

## **Chapter 24**

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**Part 1****Realty Transfer Tax****§24-101. Short Title.**

This Part shall be known as the “Realty Transfer Tax Ordinance of Millbourne Borough.”

(Ord. 447, 5/20/2015)

**§24-102. Authority.**

A realty transfer tax for general revenue purposes is hereby imposed upon the transfer of real estate or an interest in real estate situated within Millbourne Borough, regardless of where the documents making the transfer are made, executed or delivered, or where the actual settlements on such transfer took place as authorized by Article XI-D, “Local Real Estate Transfer Tax,” 72 P.S. §8101-D *et seq.*

(Ord. 447, 5/20/2015)

**§24-103. Definitions.**

*Association*—a partnership, limited partnership, or any other form of unincorporated enterprise owned or conducted by two or more persons other than a private trust or decedent’s estate.

*Corporation*—a corporation, joint-stock association, business trust, or banking institution which is organized under the laws of this Commonwealth, the United States, or any other State, territory, foreign country or dependency.

*Document*—any deed, instrument or writing which conveys, transfers, demises, vests, confirms or evidences any transfer or demise of title to real estate, but does not include wills, mortgages, deeds of trust or other instruments of like character given as security for a debt and deeds of release thereof to the debtor, land contracts whereby the legal title does not pass to the grantee until the total consideration specified in the contract has been paid or any cancellation thereof unless the consideration is payable over a period of time exceeding 30 years, or instruments which solely grant, vest or confirm a public utility easement. “Document” shall also include a declaration of acquisition required to be presented for recording under §24-102 of this Part.

*Family farm corporation*—a corporation of which at least 75 percent of its assets are devoted to the business of agriculture and at least 75 percent of each class of stock of the corporation is continuously owned by members of the same family. The business or agriculture shall not be deemed to include:

- A. Recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing.
- B. The raising, breeding or training of same animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities.
- C. Fur farming.
- D. Stockyard and slaughterhouse operations.

E. Manufacturing or processing of any kind.

*Family farm partnership*—a partnership of which at least 75 percent of its assets are devoted to the business of agriculture and at least 75 percent of the interests in the partnership are continuously owned by members of the same family. The business of agriculture shall include the leasing to members of the same family of property which is directly and principally used for agricultural purposes. The business of agriculture shall not be deemed to include:

A. Recreational activities, such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing.

B. The raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities.

C. Fur farming.

D. Stockyard and slaughterhouse operations.

E. Manufacturing or processing operations of any kind.

*Living trust*—any trust, other than a business trust, intended as a will substitute by the settlor which becomes effective during the lifetime of the settlor, but from which trust distributions cannot be made to any beneficiaries other than the settlor prior to the death of the settlor.

*Members of the same family*—any individual, such individuals brothers and sisters, the brothers and sisters of such individual's parents and grandparents, the ancestors and lineal descendants of any of the foregoing, a spouse of any of the foregoing, and the estate of any of the foregoing. Individuals related by the half-blood or legal adoption shall be treated as if they were related by the whole-blood.

*Ordinary trust*—any trust, other than a business trust or a living trust, which takes effect during the lifetime of the settlor and for which the trustees of the trust take title to property primarily for the purpose of protecting, managing or conserving it until distribution to the named beneficiaries of the trust. An ordinary trust does not include a trust that has an objective to carry on business and divide gains, nor does it either expressly or impliedly have any of the following features: the treatment of beneficiaries as associates, the treatment of the interests in the trust as personal property, the free transferability of beneficial interests in the trust, centralized management by the trustee or the beneficiaries, or continuity of life.

*Person*—every natural person, association, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both the term “person” as applied to associations, shall include the responsible members or general partners thereof, and as applied to corporations, the officers thereof.

*Real estate*:

A. All lands, tenements or hereditaments within Millbourne Borough including, without limitation, buildings, structures, fixtures, mines, minerals, oil, gas, quarries, spaces with or without upper or lower boundaries, trees, and other improvements, immovables or interests excluding permanently attached machinery and equipment in an industrial plant.

B. A condominium unit.

C. A tenant-stockholder's interest in an cooperative housing corporation, trust

or association under a proprietary lease or occupancy agreement.

*Real estate company*—a corporation or association which is primarily engaged in the business of holding, selling or leasing real estate, 90 percent or more of the ownership interest in which is held by 35 or fewer persons and which:

A. Derives 60 percent or more of its annual gross receipts from the ownership or disposition of real estate.

B. Holds real estate, the value of which comprises 90 percent or more of the value of its entire tangible asset holding exclusive of tangible assets which are freely transferable and actively traded on an established market.

*Title to real estate*—

A. Any interest in real estate which endures for a period of time the termination of which is not fixed or ascertained by a specific number of years, including without limitation an estate in fee simple, life estate, or perpetual leasehold.

B. Any interest in real estate enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consists of a group of rights approximating those of an estate in fee simple, life estate or perpetual leasehold, including without limitation a leasehold interest or possessory interest under a lease or occupancy agreement for a term of 30 years or more or a leasehold interest or possessory interest in real estate in which the lessee has equity.

*Transaction*—the making, executing, delivering, accepting, or presenting for recording of a document.

*Value*—

A. In the case of any bona fide sale of real estate at arm's length for actual monetary worth, the amount of the actual consideration therefor, paid or to be paid, including liens or other encumbrances thereon existing before the transfer and not removed thereby, whether or not the underlying indebtedness is assumed, and ground rents, or a commensurate part thereof where such liens or other encumbrances and ground rents also encumber or are charged against other real estate; provided, that where such documents shall set forth a nominal consideration, the "value" thereof shall be determined from the price set forth in or actual consideration for the contract of sale.

B. In the case of a gift, sale by execution upon a judgment or upon the foreclosure of a mortgage by a judicial officer, transactions without consideration or for consideration less than the actual monetary worth of the real estate, a taxable lease, an occupancy agreement, a leasehold or possessory interest, any exchange of properties, or the real estate of an acquired company, the actual monetary worth of the real estate determined by adjusting the assessed value of the real estate for local real estate tax purposes for the common level ratio factor developed by the Pennsylvania Department of Revenue for Pennsylvania realty transfer tax base calculations.

C. In the case of an easement or other interest in real estate the value of which is not determinable under paragraph .A or .B, the actual monetary worth of such interest.

D. The actual consideration for or actual monetary worth of any executory agreement for the construction of buildings, structures or other permanent improvements to real estate between the grantor and other persons existing before the transfer and not removed thereby or between the grantor, the agent or principle of the grantor of a related corporation, association or partnership and the grantee existing before or effective with the transfer.

(Ord. 447, 5/20/2015)

**§24-104. Imposition of Tax; Interest.**

1. Every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, a tax at the rate of 1 percent of the value of the real estate represented by such document, which tax shall be payable at the earlier of the time the document is presented for recording or within 30 days of acceptance of such document or within 30 days of becoming an acquired company.

