

WEST WYOMING BOROUGH LOCAL SERVICES TAX ORDINANCE OF 2007 REPLACING
THE EMERGENCY AND MUNICIPAL SERVICE TAX (EMST) ORDINANCE

AN ORDINANCE ENACTING THE LOCAL SERVICES TAX WHICH REPLACES THE EMERGENCY AND MUNICIPAL SERVICE TAX ORDINANCE ENACTED IN 2004 AND MAKES CHANGES TO THE LOCAL SERVICE TAX IN COMPLIANCE WITH NEW PROVISIONS IN ACT 7 OF 2007. THE TAX IS FOR GENERAL REVENUE PURPOSES IN THE AMOUNT OF FIFTY TWO DOLLARS (\$52.00) PER YEAR UPON THE PRIVILEGE OF ENGAGING IN AN OCCUPATION WITHIN THE LIMITS OF THE BOROUGH OF WEST WYOMING, LUZERNE COUNTY, PENNSYLVANIA; SAID TAX TO BE PAID BY ANY INDIVIDUAL EXERCISING SUCH PRIVILEGE; EXEMPTING THEREFROM INDIVIDUALS DERIVING LESS THAN FIFTEEN THOUSAND DOLLARS (\$15,000) PER YEAR, OR IF SAID INDIVIDUALS ARE UNDER EIGHTEEN (18) YEARS OF AGE; PROVIDING FOR ITS COLLECTION; IMPOSING ON EMPLOYERS THE DUTY OF COLLECTING SAID TAX FROM EVERY INDIVIDUAL IN THEIR EMPLOY SUBJECT TO SAID TAX COLLECTOR; CONFERRING AND IMPOSING POWERS AND DUTIES OF ADMINISTRATION ON THE TAX COLLECTOR; AND IMPOSING PENALTIES FOR THE VIOLATION THEREOF.

BE IT RESOLVED by the WEST WYOMING COUNCIL of West Wyoming Borough, Luzerne County, Pennsylvania, and it is hereby resolved by authority of the same as follows:

SECTION 1. DEFINITIONS. The following words and phrases, when used in this Ordinance shall have the meanings ascribed to them in this section, except where the context or language clearly indicates or requires a different meaning:

a. "Individual" shall mean any person, male or female, who attains or is over the age of eighteen (18) years on the first day of January, engaged in any occupation, trade, or profession within the limits of the West Wyoming Borough.

b. "Occupation" shall mean any trade, profession, business, or undertaking of any type, kind or character, including services, domestic or other, carried on or performed within the limits of the Borough of West Wyoming, for which compensation is charged or received by means of salary, wages, commissions or fees for services rendered.

c. "Employer" shall mean an individual, partnership, association, corporation, governmental body, agency, or other entity employing one (1) or more persons on a salary, wage, commission, or other compensation basis, including a self-employed person.

d. "Tax" shall mean the Emergency Management and Municipal Services Tax in the amount of Fifty two Dollars (\$52.00) levied by this Ordinance.

e. "Emergency Management and Municipal Services Tax Officer" or "Officer" shall mean the person, public employee, or private agency designated by the West Wyoming Borough to collect and administer the Emergency Management and Municipal Services Tax hereby imposed.

f. "Fiscal Year" shall mean the Twelve Month (12) Period beginning January 1 and ending December 31.

g. "District" shall mean the area within the limits and jurisdiction of the Borough of West Wyoming, Luzerne County, Pennsylvania.

h. "He," "His," or "Him" shall mean and indicate the singular and plural number, as well as, male, female, and neuter gender.

SECTION 2. LEVY.

The Borough of West Wyoming Council levies and imposes on each individual engaged in any occupation within the territorial limits of the Borough during this fiscal year and each fiscal year thereafter, a Local Services Tax. This tax is an addition to all other taxes of any kind or nature heretofore levied by the Borough, provided that all individuals deriving less than Fifteen Thousand Dollars (\$15,000.00) per year from all sources of income shall be exempt from the Emergency and Municipal Services Tax hereby levied. The Emergency and Municipal Services Tax in the amount as herein levied is due in its entirety to the Borough and is not subject to sharing with the School District.

SECTION 3. AMOUNT OF TAX.

Beginning with the first day of January, each occupation as herein before defined, engaged in within the limits of the Borough, shall be subject to a Local Services Tax in the amount of Fifty two Dollars (\$52.00) per annum, said tax to be paid by the individual so engaged.

SECTION 4. DUTY OF EMPLOYERS.

