

ORDINANCE NO. 262

AN ORDINANCE OF THE BOROUGH OF BALLY,
BERKS COUNTY, PENNSYLVANIA, TO PROVIDE REVENUE
FOR GENERAL BOROUGH PURPOSES BY IMPOSING, ASSESSING
AND LEVYING AN EMERGENCY AND MUNICIPAL SERVICES TAX ON
INDIVIDUALS FOR THE PRIVILEGE OF ENGAGING IN AN OCCUPATION
WITHIN THE BOROUGH, IMPOSING DATES, AND CONFERRING POWERS
UPON THE TAX COLLECTOR, AND PROVIDING FOR THE PAYMENT OF
SAID TAX; PRESCRIBING THE METHOD AND MANNER OF COLLECTING
THE TAX IMPOSED, ASSESSED AND LEVIED; PROVIDING
CERTAIN PENALTIES FOR THE NON-PAYMENT THEREOF; AND
REPEALING ALL INCONSISTENT ORDINANCES

WHEREAS, the Commonwealth of Pennsylvania has by virtue of amendments to the Local Tax Enabling Act (53 P.S. § 6901 et seq.) authorized municipalities to levy an Emergency and Municipal Services Tax upon individuals for the privilege of engaging in an occupation within the municipality.

NOW, THEREFORE, under and by virtue of, and pursuant to the authority granted by the Local Tax Enabling Act of the General Assembly of the Commonwealth of Pennsylvania, it is hereby ENACTED AND ORDAINED by the Borough of Bally as follows:

SECTION I DEFINITIONS

The following words and phrases, when used in this Ordinance, shall have the meaning ascribed to them in this Section unless the context clearly indicates a different meaning:

- a. "Borough" shall mean Borough of Bally, Berks County, Pennsylvania.
- b. "School District" shall mean the Boyertown Area School District, Montgomery and Berks Counties, Pennsylvania.
- c. "Individuals" shall mean any person, male or female, engaged in any occupation of any nature, kind, or type within the limits of the Borough, whether in the employ of another or self-employed during the calendar year 2007 and all years thereafter.
- d. "Occupation" shall mean any trade, profession, business or undertaking of any type or kind carried on or performed within the Borough for which recompense is received, whether by means of salary, wages, commission, or if the individual be self-employed, by payment for services rendered.

e. "Employer" shall mean an individual, partnership, limited partnership, association, firm, or corporation that engages the services of any individual and makes payment to said individual whether by salary, wages, or commission. An employer shall include a self-employed person who engages in his employ the services of one or more individuals besides himself.

f. "Tax Collector" shall mean the person designated by the School District for the collection of the Emergency and Municipal Services Tax.

g. "Date of Billing" shall mean the date when the Tax Collector first issues the bills under this Ordinance.

SECTION II LEVY AND COLLECTION OF TAX

For the period from January 1st through December 31, 2007, and for each year thereafter, the Borough hereby imposes on each individual engaged in an occupation within the limits of the Borough for any length of time in 2007 or any year thereafter, a tax for the privilege of engaging in an occupation within the Borough in the manner and at the rates hereinafter set forth. The tax shall be known as the Emergency and Municipal Services Tax. The proceeds of the Emergency and Municipal Services Tax shall be used by the Borough for police, fire or emergency services within (or to benefit the citizens of) the Borough; for road construction or maintenance; or for the reduction of property taxes.

