

**ORDINANCE NO. 09-03**

**BIRMINGHAM TOWNSHIP**

**CHESTER COUNTY, PENNSYLVANIA**

**AN ORDINANCE OF THE TOWNSHIP OF BIRMINGHAM, CHESTER COUNTY, PENNSYLVANIA, ENACTED PURSUANT TO THE AUTHORITY IN THE LOCAL TAX ENABLING ACT, 53 P.S. § 6924.101 ET. SEQ., IMPOSING A LOCAL SERVICES TAX FOR SPECIFIC REVENUE PURPOSES FOR THE PRIVILEGE OF ENGAGING IN AN OCCUPATION WITH A PRIMARY PLACE OF EMPLOYMENT WITHIN THE TOWNSHIP.**

**THE BOARD OF SUPERVISORS DOES HEREBY ENACT AND ORDAIN AS FOLLOWS:**

**Section 1. Title.**

This Ordinance shall be known as the "Local Services Tax Ordinance of Birmingham Township".

**Section 2. Authority.**

This Ordinance is enacted pursuant to the authority in the Local Tax Enabling Act, 53 P.S. § 6924.101 et seq.

**Section 3. Definitions.**

A. Except as otherwise indicated by the context, the following definitions shall apply in addition to those set forth in the Local Tax Enabling Act:

COLLECTOR – The person, public employee or private agency designated by the Township of Birmingham to collect and administer the tax herein imposed.

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

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.

INDIVIDUAL – Any person, male or female, engaged in any occupation, trade or professional within the corporate limits of the Township of Birmingham.

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 Township of Birmingham for which compensation is charged or received, whether by means of salary, wages, commission or fees.

TAX – The local services tax.

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

TOWNSHP – The Township of Birmingham, Chester County, Pennsylvania.

B. Use of the masculine gender shall include the feminine and the neuter, and reference to masculine in the singular shall include the plural.

#### **Section 4. Levy of Tax.**

For specific revenue purposes as set forth herein , an annual tax is hereby levied and assessed, commencing January 1, 2010, upon the privilege of engaging in an occupation with a primary place of employment within the Township during the tax year. Each natural person who exercises such privilege for any length of time during any tax year shall pay the tax for that year in the amount of \$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 Township 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; or (3) reduction of property taxes. The Township 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 Township. The tax shall be no more than \$52.00 on each person for each calendar year, irrespective of the number of political subdivisions within which a person may be employed.

#### **Section 5. Exemption and Refunds.**

A. Exemption. Any person whose total earned income and net profits from all sources within the Township is less than Twelve Thousand (\$12,000.00) 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) A person seeking to claim an exemption from the tax may annually file an exemption certificate with the Township and with the person's employer affirming that the person reasonably expects to receive earned income and net profits from all sources within the Township of less than Twelve Thousand (\$12,000.00) Dollars in the calendar year for which the exemption certificate is filed. In the event the Township utilizes a tax collection officer, it shall provide a copy of the exemption certificate to that officer. The exemption certificate shall have attached to it a copy of all of the employee's last pay stubs or W-2 forms from employment within the Township for the year prior to the fiscal year for which the employee is requesting to be exempted from the tax. Upon receipt of the exemption certificate and until otherwise instructed by the Township or except as required by clause (2), 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 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 Township or the Collector.

(2) With respect to a person who claimed an exemption for a given calendar year from the tax, upon notification to an employer by the person or by the Township that the person has received earned income and net profits from all sources within the Township equal to or in excess of Twelve Thousand (\$12,000.00) Dollars 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 Township in an amount equal to or in excess of Twelve Thousand (\$12,000.00) Dollars in that calendar year, an employer shall withhold the tax from the person under clause (3).

(3) If a person who claimed an exemption for a given calendar year from the 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 Township may pursue collection under this Ordinance.

(4) Except as provided in clause (2), 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 tax.

C. Refunds. The Township, in consultation with the Collector and DCED, shall establish procedures for the processing of refund claims for any tax paid by any person 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 Township or the Collector shall determine eligibility for exemption and provide refunds to exempt persons.

#### **Section 6. Duty of Employers to Collect.**

A. Each employer within the Township, as well as those employers situated outside the Township but who engage in business within the Township, is hereby charged with the duty of collecting the tax from each of his employees engaged by him or performing for him within the Township 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 Township.

