

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 467

(Duly Adopted December 26, 2007)

AN ORDINANCE AMENDING CHAPTER 84 OF THE ALBURTIS CODIFIED ORDINANCES TO RENAME THE EMERGENCY AND MUNICIPAL SERVICES TAX AS THE "LOCAL SERVICES TAX" AND OTHERWISE CONFORM THE TAX TO THE NEW REQUIREMENTS OF ACT 2007-7, WITHOUT ANY CHANGE IN THE RATE OF THE TAX (TEN DOLLARS PER YEAR).

BE IT ORDAINED and **ENACTED** by the Borough Council of the Borough of Al-
burtis, Lehigh County, Pennsylvania, as follows:

SECTION 1. The Borough of Alburytis hereby continues in effect, without any change in rate, its tax upon individuals engaging in an occupation, previously known as the Occupational Privilege Tax, then renamed by the Commonwealth as the Emergency and Municipal Services Tax, and now renamed by the Commonwealth as the Local Services Tax. Effective January 1, 2008, Chapter 84 of the Codified Ordinances is hereby amended by revising the Chapter title and §§ 84-101, 84-202, 84-205, 84-301, 84-401, 84-402, 84-403, 84-404, 84-405, 84-406, and 84-501, and adding new §§ 84-302, 84-303, 84-304, 84-305, and 84-407, as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

Chapter 84 — ~~Emergency and Municipal Services~~ Local Services Tax

Article I — Title, Authority, and Duration

§ 84-101 Short Title.

This Chapter shall be known, and may be cited, as the “Alburtis ~~Emergency and Municipal Services~~ Local Services Tax Ordinance.”

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Article II — Definitions

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§ 84-202 Employer.

The term “employer” shall mean an individual, partnership, limited partnership, limited liability company, limited liability partnership, association, ~~or corporation,~~ governmental entity, agency, or other entity that engages the services of any individual and makes payment to said individual, whether by salary, wages, ~~or commissions,~~ fees, or otherwise. The term “employer” shall ~~encompass~~ also include self-employed persons ~~who engage in their employ the services of one (1) or more individuals in addition to themselves.~~

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§ 84-205 Tax Receiver.

The term “Tax Receiver” shall mean the person designated by the Borough of Alburtis for the collection of ~~emergency and municipal services~~ local services taxes.

Article III — Imposition of Tax; Exemptions and Refunds

§ 84-301 In General.

The Borough of Alburtis hereby imposes upon each individual engaged in an occupation within the corporate limits of the Borough an ~~annual emergency and municipal services~~ a local services tax of Ten Dollars (\$10.00) each calendar year, assessed on a *pro rata* basis in the manner set forth in this Chapter, ~~payable within the first three (3) months of each calendar year.~~

§ 84-302 Exemptions.

The following persons are exempt from the local services tax imposed under this Chapter:

(a) Certain Disabled Veterans. Any person who has served in any war or armed conflict in which the United States was engaged and is honorably discharged or released under honorable circumstances from active service if, as a result of military service, the person is blind, paraplegic, or a double or quadruple amputee, or has a service-connected disability declared by the United States Veterans’ Administration or its successor to be a total one hundred percent (100%) permanent disability.

(b) Reservists Called to Active Duty. 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 a given calendar year, but only for that calendar year. For purposes of this subsection (b), the term “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.

(c) Multiple Employment. A person who is exempt from payment of the local services tax to the Borough for a given payroll period under the provisions of § 84-403 (relating to Multiple Employment), but only for that payroll period.

(d) Constitutional or Legal Limitations. Any person engaging in an occupation for which the Borough does not have the power to impose a local services tax under the Constitution of the United State and the Constitution and laws of the Commonwealth of Pennsylvania, but only with respect to that occupation. If the tax imposed under this Chapter shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United State or the Constitution or 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 the tax, or the validity of the tax so imposed, on other individuals.

