

**TUNKHANNOCK BOROUGH
WYOMING COUNTY, PENNSYLVANIA**

ORDINANCE # 2009-5

**AN ORDINANCE OF THE BOROUGH OF TUNKHANNOCK,
WYOMING COUNTY, PENNSYLVANIA, CONCERNING THE
REGISTRATION OF RENTAL UNITS WITHIN THE BOROUGH
OF TUNKHANNOCK BY LANDLORDS AND SPECIFICALLY
AMENDING THE EARNED INCOME TAX ORDINANCE.**

WHEREAS, the Borough of Tunkhannock, (hereinafter "the Borough"), adopted an Earned Income Tax Ordinance; and

WHEREAS, the aforementioned Ordinance incorporated the statutory definition of "Resident", codified at 53 P.S. section 6913, as, "A person, partnership, association or other entity domiciled in the taxing district"; and

WHEREAS, the aforementioned Ordinance incorporated the statutory definition of "Person", codified at 53 P.S. section 6913, as follows, "A natural person"; and

WHEREAS, said Ordinance does not contain any mechanism for the Borough to ascertain or confirm those individuals who may or would conform to the definition as set forth previously; and

WHEREAS, it would be a benefit to the Borough to be able to ascertain and confirm whether all persons/individuals residing in the Borough in multi-family or apartment dwellings are accurately identified as taxpayers within the Borough; and

WHEREAS, the Council believe that it is appropriate, just, prudent and fair to identify persons/individuals who may not be paying the Earned Income Tax in an effort to require these individuals to pay the same; and

WHEREAS, the Borough is also sensitive to the privacy concerns of its citizenry.

NOW THEREFORE, BE IT ORDAINED AND ENACTED this 5th day of November, 2009, by the Council of Tunkhannock Borough, Wyoming County, Pennsylvania, pursuant to the authority granted Pennsylvania Borough Code as follows:

SECTION ONE: AUTHORITY OF ENACTMENT

This Ordinance is enacted under the authority of the Local Tax Enabling Act, P.L. 1257, No. 511, December 31, 1965, 53 P.S. section 6913, as hereinafter amended, supplemented, modified or reenacted by the General Assembly of the Commonwealth of Pennsylvania.

SECTION TWO: DEFINITIONS

As used in this ordinance, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

ADULT - An individual of the age of 18 years or more.

DWELLING - Any building or portion thereof designed or used exclusively as the residence or sleeping place of one (1) or more persons. This definition shall be construed to include mobile homes, boarding houses and rooming houses. This definition shall not be construed to include hotels, motels, homeless shelters, dormitories, hospitals, rehabilitation or treatment centers, nursing homes or personal care homes.

LANDLORD - A natural or non-natural person, partnership, association, corporation, institution, or other entity, which offers for habitation as owner or manager one or more dwellings within the Borough of Tunkhannock.

SECTION THREE: REPORTING REQUIREMENTS

A. Every Landlord who offers for habitation as owner or manager one or more dwellings within the Borough of Tunkhannock shall, for each such dwelling unit or units (other than the dwelling in which that person resides) on or before March 15 of each year, provide the following information to the Council of the Borough of Tunkhannock:

1. The reporting individual or entity's name and address.
2. The full name, as reported on his or her most recent state income tax return, and address and unit number (if any) of those adult individuals occupying dwelling units owned or within the management control of the reporting individual or entity as of January 1 of the reporting year.

B. The reporting of the required information by the owner shall excuse the provision of the required information by a manager for the same premises. The reporting of the required information by the manager shall excuse reporting by the owner of the same premises. In the event neither the owner nor the manager complies, the owner shall be held responsible for such non-compliance. Where real estate is owned in multiple ownership, observance of the reporting requirement by one co-owner shall be deemed as fulfilling the requirement as to all other co-owners.

C. The duty imposed by this section shall require each landlord to report the name and address of all tenants of the age of eighteen (18) years or more of which the landlord has actual knowledge or which the landlord could, with the exercise of reasonable diligence and care, have actual knowledge.

D. Individuals required to be reported under subsection (A) (2), above, shall, upon request of the landlord or landlord's agent, provide the landlord or landlord's agent with the names of all adult individuals residing in the subject dwelling. Should a landlord be refused the required information, landlord or landlord's agent shall identify such individual refusing to provide to the Borough the name of an adult individual residing in the subject dwelling on the required report.

E. The Council of the Borough of Tunkhannock is hereby authorized to require standard reporting forms and documents to accomplish the foregoing reporting requirements.

F. The information resulting from the foregoing reporting requirement shall be kept confidential.

G. Failure of a landlord to comply with the foregoing ordinance will be subject to the penalties as set forth in Section 4 of this Ordinance.

SECTION FOUR: VIOLATIONS AND PENALTIES

A. Any person who shall violate any provision of this Article shall, upon conviction thereof, shall be guilty of a summary offense and be punished by a fine of not less than three hundred dollars (\$300.00) and not more than six hundred dollars (\$600.00) and costs of such proceedings,

including reasonable attorney's fees or, upon default of payment of such fine and costs, by imprisonment in the county jail for not more than thirty (30) days.

B. In any prosecution against a landlord for failure to comply with the reporting requirements of this ordinance, in the absence of the landlord's actual knowledge or the landlord's ability, with reasonable diligence and care, to have actual knowledge, the refusal of the tenant to provide the name of adult individuals residing within the subject dwelling to the landlord shall, as to the landlord or landlord's manager, be considered to be an affirmative defense to prosecution under this ordinance. Failure of a landlord to request the information required by this Ordinance, shall be considered a per se violation of the reasonable diligence and care standard of this Ordinance.

C. For the purposes of this section, a violation of this Ordinance relating to the reporting requirements of landlords shall be considered as a separate offense for each unreported occupied dwelling unit. Each day of non-reporting by a landlord after the 15th day of March in any reporting year shall be treated as a separate offense.

D. Enforcement of this Ordinance may be instituted by the Income Tax Officer, The Borough Tax Collector, the Borough Police Department and/or such other person as authorized by Resolution of the Tunkhannock Borough Council.

SECTION FIVE: CONSTRUCTION AND SEVERABILITY

It is the intention of the Borough of Tunkhannock that the provisions of this Ordinance be construed, enforced and interpreted in such a manner as will cause the least possible infringement of the constitutional rights of free speech, free expression, due process, equal protection or other fundamental rights consistent with the purposes of this Ordinance. Should a court of competent jurisdiction determine that any part of this Ordinance, or any application or enforcement of it is excessively restrictive of such rights or liberties, then such portion of the Ordinance shall be severed from the remainder, which shall continue in full force and effect.

SECTION SIX: REPEALER

All Ordinances or parts of Ordinances inconsistent herewith be and the same are hereby repealed.

SECTION SEVEN: EFFECTIVE DATE

This Ordinance shall take effect upon adoption.

ENACTED AND ORDAINED, this 5th day of November, 2009, in lawful session duly assembled.

Attest:

Tunkhannock Borough

BY: _____
Dawn Welch
Secretary

BY: _____
Arthur S. Huber,
Council President

BY: _____
Norman Ball
Mayor