

ORDINANCE NO. 752

**AN ORDINANCE OF THE BOROUGH OF MT. PENN,
BERKS COUNTY PENNSYLVANIA AMENDING ITS
CODIFICATION OF ORDINANCES AT CHAPTER 24,
"TAXATION, SPECIAL", PART 5, "OCCUPATIONAL
PRIVILEGE TAX" BY REPEALING SAME AND ENACTING
AN EMERGENCY AND MUNICIPAL SERVICES TAX ON
PERSONS ENGAGED IN ANY OCCUPATION WITHIN THE
CORPORATE LIMITS OF THE BOROUGH.**

BE IT ENACTED by the Borough Council of the Borough of Mt. Penn, Berks County, Pennsylvania, and **IT IS HEREBY ENACTED AND ORDAINED** by the authority of the same as follows:

SECTION 1. *The Codification of Ordinances for the Borough of Mt. Penn, Chapter 24, "Taxation, Special" Part 5. "Occupational Privilege Tax", is hereby amended and restated in its entirety so as to read as follows:*

PART 5

EMERGENCY AND MUNICIPAL SERVICES TAX

§501. DEFINITIONS.

The following words and phrases when used in this Part shall have the meaning ascribed to them in this section unless the context clearly indicates a different meaning:

INDIVIDUAL - Any person, male or female, who attains or is over the age of eighteen (18) years in any fiscal year; (1) in which the emergency and municipal services tax shall be levied; and (2) during or in which such person shall be engaged in any occupation of any nature, type or kind whatsoever within the corporate limits of the Borough of Mt. Penn, whether in the employ of another, or self-employed.

PRIVILEGE - The exercising or carrying on by any manner or means any occupation whatsoever, whether it be trade, profession, business or undertaking of any type or kind carried on or performed within the corporate limits of the Borough of Mt. Penn for which recompense is received,

whether by means of salary, wages or commission or whether the individual be self-employed by payment for services rendered.

EMERGENCY AND MUNICIPAL SERVICES TAX - A tax, of Fifty-Two Dollars (\$52.00) per year levied on each engagement in any occupation within the corporate limits of the Borough of Mt. Penn, during the fiscal year.

EMPLOYER - An individual, partnership, limited partnership, association or corporation that engages the services of any individual and makes payment to said individual whether by salary, wages or commission. An employer shall include a self-employed person who engages in his employ the services of one (1) or more individuals besides himself.

§502. LEVY AND COLLECTION OF TAX.

For the fiscal year 2006 (and annually thereafter), the Borough hereby imposes on each engagement in an occupation, to be paid by each individual exercising the privilege of engaging in any occupation within the corporate limits of the Borough of Mt. Penn, an annual emergency and municipal services tax in the manner and at the rates set forth in this Part. Any individual whose total income from all sources in any taxable year is less than Twelve Thousand Dollars (\$12,000.00) shall be exempt from the provisions of this Part.

§503. AMOUNT OF TAX.

Beginning on January 1, 2006, each engagement in an occupation, as an occupation, as defined above, shall be subject to the payment of an emergency and municipal services tax of Fifty-Two Dollars (\$52.00), to be paid by each individual exercising the privilege of engaging in any occupation, as hereinbefore defined, within the corporate limits of the Borough of Mt. Penn.

§504. DISCOUNT, FLAT RATE AND PENALTY PERIODS.

(a) Said tax shall be paid to the agent appointed by the Borough for the collection of said tax and shall be due and payable on March 1 of the year for which the same shall be levied, and if payment of the said tax be made within two(2) months next following the day of March 1, a discount of two percent (2%) shall be allowed to each individual so paying such annual tax of Fifty-Two Dollars (\$52.00), and after the expiration of the two (2) months next following the first day of March, the emergency and municipal services tax shall be paid at the flat rate of Fifty-Two Dollars (\$52.00) for the next ensuing month, and after the expiration of the next ensuing month, a penalty of five percent (5%) shall be imposed; and

(b) If the said tax is not paid when due in each fiscal year, interest thereon shall begin to accrue at the rate of six percent (6%) per annum on the amount of the said tax remaining unpaid. Such interest shall be calculated beginning on the first day of January of the year following that for

which such tax was levied, and in which it was due, and shall be calculated thereafter until said tax is paid in full, together with the penalty as hereinbefore provided.

