

MUNICIPALITY OF MONROEVILLE**ORDINANCE NO. 2369**

AN ORDINANCE OF THE MUNICIPALITY OF MONROEVILLE, ALLEGHENY COUNTY, PENNSYLVANIA, A HOME RULE CHARTER COMMUNITY, AMENDING THE "OCCUPATIONAL PRIVILEGE TAX ORDINANCE", ORDINANCE NO. 602, AS AMENDED, TO BE RE-NAMED AND ENTITLED "THE EMERGENCY AND MUNICIPAL SERVICES TAX ORDINANCE" WHICH SHALL BE LEVIED UPON THOSE PERSON ENGAGING IN AN OCCUPATION WITHIN THE MUNICIPALITY IN ACCORDANCE WITH THE LOCAL TAX ENABLING ACT PURSUANT TO ACT 511, P.L. AS AMENDED BY 222 OF 2004, H.B. 197.

WHEREAS, Council for the MUNICIPALITY OF MONROEVILLE seeks to adopt an Emergency and Municipal Services Tax in accordance with the Local Tax Enabling Act pursuant to Act 511, P.L. as amended by 222 of 2004, H.B. 197; and

WHEREAS, the Emergency and Municipal Services Tax shall be assessed, levied and collected for the purpose of police, fire and/or emergency services, road construction and/or maintenance, or reduction of property taxes; and

WHEREAS, the Emergency and Municipal Services Tax shall be assessed, levied and collected upon those persons engaging in an occupation within the Municipality by the commissioned or appointed Tax Administrator/Collector.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, the 9th day of May, 2006, makes the following amendments to its Occupational Privilege Tax Ordinance, as amended:

Section 1. The "Occupational Privilege Tax Ordinance", Ordinance 602, as amended, shall hereinafter be entitled and known as the "Emergency and Municipal Services Tax Ordinance."

Section 2 Definitions: As used in this Ordinance, unless the context indicates clearly a different meaning, the following words shall have the meanings set forth below:

- A. **COMPENSATION** -- Salaries, wages, commissions, bonuses, fees, tips, gross receipts or any other income.
- B. **EMPLOYER** -- A person, partnership, association, corporation, institution, governmental body or unit or agency or any other entity employing one (1) or more persons for a salary, wage, commission or other compensation. The term shall not include those who hire domestic servants.
- C. **MUNICIPALITY** -- The Municipality of Monroeville
- D. **OCCUPATION** -- Includes any livelihood, job, trade, profession, business or enterprise of any kind, including services, domestic or other, for which any compensation is received.
- E. **TAX** -- The tax imposed by this Ordinance.
- F. **TAX COLLECTOR** -- The Monroeville Municipal Manager or such other person appointed by him for the collection of the taxes imposed under this Ordinance.
- G. **TAXPAYER** -- Any natural person liable for the tax levied by this Ordinance.

Section 3 Levy; tax imposed; exception: Ordinance No. 602 is affirmed in all respects, except the following portions of said Ordinance shall be amended and added to reflect the following:

- A. The Municipality of Monroeville shall assess, levy and collect from each person who engages in an occupation for any length of time an Emergency and Municipal Services Tax in the amount of Fifty-Two Dollars (\$52.00) for each calendar year, effective January 2005, and in accordance with the provisions set forth herein and pursuant to the Local Tax Enabling Act pursuant to Act 511, P.L. as amended by 222 of 2004, H.B. 197.
- B. All references in any ordinance or resolution to a tax on the Privilege or engaging in an occupation, otherwise known as "Occupational Privilege Tax", shall be deemed to a reference to an "Emergency and

Municipal Services Tax”.

C. The situs of the tax shall be the place of employment, but, in the event a person is engaged in more than one occupation, or an occupation which requires his/her working in more than one political subdivision during the calendar year, the priority of claim to collect such Emergency and Municipal Tax shall be in following order:

1. The political subdivision in which a person maintains his/her principal office or is principally employed;
2. The political subdivision in which the person resides and works, if such tax is levied by that political subdivision;
3. The political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home.

