ORDINANCE NO. 549 OF 2011

LOCAL SERVICES TAX ORDINANCE (LST)

AN ORDINANCE OF BENTLEYVILLE BOROUGH, WASHINGTON COUNTY, PENNSYLVANIA, LEVYING A LOCAL SERVICES TAX; REQUIRING EMPLOYERS TO WITHHOLD AND REMIT TAX; AND RELATED PROVISIONS.

ENACTED, by the Borough of Bentleyville, Washington County, Pennsylvania under authority of the Local Tax Enabling Act 53 P.S. § 6924.101 et seq., and other applicable law, as follows:

SECTION 1. 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:

a. **COLLECTOR** – The person, public employee or private agency approved by the Washington County Tax Collection Committee to collect and administer the tax herein imposed.

b. **DCED** – The Department of Community and Economic Development of the Commonwealth of Pennsylvania.

c. **EARNED INCOME** – The compensation required to be reported to as determined by the Pennsylvania Department of Revenue under Section 303 of the Tax Reform Code of 1971, as amended, and rules and regulations promulgated thereunder. Employee business expenses as reported to or determined by the Department of Revenue under Article III of the Tax Reform Code shall constitute allowable deductions in determining earned income. The term does not include offsets for business losses. The amount of any housing allowance provided to a member of the clergy shall not be taxable as earned income.

d. **EFFECTIVE DATE** – January 1, 2012

e. **EMPLOYER** – A person, business entity or other entity, employing one or more person for a salary, wage, commission or other compensation. The term includes the Commonwealth, a political subdivision, and an instrumentality of public authority of either. For purposes of penalties under this Ordinance, the term includes a corporate officer.

f. **HE, HIS or HIM** – Indicates the singular and plural number, as well as male, female and neuter genders.

g. **INDIVIDUAL** – Any person, male or female, engaged in any occupation, trade or profession within the corporate limits of the Borough.

h. **LOCAL TAX ENABLING ACT** – The Local Tax Enabling Act, 53 P.S. § 6924.101 et seq., and any amendments thereto.

i. **NET PROFITS** – The net income from the operation of a business, profession, or other activity, as required to be reported or determined by the Pennsylvania Department of Revenue under section 303 of the Tax Reform Code of 1971, as amended, and rules and regulations promulgated thereunder. The term does not include income under any of the following paragraphs:

(1) Income which:
  (i) is not paid for services provided.
  (ii) is in the nature of earnings from an investment.

(2) Income which represents:
  (i) any gain on the sale of farm machinery.
  (ii) any gain on the sale of livestock held for 12 months or more for draft, breeding or dairy purposes; or
  (iii) any gain on the sale of other capital assets of a farm.

j. **OCCUPATION** – Any trade, profession, business or undertaking of any kind, or character, including services, domestic or other, earned in 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.

k. **PERSON** – A natural person.

l. **POLITICAL SUBDIVISION** – Includes cities, boroughs, townships, and public school districts.

m. **TAX** – The local services tax at the rate fixed in this Ordinance.

n. **TCC** – The Washington County Tax Collection Committee.

o. **TAX YEAR** – The period from January 1 until December 31 in any calendar year.

p. **BOROUGH** – The Borough of Bentleyville, Washington County, Pennsylvania

SECTION 2. IMPOSITION OF TAX

For specific revenue purposes, an annual tax is hereby levied and assessed, commencing January 1, 2012; upon the privilege of engaging in an occupation with a primary place of employment within the Borough of Bentleyville during the tax year. Each natural person who exercises such privilege for any length of time during any tax year shall pay the tax for that year in the amount of $10.00. This tax may be used solely for the following purposes as the same may be allocated by the Borough 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 Borough shall use no less than twenty-five percent 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 Borough. The tax shall be no more than $10.00 on each person for each calendar year, irrespective of the number of political subdivisions within which a person maybe employed.

SECTION 3. EXEMPTIONS AND REFUNDS

A. Political subdivisions that levy an LST at a rate that exceeds $10 must exempt from the tax taxpayers whose total earned income and net profits from all sources within the political subdivision is less than $12,000. The Borough's rate does not exceed that amount. However, 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 by the United States Veterans' Administration or its successor to be a total one hundred percent 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, the Pennsylvania Army 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 Tax Collector. 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 Tax Collector.

