ORDINANCE # 2007-15

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF LOWER ALLEN TOWNSHIP, CUMBERLAND COUNTY, PENNSYLVANIA AMENDING, MODIFYING AND CHANGING THE CODE OF THE TOWNSHIP OF LOWER ALLEN 1997, BY REPEALING CHAPTER 197 TAXATION ARTICLE III, EMERGENCY AND MUNICIPAL SERVICES TAX AND BY ENACTING BY THIS ORDINANCE A NEW CHAPTER 197 ARTICLE III, PROVIDING FOR THE ASSESSMENT OF A LOCAL SERVICES TAX

BE IT ENACTED AND ORDAINED by the Board of Commissioners ("Board") of Lower Allen Township ("Township"), Cumberland County, Pennsylvania, by virtue of the power and authority vested in said Board of Commissioners as follows:

SECTION I

CHAPTER 197 ARTICLE III, "Emergency and Municipal Services Tax," of the Code of the Township of Lower Allen, 1997 is hereby deleted in its entirety and replaced with a new Chapter 197 Article III, "Local Services Tax," as follows:

Section 197-28. TITLE

This part shall be known and may be cited as the "Lower Allen Township Local Services Tax Ordinance."

Section 197-29. AUTHORITY

This Part is enacted under the authority of the Local Tax Enabling Act, as amended by Act No. 7 of 2007.

Section 197-30. PURPOSE

The purpose of this Part is to provide revenue for police, fire and emergency services; road construction and maintenance; the reduction of property taxes and for such other purposes as may be specified for such tax from time to time by the laws of the Commonwealth of Pennsylvania.

Section 197-31. DEFINITIONS

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

BOARD OF COMMISSIONERS- shall mean the Governing Body of Lower Allen Township

COLLECTOR- the person or firm, from time to time, designated by motion of the Board of Commissioners of Lower Allen Township to collect and administer the provision of this Article and collect the tax levied by this Article. Until changed by subsequent motion, the collector shall be the same person or firm last designated to collect the Emergency and Municipal Services Tax for Lower Allen Township.

EARNED INCOME- "Compensation" as determined under section 303 of the Act of March 4, 1971 (P.L. 6, No.2), known as the "Tax Reform Code of 1971" and regulations in 61 Pa. Code Pt. I Subpt. B Art. V (relating to personal income tax) NOT service. Employee business expenses are allowable deductions as determined under Article III of the "Tax Reform Code of 1971." Any housing allowance provided to a member of the clergy shall not be taxable as earned income.

EMPLOYER- an individual, partnership, association, corporation, governmental body, agency or other entity employing one or more persons on a salary, wage, commission, fee or other compensation basis, including a self-employed person.

HE, HIS OR HIM- shall include singular and plural number and male, female and neuter gender.

INDIVIDUAL- any person engaged in any occupation, trade or profession within the jurisdiction limits of Lower Allen Township whose total earned income and net profits within Lower Allen Township are greater than $12,000 per calendar year.

NET PROFITS- The net income from the operation of business, profession, or other activity, (except from Corporations), determined under section 303 of the Act of March 4, 1971 (P.L. 6, No.2), known as the "Tax Reform Code of 1971", and regulations in 61 Pa. Code pt. 1 Subpt. B Art. V. (relating to personal income tax). The term does not include income which is not paid for services provided and which is in the nature of earnings from an investment. For taxpayers engaged in the business, profession or activity of farming the term shall not include:

(1) any interest generated from monetary accounts or investment instruments of the farming business;

(2) any gain on the sale of farming machinery;

(3) any gain on the sale of livestock held twelve months or more for draft, breeding or dairy purposes; and

(4) any gain on the sale of other capital assets of the farm.

OCCUPATION- any trade, profession, business or undertaking of any type, kind or character including services, domestic or other, carried on or performed within the jurisdiction limits of Lower Allen Township for which compensation is charged and/or received, whether by salary, wages, commissions, fees or net profits for services rendered.

RESERVE COMPONENT OF THE ARMED FORCES- 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.

TAX- the Local Services Tax levied in the Article.

YEAR- shall mean a calendar year.

Section 197-32. LEVY

Lower Allen Township hereby levies and imposes on every individual engaging in an occupation within the jurisdictional limits of Lower Allen Township a tax in the amount of $52.00 per annum, beginning the first day of January, 2008 and continuing on a calendar basis annually thereafter, until modified or repealed by subsequent ordinance. This tax is in addition to all other taxes of any kind or nature heretofore levied by Lower Allen Township.

