

ORDINANCE NO. 2007-6

AN ORDINANCE OF THE EAST BERLIN BOROUGH, ADAMS COUNTY, PENNSYLVANIA REPEALING ORDINANCE # 2006-1 AND ENACTING ORDINANCE # 2007-6 PROVIDING FOR THE ASSESSMENT, LIABILITY, COLLECTION AND PAYMENT OF A LOCAL SERVICES TAX, FOR EXEMPTIONS FROM ASSESSMENT OF THE TAX, FOR THE USE OF FUNDS COLLECTED, FOR ADMINISTRATION AND ENFORCEMENT OF THE TAX, AND FOR INTEREST, FINES AND PENALTIES FOR VIOLATIONS OF THIS ORDINANCE.

BE IT ENACTED AND ORDAINED by the East Berlin Borough Council, East Berlin Borough, Adams County, Pennsylvania, by virtue of the power and authority vested in said East Berlin Borough Council as follows:

101. TITLE

This Part shall be known and may be cited as the "East Berlin Borough Local Services Tax Ordinance."

102. AUTHORITY

This Part is enacted under the authority of the Local Tax Enabling Act, as amended by Act No. 7 of 2007.

103. PURPOSE

The purpose of this Part is to provide revenue for police, fire and emergency services; road construction and maintenance; the reduction of property taxes and for such other purposes as may be specified for such tax from time to time by the laws of the Commonwealth of Pennsylvania.

104. DEFINITIONS

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

BOARD OF COMMISSIONERS-shall mean the Governing Body of the East Berlin Borough.

BOARD OF SUPERVISORS-shall mean the Governing Body of the East Berlin Borough.

BOROUGH-the area within the jurisdictional limits of East Berlin.

BOROUGH COUNCIL-shall mean the Governing Body of East Berlin Borough.

COLLECTOR-the person or firm, from time to time, designated by motion of the East Berlin Borough Council of East Berlin Borough to collect and administer the provision of this Part and collect the tax levied by this Part. Until changed by subsequent motion, the collector shall be the same person or firm last designated to collect the Emergency and Municipal Services Tax for the East Berlin Borough.

COMBINED RATE-shall mean the aggregate annual rate of the Local Services Tax levied by a school district and East Berlin Borough located in whole or in part within the school district.

EARNED INCOME-"Compensation" as determined under section 303 of the Act of March 4, 1971 (P.L. 6, No.2), known as the "Tax Reform Code of 1971," and regulations in 61 Pa. Code Pt. I Subpt. B Art. V (relating to personal income tax) NOT INCLUDING, however, wages or compensation paid to individuals on active military service. Employee business expenses are allowable deductions as determined under Article III of the "Tax Reform Code of 1971." Any housing allowance provided to a member of the clergy shall not be taxable as earned income.

EMPLOYER-an individual, partnership, association, corporation, governmental body, agency or other entity employing one or more persons on a salary, wage, commission, fee or other compensation basis, including a self-employed person.

HE, HIS, OR HIM-shall include singular and plural number and male, female and neuter gender.

INDIVIDUAL-any person engaged in any occupation, trade or profession within the jurisdictional limits of East Berlin Borough whose total earned income and net profits within East Berlin Borough are greater than \$12,000 per calendar year.

NET PROFITS-The net income from the operation of a business, profession, or other activity, (except from Corporations), determined under section 303 of the Act of March 4, 1971 (P.L. 6, No. 2), known as the "Tax Reform Code of 1971," and regulations in 61 Pa. Code Pt. 1 Subpt. B Art. V (relating to personal income tax). The term does not include income which is not paid for services provided and which is in the nature of earnings from an investment. For taxpayers engaged in the business, profession or activity of farming the term shall not include:

- (1) any interest generated from monetary accounts or investment instruments of the farming business;
- (2) any gain on the sale of farming machinery;
- (3) any gain on the sale of livestock held twelve months or more for draft, breeding or dairy purposes ; and
- (4) any gain on the sale of other capital assets of the farm.

OCCUPATION-any trade, profession, business or undertaking of any type, kind or character including services, domestic or other, carried on or performed within the

jurisdictional limits of East Berlin Borough for which compensation is charged and/or received whether by salary, wages, commissions, fees or net profits for services rendered.

RESERVE COMPONENT OF THE ARMED FORCES-The United States Army Reserve, United States Navy Reserve, United States Marine Corps Reserve, United States Coast Guard Reserve, United States Air Force Reserve, The Pennsylvania Army National Guard or the Pennsylvania Air National Guard.

