

# CHELTENHAM TOWNSHIP'S Emergency and Municipal Services Tax Rules and Regulations

## **Preface**

The following rules and regulations have been prepared by Berkheimer Tax Administrator and Cheltenham Township for Cheltenham Township (local taxing district) to outline the Emergency and Municipal Services Tax and the responsibilities it places on employers and employees located within the local taxing district. This supplement is not independent and should be read in conjunction with the appropriate ordinance and/or resolution. Should there be any conflict, the statement in the ordinance and/or resolution will prevail.

## **Article I - Levy**

The Emergency and Municipal Services Tax is levied upon individuals for the privilege of engaging in an occupation in the local taxing district of the taxpayer's place of employment. Each individual who exercises such a privilege for any length of time during the tax year is liable for this tax unless the individual has previously paid the equivalent in Emergency and Municipal Services Taxes for the calendar year to another taxing district within the Commonwealth of Pennsylvania.

## **Article II - Exclusions From Definition Of Occupation**

The following activities, employment, and jobs will generally not be considered occupations under 72 Pa.C.S.A.. § 5453.201(b), and as defined in the ordinance and/or resolution:

- A. Active service in the armed forces (Soldiers' and Sailors' Civil Relief Act);
- B. Members of the religious clergy;
- C. Involuntary employment imposed by law; and
- D. Isolated employment that does not constitute a substantial exercise of the privilege of engaging in an occupation. Isolated employment means any employment that is so inconsequential or trivial that to levy a tax on the occupation would be confiscatory. Some examples include occupations performed by itinerants, election boards and traveling entertainers.

### Article III - Duties Of Employers

A. Each employer doing business within the jurisdiction of the taxing district is required to register with the Tax Collector, designated by the local taxing district by Resolution, and to deduct this tax from the compensation paid to each employee subject to tax.

B. All persons who engage in an occupation, full or part-time, within the taxing district must pay this tax including:

1. self-employed persons and individuals who work or perform an occupation within the district;
2. persons who are assigned and report to an office, warehouse, or headquarters within the district;
3. persons who have not previously paid the tax for the calendar year.

C. Employers will report the total tax due and withheld either on a form EMS-1 or on a form EMS-1S, as appropriate. Either form is to be accompanied by a list of employees from whom the tax has been withheld.

D. Although section 2 of the Local Tax Enabling Act ("LTEA"), 53 P.S. § 6902, permits taxing districts by ordinance and/or resolution to exempt from the tax any individuals who earn less than three thousand dollars (\$3,000) annually, the employer is nonetheless required to withhold the tax from all employees, except as otherwise provided. The intent of this rule is to provide that an employer will not wait until an employee has accumulated the minimum income before deducting the tax.

E. In certain situations, an employer may be unable to withhold the tax because of insufficient income, prior payment, etc. In these cases, it will be necessary for the employer to account for all employees from whom he was unable to withhold the tax by supplying the following information:

1. Name and address of employee;
2. Gross wages earned during tax period;
3. Period worked; and
4. Reason tax was not withheld.

If the above information is not submitted within thirty (30) days from date employment commences, it will be assumed that the employer's EMS- 1 or EMS-1S includes the total of all employees subject to the tax. Upon audit, if it is later determined that the employer did not

disclose the names of those individuals from whom he was unable to withhold, the employer will be held personally liable for the total tax due from these employees and any costs, penalties, and interest due. This, however, does not relieve any employee from the payment of the tax or from complying with the requirements of the ordinance and/or resolution.

#### **Article IV - Payment of the Tax**

A. The tax payments must be paid to the Tax Collector in one lump sum, not in installments, regardless of the method used for withholding by the employer. For example, if an employer decides to withhold the tax in installments and the payment is due before the entire amount is withheld, the employer must nevertheless remit the full amount to the Tax Collector.

B. No taxpayer shall be required to pay the tax in excess of the maximum rate set forth in the ordinance/resolution and/or the LTEA, plus interest, and costs for any calendar year. This, however, does not relieve the taxpayer or an employer from filing the proper returns.

#### **Article V - Due Dates; Costs for Failure to Timely File Returns**

A. Each taxpayer or employer who becomes subject to the tax or the withholding provisions of the ordinance and/or resolution shall file the required returns and pay the tax due on or before April 30, July 31, October 31 of the current year, or January 31 of the subsequent year for those persons, employed since the prior reporting period. If a taxpayer fails to file timely returns or fails to pay the tax in a timely manner, the taxpayer will also be liable for any costs incurred by the Tax Collector in collecting the delinquent tax.

B. The actual due date shall be determined as the due date that first occurs at least thirty (30) days after the taxpayer first becomes subject to the tax.

