

BOROUGH OF EAST PETERSBURG
Lancaster County, Pennsylvania

ORDINANCE NO. 255

AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF EAST PETERSBURG, LANCASTER COUNTY, PENNSYLVANIA, IMPOSING A LOCAL SERVICES TAX UPON PERSONS EMPLOYED WITHIN THE BOROUGH OF EAST PETERSBURG AND PROVIDING RULES AND REGULATIONS FOR THE ADMINISTRATION AND COLLECTION OF SUCH TAX.

BE AND IT IS HEREBY ORDAINED AND ENACTED by the Council of the Borough of East Petersburg, Lancaster County, Pennsylvania, as follows:

Section 1. Short Title and Authority.

This Ordinance shall be known and may be cited as the Borough of East Petersburg Local Services Tax Ordinance. This Ordinance is enacted under the authority of The Local Tax Enabling Act, 53 P.S. §6901 et seq.

Section 2. Definitions.

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

ACT – The Local Tax Enabling Act, 53 P.S. §6901 et seq., as amended from time to time, including future amendments.

BOROUGH OF EAST PETERSBURG OR BOROUGH – the area within the corporate limits of the Borough of East Petersburg, Lancaster County, Pennsylvania.

COLLECTOR – the person or agency appointed from time to time by the Borough of East Petersburg or the Manager to assess and collect the tax imposed under this Ordinance.

EMPLOYER – an individual, partnership, association, corporation, limited liability company, governmental body, agency or other entity employing one (1) or more persons on a salary, wage, commission or other compensation basis, including a self-employed person.

FISCAL YEAR – during the first calendar year following the enactment of this Ordinance, the period beginning January 1, 2010, and ending December 31, 2010, and thereafter each 12 months beginning January 1 and ending December 31.

HE, HIS OR HIM – indicates the singular and plural number as well as male, female and neuter gender.

INCOME FROM ALL SOURCES – earned income and net profits or as otherwise defined by the Act.

INDIVIDUAL – any person, male or female, engaged in any occupation, trade or profession within the corporate limits of the Borough of East Petersburg.

MANAGER – the Manager of the Borough of East Petersburg under whose direction this tax shall be administered and enforced.

OCCUPATION – any trade, profession, business or undertaking of any type, kind or character, including services, domestic or other, carried on or performed within the corporate limits of the Borough for which compensation is charged or received whether by means of salary, wages, commissions or fees for services rendered.

SCHOOL DISTRICT – the Hempfield School District.

TAX OR LOCAL SERVICES TAX – the Local Services Tax in the amount of fifty-two (\$52.00) dollars per annum levied by this Ordinance.

Section 3. Imposition of Tax

The Borough of East Petersburg levies and imposes on each individual engaged in an occupation within its corporate limits during each fiscal year a local services tax in the amount of fifty-two (\$52.00) dollars per annum, such tax to be paid by the individuals so engaged; provided, however, that any individual whose total income from all sources is less than twelve thousand (\$12,000.00) dollars for the fiscal year shall be exempt from such local services tax and may secure a refund at the end of the year by filing a claim therefor on forms to be supplied by the Borough. This tax is in addition to all other taxes of any kind or nature heretofore levied by the Borough, and this tax shall continue in force on a fiscal year basis, without annual reenactment, unless the rate of the tax is subsequently changed or this Ordinance is repealed.

Section 4. Collection by Employer; Return and Payment.

Each employer who engages in business within the Borough of East Petersburg is hereby charged with the duty of collection from each of his employees engaged by him and performing for him within the Borough of East Petersburg the said tax of fifty-two (\$52.00) dollars per annum and making a return and payment thereof to the Collector.

