

MUNICIPALITY OF MONROEVILLE

ORDINANCE NO. 2285

AN ORDINANCE OF THE MUNICIPALITY OF MONROEVILLE, ALLEGHENY COUNTY, PENNSYLVANIA, A HOME RULE CHARTER COMMUNITY, ADOPTING AND AFFIRMING THE RULES AND REGULATIONS FOR OCCUPATIONAL PRIVILEGE TAX.

**WHEREAS**, Council for the MUNICIPALITY OF MONROEVILLE seeks to adopt Rules and Regulations pertaining to the administration of Occupational Privilege Tax (OPT);

**WHEREAS**, the Municipality of Monroeville has previously enacted Ordinance Number 2236 which requires the filing of an OPT return and payment by all businesses pursuant to 53 P.S. Section 5901 *et seq.*; and

**WHEREAS**, the Rules and Regulations shall be enforced in all jurisdictions which have commissioned or appointed the Monroeville Tax Office as its Administrator.

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED**, the 9<sup>th</sup> day of December, 2003, as follows:

**SECTION I.** The Rules and Regulations attached hereto and marked as "Exhibit 1".

**SECTION II:** The Rules and Regulations shall apply to all businesses not otherwise exempt by the Constitution of the United States.

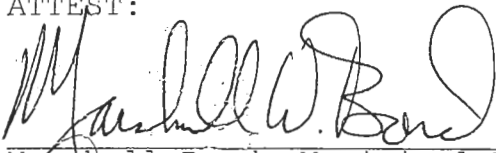
**SECTION III:** All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed.

The following Ordinance or parts thereof are specifically repealed; and


**SECTION IV.** 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 Municipality that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

**ORDAINED and ENACTED** this 9<sup>th</sup> day of December, 2003.

ATTEST:



Marshall Bond, Municipal Manager



James J. Lomeo, Mayor

# **MUNICIPALITY OF MONROEVILLE**

## **MONROEVILLE, PENNSYLVANIA**

### **OCCUPATIONAL PRIVILEGE TAX**

### **RULES AND REGULATIONS**

**Approved by Monroeville Council  
December 9, 2003**

**Ordinance Number 2285**

**MUNICIPALITY OF MONROEVILLE RULES AND REGULATIONS  
FOR OCCUPATIONAL PRIVILEGE TAX**

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# ORDINANCE 2285

## CROSS REFERENCES

Power to tax – see Act 511 of 12-31-65 (53 P.S. §6901-6924)

Limit of tax – see Act 511 of 12-31-65 (53 P.S. §6908(8))

Register - see Act 511 of 12-31-65 (53 P.S. § 6909)

## SECTION A

### RULES AND REGULATIONS

#### **ARTICLE 1. INTRODUCTION:**

A. Municipality of Monroeville Ordinance Number 2236 requires the filing of an occupational privilege tax return and payment of the tax by all businesses not otherwise exempted from the tax by the Constitution of the United States, the Constitution of the Commonwealth of Pennsylvania or the Municipality of Monroeville Ordinances. These Rules and Regulations are for the purpose of helping businesses recognize and fulfill these requirements.

B. Questions may be directed to the Monroeville Tax Office, 2700 Monroeville Blvd, Monroeville, PA, 15146-2388. Tax office information such as hours, telephone numbers and forms can be obtained from the Municipal web site [www.monroeville.pa.us](http://www.monroeville.pa.us).

C. The authority for the enactment of these taxes is the Local Tax Enabling Act of December 31, 1965, P.L. 1257 (53 P.S. 6901 et.seq.) and the Municipal Code, Chapter 334.

#### **ARTICLE 2. HOW TO REGISTER:**

Business registration forms for the Municipality of Monroeville Occupational Privilege Tax can be obtained from the Tax Collector or the Municipal web site, [www.monroeville.pa.us](http://www.monroeville.pa.us). Complete the registration form in its entirety, sign, date, and return the completed document. Upon being approved by the Municipality's Zoning Officer, the Tax Office will issue the Tax Return Form.

#### **ARTICLE 3. TAX AMOUNT:**

Beginning with the first day of January each year, each occupation as referenced in the Ordinance, engaged within the corporate limits of the Municipality of Monroeville, shall be subject to an Occupational Privilege Tax in the amount of ten (\$10.00) dollars per annum with said tax to be paid by the individual so engaged.

