

BOROUGH OF MILLERSVILLE

Lancaster County, Pennsylvania

ORDINANCE NO. 2004-8

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE BOROUGH OF MILLERSVILLE, CHAPTER 24 THEREOF, TAXATION, SPECIAL, TO RESTATE AND AMEND PART 2, OCCUPATIONAL PRIVILEGE TAX, AND TO SUBSTITUTE THEREFOR A REDESIGNATED PART 2, EMERGENCY AND MUNICIPAL SERVICES TAX, IMPOSING AN EMERGENCY AND MUNICIPAL SERVICES TAX UPON PERSONS EMPLOYED WITHIN THE BOROUGH OF MILLERSVILLE AND TO PROVIDE RULES AND REGULATIONS FOR THE ADMINISTRATION AND COLLECTION OF SUCH TAX.

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

Section 1. The Code of Ordinances of the Borough of Millersville, Chapter 24 thereof, Taxation, Special, Part 2, Occupational Privilege Tax, shall be restated and amended and a redesignated Part 2, Emergency and Municipal Services Tax, shall be substituted therefor which shall provide as follows:

Part 2

Emergency and Municipal Services Tax

§201. Short Title and Authority. This Part shall be known and may be cited as the Millersville Borough Emergency and Municipal Services Tax Ordinance. This Part is enacted under the authority of The Local Tax Enabling Act, 53 P.S. §6901 et seq., and continues and redesignates the occupational privilege tax as the Emergency and Municipal Services Tax pursuant to Act No. 222 of 2004.

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

BOROUGH OF MILLERSVILLE or BOROUGH - the area within the corporate limits of the Borough of Millersville.

COLLECTOR - the person or agency appointed from time to time by the Millersville Borough Council to assess and collect the tax imposed under, and to administer the provisions of, this Part.

EMPLOYER - an individual, partnership, association, corporation, 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 - the twelve-month period beginning January 1, 2005, and ending December 31, 2005, and each 12 months thereafter.

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

INDIVIDUAL - any person, male or female, engaged in any occupation, trade or profession within the corporate limits of the Borough of Millersville.

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 of Millersville for which compensation is charged or received whether by means of salary, wages, commissions or fees for services rendered.

TAX - the Emergency and Municipal Services Tax in the amount of fifty-two (\$52.00) dollars per annum levied by this Part which was previously referred to in this Part as an occupational privilege tax.

§203. Imposition of Tax. Beginning January 1, 2005, the Borough of Millersville hereby levies and imposes on each occupation engaged in by individuals within its corporate limits during the fiscal year of 2005 and each year fiscal year thereafter an emergency and municipal services tax in the amount of fifty-two (\$52.00) dollars per annum, said tax to be paid by the individuals so engaged; provided; however, that all persons deriving less than five thousand (\$5,000.00) dollars per year from such occupation are hereby exempt from such emergency and municipal 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 calendar year basis, without annual reenactment, unless the rate of the tax is subsequently changed or this Part is repealed.

§204. Collection by Employer; Return and Payment. Each employer who engages in business within the Borough of Millersville is hereby charged with the duty of collecting from each of his employees engaged by him and performing for him within the Borough of Millersville the said

tax of fifty-two (\$52.00) dollars per annum and making a return and payment thereof to the Collector.

§205. Withholding by Employer.

1. Each employer is hereby authorized to deduct this tax from each employee in his employ, whether said employee is paid by salary, wages or commission and whether or not part or all of such services are performed within the Borough.

2. 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.

§206. Employer's Returns; Commission.

1. Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied by the Collector.

2. Each employer in filing this return and making payment of the tax withheld from his employees shall be entitled to retain a commission calculated at the rate of two (2%) percent 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 he makes collection thereof from the salary, wages or commissions paid by him to said employee, the employer shall be responsible for payment of the tax in full without deducting a commission and as though the tax had originally been levied against him.