D. The place of employment shall be determined as of the day the taxpayer first becomes subject to the tax during the calendar year.

E. The Municipality shall only use the funds derived from the Emergency and Municipal Tax for the following:

1. Police, fire and/or emergency services;
2. Road construction and/or maintenance; or
3. Reduction of property taxes.

F. If Gateway School District chooses to levy an Emergency and Municipal Services Tax, the amount shall not exceed Five Dollars (\$5.00) of the total Fifty-Two Dollars (\$52.00).

Section 4 Returns and due dates:

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

- B.** 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.
- C.** Signature of the appropriate corporate officer or the business owner is required on the tax form when submitting this form to the Tax Collector.
- D.** 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 tax form. Failure to receive a tax return does not negate the liability to file or remit payment.
- E.** Every person making a return shall certify the correctness thereof by affidavit. 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.
- F.** Any unsigned tax return form received by the Tax Collector shall be considered as incomplete and unacceptable until it is properly signed.
- G.** **1st tax period per calendar year: January 1 through March 31**
Due Date: On or before April 30
2nd tax period per calendar year: April 1 through June 30
Due Date: On or before July 31
3rd tax period per calendar year: July 1 through September 30
Due Date: On or before October 31
4th tax period per calendar year: October 1 through December 31
Due Date: On or before January 31 of subsequent calendar year

Section 5 Duties of employers:

- A.** Every employer shall, within thirty (30) days after the effective date of this Ordinance or within thirty (30) days after first becoming an employer, register with the Tax Collector the employer's name and address, employer's tax identification number, nature of business activity in which he is engaged, the employees' names and addresses and such other information as the Tax Collector may require. Every person filing a registration shall certify the correctness thereof by affidavit. If an employer conducts business under a fictitious name, such

employer shall apply for registration in both the true and fictitious names of the individual and entity and shall list the fictitious name first on the application. Each separate employer shall apply for a separate registration.

B. As to each taxpayer employed for any length of time on or before January 1 of the calendar year for 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 the Tax Collector the full amount of all such taxes on or before April 30 of the calendar year. 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 March 31 of the year, June 30 of the year, September 30 of the year and December 31 of the 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 April 30, July 31 or October 31 of the calendar year and January 31 of the ensuing year. A return must be filed each quarter even if the liability is zero.

C. 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, covering all periods between the last such returns and date of discontinuing business and transmit to the Municipality of Monroeville all tax remaining due.

D. The failure of any employer to deduct 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, as though the tax had originally been levied against such employer.

E. 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 payment by the employees.

F. Employers who withhold the tax from employee earnings, and the person responsible for the transmission of the 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.

Section 6. Direct payment by taxpayers: Every taxpayer who is self-employed or whose tax for any reason is not collected under Section 5 of this Ordinance shall file a return on a form prescribed by the Tax Collector and shall pay the tax directly to the Tax Collector. Each such taxpayer who first becomes subject to the tax on or before January 1 of any calendar year shall file the return and pay the tax on or before April 30 of the calendar year, and each such taxpayer who first becomes subject to the tax after January 1 of any calendar year shall file the return and pay the tax on or before April 30, July 31 or October 31 of the calendar year and January 31 of the ensuing year, whichever of such payment dates first occurs at least 30 days after the taxpayer first becomes subject to the tax.

Section 7. Persons subject to tax: Both resident and nonresident taxpayers shall, by virtue of engaging in an occupation within the municipality, be subject to the tax and the provisions of this Ordinance.

Section 8. Powers and duties of Tax Collector; examination of records:

A. The Tax Collector, on behalf of the municipality, shall collect and receive the taxes, interest, fines and penalties imposed by this Ordinance and shall maintain records showing the amounts received and the dates 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 Ordinance, 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 agent designated by him all means, facilities and opportunity for the examinations hereby authorized.