**ARTICLE 4. FIDUCIARY STATUS:**

Employers who withhold the occupational privilege tax from employee earnings, and the person responsible for the transmission of occupational privilege tax by a corporate employer, shall be a fiduciary charged with all the responsibilities of a fiduciary with respect to taxes withheld, and shall be subject to all duties imposed by law on fiduciaries, including criminal penalties for breach of duties.

**ARTICLE 5. REGISTRATION OF EMPLOYERS:**

A. Each employer withholding or required to withhold tax pursuant to Municipality of Monroeville said Ordinance, shall register with the Tax Collector the employer's name and address and such other information as the Tax Collector may require within fifteen (15) days after becoming a withholding employer.

B. All employers who have a place of business located within the Taxing Authority shall maintain complete records of all employees for a period of six (6) years in such form as to enable the Tax Collector to determine the employers' liability to withhold for each employee, the actual amount withheld, the actual amount transmitted to the Tax Collector and such other information available to such employers as will enable the Tax Collector to carry out its responsibilities.

C. The limitations set forth in section B should not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:

- (1) Where no return was filed, there shall be no limitation;
- (2) Where the return is fraudulent, there shall be no limitation; or
- (3) Where there is an understatement of tax liability of twenty-five (25%) or more, and not due to fraud, suit shall begin within six years.

**ARTICLE 6. LIABILITY OF EMPLOYEE:**

Failure of any employer to withhold tax shall not relieve the employee from payment of such tax, or from complying with the requirements of the ordinance or these rules and regulations relating to the filing of declarations and tax returns.

**ARTICLE 7. RETURNS – O.P.T. FORM:**

A. The occupational privilege tax return form (O.P.T. form) shall be submitted to the Tax Collector on or prior to the date specified on the O.P.T. form for the applicable period of the calendar year. Payment of the withheld occupational privilege tax for the period is required to be remitted along with O.P.T. form, in addition to one occupational privilege listing for each person for whom the tax is being remitted.

B. The employee listing shall contain the name and address of the employer, plus the full name, social security number and address of the employee.

C. Employers may submit the information to the Tax Collector on pre-approved written/printed reports or on magnetic media utilizing a format acceptable to and pre-approved by the Tax Collector, in lieu of submitting paper records.

D. Signature of the appropriate corporate officer or the business owner is required on the O.P.T. form when submitting this form to the Tax Collector.

E. Every return shall be made upon an approved form furnished by the Tax Collector or on a document containing all required information listed on the OPT form. Every person making a return shall certify the correctness thereof by affidavit.

F. The fact that an individual's name is signed on the return shall be prima-facie evidence that such individual is authorized to sign the return on behalf of the taxpayer.

G. Any unsigned tax return form received by the Tax Collector shall be considered as incomplete and unacceptable until it is properly signed.

**ARTICLE 8. REMITTANCES:**

Remittances shall be made payable to the Municipality of Monroeville.

**ARTICLE 9. BAD CHECKS:**

The current Municipality of Monroeville fees will be levied if a check is returned unpaid by the bank.

**ARTICLE 10. QUARTERLY TAX PERIODS AND TAX REMITTANCE  
DUE DATES**

A. **1<sup>st</sup> tax period per calendar year: January 1 through March 31**  
**Due Date:** On or before April 30

**2<sup>nd</sup> tax period per calendar year: April 1 through June 30**  
**Due Date:** On or before July 31

**3<sup>rd</sup> tax period per calendar year: July 1 through September 30**  
**Due Date:** On or before October 31

**4<sup>th</sup> tax period per calendar year: October 1 through December 31**  
**Due Date:** On or before January 31 of subsequent calendar year

B. Employers who discontinue business prior to the completion of the calendar year/tax year, shall within thirty (30) days after discontinuance of business file and furnish the returns required by the Ordinance and these Rules and Regulations, covering all periods between the last such returns and date of discontinuing business and transmit to the Municipality of Monroeville all tax remaining due.

**ARTICLE 11. WITHHELD TAXES ARE HELD IN TRUST:**

A. Local occupational privilege taxes withheld from employee wages by an employer or business entity or corporation are held in trust for the taxing authority and its tax collector, even in the event of a bankruptcy; said funds withheld shall not be the "property of the bankrupt estate." Said withheld taxes shall not be commingled in the employer's general cash or other accounts.

B. (1) TRUSTEE EX MALEFICIO: One who collects the occupational privilege tax as agent for the taxing authority or the taxing authority's tax collector and fails to pay same over to the appointed collector for the taxing authority is a trustee ex maleficio.

