

Repealed 11/28/07  
Ordinance 9 of 2007

(18)

THROOP BOROUGH  
LACKAWANNA COUNTY, PENNSYLVANIA

ORDINANCE NO.: 1 OF 2006

AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF THROOP, LACKAWANNA COUNTY, PENNSYLVANIA AMENDING, MODIFYING AND CHANGING THROOP BOROUGH'S OCCUPATIONAL PRIVILEGE TAX ADOPTED DECEMBER 13, 1966 AND ENACTING CHAPTER 197, ARTICLE III, TO BE KNOWN AS THE EMERGENCY AND MUNICIPAL SERVICES TAX.

BE IT ENACTED AND ORDAINED, by the Council ("Council") of Throop Borough ("Throop") Lackawanna County, Pennsylvania, and it is hereby enacted and ordained by the same as follows:

**SECTION I**

Throop Borough's Occupational Privilege Tax adopted on December 13, 1966 is hereby amended, modified and changed and a new Chapter 197, Article III, is hereby enacted and is known as the Emergency and Municipal Services Tax, as follows:

**1. Authority.**

This Article is enacted under the authority of the Local Tax Enabling Act, as amended by Act No. 222 of 2004.

**2. Definitions.**

The OPT Ordinance is amended so that the following words and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context or language clearly indicates or requires a different meaning;

**EMPLOYER** – An individual, partnership, association, corporation, institution, governmental body or unit or agency or any 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 gender.

INDIVIDUAL – Any person, male or female, engaged in any occupation, trade or profession within the Township.

OCCUPATION – Any trade, profession, business or undertaking of any type, kind of character, including services, domestic or other, carried on or performed in Throop for which compensation is charges or received , whether by means of salary, wages, commissions or fees, for services rendered.

OCCUPATIONAL PRIVILEGE TAX - A tax on the privilege of employment within the corporate limits of Throop levied by the Local Tax Enabling Act, which remains a source of revenue for Pennsylvania school districts.

SCHOOL DISTRICT – The Mid-Valley School District.

TAX – The Emergency and Municipal Services Tax in the amount of \$52 levied by this Article.

TAX COLLECTOR – The person, public employee or private agency designated from time to time by the Throop Borough Council to collect and administer the tax imposed by this Article.

THROOP – The area within the corporate limits of the Borough of Throop.

**3. Levy.**

The OPT is hereby amended so that it sets forth as follows:

Throop hereby levies and imposes on each occupation engaged in by individuals within its corporate limits during the calendar year of 2006 and each calendar year thereafter an Emergency and Municipal Services Tax. This tax is in addition to all other taxes of any kind or nature heretofore levied by Throop and shall continue in force on a calendar-year basis, without annual reenactment unless the rate is subsequently changed.

**4. Amount of Tax.**

The OPT is hereby amended so that it sets forth as follows:

Beginning with the third day of January 2006, each occupation, as hereinbefore defined, engaged in within the corporation limits of the Township shall be subject to an Emergency and Municipal Services Tax in the amount of \$52 per annum, the tax to be paid by the individual so engaged. There is hereby exempted from this tax any person whose total income from all sources is less than Twelve Thousand (\$12,000.00) per annum.

**5. Employer to collect tax.**

The OPT is hereby amended so that it sets forth as follows:

Each employer within Throop, as well as each employer situated outside Throop, who engages in business within Throop, is hereby charged with the duty of collecting from each of his employees engaged by him and performing for him within Throop the tax of \$52 per annum and making a return and payment thereof to the Tax Collector. Further, each employer is hereby authorized to deduct this tax from each employee in his employ, whether the employee is paid by salary, wages or commission and whether or not part or all of such services are performed within Throop.

**6. Returns.**

The OPT is hereby amended so that it sets forth as follows:

Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied to him by the Tax Collector. Each employee, in filing this return and making payment of the tax withheld from his employees, shall be entitled to retain a commission to cover the cost incurred from the extra bookkeeping necessary to record such transaction, calculated at the rate of one half (1/2) of one (1) per centum of the gross tax collected and payable (.005) provided that such tax is collected and paid over by the employer on or before the dates hereinafter set forth. If the employer fails to file the return and pay the tax, whether or not he makes collection thereof from the salary, wages or commissions paid by him to the employee, the employer shall be responsible for the payment of the tax in full without deducting a commission and as though the tax had originally been levied against him.

