

ORDINANCE NO. 625

AN ORDINANCE OF THE TOWNSHIP OF PENN TO AMEND, IN ITS ENTIRETY CHAPTER 121, OCCUPATION PRIVILEGE TAX, ARTICLE IX, OF THE PENN TOWNSHIP CODE OF ORDINANCES, ORDINANCE NO. 246, TO ADOPT THE EMERGENCY AND MUNICIPAL SERVICES TAX, AND TO CONFORM TO THE REQUIREMENTS OF ACT 222 OF 2004.

BE IT ENACTED AND ORDAINED by the Board of Commissioners of the Township of Penn, York County, Pennsylvania, and it is hereby enacted and ordained by the authority of the same as follows:

SECTION 1. Short Title. This Ordinance shall be known and may be cited as the “Penn Township Emergency and Municipal Services Tax Ordinance”.

SECTION 2. Purpose. The purpose of this Ordinance is to generate revenue for police, fire and emergency services; road construction and maintenance; and reduction of property taxes.

SECTION 3. Definitions. The following words and phrases when used in this Article shall have the meanings ascribed to them in this Article except where the context or language clearly indicates or requires a different meaning:

COLLECTOR — the person or firm, from time to time, designated by motion of the Township of Penn to collect and administer the provisions of this Ordinance and collect the tax levied by this Ordinance.

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.

INDIVIDUAL — any person engaged in any occupation within the jurisdictional limits of Penn Township whose total annual income from all sources is greater than the minimum amount set from time to time by Resolution of the Board of Commissioners.

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 Penn Township.

TAX — the Emergency and Municipal Services Tax levied by this Ordinance.

SECTION 4. Levy. The Township of Penn hereby levies and imposes a tax at a rate to be determined by Resolution by the Board of Commissioners on every individual engaging in an occupation within the jurisdictional limits of Penn Township. Such Resolution shall continue in full force and effect until modified or repealed by subsequent

Resolution. This tax is in addition to all other taxes of any kind or nature heretofore levied by the Township of Penn.

SECTION 5. Restricted Use. The Township of Penn shall use the revenue derived from this tax for the following purposes:

- A. Police, fire and/or emergency services;
- B. Road construction and/or maintenance; or
- C. Reduction of property taxes.

SECTION 6. Duty of Employer. Each employer within Penn Township and each employer situate outside Penn Township but who engages in business within Penn Township, 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 Penn Township and making a return and payment thereof to the collector. Further, each employer is hereby authorized to deduct said tax from the salary, wages, commissions or fees paid to each employee. Each employer shall, at the time of payment of the tax, notify the collector of the number of employees subject to the tax, the number of employees exempt from the tax, and an employee identification number for each employee.

SECTION 7. Returns. Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied by the collector. Each employer in filing this return and making payment of the tax withheld from the employee shall be entitled to retain a commission calculated at the rate of two percent (2%) of the gross tax due and payable, provided that such tax is collected and paid over by the employer on or before the dates hereinafter set forth. It is further provided that if the employer fails to file said return and pay said tax whether or not the employer makes collection thereof from the salary, wages, commissions or fees paid by the employer to said employee, the employer is responsible for the payment of the tax in full without deducting a commission and as though the tax had originally been levied against the employer.

SECTION 8. Dates for Determining Tax Liability and Payment.

A. As to each individual employed for any length of time on or before March 31 of the current year, each employer shall deduct the tax from compensation payable to the individual, file a return on a form prescribed by the collector and pay the collector the full amount of all such taxes on or before May 1 of the current tax year. Thereafter, as to each individual for whom no prior deduction has been made who is employed for any length of time in any of the three month periods ending June 30, September 30, and December 31 of each year, each employer shall deduct the tax from compensation payable to the individual, file a return on a form prescribed by the collector and pay to the collector the full amount of all taxes deducted for each such period on or before August 1 and November 1 of the current year, and February 1 of the subsequent year, respectively.

B. Any employer who discontinues business or ceases operation before December 31 of any tax year, shall within fifteen (15) days after discontinuing business or ceasing operation, file the return hereinabove required and pay the tax to the collector.

SECTION 9. Individuals Engaged in More Than One Occupation. In the event an individual is engaged in more than one (1) occupation or an occupation which requires working in more than one (1) political subdivision during the calendar year, the priority of claim to collect the tax shall be in the following order: First, the political subdivision in which the individual maintains his or her principal office or is principally employed; Second, the political subdivision in which the individual resides and works, if such tax is levied by that political subdivision; Third, the political subdivision in which the individual is employed and which imposes the tax nearest in miles to the individual's home. The place of employment shall be determined as of the day the individual first becomes subject to the tax for the calendar year. It is the intent of this Ordinance that no individual shall pay more than one tax per calendar year irrespective of the number of political subdivisions within which such individual may be employed within any given calendar year. In case of dispute, a tax receipt of the taxing authority for that calendar year declaring that the individual has made prior payment which constitutes prima facie certification of payment to all other political subdivisions.

SECTION 10. Self-Employed Individuals. All self-employed individuals who perform services of any type or kind, or engage in any occupation or profession within the Township shall be required to comply with this Article and pay the tax to the collector on or before June 15 of the tax year, or as soon thereafter as he or she engages in an occupation. In the event a self-employed person is engaged in more than one occupation within or without the Township or an occupation which requires his or her working in more than one political subdivision during the year, reporting priority of claims and prima facie certification of payment shall be in accordance with Section 9 above.

