

**FAWN GROVE BOROUGH
YORK COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2011-3

**AN ORDINANCE ENACTING AND LEVYING A LOCAL SERVICES TAX ON
PERSONS EMPLOYED WITHIN FAWN GROVE BOROUGH, FIXING THE
RATE OF THE TAX AND EXEMPTING CERTAIN PERSONS**

WHEREAS, Fawn Grove Borough is a municipality as defined in the Local Tax Enabling Act, 53 P.S. § 6901 et. seq. (Act), being a borough; and

WHEREAS, Act 7 of 2007 authorizes boroughs to levy a local services tax and to regulate such tax; and

WHEREAS, consistent with Act 7 of 2007, Fawn Grove Borough desires to institute a local services tax, to comply with Act 7 of 2007; and

WHEREAS, Fawn Grove Borough has duly advertised notice of intention to adopt this Ordinance as required by Section 4 of the Act, 53 P.S. §6904.

NOW THEREFORE BE IT ORDAINED AND ENACTED and it is hereby ordained and enacted as follows:

SECTION 1. Title. This Ordinance shall be known as "The Fawn Grove Borough Local Services Tax Ordinance."

SECTION 2. Definitions. For purposes of this Ordinance, the following definitions shall apply:

ACT - The Local Tax Enabling Act, 53 P.S. §6901 et seq., as amended by Act 7 of 2007.

BOROUGH — Fawn Grove Borough, York County, Pennsylvania.

COLLECTION AGENT — The person or entity appointed or designated by the Borough to collect the local services tax pursuant to this Ordinance.

COMBINED RATE — The aggregate annual rate of the local services tax levied by both the Borough and Southeastern School District.

DCED — The Pennsylvania Department of Community and Economic Development.

EARNED INCOME — This term shall have the same meaning as is given in Division I of Section 13 of the Act.

EMPLOYEE — Any person who, as a result of his or her employment occupation, is subject to this Tax, or to an exemption.

NET PROFITS — This term shall have the same meaning as is given in Division I of Section 13 of the Act.

PERSON — Any employee or other person who is subject to, or exempt from, the tax imposed by this Ordinance.

PLACE OF EMPLOYMENT — The place in which the person maintains his or her principal office or is principally employed, as determined pursuant to the Local Tax Enabling Act, 53 P.S. S6901et seq., which shall be determined as of the day the Taxpayer first becomes subject to the tax during any calendar year.

RESERVE COMPONENT OF THE ARMED FORCES - The United States Army, Navy, Marine Corps, Coast Guard, or Air Force Reserve or the Pennsylvania Army or Air National Guard.

TAX — The local services tax adopted and levied by this Ordinance.

TAXPAYER — Any person who is subject to the tax imposed by this Ordinance.

SECTION 3. Amount of Tax. Fawn Grove Borough hereby enacts and levies the Tax in the amount of Forty-Two Dollars (\$42.00) per year on each Person whose Place Of Employment is located within the Borough.

SECTION 4. Calendar Year. This Tax shall be imposed on a calendar year basis.

SECTION 5. Priority of Claims. In the event that any Person is engaged in more than one occupation, that is, concurrent employment, or in an occupation which requires him or her to work in more than one political subdivision during the calendar year, then the priority of claims to collect this Tax shall be in the following order: First, the political subdivision in which the person maintains his or her principal office or is principally employed; second, the political subdivision in which the person resides and works, if such Tax is levied by that political subdivision; and third the political subdivision in which the Person is employed and which imposes the Tax nearest in miles to the person's home.

SECTION 6. Overpayments and Refunds.

- A. It is the intent of this Ordinance that no Person shall pay the Borough more than Forty-Two Dollars (\$42.00) on this Tax in any calendar year. In the event that, prior to his or her employment in the Borough in any calendar year, an Employee has previously paid a local services tax in any other political subdivision, then the employer shall refrain from withholding the Tax, so long as the Employee provides a recent pay statement from a principal employer whether within or outside of the Commonwealth 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 that the Employee will notify other employers of a change in the principal Place of Employment within two (2) weeks of its occurrence. Forms for such notification shall be the same as those prepared by DCED, as required by Section 2(f)(9)(v) of the Act. It shall be the responsibility of the employer and Employee to provide such form properly completed to the Borough or its Collection Agent.

