

# **EMERGENCY AND MUNICIPAL SERVICES TAX FREQUENTLY ASKED QUESTIONS**

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## **IMPOSITION OF EMST**

- 1. What is the authority for the new Emergency and Municipal Services Tax (EMST)?**  
Act 222 of 2004<sup>1</sup> amends the Local Tax Enabling Act, Act 511 of 1965, to permit municipalities and school districts whose taxing authority derives from Act 511,<sup>2</sup> to impose on persons employed within the jurisdiction a combined Emergency and Municipal Services Tax (EMST) of up to \$52 a year beginning on and after January 1, 2005. The EMST replaces the occupational privilege tax.
- 2. What is the maximum EMST?**  
The total EMST paid by any individual in a calendar year is limited to \$52, regardless of the number of political subdivisions in which an individual works during the year. The rate of a school district's EMST is frozen at the rate of the occupational privilege tax collected by the school district on December 1, 2004. School districts that did not impose an occupational privilege tax as of December 1, 2004 may impose an EMST of up to \$5 beginning after December 2005. A municipality can increase its EMST rate to \$52 less whatever amount is collected by the school district.
- 3. If our municipality has an Occupational Privilege Tax and we do not plan to change it do we need to take any action?**  
Section 6 of Act 222 specifies that existing municipal ordinances adopting occupational privilege taxes will continue to be in full force and effect, without reenactment, as if such tax had been levied, assessed or collected as an emergency and municipal services tax. Therefore, municipalities need not amend their existing occupational privilege tax ordinances unless they wish to enact a higher EMST rate under Act 222.
- 4. When can a municipality enact an EMST?**  
Generally, municipal budgets and the taxes to support them are enacted by December 31; however, section 5 of Act 511 permits any municipality imposing a tax under Act 511 to revise its budget during any fiscal year by increasing or making additional appropriations from funds to be provided from an Act 511 tax, such as the EMST.
- 5. What action does a municipality need to take to impose a higher rate EMST rate under Act 222?**  
To increase the rate of the Emergency and Municipal Services Tax, a municipality should either amend its existing ordinance that levied the Occupational Privilege Tax under Act 511 or enact a new ordinance under the provisions of Act 511 and Act 222. The new ordinance or proposed amendment should include the new name of the tax, the amount of the tax, the amount of the low-income exemption and the jurisdiction's withholding

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<sup>1</sup> <http://www.legis.state.pa.us/WU01/LI/BI/BT/2003/0/HB0197P4802.htm>

<sup>2</sup> The taxing authority of the City of Philadelphia and the Philadelphia School District derives from legislation other than Act 511.

policy.

Before a taxing jurisdiction can adopt a new ordinance imposing an EMST, it must advertise consideration of the new tax in a newspaper of general circulation once a week for three weeks. The advertisement must specify details of the tax, the reason for the tax and amount of revenue estimated to be derived from the tax.

Within 15 days after an ordinance has been amended or adopted, municipalities must file a copy of it with DCED. Finally, to require employer withholding at the new rate, the Municipal Secretary must notify DCED of the change in the rate.

**6. How does a municipality notify DCED of a change in the EMST rate?**

All local governments are required to file a Tax Information Form that provides the specific tax levies that are imposed. Municipal forms are due by January 18, 2005. If a municipality changes its tax rate after the Tax Information Form is filed, the Municipal Secretary should file with DCED both a copy of the new or amended ordinance and an amended Tax Information Form by copying the old Tax Information Form and making the appropriate change.

## **WITHHOLDING OF EMST**

**7. Where can I find a list of the new EMST rates?**

Municipalities and school districts or their tax collectors typically notify employers of new tax rates, collection, withholding and filing policies and procedures.

Employers can also find the most recently filed EMST rates on DCED's Register at <http://www.inventpa.com/default.aspx?id=149>.

**8. When will the new EMST rates be available?**

The earliest that new EMST rates can become effective is January 1, 2005. Since there was limited time to enact the tax increase (Act 222 took effect on December 1, 2004, and changes in the tax rate must be advertised for three different weeks), some rate increases may not be adopted and/or take effect until after January 1, 2005. As described in the answer to question 5, jurisdictions may choose to levy new rates later in the year as the tax rate may be increased any time during 2005 or thereafter.

As of January 10, 2005, 74 municipalities had notified DCED that they have adopted the new EMST rates. DCED expects that a list of new EMST rates will be available by January 24, 2005, since Municipal Tax Information Forms are due by January 18. New EMST rates submitted to DCED after January 18 will be available on the Register within 48 hours of receipt.

**9. Where are 2005 rates found on DCED's Tax Register?**

The Local Tax Enabling Act provides that the Register for Earned Income and Occupational Privilege/Emergency and Municipal Services Taxes is effective from July 1 to June 30. Therefore, in the past, the official "2005 Register" would

not have been available until July 2005. However, DCED's online Register is updated continuously. DCED updates the Register as soon as the information is received from municipalities and school districts. The effective date shown in the Register for each tax is the date that DCED received the information from the local taxing jurisdiction.

