

Borough of Cochranton
CRAWFORD COUNTY, PENNSYLVANIA

Ordinance No. 2014 - 3

AN ORDINANCE REPEALING AND REPLACING THE OCCUPATIONAL
TAX AND ENACTING A LOCAL SERVICES TAX.

WHEREAS, by Act 32 of 2008, the Pennsylvania General Assembly authorized municipalities to levy and collect a Local Services Tax on the wages, salaries, commissions and/or other compensation of employees working within the municipality pursuant to the Pennsylvania Local Tax Enabling Act.

WHEREAS, the *Borough of Cochranton of Crawford County* desires to enact a new ordinance authorizing the levy and collection of the Local Services Tax at a rate of \$52.00 per year in a manner consistent with the governing authority of the Local Tax Enabling Act, as amended by Act 32 of 2008, and as otherwise amended.

WHEREAS, it is intended that this Ordinance shall repeal and replace the existing levy of the Occupational Tax under terms consistent with the current law and does not levy a new tax.

NOW, THEREFORE, be it ordained by the *Borough of Cochranton of Crawford County* and it is hereby ordained by and with the authority of same as follows:

Section 1. Title. The title of this Ordinance is the Cochranton Borough Local Services Tax Ordinance.

Section 2. Purpose. The purpose of this Ordinance is to repeal and replace the Ordinance 1983-3 (Occupational Tax Ordinance) and for the levy of the Local Services Tax to meet the existing requirements of the Local Tax Enabling Act as it has been and may be further amended.

Section 3. Authority. This Ordinance is adopted pursuant to the authority of the Local Tax Enabling Act, Act 511 of 1965, as amended by Act 32 of 2008 and as otherwise amended, found at 53 P.S. § 6924.101, *et seq.*

Section 4. Definitions.

Borough - Cochranton Borough, its governing body and duly appointed representatives. It shall also mean political subdivision or municipality, as appropriate, in this Ordinance.

DCED - The Department of Community and Economic Development of the Commonwealth of Pennsylvania.

Earned Income - Wages, salaries, commissions, or other compensation including compensation as required to be reported to or as determined by the Department of

Revenue under Section 303 of the act known as the Tax Reform Code of 1971, and rules and regulations promulgated under that section.

Employer – A person, partnership, association, limited liability company, limited liability partnership, corporation, governmental body, agency or other entity employing one or more persons for a salary, wage, commission or other compensation, including a self-employed person. The term includes the Commonwealth, a political subdivision and an instrumentality or public authority of either. For purposes of penalties, the term includes a corporate officer.

His, Her, Its - All references to "his," "her," or "its" shall include the masculine, feminine, neutral, singular, and plural as appropriate.

Local Services Tax (or "LST") – The Local Services Tax at the rate fixed in Section 5 of this Ordinance.

Local Tax Enabling Act (or "LTEA") – Act 511 of 1965, enacted December 31, 1965, P.L. 1257, as thereafter amended, and including Act 32 adopted July 2, 2008, as thereafter amended, which Act is found at 53 P.S. § 6913 (until repealed effective June 30, 2012) and 53 P.S. § 6924.101, *et seq.*, as same may be hereafter amended.

Net Profits – The net income from the operation of a business, other than a corporation, as required to be reported to or as determined by the Department of Revenue under Section 303 of the act known as the Tax Reform Code of 1971, and rules and regulations promulgated under that section. The term does not include any:

1. Income which:
 - (i) is not paid for services provided; and
 - (ii) is in the nature of earnings from an investment.
2. Income which represents:
 - (i) any gain in the sale of farm machinery;
 - (ii) any gain on the sale of livestock held twelve (12) months or more for draft, breeding or dairy purposes; and
 - (iii) any gain on the sale of other capital assets of a farm.

Occupation - Any trade, profession, business, or undertaking of any type, kind, or character, including services, domestic or other, earned on or performed within the corporate limits of the Borough for which compensation is charged or received; whether by means of salary, wages, commission, or fees for services rendered.

Person – A natural person engaged in any occupation, trade, or profession within the corporate limits of the Borough.

Succeeding Year – The calendar year following the tax year.

Taxpayer – A person or business required under this Ordinance to file a return or to pay a tax.

Tax Officer (or "Tax Collector") - The person(s) or entity(s) appointed to collect the LST.