Each employer within the Borough as well as, those employers situated outside the Borough is hereby charged with the duty of collecting from each of his employees engaged by him, and performing for him within the Borough, the said tax of Fifty two Dollars (\$52.00) must be assessed and collected on a pro-rata basis determined by the number of payroll periods established by an employer for a calendar year, and making a return and payment thereof to the Occupation Tax Officer. Further, each employer is hereby authorized to deduct this tax from each employee in his employ, whether the said employee is paid by salary, wages, or commission, and whether or not part or all such services are performed within the Borough. Each employer shall deduct said tax from the pays throughout the calendar year of each such employee for each period as set forth in Section 6 herein, unless the tax has previously been withheld from the employee in the fiscal year by the employer or the employee provides verification to the employer that the tax has previously been withheld for a like amount in the fiscal year. In the event the tax has been withheld in an amount less than the rate of tax herein levied, then, in such event, the employer shall deduct an amount equal to the difference between the amount previously withheld in such fiscal year and the tax herein levied by the borough.

SECTION 5. RETURNS.

Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied by the Tax Officer. It is further provided that if the employer fails to file said return, and pay said tax, whether or not he makes collection thereof from the salary, wages, or commissions paid by him to said employee, the employer shall be responsible for the payment of the tax in full as though the tax had originally been levied against him. The failure to receive notice shall not relieve the employer or any person subject to this Ordinance from the withholding or payment of any taxes imposed by the Borough, and such employer or taxpayer as the case may be shall be charged with the taxes as though he had received notice.

SECTION 6. DATES FOR DETERMINING TAX LIABILITY AND PAYMENT.

For each fiscal year, each employer shall use his employment records from January 1 to March 31, in conjunction with his employment records from April 1 to June 30, in conjunction with his employment records from July 1 to September 30, in conjunction with his employment records from October 1 to December 31, for determining the number and names of those employees from whom the said tax shall be deducted and paid over to the Local Services Tax Officer. Payment of said tax when applicable by the aggregate earnings of an employee shall be made by the employer to the Local Services Tax Officer on or before the last day of April, July, October and January for each year this tax is in force. Except that where the Employer has in their possession LOCAL SERVICE TAXES in excess of Five Hundred Dollars (\$500.00) then, in such an event, the taxes shall be forwarded to the designated officer Thirty (30) days after the end of the month the tax was withheld, and in no event beyond the designated due dates whichever first occurs.

SECTION 7. ASSESSMENT AND COLLECTION.

The tax must be assessed and collected on a pro-rata basis determined by the number of payroll period established by an employer for a calendar year. When calculating the pro-rata share, employers are required to round down to the nearest one-hundredth of a dollar. For example, a \$52 tax would be collected at \$1 per week for taxpayers paid weekly or at \$4.33 per month for taxpayers paid monthly.

SECTION 8. EMPLOYERS ARE REQUIRED TO WITHHOLD THE "LST" ON A PAYROLL BASIS FOR THOSE PAY ROLL PERIODS IN WHICH THE TAXPAYER IS EMPLOYED.

However, when two or more employers employ a taxpayer in a payroll period, an employer is not required to withhold the LST if the taxpayer provides a pay stub from his/her principal employer accompanied by an employee statement of principal employment that the pay stub is from the taxpayer's principal employer and that the taxpayer will notify the employer of any change in employment. Employers are relieved of liability for the tax if they fail to withhold the tax due to incorrect information provided by the taxpayer regarding the taxpayer's principal employer or if the employer complies with the provisions establishing the collection of the tax on a payroll period basis.

SECTION 9. INDIVIDUALS ENGAGED IN MORE THAN ONE (1) OCCUPATION.

Each individual who shall have more than One (1) Occupation within the borough shall be subject to the payment of this tax on his principal occupation, and his principal employer shall deduct this tax and deliver to him evidence of deduction on a form to be furnished by the employer and acceptable to the Officer, which form shall be evidence of deduction having been made, and when presented to any other employer shall be authority for such other employer to not deduct this tax from the employee's wages. However, the name of such employee shall be included in a quarterly return of the employer to the Local Services Tax Officer by setting forth the name and address of such employee, and the name, address and account number of the employer who actually deducted this tax.

SECTION 10. CONCURRENT EMPLOYMENT.

If a taxpayer has two or more jobs in different political subdivisions during a payroll period, the

priority of claim to collect the LST is as follows: (1) Where the taxpayer maintains his or her principal office or is principally employed; (2) where the taxpayer resides and works; and (3) where the taxpayer is employed that is nearest in miles to the taxpayer's home.

