

BOROUGH OF FOUNTAIN HILL

ORDINANCE NO. 732

AN ORDINANCE OF THE BOROUGH OF FOUNTAIN HILL, LEHIGH COUNTY, PENNSYLVANIA, AMENDING THE CODE OF ORDINANCES CHAPTER 24 TO REPEAL PART 3, THE EMERGENCY AND MUNICIPAL SERVICES ACT AND REENACT A NEW PART 3 TO BE ENTITLED THE LOCAL SERVICE TAX AND PROVIDING FOR AN EFFECTIVE DATE AND GENERAL REPEALER

WHEREAS, pursuant to the Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, 53 P.S. 6901 et seq. as amended by Act 22 of 2004, the Borough of Fountain Hill (hereinafter the “Borough”) adopted an Emergency and Municipal Service Tax in the amount of \$52.00. The aforesaid Local Tax Enabling Act was further amended by Act 7 of 2007 signed by the Governor on June 21, 2007; and

WHEREAS, the Borough wishes to incorporate the applicable provisions of such Amendment into its Ordinance so that such Ordinance is in compliance with the Local Tax Enabling Act as so amended, and in doing so, the Borough wishes to reenact the ordinance in its entirety;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED, and it hereby is ordained and enacted by the Borough Council of Fountain Hill, County of Lehigh, Commonwealth of Pennsylvania, as follows:

1. §301. Short Title. This ordinance shall be known, and may be cited as the **Local Services Tax** (Ordinance 247, March 12, 1964, §1; as reenacted and amended by Ordinance 348, January 4, 1982; as amended by Ordinance 704, December 29, 2004, §1; **as amended by Act 7 of 2007**).

2. §302. Definitions.

As used in this ordinance, unless the context clearly indicates a different meaning, the following words shall have the meaning set forth below:

1. “Municipality” shall mean the Borough of Fountain Hill.
2. “Compensation” shall mean salaries, wages, commission, tips, bonuses, fees, gross receipts, or any other earned income.
3. “Employer” shall mean any person, partnership, limited liability partnership, unincorporated association, institution, trust, corporation, governmental agency, or any other body engaged in business or situated in the Borough of Fountain Hill, employing one or more employees engaged in any occupation, other than domestic servants.

4. Earned Income- Compensation as this term is defined in Section 13 of the Local Tax Enabling Act of Dec. 31, 1965m P.L. 1257, §13, as amended, 53 P.S. §6913, as amended.

5. Net Profits-The net income from the operation of a business, profession, or other activity, as this term as this term is defined in Section 13 of the Local Tax Enabling Act of Dec. 31, 1965m P.L. 1257, §13, as amended, 53 P.S. §6913, as amended.

6. “Occupation” shall include any livelihood, job, trade, profession, business or enterprise of any kind, including services, domestic or other, for which any compensation is received.

7. “Local Service Tax Collector” or “Tax Collector” shall mean the person, public employee, private agency, or other entity designated by the Council to collect and administer the tax imposed herein.

8. “Tax” shall mean the Local Service tax imposed by this ordinance.

9. “Taxpayer” shall mean any natural person liable for the tax levied by this ordinance.

10. Tax Year-The period from January 1 until December 31 in any year; a calendar year.

(Ordinance 247, March 12, 1964, §2; as reenacted and amended by Ordinance 348, January 4, 1982; and amended by Ordinance 510, February 10, 1993; and by Ordinance 704, December 29, 2004, §1)

3. §303. Imposition and Levy of Tax.

A tax for general revenue purposes, in the amount of \$52, is hereby imposed and levied upon the privilege of engaging in an occupation within the Borough from the effective date of this Part, and in each following calendar year. Each natural person who exercises such privilege for any length in any calendar year, beginning **January 1, 2008**, shall pay the tax in accordance with the provisions of this Part. Borough Council may adopt regulations for the processing of claims for exemptions.

(Ordinance 247, March 12, 1964, §3; as reenacted and amended by Ordinance 348, January 4, 1982; and by Ordinance 704, December 29, 2004, §2)

§303.1 Exemptions.

Exemptions: The following persons are exempt from payment of the tax:

A. Any person whose total earned income and net profits from all sources within the Municipality is less than **Twelve Thousand Dollars (\$12,000.00)** per annum.

B. Any person who 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.

C. 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 purposes of this subsection, "reserve component of the armed forces" shall mean the United States Army 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.

