

ORDINANCE #269

**AN ORDINANCE OF THE BOROUGH OF BALLY,
BERKS COUNTY, PENNSYLVANIA, TO PROVIDE REVENUE
FOR BOROUGH PURPOSES BY IMPOSING, ASSESSING
AND LEVYING A LOCAL SERVICES TAX ON INDIVIDUALS
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**

IT IS HEREBY ENACTED AND ORDAINED by the Borough Council of the Borough of Bally, Berks County, Pennsylvania, as follows:

SECTION I. TITLE. The title of this Ordinance shall be the "Borough of Bally Local Services Tax Ordinance."

SECTION II. DEFINITIONS. The following words and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context or language clearly indicates or requires a different meaning:

BOROUGH - The area within the corporate limits of the Borough of Bally, Berks County, Pennsylvania.

COLLECTOR - The elected person, or public employee or private agency designated by the Borough to collect and administer the tax herein imposed.

DCED - The Department of Community and Economic Development of the Commonwealth of Pennsylvania.

EARNED INCOME - Compensation as this term is defined in Section 13 [relating to earned income taxes] of the Local Tax Enabling Act, the Act of Dec. 31, 1965, P.L. 1257, § 13, as amended (53 P.S. § 6913, as amended).

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

HE, HIS or HIM - Indicates the singular and plural number, as well as male, female and neuter genders.

INDIVIDUAL - Any person, male or female, engaged in any occupation, trade or profession within the Borough.

NET PROFITS -The net income from the operation of a business, profession; or other activity, as this term is defined in Section 13 [relating to earned income taxes] of the Local Tax Enabling Act, the Act of Dec. 31, 1965, P.L. 1251, § 13, as amended (53 P.S. § 6913, as amended).

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

TAX - The Local Services Tax at the rate fixed in SECTION III of this Ordinance, below.

TAX YEAR - The period from January 1 until December 31 in any calendar year.

SECTION III. IMPOSITION OF TAX. For specific revenue purposes, an annual tax is hereby levied and assessed, commencing January 1, 2009 upon the privilege of engaging in an occupation with a primary place of employment within the Borough during the tax year. Each individual who exercises such privilege for any length of time during any tax year shall pay the tax for that year in the amount of FIFTY-TWO DOLLARS (\$52.00), assessed on a pro rata basis, in accordance with the provisions of this Ordinance. This tax may be used solely for the following purposes as the same may be allocated by the Borough from time to time: (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; or (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 the homestead property exclusion). The Borough shall use no less than twenty-five percent of the funds derived from the tax for emergency services. This tax is in addition to all other taxes of any kind or nature heretofore levied by the Borough. The tax shall be no more than \$52.00 on each individual for each calendar year, irrespective of the number of political subdivisions within which a person may be employed.

SECTION IV. EXEMPTION AND REFUNDS.

A. Exemption. Any individual whose total earned income and net profits from all sources within the Borough is less than twelve thousand (\$12,000) dollars for any calendar year in which the tax is levied is exempt from the payment of the tax for that calendar year. In addition, the following persons are exempt from payment of the tax:

(1) Any person who has 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 disability.

(2) 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. For the purposes of this subparagraph, "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.

B. Procedure to Claim Exemption.

(1) An individual seeking to claim an exemption from the Local Services Tax may annually file an exemption certificate with the Borough and with the person's employer affirming that the person reasonably expects to receive earned income and net profits from all sources within the Borough of less than twelve thousand dollars (\$12,000) in the calendar year for which the exemption certificate is filed. A copy of the exemption certificate shall be provided to the Borough Tax Collector. The exemption certificate shall have attached to it a copy of all the individual's last pay stubs or W-2 forms from employment within the Borough for the year prior to the fiscal year for which the individual is requesting to be exempted from the tax. Upon receipt of the exemption certificate and until otherwise instructed by the Borough or except as required by clause B(2), below, the employer shall not withhold the tax from the individual claiming the exemption during the calendar year or during the remainder of the calendar year for which the exemption certificate applies. Employers shall ensure that the exemption certificate forms are readily available to employees at all times and shall furnish each new employee with a form at the time of hiring. The exemption certificate form shall be the uniform form provided by the Borough.