SECTION III EXEMPTION FROM TAX

Any individual whose total income from all sources during the year 2007, or any single year thereafter, is less than TWELVE THOUSAND DOLLARS (\$12,000.00) may be exempted from payment of the Emergency and Municipal Services Tax imposed pursuant to the provisions of this Ordinance. Any person who qualifies for an exemption from taxation as set forth in this section III, and who is desirous of being exempted from payment of the Emergency and Municipal Services Tax for any single year, shall obtain an exemption form from the Borough and shall submit the completed exemption form to the Borough together with all information requested as part of the exemption request form. The exemption request form shall include, in addition to any other information the Borough deems relevant to establish the applicant's anticipated income for any particular year, the applicant's name, address, and social

obtain a form from the Tax Collector and/or the Secretary of the Borough, and shall complete the said form and return it to the Tax Collector within fifteen (15) days after commencing to do business in the Borough. Said information shall consist of, but is not limited to, the following:

1. The name(s) of the property owner(s).
2. The address of the property owner(s).
3. The location of the business property.
4. The name of the business or enterprise, along with the names of the principals involved and their home or residential addresses, whether the business enterprise be a corporation, individual proprietorship, partnership, profit corporation, non-profit corporation, or any other type of association. In the case of a corporation, the names and addresses of all corporate officers shall be supplied.
5. The names and telephone number of a responsible individual to be contacted in case of an emergency or crisis situation.
6. Any other address of the business enterprise outside of the Borough.
7. The estimated number of employees.
8. The date business commenced within the Borough.
9. Additional information as may be required by the Tax Collector from time to time.

C. From January 1, 2007, and each year thereafter, it is hereby required that all landlords shall provide an updated list of all of the occupants within the building(s) which said landlord owns within the Borough, to be supplied to the Tax Collector by not later than January 31, 2007, and by the same date in each year thereafter.

SECTION VI DUTY OF EMPLOYERS

Each employer within the Borough is hereby charged with the duty of collecting and paying over to the Tax Collector from each employee engaged in his service, the said tax of twenty dollars (\$20.00) per year upon each individual employed by said employer who performs services on behalf of said employer within the geographical limits of the Borough or who is engaged in an occupation as hereinbefore defined, for the benefit of said employer or in the service of said employer within the geographical limits of the Borough. Each employer shall

security number; the name and address of current (or most recent) employer; copies of the applicant's federal and/or state income tax returns for the two most recent calendar years, or – if no federal or state tax returns were filed during either of the two most recent calendar years – a statement as to the total sources and amounts of all income received by the applicant during the two most recent calendar years. The application for exemption shall be signed by the individual requesting the exemption, and shall be made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities. The application must be completed and submitted to the Borough within the year for which exemption from payment is requested, and shall be submitted to the Borough no later than June 30th of the year for which the exemption is sought.

SECTION IV AMOUNT OF TAX

Each individual engaged in an occupation as hereinbefore defined, within the limits of the Borough, shall pay an Emergency and Municipal Services Tax in the amount of twenty dollars (\$20.00).

SECTION V DISCOUNT, FLAT RATE AND PENALTY PERIODS

A. The said tax shall be due and payable on January 1, 2007, and if payment of said tax be made within two (2) months after date of billing, a discount of two percent (2%) shall be allowed each individual so paying said annual tax of twenty dollars (\$20.00). If the tax is paid by taxpayer after the two (2) month period following billing and prior to a four (4) month period following billing, the tax due shall be twenty dollars (\$20.00). All taxpayers who shall fail to make payment of any such charges against them for four (4) months after date of billing, shall be charged a penalty of ten percent (10%) which penalty shall be added to the taxes by the Tax Collector and collected by him. In the case of any persons engaging in occupations within the geographical limits of the Borough after January 1, 2007, the periods of time, as hereinbefore set forth for discount, flat rate and penalties shall apply. Such periods of discount, flat rate and penalties shall continue for all succeeding years after calendar year 2007 unless the same shall be changed by way of ordinance or resolution by the Borough.

B. From January 1, 2007, and each year thereafter, all new businesses located within the Borough, whether it is a corporation, individual proprietorship, partnership, or any type of association whatsoever, and whether it is an industrial or commercial business, shall

January 1st of any particular year, shall require said employee to furnish to him a Certificate of Payment from the Tax Collector showing that the Emergency and Municipal Services Tax has heretofore been paid for the year in question. In the event that such an employee has not previously paid his Emergency and Municipal Services Tax, the employer shall deduct the same within thirty (30) days after the employee is hired, or after the date of billing, whichever is later, and remit it to the Tax Collector within thirty days after the end of each calendar quarter (i.e., March 31st, June 30th, September 30th, or December 31st).