2. The payment of the tax imposed herein shall be evidenced by the affixing of an official stamp or writing by the recorder whereon the date of the payment of the tax, amount of the tax and the signature of the collecting agent shall be set forth.

3. It is the intent of this Part that the entire burden of the tax imposed herein on a person or transfer shall not exceed the limitations prescribed in the Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, 53 P.S. §6924.101 *et seq.*, so that if any other political subdivision shall impose or hereafter shall impose such tax on the same person or transfer then the tax levied by Millbourne Borough under the authority of that Act shall during the time such duplication of the tax exists, except as hereinafter otherwise provided, be one-half of the rate and such one-half rate shall become effective without any action on the part of Millbourne Borough; provided, however, that Millbourne Borough and any other political subdivision which imposes such tax on the same person or transfer may agree that, instead of limiting their respective rates to one-half of the rate herein provided, they will impose respectively different rates, the total of which shall not exceed the maximum rate permitted under the Local Tax Enabling Act, 53 P.S. §6924.101 *et seq.*

4. If for any reason the tax is not paid when due, interest at the rate in effect at the time the tax is due, shall be added and collected.

(Ord. 447, 5/20/2015)

**§24-105. Exempt Parties.**

The United States, the Commonwealth, or any of their instrumentalities, agencies or political subdivisions shall be exempt from payment or the tax imposed by this Part. The exemption of such governmental bodies shall not, however, relieve any other party to a transaction from liability for the tax.

(Ord. 447, 5/20/2015)

**§24-106. Excluded Transactions.**

The tax imposed by §24-104 shall not be imposed upon:

A. A transfer to the Commonwealth, or to any of its instrumentalities, agencies or political subdivisions, by gift, dedication or deed in lieu of condemnation or deed of confirmation in connection with condemnation proceedings, or a reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation which reconveyance may include property line adjustments provided said reconveyance is made within 1 year from the date of condemnation.

B. A document which Millbourne Borough is prohibited from taxing under the Constitution or statutes of the United States.

C. A conveyance to a municipality, township, school district or county pursuant to acquisition by the municipality, township, school district or county of a tax delinquent property at sheriff sale or tax claim bureau sale.

D. A transfer for no or nominal actual consideration which corrects or confirms a transfer previously recorded, but which does not extend or limit existing record legal title or interest.

E. A transfer or division in kind for no nominal actual consideration of property passed by testate or intestate succession and held by cotenants; however, if any of the parties take shares greater in value than their undivided interest, tax is due on the excess.

F. A transfer between husband and wife, between persons who were previously husband and wife who have since been divorced, provided the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, between parent and child or the spouse of such child, between brother or sister or spouse of a brother or sister and brother or sister or the spouse of a brother or sister, and between a grandparent and grandchild or the spouse of such grandchild, except that a subsequent transfer by the grantee within 1 year shall be subject to tax as if the grantor were making such transfer.

G. A transfer for no or nominal actual consideration of property passing by testate or intestate succession from a personal representative of a decedent to the decedent's devisee or heir.

H. A transfer for no or nominal actual consideration to a trustee of an ordinary trust where the transfer of the same property would be exempt if the transfer was made directly from the grantor to all of the possible beneficiaries that are entitled to receive the property or proceeds from the sale of the property under the trust, whether or not such beneficiaries are contingent or specifically named. No such exemption shall be granted unless the Recorder of Deeds is presented with a copy of the trust instrument that clearly identifies the grantor and all possible beneficiaries.

I. A transfer for no or nominal actual consideration to a trustee of a living trust from the settlor of the living trust. No such exemption shall be granted unless the Recorder of Deeds is presented with a copy of the living trust instrument.

J. A transfer for no or nominal actual consideration from a trustee of an ordinary trust to a specifically named beneficiary that is entitled to receive the property under the recorded trust instrument or to a contingent beneficiary where the transfer of the same property would be exempt if the transfer was made by the

grantor of the property into the trust to that beneficiary. However, any transfer of real estate from a living trust during the settlor's lifetime shall be considered for the purposes of this Part as if such transfer were made directly from the settlor to the grantee.

K. A transfer for no or nominal actual consideration from a trustee of a living trust after the death of the settlor of the trust or from a trustee of a trust created pursuant to the will of a decedent to a beneficiary to whom the property is devised or bequeathed.

L. A transfer for no or nominal actual consideration from the trustee of a living trust to the settlor of the living trust if such property was originally conveyed to the trustee by the settlor.

M. A transfer for no or nominal actual consideration from a trustee to a beneficiary of an ordinary trust.

N. A transfer for no or nominal actual consideration from trustee to successor trustee.

O. A transfer (1) for no or nominal actual consideration between principal and agent or straw party; or (2) fruit or to an agent or straw party where, if the agent or straw party were his principal, no tax would be imposed under this Part. Where the document by which title is acquired by a grantee or statement of value fails to set forth that the property was acquired by the grantee from, or for the benefit of, his principal, there is a rebuttable presumption that the property is the property of the grantee in his individual capacity if the grantee claims an exemption from taxation under this paragraph.

P. A transfer made pursuant to the statutory merger or consolidation of a corporation or statutory division of nonprofit corporation, except where the department reasonably determines that the primary intent for such merger, consolidation or division is avoidance of the tax imposed by this Part.

Q. A transfer from a corporation or association of real estate held of record in the name of the corporation or association where the grantee owns stock of the corporation or an interest in the association in the same proportion as his interest in or ownership of the real estate being conveyed and where the stock of the corporation or the interest in the association has been held by the grantee for more than 2 years.

R. A transfer from a nonprofit industrial development agency or authority to a grantee of property conveyed by the grantee to that agency or authority as security for a debt of the grantee or a transfer to a nonprofit industrial development agency or authority.

S. A transfer from a nonprofit industrial development agency or authority to a grantee purchasing directly from it, but only if: (1) the grantee shall directly use such real estate for the primary purpose of manufacturing, fabricating, compounding, processing, publishing, research and development, transportation, energy conversion, energy production, pollution control, warehousing or agriculture; and (2) the agency or authority has the full ownership interest in the real estate transferred.

T. A transfer by a mortgagor to the holder of a bona fide mortgage in default

in lieu of a foreclosure or a transfer pursuant to a judicial sale in which the successful bidder is the bona fide holder of a mortgage, unless the holder assigns the bid to another person.

U. Any transfer between religious organizations or other bodies or persons holding title for religious organization if such real estate is not being or has not been used by such transferor for Commercial purposes.

V. A transfer to a conservancy which possesses a tax exempt status pursuant to §501(c)(3) of the Internal Revenue Code of 1954, (68A, Stat. 3, 26 U.S.C. §501(c)(3)) and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open space opportunities.

W. A transfer of real estate devoted to the business of agriculture to a family farm corporation by a member of the same family which directly owns at least 75 percent of each class of stock thereof.

X. A transfer between members of the same family of an ownership interest in a real estate company or family farm corporation.