C. Returns are due on the dates indicated in the resolution and/or ordinance and in accordance with the following rules:

1. Returns mailed to the Tax Collector will be considered timely if postmarked on the date indicated on the ordinance and/or resolution.
2. When the date occurs on a Saturday, a holiday, or a Sunday, the returns are due the next business day.

## **Article VI - Employers Not Subject To Withholding**

A. The tax is applicable to employees of the state and federal government or their agencies, commissions, and so on, even though their employers may not be required to withhold the tax.

B. All individuals whose employers are not subject to the withholding requirements will be considered self-employed and will pay the tax on an individual basis in accordance with Article VII of the regulations.

## **Article VII - Self-Employed Persons**

A. All persons who engage in an occupation, full or part-time, within the district must pay this tax including:

1. self-employed persons and individuals who work or perform an occupation within the district;
2. persons who are assigned and report to an office, warehouse, or headquarters located within the district.

B. Taxpayers whose employers do not withhold the tax or who are self-employed must complete form EMS-3 and return Tax Collector's copy on or before April 30 if working on or before April 1 and within 30 days after the quarters ending June 30, September 30 and December 31 for those who begin work during those quarters.

C. Self-employed individuals will report their tax on form EMS-3. For the purposes of these regulations, self-employed persons will include self-employed federal employees, people whose employer is not subject to the withholding requirements, and domestic employees.

D. All self-employed persons subject to the tax must register with the tax administrator within ten (10) days after they initiate an occupation in the district.

## **Article VIII - Employers And Self-Employed Individuals Whose Business Is Outside The Taxing District**

A. The tax can be imposed only upon individuals who are engaged in occupations within the geographical boundaries of the district. The place of employment shall be determined as of the first day that an individual becomes subject to the tax during the calendar year.

B. Persons in transit such as field men and salespersons will be liable for the tax if they perform any portion of their services within the district.

If the headquarters are located within the taxing district and the employee may perform some portion of their services outside of the taxing district, they are taxable provided they report into the headquarters for assignments.

If the employee does not report into the headquarters located in the taxing district, but receives his assignments via telephone or mail, the employee is exempt from the tax.

If the headquarters of the employer where the employees' payroll checks are prepared is within the taxing district but the employees work at another location outside the district, they are also exempt from the tax.

C. Exemption from the tax is granted to any person who is liable and has already paid Emergency and Municipal Services Taxes totaling the maximum rate set forth in the LTEA for the same calendar year to another taxing district in Pennsylvania prior to his becoming subject to this tax.

D. Where a person is engaged in more than one occupation, or an occupation that requires his working in more than one political subdivision during the calendar year, the priority of claim to collect such tax shall be in the following order: first, the political subdivision in which the person maintains his principal office or is principally employed; second, the political subdivision in which the person resides and works, if such a tax is levied by that political subdivision; third, the political subdivision in which the person is employed and which imposes the tax nearest in miles to the person's home.

## **Article IX - Claims For Exemption and Refund**

A. Claims arising from the earnings exemption shall be processed according to the following rules:

1. Claims will be accepted only after the close of the calendar year in which the earnings are represented to be less than the minimum stated in the appropriate ordinance and/or resolution.
2. Such claims must be presented within twelve (12) months following the year tax was due.
3. The claim must be prepared on a form designated by the Tax Collector and must be accompanied by a true copy of the claimant's Federal Income Tax Return together with the applicable Federal forms W-2 and any other certification required by the Tax Collector or his deputies.
4. In event the claimant is not required to file a Federal Income Tax Return, any other certification desired by the Tax Collector must be submitted before any refund will be made.

B. Claims for refunds of taxes erroneously withheld or paid must be filed in writing with the Tax Collector within three (3) years from the date the tax was erroneously withheld or paid or from the date the tax was due, whichever is later.

C. The burden of proof of earnings or prior payment is on the taxpayer and must be submitted to the satisfaction of the Tax Collector. In case of dispute, a tax 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.

D. The minimum income exclusion is not restricted to the taxpayer's earnings in this district. It applies to the total earnings in all taxing districts during the calendar year.

#### **Article X - Additional Regulations And Rules**

The Tax Collector, as Emergency and Municipal Services Tax Collector, reserves the right to issue additional regulations and rules as circumstances demand and to interpret these rules and regulations based on each individual case with the consent and permission of Cheltenham Township.

#### **Article XI - Forms And Copies Of Regulations, Ordinances, And/Or Resolutions**

A. All necessary forms, except for the EMS-2 form that employers must also complete, will be supplied by the Tax Collector upon request.

B. Failure to receive copies of forms, regulations, ordinances, resolutions, and so on does not relieve any person or employer from his obligation to pay the tax and/or file the required forms.

C. All payments and reports must be made on properly executed forms as required by this office, unless written authorization is given for use of alternative forms.

D. All payments and inquiries are to be referred to the Tax Collector.

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