

OFFICIAL
BOROUGH OF LINCOLN
ALLEGHENY COUNTY, PENNSYLVANIA

ORDINANCE NO. 11-05

AN ORDINANCE OF THE BOROUGH OF LINCOLN, ALLEGHENY COUNTY, PENNSYLVANIA, REPEALING PART 3 OF CHAPTER 24 OF THE LINCOLN BOROUGH CODE OF ORDINANCES REGARDING THE OCCUPATION PRIVILEGE TAX AND ENACTING AN ENTIRELY NEW PART 3 OF CHAPTER 24 PROVIDING FOR A LOCAL SERVICES TAX IN THE AMOUNT OF FIFTY-TWO DOLLARS (\$52.00) FOR THE PRIVILEGE OF ENGAGING IN AN OCCUPATION WITHIN THE BOROUGH EFFECTIVE JANUARY 1, 2012 TO BE PAID BY EACH INDIVIDUAL EXERCISING SUCH PRIVILEGE; REQUIRING THE FILING OF RETURNS; PLACING UPON EMPLOYERS THE DUTY OF COLLECTING AND REMITTING TAX OWED BY EMPLOYEES; PROVIDING FOR THE ADMINISTRATION AND COLLECTION OF THE TAX; AND IMPOSING PENALTIES FOR VIOLATION.

BE IT ORDAINED AND ENACTED BY THE BOROUGH OF LINCOLN, ALLEGHENY COUNTY, PENNSYLVANIA AND IT IS HEREBY ORDAINED AND ENACTED BY AUTHORITY OF THE SAME THAT PART 3 OF CHAPTER 24 OF THE LINCOLN BOROUGH CODE OF ORDINANCES IS HEREBY REPEALED AND AN ENTIRELY NEW PART 3 OF CHAPTER 24 IS HEREBY ENACTED AS FOLLOWS:

PART 3

LOCAL SERVICES TAX

SECTION 301. Title. This Ordinance shall be known and may be cited as the "Local Services Tax Ordinance".

SECTION 302. Definitions. As used in this Ordinance, unless the context clearly indicates a different meaning, the following words and phrases shall have the meanings set forth below:

- (A) "Borough" shall mean the Borough of Lincoln.
- (B) "Collector" shall mean the person, public employee, appointed and/or elected public official or private agency designated from time to time by Resolution of the Borough to collect and administer the tax herein imposed.

(C) "DCED" shall mean the Department of Community and Economic Development of the Commonwealth of Pennsylvania.

(D) "Earned Income" shall mean compensation as this term is defined in Section 13 [relating to earned income taxes] of the Local Tax Enabling Act, the Act of Dec. 31, 1965, P.L. 1257, § 13, as amended, 53 P.S. § 6913, as amended.

(E) "Employer" shall mean an individual, partnership, association, limited liability corporation, limited liability partnership, corporation, governmental body, agency or other entity engaged in business or situated in the Borough, employing one or more persons on a salary, wage, commission or other compensation basis, including a self-employed person.

(F) "He", "His" or "Him" shall mean the singular and plural number, as well as male, female and neuter genders.

(G) "Individual" or "Taxpayer" shall mean any person, male or female, engaged in any occupation, trade or profession within the limits of the Borough.

(H) "Net Profits" shall mean the net income from the operation of a business, profession, or other activity, as this term is defined in Section 13 [relating to earned income taxes] of the Local Tax Enabling Act, the Act of Dec. 31, 1965, P.L. 1251, § 13, as amended, 53 P.S. § 6913, as amended.

(I) "Occupation" shall mean any trade, profession, business or undertaking of any type, kind or character, including services, domestic or other, earned and/or performed within the limits of the Borough for which compensation is charged or received; whether by means of salary, wages, commission or fees for services rendered.

(J) "Tax" shall mean the tax imposed by this Ordinance.

(K) "Tax Year" shall mean the period from January 1 until December 31 in any year; a calendar year.

SECTION 3. Levy. For specific revenue purposes, an annual tax is hereby levied and assessed, commencing January 1, 2012, upon the privilege of engaging in an occupation with a

primary place of employment within the Borough 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 Borough 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; (3) reduction of property taxes; or (4) property tax relief through implementation of a homestead and farmstead exclusion in accordance with 53 Pa. C.S. Ch. 85, Subch. F (relating to homestead property exclusion). The Borough 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 Borough. 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 304. Collection Through Employers:

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

(B) Each employer within the Borough, as well as those employers situated outside the Borough but who engage in business within the Borough, is hereby charged with the duty of collecting the tax from each of his employees employed by him or performing services for him within the Borough and making a return and payment thereof to the Collector. Further, each employer is hereby authorized to deduct this tax from the compensation to be paid to 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 Borough.

(C) 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 E of this Section. For purposes of this paragraph, combined rate shall mean the aggregate annual rate of the tax levied by the Borough and the School District.

(D) No person shall be subject to the payment of the Local Services Tax by more than one political subdivision during each payroll period.

(E) 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. All employees must notify the employees' 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. If proof is provided under this provision, the employer shall not deduct the tax but shall maintain adequate records concerning such employees.

(F) The tax shall be no more than fifty-two (\$52) on each person for each calendar year, irrespective of the number of political subdivisions within which a person may be employed. The Borough shall provide a taxpayer a receipt of payment upon request by the taxpayer.

(G) No employer shall be held liable for failure to withhold the tax or for the payment of the withheld tax money to the Borough 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 employer or where the employee is principally employed.

Further, an employer shall not be liable for payment of the Local Services Tax in an amount exceeding the amount withheld by the employer if the employer complies with the provisions of Paragraph B of Section 312 of this Ordinance and this section and remits the amount so withheld in accordance with this Ordinance.