Y. A transaction wherein the tax due is \$1 or less.

Z. Traces for the production or extraction of coal, oil, natural gas or minerals and assignments thereof.

In order to exercise any exclusion provided in this Section, the true, full and complete value of the transfer shall be shown on the statement of value. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. For leases of coal, oil, natural gas or minerals, the statement of value may be limited to an explanation of the reason such document is not subject to tax under this Part.

*(Ord. 447, 5/20/2015)*

**§24-107. Documents Relating to Associations or Corporations and Members, Partners, Stockholders or Shareholders Thereof.**

Except as otherwise provided in §24-106, documents which make, confirm or evidence any transfer or demise of title to real estate between associations or corporations and the members, partners, shareholders or stockholders thereof are fully taxable. For the purposes of this Part, corporations and associations are entities separate from their members, partners, stockholders or shareholders.

*(Ord. 447, 5/20/2015)*

**§24-108. Acquired Company.**

1. A real estate company is an acquired company upon a change in the ownership interest in the company, however effected, if the change does not affect the continuity of the company; and of itself or together with prior changes has the effect of transferring, directly or indirectly, 90 percent or more of the total ownership interest in the company within a period of 3 years.

2. With respect to real estate acquired after February 16, 1986, a family farm corporation is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm corporation or when, because of issuance or transfer of stock or because of acquisition or transfer of assets that are devoted to the

business of agriculture, it fails to meet the minimum requirements of a family farm corporation under this Part.

3. Within 30 days after becoming an acquired company, the company shall present a declaration of acquisition with the recorder of each county in which it holds real estate for the affixation of documentary stamps and recording. Such declaration shall set forth the value of real estate holdings of the acquired company in such county. A copy of the Pennsylvania Realty Transfer Tax Declaration of Acquisition may be submitted for this purpose.

(Ord. 447, 5/20/2015)

#### **§24-109. Credits Against Tax.**

1. Where there is a transfer of a residential property by a licensed real estate broker which property was transferred to him within the preceding year as consideration for the purchase of other residential property, a credit for the amount of the tax paid at the time of the transfer to him shall be given to him toward the amount of the tax due upon the transfer.

2. Where there is a transfer by a builder of residential property which was transferred to the builder within the preceding year as consideration for the purchase of new, previously unoccupied residential property, a credit for the amount of the tax paid at the time of the transfer to the builder shall be given to the builder toward the amount of the tax due upon the transfer.

3. Where there is a transfer of real estate which is leased by the grantor, a credit for the amount of tax paid at the time of the lease shall be given the grantor toward the tax due upon the transfer.

4. Where there is a conveyance by deed of real estate which was previously sold under a land contract by the grantor, a credit for the amount of tax paid at the time of the sale shall be given the grantor toward the tax due upon the deed.

5. If the tax due upon the transfer is greater than the credit given under this Section, the difference shall be paid. If the credit allowed is greater than the amount or tax due, no refund or carryover credit shall be allowed.

(Ord. 447, 5/20/2015)

#### **§24-110. Extension of Lease.**

In determining the term of a lease, it shall be presumed that a right or option to renew or extend a lease will be exercised if the rental charge to the lessee is fixed or if a method for calculating the rental charge is established.

(Ord. 447, 5/20/2015)

#### **§24-111. Proceeds of Judicial Sale.**

The tax herein imposed shall be fully paid, and have priority out of the proceeds or any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made except the State realty transfer tax, and the sheriff, or other officer, conducting said sale, shall pay the tax herein imposed out of the first moneys paid to him in connection therewith. If the proceeds of the sale are insufficient to pay the entire tax herein imposed, the purchaser

shall be liable for the remaining tax.

(*Ord. 447, 5/20/2015*)

**§24-112. Duties of Recorder of Deeds.**

1. As provided in 16 P.S. §11011-6, as amended by Act of July 7, 1983, (P.L. 40, No. 21), the Recorder of Deeds shall be the collection agent for the local realty transfer tax, including any amount payable to Millbourne Borough based on a redetermination of the amount of tax due by the Commonwealth of Pennsylvania of the Pennsylvania realty transfer tax, without compensation from Millbourne Borough.

2. In order to ascertain the amount of taxes due when the property is located in more than one political subdivision, the recorder shall not accept for recording such a deed unless it is accompanied by a statement of value showing what taxes are due each municipality.

3. On or before the 10<sup>th</sup> of each month, the recorder shall pay over to Millbourne Borough all local realty transfer taxes collected, less 2 percent for use of the County, together with a report containing the information as is required by the Commonwealth of Pennsylvania in reporting collections of the Pennsylvania realty transfer tax. The 2 percent commission shall be paid by the County.

4. Upon a redetermination of the amount of realty transfer tax due by the Commonwealth of Pennsylvania, the recorder shall rerecord the deed or record the additional realty transfer tax form only when both the State and local amounts and a rerecording or recording fee has been tendered.

(*Ord. 447, 5/20/2015*)

**§24-113. Statement of Value.**

Every document lodged with or presented to the recorder of deeds for recording shall set forth therein and as a part of such document the true, full and complete value thereof, or shall be accompanied by a statement of value executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this Part. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. The provisions of this Section shall not apply to any excludable real estate transfers which are exempt from taxation based on family relationship. Other documents presented for the affixation of stamps shall be accompanied by a certified copy of the document and statement of value executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this Part.

(*Ord. 447, 5/20/2015*)

**§24-114. Civil Penalties.**

1. If any part of any underpayment of tax imposed by this Part is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment.

2. In the case of failure to record a declaration required under this Part on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause,

there shall be added to the tax 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 50 percent in the aggregate.

(*Ord. 447, 5/20/2015*)

**§24-115. Lien.**

The tax imposed by this Part shall become a lien upon the lands, tenements, or hereditaments, or any interest therein, lying, being situated, wholly or in part within the boundaries of Millbourne Borough, which lands, tenements, hereditaments, or interest therein, are described in or conveyed by or transferred by the deed which is the subject of the tax imposed, assessed and levied by this Part said lien to begin at the time when the tax under this Part is due and payable, and continue until discharge by payment, or in accordance with the law, and the solicitor is authorized to file a municipal or tax claim in the Court of Common Pleas of Delaware County, in accordance with the provisions of the Municipal Claims and Liens Act of 1923, 53 P.S. §7101 *et seq.*, its supplements and amendments.

(*Ord. 447, 5/20/2015*)

**§24-116. Enforcement.**

All taxes imposed by this Part together with interest and penalties prescribed herein, shall be recoverable as other debts of like character are recovered.

(*Ord. 447, 5/20/2015*)

**§24-117. Regulations.**

The Board of Supervisors of Millbourne Borough is charged with enforcement and collection of the tax and is empowered to promulgate and enforce reasonable regulations for enforcement and collection of the tax. The regulations which have been promulgated by the Pennsylvania Department of Revenue under 72 P.S. §8101-C *et seq.*, are incorporated into and made a part of this Part.

(*Ord. 447, 5/20/2015*)

**Part 2****Mercantile Business License Tax****§24-201. Definitions.**

The following words and phrases, when used in the Part shall have the meanings ascribed to them in this Section, unless the context clearly indicates a different meaning.