**7. Dates for determining tax liability and payment.**

The OPT is hereby amended so that it sets forth as follows:

Each employer shall use his employment records from the first day of January to the 31<sup>st</sup> of March for determining the number of employees from whom the tax shall be deducted and paid over to the Tax Collector on or before April 30. In the event that new employees start employment after the April 30<sup>th</sup> payment date, such tax on such employees are to be paid quarterly with supplemental reports as follows: 2<sup>nd</sup> quarter payments July 31<sup>st</sup>; 3<sup>rd</sup> quarter payment October 31<sup>st</sup>; fourth quarter payment January 31<sup>st</sup> of the following fiscal year.

**8. Payment of tax for individuals engaged in more than one occupation.**

The OPT is hereby amended so that it sets forth as follows:

A. Each individual who has more than one occupation within Throop shall be subject to the payment of this tax on his principal occupation. His principal employer shall deduct this tax and deliver to him evidence of deductions on a form to be furnished to the employer by the Tax Collector. Such form shall be evidence of deduction having been made and, when presented to any other employer, shall be authority for such employer to not deduct this tax from the employee's wages, but to include such employee on his return by setting forth his name, address and the name and account number of the employer who deducted this tax.

B. Priority of claim.

(1) In the event that a person is engaged in more than one occupation or an occupation which requires his working in more than one political subdivision during the calendar year, the priority of claim to collect such occupational privilege tax shall be in the following order:

(a) The political subdivision in which a person maintains his principal office or is principally employed.

(b) The political subdivision in which the person resides and works, if such a tax is levied by that political subdivision.

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

(2) The place of employment shall be determined as of the day the taxpayer first becomes subject to the tax during the calendar year. It is the intent of this provision that no person shall pay more than \$52 in any calendar year as an Emergency and Municipal Services Tax, irrespective of the number of political subdivisions with which such person may be employed within any given calendar year. In case of a dispute, a tax receipt of the taxing authority for that calendar year, declaring that the taxpayer has made prior payments, shall constitute prima facie certification of payment to all other political subdivisions.

C. Deduction or nondeduction and reporting by employers shall be in accordance with Subsection A hereof.

**9. Payment of tax by self-employed individuals.**

The OPT is hereby amended so that it sets forth as follows:

A. All self-employed individuals who perform services of any type or kind engaged in any occupation or profession within the Township shall be required to comply with this Article and pay the tax to the Tax Collector on April 30 or as soon thereafter as he engages in an occupation.

B. In the event that a self-employed person is engaged in more than one occupation within or without the township or an occupation which requires working in more than one political subdivision during the year, reporting priority of claims and prima facie certification of payment shall be in accordance with paragraph 8.

#### **10. Imposition of tax.**

The OPT is hereby amended so that it sets forth as follows:

All employers and self-employed individuals residing or having their place of business outside of Throop but who perform services of any type or kind or engage in any occupation or profession in Throop do, by virtue thereof, agree to be bound by and subject themselves to the provision, penalties and regulations promulgated under this Article with the same force and effect as though they were residents of Throop. Any individual engaged in an occupation in Throop and an employee of a nonresident employer may, for the purpose of this Article, be considered a self-employed person, and in the event that this tax is not paid, Throop shall have the option of proceeding against either the employer or employee for the collection of this tax as hereinafter provided.

#### **11. Administration of tax.**

The OPT is hereby amended so that it sets forth as follows:

A. The Tax Collector shall 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.

B. The Tax Collector is hereby charged with the administration and enforcement of this Article and is hereby charged and empowered to prescribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this Article, including the 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 or any payment made by a taxpayer who is engaged in a business or occupation or businesses or occupations in Throop from which he derives, in aggregate, less than \$12,000 per year income from all sources. Any person aggrieved by any decision of the Tax Collector

shall have the right to appeal to the Court of Common Pleas of Lackawanna County as in other cases provided.

C. The Tax 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 Tax collector the means, facilities and opportunity for such examination.

**12. Collection of unpaid taxes; interest.**

The OPT is hereby amended so that it sets forth as follows:

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

B. If for any reason the tax is not paid when due, interest at the rate of 6% on the amount of the tax shall be calculated beginning with the due date of the tax, and a penalty of 10% shall be added to the flat rate of the tax for nonpayment 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.

