FRANKLIN TOWNSHIP
ORDINANCE NO. 2015-06

AN ORDINANCE OF FRANKLIN TOWNSHIP, CARBON COUNTY, PENNSYLVANIA, REPEALING ORDINANCE NO. 39, AND ENACTING AN ORDINANCE TO BE KNOWN AS THE LOCAL SERVICES TAX. SAID ORDER TO BE EFFECTIVE JANUARY 1, 2016.

WHEREAS, the Commonwealth of Pennsylvania adopted Act, No. 7 of 2007 which provided for the repeal of Occupational Privilege Tax by providing for a Local Services Tax; and,

WHEREAS, the Franklin Township, in order to comply with Act No. 7 of 2007, must repeal its existing Occupational Privilege Tax and replace the same with a Local Services Tax consistent with Act No. 7 of 2007.

BE IT ENACTED AND ORDAINED by the Franklin Township, Carbon County, Pennsylvania, by virtue of the power and authority vested in said Franklin Township as follows:

SECTION 1. TITLE.

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

SECTION 2. AUTHORITY.

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

SECTION 3. 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 4. 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 or language clearly indicates or requires a different meaning:

POLITICAL SUBDIVISION - The area within the corporate limits of Franklin Township.

COLLECTOR - The person, public employee or private agency designated by the political subdivision to collect and administer the tax herein imposed.

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

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 INCLUDING, however, wages or compensation paid to individuals on active military 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, limited liability corporation, limited liability partnership, corporation, governmental body, agency or 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 genders.

INDIVIDUAL - Any person, male or female, engaged in any occupation, trade or profession within the corporate limits of the political subdivision.

NET PROFITS - The net income from the operation of a business, profession, or other activity, (except form 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. 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 instrument 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, earned on or performed within the corporate limits of the political subdivision for which compensation is charged or received; whether by means of salary, wages, commission or fees 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, United the Pennsylvania Arm National Guard or the Pennsylvania Air National Guard.

TAX - The local service tax at the rate fixed in Section 5 of this article.

TAX YEAR - The period from January 1st until December 31st in any year; a calendar year.

SECTION 5. LEVY OF TAX.

The Franklin Township hereby levies and imposes on every individual engaging in an occupation with the jurisdictional limits of the Franklin Township tax in the amount of fifty-two dollars ($52.00) per annum, beginning the first day of January 2016 and continuing on a calendar basis annually thereafter, until modified o repealed by subsequent ordinance. This tax may be used solely for the following purposes as the same may be allocated by the Franklin Township from time to time: (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; or (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). The political subdivision shall use no less than twenty-five percent (25%) of the funds derived from the tax for emergency services. This tax is in addition to all other taxes of any kind or nature heretofore levied by the political subdivision. The tax 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.

SECTION 6. EXEMPTION AND REFUNDS.

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

(1) 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 the United States Veterans' Administration or its successor to be total one hundred percent (100%) 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. For the 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, United the Pennsylvania Arm National Guard or the Pennsylvania Air National Guard.

B. Procedure to Claim Exemption.

(1) A person seeking to claim an exemption from the local services tax may annually file an exemption certificate with the political subdivision and with the person's employer affirming that the person reasonably expects to receive income and net profits from all sources within the political subdivision of less than twelve thousand dollars ($12,000.00) in the calendar year for which the exemption certificate is filed. In the event the political subdivision utilizes a tax collection officer, it shall provide a copy of the exemption certificate to that officer. The exemption certificate shall have attached to it a copy of all the employee's last pay stubs or W-2 forms from employment within the political subdivision for the year propr to the fiscal year for which the employee is requesting to be exempted from the tax. Upon receipt fo the exemption certificate and until otherwise instructed by the political subdivision or except as required by clause (2), the employer shall not withhold the tax 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 political subdivision.

(2) With respect to a person who claimed an exemption for a given calendar year from the tax, upon notification to an employer by the person or by the political subdivision that the person has received earned income and net profits from all sources within the political subdivision 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 tax exemption for that calendar year, or upon an employer's payment to the person of earned income within the municipality in an amount equal to or in excess of twelve thousand dollars ($12,000.00) in that calendar year, an employer shall withhold the local services tax from the person under clause (3).

(3) If a person who claimed an exemption for a given calendar year from the tax becomes subject to the tax for the calendar year under clause (2), the employer shall withhold the tax for the remainder of that calendar year. The employer shall withhold form the person, for the first payroll period after receipt of the notification under clause (2), a lump sum equal to the amount of tax 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 tax 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 tax under this clause is subsequently severed in that calendar year, the person shall be liable for any outstanding balance of tax due, and the political subdivision may pursue collection under this article.

(4) Except as provided in clause (2), 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 local services tax.

C. Refunds. The Franklin Township, in consultation with the Collector and 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 accordance with provision 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 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 New Garden Township or the Collector shall determine eligibility for exemptions and provide refunds to exempt persons.

SECTION 7. DUTY OF EMPLOYERS TO COLLECT.

A. Each employer within the political subdivision, as well as those employers situated outside the political subdivision but who engage in business within the political subdivision, is hereby charged with the duty of collecting tax from each of his employees engaged by him or performing for him within the political subdivision and making a return and payment thereof to the Collector. Further, each employer is hereby authorized to deduct this tax for each employee in his or her employment, whether said employee is paid by salary, wage or commission and whether or not all such services are performed within the political subdivision.