§505. DUTY OF EMPLOYERS.

Each employer within the Borough of Mt. Penn is hereby charged with the duty of collecting and paying over to the agent appointed by the Borough for the collection of said tax from each employee engaged in his services, and said tax of Fifty-Two (\$52.00) per year upon the privilege of engaging in any occupation, as herein above defined, from each individual employed by said employer who performs services on behalf of said employer within the Borough of Mt. Penn or who is engaged in an occupation, as hereinbefore defined, for the benefit of the said employer or in the service of said employer within the corporate limits of the Borough of Penn. Each employer shall make a return and payment of said tax and is authorized to deduct the emergency and municipal services tax at the rates hereby imposed from each employee in his service, whether said employee is paid by salary, wages or commission. Each employer within the Borough of Mt. Penn shall prepare and file a return showing a computation of the tax on a form to be obtained by him from the agent appointed by the Borough for the collection of said tax. If the employer fails to file said return and pay said tax, but makes collection thereof from the salary, wages or commission paid by him to said employee, the employer shall be responsible for payment of the tax in full without any deductions as though the tax had originally been levied against him.

§506. INDIVIDUALS ENGAGED IN MORE THAN ONE OCCUPATION.

Each individual who shall have more than one (1) occupation within the Borough of Mt. Penn shall be subject to the payment of the annual emergency and municipal services tax solely upon the privilege of engaging in his principal occupation and his principal employer shall deliver to him a certificate of payment in a form to be furnished to the employer by the agent appointed by the Borough for the collection of said tax certifying to any other employer of such individual that said emergency and municipal services tax has been paid by the employee to the employer and in turn remitted by said employer to the agent appointed by the Borough for the collection of said tax. Any employer receiving such certificate of payment of the emergency and municipal services tax by another employer by deduction from the said individual shall not deduct or collect the emergency and municipal services tax imposed by this Part.

§507. EMPLOYER'S DATE OF DETERMINATION OF LIABILITY FOR TAX.

Each employer within the Borough of Mt. Penn shall use his employment records as of the first day of March of the tax year in determining the number of employees from whom the said emergency and municipal services tax shall be deducted and paid over to the agent appointed by the Borough for the collection of said tax. Each employer who engages the services of any individual in an occupation to be performed in the Borough of Mt. Penn on or after the first (1st) day of March in any year shall require said employee to furnish to him a certificate under form EE to be supplied by the agent appointed by the Borough for the collection of said tax showing that the emergency and

municipal services tax for the said year has heretofore been paid or deducted by a previous employer and in the absence thereof the employer shall deduct and pay over to the agent appointed by the Borough for the collection of said tax of the Borough of Mt. Penn the tax herein levied and imposed.

A new employee shall be entitled to the two percent (2%) deduction, provided such deduction and payment to the agent appointed by the Borough for the collection of said tax is made within the two (2) months next following the date of employment of such new employee.

§508. SELF-EMPLOYED INDIVIDUALS AND EMPLOYERS BEYOND THE CORPORATE LIMITS OF THE BOROUGH OF MT. PENN.