**13. Restricted use.**

The OPT is hereby amended so that it sets forth as follows:

Throop may use funds derived from the Emergency and Municipal Services Tax only for the following purposes:

- (1) Police, fire and/or emergency services;
- (2) Road construction and/or maintenance;
- (3) Reduction of property taxes.

**14. Construal of terms.**

The OPT is hereby amended so that it sets forth as follows:

A. Nothing contained in this Article shall be construed to empower Throop to levy and collect the tax hereby imposed on any occupation not within the power of Throop under the Constitution of the United States and the laws of the Commonwealth.

B. If the tax hereby imposed under the provisions of this Article 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 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 persons or individuals as herein provided.

## **15. Violations and penalties.**

The OPT is hereby amended so that it sets forth as follows:

Whoever makes any false or untrue statement on any return required by this Article or whoever refuses inspection of his books, records or accounts in his custody and control setting forth the number of employees subject to this tax who are in his employment or whoever fails or refuses to file any return required by this Article shall be fined not less than \$100 nor more than \$600, plus costs of prosecution, for each offense and, in default of payment of the fine and costs, shall be imprisoned not more than 30 days for each offense. 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 II**

The provisions of this Ordinance, as far as they are the same as those of ordinances in force immediately prior to the enactment of this Ordinance, are intended as a continuation of such ordinances and not as new enactments. The provisions of this Ordinance shall not affect any such suit or prosecution pending or to be instituted to enforce any right or penalty or to punish any offense under the authority of any ordinance repealed by this Ordinance.

## **SECTION III**

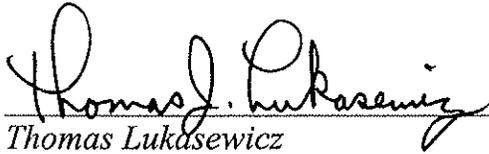
The provisions of this Ordinance are severable, and if any of the provisions shall be held to be unconstitutional, illegal, or invalid, such decision shall not affect the validity of any of the remaining provisions of this Ordinance. It is hereby declared as a legislative intent that this Ordinance would have been adopted had such unconstitutional, illegal or invalid provision not been included herein.

## **SECTION IV**

This ordinance shall take effect on January 3, 2006. (SECTION 5 OF ACT 511 permits any municipality imposing a tax under Act 511 to revise its budget during any

fiscal year by increasing or making additional appropriations from funds to be provided from an Act 511 tax.)

**ENACTED AND ORDAINED** into an Ordinance this 3<sup>rd</sup> day of January, 2006.



Thomas Lukaszewicz  
Council President



Stanley Lukowski  
Mayor

Attest:



Christina Sullivan  
Borough Secretary

**Throop Borough Council  
Special Monthly Meeting  
following the 6:30 p.m. Monthly Work Session  
Thursday, May 11, 2006  
7:00 p.m.**

Cindy Johnson - A  
James Barnick, **Vice President** - P  
Thomas Lukasewicz, **President** - P  
Tony Chrzan - P  
George Marushock - P  
John Musewicz - P  
Joseph Barone - P  
**Solicitor** - Louis A. Cimini - P  
**Mayor** - Stanley Lukowski - P  
Assistant Treasurer - Lenore Dolan - A  
Secretary - Christina Sullivan - P  
Chief Clerk/Treasurer - Elaine Morrell - P

**11. Motion by Chrzan**

**Second by Barnick**

To amend Throop Borough Ordinance # 1 of 2006, an ordinance of the Council of the Borough of Throop, modifying and changing Throop Borough's Occupational Privilege Tax and enacting Chapter 197, Article III, to be known as the Emergency and Municipal Services Tax. Amending Section I, # 4 Amount of Tax. This section states "There is hereby exempted from this tax any person whose total income from ALL SOURCES is less the twelve Thousand (\$12,000.00) per annum. To amend only "whose total income from EARNED INCOME" is less than \$12,000.00 per annum. The total income is amended to **Earned Income and not all sources of income.** (As per Barbara Fairchild, Berkheimer Associates, all sources would include pensions, interest, dividends, etc.) This is Earned Income only.

All in favor

Motion carried