest on overpayment), on petition of and proof by the taxpayer, income taxes paid in excess of income taxes rightfully due.

H. Bond Required.

In the event that the Chief Administrative Officer designates a third-party to

administer the powers and duties of the Income Tax Officer as contained within this Section, prior to initiating any official duties, the third-party shall give and acknowledge a bond to the Township as follows:

- (1) The Township shall fix the amount of the bond in an amount equal to the maximum amount of taxes that may be in the possession of the tax officer at any given time or an amount sufficient to secure the financial responsibility of the designated Income Tax Officer in accordance with guidelines adopted by the department. The amount of the bond shall be revised annually by the Chief Administrative Officer based upon the annual examination required under section 505(h) of the Local Tax Enabling Act.
- (2) The 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 licensed by the Insurance Department.
- (3) The bond shall be conditioned upon the completion of all of the following by the designated Income Tax Officer's employees and appointees:
 - (i) The faithful execution of all duties required of the designated tax officer.
 - (ii) The just and faithful accounting or payment over of all moneys and balances paid to, received or held by the designated tax officer by virtue of the office in accordance with law.
 - (iii) The delivery of all tax records or other official items held in right as the designated tax officer to the designated tax officer's successor.
- (d) Each bond shall be taken in the name of the Township and shall be for the use of the Township, and for the use of any other political subdivision or tax collection district for which income taxes shall be collected or distributed on behalf of the Township in case of a breach of any conditions of the bond by the acts or negligence of the principal on the bond.
- (e) The Township or any political subdivision may sue upon the bond for the payment or distribution of income taxes due and owing to it from the third party, designated Income Tax Officer.
- (f) Each bond shall contain the name of the surety company bound on the bond.
- (g) The Township may, upon cause shown and due notice to the designated Income Tax Officer and the designated Income Tax Officer's sureties, require or allow the substitution or the addition of a surety company acceptable to the Township for the purpose of making the bond sufficient in amount, without releasing the sureties first approved from any accrued liability or previous action on the bond.
- (h) The Chief Administrative Officer shall designate the custodian of the bond.
- (i) The designated Income Tax Officer shall file copies of all bonds in effect with the Township.

- (j) A copy of all bonds in effect shall be made available upon request and at no cost to the department or to a political subdivision seeking payment or distribution of income taxes authorized by this Ordinance.

§ 489-76 Actions for collection of income taxes.

A. Authority to instate legal proceedings.

The Income Tax Officer may sue in the name of the Township for recovery of taxes due and unpaid under this Ordinance. Nothing in this subsection shall affect the authority of the Township to file an action in its own name for collection of income taxes under this Ordinance. This subsection shall not be construed to limit the Income Tax Officer or the Township from recovering delinquent income taxes by any other means provided by this Ordinance or by law.

B. Time limitations and exceptions.

A suit may be brought to recover the tax imposed by this article within three years after such tax is due or within three years after a declaration or return has been filed, whichever date is later; provided, however, that this limitation shall not prevent the institution of 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 under the provisions of this article.
- (2) In the case of a false or fraudulent declaration or return with the intent to evade tax.
- (3) Where any person or taxpayer required under this article to deduct and pay over taxes has deducted taxes according to the provisions of this article and has failed to pay the amount so deducted to Upper Darby Township.
- (4) In the case of substantial understatement of tax liability of twenty-five (25%) or more and no fraud, suit shall begin within six (6) years.
- (5) This section shall not be construed to limit the Township from recovering delinquent taxes by any other means provided by law.

C. Recovery of erroneous refunds.

The Officer may sue for recovery of an erroneous refund provided such suit is begun within 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.

§ 489-77 Interest and penalties.

A. Imposition of Interest and Penalties.

If for any reason the tax is not paid when due, interest at the rate the taxpayer is required to pay to the Commonwealth under section 806 of the act of April 9, 1929 (P.L. 343, No. 176), known as The Fiscal Code, on the amount of the income tax, and an additional penalty of 1% of the amount of the unpaid income tax for each month or fraction of a month during which the income tax remains unpaid shall be added and collected but the amount shall not exceed 15% in the aggregate. Where an action is brought for the recovery of the income tax, the taxpayer liable for the income tax shall, in addition, be liable for the costs of collection, interest and penalties.

B. Waiver of Interest and Penalties.

The Income Tax Officer, or his authorized agent, shall be authorized to waive interest, or penalty, or both, in whole or in part, only under the following circumstances:

- (1) Where litigation of the amount of taxes due is pending or threatened and waiver of interest, or penalty, or both, on past amounts owed is proposed as part of an overall settlement of the litigation; or,
- (2) Where the waiver of interest, or penalty, or both, is part of an agreement under which the entire principal amount of the taxes due shall be paid to the Township whether litigation is pending or threatened or not.

§ 489-79 Applicability.

A. Deduction for payment of like taxes.

Payment of any tax on salaries, wages, commissions, other compensation or on net profits of businesses, professions or other activities to a political subdivision by residents thereof pursuant to an ordinance or resolution passed or adopted under the authority of the Local Tax Enabling Act shall be credited to and allowed as a deduction from the liability of such person for any other like tax respectively on salaries, wages, commissions or other compensation or on net profits of businesses, professions or other activities imposed by any other political subdivision of this Commonwealth under the authority of this Act.

B. Deduction for payment of earned income tax to other municipality.

Payment of any tax on income to any municipality by residents thereof pursuant to an ordinance or resolution passed or adopted under the authority of the Local Tax Enabling Act shall, to the extent that such income includes salaries, wages, commissions, other compensation or net profits of businesses, professions or other activities, but in such proportion as hereinafter set forth, be credited to and allowed as a deduction from the liability of such persons for any other tax on salaries, wages, commissions, other compensation or net profits of businesses, professions or other activities imposed by any other political subdivision of this

commonwealth under the authority of said Act.