(2) With respect to an individual who claimed an exemption for a given calendar year from the tax, upon notification to an employer by the individual or by the Borough that the individual has received earned income and net profits from all sources within the Borough equal to or in excess of twelve thousand dollars (\$12,000) in that calendar year or that the individual is otherwise ineligible for the tax exemption for that calendar year, or upon an employer's payment to the individual of earned income within the municipality in an amount equal to or in excess of twelve thousand dollars (\$12,000) in that calendar year, an employer shall withhold the Local Services Tax from the individual pursuant to the provisions of subsection B.(3), below.

(3) If an individual who claimed an exemption for a given calendar year from the tax becomes subject to the tax for the calendar year under subsection B.(2), above, the employer shall withhold the tax for the remainder of that calendar year. The employer shall withhold from the individual, for the first payroll period after receipt of the notification under clause B.(2), a lump sum equal to the amount of tax that was not withheld from the individual due to the exemption claimed by the individual under this Section IV, plus the per payroll amount due for that first payroll period. 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. In the event the employment of an individual subject to withholding of the tax under this clause is subsequently severed in that calendar year, the individual shall be liable for any outstanding balance of tax due, and the Borough may pursue collection under this article.

(4) Except as provided in subsection B.(2), above, it is the intent of this subsection that employers shall not be responsible for investigating exemption certificates, monitoring tax exemption eligibility or exempting any employee from the Local Services Tax.

C. Refunds. The Borough, in consultation with the Collector and DCED, shall establish procedures for the processing of refund claims for any tax paid by any individual who is eligible for exemption, which procedures shall be in accord with provisions of the general municipal law relating to refunds of overpayments and interest on overpayments. Refunds made within seventy-five days of a refund request or seventy-five days after the last day the employer is required to remit the tax for the last quarter of the calendar year, whichever is later, shall not be subject to interest. No refunds shall be made for amounts overpaid in a calendar year that do not exceed one dollar (\$1.00). The Borough or the Collector shall determine eligibility for exemption and provide refunds to exempt persons.

SECTION V. DUTY OF EMPLOYERS TO COLLECT TAX.

A. Each employer within the Borough, as well as those employers situated outside the Borough but who engage in business within the Borough, is hereby charged with the duty of collecting the tax from each of his employees engaged by him or performing for him within the Borough and making a return and payment thereof to the Collector. Further, each employer is hereby authorized to deduct this tax for each employee in his or her employ, whether said employee is paid by salary, wage or commission and whether or not all such services are performed within the Borough.

B. An individual subject to the tax shall be assessed by the employer a pro rata share of the tax for each payroll period in which the individual is engaging in an occupation. The pro rata share of the tax assessed on the individual for a payroll period shall be determined by dividing the rate of the 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. Collection of the tax shall be made on a payroll period basis for each payroll period in which the individual is engaging in an occupation, except as provided in subsection V.D., below. For the purposes of this paragraph, combined rate shall mean the aggregate annual rate of the tax levied by the school district and the municipality.

C. No individual shall be subject to the payment of the Local Services Tax by more than one political subdivision during each payroll period.

D. In the case of concurrent employment, an employer shall refrain from withholding the tax if the employee provides 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 the tax withheld and 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. The employee's statement shall be provided on the form approved by DCED.

E. The Tax shall be no more than FIFTY-TWO DOLLARS (\$52.00) on each person for each calendar year, irrespective of the number of political subdivisions within which a person may be employed. The political subdivision shall provide a taxpayer a receipt of payment upon request by the taxpayer.

F. No employer shall be held liable for failure to withhold the tax or for the payment of the withheld tax money to the Borough 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. Further, an employer shall not be liable for payment of the Local Services Tax in an amount exceeding the amount withheld by the employer if the employer complies with the provisions of this Ordinance and remits the amount so withheld in accordance with this Ordinance.

G. Employers shall be required to remit to the Collector the Local Services Taxes withheld by the employer within thirty days after the end of each quarter of a calendar year.

SECTION VI. RETURNS. Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied to the employer by the Collector. If an employer fails to file the return and pay the tax, whether or not the employer makes collection thereof from the salary, wages or commissions paid by him or her to an employee, except as provided hereafter in this article, the employer shall be responsible for the payment of the tax in full as though the tax had been originally levied against the employer.

SECTION VII. DATES FOR DETERMINING TAX LIABILITY AND PAYMENT. In each calendar year, each employer shall use his or her employment records to determine the number of employees from whom the Local Services Tax shall be deducted and paid over to the Collector on or before the thirtieth day following the end of each quarter of each calendar year.