*Borough*—the Borough of Millbourne.

*Collector*—shall mean the person designated by the Borough Council to collect and administer the collection of the mercantile tax.

*Gross volume of business*—shall include both cash and credit transactions and trade-in transactions as provided by law.

*License year*—shall mean the calendar year beginning January 1 and ending December 31 of each year.

*Person*—any individual, partnership, limited partnership, association, corporation or like enterprise, except such as are exempt from taxation under the Local Tax Enabling Act. No. 511, approved December 31, 1965, P.L. 1257, 53 P.S. §6924.101 *et seq.*, as amended.

*Place of amusement*—any place, indoors or outdoors, where the general public or a limited or selected number thereof may, upon payment of an established price, attend or engage in any amusement, entertainment, exhibition, context or recreation, including, among other places, theaters, motion-picture houses, amusement parks, arenas, baseball or football parks, skating rings, circus or carnival tents, bowling alleys, billiard or pool rooms, shuffleboard rooms, nine or tenpin alleys, dance halls, archery ranges and other like places. The term does not include any exhibition, amusement, performance or contest conducted by a nonprofit corporation or association organized for religious, charitable or educational purposes.

*Retail dealer<sup>1</sup> or retail vendor<sup>1</sup>*—any person who is a dealer in or a vendor of goods, wares and merchandise and who is not a wholesale dealer or vendor or a wholesale and retail dealer or vendor as hereinafter defined.

*Temporary, seasonal or itinerant business*—any business that is conducted at one location for less than 60 consecutive calendar days.

*Wholesale and retail dealer<sup>1</sup> or wholesale and retail vendor<sup>1</sup>*—any person who sells to dealers in or vendors of goods, wares and merchandise and to other persons.

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<sup>1</sup>Note: These terms shall not include nonprofit corporations or associations organized for religious, charitable, or educational purposes, agencies of the government of the United States or of the Commonwealth of Pennsylvania or any person vending or disposing of articles of his own growth, production or manufacture for shipment or delivery from place of growth, production or manufacture thereof.

*Wholesale dealer<sup>1</sup> or Wholesale vendor<sup>1</sup>*—any person who sells to dealers in or vendors of goods, wares and merchandise and to no other persons.

(*Ord. 366, 3/21/1995, §70-10*)

**§24-202. License.**

Each license year every person in the Borough desiring to continue to engage in the business of wholesale or retail, or wholesale and retail vendor or dealer in goods, wares and merchandise, and any person conducting a place of amusement or a restaurant or other place where food, drink or refreshments are sold, shall on or before April 15 of the license year, apply for and procure a mercantile license for his place of business, or if more than one, for each of his places of business in the Borough, from the Collector of the Borough, who shall issue the same upon payment of a fee in an amount as established, from time to time, by resolution of the Borough Council for a wholesale or retail license for his place of business, or if more than one, for each of his places of business in the Borough, for the license year. Each application for a license shall be signed by the applicant, if a natural person, and in the case of an association or partnership, by a member or partner thereof, and in the case a corporation, by an officer thereof. Such licenses shall not be assignable and shall be conspicuously posted at the place of business or each of the places of business of every such person at all times. In case of loss, defacement or destruction of any license, the person to whom the license, was issued shall apply to the Collector for a new license, for which a fee in an amount as established, from time to time, by resolution of the Borough Council shall be charged.

(*Ord. 366, 3/21/1995, §70-11; as amended by Ord. 447, 5/20/2015*)

**§24-203. Imposition of Tax; Rate.**

1. A mercantile license tax to provide revenue for general borough purposes is hereby levied, assessed and imposed upon every person engaging in any of the following occupations or business in the Borough:

A. Wholesale vendors or dealers in goods, wares and merchandise of every kind,

B. Retail vendors or dealers in goods, wares and merchandise of every kind, and all persons engaged in conducting places or amusement, restaurants or other places where food, drink or refreshments are sold.

C. Wholesale and retail vendors or dealers in goods, wares and merchandise of every kind.

D. Wholesale and retail vendors or dealers in resale of goods, wares and merchandise taken as a trade-in or as part payment for other goods, wares or merchandise to the extent that the resale price exceeds the trade-in allowance.

2. The tax assessed on those occupations or business described in subsection 1.A, .B, .C and .D above is levied at the rate of one mill on each dollar of the gross volume of wholesale business transacted and at the rate of 1.25 mills on each dollar of the gross volume of retail business transacted in accordance with the provisions of §24-204 herein.

(*Ord. 366, 3/21/1995, §70-12*)

**§24-204. Computation of Tax.**

1. *Computation of Tax Based Upon Volume from Prior Year.* Every person subject to the payment of the tax herein imposed, who has commenced his business at least a full year prior to the first day of January of any license year shall compute the gross volume of business upon the actual gross amount of business transacted by him during the preceding calendar year.

2. *Computation of Tax Where in Business Less than One Year.* Every person subject to payment of the tax hereby imposed, who has commenced his business less than 1 full year prior to the first day of January of any license year, shall compute the gross volume of business by multiplying by 12 the monthly average of the actual gross amount of business transacted by him during the months he was engaged in business prior to January 1.

3. *Computation of Tax for New Business.* Every person subject to the payment of the tax hereby imposed, who commences his business subsequent to the first day of January of any license year, shall compute the gross volume of business for the license year upon the gross volume of business transacted by him during the first month of his engaging in business, multiplied by the number of months remaining in the license year.

4. *Computation of Tax for Temporary or Seasonal Business.* Every person subject to the payment of the tax hereby imposed who engages in business, temporary, seasonal or itinerant by its nature shall compute the gross volume of business upon the actual gross amount of business transacted by him during the license year.

(Ord. 366, 3/21/1995, §70-13)

**§24-205. Taxpayers Returns.**

1. *Returns of the Taxpayer.* Every return, as hereinafter required by this Section, shall be made upon a form furnished by the Collector thereof under the penalties of perjury.

2. *Estimate Return Where in Business Over 1 Year.* Every person subject to the tax imposed by this Part who has commenced his business at least 1 full year prior to the beginning of the license year, shall on or before the fifteenth day of April following file with the Collector, a return setting forth his name, his business and business address, and such other information as may be necessary to compute the estimated gross volume of business to be transacted by him during the license year and the amount of tax estimated to be due.

3. *Estimated Return Where in Business Less than 1 Year.* Every person subject to the tax imposed by this Part who has commenced his business less than 1 full year prior to the beginning of the license year shall on or before the fifteenth day of April following file with the Collector a return setting forth his name, his business, business address, and such other information as may be necessary to compute the actual gross volume of business transacted by him during the license year and the amount of tax estimated to be due.

4. *Estimated Return for New Business.* Every person subject to the tax imposed by this Part who commences business subsequent to the beginning of the license year shall within 45 days from the date of commencing such business file a return with the Collector setting forth his name, business and business address and such information

as may be necessary to compute the estimated gross volume of business to be transacted by him during the license year and the amount of tax estimated to be due.