C. Nonresident credit for payment to Upper Darby Township.

Residents of municipalities other than Upper Darby Township who are subject to this tax and who have paid tax to Upper Darby Township pursuant to the collection at source, as provided in § 489-74 of this article, shall, upon application by the taxpayer on the appropriate form, cause to be forwarded to said municipality for credit the appropriate amount of tax or shall be entitled to repayment after submission of an appropriate application and proofs, as required by Upper Darby Township.

D. Charitable and Non-profit exemption.

The tax imposed by this Ordinance shall not apply to institutions or organizations operated for public, religious, or charitable purposes, to institutions or organizations not organized or operated for private profit, or to trusts and foundations established for any of the said purposes.

§ 489-79 Violations and penalties.

A. Failure to make return or payment.

Any person who fails, neglects or refuses to make any declaration or return required by this article, any employer who fails, neglects or refuses to register or to pay the tax deducted from his employees or fails, neglects or refuses to deduct or withhold the tax from his employees; 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 payments of the whole or any part of the tax imposed by this article shall, upon conviction thereof before any proper District Justice or court of competent jurisdiction in the County of Delaware, be sentenced to pay a fine of not more than \$1,000 for each offense and costs and, in default of payment of said fine and costs, be imprisoned for a period not exceeding 30 days.

B. Breach of confidentiality.

- (1) Any person who divulges any information which is confidential under the provisions of this article shall, upon conviction thereof before any District Justice or court of competent jurisdiction in the County of Delaware, be sentenced to pay a fine of not more than \$1,000 for each offense and costs and, in default of payment of said fines and costs, be imprisoned for a period not exceeding 30 days.

- (2) In the event the offender is the Income Tax Officer, an employee or agent of the Income Tax Officer, or an employee of the Township, the offender shall be discharged from their duties.
- (3) In the event the offender is a third-party Income Tax Officer, offense under this paragraph shall constitute a material breach of the terms of the agreement between the Township and third-party Income Tax Officer, and such agreement shall be terminated immediately without penalty to the Township.

C. Fine and penalties against third-party Income Tax Officer.

- (1) If a third-party Income Tax Officer fails to distribute income taxes to the Township as required, the Township may seek equitable relief from a third-party Income Tax Officer, including an accounting of all undistributed income taxes, and monetary damages, in the form of recovery of the income taxes not previously distributed. In addition, the Township may seek civil penalties and the payment of attorneys' fees for failing to distribute income taxes owed to the Township.
- (2) An action may be brought against the third-party income tax officer to compel the performance of duties required by this Ordinance, the Local Tax Enabling Act, or imposed by federal, state, or local regulations, including the duty to deliver all tax records and other official items held in right as Income Tax Officer to the third-party Income Tax Officer's successor. Upon a finding of failure to perform a duty, the third-party Income Tax Officer shall be held liable for the cost of reproducing tax records if they are lost or cannot be delivered.
- (3) A third-party Income Tax Officer who violates any provision of this section shall be subject to a civil penalty of up to \$1,000 for each violation. An action against a third-party Income Tax Officer for a violation of this Ordinance may be brought by the Township, a political subdivision owed income taxes by the third-party Income Tax Officer, or by a surety that is liable because of the violation.
- (4) The Township shall remove or terminate the agreement with a third-party Income Tax Officer who has been found in violation of any provision of paragraph (1), (2), or (3). Such removal or termination shall be without penalty to the Township.

D. Cumulative remedies.

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

E. Nonwaiver of responsibility to make return.

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

§ 489-80 Compensation for third-party Income Tax Officer.

- A. In the event the Chief Administrative Officer designate a third party to perform the duties and responsibilities of Income Tax Officer, Township Council shall determine, by Resolution, the compensation for such services and expenses. At the discretion of Township Council, the third party Income Tax Officer may be permitted to withhold the amount of the Income Tax Officer's compensation from income taxes collected.

§ 489-81 Effective date; continuation of provisions.

This article shall become effective on the 1st day of January 2025 and shall remain in full force and effect for the fiscal year 2025. Thereafter, this article shall remain in full force and effect on a calendar-year basis without annual reenactment until the specific repeal of this article by the Upper Darby Township Council.

SECTION 2. SEVERABILITY.

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

SECTION 3. INTERPRETATION.

The words, phrases and provisions of this Ordinance are not to be interpreted in a way that results in an absurd construction of the meaning, or in a way that causes one provision to contradict another.

SECTION 4. LIBERAL CONSTRUCTION.

The provisions of this Ordinance shall be liberally construed to effectively carry out the purposes that are hereby found and declared to be in furtherance of the public health, safety, welfare and convenience.

SECTION 5. REPEAL OF PRIOR ORDINANCES.

All ordinances or parts thereof inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby repealed.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect and be in force on the 1st day of January 2025.

ENACTED and ORDAINED this 4th day of September, 2024.

ATTEST: Michelle Billups
MICHELLE BILLUPS
SECRETARY OF COUNCIL

BY: Hafiz Tunis, Jr.
HAFIZ TUNIS, JR.
PRESIDENT OF COUNCIL

Ordinance No. 3169 is **APPROVED** this 4th day of September, 2024.

ATTEST: Crandall O. Jones
CRANDALL O. JONES
CHIEF ADMINISTRATIVE OFFICER

BY: Edward Brown
EDWARD BROWN
MAYOR