EXAMPLE: An officer of a company that fails to remit the occupational privilege tax withheld from the company's employees may be held personally liable for the occupational privilege tax withheld as a trustee ex maleficio, where the officer has been active and/or in control over the collection of remitting the taxes.

(2) Businesses and Corporations must act through individuals and where such individuals are the acting and controlling officers and agents of the corporation or business, and they fail to administer the trust responsibilities, liabilities are imposed upon the individuals who are responsible for the performance of the trust duty.

EXAMPLE: A corporation which files a tax return form, or the forms or pay check stubs document collections from employees, but remits only part of these collections to the tax collector shall be liable for the withheld taxes as a trustee through wrong doing, to the extent that this officer failed, permitted and/or directed the corporation not to remit the withheld tax.

EXAMPLE: An officer and/or director of a corporation or business who has knowledge that the corporation has failed to pay over withheld occupational privilege tax shall be personally liable for the tax withheld because the person did not try to prevent the corporation or business from spending its funds without first paying the withheld tax to the tax collector.

(3) LIABILITIES OF CORPORATIONS AND OFFICERS: Where a corporation does not remit the occupational privilege tax withheld from its employees and subsequently is dissolved in bankruptcy, the corporate officers shall be held personally liable, jointly or severally, for the payment of the occupational privilege tax withheld.

EXAMPLE: The officers are the sole owners of the shares of stock and/or are the "guiding force" of the corporation. The officers are trustees of the occupational privilege tax collected since they are responsible for the corporation's failure to remit the tax and for the misappropriation of the funds. The doctrine of separate entity of the corporation shall not defeat the Municipality of Monroeville claims.

C. The employer, the business, the corporation shall not characterize the tax withheld simply as creating a debtor-creditor relationship between the employer or business or corporation and the Municipality of Monroeville as collector for the taxing authority, therefore the employer is the conduit for its employees' tax payments. Consequently, these taxes are withheld in "express trust" or in "constructive trust" for the taxing authority and its collector of these taxes.

D. LOWEST INTERMEDIATE BALANCE TEST (L.I.B.T.): This is a judicial test which the Tax Collector will apply to ease the burden of the beneficiary (the tax collector) to trace the funds if or when a trustee commingles trust funds due to the



Municipality of Monroeville with other monies in a single account. The L.I.B.T. allows trust beneficiaries to assume that trust funds are withheld last from a commingled account. Therefore the lowest intermediate balance in an account represents trust funds that have never been dissipated and which are reasonably identifiable. The Municipality of Monroeville will take the position that the Court will keep in mind a broad policy against allowing a party unilaterally to make a trust unenforceable by commingling assets. Also, in the event of a bankruptcy filing the L.I.B.T. is intended to provide a method for the Tax Collector to demonstrate that amounts of withheld taxes were/are still in the possession of the debtor at the commencement of the case.

See: *City of Farrell VS Sharon Steel Corp et al.*, 41 F.3d 92, C.A.3(Pa.), 1994. United States Office; Mueller Industries, Inc.; Citibank, N.A. United States Court of Appeals, Third Circuit, No. 94-3130, November 14, 1994 case.

E. INTERLOCKING BUSINESS ENTITIES: A company that maintains separate payrolls for its employees on a separate checking account or general ledger system and reported to the Tax Collector that it has withheld payroll tax from its employees shall be liable for the occupational privilege tax, plus penalty, plus interest, when the tax has not been remitted to the Tax Collector.

EXAMPLE: The fact that a company is closely tied to a corporation and that together the company and corporation provide a single overall set of services does not excuse the corporation from liability for unremitted tax withheld where the entities have been kept separate for bookkeeping and operational purposes.

## **ARTICLE 12. ASSESSMENT AND COLLECTION OF UNDERPAYMENT OF THE TAX:**

A. If as a result of research or investigation conducted by or on behalf of the Tax Collector, a declaration or return is found or is reasonably believed to be incorrect, the Tax Collector is authorized to assess and collect underpayments of taxes withheld at the source, or any underpayments of tax owed by any employer or taxpayer with respect to occupational privilege tax. If no declaration or return has been filed and a tax is found or determined to be due, the tax actually due may be assessed and collected without the formality of obtaining a delinquent declaration or return from the employer or taxpayer.