(H) Employers shall be required to remit the Local Services Taxes thirty days after the end of each quarter of a calendar year.

(I) Any employer who discontinues business or ceases operation at any time after January 1, 2012 shall, within Fifteen (15) days after discontinuing business or ceasing operation, file the return hereinabove required and pay the tax to the Collector.

(J) 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 Ordinance, or who fails to pay such tax to the Collector, shall be liable for such tax in full, as though the tax had originally been levied against such employer.

SECTION 305. Direct Payment by Taxpayers. Every taxpayer who is self-employed who performs services of any type or kind or engages in any occupation or profession with a primary place of employment within the Borough or whose tax for any other reason is not collected under Section 304 of this Ordinance, shall file a return on a form prescribed by the Collector and shall pay the tax directly to the Collector on or before the thirtieth day following the end of each quarter.

SECTION 306. Non-Resident Taxpayers. Both resident and non-resident taxpayers shall, by virtue of engaging in an occupation within the Borough, be subject to the tax and the provisions of this Ordinance. All employers and self-employed individuals residing or having their places of business outside of 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 Ordinance with the same force and effect as though they were residents of the Borough. Further, any individual engaged in an occupation within the Borough and an employee of nonresidential

employers may, for purposes of this Ordinance, be considered a self-employed person, and in the event his or her 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.

SECTION 307. 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 308. Dates for determining tax liability and payment. In each tax year, each employer shall use his or her employment records to determine the number of employees from whom such tax shall be deducted and paid over to the Collector on or before the thirtieth day following the end of each calendar quarter of each such tax year.

SECTION 309. 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 local services 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 a 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 310. Administration and Enforcement.

(A) The Collector shall be appointed by Resolution of the Borough and shall continue as Collector until such time that the Borough appoints a different Collector by subsequent Resolution. It shall be the duty of the Collector to accept and receive payments of the tax and 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.

(B) The Collector is hereby charged with the administration and enforcement of this Ordinance and is hereby charged and empowered, subject to approval by Borough Council, 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 under Act 50 of 1998.

(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 311. Collection.

(A) In the event that any tax under this Ordinance remains due or unpaid 30 days after the due dates above set forth, the Collector shall collect by suit, appropriate wage

attachment directed to the employer or otherwise all taxes, costs, fines, interest and penalties due under this Ordinance and remaining unpaid.

(B) If, for any reason, the tax is not paid within thirty (30) days after the applicable dates as set forth in Sections 304 and 305 hereof, a penalty of ten (10%) percent of the amount of the tax remaining unpaid, and interest at the rate of 6% on the amount of such tax shall be calculated beginning with the due date of the tax and 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 penalties and interest.

(C) The 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 an overpayment to the Collector, the Collector shall refund the amount of the overpayment to the person who paid under protest.

SECTION 312. Exemptions:

(A) Any person whose total earned income and net profits from all sources within the Borough is less than twelve thousand (\$12,000) 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) In order to claim the exemption, the following procedure shall apply:

(1) A person seeking to claim an exemption from the local services tax must annually file an exemption certificate with the Borough and with the person's employer in which the person swears, under oath, that the person reasonably expects to receive earned income and net profits from all sources within the Borough of less than twelve thousand dollars (\$12,000) in the calendar year for which the exemption certificate is filed. The exemption certificate shall have attached to it a copy of all the employee's last pay stubs or W-2 forms from employment within the Borough for the year prior to the fiscal year for which the employee is requesting to be exempted from the tax. Failure to provide the required information will disqualify a taxpayer from claiming the exemption. Upon receipt of the exemption certificate and until otherwise instructed by the Borough 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 a form provided by the Borough.

(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 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) 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) in that calendar year, an employer shall withhold the local services 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 Borough 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 local services tax.

SECTION 313. Violations: 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 or pay the tax which is due shall be guilty of a violation and, upon conviction thereof, shall be sentenced to pay a fine of not more than \$600 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 or against any individual and/or taxpayer from whom the tax is due.

SECTION 314. Applicability and Severability. The tax shall not apply to any subject or person not within the taxing power of the Borough under the Constitution of the United States and

the laws of and Constitution of the Commonwealth of Pennsylvania. If a final decision of a Court of competent jurisdiction holds any provisions of this Ordinance, or the application of any provision to any circumstance, to be illegal or unconstitutional, the other provisions of this Ordinance, or the application of such provision to other circumstances, shall remain in full force and effect. The intention of the Council of the Borough of Lincoln is that the provisions of this Ordinance shall be severable and that this Ordinance would have been adopted as if any such illegal or unconstitutional provision had not been included.

SECTION 315. Repealer. Except as set forth hereafter, all ordinances or parts of ordinances inconsistent herewith are hereby repealed. Nothing herein shall be construed to repeal the imposition and collection of the occupation privilege tax, plus applicable penalties and interest, for calendar year 2011 and all prior calendar years, as the same existed prior to this Ordinance.

SECTION 316. Effective Date. This Ordinance shall become effective in accordance with the Act of December 31, 1965, P.L. 1257, 53 P.S. Section 6901 et seq., and its amendments, and shall remain in effect thereafter for the calendar year beginning January 1, 2012 and shall remain in effect for all calendar years thereafter unless repealed or modified by a subsequent Ordinance of the Borough.


ORDAINED AND ENACTED this 22 day of November, 2011, a full quorum being present.

ATTEST:

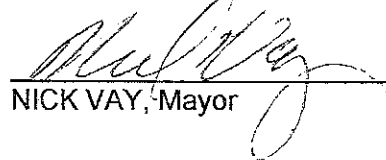

SHARON JASEGAN, Borough Secretary



BOROUGH OF LINCOLN:


MARK BETZNER, Council President

Examined and Approved this 22 day of November, 2011.


NICK VAY, Mayor