TAX-the Local Services Tax levied in this Part.

YEAR-shall mean a calendar year.

105. LEVY

The East Berlin Borough hereby levies and imposes on every individual engaging in an occupation within the jurisdictional limits of East Berlin Borough a tax in the amount of \$52.00 per annum, beginning the first day of January, 2008 and continuing on a calendar basis annually thereafter, until modified or repealed by subsequent ordinance. This tax is in addition to all other taxes of any kind or nature heretofore levied by East Berlin Borough.

106. RESTRICTED USE

The East Berlin Borough shall use the revenue derived from this tax for the following purpose; provided, however, that no less than twenty-five (25%) percent of the funds derived from this tax shall be used for Emergency Services, as defined herein:

1. Emergency Services, which shall include emergency medical services, police services and/or fire services.
2. Road Construction and/or maintenance.
3. Reduction of property taxes.
4. Property tax relief through implementation of a homestead and farmstead exclusion in accordance with 53 Pa.C.S. Ch. 85 Subch. F. (relating to homestead property exclusion), and, in accordance with Section 22.6 of Act 7 of 2007, as amended from time to time.

107. DUTY OF EMPLOYER

- A. Each employer within East Berlin Borough and each employer situate outside East Berlin Borough who engages in business within East Berlin Borough, is hereby charged with the duty of collecting the tax from each of the employees engaged by the employer and performing work for the employer within East Berlin Borough. Each person subject to the tax shall be assessed a pro rata share of the tax for each payroll period in which the person is engaging in an occupation.

- B. The pro rata share of the tax assessed on the person for a payroll period shall be determined by dividing the combined rate of the Local Services Tax levied for the calendar year by the number of payroll periods established by the employer for the calendar year. For purposes of determining the pro rata share, an employer shall round down the amount of the tax collected each payroll period to the nearest one hundredth of a dollar.
- C. Employer collection of the Local Services Tax shall be made on a payroll period basis for each payroll period, beginning with the first payroll period in which the person is engaging in an occupation.
- D. No employer shall be held liable for failure to withhold the Local Services Tax or for the payment of the withheld tax money to a political subdivision if the failure to withhold taxes arises from incorrect information submitted by the employee as to the employee's place or places of employment, the employee's principal office or where the employee is principally employed.

108. RETURNS

Employers are required to make and file a Local Services Tax Quarterly Return thirty (30) days after the end of each quarter of a calendar year. The Local Services Tax Quarterly Return shall list the name, address, social security number of the employees; the physical address of the employee's place of employment; the number of payroll periods for which the Local Services Tax was withheld and the amount of Local Services Tax being remitted for each employee.

109. DATES FOR DETERMINING TAX LIABILITY AND PAYMENT

Each employer shall use his employment and payroll records from the first day of January to March 31 each year for determining the number of employees from whom said tax shall be deducted and paid over to the collector on or before April 30 of the same calendar year. Supplemental reports shall be made by each employer on July 30, October 30 and January 31 for new employees as reflected on his employment and payroll records from April 1 to June 30, July 1 to September 30 and October 1 to December 31, and payments on these supplemental reports shall be made on July 30, October 30 and January 30, respectively.

110. INDIVIDUALS ENGAGED IN MORE THAN ONE OCCUPATION

- A. In the event a person is engaged in more than one occupation, that is, concurrent employment, or an occupation which requires the person working in more than one political subdivision during the payroll period, the priority of claim to collect the Local Services Tax shall be in the following order:
 - 1. The political subdivision in which a person maintains his or her principal office or is principally employed;

2. The political subdivision in which the person resides and work, if the tax is levied by that political subdivision;
 3. The political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home.
- B. In the case of concurrent employment, an employer shall refrain from withholding the Local Services Tax, if the employee provides:
1. a recent pay statement from a principal employer that includes the name of the employer, the length of the payroll period and the amount of Local Services Tax withheld: and
 2. a statement from the employee that the pay statement is from the employee's principal employer and the employee will notify other employers of a change in principal place of employment within two weeks of its occurrence.
- C. The Situs of the tax shall be the place of employment on the first day the person becomes subject to the tax during each payroll period. It is the intent of this section that on person shall be subject to the payment of the Local Services Tax by more than one political subdivision during each payroll period.