- B. In the event that a Person's employer within the Borough withholds this Tax, and the Person has previously paid a local services tax in another political subdivision pursuant to this Section, then, upon written request of the Taxpayer, pursuant to regulations adopted by the Borough pursuant to Section 2(f)(9)(vii) of the Act, the Borough or its Collection Agent shall refund such overpayment, except that the Borough shall only be required to provide refunds for overpaid amounts that exceed One Dollar (\$1.00). Refunds made within seventy-five (75) days of the refund request or within 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 last, shall not be subject to interest. The amount of the refund shall be limited to the amount of any local services tax paid by the Taxpayer in another political subdivision, but in no event shall exceed the amount of this Tax fixed by the Borough for the calendar year in which the refund was sought.

- C. In the event that a Person has in any calendar year previously paid a local services tax in another political subdivision, but such Tax was less than \$42.00 then the Taxpayer shall be liable for the difference between the Tax actually paid in the other political subdivision and the amount due for this Tax to the Borough.

- D. The provisions of Section 6 shall not apply to any local services tax paid to the Southeastern School District.

SECTION 7. Exemptions.

- A. The following Persons shall be exempt from the Tax:
- I. Any Person whose total Earned Income and Net Profits is less than \$12,000 in the calendar year in which the Tax is levied.
 2. 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, if, as a result of military service, the Person is blind, paraplegic, or a double or triple amputee, or has a service-connected disability declared by the United States Veterans' Administration or its successor to be one hundred percent (100%) permanent disability.
 3. 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.
- B. A Person seeking exemption from the Tax pursuant to this Section may annually file an exemption certificate with the Borough and with his or her employer affirming that he or she reasonably expects to receive Earned Income and Net Profits from all sources 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 the Employee's last pay stubs or W-2 forms from employment within the Borough for the year prior to the year for which the exemption is requested. Upon receipt of the exemption certificate and until notified otherwise by the Borough, the employer shall not withhold the Tax from the Person for the calendar year, or the remainder of the calendar year, for which the exemption certificate applies. The exemption certificate shall be on a form prepared by DCED, pursuant to section 2(e)(1) of the Act.
- c. For any Person who claims an exemption pursuant to this Section, 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 \$12,000 in that calendar year, or that the Person is otherwise ineligible for the exemption for that calendar year, or upon an employer's payment to the person of Earned Income within the Borough of \$12,000 or more in that calendar year, the employer shall withhold the Tax from the Person for the remainder of the calendar year, and shall withhold from the Person, for the first payroll period after receipt of the notification or after the Person equals or exceeds \$12,000 in Earned Income, a lump sum equal to the amount of the Tax not previously withheld in the current calendar year due to the exemption, plus the per payroll amount due for that first payroll period. The amount of

Tax withheld per payroll period for the remaining payroll periods in the calendar year shall be the same amount withheld for other employees.

SECTION 8. Duties of Employers and Withholding of Tax. It shall be the duty of every employer within the Borough, or every employer of a Person whose Place Of Employment as defined in this Ordinance is the Borough, to collect this Tax from and on behalf of each such Person whose Place Of Employment is the Borough from the Employee in a manner set forth in Section 2(f)(9)(i) of the Act, which is by a pro rata share of the Tax for each payroll period in which the Employee is engaging in an occupation. The pro rata share of the Tax assessed on a Person shall be determined by dividing the Combined Rate of the Tax levied for the calendar year by the number of payroll periods established by the employer for the calendar year, or, in the case of a Person who becomes employed after the beginning of the calendar year, by the number of payroll periods remaining in the calendar year. In the event that the employment of a Person is subsequently severed, the Person shall be liable for any outstanding balance of the Tax due to the Borough for that calendar year, which the Borough may collect as permitted by law.

SECTION 9. Collection Agent. The Borough hereby designates the York Adams Tax Collection Bureau as its Collection Agent for this Tax. The York Adams Tax Collection Bureau's current mailing address is: 1405 North Duke Street, P.O. Box 15627, York, PA 17405-0156. This section may be amended from time to time by Resolution.