(1) A person seeking to claim an exemption from the Local Services Tax may annually file an exemption certificate on a form developed by the Department of Community and Economic Development with Borough, and copy to the Tax Collector, and with the person's employer affirming that the person reasonably expects to receive earned income and net profits from all sources within Borough of less than twelve thousand dollars (\$12,000.00) in the calendar year for which the exemption certificate is filed. The exemption certificate shall have attached to it a copy of all of the employee's last pay stubs or W-2 form from employment within the Borough for the year prior to the fiscal year for which the employee is requesting to be exempted from the local services tax. Upon receipt of the exemption certificate and until otherwise instructed by the Borough or Tax Collector except as required by Clause (2) below, the employer shall not withhold the tax from the person during the calendar year or the remainder of the calendar year for which the exemption certificate applies. Employers shall ensure that the exemption certificate form are readily available to employees at all times and shall furnish each new employee with a form at the time of hiring.

(2) With respect to a person who claimed an exemption for a given calendar year from the Local Services Tax, upon notification to an employer by the person or by the Borough that the person has received earned income and net profits from all sources within the Borough equal to or in excess of twelve thousand dollars (\$12,000.00) in that calendar year or that the person is otherwise ineligible for the tax exemption for that calendar year, or upon an employer's payment to the person of earned income within the Borough in an amount equal to or in excess of twelve thousand dollars (\$12,000.00) in that calendar year, an employer shall withhold the Local Services Tax from the person under Clause (3) below.

(3) If a person who claimed an exemption for a given calendar year from the Local Services Tax becomes subject to the tax for the calendar year under Clause (2), the employer shall withhold the tax for the remainder of that calendar year. The employer shall withhold from the person, for the first payroll period after receipt of the notification under clause (2), a lump sum equal to the amount of tax that was not withheld from the person due to the exemption claimed by the person under this subsection, 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 a person subject to withholding of the tax under this clause is subsequently severed in that calendar year, the person shall be liable for any outstanding balance of tax due and the Borough may pursue collection under this act.

(4) Except as provided in Clause (2) above, employers shall not be responsible for investigating exemption certificates, monitoring tax exemption eligibility or exempting any employee from a local services tax.

(5) The Municipality and/or Tax Collector shall determine eligibility for exemption under this Section.

§303.2 Restricted Use of the Local Services Tax.

A. Any municipality deriving funds from the Local Services Tax may only use the funds for:

1. No less than 25% of the funds derived shall be used for 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.

§303.3 Employer Collection Through Payroll.

A. If a local services tax is levied at a combined rate exceeding ten dollars (\$10.00) in a calendar year, a person subject to the local services tax shall be assessed a pro rata share of the tax for each payroll period in which the person is engaging in an occupation. The pro rata share of the tax assessed on the person for a payroll period shall be determined by dividing the combined rate of the local services 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 dollar. Collection of the local services tax levied under this subclause shall be

made on a payroll period basis for each payroll period in which the person is engaging in an occupation, except as provided below in (C). No person shall be subject to the payment of the Tax by more than one political subdivision during each payroll period as established by Clause (B). The Borough and/or Tax Collector shall provide a taxpayer a receipt of payment of the Tax upon request by the Taxpayer.

B. With respect to a person subject to the local services tax at combined rate exceeding ten dollars (\$10.00), the situs of the tax shall be the place of employment on the first day the person 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 working in more than one political subdivision during a payroll period, the priority of claim to collect the local services tax shall be the following order: first, the political subdivision in which a person maintains the person's principal office or is principally employed; second, the political subdivision in which the person resides and works, if the tax is levied by the political subdivision; and third, the political subdivision in which a person is employed and which imposed the tax nearest in miles to the person's home.

C. In the case of concurrent employment, an employer shall refrain from withholding the local services 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 local services tax withheld and a statement from the employee that the pay statement is from the employee's principal employer and the employee will notify the other employers of a change in principal place of employment within two weeks of its occurrence.

§303.4 Regulations for the Processing of Refund Claims

The Borough of Fountain Hill, in consultation with the Tax Collector and the Department of Community and Economic Development, shall establish procedures by Resolution for the processing of refund claims for any tax paid by any person who is eligible for exemption, which procedures shall be consistent with 53 Pa. C.S. §§ 8425 and 8426 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): The Municipality or Tax Collector shall determine eligibility provide refunds to exempt persons under Section 303.1

4. §304. Collection Through Employers.

