BILL NO. 64-2009

AN ORDINANCE

AN ORDINANCE AMENDING CHAPTER 24 PART 2B HOME RULE EARNED INCOME TAX SECTION 24-221 THROUGH SECTION 24-235 OF THE CITY OF READING CODIFIED ORDINANCES. SECTION 24-221 THROUGH SECTION 24-235 SHALL PROVIDE FOR A TAX OF ONE AND TWO TENTHS PERCENT (1.2%) ON ALL EARNED INCOME AND NET PROFITS GENERATED BY RESIDENTS OF THE CITY OF READING. THIS TAX OF ONE AND TWO TENTHS PERCENT (1.2%) ON ALL EARNED INCOME AND NET PROFITS GENERATED BY RESIDENTS OF THE CITY OF READING SHALL BE IN ADDITION TO THE TAX COLLECTED UNDER 24-201 ET SEQ. OF THE CITY OF READING CODIFIED ORDINANCES.

THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Section 24-221 through Section 24-235 of the City of Reading Codified Ordinances shall read as follows:

Chapter 24 Part 2B

Home Rule Earned Income Tax

24-221 Definitions.
24-222 Imposition of Tax.
24-223 Annual Returns of Taxpayers.
24-224 Declaration and Payment of Tax.
24-225 Collection at Source.
24-226 Income Tax Officer; Powers and Duties.
24-227 Suit for Collection of Tax.
24-228 Interest on Unpaid Tax.
24-229 Payment and Refunds.
24-230 Applicability.
24-231 Severability.
24-232 Effective Term.
24- 233 Rules and Regulations.
24-234 Hearing Officer.
24- 239 Penalty.

24-221 DEFINITIONS.

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

(a) "Association" means a partnership, limited partnership or any other unincorporated group of two or more persons.

(b) "Tax Administration" means the City of Reading Tax Administration designated by Council to administer the provisions of this Earned Income Tax article under the direction of the Finance Director.

(b) "Business" means 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.

(c) "Corporation" means 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.

(d) "Council" means the City Council of Reading.

(e) "Current year" means the calendar year for which the tax is levied.

(f) "Domicile" means 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 place in which a man has voluntarily fixed the habitation of himself and his family, 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.

(g) "Earned income" means 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 service after reaching a specific age or after a stated period of 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.

(h) "Employer" means 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.

(i) "Income Tax Officer" or "Officer" means a person, public employee or private agency designated by the governing body to collect and administer the tax on earned income and net profits.

(j) "Net profits" means 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.

(k) "Nonresident" means a person, partnership, association or other entity domiciled outside the taxing district.

(l) "Person or individual" means a natural person.

(m) "Preceding year" means the calendar year before the current year

(n) "Resident" means a person, partnership, association or other entity domiciled in the taxing district.

(o) "Succeeding year" means the calendar year following the current year.

(p) "Taxpayer" means 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.

(q) "Tax Administration" means the City of Reading Tax Administration designated by Council to administer the provisions of this Earned Income Tax article under the direction of the Finance Director.

24-222 IMPOSITION OF TAX.

A tax, for general revenue purposes, of one and two tenths percent (1.2%) over and above the tax collected under 24-201 et seq. of the City of Reading Code of Ordinances is hereby imposed on the following:

(a) Salaries, wages, commissions and other compensation earned from year to year, on and after January 1, 2010, by individual residents of the City of Reading.

(b) Net profits earned from year to year, on and after January 1, 2010, by residents of the City.

The tax levied under subsections (a) hereof shall relate to and be imposed upon salaries, wages, commissions and other compensation paid by an employer or on his behalf to a person who is employed by him. The tax levied under subsection (b) hereof shall relate to and be imposed on the net profits of any business, profession or other activity carried on by any person or persons.