SECTION 11. Employees and Self-Employed Individuals Residing Beyond the Limits of Penn Township. All employers and self-employed individuals residing or having their place of business outside Penn Township but who engage in any occupation within Penn Township, do by virtue thereof agree to be bound by and subject themselves to the provisions, penalties and regulations promulgated under this Ordinance with the same force and effect as though they were residents of Penn Township. Further, any individual engaged in an occupation within Penn Township and an employee of a nonresident employer may for the purpose of this Article be considered a self-employed person and in the event this tax is not paid the Township shall have the option of proceeding against either the employer or employee for the collection of this tax as hereinafter provided.

SECTION 12. Administration of Tax.

1. 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 or her 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 the employers relating to the number of employees subject to the tax, the number of employees exempt from the tax, and an employee identification number for each employee as set forth in Section 6 above.

2. The collector is hereby charged with the administration and enforcement of this Ordinance 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 Ordinance, including provisions for the examination of the payroll records of any employer subject to this Ordinance; the examination and correction of any return made in compliance with 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 collector shall have the right to appeal to the Court of Common Pleas of York County as in other cases provided.

3. The collector is hereby authorized to examine the books and payroll records of any employer in order to verify the occurrence 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.

SECTION 13. Suit for Collection and Enforcement.

1. In the event any tax under this Ordinance remains due or unpaid thirty (30) days after the date above set forth, the collector may sue for recovery of such tax or unpaid tax together with interest and penalty. Upon each such judgment, execution may be issued without any stay or benefit of any exemption law. The right of the collector to collect unpaid taxes under this Ordinance shall not be affected by the fact that such taxes have been entered as liens in the office of the Prothonotary, or the fact that the property against which they were levied has been returned to the County Commissioners for taxes for prior years.

2. If for any reason, the tax is not paid when due, interest at the rate of six percent (6%) per annum on the amount of said tax, and an additional penalty of one-half of one percent (1/2%) of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid, shall be added and collected. When suit is brought for the recovery of any such tax, the person liable therefore shall, in addition, be liable for the costs of collection, including but not limited to, attorney's fees, and the interest and penalties herein imposed.

3. If for any reason, the employee fails to make its payroll records available for examination, the collector may file suit seeking an injunction to compel the employer to allow the collector to examine the books, payroll records, and financial records of the employer as set forth in Section 12(3) above.

4. The remedies set forth in this Section are in addition to and not in lieu of the fines and penalties that may be imposed as set forth in Section 14 below.

SECTION 14. Fine and Penalty. Whoever makes any false return or untrue statement on any return required by this Ordinance or refuses inspection of the employer's books, records or accounts in the employer's custody and control or to determine the number of employees subject to this tax who are in the employer's employment or who fails or refuses to file any return required by this Ordinance or fails or refuses to pay the tax levied shall upon finding thereof pay a fine of not more than three hundred dollars (\$300.00) for each offense. It is further provided that the action to enforce the fine may be instituted against any person in charge of the business or any employer who has failed or refused to file a return required by this Ordinance. Every day that a violation of this Ordinance continues shall constitute a separate offense. The Township Manager, Treasurer, Collector or other person or persons specifically authorized by the Board of Commissioners of Penn Township shall determine in each instance whether a violation has occurred under this Ordinance. Upon determination that a violation has occurred, the Township official or other person or persons designated by the Board of Commissioners shall impose a fine upon the violator and shall give the violator written notice by United States mail or in person of the violation and the imposition of the fine. If the violator fails to pay the fine within the time specified in the notice of violation, the Township police may institute a summary proceeding on behalf of the Township, and any person found to be in violation shall pay the fine as set forth above plus all court costs and reasonable attorney's fees incurred by the Township in the criminal enforcement proceeding.

SECTION 15. Repeal of Per Capita Tax and Occupation Tax. The Per Capita Tax levied by Ordinance No. 11, as amended by Ordinance No. 192, shall be repealed. The Occupation Tax levied by Ordinance No. 245, as amended by Ordinance No. 259 and Ordinance No. 310, shall be repealed.

SECTION 16. Repeal of Rental Unit Reporting. Ordinance No. 317 requiring owners of rental units to report rentor identities shall be repealed in its entirety.

SECTION 17. Repealer. All Ordinances or parts of Ordinances that are inconsistent herewith are hereby repealed.

SECTION 18. Severability. If any sentence, clause, section or part of this Ordinance 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, sections or parts of this Ordinance. It is hereby declared as the intent of the Board of Commissioners that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 19. Effective Date. This Ordinance shall become effective five (5) days after enactment.

**ENACTED AND ORDAINED BY THE BOARD OF COMMISSIONERS OF
PENN TOWNSHIP THIS 17th DAY OF January, 2005.**

**BOARD OF COMMISSIONERS
PENN TOWNSHIP, YORK COUNTY,
PENNSYLVANIA**

By *Michael T. Rishel*
Michael T. Rishel, President

ATTEST:

Kristina J. Rodgers
Kristina J. Rodgers, Township Secretary