

ORDINANCE NO. 2023-02
DERRY TOWNSHIP, DAUPHIN COUNTY

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF DERRY TOWNSHIP, DAUPHIN COUNTY, PENNSYLVANIA, AMENDING CHAPTER 189, TAXATION, ARTICLE I, LOCAL SERVICES TAX, OF THE DERRY TOWNSHIP CODE OF ORDINANCES, REAFFIRMING AND LEVYING A LOCAL SERVICES TAX AND AMENDING CERTAIN PROVISIONS OF THE LOCAL SERVICES TAX.

WHEREAS, Derry Township previously enacted, imposed, instituted and levied a Local Services Tax as set forth in Chapter 189, Article I, of the Derry Township Code of Ordinances; and,

WHEREAS, The Board of Supervisors of Derry Township intends to and hereby does reaffirm the adoption and levying of a Local Services Tax and further intends to amend the provisions of the Derry Township Local Services Tax as set forth in Chapter 189, Article I, of the Derry Township Code of Ordinances.

BE IT ORDAINED AND ENACTED by the Board of Supervisors of the Township of Derry, Dauphin County, Pennsylvania, as follows:

ARTICLE I.

Chapter 189, Taxation, Article I, Local Services Tax, of the Code of Ordinances of Derry Township is hereby amended in its entirety by the Township of Derry, Dauphin County, Pennsylvania under authority of the Local Tax Enabling Act, 53 P.S. section 6924.101 et seq, and other applicable law, to read as follows:

Section 189-1. Definitions

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

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

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

EARNED INCOME – Compensation as defined in the Local Tax Enabling Act, 53 P.S. § 6924.501.

EMPLOYER – A person, business entity or other entity, employing one or more persons for a salary, wage, commission or other compensation. The term includes the Commonwealth, a political subdivision and an instrumentality or public authority of either. For purposes of penalties under this Article, the term includes a corporate officer.

HE, HIS or HIM – Indicates the singular and plural number, as well as male, female and neuter genders.

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

LOCAL TAX ENABLING ACT – The Local Tax Enabling Act, 53 P.S. § 6294.101, et. seq. and any amendments thereto.

NET PROFITS – The net income from the operation of a business, profession, or other activity, as defined by the Local Tax Enabling Act, 53 P.S. § 6924.501.

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 political subdivision for which compensation is charged or received, whether by means of salary, wages, commissions or fees for services rendered.

PERSON – a natural person.

TAX – The local services tax at the rate fixed in this Article.

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

TOWNSHIP – The Township of Derry, Dauphin County, Pennsylvania.

Section 189-2. Imposition Of Tax

- A. For specific revenue purposes pursuant to the Local Tax Enabling Act, 53 P.S. § 6901 et seq., an annual local services tax is hereby levied and assessed, commencing January 1, 2023 as set forth herein, and each fiscal year thereafter, upon the privilege of engaging in an occupation with a primary place of employment within Derry Township during the tax year. Each natural person who exercises such privilege to be employed and/or engaged in an occupation within the Township for any length of time during any tax year shall pay the local services tax for that year in the amount of \$52.00 in accordance with the provisions of this Article. This tax shall be in addition to all other taxes of any kind or nature heretofore levied by the Township of Derry and by any other municipality or taxing body.
- B. 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; (3) reduction of property taxes; and/or, (4) property tax relief through implementation of a homestead property exclusion in accordance with 53 Pa. C.S. Ch. 85, Subch. F (relating to homestead property exclusion). The Township shall use no less

than twenty-five percent of the funds derived from the tax for emergency services. 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 189-3. Exemptions And Refunds

A. Exemption. The following persons shall be exempt from the Local Services Tax:

1. Any person whose total earned income and net profits from all sources within the Township of Derry is less than Twelve Thousand Dollars (\$12,000.00) for any calendar year in which the tax is levied.
2. 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.
3. 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 local services tax may annually file an exemption certificate with the Township, the Township's appointed tax collector and with the person's employer affirming that the person reasonably expects to receive earned income and net profits from all sources within the political subdivision of less than twelve thousand dollars (\$12,000) 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 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 Section (2) below, 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, which are provided by DCED, 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 and/or DCED.

- 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 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 Township in an amount equal to or in excess of twelve thousand dollars (\$12,000) in that calendar year, an employer shall withhold the local service tax from the person under Section (3) below.
- 3) If a person who claimed an exemption for a given calendar year from the local services tax becomes subject to the tax for the calendar year under Section (2) above, the employer shall withhold the 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. 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 Article.
- 4) Except as provided in Section (2) above, 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.

C. Refunds

The Township, in consultation with the appointed Tax Collector and DCED, shall establish procedures for the processing of refund claims for any local services 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, and in particular in accordance with 53 Pa. C.S.A. §§ 8425 and 8426, as amended. 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): The Township or the appointed Tax Collector shall determine eligibility for exemption and provide refunds to exempt persons.