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

The tax levied by this article shall be applicable to salaries, wages, commissions and other compensation and to net profits earned in the period beginning January 1, 2010, and ending December 31, 2010, and thereafter, from year to year on a calendar year basis and shall be in addition to the tax imposed for the same period or periods under 24-201 et seq..

24-223 ANNUAL RETURNS OF TAXPAYERS.

A. On or before April 15 of each year, every person, resident or non-resident, who resided in the City of Reading for all or any part of the preceding calendar year shall file with the appropriate Officer an Annual Tax Return showing all earned income and net profits received and/or earned for the previous year. A husband and wife may file a joint return.

B. If a person has no earned income to report, the word "none" shall be entered on the Annual Tax Return, and the return shall be signed, dated and returned to the Officer with an explanation (military service, retired, disability income only, etc.).

C. If net profits are received, the type of business, profession, or activity shall be indicated on Annual Tax Return and the amount of the profits shall be shown on the appropriate line(s) of the Return. If a net loss is incurred in the operation of a business activity, it may not be offset against the net profit of other business activities or earned income. Losses shall be indicated as zero in all calculations involving net profits on the Annual Tax Return. Copies of the appropriate Federal or Pennsylvania Income Tax Schedules shall be attached to the Annual Tax Return to substantiate profits and/or losses indicated.

D. When a Return is made for a fiscal year, the Return shall be filed within one hundred five (105) days from the end of said fiscal year.

E. The Annual Tax Return shall also show the taxpayer's name, Social Security number, address, place or places of employment or business, the amounts of tax due, the amount of any credit claimed for tax withheld by an employer (with a

copy of the Earnings and Tax Statement) or paid on estimate and such other information as may be indicated on the Return form or as may be required by the Officer. Every person subject to the tax shall file such return regardless of the fact that his wages may have been subject to withholding of the tax by his employer and regardless of whether or not tax is due.

F. At the time of filing the Annual Return, the taxpayer shall pay any tax due.

G. Tax Returns must be signed and dated by the taxpayer(s) in the space(s) provided.

24-224 DECLARATION AND PAYMENT OF TAX.

(a) Net Profits.

(1) Every taxpayer who reasonably expects that he will earn any taxable net profits during the period between January 1, 2010, and December 31, 2010, and thereafter, from year to year, shall, on or before April 15, 2010, and April 15 of each succeeding year, make and file with the Income Tax Officer, on a form prescribed by the Income Tax Officer, a declaration of his estimated net profits for the period beginning January 1, 2010, and ending December 31, 2010, and thereafter in each succeeding year between January 1 and December 31, setting forth the estimated amount of net profits reasonably expected by him for such period and subject to the tax, the amount of estimated tax imposed by this article on such estimated net profits, and such other relevant information as the Income Tax Officer may require. The taxpayer making the declaration shall, at the time of filing thereof, pay the City one-fourth of the estimated tax shown as due thereon and such taxpayer shall thereafter pay one-fourth of the estimated tax in each of three installments, as follows: one installment on or before June 15, 2010, one installment on or before September 15, 2010, and the last installment on or before January 15, 2010, and thereafter, from year to year, on June 15, September 15 and January 15, in each succeeding year.

(2) A person who on April 15, 2010, did not reasonably expect that he would earn any taxable net profits during the period between January 1, 2010, and December 31, 2010, and who, subsequent to April 15, 2010, reasonably expects that he will earn taxable net profits on or before December 31, 2010, shall make and file on or before June 15, 2010, September 15, 2010, or January 15, 2011, and thereafter, from year to year, on June 15, September 15, and January 15, respectively, in each succeeding year, whichever of these dates next follows the date on which the taxpayer first reasonably expects such net profits, a declaration similar to that required under subsection (a)(1) hereof.

The taxpayer making the declaration shall, at the time of filing thereof, pay to the City the estimated tax shown as due thereon, provided, however, that the taxpayer shall have the right to pay the estimated tax in equal installments on or

before the quarterly installment payment dates which remain after the filing of the declaration.