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.

D 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 the 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.

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.

F. 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.

Section 9. Collection of tax; payment under protest:

- A. Remittances shall be made payable to the Municipality of Monroeville.
- B. The current Municipality of Monroeville fees will be levied if a check is returned unpaid by the bank.
- C. The Tax Collector shall collect, by suit or otherwise, all taxes, interest, costs, fines and penalties due under this Ordinance and unpaid. If for any reason any tax is not paid when due, interest at the rate of six percent (6%) per year on the amount of unpaid tax, and an additional penalty of one-half of one percent (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 collections as well as for interest and penalties. The Tax Collector may accept payment under protest of the tax claimed by the municipality in any case where any person disputes the municipality's claim for the tax.
- D. 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.). 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. Refunds shall be made only pursuant to approval of the Monroeville Municipal Council.

Section 10. Withheld taxes are held in trust:

A. Local 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 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.

(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.

(3) LIABILITIES OF CORPORATIONS AND OFFICERS: Where a corporation does not remit the 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 tax withheld.

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.

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 tax, plus penalty, plus interest, when the tax has not been remitted to the Tax Collector.

Section 11. Violations and penalties: Any person or employer who fails to comply with the registration requirement or makes any false or untrue statement on his registration or tax return or who refuses to permit inspection of the books, records or accounts of any business in his custody when the right to make such inspection by the Tax Collector is requested and whoever fails or refuses to file a return required by this ordinance shall, upon conviction in any court of competent jurisdiction, upon conviction thereof before a District Justice, be subject to a fine of not more than six hundred dollars (\$600.), plus costs of prosecution, and, in default of payment of such fine and costs, to imprisonment in the Allegheny County Jail for a period not exceeding thirty (30) days. In the case of partnerships or association, the fine and penalty may be imposed

upon any of the partners or members thereof, and in the case of corporations, upon any of the officers thereof in lieu of the corporation itself. Each day on which any person violates this Article shall be considered as separate offense and shall be punishable as such as hereinbefore provided.

Section 12. Refunds and exceptions:

- A.** After the close of the tax year, any person whose total income from all sources is less than \$5,500.00 per annum shall be exempt from paying the Emergency and Municipal Services Tax set forth herein. Any person claiming exemption status must provide to the Tax Collector, in writing, proof that total income from all sources is less than \$5,500.00. This provision shall not be construed to relieve an employer from the duty to collect a tax imposed under this Ordinance because of a representation by an employee that his earnings in any year would be less than fifty five hundred dollars (\$5,500.). Refunds shall be made only pursuant to approval of the Monroeville Municipal Council.
- B.** 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.)
- C.** If a taxpayer is subject to the Occupational Privilege Tax in another jurisdiction, this shall not offset or credit against the liability of the tax.

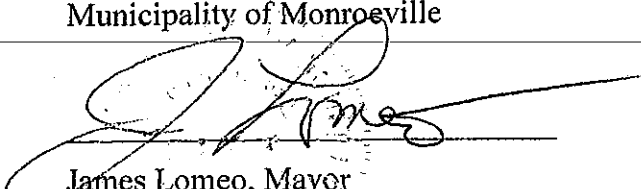
Section 13. Applicability: The tax shall not apply to any subject of tax or person not within the taxing power of the municipality under the Constitution of the United States and the laws and Constitution of the Commonwealth of Pennsylvania.

Section 14. Effective date: This ordinance shall become effective January 1, 2007 and shall remain in effect thereafter from year to year on a calendar basis. 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.

Section 15. Repealer: Any ordinance or part of ordinance conflicting with any of the provisions of this ordinance shall be and the same is hereby repealed insofar as the same affects this ordinance. 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 9th day of May 2006.

Municipality of Monroeville


James Lomeo, Mayor

Attest:


Marshall W. Bond, Municipal Manager

ENTERED INTO LEGAL BOOK: May 19, 2006