111. EXEMPTIONS TO THE LOCAL SERVICES TAX

- A. The Local Services Tax shall be no more than \$52 on each person for each calendar year, irrespective of the number of political subdivisions within which a person may be employed.
- B. The Local Tax Enabling Act, as amended, requires Municipalities and School Districts who levy the Local Services Tax at a combined rate exceeding \$10 to exempt any person from the Local Services Tax whose total earned income and net profits from all sources within the East Berlin Borough is less than \$12,000 for the calendar year in which the Local Services Tax is levied.

Each political subdivision levying the Local Services Tax shall exempt the following persons from the Local Services Tax:

1. Any person whose total earned income and net profits from all sources within the East Berlin Borough is less than Twelve Thousand (\$12,000.00) Dollars for the calendar year in which the Local Services Tax is levied.
2. Any person who served in any war or armed conflict in which the United States was engaged and is honorably discharged or released under honorable circumstances from active service if, as a result of military service, the person is blind, paraplegic or a double or quadruple amputee or has a service connected disability declared

by the United States Veterans' Administration or its successor to be a total one hundred percent permanent disability.

3. Any person who serves as a member of a Reserve Component of the Armed Forces and is called to active duty at any time during the taxable year. A "Reserve Component of the Armed Forces" shall mean the United States Army Reserve, United States Navy Reserve, United States Marine Corps Reserve, United States Coast Guard Reserve, United States Air Force Reserve, The Pennsylvania Army National Guard or The Pennsylvania Air National Guard.
- C. A person seeking to claim an exemption from the Local Services Tax must annually file an exemption certificate with the collector of the tax for the political subdivision levying the tax and file a copy of the certificate with the person's employer affirming that the person reasonably expects to receive earned income and net profits from all sources within the political subdivision of less than \$12,000 in the calendar year for which the exemption certificate is filed. The exemption certificate shall have attached to it a copy of all of the employee's last pay stubs or W-2 forms from employment within the political subdivision for the year prior to the fiscal year for which the employee is requesting to be exempted from the Local Services Tax.
- D. Upon receipt of the exemption certificate and until otherwise instructed by the collector of the tax for East Berlin Borough the employer shall not withhold the tax from the person during the calendar year or remainder of the year for which the exemption certificate applies. With respect to a person who claimed an exemption from the Local Services Tax, upon notification to an employer by the person or by the collector of the tax for the East Berlin Borough, that the person received earned income and net profits from all sources within that East Berlin Borough equal to or in excess of \$12,000 in that calendar year or that the person is otherwise ineligible for the tax exemption for that calendar year, or upon an employer's payment to the person of earned income within that East Berlin Borough in an amount equal to or in excess of \$12,000 in that calendar year, an employer shall withhold the Local Services Tax from the person as follows:
1. If a person who claimed an exemption for given calendar year from the Local Services Tax becomes subject to the tax for the calendar year the employer shall withhold the tax for the remainder of that calendar year.
 2. The employer shall withhold from the person, for the first payroll period after receipt of the notification under the above paragraph, a lump sum equal to the amount of the tax that was not withheld from the person due to the exemption certificate filed by the person, plus the per payroll amount due for that first payroll period.

3. The amount of tax withheld per payroll period for the remaining payroll periods in that calendar year shall be the same amount withheld for other employees.
- E. In the event the employment of a person subject to withholding of the Local Services Tax under this exception is severed in that calendar year, the person shall be liable for any outstanding balance of tax due and the political subdivision levying the tax may pursue collection under this act.
- F. Except as provided for in paragraph D above, Employers shall not be responsible for investigating exemption certificates, monitoring tax exemption eligibility or exempting any employee from a Local Services Tax.
- G. Employers shall be responsible for retaining a copy of all exemption certificates files by employees within a given calendar year for a minimum of three (3) years. Employers who have failed to withhold the Local Services Tax from an employee or employees, AND do not have copies of the employee exemption certificate or certificates, will be held responsible for the payment of the Local Services Tax as if the tax had been originally levied against the employer.

112. SELF EMPLOYED INDIVIDUALS

All self-employed individuals and individuals whose employer is not required to withhold local taxes (certain state and federal agencies) will be billed quarterly for the Local Services Tax. The full amount of tax must be paid by the date indicated on such billing. If such taxpayer qualifies for a low-income exemption, the taxpayer may complete the required exemption certificate or make application for a refund of the tax paid.