5. *Return for Temporary or Seasonal Business.* Every person subject to the tax imposed by this Part who engages on a business; temporary, seasonal or itinerant by its nature, shall within 7 days from the day he completes such business file a return with the Collector setting forth his name, business and business address and such information as may be necessary in arriving at the actual gross amount of business transacted by him during such period and the amount of tax due.

6. *Final Return; Contents.* After the end of the license year every person subject to the tax hereby imposed shall, on or before the fifteenth day of April, make a return to the Collector of the actual volume of business transacted by the taxpayer during the period for which the taxpayer is subject to the tax. Such final return shall state the amount of the gross volume of business transacted during the license year and the tax due; the amount of tax paid with the estimated return, and the amount of tax due upon the final computation.

(Ord. 366, 3/21/1995, §70-14)

#### **§24-206. Payment of Tax.**

At the time of filing the return, the person making the same shall pay the amount of tax shown as due thereon to the Collector.

(Ord. 366, 3/21/1995, §70-15)

#### **§24-207. Powers and Duties of Collector.**

1. It shall be the duty of the Collector to collect and receive the fees, taxes, fines and penalties imposed by this Part. It shall also be his duty to keep a record showing the amount received by him from each person paying the tax and the date of such receipt.

2. The Collector is hereby charged with administration and enforcement of the provisions 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 provision for the reexamination and correction of returns and payments alleged or found to be incorrect or as to which an overpayment is claimed or found to have occurred.

3. The Collector is hereby authorized to examine the books, papers and records of any taxpayer or supposed taxpayer in order to verify the accuracy of any return made or, if no return was made, to ascertain the tax due. Every such taxpayer or supposed taxpayer is hereby directed and required to give to the Collector the means, facilities and opportunity for such examination and investigation as are hereby authorized.

(Ord. 366, 3/21/1995, §70-16)

#### **§24-208. Method of Recovery.**

All taxes due and unpaid under this Part shall be recoverable by the Borough Solicitor as other debts due the Borough are now by law recoverable.

(Ord. 366, 3/21/1995, §70-17)

**§24-209. Unpaid Taxes: Interest and Penalties.**

If for any reason the tax is not paid when due, interest at the rate of 1 percent per month or fractional part of a month, from the day they are due are due and payable until paid, and an additional penalty of 10 percent shall be added and collected. Where suit is brought for the recovery of any such tax, the person liable therefor shall, in addition, be liable for the cost of collection and the interest and penalties herein imposed.

(*Ord. 366, 3/21/1995, §70-18*)

**§24-210. Disposition of Receipts.**

All fees, taxes, interest, fines and penalties received, collected or recovered under the provisions of this Part shall be paid into the treasury of the Borough of Millbourne for the use and benefit of the Borough of Millbourne.

(*Ord. 366, 3/21/1995, §70-19*)

**§24-211. Violations and Penalties.**

Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.

(*Ord. 366, 3/21/1995, §70-20; as amended by Ord. 447, 5/20/2015*)

**§24-212. Limitations.**

Nothing contained in this Part shall be construed to empower the Borough to levy and collect the taxes hereby imposed on any person, business or portion of any business not within the taxing power of the Borough under the Constitution of the United States and the Constitution and laws of the Commonwealth of Pennsylvania.

(*Ord. 366, 3/21/1995, §70-21*)

**§24-213. Construction.**

The provisions of this Part shall be severable and if any of the provisions thereof shall be held to be unconstitutional, such decision shall not affect the validity of any of the remaining provisions of this Part. It is hereby declared as the legislative intent that this Part would have been adopted had such unconstitutional provision not been included therein.

(*Ord. 366, 3/21/1995, §70-22*)



**Part 3****Earned Income and Net Profits Tax****§24-301. General Provisions.**

1. *Short Title.* This Part shall be known as the “Earned Income Tax Ordinance” of the Borough of Millbourne, Delaware County, Commonwealth of Pennsylvania, hereinafter called “Borough.”

2. *Definitions.* Except as otherwise indicated by the context, the following definitions shall apply in addition to those set forth in the Enabling Act:

*Borough*—the Borough of Millbourne, Delaware County, Commonwealth of Pennsylvania.

*Officer*—person or corporation designated from time to time by resolution of the Borough as being responsible for the collection and reporting of the tax levied by this Part.

*Taxable year*—January 1 to December 31 of any year, provided that any taxpayer whose books are maintained on a different fiscal year basis may, with the consent of the Officer, report and pay taxes on the basis of such fiscal year, with suitable adjustment of dates for quarterly returns as hereinafter set forth.

(Ord. 347, 2/1/1993, Art. I)

**§24-302. Incorporation of Statute.**

The provisions of §§13 and 14 of the Local Tax Enabling Act, its supplements and amendments are incorporated herein by reference, except that where options are provided in said §§13 and 14, this Part shall designate the option selected. Any present and future provisions and supplements or amendments to the “Enabling Act” which are mandatory are hereby specifically included and shall automatically become part of this Part upon the effective date of their passage without formal amendment to this Part by the Borough.

(Ord. 347, 2/1/1993, Art. II)

**§24-303. Imposition and Rate of Tax.**

A tax for general Borough purposes in the amount of 1 percent is hereby imposed on earned income, including inter alia, salaries, wages, commissions, bonuses, incentive payments, fees, tips and other compensation received by residents of the Borough, and on earned income, including inter alia, salaries, wages, commissions, bonuses, incentive payments, fees, tips and other compensation received by nonresidents of the Borough for work done or services performed or rendered in the Borough and on the net profits received from businesses, professions or other activities conducted by residents of the Borough and the net profits received from businesses, professions or other activities conducted in the Borough, by nonresidents of the Borough, beginning the 1st day of January, A.D. 1993, and continue for each succeeding year without annual reenactment.

(Ord. 347, 2/1/1993, Art. III)

**§24-304. Declaration, Return and Payment of Tax.**1. *Net Profits.*

A. Every taxpayer making net profits shall, on or before April 15, of the then current year, make and file with the Officer on a form prescribed or approved by the Officer a declaration of his estimated net profits during the period beginning January 1, and ending December 31, of the then-current year and shall pay to the Officer in four equal quarterly installments the tax thereon due as follows:

(1) The declaration and first installment due April 30<sup>th</sup>.

(2) All other installments on or before July 31 and October 31 of the then-current year and January 31 of the succeeding year.

B. Any taxpayer who first anticipates any net profit after January 1 of the then current year shall make and file the declaration hereinabove required on or before April 30, July 31, or October 31, of the then-current year and January 31 of the succeeding year, whichever of these dates next follows the date on which the taxpayer first anticipates such net profit and shall pay to the Officer in equal installments the tax thereon on or before the quarterly payment dates which remain after the filing of the declaration.