SECTION 10. Remission of Tax and Liability.

- A. It shall be the responsibility of every employer of every Taxpayer whose place of employment is in the Borough to collect and remit said taxes to the Borough's Collection Agent no later than thirty (30) days after the end of each quarter of a calendar year. Nothing in this Section or this Ordinance is intended, or shall be construed, to relieve any Taxpayer whose place of employment is the Borough from the responsibility and liability for the payment of this Tax. In the event that any such Taxpayer's employment fails to collect or remit such Tax to the Borough or its Collection Agent, then it shall be the responsibility of the Taxpayer to do so.
- B. Notwithstanding the provisions of this Ordinance, 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 the Tax 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. An employer shall also not be liable for payment of the Tax in an amount exceeding the amount withheld by the employer if the employer complies with the provisions of sections 2, 2(e) and 2(f)(9) of the Act.

SECTION 11. Permitted Uses of Tax. The Borough Council shall, in their sole discretion, determine the use of the revenues generated by this Tax, except that the use shall be limited to one or more of the following purposes and amounts:

- A. Emergency services, which shall include emergency medical, police and/or fire services; Provided that at least twenty-five percent (25%) of the funds derived from the Tax shall be used for this purpose.
- B. Road construction and/or maintenance;
- C. Reduction in property taxes;
- D. Property tax relief in the event that the Borough implements a homestead and farmstead exclusion in accordance with 53 Pa. C.S. Chapter 85 subchapter F (relating to homestead property exclusion), and Section 22.6 of the Act;
- E. Any other uses permitted by law.

SECTION 12. Penalties, Enforcement and Collection Actions.

- A. Subject to the limitations of Section 11, and of the Act, any Person, Employee, employer, partnership, corporation, or any other entity, which violates any of the provisions of this Ordinance shall commit a summary offense, and, upon conviction thereof by a Magisterial District Judge (formerly known as District Justice), shall be subject to a fine of up to One Thousand Dollars (\$1,000.00) for each Tax which is due pursuant to this Ordinance, together with the Tax and costs of collection, including reasonable attorney's fees and court costs.
- B. In addition to the penalties in subsection A, the Borough and its Collection Agent shall be entitled to any and all civil remedies available by law for the collection of such Tax, and shall be entitled to all costs of collection, including reasonable attorney's fees and court costs, as approved by the Borough from time to time by Resolution.
- C. The Borough and its Collection Agent are further authorized to collect this Tax by any other lawful means available to them, whether in law or equity. The Borough specifically authorizes its Collection Agent to act on its behalf and as its agent to collect all such taxes pursuant to this Section and this Ordinance, and to initiate and prosecute on its behalf any summary criminal actions pursuant to subsection A, and any other legal actions for remedies as authorized in Section B.
- D. If for any reason the Tax is not paid when due, interest at the rate of 6% on the amount of such Tax shall be calculated beginning with the due date of

the tax and penalty of 5% shall be added to the flat rate of such Tax for nonpayment thereof. Where suit is brought for the recovery of this Tax or other appropriate remedy undertaken, the Person shall be liable therefore shall, in addition, be responsible and liable for the costs of collection, including reasonable attorney's fees and court costs.

SECTION 13. Severability. In the event that any portion or provision of this Ordinance, or of the Act to which this Ordinance relates, is deemed or determined by a court of competent jurisdiction to be invalid, or is stricken, then the remainder of this Ordinance shall remain in full force and effect as if that invalid or stricken portion or provision were not part of this Ordinance.

SECTION 14. Repealer. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 15. Effective Date. The Tax imposed by this Ordinance shall be effective on January 1, 2012 and all calendar years thereafter unless repealed or modified by Ordinance of Fawn Grove Borough Council.

ENACTED AND ORDAINED this 4th day of October, 2011.

ATTEST:

Cathy E. Herwood
Secretary

**FAWN GROVE
BOROUGH COUNCIL**

By: Gordon M. Fadden
President

Approved this 4th day of October 2011.

By: Bradley M. Frey
Mayor