SECTION IX SELF-EMPLOYED INDIVIDUALS WITHIN THE BOROUGH

Each self-employed individual in the Borough who performs any services of any type or kind within the geographical limits of the Borough for any length of time in the year 2007 or any year thereafter, whether the same be regarded either as a profession or as a business, shall be required to pay an Emergency and Municipal Services Tax of twenty dollars (\$20.00) to the Borough for each year, or part of a year, during which said self-employed person performs any services within the Borough.

SECTION X NO IMPACT ON OTHER TAXES

The tax imposed by this Ordinance shall be in addition to all other taxes of any kind or nature heretofore or hereafter levied by the Borough.

SECTION XI POWERS AND DUTIES OF THE TAX COLLECTOR

A. It shall be the duty of the Tax Collector to collect and receive the taxes, fines, or penalties imposed by this Ordinance. It shall also be his duty to keep a record showing the amount received by him from each self-employed person paying the tax and the date of such receipt; and further, it shall be his duty to keep a record showing the amount received by him from every employer paying the tax on behalf of his employees by deduction made by said employer from the salary, wages, commissions or other forms of recompense.

B. The Tax Collector is hereby charged with the administration and enforcement of the provisions of this Ordinance, and is hereby empowered to prescribe, adopt, and promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this Ordinance, including a provision for the examination of

make a return in payment of said tax and is authorized to deduct the said Emergency and Municipal Services Tax at the rates hereby imposed from each employee in his service, whether said employee is paid by salary, wages, or commission. Each employer within the Borough shall prepare and file a return showing a computation of the tax on a form to be obtained by him from the Tax Collector, and shall pay to the Tax Collector the full amount of taxes deducted on or before April 30th of each respective tax year. Each employer, in filing his return and making payment by deduction from the salary, wages, commission, or other compensation payable by him to his employees, shall be entitled to retain a commission calculated at two percent (2%) on the gross tax due and payable by each individual, provided that such taxes are collected and paid over by the employer to the Tax Collector within thirty (30) days first following the date of billing. It is further provided that, if the employer fails to file said return and pay said tax, but makes collection thereof from the salary, wages, or commissions paid by him to said employee, the employer shall be responsible for the payment of the tax in full without any deductions or commissions as though the tax had originally been levied against him.

SECTION VII INDIVIDUALS ENGAGED IN MORE THAN ONE OCCUPATION

Each individual who shall have more than one occupation within the Borough shall be subject to the payment of the annual Emergency and Municipal Services Tax solely upon his principal occupation and his principal employer shall deliver to him a certificate of payment on a form to be furnished to the employer by the Tax Collector certifying to any other employer of such individual that said Emergency and Municipal Services Tax has been paid by the employee to the employer and in turn remitted by said employer to the Tax Collector. Any employer receiving such Certificate of Payment of the Emergency and Municipal Services Tax by another by deduction from the same individual shall not deduct or collect the Emergency and Municipal Services Tax imposed by this Ordinance for the same one year period of time.

SECTION VIII EMPLOYER'S DATE OF DETERMINATION OF LIABILITY FOR TAX

Each employer in the Borough shall use his employment records as of January 1st of each year in determining the number of employees from whom the said Emergency and Municipal Services Tax shall be deducted and paid over to the Tax Collector. Each employer who engages the services of an individual in an occupation to be performed in the Borough after

D. Whenever a civil action is initiated to enforce any of the provisions of this Ordinance, the individual who is found to be liable therefore, in addition to any taxes which may be found to be due and any interest or other penalty which may be assessed, shall be responsible for and liable for the costs of collection (including reasonable attorneys fees incurred by the Borough in the enforcement of this Ordinance).