C. Every taxpayer shall on or before April 15, of the then current year and each succeeding year make and file with the Officer on a form prescribed or approved by the Officer a final return showing the amount of net profits earned during the period beginning January 1 and ending December 31 of the then current year, as defined in the Enabling Act, the total amount of tax due thereon and the total amount of tax paid thereon. At the time of filing the final return, the taxpayer shall pay to the Officer the balance of tax due or shall make demand for refund or credit in the case of overpayment.

D. Any taxpayer may, in lieu of making the fourth quarterly installment of his estimated tax, elect to make and file with the Officer on or before January 31 of the succeeding year the final return hereinbefore required, and pay the balance of tax due thereon.

E. The Officer is hereby authorized to provide by regulation of the making and filing of adjusted declarations of estimated net profits.

F. Every taxpayer who discontinues business prior to December 31, of the then current year shall, within 30 days after the discontinuance of business, file his return as herein required and pay the tax due.

2. *Earned Income.*

A. Every taxpayer shall, on or before April 15, of the then current year make and file with the Officer a final return showing the amount of earned income, including, inter alia, salaries, wages, commissions, bonuses, incentive payments fees, tips and other compensation (other than net profits) received during the period beginning January 1, and ending December 31, of the then-current year, the total tax due thereon, the amount of tax paid thereon that has been withheld pursuant to the provisions relating to collection at the source and the balance of the tax due. At the time of filing said final return, the taxpayer shall pay the balance of the tax due, or shall make demand for refund, or credit in the case of overpayment.

B. Every taxpayer who is employed for a salary, wage, commission or other compensation and who receives any earned income (other than net profits) not subject to the provisions relating to collection at source shall make and file with the Officer on a form prescribed and approved by the Officer a quarterly return on or before April 30, July 31, October 31, of the then-current year, and January 31, of the succeeding year, setting forth the aggregate amount of earned income not subject to withholding during the 3-month periods ending March 31, June 30, September 30, and December 31, of the then current year respectively and subject to tax, with such other information as the Officer may require. Every taxpayer making such return shall at the time of filing thereof pay to the Officer the amount of tax shown as due thereon.

C. For each year succeeding the year 1993, every taxpayer shall make and file with the Officer a final return on a form prescribed and approved by the Officer setting forth the aggregate amount of earned income not subject to withholding during the period beginning January 1, and ending December 31, of the then current year, the amount of tax paid thereon and such other information as the Officer may require of any tax shown as due thereon on or before April 15, of the succeeding year, or shall make demand for refund or credit in the case of overpayment.

(Ord. 347, 2/1/1993, Art. IV, §§400-401)

**§24-305. Collection at Source.**

1. *Registration, Returns and Payment of Tax.*

A. Every employer having an office, factory, workshop, branch, warehouse or other place of business within the corporate limits of the Borough who employs one or more persons, other than domestic servants, for a salary, wage commission or other compensation shall within 15 days after becoming an employer, register with the Officer his name and address and such other information as the Officer may require and shall deduct at the time of payment of salary, wage, commission or other compensation to his employee or employees residing in the Borough the tax imposed by this Part on the earned income due his employee or employees, and shall on or before April 30, July 31, October 31, of the then current year and January 31, of the succeeding year, file a return and pay to the Officer the amount of taxes deducted during the preceding 3-month periods ending March 31, June 30, September 30, and December 31, of the then current year respectively.

B. All returns herein required shall show the name and social security number of each such employee, the earned income of such employee during said preceding 3-month period, the tax deducted therefrom, the political subdivisions imposing the tax upon such employee, the total earned income of all such employees during such preceding 3-month period and the total tax deducted therefrom and paid with the return.

C. On or before February 28, of each year, every employer shall file with the Officer:

(1) An annual return showing the total amount of earned income paid, the total amount of tax deducted and the total amount of tax paid to the Officer for the period beginning January 1, and ending December 31, of the then current

year.

(2) A return withholding statement for each employee residing within the Borough employed during all or any part of the period beginning January 1, and ending December 31, setting forth the employee's name, address and social security number, the amount of earned income paid to the employee during said period, the amount of tax deducted, the political subdivisions imposing the tax on such furnish a copy of the individual return to the employee for whom it is filed.

D. Every employer who discontinues business prior to December 31, of the then current year shall within 30 days after the discontinuance of business file the returns and withholding statements hereinbefore required and pay the tax due.

E. No employer shall be required to register, deduct taxes, file returns or pay taxes in the case of domestic servants.

F. Every employer who willfully or negligently fails or omits to make such required deductions shall be liable for payment of the taxes which he was required to withhold to the extent that such taxes have not been recovered from the employee.

G. The failure or omission of any employer to make the deductions required shall not relieve any employee from the payment of tax or from compliance with the requirements of this Part relating to the filing of declarations and returns.

*(Ord. 347, 2/1/1993, Art. V, §500)*

#### **§24-306. Administration.**

The income tax Officer shall be selected from time to time by resolution of, and shall receive such compensation for his services and expenses as determined from time to time by the Council of Millbourne Borough. Such Officer is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to the administration and enforcement of this Part and shall have the powers and duties and be subject to the penalties provided in the "Local Tax Enabling Act," its supplements and amendments.

*(Ord. 347, 2/1/1993, Art. VI)*

#### **§24-307. Applicability.**

The tax imposed in §24-303 of this Part shall not be levied on the net profits of any person, institution or organization as to whom it is beyond the power of the Borough to impose said tax under the Constitution of the United States of America or the Constitution and Laws of the Commonwealth of Pennsylvania.

*(Ord. 347, 2/1/1993, Art. VII)*

#### **§24-308. Penalties and Enforcement.**

1. In enforcing the collection of the tax hereby levied, the Officer shall have all the remedies prescribed by the Enabling Act and shall add to the amount of any delinquent tax or debt created by the failure to pay or to collect at the source such tax, interest at the rate of 6 percent per annum on the amount of said tax, and an additional penalty of ½ percent of the amount of the unpaid tax for each month or fraction thereof during

which the tax remains unpaid. Where suit is brought for the recovery of any such tax, the person liable thereof shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

2. In addition, any person or employer violating or conspiring to violate any provisions of this Part or the Enabling Act shall, upon conviction in summary proceedings, be subject to a fine of not more than \$500 for each offensive and costs and, in default of payment thereof to imprisonment for a period not exceeding 30 days. Any person who divulges any information which is confidential under the provisions of this Part shall, upon conviction thereof in summary proceedings, be subject to a fine of not more than \$500 for each such offense and costs and, in default of payment thereof to imprisonment for a period not exceeding 30 days.

(*Ord. 347, 2/1/1993, Art. IX*)



**Part 4****Local Services Tax****§24-401. Short Title.**

This Part shall be known and may be cited as the “Borough of Millbourne Local Services Tax Ordinance.”

(*Ord. 420, 12/17/2007, §1*)

**§24-402. Definitions.**

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

*Borough of Millbourne or Borough*—the area within the corporate limits of the Borough of Millbourne.

*Collector*—the person, public employee or private agency designated by the Borough of Millbourne 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 this term is defined in §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.

*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.

*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 Borough of Millbourne.

*Net profits*—the net income from the operation of a business, profession, or other activity, as this term is defined in §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.