(3) The Income Tax Officer is hereby authorized to provide by regulations, approved by Council, for the making and filing of adjusted declarations of estimated net profits, and for the payments of the estimated tax in cases where a taxpayer who has filed the declaration hereinabove required shall thereafter either reasonably expect additional net profits not previously declared or find that he has overestimated his net profits.

(4) On or before April 15, 2011, and April 15 thereafter, from year to year, every taxpayer who has earned taxable net profits shall make and file with the Income Tax Officer a final return showing all of such net profits for the period beginning January 1, 2010, and ending December 31, 2010, and periods thereafter, year to year, the total amount of tax due, the amount of estimated tax paid under the provisions of this section and the balance due. When the return is made for a fiscal year different from the calendar year, the return shall be made within 105 days from the end of such fiscal year. The percentage of the total net profits of any calendar or fiscal year of a taxpayer beginning or ending within the period beginning January 1, 2010, and ending December 31, 2010, to which the tax imposed by this article shall be applicable shall be equal to the same percentage of such total net profits as the number of days in any such year within such period bears to the total number of days in any such year. At the time of filing the final return, the taxpayer shall pay the balance of the tax due or shall make demand for refund or credit in the case of overpayment.

(5) Every taxpayer who discontinues business prior to December 31, 2010, or prior to December 31 in any succeeding year while this article is in force and effect, shall, within thirty days after the discontinuance of business, file his final return as hereinabove required and pay the tax due, or demand refund or credit in the case of overpayment.

(b) Salaries, Wages, Commission and Other Compensation.

(1) Every taxpayer employed on a salary, wage, commission or other compensation basis and who reasonably expects to earn any taxable earnings not subject to the provisions of Section 24-224 relating to the collection at source, shall, on or before April 15, 2010, make and file with the Income Tax Officer a declaration of his estimated total amount of taxable salaries, wages, commissions and other compensation for the period beginning January 1, 2010, and ending December 31, 2010, the estimated amount of the tax thereon that will be deducted therefrom pursuant to Section 24-224, the estimated amount of tax imposed by this article that will not be deducted therefrom pursuant to Section 24-224, and such other relevant information as the Income Tax Officer may require. In preparing a declaration of estimated taxable salaries, wages, commissions and other compensation taxable under this article, the taxpayer

shall use the same amounts with respect to such items as he shall have used in preparing his declaration of estimated tax for the year 2010 for Federal income tax purposes, if such taxpayer shall be required to file any such last-mentioned declaration.

(2) A person who on April 15, 2010, did not reasonably expect that he would earn any salaries, wages, commissions and other compensation not subject to the provision of Section 24-224 relating to the collection at source, during the period between January 1, 2010, and December 31, 2010, and who subsequent to April 15, 2010, reasonably expects that he will earn salaries, wages, commissions and other compensation not subject to the provisions of Section 24-224, on or before December 31, 2010,shall make and file on or before June 15, 2010, September 15, 2010, or January 15, 2011, and thereafter from year to year in each succeeding year on June 15, September 15 and January 15 respectively, whichever of these dates next follows the date on which the taxpayer first reasonably expects that he will earn such salaries, wages, commissions and other compensation, a declaration similar to that required under subsection (b) (1) hereof. The taxpayer making the declaration shall, at the time of filing thereof, pay to the City the estimated tax shown as due thereon, provided, however, that the taxpayer shall have the right to pay the estimated tax in equal installments on or before quarterly installment payment dates which remain after the filing of the declaration.

(3) The Income Tax Officer is hereby authorized to provide by regulations approved by Council for the making and filing of adjusted declarations of estimated salaries, wages, commissions and other compensation, and for the payments of the estimated tax in cases where a taxpayer who has filed the declaration hereinabove required shall thereafter either reasonably expect additional salaries, wages, commissions and other compensation not previously declared, or find that he has overestimated his salaries, wages, commissions and other compensation.