SECTION XIII POWERS OF TAX COLLECTOR

The Tax Collector shall have the power in case of the neglect or refusal of any person, partnership, co-partnership, association, corporation, or any employer to make payment of the amount of the tax due by him, after four (4) months from the date of billing, to levy the amount of said tax, any penalty due thereon, and costs as provided in this Ordinance. The Tax Collector shall have all powers regarding the collection of delinquent Emergency and Municipal Services Taxes as are set forth in the Local Tax Enabling Act No. 511 of 1965 (53 P.S. 6901 et seq.).

SECTION XIV SAVING CLAUSE

A. Nothing contained in this Ordinance shall be construed to empower the Borough to levy and collect the Emergency and Municipal Services Tax hereby imposed on any occupation not within the taxing power of the Borough under the Constitution of the United States and the laws of the Commonwealth of Pennsylvania.

B. If any sentence, clause, or section, or part of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality and/or invalidity shall not affect or impair any of the remaining provisions, sentences, clause, sections or parts of this Ordinance. It is hereby declared to be the intent of this Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section or part thereof, not been included herein.

SECTION XV REPEALER

Ordinance Number 163 is specifically repealed. All other ordinances or parts of ordinances which are inconsistent herewith are hereby repealed to the extent necessary to give full effect to the terms of this ordinance.

the payroll records of any employer within the Borough, and, further, for the re-examination and correction of any returns made in compliance with this Ordinance, and any payment alleged or found to be incorrect, or as to which over-payment is claimed or found to have occurred. Any person aggrieved by any decision of the Tax Collector shall have the right to appeal as in other cases provided.

C. The Tax 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 on behalf of his employees, or if no return was made, to ascertain the Emergency and Municipal Services Tax due. Each employer in the Borough is hereby directed and required to give to the Tax Collector the means, facilities, and opportunity for such examinations and investigations as are hereby authorized.

SECTION XII SUIT ON COLLECTIONS, FINES AND PENALTIES

A. The Tax Collector may sue in the name of the Borough for recovery of any tax due or unpaid under this Ordinance.

B. Any person who makes any false or untrue statement on any return required by this Ordinance, or who refused inspection of his books, records, or accounts in his custody or control in order to determine the number of employees subject to the Emergency and Municipal Services Tax who are in his employ, or who fails to pay any tax due pursuant to the terms of this Ordinance, or refuses to file any return required by this Ordinance, shall upon conviction in a civil action before a District Justice, shall, in addition to being ordered to pay the tax(es) due, be ordered pay a fine of not more than Six Hundred Dollars (\$600.00) for each offense. Each separate failure to comply with the provisions of this Ordinance shall be deemed to be a separate offense.

C. If, for any reason, the tax is not paid when due, in addition to the fine provided in Section XII.B., above, any person found liable to pay the tax shall be ordered to pay interest at the rate of six percent (6.00%) on the amount of said tax determined to be due calculated beginning on January 1st of the applicable tax year, plus a penalty of one-half of one percent (0.5%) per month for each month or fraction thereof that the tax remains unpaid.

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SECTION XVI AUTHORITY

This Ordinance is enacted under the authority of the Local Tax Enabling Act, P.L. 1257, Act No. 511 of 1965, as amended (53 P.S. § 6901 et seq.).

SECTION XVII EFFECTIVE DATE

This Ordinance shall become effective on January 1, 2007 and shall continue on a calendar year basis, thereafter, without annual reenactment.

ORDAINED AND ENACTED this 28th day of November, 2006, by the Borough Council of the Borough of Bally, Berks County, Pennsylvania, in lawful session duly assembled.

BOROUGH COUNCIL:

Attest: Luis L. Hernandez
Secretary

By: Leo D. Motta
President

APPROVED:

Philip D. Ferrizzi
Philip Ferrizzi, Mayor