

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 512

(Duly Adopted November 26, 2013)

AN ORDINANCE AMENDING THE BOROUGH OF ALBURTIS LOCAL SERVICES TAX ORDINANCE (CHAPTER 84 OF THE ALBURTIS CODIFIED ORDINANCES), EFFECTIVE JANUARY 1, 2014, TO INCREASE THE RATE OF THE LOCAL SERVICES TAX FROM TEN DOLLARS (\$10.00) EACH CALENDAR YEAR TO FIFTY-TWO DOLLARS (\$52.00) EACH CALENDAR YEAR; TO EXEMPT FROM THE TAX 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; AND TO ASSESS THE TAX PRO RATA EACH PAY PERIOD THROUGHOUT THE YEAR INSTEAD OF IN A SINGLE PAYMENT AT THE BEGINNING OF THE YEAR.

WHEREAS, the Borough of Alburdis has enacted a Local Services Tax (previously known as the Occupational Privilege Tax and the Emergency and Municipal Services Tax) pursuant to the Pennsylvania Local Tax Enabling Act, 53 PA. STAT. ANN. § 6924.101 *et seq.* (previously codified at 53 PA. STAT. ANN. § 6901 *et seq.*); and

WHEREAS, the Local Services Tax has been amended from time to time and is codified as Chapter 84 of the Alburdis Codified Ordinances; and

WHEREAS, Borough Council desires to increase the rate of the Local Services Tax from ten dollars (\$10.00) per person per year to fifty-two dollars (\$52.00) per person per year, effective January 1, 2014; and

WHEREAS, when the rate of the Local Services Tax exceeds ten dollars (\$10.00), the Local Tax Enabling Act requires that the tax shall be assessed on a pro rata basis for each payroll period during the calendar year rather than at one time when the taxpayer first becomes subject to the tax during the calendar year; and

WHEREAS, when the rate of the Local Services Tax exceeds ten dollars (\$10.00), the Local Tax Enabling Act requires that the political subdivision imposing the tax exempt from the tax for any given year any person whose total earned income and net profits from all sources within the political subdivision is less than twelve thousand dollars (\$12,000) for that year; and

WHEREAS, on November 15, 2013, November 20, 2013, and November 25, 2013 (which are days within three separate calendar weeks and before the adoption of this Ordinance), the Borough published a public notice in the Easton *Express-Times*, a newspaper of general circulation in the Borough of Alburdis, of its intention to consider the adoption of this Ordinance on November 26, 2013 at 7:00 P.M. in the Borough Hall, 260 Franklin Street, Alburdis, Pennsylvania. The notice included a summary of the provisions of this Ordinance, as provided in the title of this Ordinance, and included the information described in 53 PA. STAT. ANN. § 6924.306;

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Alburdis, Lehigh County, Pennsylvania, as follows:

SECTION 1. Effective January 1, 2014, for taxes assessed for calendar year 2014 and subsequent calendar years, Chapter 84 of the Codified Ordinances (relating to Local Services Tax) is amended by revising §§ 84-102, 84-204, 84-301, 84-302, 84-303, 84-304, 84-401, 84-402, and 84-403, and adding new § 84-204.1, as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

Chapter 84 — Local Services Tax

Article I — Title, Authority, and Duration

* * *

§ 84-102 Authority.

This Chapter is enacted under the authority granted by the Local Tax Enabling Act, 53 PA. STAT. ANN. § ~~6901~~ 6924.101 *et seq.*

* * *

Article II — Definitions

* * *

§ 84-201.1 Earned Income and Net Profits.

The term “earned income and net profits” shall mean, for an individual for a given calendar year, the sum of that individual’s “earned income” within the meaning of § 80-112 (relating to Earned Income Tax—Definitions—Earned Income) and “net profits” within the meaning of § 80-118 (relating to Earned Income Tax—Definitions—Net Profits) for the given calendar year.

* * *

§ 84-204 Occupation.

The term “occupation” shall mean any trade, profession, business, or undertaking of any kind carried on or performed within the corporate lim-

its of the Borough of Albury for which recompense is received ~~in excess of Five Hundred Dollars (\$500.00) for any particular year~~, whether by means of salary, wages, commissions, or, if the individual is self-employed, by payment for services rendered.

* * *

Article III — Imposition of Tax; Exemptions and Refunds

§ 84-301 In General.

The Borough of Albury hereby imposes upon each individual engaged in an occupation within the corporate limits of the Borough a local services tax of ~~Ten Dollars (\$10.00)~~ Fifty-two Dollars (\$52.00) each calendar year, assessed on a pro rata basis in the manner set forth in this Chapter.

§ 84-302 Exemptions.

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

* * *

(c) Persons Earning Under \$12,000. Any person whose total earned income and net profits from all sources within the corporate limits of the Borough is less than Twelve Thousand Dollars (\$12,000.00) for a given calendar year is exempt from the local services tax for that calendar year.