(4) On or before April 15, 2011, every taxpayer who has received taxable salaries, wages, commissions and other compensation shall make and file with the Income Tax Officer, a final return showing all such salaries, wages, commissions and other compensation earned during the period beginning January 1, 2010, and ending December 31, 2010, the total amount of tax due thereon, the amount, if any, of estimated tax thereon paid under the provisions of this section, and the amount, if any, of tax thereon that has been withheld pursuant to the provisions of Section 24-224 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.

24-225 COLLECTION AT SOURCE.

(a) Every person, firm or corporation within the City who employs one or more persons on a salary, wage, commission or other compensation basis, other than domestic servants, shall deduct, at the time of the payment thereof, the tax imposed by this article on the salaries, wages, commissions and other compensation due to his employee or employees, and shall, on or before April 30, 2010, July 31, 2010, October 31, 2010, and January 31, 2011, respectively, and thereafter year to year, make and file with the Income Tax Officer, a return setting forth the taxes so deducted, and pay to the City the amount of taxes deducted for the preceding quarterly periods ending March 31, 2010, June 30, 2010, September 30, 2010, and December 31, 2010, respectively, and thereafter year to year..

(b) On or before February 28, 2011, and thereafter year to year, every such employer shall file with the Income Tax Officer:

(1) An annual return showing the total amount of salaries, wages, commissions and other compensation earned by each employee on which a tax is imposed by this article, the total amount of taxes so deducted, and the total amount of all taxes paid to the City on account of salaries, wages, commissions and other compensation earned by each employee during the period beginning January 1, 2010, and ending December 31, 2010, and thereafter year to year.

(2) A return for each person employed during all or any part of the period beginning January 1, 2010, and ending December 3l, 2010, and thereafter year to year, who earned, during such period, any salaries, wages, commissions or other compensation subject to the tax imposed by this article, setting forth the employee's name, address and Social Security number, the total amount of salary, wages, commissions or other compensation earned by each employee during such period, and the amount of tax deducted therefrom. Every employer shall furnish a copy of the individual return to each employee for whom the employer is obligated to make a return under the provisions of this article.

(c) Every employer who discontinues business prior to December 31, 2010, and thereafter year to year, shall, within thirty days after the discontinuance of business, file the returns herein above required and pay the tax due.

(d) The failure or omission of any employer to make the deductions required by this section does not relieve any employee from the payment of the tax or from complying with the requirements of this article relating to the filing of declarations and returns.

(e) If an employer makes a deduction of tax as required by this section, the amount deducted shall constitute in the hands of such employer a trust fund held for the account of the City as beneficial owner thereof, and the employee from whose salaries, wages commissions or other compensation such tax was deducted shall be deemed to have paid such tax. Payment of the tax under the

provisions of this section shall not relieve the taxpayer from filing a final return required by Section 24-223.

24-226 INCOME TAX OFFICER; POWERS AND DUTIES.

(a) It shall be the duty of the Income Tax Officer to collect and receive the taxes, fines and penalties imposed by this article. It shall also be his duty to keep a record showing the amount received by him from each person paying the tax and, if paid by such person in respect to another person, the name of such other person and the date of such receipt.

(b) The Income Tax Officer is hereby charged with the administration and enforcement of the provisions of this article, and all amendments thereto, as well as all rules and regulations of Council pertaining thereto, for the administration and enforcement of this article, including provisions for the re-examination 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 grant reasonable extensions of time upon proper cause shown for filing declarations or returns found necessary for the administration of this article.

(c) The Income Tax Officer, and agents designated in writing by him, are hereby authorized to examine the books, papers, and records of any employer, taxpayer, person, firm or corporation 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, taxpayer, person, firm or corporation 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, the means, facilities and opportunity for such examination and investigations, as are hereby authorized.

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

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

24-227 SUIT FOR COLLECTION OF TAX.

(a) The Income Tax Officer may sue in the name of the City for the recovery of taxes due and unpaid under this article.