**10. Can employers be penalized for not withholding at an EMST rate that is not listed in the Register?**

Section 9 of Act 511 prohibits a local taxing jurisdiction from requiring that employers withhold from the compensation of their employees an EIT or EMST that is not listed in the Register. Employers may, however, do so voluntarily.

**11. When should the new EMST be withheld and remitted to local taxing jurisdictions?**

Section 9 of Act 511 prohibits a local taxing jurisdiction from requiring that employers withhold the EMST from any one of their employees more than one time in any calendar year. However, local taxing jurisdictions may permit employers to withhold the EMST in installments.

Many taxing jurisdictions are requiring that employers withhold the EMST as soon as possible in the calendar year (during the first quarter) and remit all withheld taxes by April 30. This is generally the same procedure that has been used for the administration of the occupational privilege tax. For employees hired in subsequent quarters who have not already paid the tax (see answer to question 2), municipalities can require the employer withhold the tax during that quarter and remit the tax 30 days after the end of the quarter. However, withholding policies vary among local taxing jurisdictions, so employers should check with their local taxing jurisdiction for guidance on withholding policies.

**12. Can the EMST be withheld from more than one paycheck?**

Section 9 of Act 511 prohibits a local taxing jurisdiction from requiring that employers withhold the EMST from any one of their employees more than one time in any calendar year. However, the act does not prohibit a local taxing jurisdiction from giving employers the option of spreading the withholding of the EMST over more than one paycheck. Some local taxing jurisdictions have taken advantage of this and are providing employers with the option of spreading the withholding of the EMST over the first four paychecks or, if the employee's gross pay is less than \$130, deducting 10% of the employees' gross pay. These jurisdictions have elected not to hold employers liable for any non-deducted portion of the withholding liability as long as the employer deducts from the employees' last paycheck as much of the employee's remaining EMST liability as possible.

**13. Is the new \$12,000 low-income exemption mandatory?**

The low-income exemption is optional on the part of the municipality or school district. Local taxing jurisdictions may provide for no exemption or an exemption in any amount so long as the exemption does not exceed \$12,000. DCED recommends that municipalities and school districts establish uniform exemption levels.

**14. Should employers withhold the EMST from employees who will not earn more than the low-income exemption?**

Employers may not be able to predict or know an employee's income from all sources. Therefore, it may be a prudent practice for employers to withhold the tax from all employees, even if it appears that some of those employees may be eligible for the low-income exemption. Local taxing jurisdictions are responsible for refunding taxes withheld from taxpayers who earn less than the low-income exemption. However, withholding policies vary from among local taxing jurisdictions, so employers should check with their local taxing jurisdiction for guidance on withholding policies.

**15. If updated EMST rates are not available as of first pay period in 2005 should employers withhold the \$5 or \$10 OPT and then catch-up when rates are updated?**

Employers should withhold the EMST rate based on the most recent information available from the taxing jurisdiction and/or in the Tax Register.

**16. Where is an individual employed for purposes of the EMST?**

Section 2 of Act 511 establishes the situs for the EMST as the place of employment, which means the actual location where the individual works. It is not the headquarters of the employer where payroll checks are prepared.

**17. If an employee concurrently works in more than one political subdivision and is subject to more than one EMST, which political subdivision has priority for EMST?**

Section 2 of Act 511 provides that the place of employment is determined as of the day the taxpayer first becomes subject to the tax during the calendar year. A tax receipt showing payment of the EMST at an earlier date in the same calendar year constitutes prima facie certification of payment to all other political subdivisions where an individual subsequently becomes liable for the tax. Should an employee work in two or more political subdivisions at the same time, Section 2 also establishes the following priorities for claims to collect such tax: (1) the political subdivision where the employee maintains his or her principal office or is principally employed; (2) the political subdivision in which the person resides and works if the political subdivision of residence imposes the tax; and (3) the political subdivision in which a person is employed imposing the tax which is nearest to the person's home.

**18. If on the first pay of 2005 an employee has an EMST of \$10 withheld, and then later in the year transfers to a municipality with an EMST in excess of \$10 should the additional amount then be withheld?**

The total EMST paid by any individual in a calendar year is limited to \$52, regardless of the number of political subdivisions in which an individual works during the year. If an employee pays an EMST of \$10 and transfers to a municipality where the rate is higher, the employer should withhold the difference.

***Disclaimer:** The Department of Community and Economic Development has no authority to issue an opinion on the law that is binding on any agency or individual. This summary is for informational purposes only. The Department of Community and Economic Development suggests that municipalities, school districts and employers contact their solicitor or legal counsel for further information.*