§ 84-303 Low Income Exemption Not Implemented.

Except as provided in § 84-204 (relating to definition of Occupation), the Borough has not elected to exempt from the payment of the local services tax imposed under this Chapter for any calendar year persons whose total earned income and net profits from all sources within the Borough is less than twelve thousand dollars (\$12,000.00) for that calendar year.

§ 84-304 Procedure to Claim Exemptions.

(a) A person seeking to claim an exemption from the local services tax imposed under this Chapter may annually (or whenever justified) file an exemption certificate with the Tax Receiver and with the person's employer affirming the facts which justify the exemption and attaching such documentation as is required by the exemption certificate or the Tax Receiver to prove those facts.

(b) The exemption certificate used under this Section must be the uniform form provided by the Tax Receiver. The Tax Receiver shall issue a uniform form based on the form developed by the Pennsylvania Department of Community and Economic Development, but with such changes and additions as necessary or desirable to conform to the law and this Chapter (e.g. no exemption for persons with total earned income and net profits under \$12,000). 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.

(c) Upon receipt of the exemption certificate and until otherwise instructed by the Tax Receiver, the employer shall not withhold the tax from the person during the calendar year for which the exemption certificate applies. It is the intent of this subsection that employers shall not be responsible for investigating exemption certificates, monitoring tax exemption eligibility, or exempting any employee from the local services tax.

§ 84-305 Refunds.

Refund claims for overpaid local services taxes for any calendar year shall be processed in accordance with the provisions of the Local Taxpayers Bill of Rights Act, 53 PA. CONS. STAT. §§ 8421-8438, as supplemented by the rules, regulations, and procedures set forth in Chapter 87 (relating to Taxpayer Bill of Rights), except that:

(a) Refunds made within seventy-five (75) days of a refund request or seventy-five (75) 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 imposed under 53 PA. CONS. STAT. § 8426.

(b) The Borough shall only provide refunds for amounts overpaid in a calendar year that exceed one dollar (\$1.00).

(c) The Tax Receiver is authorized to determine eligibility for exemption and provide refunds to exempt persons. If the Tax Receiver denies a Petition for Refund, then the Petition shall be forwarded to Council

for processing in accordance with the procedures set forth in Chapter 87 (relating to Taxpayer Bill of Rights).

Article IV — Administration

§ 84-401 Collection by Employer.

(a) In General. Each employer engaging in business within the Borough of Alburtis (whether situated in the Borough or outside of the Borough) is hereby charged with the duty of collecting and paying over to the Borough Tax Receiver for each payroll period the *pro rata* portion of the tax levied hereunder, yearly, attributable to that payroll period upon each individual within his employ subject to said tax, as determined and calculated under the provisions of this Chapter. Each employer shall make a return and payment of said tax and is authorized to deduct said ~~emergency and municipal services~~ local services tax from each employee earning wages in his service subject to the tax who is earning compensation from the employer, whether the employee is paid by salary, wage, commission, or otherwise, and whether or not all such services are performed within the Borough. Each employer shall make and file a return showing a computation of the tax on a form to be obtained by him from the Borough Tax Receiver. Each employer shall remit the local services taxes required to be collected in any given calendar quarter within thirty (30) days following the end of the quarter. If an employer fails to file the return and pay the tax, whether or not the employer makes collection of the tax from the salary, wages, or commissions paid by him or her to an employee, except as provided in this Chapter, the employer shall be responsible for the payment of the tax in full as though the tax had been originally levied against the employer.

(b) Limitation of Liability. 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 §§ 84-304 (relating to Procedure to Claim Exemptions), 84-402 (relating to Pro-Rata Assessment of the Tax), and 84-403 (relating to Multiple Employment), and this section, and remits the amount so withheld in accordance with subsection (a).

§ 84-402 Initial Determination of Liability; Subsequent Reports. Pro-Rata Assessment of the Tax.