Tax Year (or "Current Year") – The calendar year for which the tax is levied; January 1 through December 31.

The definitions as found in the Local Tax Enabling Act, as amended from time to time are hereby incorporated herein by reference and shall be applied in the administration and enforcement of this Ordinance.

Section 5. Levy of Local Services Tax. In accordance with the provisions of the Local Tax Enabling Act, *Cochranton Borough* hereby levies and assesses a Local Services Tax commencing January 1, 2015 upon the privilege of engaging in an occupation with a primary place of employment within the Borough during the tax year. Each person who exercises such privilege for any length of time during any Tax Year shall pay the LST for that year in the amount of \$52.00, assessed on a pro rata basis, in accordance with the provisions of this Ordinance. This LST may be used solely for the following purposes as the same may be allocated by the Borough from time to time: (a) emergency services, which shall include emergency medical services, police services, and fire services; (b) road construction and/or maintenance; (c) reduction of property taxes; or (d) property tax relief through implementation of the homestead and farmstead exclusion in accordance with 53 Pa. Cons. Stat. Chapter 85, subchapter F. The Borough shall use no less than twenty-five percent (25%) of the funds derived from the LST for emergency services. This LST is in addition to all other taxes of any kind or nature heretofore levied by the Borough.

Section 6. Local Tax Enabling Act Applicable. This LST is imposed under authority of the Local Tax Enabling Act. All provisions of the LTEA that govern the levy, administration and collection of the LST are incorporated into this Ordinance by reference as though set forth herein. Any future amendments to the LTEA that are required to be applied to the levy and collection of the LST shall automatically become part of this Ordinance upon the effective date of such amendment, without the need for formal amendment of this Ordinance, to the maximum extent allowed by law.

Section 7. Exemption and Refunds.

(a) Exemption. Any person whose total earned income and net profits from all sources within the Borough is less than twelve thousand dollars (\$12,000.00) for any calendar year in which the LST is levied is exempt from the payment of the LST for that calendar year. In addition, the following persons are exempt from payment of the LST:

- (i) 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%) disability.

- (ii) 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. For purposes of this subparagraph, "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.

(b) Procedure to Claim Exemption.

- (i) A person seeking to claim an exemption from the LST may annually file an exemption certificate with the Borough and with the person's employer affirming that the person reasonably expects to receive earned income and net profits from all sources within the Borough of less than twelve thousand dollars (\$12,000.00) in the calendar year for which the exemption certificate is filed. In the event the Borough utilizes a Tax Collector, it shall provide a copy of the exemption certificate to the Tax Collector. The exemption certificate shall have attached to it a copy of the employee's last pay stubs or W-2 forms from employment within the Borough for the year prior to the fiscal year for which the employee is requesting to be exempted from the LST. Upon receipt of the exemption certificate and until otherwise instructed by the Borough or except as required by subparagraph (ii) below, the employer shall not withhold the LST from the person during the calendar year or the remainder of the calendar year for which the exemption certificate applies. 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. The exemption certificate form shall be the uniform form provided by the Borough.
- (ii) With respect to a person who claimed an exemption for a given calendar year from the LST, upon notification to an employer by the person or by the Borough that the person has received earned income and net profits from all sources within the Borough equal to or in excess of twelve thousand dollars (\$12,000.00) in that calendar year or that the person is otherwise ineligible for the exemption for that calendar year, or upon employer's payment to the person of earned income within the Borough in an amount equal to or in excess of twelve thousand dollars (\$12,000.00) in that calendar year, an employer shall withhold the LST from the person pursuant to subparagraph (iii) below.
- (iii) If a person who claimed an exemption for a given calendar year from the LST becomes subject to the LST for the calendar year under

subparagraph (ii) above, the employer shall withhold the LST for the remainder of that calendar year. The employer shall withhold from the person, for the first payroll period after receipt of notification under subparagraph (ii) above, a lump sum equal to the amount of LST 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 LST 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 LST under this clause is subsequently severed in that calendar year, the person shall be liable for any outstanding balance of LST due, and the Borough may pursue collection under this Ordinance.

(iv) Except as provided in subparagraph (ii), 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 LST.