§207. Employer's Annual Report and Payment; Supplements. Each employer shall use his employment records from the first day of January to the 15th day of May for determining the number of employees from whom said tax shall be deducted and paid over to the Collector on or before June 15. Supplemental reports shall be made by each employer on August 15 and December 15 on new employees as reflected on his employment records from May 15 to August 15 and from August 15 to December 15. Payments on these supplemental reports shall be made on September 15 and December 31, respectively.

§208. Individuals Having More Than One (1) Occupation Within Borough. 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, address and the name and address of the employer who deducted this tax.

§209. 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 Part on June 15 of the fiscal year or as soon thereafter as he engages in an occupation.

§210. 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 promulgated under this Part with the same force and effect as though they were residents of the Borough. Any individual engaged in an occupation within the Borough and an employee of a nonresident employer may, for the purpose of this Part, 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.

§211. Powers and Duties of Collector.

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 from each employer or self-employed person together with the date the tax was received.

2. The Collector is hereby charged with the administration and enforcement of this Part 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 Part, including provisions for the examination of the payroll records of any Employer subject to this Part, the examination and correction of any return made in compliance with this Part 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 Lancaster County as in other cases provided.

§212. Recovery of Unpaid Tax; Interest and Penalty Added to Unpaid Tax.

1. In the event that any tax under this Part remains due or unpaid thirty (30) days after the due dates above set forth, the Borough may sue for the recovery of any such tax due or unpaid under this Part together with interest and penalty.

2. 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 of the amount of the unpaid tax shall be added and collected for each month or fraction thereof during which the tax remains unpaid. 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.

3. The Collector or his duly authorized representative or agent 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 or his duly authorized representative or agent the means, facilities and opportunity for such examinations.

§213. Prohibited Acts; Penalty for Violation. Any person who makes any false or untrue statement on any return required by this Part, 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 whoever fails or refuses to file any return required by this Part commits a violation of this Part. If Borough Council or the Collector determines that a person has committed or permitted the commission of a violation of this Part, the Borough may institute summary criminal proceedings and/or may seek equitable relief. In the event summary criminal proceedings are instituted, the fine for the first offense shall be not 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) Dollars. Each day or portion thereof in which a violation exists shall be considered a separate violation of this Part. Each Section of this Part which is violated shall be considered a separate violation. The amount of any fine imposed by a district justice or a court shall be in addition to any other fine which may be imposed under any other provisions of the Code of Ordinances 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. The action to enforce the Part may be instituted against any person in charge of the business of any employer who shall have failed or refused to file a return required by this Part.

§214. Applicability; Validity.

1. Nothing contained in this Part 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.

2. If the tax hereby imposed under the provisions of this Part shall be held to be in violation of the Constitution of the United States or of the 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.

3. It is the intent of this Part that the entire burden of the tax imposed on an occupation by the Borough and the School District shall not exceed the limitations prescribed in Section 8 of The Local Tax Enabling Act, 53 P.S. §6908, and therefore the School District shall be entitled to its share of the tax in accordance with the provisions of said Section 8.

Section 2. Severability. In the event any provision, section, sentence, clause or part of this Part 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 Part, it being the intent of Borough Council that the remainder of the Part shall be and shall remain in full force and effect.

Section 3. Construction. Nothing in this Ordinance or in the Code of Ordinances of the Borough of Millersville as hereby amended shall be construed to affect any suit or proceedings pending in any court, or any rights acquired or liability incurred, or any cause or causes of action existing prior to the adoption of this amendment.

Section 4. Savings Clause. All other sections, parts and provisions of the Code of Ordinances of the Borough of Millersville shall remain in full force and effect as previously enacted and amended.

Section 5. Effective Date. This Ordinance shall take effect and be in force on January 1, 2005.

DULY ORDAINED AND ENACTED this 31st day of December, 2004, by Borough Council of the Borough of Millersville, Lancaster County, Pennsylvania, in lawful session duly assembled.

BOROUGH OF MILLERSVILLE
Lancaster County, Pennsylvania

Attest: _____
Secretary

By: _____
President
Borough Council

[BOROUGH SEAL]

Examined and approved as an Ordinance this 31st day of December, 2004.

Mayor