~~Employers shall use employment records as of January 1 of each year for the purpose of initial determination of liability for withholding, report, and payment. Thereafter reports shall be made to the Borough Tax Receiver promptly upon the employment of newly hired individuals.~~

A person subject to the local services tax imposed under this Chapter shall be assessed a *pro rata* share of the tax for each payroll period in which the person is engaging in an occupation within the Borough. The *pro rata* share of the tax assessed on the person for a payroll period shall be determined by dividing the rate of the tax for the calendar year by the number of payroll periods established by the employer for the calendar year (with any fraction rounded down to the nearest one-hundredth of a dollar). A self employed person shall be assessed a *pro rata* share of the tax for each calendar quarter, and shall pay the tax for each quarter within thirty (30) days following the end of the quarter. Each calendar quarter shall be deemed a payroll period for self employed persons.

§ 84-403 Multiple Employment.

~~(a) **Within Alburtis.** Each individual who shall have more than one (1) occupation within the Borough of Alburtis shall be subject to the payment of annual emergency and municipal services tax solely upon his principal occupation. A certificate of employment shall be furnished by each employer, upon a form furnished by the Borough Tax Receiver, to~~

~~each employee engaged in multiple employment upon request of the employee.~~

(a) **Tax Limitation.** No person shall be subject to the payment of the local services tax by more than one political subdivision during any given payroll period, except that a person is subject to both a local services tax imposed by a school district and a local services tax imposed by a municipality located in whole or in part within that school district. The total of all local services taxes authorized under the Local Tax Enabling Act, 53 PA. STAT. ANN. § 6901 *et seq.*, collected from any given person for any given calendar year shall be no more than fifty-two dollars (\$52.00), irrespective of the number of political subdivisions within which the person may be employed. The Tax Receiver shall provide a taxpayer a receipt of payment upon request by the taxpayer.

(b) ~~More than One Political Subdivision.~~ General Rule.

The situs of the local services tax shall be the place of employment determined as of the day the person first becomes subject to the tax during each payroll period. In the event a person is engaged in more than one occupation, that is, concurrent employment, or an occupation which requires the person working in more than one political subdivision during a payroll period, the priority of claim to collect the local services tax shall be in the following order:

~~(1) **Maximum Tax.** In the event a person is engaged in one occupation within the Borough and one or more other occupations in another political subdivision during a particular calendar year, and/or is engaged in an occupation which requires working in more than one political subdivision during the calendar year, the person shall not be required to pay more than a total of Fifty two Dollars (\$52.00) in any calendar year as an emergency and municipal services tax authorized under the Local Tax Enabling Act, 53 PA. STAT. ANN. § 6901 *et seq.*, irrespective of the number of political subdivisions within which the person may be employed during the calendar year.~~

~~(2) **Priority.** The priority of claim to collect the emergency and municipal services tax shall be in the following order:~~

~~(A)~~ (1) First, the political subdivision in which a the person maintains ~~his~~ the person's principal office or is principally employed;

~~(B)~~ (2) Second, the political subdivision in which the person resides and works, if such a tax is levied by that political subdivision;

~~(C)~~ (3) Third, the political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home.

~~The place of employment shall be determined as of the day the taxpayer first becomes subject to an emergency and municipal services tax during the calendar year.~~

~~(3) **Tax Receipt of Prior Payment.** A tax receipt of a political subdivision declaring that a taxpayer has made prior payment of an emergency and municipal services tax for a given calendar year shall constitute prima facie certification of payment to all other political subdivisions.~~

(c) **Employer Withholding.** 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 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 (2) weeks of its occurrence. This information shall be attached to an exemption certificate as provided under § 84-304, and a duplicate original of the exemption certificate and supporting documentation shall be filed with the Tax Receiver.

§ 84-404 Duties of Tax Receiver.

(a) It shall be the duty of the Borough Tax Receiver to collect and receive the tax imposed by this Chapter and to keep full and accurate records.