(c) Refunds. The Borough, in consultation with the Tax Collector and the DCED, shall establish procedures for the processing of refund claims for any tax paid by any person who is eligible for exemption, which procedures shall be in accord with provisions of the general municipal law relating to refunds of overpayments and interest on overpayments. 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 tax for the last quarter of the calendar year, whichever is later, shall not be subject to interest. No refunds shall be made for amounts overpaid in a calendar year that do not exceed one dollar (\$1.00): The Borough or the Tax Collector shall determine eligibility for exemption and provide refunds to exempt persons.

Section 8. Duty of Employers to Collect.

(a) Each employer within the Borough, as well as those employers situated outside the Borough but who engage in business within the Borough, is hereby charged with the duty of collecting the LST from each of his employees engaged by him or performing services for him within the Borough and making a return and payment thereof to the Tax Collector. Further, each employer is hereby authorized to deduct the LST for each employee, whether said employee is paid by salary, wage, commission, or other type of compensation and whether or not all such services are performed within the Borough.

(b) A person subject to the LST shall be assessed by the employer 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 rate of the LST 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 LST collected on each

payroll period to the nearest one-hundredth of a dollar. Collection of the LST shall be made on a payroll period basis for each payroll period in which the person is engaging in an occupation, except as provided in paragraph (d) of this section.

(c) No person shall be subject to the payment of the LST by more than one political subdivision during each payroll period.

(d) In the case of concurrent employment, an employer shall refrain from withholding the LST 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 LST withheld, and a statement from the employee that the pay statement is from the employee's principal employer and that the employee will notify other employers of a change in the principal place of employment within two weeks of its occurrence. The employee's statement shall be provided on the form approved by the DCED.

(e) The LST shall be no more than fifty-two dollars (\$52.00) on each person for each calendar year, irrespective of the number of political subdivisions within which a person may be employed. The Borough shall provide a taxpayer with a receipt of payment of the LST upon request by the taxpayer.

(f) No employer shall be held liable for failure to withhold the LST or for the payment of the withheld LST money to the Borough if the failure to withhold the LST 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 LST in an amount exceeding the amount withheld by the employer if the employer complies with the provisions of Section 7(b) of this Ordinance and this section and remits the amount so withheld in accordance with this Ordinance.

(g) Employers shall be required to remit the LST thirty (30) days after the end of each quarter of the calendar year.

Section 9. Returns. Each employer shall prepare and file a return showing a computation of the LST on forms to be supplied to the employer by the Tax Collector. If an employer fails to file the return and pay the LST, whether or not the employer makes collection thereof from salary, wages, commission, or other compensation paid to an employee, except as provided hereafter in this Ordinance, the employer shall be responsible for the payment of the LST in full as though the LST had been originally levied against the employer.

Section 10. Dates for Determining Tax Liability. In each tax year, each employer shall use his, her, or its employment records to determine the number of employees from whom such LST shall be deducted and paid over to the Tax Collector on or before the thirtieth (30th) day following the end of each calendar quarter of each such tax year.

Section 11. Self-Employed Persons. Each self-employed person who performs services of any type or kind or engages in any occupation or profession within a primary place of employment within the Borough shall be required to comply with this

Ordinance and pay the pro rata portion of the LST due to the Tax Collector on or before the thirtieth (30th) day following the end of each calendar quarter of each tax year.

Section 12. Persons Engaged in More Than One Occupation or Employed in More Than One Political Subdivision.

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

- (i) First, the political subdivision in which a person maintains his or her principal office or is principally employed;
- (ii) Second, the political subdivision in which the person resides and works if the LST is levied by that political subdivision;
- (iii) Third, the political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home.

In case of dispute, a 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.

Section 13. Non-Residents Subject to LST. All employers and self-employed persons residing or having their places of business outside of the Borough but who perform services of any type or kind or engage in any occupation or profession within the Borough do, by virtue thereof, agree to be bound by and subject themselves to the provisions, penalties, and regulations promulgated under this Ordinance with the same force and effect as though they were residents of the Borough. Further, any person engaged in an occupation within the Borough and an employee of a non-residential employer may, for purposes of this Ordinance, be considered a self-employed person, and in the event his or her tax is not paid, the Borough shall have the option of proceeding against either the employer or employee for the collection of this LST as hereinafter provided.

Section 14. Administration of LST.

(a) The Tax Collector shall be appointed by resolution of the Borough. It shall be the duty of the Tax Collector to accept and receive payments of the LST and to keep a record thereof showing the amount received from each employer or self-employed person, together with the date the LST was received.