Each self-employed individual in the Borough of Mt. Penn who performs any services of any time or kind within the corporate limits of the Borough of Mt. Penn, whether the same be regarded either as a profession or as a business, shall be required to pay an emergency and municipal services tax of Fifty-Two Dollars (\$52.00) for himself and shall further be required to deduct and pay over in the manner hereinbefore set forth in Section 505 an annual emergency and municipal services tax of Fifty-Two Dollars (\$52.00) for every individual in his employ who is engaged in the performance of any occupation or profession for him within the Borough of Mt. Penn. Any individual engaged in any occupation within the Borough who is an employee of another shall be liable for the payment of the emergency and municipal services tax of Fifty-Two Dollars (\$52.00) for himself and shall be treated and regarded as a self-employed individual if the location of the business of his employer is beyond the corporate limits of the Borough of Mt. Penn. Each employer whose business location is beyond the corporate limits of the Borough of Mt. Penn shall be required to furnish to the agent appointed by the Borough for the collection of said tax a list of all individuals employed by him who exercise the privilege of engaging in any occupation of any type or kind within the corporate limits of the Borough of Mt. Penn during the fiscal year.

§509. DOMESTICS.

Where a person is engaged in domestic services for others and has more than one (1) employer in the performance of such services, the employer by whom such domestic employee is employed on the first day of March shall be responsible for the collection and payment of the annual emergency and municipal services tax for such domestic employee to the agent appointed by the Borough for the collection of said tax and in the event the domestic employee is not employed by any person on the first day of March, the said responsibility for deducting and paying over the Borough emergency and municipal services tax shall rest upon the employer of the domestic employee on the next succeeding date following the first day of March, and said employer shall furnish to said domestic employee a certificate of payment of said emergency and municipal services tax to be exhibited to all other employers of said domestic employee and the producing of said certificate to such other employers shall excuse them from the payment of any further emergency and municipal services tax from said domestic employee for the fiscal year.

§510. TAX TO BE IN ADDITION TO OTHER BOROUGH TAXES.

The tax imposed by this Part shall be in addition to all other taxes of any kind or nature heretofore or hereafter levied by the Borough of Mt. Penn.

§511. POWERS AND DUTIES OF THE AGENT APPOINTED BY THE BOROUGH FOR THE COLLECTION OF SAID TAX.

(a) It shall be the duty of the agent appointed by the Borough for the collection of said tax to collect and receive the taxes, fines or penalties imposed by this Part. It shall also be his duty to keep a record showing the amount received by him from each self-employed person paying the tax and the date of such receipt; and, further, it shall be his duty to keep a record showing the amount received by him from every employer paying the tax on behalf of his employees by deduction made by such employer from the salary, wages, commissions or other forms of recompense.

(b) The agent appointed by the Borough for the collection of said tax is hereby charged with the administration of this Part, and is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this Part, including a provision for the examination of the payroll records of any employer within the Borough of Mt. Penn; and, further, for the re-examination and correction of any returns 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 agent appointed by the Borough for the collection of said tax shall have the right to appeal to the Court of Common Pleas of Berks County as in other cases provided.

(c) The agent appointed by the Borough for the collection of said tax is hereby authorized to examine the books and payroll records of any employer in order to verify the accuracy of any return made by any employer on behalf of his employees, or if no return was made, to ascertain the emergency and municipal services tax due. Each employer in the Borough of Mt. Penn is hereby directed and required to give to the agent appointed by the Borough for the collection of said tax the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

(d) The records, books and accounts of the agent appointed by the Borough for the collection of said tax shall be audited by whoever is charged with the auditing of the accounts of the Borough of Mt. Penn.

§512. SUIT ON COLLECTIONS.

(a) In the event that any tax under this Part remains due and unpaid at the end of the fiscal year, the agent appointed by the Borough for the collection of said tax may sue for the recovery of any such tax due or unpaid under this Part, together with penalty.

(b) Where suit is brought for the recovery of any emergency and municipal services tax, the individual liable therefor shall, in addition, be responsible and liable for the costs of collection and the interest and penalties herein imposed pursuant to Section 504 above.

§513. FINES AND PENALTIES.