*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 Borough of Millbourne for which compensation is charged or received, whether by means of salary, wages, commission or fees for services rendered.

*Tax*—the local services tax at the rate fixed in §24-403 of this Part.

*Tax year*—the period from January 1 until December 31 in any year; a calendar year.

(*Ord. 420, 12/17/2007, §2*)

**§24-403. Levy of Tax.**

For specific revenue purposes, an annual tax is hereby levied and assessed, commencing January 1, 2008, upon the privilege of engaging in an occupation with a primary place of employment within the Borough of Millbourne 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, assessed on a pro rata basis, in accordance with the provisions of this Part. This tax may be used solely for the following purposes as the same may be allocated by the Borough Council from time to time: (A) emergency services, which shall include emergency medical services, police services and/or fire services; (B) road construction and/or maintenance; (C) reduction of property taxes; or (D) 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 25 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 of Millbourne. The tax shall be no more than \$52 on each person for each calendar year, irrespective of the number of political subdivisions within which a person may be employed.

(*Ord. 420, 12/17/2007, §3*)

**§24-404. Exemption and Refunds.**

1. *Exemption.* Any person whose total earned income and net profits from all sources within the Borough is less than \$12,000 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:

A. 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 100 percent disability.

B. 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.

2. *Procedure to Claim Exemption.*

A. A person seeking to claim an exemption from the local services tax may annually file an exemption certificate with the Borough and with the person's employer affirming that the person reasonably expects to receive earned income and net profits from all sources within the Borough of less than \$12,000 in the calendar year for which the exemption certificate is filed. In the event the Borough 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 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. Upon receipt of the exemption certificate and until otherwise instructed by the Borough or except as required by paragraph .B, 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 Borough.

B. 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 \$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 \$12,000 in that calendar year, an employer shall withhold the local services tax from the person under paragraph .C.

C. 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 paragraph .B, 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 paragraph .B, 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 paragraph 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 act.

D. Except as provided in paragraph .B, 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 a local services tax.

3. *Refunds.* The Borough Manager, 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 75 days of a refund request or 75 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 \$1. The Borough Manager or the Collector shall determine eligibility for exemption and provide refunds to exempt persons.

(*Ord. 420, 12/17/2007, §4*)

**§24-405. Duty of Employers to Collect.**

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

2. 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 combined 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 .4 of this Section. For purposes of this subsection, "combined rate" shall mean the aggregate annual rate of the tax levied by the school district and the Borough.

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

4. 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 2 weeks of its occurrence. The employee's statement shall be provided on the form approved by DCED.

5. The tax shall be no more than \$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.

6. 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 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 §24-404.2 of this Part and this Section and remits the amount so withheld in accordance with this Part.

7. Employers shall be required to remit the local services taxes 30 days after the end of each quarter of a calendar year.

*(Ord. 420, 12/17/2007, §5)*

**§24-406. 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 Part, the employer shall be responsible for the payment of the tax in full as though the tax had been originally levied against the employer.

(Ord. 420, 12/17/2007, §6)

**§24-407. 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 30<sup>th</sup> day following the end of each calendar quarter of each such tax year.

(Ord. 420, 12/17/2007, §7)

**§24-408. 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 Borough of Millbourne shall be required to comply with this Part and pay the pro rata portion of the tax due to the Collector on or before the 30<sup>th</sup> day following the end of each quarter.

(Ord. 420, 12/17/2007, §8)

**§24-409. Individuals Engaged in More than One Occupation or Employed in More Than One Political Subdivision.**

1. The situs of the tax shall be the place of employment on the 1<sup>st</sup> 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:

A. First, the political subdivision in which a person maintains his or her principal office or is principally employed.

B. Second, the political subdivision in which the person resides and works if the tax is levied by that political subdivision.

C. 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.

(Ord. 420, 12/17/2007, §9)

**§24-410. Nonresidents Subject to Tax.**

All employers and self-employed individuals residing or having their places of business outside of the Borough of Millbourne but who perform services of any type or

kind or engage in any occupation or profession within the Borough of Millbourne do, by virtue thereof, agree to be bound by and subject themselves to the provisions, penalties and regulations promulgated under this Part with the same force and effect as though they were residents of the Borough of Millbourne. Further, any individual engaged in an occupation within the Borough of Millbourne and an employee of a nonresidential employer may, for the purpose of this Part, 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.

(*Ord. 420, 12/17/2007, §10*)

#### **§24-411. Administration of Tax.**

1. The Collector shall be appointed by resolution of the Borough Council. 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 from each employer or self-employed person, together with the date the tax was received.

2. The Collector is hereby charged with the administration and enforcement of this Part and is hereby charged and empowered, subject to Borough Council approval, to prescribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this Part, including provisions for the examination of payroll records of any employer subject to this Part, the examination and correction of any return 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 Collector shall have the right to appeal to the Court of Common Pleas of Delaware County as in other cases provided.

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.

(*Ord. 420, 12/17/2007, §11*)

#### **§24-412. Suits for Collection.**

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

2. If for any reason the tax is not paid when due, interest at the rate of 6 percent on the amount of such tax shall be calculated beginning with the due date of the tax and a penalty of 5 percent 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 therefor shall, in addition, be responsible and liable for the costs of collection.

(*Ord. 420, 12/17/2007, §12*)

#### **§24-413. Violations and Penalties.**

Whoever makes any false or untrue statement on any return required by this Part,

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 Part shall be guilty of a violation and, upon conviction thereof, 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 Part.

(*Ord. 420, 12/17/2007, §13*)

**§24-414. Interpretation.**

1. Nothing contained in this Part shall be construed to empower the Borough of Millbourne 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.

2. If the 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 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.

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 an occupation privilege tax, plus applicable penalties and interest, for calendar year 2006, and all prior calendar years, or of an emergency and municipal services tax for calendar year 2007, as the same existed prior to this amendment.

The tax imposed by this Part shall be effective on January 1, 2008, and all calendar years thereafter unless repealed or modified by ordinance of the Borough Council.

In all other respects, the Code of Ordinances of the Borough of Millbourne shall remain as heretofore enacted, ordained and amended, which said Chapter, as amended, is hereby re-enacted in its entirety herein.

(*Ord. 420, 12/17/2007, §14*)



**Part 5****Parking Lot Tax****§24-501. General Provisions.**

1. *Definitions.* The following words or phrases, when used in this Part, shall have the meaning ascribed to them in this Section, except where the context clearly indicates different meaning:

*Association*—any partnership, limited partnership or other form of unincorporated enterprise owned by two or more persons.

*Owner*—any person, persons or entity who shall have legal or equitable title in any form whatsoever to any premises, or part thereof, with or without accompanying actual possession thereto, or who shall have charge, care or control of any lot, premises, building or structure, or part thereof, as owner or agent of the owner, or as a fiduciary, trustee, receiver, guardian, lessee or mortgagee in possession, regardless of how such possession was obtained. Any person, group of persons or entity who is a lessee, sublessee or assignee or a lessee of any part or all of the any building, structure or land shall be deemed to be a co-owner with the lessor for the purposes of this Part and shall have responsibility over the portion of the premises so subject, leased or assigned.

