



## **Local Services Tax Rules and Regulations**

### **Preface**

The following rules and regulations have been promulgated by Berkheimer Tax Administrator and adopted by the taxing body to outline the Local Services Tax and the responsibilities it places on employers and employees located within the local taxing district. This supplement is not independent and should be read in conjunction with the appropriate ordinance and/or resolution. Should there be any conflict, the statement in the ordinance and/or resolution will prevail.

### **Article I - Levy**

The Local Services Tax is levied by the political subdivision upon individuals engaging in an occupation in that taxing district. Each individual who exercises such a privilege for any length of time during the tax year is liable for this tax unless the individual has previously paid the equivalent in Local Services Taxes for the calendar year to another taxing district within the Commonwealth of Pennsylvania.

### **Article II - Exclusions from Definition of Occupation**

The following activities, employment, and jobs will generally not be considered occupations for purposes of the Local Services Tax, and as defined under the applicable state and local law:

- A. Active service in the armed forces (Soldiers' and Sailors' Civil Relief Act);
- B. Members of the religious clergy;
- C. Involuntary employment imposed by law; and
- D. Isolated employment that does not constitute a substantial exercise of the privilege of engaging in an occupation. Isolated employment means any employment that is so inconsequential or trivial that to levy a tax on the occupation would be confiscatory. Some examples include occupations performed by itinerants, election boards and traveling entertainers.
- E. Member or a reserve component of the armed forces who is called to active duty during the tax year. "Reserve Component" of the armed forces" shall mean the United States Army reserve, the United States Navy reserve, the United States Marine Corps reserve, the United States Coast Guard reserve, the United States Air Force reserve, the Pennsylvania Army National Guard or the Pennsylvania Air National Guard.
- F. Any person who 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.

### **Article III - Duties of Employers**

A. Each employer doing business within the jurisdiction of the taxing district is required to register with the Tax Collector and to deduct this tax from the compensation paid to each employee subject to tax.

B. All persons who engage in an occupation, full or part-time, within the taxing district must pay this tax including: Self-employed persons and individuals who work or perform an occupation within the district; Persons who are assigned and report to an office, warehouse, or headquarters within the district; Persons who have not previously paid the tax of for the calendar year.

C. Employers will report the total tax due and withheld on a form LST-1. The LST-1 form is to be accompanied by a list of employees from whom the tax has been withheld.

D. Employers are not required to withhold the tax from any employee who files an Exemption Certificate for that tax year, unless otherwise directed by the taxing body or the tax collector. Employers shall ensure that Exemption Certificate forms are readily available to its employees at all times and shall furnish each new employee with a form at the time of hiring.

E. In certain situations, an employer may be unable to withhold the tax because of insufficient income, prior payment, etc. In these cases, it will be necessary for the employer to account for all employees from whom he was unable to withhold the tax by supplying the following information:

Name and address of employee;  
Gross wages earned during tax period;  
Period worked; and  
Reason tax was not withheld.

If the above information is not submitted within thirty (30) days from date employment commences, it will be assumed that the employer's LST-1 or LST-1S includes the total of all employees subject to the tax. Upon audit, if it is later determined that the employer did not disclose the names of those individuals from whom he was unable to withhold, the employer will be held personally liable for the total tax due from these employees and any costs, penalties, and interest due. This, however, does not relieve any employee from the payment of the tax or from complying with the requirements of the ordinance and/or resolution.

### **Article IV - Payment of the Tax**

A. The tax payments must be paid to the Tax Collector thirty (30) days after the close of each quarter of a calendar year. Collection of the tax shall be made on a payroll period basis for each payroll period in which the taxpayer is engaged in an occupation.

B. No taxpayer shall be required to pay the tax in excess of the maximum rate set forth in the ordinance/resolution and/or the LTEA, plus penalties, interest, and costs for any calendar year. This, however, does not relieve the taxpayer or an employer from filing the proper returns.

## **Article V - Due Dates; Costs for Failure to Timely File Returns**

A. Each taxpayer or employer who becomes subject to the tax or the withholding provisions of the ordinance and/or resolution shall file the required returns and pay the tax thirty (30) days after the close of each quarter of the calendar, i.e., April 30, July 31, October 31 of the current year, or January 31 of the subsequent year for those persons employed during that quarter. If a taxpayer fails to file timely returns or fails to pay the tax in a timely manner, the taxpayer will also be liable for any costs incurred by the Tax Collector in collecting the delinquent tax.

B. Returns are due on the dates indicated in the resolution and/or ordinance and in accordance with the following rules: Returns mailed to the Tax Collector will be considered timely if postmarked on the date indicated on the ordinance and/or resolution. When the date occurs on a Saturday, a holiday, or a Sunday, the returns are due the next business day.

## **Article VI - Employers Not Subject To Withholding**

A. The tax is applicable to employees of the state and federal government or their agencies, commissions, and so on, even though their employers may not be required to withhold the tax.

B. All individuals whose employers are not subject to the withholding requirements will be considered self-employed and will pay the tax on an individual basis in accordance with Article VII of the regulations.

## **Article VII - Self-Employed Persons**

A. All persons who engage in an occupation, full or part-time, within the district must pay this tax including:

Self-employed persons and individuals who work or perform an occupation within the district; Persons who are assigned and report to an office, warehouse, or headquarters located within the district.

B. Taxpayers whose employers do not withhold the tax or who are self-employed must complete form LST-3 and return Tax Collector's copy on or before April 30, or at least thirty (30) days after the taxpayer first becomes subject to the tax, unless another due date is designated on the form.