113. EMPLOYEES AND SELF EMPLOYED INDIVIDUALS RESIDING BEYOND THE LIMITS OF EAST BERLIN BOROUGH

All employers and self-employed individuals residing or having their place of business outside East Berlin Borough but who engage in any occupation within East Berlin Borough, do by virtue thereof agree to be bound by and subject themselves to the provisions, penalties and regulations promulgated under this Part with the same force and effect as though they were residents of East Berlin Borough. Further, any individual engaged in an occupation within East Berlin Borough and an employee of a non-resident employer may for the purpose of this Part be considered a self-employed person and in the event this tax is not paid, the collector shall have the option of proceeding against either the employer or employee for collection of this as hereinafter provided.

114. ADMINISTRATION OF TAX

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

of the information submitted by employers relating to the number of employees subject to the tax, the number of employees exempt from the tax, the employee exemption certificates and refunds of the tax paid to individuals and employers. It further shall be the duty of the collector, on behalf of the East Berlin Borough, to provide a taxpayer a receipt of payment upon written request of the taxpayer.

- B The collector is hereby charged with the administration and enforcement of this Part 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 Part, including provisions for the examination of the payroll records of any employer subject to this Part; the examination and correction of any return made in compliance with this Part; and any payment alleged or found to be incorrect or as to which overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the collector shall have the right to appeal to the Court of Common Pleas of York or Cumberland County as in other cases provided.
- C. The collector is hereby authorized to examine the books and payroll records of any employer in order to verify the accuracy of any return made by an employer; or, if no return was made, to ascertain the tax due. Each employer is hereby directed and required to give the collector the means, facilities and opportunity for such examination.

115. SUIT FOR COLLECTION

1. In the event any of the tax under this Part remains due or unpaid 30 days after the due date set forth above, the collector may sue for the recovery of such tax due or unpaid together with interest and penalty.
2. If for any reason the tax is not paid when due, interest at the rate of 6% per annum on the amount of said tax, and an additional penalty of 10% shall be added to the flat rate of said tax for non-payment thereof. Where suit is brought for the recovery of this tax, the individual liable therefore shall, in addition, be responsible and liable for the costs of collection, including, but not limited to, attorney's fees.

116. FINE AND PENALTY

Whoever makes any false or untrue statement on any return required by this Part, or who refuses inspection of his books, records, or accounts in his custody and control in order to determine the number of employees subject to this tax who are in his employment, or who fails or refuses to file any return required by this Part, or fails or refuses to pay the tax herein levied shall, upon conviction, be sentenced to pay a fine of not more than \$600 plus costs and, in default of payment of said fine and costs, be sentenced to a term of imprisonment not to exceed 30 days. 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 refused to file a return required by this Part.

117. REFUNDS

Refunds are to be paid within seventy-five days of a refund request or seventy-five days after the last day the employer is required to remit the local services tax for the last quarter of the calendar year, under section 9 of Act 7, whichever is later and shall not be subject to interest if paid within the allowed time.

Refunds shall only be provided for amounts overpaid in a calendar year that exceed one dollar (\$1).

(A) Refund due to duplication of payment. If at any time during the calendar year a taxpayer pays more than \$52.00 in combined LST, the taxpayer may apply for a refund of the amount over \$52.00. The proper refund request form must be completed and signed by the taxpayer and necessary documentation must be included. These refunds may be processed at the time they are received, unless there is reason to believe we will not receive the tax from the employer.

(B) When an individual's "Earned Income and Net Profits" only, for the calendar year is less than the twelve thousand dollar exemption, at the end of the calendar year, any taxpayer who qualifies may complete a refund application and include a copy of the necessary documentation.

118. REPEALER AND SEVERABILITY

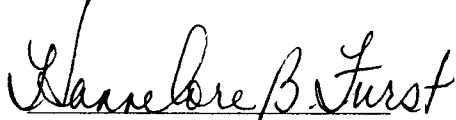
The provisions of this Ordinance shall be severable. If any of its provisions shall be held to be unconstitutional, illegal or otherwise invalid, that decision shall not affect the remaining provisions of this Ordinance or of the East Berlin Borough Code of Ordinances.


119. EFFECTIVE DATE

This Ordinance shall become effective in accordance with applicable law, with the repeal of previous Occupational Privilege Tax and Emergency and Municipal Services Tax Ordinances, effective January 1, 2008.

ENACTED AND ORDAINED THIS 5th DAY OF December 2007.

ATTEST:


Secretary


President of Borough Council