Section 5. Duty of Employers

- A. Each employer within the Borough as well as those employers situated outside of the Borough, but who engage in business within the Borough, is hereby charged with the duty of collecting from each of his employees engaged by him and performing for him within the Borough such local services tax at the rate of \$52 per annum and making a return and remitting the tax to the Collector within thirty days after the end of each quarter of the fiscal year. Further, each employer is hereby authorized to deduct this tax from each employee in his employ, whether such employee is paid by salary, wages or commission and whether or not part or all such services are performed within the Borough. If the full amount of the tax has been remitted to the Borough for a previous quarter or quarters of the same fiscal year for the same employee, no additional quarterly returns and remittances will be required by the employer for that employee for the balance of the fiscal year. The Manager may from time to time prescribe a different schedule for making returns and remitting the tax to the Collector to the extent permitted by law.

- B. Taxes deducted from wages by an employer shall at all times be and remain the property of this Borough and shall constitute a trust fund in the employer's hands until remitted to the Collector. Deduction of taxes from wages shall, as between the employee and the Borough, constitute payment of the tax by the employee, regardless of any insolvency or failure to remit on the employer's part.
- C. Each employer shall deduct and collect the full amount of the tax from employees at least quarterly or on a pro rata basis for each payroll period (or other method established by the General Assembly of the Commonwealth of Pennsylvania) if required by the Act. The Manager may from time to time prescribe a different frequency of deduction and collection of the tax from employees to the extent permitted by law.

Section 6. Employer's Returns.

- A. Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied by the Collector.
- B. If the employer fails to file such return and pay such tax, whether or not he makes collection thereof from the salary, wages or commissions paid by him to such employee, the employer shall be responsible for payment of the tax as though the tax had originally been levied against him.

Section 7. Employment Records.

Each employer shall use his employment records for determining the number of employees from whom such tax shall be deducted and paid over to the Collector for each quarter of the fiscal year. Supplemental reports shall be made for new employees who were not included in a previous report.

Section 8. Individuals Having More Than One (1) Occupation.

- A. Each individual who shall have more than one (1) occupation within the Borough shall be subject to the payment of this tax on his principal occupation, and his principal employer shall deduct this tax and deliver to him evidence of deductions on a form to be furnished to the employer by the Borough, which form shall be evidence of deductions having been made and when presented to any other employer shall be authority for such employer to not deduct this tax from the employee's wages, but to include such employee on his return by setting forth his name and address and the name and address of the employer who deducted this tax.
- B. Each individual who engages in at least one occupation within the Borough and at least one occupation in another municipality shall be subject to the payment of this tax, subject to the limitations set forth below. The priority among municipalities to the receipt of payment of the tax shall be governed by the Act. To the extent, the tax imposed under this Ordinance exceeds the tax imposed by another municipality deemed to have priority under the Act, such individual shall pay to the Borough the difference between the tax imposed under this Ordinance and the tax paid to the other municipality. Provided such employee provides evidence of the amount of the deductions for the tax paid to the other municipality on a form approved by the other municipality and furnished by the employer located outside of the Borough, the Borough employer is authorized to deduct only the difference between the tax imposed under this Ordinance and the tax paid to the other municipality. In addition to withholding the tax as set forth in the prior sentence, the Borough employer shall identify such employee on his return to the Borough by setting forth his name and address and the name and address of the employer who deducted the

tax in the other municipality, the amount of the tax withheld, and the name of the municipality to which the tax was paid.

- C. It is the intent of this Section and Ordinance that no one individual pay more than \$52 per annum for the local services tax imposed under this Ordinance by the applicable taxing authorities.

Section 9. Payment by Self-Employed Individuals.

All self-employed individuals who perform services of any type or kind or engage in any occupation or profession within the Borough shall be required to comply with this Ordinance and pay the tax to the Collector on April 30 of each year or as soon thereafter as he engages in an occupation within the Borough.

Section 10. Status of Nonresident Employers and Self-Employed Individuals.

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

Section 11. Collection and Administration of Tax by Borough.

- A. It shall be the duty of the Collector to accept and receive payments of this tax and to 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.
- B. The Manager is hereby charged with the administration and enforcement of this Ordinance and is hereby charged and empowered to prescribe, adopt, and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this Ordinance, including provisions for the processing of refund claims for the tax paid by any person who is eligible for an exemption, the examination of the payroll records of any employer subject to this Ordinance, and the examination and correction of any return made pursuant to this Ordinance 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 Manager shall have the right to appeal to the East Petersburg Borough Council pursuant to the Local Agency Law.
- C. The Manager or his duly 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 Manager or his duly authorized representative or agent the means, facilities, and opportunity for such examinations.