1. Every employer shall, within 15 days after the effective date of this Part or within 15 days after first becoming an employer, register with the Tax Collector the employer's name, address, and such other information as the Tax Collector may require.

2. As to each taxpayer who is employed for any length of time after the effective date of this Part and on or before March 31 of any year in which the tax is imposed, each employer shall deduct the tax from compensation payable to the taxpayer, file a return on a form prescribed by the Tax Collector, and pay to said Tax Collector the full amount of all such taxes on or before April 30 of the current tax year. Thereafter, as to each taxpayer 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 20, and December 31, of the current tax year, each employer shall deduct the tax from compensation payable to the taxpayer, file a return on a form prescribed by the Tax Collector, and pay to the Tax Collector the full amount of all taxes deducted for each such three-month period on or before July 31 or October 31 of the current tax year, and January 31 of the following year, respectively.

3. Any employer who discontinues business or ceases operation before December 31 of any year during which this tax is in effect shall, within 15 days after discontinuing business or ceasing operations, file the return hereinabove required and pay the tax to the Tax Collector.

4. The failure of any employer to deduct the tax shall not relieve the employee from the duty to file a return and pay the tax. Any employer who fails to deduct the tax as required by this Section, or who fails to pay such tax to the Tax Collector, shall be liable for such tax in full, without deduction of the commission hereinafter provided, as though the tax had originally been levied against such employer.

5. As to employees who present official receipts evidencing prior payment of the tax either directly or by collection through other employers, the employer shall not deduct the tax but shall maintain adequate records concerning such employees.

(Ordinance 247, March 12, 1964, §4; as reenacted and amended by Ordinance 348, January 4, 1982)

§304.1 Tax Collector Demand.

A. The Tax Collector shall demand, receive and collect from all employers, employing persons owing delinquent tax, upon the presentation of a written notice and demand certifying that the information contained therein is true and correct, and contains the name of the taxable individual or spouse, and the amount of tax due. Upon the presentation of such written notice and demand, it is the duty of employer to deduct from the wages, commissions or earnings as such individual employees then-owning or that shall within 60 days thereafter become due, or from any unpaid commissions or earnings of any such taxable earnings in its or his possession or that shall within 60 days thereafter come into its or his possession, a sum sufficient to pay the respective amount of the delinquent tax and to pay the same to the tax collector within 60 days after such notice has been given. No more than ten percent (10%) of the wages, commission or earnings of the delinquent taxpayer may be deducted at any one time for

the delinquent tax. The employer shall be entitled to deduct from the monies collected from each employee the cost incurred from the extra bookkeeping necessary to record such transaction, but not exceeding two percent (2%) of the amount of monies so collected and paid over the tax collector. Upon the failure of the employer to deduct the amount of taxes or to pay the same over to the tax collector, less the cost of the bookkeeping involved in such transaction, the employer shall forfeit and pay the amount of such tax for each taxpayer whose taxes are not withheld and paid over, or that are withheld and not paid over together the penalty of ten percent (10%) added thereto, to be recovered by an action of assumpit and a suit to be instituted by the tax collector, or by the proper authorities of the taxing district, as debts of like amount a now by law recoverable, except that such person shall not have the benefit of any stay of execution or exemption law. The tax collector shall not proceed against a spouse or his employer until he has pursued collection remedies against the delinquent taxpayer and his employer under this Part.

5. §305. Direct Payment by Taxpayers.

Every taxpayer who is self-employed or whose tax for any other reason is not collected under §304 of this Part, shall file a return on a form prescribed by the Tax Collector and shall pay the tax directly to said Collector. Each such taxpayer who first becomes subject to the tax after the effective date of this Part, and on or before March 31 of the current tax year, shall file the return and pay the tax on or before April 30 of the current tax year, and each such taxpayer who first becomes subject to the tax after March 31 of the current tax year shall file the return and pay the tax on or before July 31, October 31 of the then current year, or January 31 of the following year, whichever of such payment dates first occurs at least 30 days after the taxpayer becomes subject to the tax. (Ordinance 247, March 12, 1964, §5; as reenacted and amended by Ordinance 348, January 4, 1982)

6. §306. Nonresident Taxpayers.

Both residents and nonresident taxpayers shall, by virtue of engaging in an occupation within the Borough of Fountain Hill, be subject to the tax and the provisions of this Part. (Ordinance 247, March 12, 1964, §6; as reenacted and amended by Ordinance 348, January 4, 1982)

7. §307. Administration and Enforcement.