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

(d) (e) Constitutional or Legal Limitations. Any person engaging in an occupation for which the Borough does not have the power to im-

pose 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.~~ [RESERVED]

~~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) **Exemption Certificate—In General.** 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) **Low Income Exemption Certificate.** A person seeking to claim the exemption under § 84-302(c) (relating to Persons Earning Under \$12,000) must affirm in the exemption certificate that the person reasonably expects to receive earned income and net profits from all sources within the corporate limits of the Borough of less than Twelve Thousand Dollars (\$12,000.00) in the calendar year for which the exemption is filed, and shall attach to the exemption certificate a copy of all the person's last pay stubs or W-2 forms from employment within the corporate limits of

the Borough for the calendar year preceding the calendar year for which the person is filing the exemption certificate.

(b) (c) Uniform Form. 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.

(e) (d) Employer Relieved From Withholding Tax. Upon receipt of the exemption certificate and until otherwise instructed by the Tax Receiver, or except as required by subsection (e), 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. ~~It~~ Except as provided in subsection (e), 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.

(e) Withholding After a Person's Income Exceeds \$12,000.

(1) With respect to a person who claimed an exemption under § 84-302(c) (relating to Persons Earning Under \$12,000) for a given calendar year from the local services tax—

(A) upon notification to an employer by the person or by the Tax Receiver that the person has received earned income and net profits from all sources within the corporate limits of the Borough equal to or in excess of Twelve Thousand Dollars (\$12,000.00) in that calendar year; or

(B) upon an employer's payment to the person of earned income within the corporate limits of the Borough in an amount equal to or in excess of Twelve Thousand Dollars (\$12,000.00) in that calendar year.

the employer shall withhold the local services tax from the person for the remainder of that calendar year in accordance with the remaining paragraphs of this subsection (e).

(2) The amount to be withheld by the employer for the first payroll period after the notification under paragraph (1)(A), or for the payroll period in which the employer's total payments of earned income to the person for the calendar year first satisfies the requirement of paragraph (1)(B), shall be a lump sum equal to the amount of local services tax that was not withheld from the person due to the exemption claimed by the person for the calendar year, plus the per payroll amount due for that payroll period.

(3) The amount of local services tax to be withheld by the employer for the remaining payroll periods in that calendar year after the payroll period described in paragraph (2) shall be the same amount withheld for other employees who are not eligible for an exemption.

(4) In the event the employment of a person subject to withholding of local services tax under this subsection (e) 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 Chapter and the Local Tax Enabling Act, 53 PA. STAT. ANN. § 6924.101 et seq.

* * *

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 each year for each payroll period the *pro rata* portion of the tax levied hereunder 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 local services tax from each employee 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. The tax shall be collected from an employee subject to the tax at the time it is assessed against that employee under § 84-402 (relating to Assessment of the Tax). 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.

* * *

(c) **DCED Local Withholding Tax Register.** Notwithstanding subsection (a), no employer shall be required to withhold from the compensation of its employees any local services tax at a rate or amount in excess of that on the officially released Local Withholding Tax Register maintained by the Pennsylvania Department of Community and Economic Development under 53 PA. STAT. ANN. § 6926.351, as in effect at the time the withholding is otherwise required under this Chapter. The provisions of this subsection (c), however, shall not affect the liability of the taxpayer employee for taxes lawfully imposed under this Chapter.

§ 84-402 Assessment of the Tax.

A person subject to the local services tax imposed under this Chapter shall be assessed ~~the full amount~~ a *pro rata share* of the tax for a calendar year ~~on the first~~ each payroll period of the calendar year 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 pay the tax for a given calendar year within thirty (30) days following the end of the first calendar quarter in that calendar year in which the person is engaging in an occupation within the Borough. 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) **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. § ~~6904~~ 6924.101 *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) **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 ~~the calendar year~~ 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 ~~calendar year~~ payroll period, the priority of claim to collect the local services tax shall be in the following order:

* * *

* * *

* * *

* * *

SECTION 2. Council hereby re-enacts for calendar year 2014 and succeeding years the Local Services Tax and the Alburtis Local Services Tax Ordinance as set forth in Chapter 84 of the Alburtis Codified Ordinances (as amended by Section 1 of this Ordinance).

SECTION 3. Nothing in this Ordinance shall be construed to repeal or amend the imposition and collection of the Borough's local services tax, emergency and municipal services tax, or occupational privilege tax (plus applicable interest and penalties) for calendar year 2013 and prior calendar years, and such taxes for any such year shall be imposed and collected in accordance with the provisions of this Chapter as in effect for the given year.

SECTION 4. The Executive Secretary of the Borough shall send a certified copy of this Ordinance to the Pennsylvania Department of Community and Economic Development no later than December 1, 2013.

DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Al-
burtis, this 26th day of November, 2013, 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 November, 2013, the above Ordinance is hereby
APPROVED.

Kathleen Palmer, Mayor