Section 197-33. RESTRICTED USE

Lower Allen Township shall use the revenue derived from this tax for the following purposes:

1. Emergency Services, which shall include emergency medical services, police services and/or fire services.

2. Road construction and/or maintenance

3. Reduction of property taxes.

4. 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).

Lower Allen Township shall use no less than twenty-five percent of the funds derived from the Local Services Tax for emergency services.

Section 197-34. DUTY OF EMPLOYER

Each employer within Lower Allen Township and each employer situate outside Lower Allen Township who engages in business within Lower Allen Township, is hereby charged with the duty of collecting the tax from each of the employees engaged by the employer and performing work for the employer within Lower Allen Township. Each person subject to the tax shall be assessed a pro rata share of the tax for each payroll period in which the person is engaged 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.

Employer collection of the Local Services Tax shall be made on a payroll period basis for each payroll period, beginning with the first payroll period in which the person is engaging in an occupation.

No employer shall be held liable for failure to withhold the Local Services Tax or for the payment of the withheld tax money to a political subdivision 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.

Section 197-35. RETURNS

Employers are required to make and file a Local Services Tax Quarterly Return thirty (30) days after the end of each quarter of a calendar year. The Local Services Tax Quarterly Return shall list the name, address, social security number of the employee; the physical address of the employee's place of employment; the number of payroll periods for which the Local Services Tax was withheld and the amount of Local Services Tax being remitted for each employee.

Section 197-36. DATES FOR DETERMINING TAX LIABILITY AND PAYMENT

Each employer shall use his employment and payroll records from the first day of January to March 31 each year for determining the number of employees from whom said tax shall be deducted and paid over to the collector on or before April 30 of the same calendar year. Supplemental reports shall be made by each employer on July 30, October 30 and January 31 for new employees as reflected on his employment and payroll records from April 1 to June 30, July 1 to September 30 and October 1 to December 31, and payments on these supplemental reports shall be made on July 30, October 30 and January 30, respectively.

Section 197-37. INDIVIDUALS ENGAGED IN MORE THAN ONE OCCUPATION

In the event a person is engaged in more than one occupation, this is, concurrent employment, or an occupation which required the person working in more than one political subdivision during the payroll period, the priority of claim to collect the Local Services Tax shall be in the following order:

1. The political subdivision in which a person maintains his or her principal office or is principally employed;

2. The political subdivision in which the person resides and works; if the tax is levied by that political subdivision;

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

In the case of concurrent employment, an employer shall refrain from withholding the Local Services Tax, if the employee provided:

1. 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 Local Services Tax withheld; and

2. a statement from the employee that the pay statement is from the employee's principal employer and the employee will notify other employers of a change in principal place of employment within two weeks of its occurrence.

The Situs of the tax shall be the place of employment on the first day the person becomes subject to the tax during each payroll period. It is the intent of this section that no person shall be subject to the payment of the Local Services Tax by more than one political subdivision during each payroll period.

Section 197-38. EXEMPTIONS TO THE LOCAL SERVICES TAX

The Local Services Tax shall be no more that $52.00 on each person for each calendar year, irrespective of the number of political subdivisions within which a person may be employed.

The law requires Municipalities and School Districts who levy the Local Services Tax at a combined rate exceeding $10 to exempt any person from the Local Services Tax whose total earned income and net profits from all sources within the political subdivision is less than $12,000 for the calendar year in which the Local Services Tax is levied.

Each political subdivision levying the Local Services Tax shall exempt the following persons from the Local Services Tax:

1. 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, <u>if, as a result of military service</u>, 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 permanent disability.

2. 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. A "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.

A person seeking to claim an exemption from the Local Services Tax may annually file an exemption certificate with the collector of the tax for the political subdivision levying the tax and file a copy of the certificate 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 $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 collector of the tax for the political subdivision levying the tax the employer shall not withhold the tax from the person during the calendar year or remainder of the calendar year for which the exemption certificate applies. With respect to a person who claimed an exemption from the Local Services Tax, upon notification to an employer by the person or by the collector of the tax for the political subdivision, that the person has received earned income and net profits from all sources within that political subdivision 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 that political subdivision 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 as follows:

> If a person who claimed an exemption for a given calendar year from the Local Services Tax becomes subject to the tax for the calendar year the employer shall withhold the tax for the remainder of that calendar year.
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> The employer shall withhold from the person, for the first payroll period after receipt of the notification under the above paragraph, a lump sum equal to the amount of the tax that was not withheld from the person due to the exemption certificate filed by the person, plus the per payroll amount due for that first payroll period.
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> 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.
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> In the event the employment of a person subject to withholding of the Local Services Tax under this exemption is 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 under this act.