(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 is no longer eligible for an exemption, 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 that calendar year. The employer shall withhold from 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.

(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 TCC, 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 accord with provisions of the general municipal law relating to refunds of overpayments and interest on overpayments. Refunds made within seventy-five 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); The

Collector shall determine eligibility for exemption and provide refunds to exempt persons.

SECTION 4. DUTY OF EMPLOYER 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 tax from each employee engaged by him or performing for him within the Borough 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 employ, whether said employee is paid by salary, wage or commission and whether or not all such services are performed within the Borough.

B. A person subject to the tax shall be assessed by the employer 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 calendar year.

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 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 weeks of its occurrence. The employee's statement shall be provided on the form approved by the DCED.

E. The tax shall be ten dollars ($10) on each person for each calendar year, irrespective of the number of political subdivisions within which a person may be employed. The Tax Collector 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 Borough 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 this Ordinance 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 5. 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 salary, 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 6. DATES FOR DETERMINING TAX LIABILITY AND PAYMENT

In each tax year, each employer shall use his or her employment records to determine the

number of employees from whom such tax shall be deducted and paid over to the Collector on or before the thirtieth day following the end of each calendar quarter of each such tax year.

SECTION 7. SELF-EMPLOYED INDIVIDUALS

Each self-employed individual 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 article and pay the tax due to the Collector on or before the thirtieth day following the end of the quarter.

SECTION 8. INDIVIDUALS ENGAGED IN MORE THAN ONE OCCUPATION OR EMPLOYED IN MORE THAN ONE POLITICAL SUBDISIVION

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 constitutes prima facie certification of payment to all other political subdivisions.

SECTION 9. NON-RESIDENTS SUBJECT TO TAX

All employers and self-employed individuals 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 article with the same force and effect as though they were residents of the Borough. Further, any individual engaged in an occupation within the Borough 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 Borough shall have the option of proceeding against either the employer or employee for the collection of this tax as hereinafter provided.

SECTION 10. ADMINISTRATION OF TAX

A. It shall be the duty of the Collector to accept and receive payments of this tax and to 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 Collector is hereby charged with the administration and enforcement of this article and is hereby charged and empowered, subject to TCC 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 person aggrieved by any decision of the Collector shall have the right to appeal consistent with the Local Taxpayers Bill of Rights under Act 50 of 1998.

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 11. SUITS FOR COLLECTION

A. In the event that any tax under this Ordinance remains due or unpaid 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 6% on the amount of such tax shall be calculated beginning with the due date of the tax and a 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 individual liable therefor shall, in addition, be responsible and liable for the costs of collection.

SECTION 12. 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, or 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 $600 and costs of prosecution, and, in default of payment of such fine and costs, to imprisonment for not more than 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 13. INTERPRETATION

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

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 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 14. SEVERABILITY

The provisions of the Ordinance shall be severable, and, if any of the provisions hereof shall be held to be invalid or unenforceable, the remaining provisions of this Ordinance shall remain in effect.

SECTION 15. COMFLICTING ORDINANCES REPEALED

All ordinances or parts of ordinances conflicting with any of the provisions of this Ordinance are hereby repealed insofar as same affect this Ordinance. Nothing herein shall be construed to repeal the imposition and collection of an occupation privilege tax, plus applicable penalties and interest for any prior calendar years.

SECTION 16. EFFECTIVE DATE

This Ordinance shall become effective January 1, 2012, and all calendar years thereafter unless repealed or modified by an ordinance of the Borough.

ORDAINED AND ENACTED at the duly assembled public meeting of Bentleyville Borough, this 6th day of December, 2011.

BENTLEYVILLE BOROUGH

ATTEST: BY: _____
Joseph R. Kurilko, President

_____
Sheryl M. Hreha, Secretary/Treasurer

EXAMINED AND APPROVED the day and year as set forth above.

BY: _____
Thomas Brown, Mayor

(Borough Seal)