Whoever 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 or control, in order to determine the number of employees subject to the emergency and municipal services tax who are in his employment, or whoever fails or refuses to file any return required by this Part, shall be guilty of a violation of this Part, and, upon conviction thereof before the District Justice, for every such offense, shall be sentenced to pay a fine of not more than Six Hundred Dollars (\$600.00) and costs of prosecution, and, in default of payment of such fine and costs, to imprisonment for not more than thirty (30) days. It is further provided that action to enforce the penalty herein provided may be begun and instituted against any person in charge of the business premises of any employer who has failed or who refuses to file a return required by this Part.

§514. VALIDITY; SEVERANCE.

The provisions of this Part are severable, and if any of its provisions or exceptions shall be held illegal, invalid or unconstitutional, such decision of the court shall not affect or impair any of the remaining provisions of this Part. It is hereby declared to be the legislative intent that this Part would have been adopted if such illegal, invalid or unconstitutional provisions or exceptions had not been included herein.

§515. SAVING CLAUSE.

(a) Nothing contained in this Part shall be construed to empower the Borough of Mt. Penn to levy and collect the emergency and municipal services tax imposed on any occupation not within the taxing power of the Borough under the Constitution of the United States and the laws and Constitution of the Commonwealth of Pennsylvania.

(b) If the emergency and municipal services tax hereby imposed under the provisions of this Part shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United States or 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 emergency and municipal services tax, or the validity of the tax so imposed upon other persons or individuals as herein provided.

§516. APPLICABILITY.

If any individual is engaged in any occupation of any type or kind licensed by the Commonwealth of Pennsylvania, the tax imposed by this Part, nevertheless, shall be payable and due by said individual for the privilege of maintaining a location within the corporate limits of the Borough of Mt. Penn or for the carrying on of such occupation or business so licensed within the corporate limits of the Borough of Mt. Penn.

§517. LEGAL AUTHORITY AND PURPOSES.

This Part is enacted under the authority of the Act of December 31, 1965, P.L. 1257, as amended, known as the Local Tax Enabling Act, and the tax imposed hereby shall be used for (i) road construction and/or maintenance; (ii) police, fire and/or emergency services; and/or (iii) reduction of property taxes.

§518. USE OF REVENUE FROM TAX.

The revenue to be derived from the said tax is necessary to help to defray the expenses of the Borough of Mt. Penn in accordance with the provisions of the Local Tax Enabling Act.

§519. CLAIMS FOR REFUNDS.

Any claim for refund of any emergency and municipal services tax paid during any fiscal year shall be filed in writing with the agent appointed by the Borough for the collection of said tax on or before the first day of July in the year for which the said tax shall have been levied; any claim filed for refund after the said date shall be barred and disallowed. At the time refund is made, the original receipt, validated by the Borough Treasurer, shall be surrendered to the agent appointed by the Borough for the collection of said tax.

SECTION 2. Repeal of Ordinances.

Any ordinance or part of ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent with this Ordinance's provision.

SECTION 3. Severability.

If any article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase or word in this Ordinance is, for any reason declared to be illegal, unconstitutional or invalid, by any Court of competent jurisdiction, this decision shall not affect or impair the validity of the Ordinance as a whole, or any

other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word, or remaining portion of the within Ordinance. The Borough Council of the Borough of Mt. Penn, Pennsylvania, hereby declares that it would have adopted the within Ordinance and each article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase and word thereof, irrespective of the limitations, restrictions, sentences, clauses, phrases, or word that may be declared illegal, unconstitutional or invalid.

SECTION 4. Effective Date.

This ordinance shall become effective January 1, 2006 and each fiscal year thereafter until revised, amended or revoked.

SECTION 5. Code of Ordinances.

The Code of Ordinances, as amended, of the Borough of Mt. Penn, Berks County, Pennsylvania shall be and remain unchanged and in full force and effect except as amended, supplemented, and modified by this Ordinance. This Ordinance shall become a part of this Code of Ordinances upon adoption.

DULY ORDAINED and **ENACTED** into an Ordinance
this 22nd day of September, 2005.

Thomas A. Stinson
President

Attest: A. J. Horski
Secretary