B. A person subject to the tax shall be assessed by the employer 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 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 person is engaging in an occupation, except as provided in Paragraph D of this Section.

C. No person shall be subject to the payment of the 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 Township 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 Township 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 tax in an amount exceeding the amount withheld by the employer if the employer complies with the provisions of Paragraph B of Section 5 of this Ordinance and this Section and remits the amount so withheld in accordance with this Ordinance.

G. Employers shall be required to remit the tax thirty (30) days after the end of each quarter of a calendar year.

### **Section 7. 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 Ordinance, 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 8. Dates for Determining Tax Liability and Payment.**

Each employer shall use his employment and payroll records from the first day of January to March 31 each year for determining the number of employees from whom said tax shall be deducted and paid over to the collector on or before April 30 of the same calendar year. Supplemental reports shall be made by each employer on July 30, October 30 and January 31 for new employees as reflected on his employment and payroll records from April 1 to June 30, July 1 to September 30 and October 1 to December 31, and payments on these supplemental reports shall be made on July 30, October 30 and January 31, respectively.

**Section 9. Self-Employed Individuals.**

Each self-employed individual who performs services of any type or kind or engages in any occupation or profession within a primary place of employment within the Township shall be required to comply with this Ordinance and 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 10. 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 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 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;
- (2) Second, the political subdivision in which the person resides and works if the tax is levied by that political subdivision;
- (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 11. Nonresidents Subject to Tax.**

All employers and self-employed individuals residing or having their places of business outside of the Township but who perform services of any type or kind or engage in any occupation or profession within the Township 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 Township. Further, any individual engaged in an occupation within the Township 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 Township shall have the option of proceeding against either the employer or employee for the collection of this tax as hereinafter provided.

**Section 12. Administration of Tax.**

A. The Collector shall be appointed by resolution of the Township. 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 or her from each employer or self-employed person, together with the date the tax was received. It shall be the duty of the Collector to accept and keep a record of the information submitted by employers relating to the number of employees subject to the tax, the number of employees exempt from the tax, the employee exemption certificates and refunds of the tax paid to individuals and employers.

B. The Collector is hereby charged with the administration and enforcement of this Ordinance and is hereby charged and empowered, subject to Township 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.

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 13. Suits for Collection.**

A. In the event that any tax under this Ordinance remains due or unpaid 30 days after the due dates set forth in this Ordinance, the Collector may sue for the recovery of 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 suit is brought for the recovery of this tax or other appropriate remedy undertaken, the individual liable therefore shall be responsible and liable for the costs of collection.

**Section 14. Violations and Penalties.**

Whoever makes any false or untrue statement on any return required by this Ordinance, 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 Ordinance shall be guilty of a violation and, upon conviction thereof, shall be

sentenced to pay a fine or not more than \$600.00 and costs of prosecution, and, in default of payment of such fine and costs, to imprisonment for not more than 30 days. 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 refuses to file a return required by this Ordinance.

**Section 15. Interpretation.**

A. Nothing contained in this Ordinance shall be construed to empower the Township to levy and collect the tax hereby imposed on any occupation not within the taxing power of the political subdivision 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 Ordinance 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 16. Renumbering.**

The Board of Supervisors hereby authorizes General Code to make nonsubstantive numbering and formatting changes necessary for consistency with the Code.

**Section 17. Severability.**

If any sentence, clause, section or other 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 hereof. It is hereby declared as the intent of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, sections or part thereof not have been included herein.

**Section 18. Repealer.** Except as set forth hereafter, all Ordinances or parts of Ordinances inconsistent herewith are hereby repealed.

**Section 19. Effective Date.** This Ordinance shall be effective thirty days from the date of adoption as provided by the Local Tax Enabling Act. The tax imposed by this Ordinance shall be effective on January 1, 2010 and all calendar years thereafter unless repealed or modified by Ordinance of the Township of Birmingham.

ENACTED AND ORDAINED this 16<sup>th</sup> day of November, 2009.

**BOARD OF SUPERVISORS  
BIRMINGHAM TOWNSHIP**

ATTEST:

*Quina Nelling*  
Quina Nelling, Secretary

*John L. Conklin*  
John L. Conklin, Chairman

Absent  
William J. Kirkpatrick, Vice-Chairman

*Alfred W. Bush*  
Alfred W. Bush, Member