(b) The Borough Tax Receiver is hereby charged with the administration and enforcement of the provisions of this Chapter and is, in addi-

tion, empowered to promulgate rules and regulations in furtherance of this duty. Any person aggrieved by any decision of the Borough Tax Receiver shall have the right of appeal to the Court of Common Pleas of Lehigh County as in similar cases made and provided to appeal in accordance with the provisions of the Local Taxpayers Bill of Rights Act, 53 PA. CONS. STAT. §§ 8421-8438, as supplemented by the rules, regulations, and procedures set forth in Chapter 87 (relating to Taxpayer Bill of Rights) and by § 84-305 (relating to Refunds).

(c) The Borough Tax Receiver is hereby authorized to examine the books and records of any employer in order to verify the accuracy of returns in his office, or if no return was made, to ascertain the tax due. Each employer is hereby directed and required to give the Tax Receiver the means, facilities, and opportunity for such examination.

§ 84-405 Collection of Delinquent Taxes.

The Borough of Alburtis Tax Receiver is hereby authorized to proceed to collect delinquencies as in other cases wherein collection of unpaid claims is allowed in the taxes imposed under this Chapter, including penalties and interest, in accordance with the procedures provided by law.

§ 84-406 Restricted Use of Tax Revenues.

Effective January 1, 2005 2008, the Borough may only use the funds derived from the ~~emergency and municipal services~~ local services tax imposed under this Chapter for the following purposes:

(a) ~~police, fire, and/or~~ emergency services, which shall include emergency medical services, police services, and/or fire services;

(b) road construction and/or maintenance; ~~and/or~~

(c) reduction of property taxes; and/or

(d) property tax relief through implementation of a homestead and farmstead exclusion in accordance with 53 PA. CONS. STAT. Chapter 85, Subchapter F (relating to homestead property exclusion). In the event the Borough decides to implement a homestead and farmstead exclusion un-

der this subsection (d), the Borough shall comply with the requirements of 53 PA. STAT. ANN. § 6922.6(b).

The Borough shall use no less than twenty-five percent (25%) of the funds derived from the local services tax for emergency services under subsection (a).

§ 84-407 East Penn School District Local Services Tax.

If the East Penn School District also levies a local services tax, the School District's share of the aggregate local services tax imposed by the Borough and the School District shall be collected by the Tax Receiver based on payroll periods and shall be paid to the School District on a quarterly basis within sixty (60) days after receipt by the Borough or the Tax Receiver.

Article V — Violations, Interest, and Penalties

§ 84-501 Late Payment Penalty, and Interest, and Costs.

If the tax under this Chapter for any given year shall be paid after March 31 of that year, a five percent (5.0%) penalty shall be added. If the tax shall not be paid within the calendar year for which it is due, interest at a rate of six percent (6.0%) per annum shall be added. If for any reason the tax imposed under this Chapter is not paid when due, a penalty in the amount of five percent (5.0%) of the total amount of overdue tax shall be added, together with interest at the rate of six percent (6.0%) per annum on the unpaid amount from the due date of the tax until payment is made. Where suit is brought for the recovery of any tax imposed under this Chapter or other appropriate remedy is undertaken, the person liable for the tax shall, in addition, be liable for the costs of collection.

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SECTION 2. Nothing in this Ordinance shall be construed to repeal the imposition and collection of an occupational privilege tax, plus applicable interest and penalties, for calendar year 2004 and prior calendar years, or an emergency and municipal services tax, plus applicable interest and penalties, for calendar years 2005, 2006, and 2007, as the same existed prior to this amendment.

DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Al-
burtis, this 26th day of December, 2007, in lawful session duly assembled.

BOROUGH COUNCIL
BOROUGH OF ALBURTIS

Steven R. Hill, President

Attest:

Sharon Trexler, Executive Secretary

AND NOW, this 26th day of December, 2007, the above Ordinance is hereby
APPROVED.

Robert W. Mader, Mayor