B. HEARINGS/MEETINGS: Any person aggrieved by an assessment made by the Tax Collector may, within thirty days after receipt of notice of the assessment, appeal the assessment by forwarding a letter to the Tax Collector stating in detail why the taxpayer believes the assessment to be incorrect and including documentation to support the appellant's position. A meeting or hearing will be arranged within thirty days of the receipt of the appeal notice. The appeal meeting or hearing may be recorded at the decision of the Tax Collector. A decision on the appeal shall be rendered by the Tax Collector within thirty days of the close of the meeting or hearing. The person aggrieved may also properly file all applicable returns and provide all needed supporting documentation if this was not previously done by the aggrieved person. This may also permit promptly amending the assessment to the satisfaction of both parties.

C. ADMINISTRATIVE REVIEW PROCEDURE: Upon receipt of a written request for an Administrative Review (hereinafter referred to as "the Review"), the review will be scheduled within thirty (30) days from the date such request is received by the Tax Collector.

(1) The Review may be recorded at the option of the Tax Collector and the appellant may be required to provide verification that all factual information presented, including oral statements, are true, correct and complete to the best of their knowledge and belief. If a record is made of the Review, the appellant may obtain a copy of the record by paying a fee equal to 50% of all costs incurred in the preparation and transcription of the record.

(2) The purpose of the Review shall include, but not be limited to a review of all documents, data and records produced by appellant and an opportunity for appellant to explain his or her position and be heard on issues directly relating to the filing of the tax return and payment of taxes. The Tax Collector, or his authorized representative, shall have ample opportunity to make such inquiries of appellant as will enable the Tax Collector to fully understand appellant's information and documents and to make other inquiries as may be appropriate in examining and understanding appellant's position.

(3) Appellant shall file with the Tax Collector the properly completed and signed proposed tax returns for each tax year in question and such returns, along with any supporting data and documents, shall be reviewed. A reasonable effort shall be made to reach a fair and equitable accommodation with the appellant. In the event this can not be done, the Tax Collector, after a review of all the data and records submitted and of the record of the hearing, shall make such determination as he believes in his opinion to be appropriate and notify the appellant of his determination in writing, which shall be sent to the appellant at appellant's last known address by ordinary mail and which shall then become appellant's formal notice of appellant's tax liability as of the date of that determination.

**ARTICLE 13. "PAID UNDER PROTEST":**

A check endorsement shall not qualify as a refund claim. The words "Paid Under Protest" handwritten, typed or otherwise placed on a taxpayer's check or money order, or the check or money order of an employer, shall not qualify as a refund claim as the words are not sufficient to appraise the Tax Collector's personnel of the taxpayer's intent to seek a refund or of the substance of their claim, or of facts sufficient to permit the Tax Collector to undertake an investigation of the person's claim.

**ARTICLE 14. REFUNDS:**

(a) Refunds of the occupation privilege tax will, under normal circumstances, not be considered until after the close of the tax year, where such refund is based upon the claim that the taxpayer did not earn one thousand dollars (\$1,000) or more by employment by employment within the Municipality.

(b) Refund claims based upon non-earning of one thousand dollars (\$1,000) or more within the Municipality must be accompanied by appropriate documentary evidence, such as W-2s or a statements from the employer(s) where the w-2 issued contains both earnings within and outside the Municipality.

(c) Claims for refunds representing duplicate deductions made by two or more separate employers on the same employee, which represents an obvious overpayment of the limit of the tax, will be considered timely and acted upon even though the tax year has not terminated, or refunds of tax deductions made erroneously by an employer where there is documentary evidence presented that the employee was not and will not be employed within the Municipality during the tax year, will also be considered timely even though the year has not terminated. (Revenue Ruling 1971-1 of July 23, 1971.)

#### **ARTICLE 15. REFUNDS IN EXCESS OF ANNUAL LIMIT:**

(a) Pa Statute, 53P.S. Section 6908(8), limits the annual rate of occupational privilege tax on any one individual to ten dollars (\$10.00) per year.

(b) If, at any time, two political subdivisions shall impose the above tax on the same person, subject, or "privilege" located within multiple political subdivisions, during the same year or part of the same year, under authority of Pa Statute, 53P.S. Section 6908(8), during the time such duplication of the tax exists the subsequent deductions shall be refunded upon written request and proof of payment.

#### **EFFECT OF RULES AND REGULATIONS:**

**Insofar as these Rules and Regulations may be found to conflict with Municipal Ordinances or other law, regardless of whether they purport to increase a taxpayer's responsibility to pay the tax, Article 334 or other applicable law shall prevail. Compliance with these Rules and Regulations shall be sufficient to bar imposition of penalty by the Municipality of Monroeville.**