Section 189-4. 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 local services tax from each of their employees engaged by the employer or performing for the employer within the Township and making a return and payment thereof to the appointed Tax Collector. Further, each employer is hereby authorized to deduct this tax for each employee in the employer's employ, whether said employee is paid by salary, wage or commission and whether or not all such services are performed within the Township.

B. No person shall be subject to the payment of the local services tax by more than one political subdivision during each payroll period.

C. 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.

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

E. No employer shall be held liable for failure to withhold the local services 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 local services tax in an amount exceeding the amount withheld by the employer if the employer complies with the provisions of this Article and remits the amount so withheld in accordance with this Article.

F. Employers shall be required to remit the local services taxes thirty days after the end of each quarter of a calendar year.

Section 189-5. Returns.

Each employer shall prepare and file a return showing a computation of the local services tax on forms to be supplied to the employer by the appointed Tax 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 the employer to an employee, except as provided hereafter in this Article, 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 189-6. Dates for determining tax liability and payment.

In each tax year, each employer shall use their employment records to determine the number of employees from whom such tax shall be deducted and paid over to the appointed Tax

Collector on or before the thirtieth (30th) day following the end of each calendar quarter of each such tax year.

Section 189-7. 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 of Derry shall be required to comply with this Article and pay the local services tax due to the appointed Tax Collector on or before the thirtieth (30th) day following the end of each quarter.

Section 189-8. 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 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 189-8.1. Reserved

Section 189-9. 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 Article 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 Article, be considered a self-employed person, and in the event his or her local services 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 189-10. Administration of tax.

A. The appointed Tax Collector shall be appointed by resolution of the Board of Supervisors of Derry Township. It shall be the duty of the appointed Tax Collector to accept and receive payments of the local services tax and to keep a record thereof showing the amount received from each employer or self-employed person, together with the date the tax was received.

B. The appointed Tax Collector is hereby charged with the administration and enforcement of this Article 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 Article, including provisions for the examination of payroll records of any employer subject to this Article, the examination and correction of any return made in compliance with this Article 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 appointed Tax Collector shall have the right to appeal consistent with the Local Taxpayers Bill of Rights under Act 50 of 1998.

C. The appointed Tax 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 local services tax due. Each employer is hereby directed and required to give the appointed Tax Collector the means, facilities and opportunity for such examination.

Section 189-11. Suits for collection.

A. In the event that any local services tax under this Article remains due or unpaid 30 days after the due dates above set forth, the appointed Tax Collector may sue for the recovery of any such tax due or unpaid under this Article, together with interest and penalty.

B. Where suit is brought for the recovery of this local services tax or other appropriate remedy undertaken, the individual liable therefore shall, in addition, be responsible and liable for the costs of collection.

Section 189-12. Violations and penalties.

Whoever makes any false or untrue statement on any return required by this Article, 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 Article 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 article.

Section 189-12.1. Interpretation and Effective Date.

- A. Nothing contained in this article shall be construed to empower the Township to levy and collect the local services tax hereby imposed on any occupation not within the taxing power of the Township 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 Article 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.
- C. The tax imposed by this Article was initially imposed for the calendar year beginning January 1, 2009 and has remained in effect on an annual basis since that time. This Ordinance amendment to Chapter 189, Article I, of the Derry Township Code of Ordinances shall become effective for the calendar year beginning January 1, 2023 and shall remain in effect thereafter on an annual basis until repealed.

ARTICLE II.

It is hereby declared to be the legislative intent that if a court of competent jurisdiction declares any provisions of this Ordinance to be invalid or ineffective in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this Ordinance shall continue to be separately and fully effective. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section or part thereof, other than any part declared invalid, if it had advance knowledge that any part would be declared invalid.

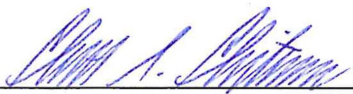
ARTICLE III.

Any Ordinance or parts of Ordinances conflicting with the provisions of this Ordinance shall be and the same are hereby repealed to the extent of such conflict. Nothing herein shall be construed to repeal the imposition and collection of an occupation privilege tax, plus applicable penalties and interest, and all prior calendar years, or of an emergency and municipal services tax, plus applicable penalties and interest, as the same exist prior to this amendment.

DULY ENACTED AND ORDAINED this 24th day of January 2023, by the Board of Supervisors of Derry Township, Dauphin County, Pennsylvania, in lawful session duly assembled.

ATTEST

BOARD OF SUPERVISORS
TOWNSHIP OF DERRY
DAUPHIN COUNTY, PENNSYLVANIA



Christopher S. Christman,
Township Manager



E. Christopher Abruzzo - Chairman

(Seal)

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