*Person*—every natural person, co-partnership, association or corporation. Whenever used in any clause prescribing or imposing a penalty, or both, the term “person” as applied to co-partnership or associations shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

*Nonresidential parking lot*—any nonresidential lot, premises, space, building, structure, or garage, or part thereof, which automobiles, cars trucks, vans, motorcycles or any other motorized vehicle is parked, stationed, or stored, for a fee, except that this shall not include any municipal coin-metered parking spaces or parking lots.

*Treasurer*—the Treasurer of the Borough of Millbourne.

2. *Singular and Masculine Terms.* The singular shall include the plural, and the masculine shall include the feminine.

(Ord. 362, 7/5/1994, Art. I)

**§24-502. Imposition of Tax.**

1. *Imposition of Tax.* A nonresidential parking lot tax to provide revenue for general borough purposes (as authorized der the Local Tax Enabling Act, Act of 1965, P.L. 1257, No. 511, as amended 53 P.S. §6901 *et seq.*) is hereby levied, assessed and imposed upon every person who owns and operates a nonresidential parking lot within the boundaries of the Borough of Millbourne.

2. *Rate.* The tax assessed as set forth in subsection .1 is levied at the rate of 15 percent of the gross receipts in accordance with subsection .3 herein.

3. *Computation of Tax.*

A. Every person subject to the payment of the tax hereby imposed who

operates or has commenced the operation of a nonresidential parking lot during the period from the adoption of this Part to December 31, 1994, shall compute his tax upon the actual gross receipts received by him during such period.

B. Every person subject to the payment of the tax hereby imposed who has commenced the operation of nonresidential parking lot at least 12 full months prior to January 1, 1996, or the 1<sup>st</sup> day of January of each succeeding year, thereafter, shall compute his tax upon the actual gross receipts received by him during such 12-month period.

C. Every person subject to the payment of the tax hereby imposed who has commenced operation of a nonresidential parking lot less than 12 full months prior to January 1, 1996, or the 1<sup>st</sup> day of January of each succeeding year thereafter, shall compute his tax upon the actual gross receipts received by him during such period.

D. Every person subject to the payment of the tax hereby imposed who has commenced operation of a nonresidential parking lot temporarily or seasonal, shall compute his tax upon the actual gross receipts received by him during such period.

(Ord. 362, 7/5/1994, Art. II)

#### **§24-503. Taxpayer Returns.**

1. *Returns.*

A. Every return, as hereinafter required, shall be made upon a form furnished by the Treasurer. Every person making such return shall certify the correctness thereof by affidavit.

B. Every person subject to the tax imposed by this Part shall, on or before March 1 of the taxable period, and each succeeding year thereafter, file with the Treasurer a return setting forth his name, the name of the parking lot, if any, address and such other information as may be necessary in arriving at the actual gross receipts income received by him during the said period and the amount of the tax due.

(Ord. 362, 7/5/1994, Art. III)

#### **§24-504. Payment of Tax.**

*Payment of Tax.* At the time of filing the return, the person making the same shall pay the amount of tax shown as due thereon to the Treasurer.

(Ord. 362, 7/5/1994, Art. IV)

#### **§24-505. Powers and Duties of Treasurer.**

1. *Collection of Tax.* It shall be the duty of the Treasurer to collect and receive the fees, taxes, fines and penalties imposed by this Part. It shall also be his duty to keep a record showing the amount received by him for each person paying the tax and the date of such receipt.

2. *Administration/Enforcement.* The Treasurer is hereby charged with the administration and enforcement of the provisions 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

provisions for the reexamination and correction of returns and payments alleged or found to be incorrect or as to which an overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the Treasurer shall have the right to appeal to the Court of Common Pleas of Delaware County or as otherwise provided by law.

3. *Examination of Books.* The Treasurer is hereby authorized to examine the books, papers and records of any taxpayer or supposed taxpayer in order to verify the accuracy of any return made or, if no return was made, to ascertain the tax due. Every such taxpayer or supposed taxpayer is hereby directed and required to give to the Treasurer the means, facilities and opportunity for such examinations and investigations are hereby authorized.

(Ord. 362, 7/5/1994, Art. V)

**§24-506. Method of Recovery.**

*Method of Recovery.* All taxes due and unpaid under this Part shall be recoverable by the Borough Solicitor as other debts due the Borough are now by law recoverable.

(Ord. 362, 7/5/1994, Art. VI)

**§24-507. Unpaid Taxes–Interest and Penalty.**

*Interest and Penalty.* If for any reason the tax is not, paid when due, interest at the rate of 6 percent per annum of the amount of said tax, and an additional penalty of 1 percent of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid, shall be added and collected. Where suit is brought for the recovery of any such tax, the person liable therefor shall, in addition, be liable for the cost of collection and the interest and penalties herein imposed.

(Ord. 362, 7/5/1994, Art. VII)

**§24-508. Disposition of Receipt.**

*Disposition of Receipt.* All fees, taxes, interest, fines and penalties received, collected or recovered under the provisions of this Part shall be paid into the Treasury of the Borough of Millbourne for the use and benefit of the Borough of Millbourne.

(Ord. 362, 7/5/1994, Art. VIII)

**§24-509. Violations and Penalties.**

Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.

(Ord. 362, 7/5/1994, Art. IX; as amended by Ord. 447, 5/20/2015)

**§24-510. Miscellaneous Provisions.**

*Limitations.* Nothing contained in this Part shall be construed to empower the

Borough to levy and collect the taxes hereby imposed on any person, business or portion of any business within the taxing power of the Borough under the Constitution of the United States and the Constitution and laws of the Commonwealth of Pennsylvania.

*(Ord. 362, 7/5/1994, Art. X)*

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**Part 6****Homestead Exclusion****§24-601. Purpose and Objective.**

The Borough intends to provide for a Homestead Exclusion for qualified property owners in the Borough of Millbourne pursuant to the Pennsylvania Homestead Property Exclusion Program Act, 1998, May 5, P.L. 301, No. 50, 53 Pa.C.S.A §8581 *et seq.*, (hereinafter, the “Homestead Act”).

(*Ord. 439, 11/14/2012, §1*)

**§24-602. Establishment of Homestead Exclusion.**

For fiscal year 2012, there is hereby established an exclusion from real estate taxation in the amount of \$5,000 of the assessed value of each homestead property in the Borough of Millbourne.

(*Ord. 439, 11/14/2012, §2*)

**§24-603. Administration and Procedure.**

1. The definition of terms and procedures to be used by the Borough of Millbourne in executing this Part shall be governed by those definitions and procedures as exist in the Homestead Act at the time of the adoption of this Part.

2. The Borough Council, Tax Collector and other Borough Officers shall establish procedures for the application of the exclusion to tax levies that have already been made for fiscal year 2012.

(*Ord. 439, 11/14/2012, §3*)