(b) Any suit brought to recover the tax imposed by this article shall be begun within three years after such tax is due, or within three 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 article, there shall be no limitation.

(2) Where an examination of the declaration or return filed by any person, or of other evidence relating to such declaration or return in the possession of the Income Tax Officer, reveals a fraudulent evasion of taxes, there shall be no limitation.

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

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

(5) This section shall not be construed to limit the City from recovering delinquent taxes by any other means provided by this article.

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

24-228 INTEREST ON UNPAID TAX.

If for any reason the tax is not paid when due, interest at the rate of six percent per annum on the amount of such tax, and an additional penalty of one-half of one 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.

24-229 PAYMENT AND REFUNDS.

The Income tax Officer is hereby authorized to accept payment of the amount of tax claimed by the City in any case where any person disputes the validity or amount of the City's claim for the tax. If it is thereafter judicially determined by a

court of competent jurisdiction that there has been an overpayment to the Income Tax Officer, the amount of the overpayment shall be refunded to the person who paid.

24-230 APPLICABILITY.

The tax imposed by this article shall not apply:

(a) To any person as to whom it is beyond the legal power of the City to impose the tax herein provided for under the Constitution of the United States and the Constitution and Laws of the Commonwealth of Pennsylvania.

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

This section shall not be construed to exempt any person who is an employer from the duty of collecting the tax at source from his employees and paying the amount collected to the City under the provisions of Section 24-224

24-231 SEVERABILITY.

The provisions of this article are severable. If any sentence, clause or section of this article 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 article. It is hereby declared to be the intent of Council that this article would have been adopted had such unconstitutional, illegal or invalid sentence, clause or section not been included herein.

24-232 EFFECTIVE TERM.

This article shall be in force and effect from January 1, 2010, to and including December 31, 2010, and thereafter, from year to year, between January 1, and December 31, inclusive, in each succeeding year until otherwise ordained by the City or revoked by an act of Assembly, now or hereafter in force and effect, of the Commonwealth of Pennsylvania.

Wherever in this article a date is designated referring to a particular year, such year shall be construed to refer to the initial year in which this article is effective, and thereafter shall be construed to mean each succeeding year in which this article remains in effect.

Dates used in this article relevant to the initial effective period shall be construed in succeeding years with reference to the corresponding next year.

24-233 RULES AND REGULATIONS.

The Division of Tax Administration shall issue rules and regulations for the implementation of this ordinance. Such rules and regulations shall be subject to approval by City Council.

24-234 HEARING OFFICER.

The Tax Administration Manager is designated as the hearing officer to conduct hearings and decide all appeals filed.

24-239 PENALTY.

(a) 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 Income Tax Officer or any agent designated by him to examine his books, records and papers, and any person who knowingly makes an 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 article shall, upon conviction thereof before any justice of the peace, alderman or magistrate, or court of competent jurisdiction in Berks County, be sentenced to pay a fine of not more than five hundred dollars ($500.00) for each offense, and costs, and, in default of payment of said fine and costs to be imprisoned for a period not exceeding thirty days.

(b) Any person who divulges any information which is confidential under the provisions of this article 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 six hundred dollars ($600.00) for each offense, and costs, and in default of payment of such fines and costs shall be imprisoned for a period not exceeding ninety days.

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

(d) 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.

SECTION 2. This Ordinance shall become effective January 1, 2010.

Enacted 16 day of Nov, 2009.

President of Council

Attest:

City Clerk

Submitted to Mayor: _____
Date: 11-17-09
Received by the Mayor's Office: _____
Date: 11-17-09
Approved by Mayor: _____
Date: 11/23/09.
Vetoed by Mayor: _____
Date: _____

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original Ordinance passed by the Council of the City of Reading, on the 16th day of Nov. A. D. 20 09. Witness my hand and seal of the said City this 24th day of Nov. A. D. 20 09.

CITY CLERK