The Tax Collector, on behalf of the Borough, shall collect and receive the taxes, interest, fines and penalties imposed by this Part, and shall maintain records showing the amounts received, from whom received, and the date such amounts were received. The Tax Collector shall prescribe and issue all forms necessary for the administration of the tax and may adopt and enforce regulations relating to any matter pertaining to the administration of this Part, including, but not limited to requirements for collection through employers, requirements for deductions, requirements for evidence and records, and provisions for the examination and correction of returns. The Tax Collector and agents designated by him may examine the records of any employer or supposed employer or of any taxpayer or supposed taxpayer in

order to ascertain the tax due or verify the accuracy of any return. Every employer or supposed employer and every taxpayer or supposed taxpayer shall give the Tax Collector and any person designated by him all means, facilities and opportunity for the examinations hereby authorized. (Ordinance 247, March 12, 1964, §7; as reenacted and amended by Ordinance 348, January 4, 1982)

8. §308. Collection.

The Tax Collector shall collect, by suit or otherwise, all taxes, interest, costs, fines and penalties due under this Part and unpaid. If, for any reason, any tax is not paid when due, interest at the rate of 6% per year on the amount of unpaid tax and an additional penalty of 1/2 of 1% of the amount of unpaid tax, for each month or fraction of month during which the tax remains unpaid, shall be added and collected. Whenever suit is brought for the recovery of unpaid tax, the taxpayer shall, in addition, be liable for the costs of collection as well as for interest and penalties. The Tax Collector may accept payment under protest of the tax claimed by the Borough in any case where any person disputes the Borough's claim for the tax. If a court of competent jurisdiction thereafter decides that there has been overpayment to the Tax Collector, the Tax Collector shall refund the amount of the overpayment to the person who paid under protest. (Ordinance 247, March 12, 1964, §8; as reenacted and amended by Ordinance 348, January 4, 1982).

9. §309. Bond and Compensation of Tax Collector.

1. The Tax Collector, before entering upon his official duties, shall give and acknowledge, a bond to the Borough. If the Borough shall designate any bond previously given by the Tax Collector as adequate, such bond shall be sufficient to satisfy the requirements of this section.

2. The Tax Collector shall receive such compensation for his services and expenses as shall be determined by the Council from time to time.

(Ordinance 247, March 12, 1964, §9; as reenacted and amended by Ordinance 348, January 4, 1982)

10. §310. Continuation of Tax.

The tax levied and imposed shall continue in force on a calendar year basis following January 1, **2008** without annual re-enactment, until such time as Borough Council shall change the rate of tax or by appropriate ordinance repeal such tax.

(Ordinance 247, March 12, 1964, §10; as reenacted and amended by Ordinance 348, January 4, 1982; as amended by Ordinance 704, December 29, 2004, §3)

11. §311. Violation.

Any person who violates any provision of this ordinance or any regulation adopted pur-

suant hereto shall, upon conviction thereof, be sentenced to pay a fine of not more than \$500 and costs of prosecution, or to undergo imprisonment for not more than 30 days.

(Ordinance 247, March 12, 1964, §11; as reenacted and amended by Ordinance 348, January 4, 1982)

GENERAL REPEALER

All ordinances or parts of ordinances, and all resolutions or parts of resolutions, inconsistent herewith shall be and are hereby repealed. **Nothing herein shall be construed to repeal the imposition and collection of an occupation privilege tax, plus applicable penalties and interest, for calendar year 2005 and all prior years, or of an emergency and municipal services tax, plus applicable penalties and interest, for calendar years 2006 and 2007, as the same exist prior to this amendment.**

SEVERABILITY

The provisions of this ordinance are severable. If any provision, sentence, clause, phrase, section or part thereof shall for any reason be found unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, phrases, sections, or parts thereof, but the same shall remain in effect. It is hereby declared to be the intent of the Borough that this ordinance shall stand notwithstanding the invalidity of any part included herein.

EFFECTIVE DATE

The provisions of this ordinance shall become effective **January 1, 2008.**

BOROUGH OF FOUNTAIN HILL

By: _____
Lawrence E. Rapp
President, Borough Council

ATTEST

Randy Soriano
Executive Secretary

Approved:

Ned C. Fink, Mayor

Date of Adoption: December 19, 2007