SECTION VIII. SELF-EMPLOYED INDIVIDUALS. Each self-employed individual who performs services of any type or kind or engages in any occupation or profession with a primary place of employment within the Borough shall be required to comply with the provisions of this Ordinance and to pay the pro rata portion of the tax due to the Collector on or before the thirtieth day following the end of each quarter.

SECTION IX. INDIVIDUALS ENGAGED IN MORE THAN ONE OCCUPATION OR EMPLOYED IN MORE THAN ONE POLITICAL SUBDIVISION.

A. The situs of the tax shall be the place of employment on the first day the individual becomes subject to the tax during each payroll period. In the event a person is engaged in more than one occupation, that is, concurrent employment, or an occupation which requires the person to work in more than one political subdivision during a payroll period, the priority of claim to collect the local services tax shall be in the following order:

(1) First, the political subdivision in which a person maintains his or her principal office or is principally employed; or

(2) Second, the political subdivision in which the person resides and works if the tax is levied by that political subdivision; or

(3) Third, the political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home.

In case of dispute, a tax receipt of the taxing authority for that calendar year declaring that the taxpayer has made prior payment constitutes prima facie certification of payment to all other political subdivisions.

SECTION X. NONRESIDENTS SUBJECT TO TAX. All employers and self-employed individuals residing or having their places of business outside of 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 promulgated under this Ordinance with the same force and effect as though they were residents of the Borough. Further, any individual engaged in an occupation within the Borough and an employee of a nonresidential employer may, for the purpose of this Ordinance, be considered a self-employed person, and in the event his or her 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 XI. ADMINISTRATION OF TAX.

A. The Collector shall be appointed by resolution of the Borough. 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 Collector is hereby charged with the administration and enforcement of this Ordinance and is hereby charged and empowered, subject to Borough approval, to proscribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this Ordinance, including provisions for the examination of 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 consistent with the Local Taxpayers Bill of Rights under Act 50 of 1998 (municipalities may detail their appeal processes).

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.

SECTION XII. CIVIL ACTION FOR COLLECTION.

A. In the event that the Tax imposed by this Ordinance remains due or unpaid 30 days after the due dates above set forth, the Collector may institute a civil action to recover any such tax due or unpaid under this Ordinance, together with interest and penalty.

B. If for any reason the tax is not paid when due, interest at the rate of 6% on the amount of such tax shall be calculated beginning with the due date of the tax and a penalty of 5% shall be added to the flat rate of such tax for nonpayment thereof. Where a civil action is brought for the recovery of this tax or other appropriate remedy undertaken, the individual liable therefor shall, in addition, be responsible and liable for the costs of collection.

SECTION XIII. VIOLATIONS AND PENALTIES. Whoever makes any false or untrue statement on any return required by this article, or whoever refuses inspection of the books, records or accounts in his or her custody and control setting forth the number of employees subject to this tax who are in his or her employment, or whoever fails or refuses to file any return required by this article shall be guilty of a violation and, upon conviction thereof, shall be sentenced to pay a fine of not more than \$600 plus the costs of prosecution. Each separate individual tax payer, and each quarterly failure to pay the tax due may be considered a separate violation. The action to enforce the penalty herein prescribed may be instituted against any person in charge of the business of any employer who shall have failed or who refused to file a return required by this article.

SECTION XIV. INTERPRETATION.

A. Nothing contained in this article 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 laws of the Commonwealth of Pennsylvania.

B. If the tax hereby imposed under the provisions of this article shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United States or of the laws of the Commonwealth of Pennsylvania as to any individual, the decision of the court 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.

SECTION XV. REPEALER. Except as specifically set forth herein, all ordinances or parts of ordinances inconsistent herewith are hereby repealed. Ordinance No. 262 is hereby specifically repealed effective midnight, December 31, 2008. Nothing herein shall be construed to repeal the imposition and collection of the Occupational Privilege Tax or the Emergency and Municipal Services Tax, plus applicable penalties and interest, for calendar year 2008 and all prior calendar years, as the same exist prior to this amendment.

SECTION XVI. EFFECTIVE DATE. The Local Services Tax imposed by this Ordinance shall be effective on January 1, 2009, and all calendar years thereafter unless repealed or modified by Ordinance of the Borough of Bally.

ORDAINED AND ENACTED this 7th day of October, 2008, by the Borough Council of the Borough of Bally, Berks County, Pennsylvania, in lawful session duly assembled.

BOROUGH COUNCIL:

Attest: Andrea L DeLo
Secretary

By: Leo Mutt
President

APPROVED:

Philip Ferrizzi
Philip Ferrizzi, Mayor