Employers shall not be investigating exemption certificates, monitoring tax exemption eligibility or exempting any employee from a Local Services Tax.

Employers shall be responsible for retaining a copy of all exemption certificates filed by employees within a given calendar year for a minimum of three (3) years. Employers who have failed to withhold the Local Services Tax from an employee or employees, AND do not have copies of the employee exemption certificate or certificates, will be held responsible for the payment of the Local Services Tax as if the tax had been originally levied against the employer.

Section 197-39. SELF-EMPLOYED INDIVIDUALS

All self-employed individuals and individuals whose employer is not required to withhold local taxes (certain state and federal agencies) will be billed quarterly for the Local Services Tax. The full amount of tax must be paid by the date indicated on such billing. If such taxpayer qualifies for a low-income exemption, the taxpayer may complete the required exemption certificate or make application for a refund of the tax paid.

Section 197-40. EMPLOYEES AND SELF-EMPLOYED INDIVIDUALS RESIDING BEYOND THE LIMITS OF LOWER ALLEN TOWNSHIP

All employers and self-employed individuals residing or having their place of business outside Lower Allen Township but who engage in any occupation within Lower Allen Township, 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 Lower Allen Township. Further, any individual engaged in an occupation within Lower Allen Township and an employee of a non-resident employer may for the purpose of this Part be considered a self-employed person and in the event this tax is not paid, the collector shall have the option of proceeding against either the employer or employee for collection of this tax as hereinafter provided.

Section 197-41. ADMINISTRATION OF TAX

1. It shall be the duty of the collector to accept and receive payments of this tax and 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. It shall be the duty of the collector to accept and keep a record of the information submitted by employers relating to the number of employees subject to the tax, the number of employees exempt from the tax, the employee exemption certificates and refunds of the tax paid to individuals and employers.

2. The collector is hereby charged with the administration and enforcement of this Article 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 Article, including provisions for the examination of the payroll records of any employer subject to this Article; the examination and correction of any return made in compliance with this Article; and any payment alleged or found to be incorrect or as to which overpayment is claimed or found to have occurred. Any person aggrieved by an decision if the collection shall have the right to appeal to the Court of Common Pleas of Cumberland County as in other cases provided.

3. 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.

Section 197-41.1. SUIT FOR COLLECTION

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

2. If for any reason the tax is not paid when due, interest at the rate of 6% per annum on the amount of said tax, and an additional penalty of 10% shall be added to the flat rate of said tax for non-payment thereof. Where suit is brought for the recovery of this tax, the individual liable therefore shall, in addition, be responsible and liable for the costs of collection, including, but not limited to, attorney's fees.

Section 197-41.2. FINE AND PENALTY

Whoever makes any false or untrue statement on any return required by this Article, or who refuses inspection of his books, records or accounts in his custody and control in order to determine the number of employees subject to this tax who are in his employment, or who fails or refuses to file any return required by this Article, or fails or refuses to pay the tax herein levied shall, upon conviction, be sentenced to pay a fine of not more than $600 plus costs and, in default of payment of said fines and costs, be sentenced to a term of imprisonment not to exceed 30 days. It is further provided that the action to enforce the fine and penalty herein provided may be instituted against any person in charge of the business of any employer who has failed or refused to file a return required by this Article.

Section 197-41.3. REPEALER AND SEVERABILITY

The provisions of this Ordinance shall be severable. If any of its provisions shall be held to be unconstitutional, illegal or otherwise invalid, that decision shall not affect the remaining provisions of this Ordinance or of the Lower Allen Township Code of Ordinances.

Section 197-41.4. EFFECTIVE DATE

This Ordinance shall become effective in accordance with applicable law, with the repeal of previous Occupational Privilege Tax and Emergency and Municipal Services Tax Ordinances, effective January 1, 2008.

ENACTED AND ORDAINED, into an ordinance this 13th day of November 2007.

ATTEST:
(Corporate Seal)

Danna S. Lutes
~~(Assistant)~~ Secretary

BOARD OF COMMISSIONERS
LOWER ALLEN TOWNSHIP

John T. Tufnel
~~(Vice)~~ President