SECTION 11. SELF-EMPLOYED INDIVIDUALS.

All self-employed individuals who perform services of any kind or type, engaged in any occupation or profession within the borough shall be required to comply with this Ordinance and pay the tax to the Officer, on a quarterly basis as if their payroll period is a calendar quarter. Self-employed taxpayers shall pay the tax thirty (30) days after the end of each calendar quarter and in no event after the designated due dates as set forth in Section 6. herein whichever first occurs. The failure to receive notice shall not relieve any person subject to this Ordinance from the payment of any taxes imposed by the borough, and such taxpayer shall be charged with the taxes as though he had received notice.

SECTION 12. EMPLOYERS AND SELF-EMPLOYED INDIVIDUALS RESIDING BEYOND THE LIMITS OF THE BOROUGH OF WEST WYOMING

All employers and self-employed individuals residing and having their place of business outside the WEST WYOMING BOROUGH but who perform services of any type or kind, or engage in any occupation or profession within the borough, are by virtue thereof bound by and subject 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 a non-resident employer may, for the purpose of this Ordinance be considered a self-employed person, and in the event this 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. Each such employer and individual as the case may be shall be subject to the provisions of this Ordinance as it applies to payment, reporting and any other applicable provision of this Ordinance.

SECTION 13. ADMINISTRATION OF TAX.

a. It shall be the duty of the Local Services Tax Officer to accept and receive payments of this tax and to 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 Local Services Tax Officer is hereby charged with the administration and enforcement of this Ordinance, and is hereby charged and empowered to prescribe, 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 the 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 to which overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the Local Services Tax Officer shall have the right to appeal in accordance with the provisions of the Local Taxpayers Bill of Rights or to the court of competent jurisdiction, as in other cases provided.

c. The Local Services Tax Officer is hereby authorized to examine the books and payroll 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 Local Services Tax Officer the means, facilities and opportunity to examine such books and payroll of

the employer, and to ascertain the tax due, if any.

SECTION 14. SUITS FOR COLLECTION.

a. In the event that any tax under this Ordinance remains due or unpaid for Thirty (30) Days after the due date above set forth, the Local Services Tax Officer may sue for the recovery of any such tax due or unpaid under this Ordinance, together with interest and penalty.

b. If said tax is not paid when due, interest at the rate of Six Percent (6%) per annum shall be calculated, beginning with the due date of said tax, and a penalty of Ten Percent (10%) shall be added to the flat rate of said tax for the non-payment thereof. Where suit is brought for the recovery of this tax, the individual liable therefore shall, in addition, be responsible and liable for the costs of collection and reasonable attorney fees.

SECTION 15. FINE AND PENALTY.

Whoever makes false and untrue statements on any return required by this Ordinance, or who refuses inspection of the books, records and accounts in his custody and control setting forth the number of employees in his employment subject to this tax, or whoever fails or refuses to file any return required by this Ordinance shall upon conviction before any District Magistrate of the borough, be sentenced to pay a fine of not more than Five Hundred Dollars (\$500.00) and costs for each offense, and in default of the payment of said fine and costs, be imprisoned in the Luzerne County jail for a period not exceeding Thirty (30) Days for each offense. It is further provided that the action to enforce the fine and penalty herein provided may be instituted against any person in charge of the business of any employer who has failed or refused to file a return required by this Ordinance.

SECTION 16. VALIDITY.

Provisions of this Ordinance shall be severable and if any of its provisions shall be held invalid or unconstitutional, the decision of the Court to this effect shall not affect or invalidate any of the remaining provisions. It is hereby declared to be the legislative intent of the West Wyoming Borough Council that this Ordinance would have been adopted if such illegal, invalid or unconstitutional provisions had not been included herein.

SECTION 17. SAVING CLAUSE.

a. Nothing contained in this Ordinance shall be construed to empower the West Wyoming Borough to levy and collect the tax hereby imposed on any occupation not within the taxing power of the borough 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 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 18. The tax herein imposed and the Ordinance herein enacted is in pursuance of authority granted by the provisions of Act 7 of 2007 amending the Local Tax Enabling Act, Act

511 of 1965 approved by the General Assembly of the Commonwealth of Pennsylvania December 31, 1965, as amended.

SECTION 19. All Ordinance or parts of Ordinance inconsistent herewith be and the same hereby are repealed.

RESOLVED this 10th day of OCTOBER, 2007.

ATTEST:

Thomas C. Lefter
Secretary, West Wyoming Council

David G. Sedinski
Chairman, West Wyoming Council

Joseph R. Hubbard
MAYOR