B. A person subject to the tax 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 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 (1/100) of a dollar. Collection of the tax 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. For purposes of this paragraph, combined rate shall mean the aggregate annual rate of the tax levied by the school district and the municipality.

C. No person shall be subject to the payment of the local services tax by more than one political subdivision during each payroll period.

D. In the case of concurrent employment, an employer shall refrain from withholding the tax 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 tax withheld and 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 (2) weeks of its occurrence. The employee's statement shall be provided on the form approved by DCED.

E. The tax 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 political subdivision shall provide a taxpayer a receipt of payment upon request by the taxpayer.

F. No employer shall be held liable for failure to withhold the tax or for the payment of the withheld tax money to the 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. Further, an employer shall not be liable for payment of the local services tax in an amount exceeding the amount withheld by the employer if the employer complies with the provisions of paragraph B of section 6 of this article and this section and remits the amount so withheld in accordance with this article.

G. Employers shall be required to remit the local services taxes thirty days after the end of each quarter of a calendar year.

SECTION 8. RETURNS.

Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied to the employer by the Collector. If an employer fails to file the return, and pay the tax, whether or not the employer makes collection thereof from the salar, wages or commissions paid by him or her to an employee, except as provided hereafter in this article, the employer shall be responsible for the payment of the tax in full as though the tax had been originally levied against the employer.

SECTION 9. DATES FOR DETERMINING TAX LIABILITY AND PAYMENT.

Each employer shall use his employment and payroll records from the first day of January to March 31st 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 30th of the same calendar year. Supplemental reports shall be made by each employer on July 30th, October 30th and January 31st for new employees as reflected on his employment and payroll records from April 1st to June 30th, July 1st to September 30th and October 1st to December 31st, and payments on these supplemental reports shall be made on July 30th, October 30th and January 31st, respectively.

SECTION 10. SELF-EMPLOYED INDIVIDUALS.

Each self-employed individual who has earned income or realizes net profit, as those terms are defined herein, within the political subdivision shall be required to comply with this article and pay the tax due to the Collector on or before the thirtieth day following the end of each quarter.

SECTION 11. INDIVIDUALS ENGAGED IN MORE THAN ONE OCCUPATION OR EMPLOYED IN MORE THAN ONE POLITICAL SUBDIVISION.

A. 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. In the event a person is engaged

in more than one occupation, that is, concurrent employment, or an occupation which requires the person working in more than one political subdivision during a payroll period, the priority of claim to collect the local services tax shall be in the following order:

(1) First, the political subdivision in which a person maintains his or her principal office or is principally employed;

(2) Second, the political subdivision in which the person resides and works if the tax is levied by that political subdivision;

(3) 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 tax receipt of the taxing authority for that calendar year declaring that the taxpayer has made prior payment to all other political subdivisions.

SECTION 12. NONRESIDENTS SUBJECT TO TAX.

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

SECTION 13. ADMINISTRATION OF TAX.

A. 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 fo the tax paid to individuals and employers.

B. The Collector is hereby charged with the administration and enforcement fo this article and is hereby charged and empowered, subject to municipal approval, to proscribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this article, including provisions for the examination of 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 persons

aggrieved by any decision of the Collector shall have the right to appeal to the Court of Common Pleas of Carbon County after exhausting any administrative remedies, as in other cases provided.

C. 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 14. SUITS FOR COLLECTION.

A. In the event that any tax under this article remains due or unpaid thirty (30) days after the due dates above set forth, the 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 six percent (6%) on the amount of such tax shall be calculated beginning with the due date of the tax and a penalty of five percent (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 individual liable thereof shall, in addition, be responsible and liable for the costs of collection.

SECTION 15. VIOLATIONS AND PENALTIES.

Whoever makes any false or untrue statement on any return required by this article, or whoever refuses inspection of the books, records or accounts in his or her custody and control setting forth the number of employees subject to this tax who are in his or her employment, whoever fails or refuses to file any return required by this article 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 such fine and costs, 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 shall have failed or who refuses to file a return required by this article.

SECTION 16. INTERPRETATION.

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

B. If the tax hereby imposes 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 of the laws of the Commonwealth of Pennsylvania as to any individual, the decision of the court shall not affect or impair the right to impose or collect said tax or the validity of the tax so imposed on other persons or individuals as herein provided.

SECTION 17.

Except as set forth hereafter, all ordinances or parts of ordinances inconsistent herewith are hereby repealed. Nothing herein shall be construed to repeal the imposition and collection of an occupation privilege tax, plus applicable penalties and interest, for the calendar year 2015 and all prior calendar years, or of an emergency and municipal services tax, plus applicable penalties and interest, for calendar years 2015 and 2016, as the same exist prior to this amendment.

SECTION 18.

This Ordinance shall become effective in accordance with applicable law, with the repeal of previous Occupational Privilege and Emergency and Municipal Services Tax Ordinances, effective January 1, 2016.

SECTION 19.

This Ordinance shall take effect immediately.

ORDINANCE AND ENACTED this 20 day of October, 2015.

FRANKLIN TOWNSHIP

By: _____
Chairman

_____
Vice Chairman

_____
Member

ATTEST: (SEAL)

_____
Secretary