C. Self-employed individuals will report their tax on form LST-3. For the purposes of these regulations, self-employed persons will include self-employed federal employees, people whose employer is not subject to the withholding requirements and domestic employees.

D. All self-employed persons subject to the tax must register with the tax administrator within ten (10) days after they initiate an occupation in the district.

## **Article VIII - Employers and Self-Employed Individuals Whose Business Is Outside the Taxing District**

A. The tax can be imposed only upon individuals who are engaged in occupations within the geographical boundaries of the district. Where the combined rate of tax exceeds \$10, i.e., where the rate of tax imposed by both the school district and municipality in which the individual engages in an occupation together exceeds \$10, the place of employment shall be determined as of the first day that an individual becomes subject to the tax during each payroll period. Where the combined rate of tax does not exceed \$10, the place of employment shall be determined as of the first day that an individual becomes subject to the tax during the calendar year.

B. Persons in transit such as field men and salespersons will be liable for the tax if they perform any portion of their services within the district.

If the headquarters are located within the taxing district and the employee may perform some portion of their services outside of the taxing district, they are taxable provided they report into the headquarters for assignments. If the employee does not report into the headquarters located in the taxing district, but receives his assignments via telephone or mail, the employee is exempt from the tax. If the headquarters of the employer where the employees' payroll checks are prepared is within the taxing district but the employees work at another location outside the district, they are also exempt from the tax.

C. Exemption from the tax is granted to any person who is liable and has already paid Local Services Taxes totaling the maximum rate set forth in the LTEA for the same calendar year to another taxing district in Pennsylvania prior to his becoming subject to this tax.

D. If a tax is levied at a combined rate exceeding ten dollars (\$10) in a calendar year, a person subject to the local services tax shall be assessed 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 local services 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 local services tax levied under this provision shall be made on a payroll period basis for each payroll period in which the person is engaging in an occupation, except as otherwise provided below.

In the case of concurrent employment, an employer shall refrain from withholding the local services 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 local services tax withheld and a statement from the employee, on a form approved by the Department of Community and Economic Development, 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.

E. Where a person is engaged in more than one occupation, or an occupation that requires his working in more than one political subdivision during a payroll period, the priority of claim to collect such tax shall be in the following order: first, the political subdivision in which the person maintains his principal office or is principally employed; second, the political subdivision in which the person resides and works, if such a tax is levied by that political subdivision; third, the political

subdivision in which the person is employed and which imposes the tax nearest in miles to the person's home.

## **Article IX - Claims for Exemption and Refund**

A. Claims arising from the earnings exemption shall be processed according to the following rules:

(1) A person seeking to claim an exemption from the local services tax shall may annually file an exemption certificate developed by the Department of Community and Economic Development, with the political subdivision levying the tax 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. The exemption certificate shall have attached to it a copy of all of the employee's last pay stubs or w-2 forms from employment within the political subdivision for the year prior to the fiscal year for which the employee is requesting to be exempted from the local services tax. upon receipt of the exemption certificate and until otherwise instructed by the political subdivision levying the tax or except as required by clause (2), the employer shall not withhold the tax from the person during the calendar year or the remainder of the calendar year for which the exemption certificate applies.

(2) Upon notification to an employer by the person or by the political subdivision that the person has received income earned income and net profits from all sources within that political subdivision 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 income earned income within that political subdivision in an amount equal to or in excess of twelve thousand dollars (\$12,000) in that calendar year, an employer shall withhold the tax levied by a political subdivision under this section local services tax from the person under clause (3).

(3) If a person who claimed an exemption for a given calendar year from the tax levied by a political subdivision under this subsection local services tax becomes subject to the tax for the calendar year under clause (2), the employer shall withhold the tax for the remainder of that calendar year. the employer shall withhold from the person, for the first payroll period after receipt of the notification under clause (2), a lump sum equal to the amount of tax that was not withheld from the person due to the exemption claimed by the person under this subsection, plus the per payroll amount due for that first payroll period. The amount of tax withheld per payroll period for the remaining payroll periods in that calendar year shall be the same amount withheld for other employees. In the event the employment of a person subject to withholding of the tax under this clause is subsequently severed in that calendar year, the person shall be liable for any outstanding balance of tax due and the political subdivision levying the tax may pursue collection.

B. Claims for refunds of taxes erroneously withheld or paid must be filed in writing with the Tax Collector within three (3) years from the date the tax was erroneously withheld or paid or from the date the tax was due, whichever is later. Only overpayments in a calendar year that exceed \$1 shall be refunded. 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 local services tax for the last quarter of the calendar year, whichever is later, shall not be subject to interest

C. The burden of proof of earnings or prior payment is on the taxpayer and must be submitted to the satisfaction of the Tax Collector. 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.

#### **Article X - Additional Regulations and Rules**

The Tax Collector, as Local Services Tax Collector, reserves the right to issue additional regulations and rules as circumstances demand and to interpret these rules and regulations based on each individual case.

#### **Article XI - Forms and Copies of Regulations, Ordinances, and/Or Resolutions**

A. All necessary forms, except for the LST-2 form that employers must also complete, will be supplied by the Tax Collector upon request.

B. Failure to receive copies of forms, regulations, ordinances, resolutions, and so on does not relieve any person or employer from his obligation to pay the tax and/or file the required forms.

C. All payments and reports must be made on properly executed forms as required by this office, unless written authorization is given for use of alternative forms.

D. All payments and inquiries are to be referred to the Tax Collector.