Section 12. Suits for Collection.

- A. In the event that any tax under this Ordinance remains due or unpaid thirty (30) days after the due date above set forth, the Borough may sue for the recovery of any such tax due or unpaid under this Ordinance together with interest and penalty by any method permitted by the Act or by any other appropriate remedy.

- B. If for any reason the tax is not paid when due, interest at the rate of six (6%) percent per annum on the amount of said tax shall be calculated beginning with the due date of said tax, and an additional penalty of one-half of one percent (.5%) 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 this tax, the individual liable therefor shall, in addition, be responsible and liable for the costs of collection, including attorneys' fees.

Section 13. Violations and Penalties.

Any person who makes any false or untrue statement on any return required by this Ordinance, or who refuses inspection of his books, records or accounts in his custody and control setting forth the number of employees subject to this tax who are in his employment, or who fails or refused to file any return or deduct, withhold, collect, remit or pay any tax required by this Ordinance, or who fails or refuses to comply with any other provision of this Ordinance, commits a violation of this Ordinance. If the Manager or the Collector determines that a person has committed or permitted the commission of a violation of this Ordinance, the Borough may institute summary criminal proceedings and/or may seek equitable or other relief. In the event summary criminal proceedings are instituted, the fine for the first offense shall not be less than One Hundred (\$100) Dollars and not more than six Hundred (\$600) Dollars. The fine for a second offense shall not be less than Three Hundred (\$300) Dollars and not more than Six Hundred (\$600) Dollars. The fine for a third or greater offense shall not be less than Five Hundred (\$500) Dollars and not more than Six Hundred (\$600). Each day or portion thereof in which a violation exists shall be considered a separate violation of this Ordinance. Each Section of this Ordinance which is violated shall also be considered a separate violation. The amount of any fine imposed by a magisterial district judge or a court shall be in addition to any other fine which may be imposed under any other ordinance of the Borough or under any statute. In default of payment of any fine, such person shall be liable to imprisonment for not more than thirty (30) days. In addition to other responsible persons, the action to enforce the Ordinance may be instituted against any person in charge of the business of any employer who shall have failed or refused to file a return or remit a payment required by this Ordinance.

Section 14. Applicability; Validity.

- A. Nothing contained in this Ordinance shall be construed to empower the Borough to levy and collect the tax hereby imposed on any occupation not within the taxing power of the Borough under the Constitution of the United States and the Constitution and laws of the Commonwealth of Pennsylvania.
- B. If the tax hereby imposed under the provisions of this Ordinance shall be held to be in violation of the Constitution of the United States or the Constitution or laws of the Commonwealth of Pennsylvania as to any individual, such decision shall not affect or impair the right to impose or collect said tax, or the validity of the tax so imposed, on other persons or individuals as herein provided.
- C. It is the intent of this Ordinance that the entire burden of the tax imposed on a person by the Borough and the School District shall not exceed the limitations prescribed in the Act.

Section 15. Severability.

In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such invalidity, illegality or unconstitutionality shall not affect or impair the remaining provisions, sections, sentences,

clauses or parts of this Ordinance, it being the intent of the East Petersburg Borough Council that the remainder of the Ordinance shall be and shall remain in full force and effect.
Section 16. Effective Date.

This Ordinance shall take effect and be in force on January 1, 2010.

DULY ORDAINED AND ENACTED the 15th day of December, 2009, by the Council of the Borough of East Petersburg, Lancaster County, Pennsylvania, in lawful session duly assembled.

BOROUGH OF PETERSBURG
Lancaster County, Pennsylvania

Attest: James R. Williams
James R. Williams, Secretary

By: Cathleen M. Panus
Cathleen M. Panus, President

[Borough Seal]

Gary L. Spangenburg
Gary L. Spangenburg, Mayor