(b) The Tax Collector is hereby charged with the administration and enforcement of this Ordinance and is hereby charged and empowered, subject to Borough approval, to proscribe, adopt, and promulgate rules and regulations relating to the administration and enforcement of this Ordinance, including provisions for examining payroll records of any

employer subject to this Ordinance, examining and correcting returns made in compliance with this Ordinance, and examining and correcting payments of the LST. Any person aggrieved by any decision of the Tax Collector has the right to appeal consistent with the Local Taxpayers Bill of Rights under Act 50 of 1998.

(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 LST due. Each employer is hereby directed and required to give the Tax Collector the means, facilities, and opportunity for such examination.

Section 15. Taxpayers Obligations. Every taxpayer who is subject to payment of the LST, and for whom full payment of the LST has not been withheld by the employer, shall, on or before April 15 of the succeeding year, make and file with the Tax Collector a return showing the amount of earned income and net profits from all sources within the Borough received during the current year, the total amount of LST due, the amount of LST that has been withheld, and the balance of LST due. At the time of filing the return, the taxpayer shall pay the Tax Collector the balance of the LST due or shall make demand for refund or credit in the case of overpayment.

Section 16. Suits for Collection.

(a) In the event that any LST under this Ordinance remains due or unpaid thirty (30) days after the due dates above set forth, the Collector may sue for the recovery of any such LST due or unpaid under this Ordinance, together with interest and penalty.

(b) If for any reason the LST is not paid when due, interest at the rate of six percent (6%) on the amount of such LST shall be calculated beginning with the due date of the LST and a penalty of five percent (5%) shall be added to the flat rate of such LST for nonpayment thereof. Where suit is brought for recovery of the LST or other appropriate remedy undertaken, the person liable therefor shall, in addition, be responsible and liable for the costs of collection, including attorneys' fees.

Section 17. Violations and Penalties. Whoever makes any false or untrue statement on any return required by this Ordinance, or whoever refuses inspection of the books, records, or accounts in his, her, or its custody and control setting forth the number of employees subject to the LST who are in his, her, or its employment, or whoever fails or refuses to file any return required by this Ordinance shall be guilty of a violation and, upon conviction thereof, shall be sentenced to pay a fine of not more than six-hundred dollars (\$600.00) and costs of prosecution, and, in default of payment of costs and fines, to imprisonment for not more than thirty (30) days. The action to enforce the penalty herein prescribed may be instituted against any person in charge of the business of any employer who failed or refused to file a return required by this Ordinance.

Section 18. Interpretation.

(a) Nothing contained in this Ordinance shall be construed to empower the Borough to levy and collect the LST on any occupation not within the taxing power of

the Borough under the Constitution or laws of the United States and the Constitution or laws of the Commonwealth of Pennsylvania.

(b) If the LST under this Ordinance shall be held by any court of competent jurisdiction to be in violation of the Constitution or laws of the United States and the Constitution or laws of the Commonwealth of Pennsylvania as to any person, the decision of the court shall not affect or impair the right to impose or collect the LST or the validity of the LST on other persons as herein provided.

Section 19. Severability. The provisions of this Ordinance are severable. If any sentence, clause, or section of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses or sections of this Ordinance. It is the intent of the Borough that this Ordinance would have been adopted without such unconstitutional, illegal, or invalid sentence, clause, or section included herein.

Section 20. Repeal. All ordinances and parts of ordinances inconsistent with this Ordinance, including Ordinance 1983-3, are hereby repealed effective January 1, 2015, and all ordinances previously adopted by or in effect in this Borough which purport to levy or assess an occupational tax, emergency and municipal services tax, or local services tax are hereby repealed and superseded by this Ordinance effective January 1, 2015, except that provisions relating to the reporting and collection of taxes imposed in tax years preceding 2015 shall, as applicable, remain in effect.

Section 21. Effective Date. This Ordinance shall be effective at the earliest possible time permitted in accordance with the applicable provisions of the laws governing this Borough and the tax hereby levied shall be effective for calendar year 2015 and each year thereafter.

THEREFORE, BE IT ORDAINED AND ENACTED, by the Mayor and Borough Council for the *Borough of Cochranon, Crawford County* this 22nd day of December, 2014.

Attest:



Daniel A. Jackson, Council President



Barbara Opatrny, Borough Manager



Mark Roche, Mayor