

ORDINANCE NO. 958

AN ORDINANCE OF THE BOROUGH OF PITCAIRN
ALLEGHENY COUNTY COMMONWEALTH OF
PENNSYLVANIA AMENDING THE LOCAL SERVICES TAX
ORDINANCE TO INCREASE THE LOCAL SERVICES TAX
FROM \$26.00 PER YEAR TO ITS \$52.00 PER YEAR
MAXIMUM.

WHEREAS, on June 22, 2007, the Local Tax Enabling Act No. 511 was amended by Act 7 of 2007 to change the name of the Emergency and Municipal Services Tax to Local Services Tax, which permitted, among other things, the imposition of a \$52.00 per year tax on certain employees who have the privilege of engaging in an occupation within the Borough

WHEREAS, through passage of Ordinance 953 of 2007, the Borough of Pitcairn enacted the "LST" but chose to assess the tax at \$26.00 per person engaging in an occupation as opposed to the maximum of \$52.00 permitted by the Act.

WHEREAS, the Borough of Pitcairn believes it is in the citizens of the Borough of Pitcairn interest to increase the LST to the maximum \$52.00 amount for those certain employees covered under the act.

IT IS HEREBY ENACTED AND ORDAINED by the Borough of Pitcairn, Allegheny County, Pennsylvania, as follows:

SECTION I: The Borough of Pitcairn's Local Services Ordinance, Ordinance No 953 of 2007, is hereby amended to increase the LST assessed on those individuals covered under the terms of Act 7 of 2007 and engaging in an occupation in the Borough of Pitcairn from \$26.00 per year to \$52.00 per year and said Ordinance is hereby restated in its entirety as follows:

LOCAL SERVICES TAX

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. **POLITICAL SUBDIVISION** The area within the corporate limits of the Borough of Pitcairn

- B. MUNICIPAL TAX COLLECTOR – “Collector” means the person, public employee or private agency designated by the political subdivision to collect and administer the tax herein imposed.
- C. BOROUGH: The Borough of Pitcairn
- D. DCED The Department of Community and Economic Development of the Commonwealth of Pennsylvania.
- E. EARNED INCOME Compensation as this term is defined in Section 13 [relating to earned income taxes] of the Local Tax Enabling Act, the Act of Dec. 31, 1965, P.L. 1257, § 13, as amended, 53 P.S. § 6913, as amended.
- F. EMPLOYER An individual, partnership, association, limited liability corporation, limited liability partnership, corporation, governmental body, agency or any other entity employing one or more persons on a salary, wage, commission or other compensation basis, including a self-employed person.
- G. EXEMPTION CERTIFICATE An exemption certificate substantially in the form of the uniform certificate prescribed by the Pennsylvania Department of Community and Economic Development affirming that the person reasonably expects to receive Earned Income and/or Net Profits from all sources within the municipality of less than twelve thousand dollars (\$12,000) in the calendar year for which the Exemption Certificate is filed, which Exemption Certificate has attached to it a copy of all of the employee’s last pay stubs or W-2 forms from employment within the municipality for the year prior to the calendar year for which the employee is requesting to be exempted from the Tax. In addition to the income exemptions, provision has been made for certain military exemptions.
- H. HIS or HIM Indicates the singular and plural number, as well as male, female and neuter genders.
- I. INDIVIDUAL Any person, male or female, engaged in any occupation, trade or profession within the corporate limits of the political subdivision.
- J. LOCAL SERVICES Emergency Services; road construction and/or maintenance; reduction of property taxes; and property tax relief through implementation of a homestead and farmstead exclusion in accordance with 53 Pa.C.S. Subch. F.
- K. NET PROFITS The net income from the operation of a business, profession; or other activity, as this term is defined in Section 13 [relating to earned income taxes] of the Local Tax Enabling Act, the Act of Dec. 31, 1965, P.L. 1251, § 13, as amended, 53 P.S. § 6913, as amended.
- L. OCCUPATION Any livelihood, 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, net profits, commission or fees for services rendered.

M. PRECEDING YEAR The calendar year before the current year.

N. TAX The local services tax at the rate fixed in Paragraph 2 of this article.

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

2. Levy of tax - For specific revenue purposes, an annual tax is hereby levied and assessed, commencing January 1, 2009 and continuing on a calendar basis annually thereafter, until modified, amended, or repealed by a subsequent law and/or ordinance; upon the privilege of engaging in an occupation with a primary place of employment within the Borough of Pitcairn 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 Fifty-Two Dollars and 00/100 (\$52.00), assessed on a pro rata basis, in accordance with the provisions of this article. This tax may be used solely for the following purposes as the same may be allocated by the Borough of Pitcairn 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 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 and 00/100 (\$52.00) on each person for each calendar year, irrespective of the number of political subdivisions within which a person maybe employed.

3. 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 and 00/100 (\$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 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 political subdivision and with the person's employer affirming that the person reasonably expects to receive earned income and net profits from all sources within the political subdivision of less than Twelve Thousand Dollars and 00/100 (\$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 prior to the fiscal year for which the employee is requesting to be exempted from the tax. Upon receipt of 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 and 00/100 (\$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 and 00/100 (\$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 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, 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

- (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. Time period – Any person who has overpaid the Tax may obtain a refund by making a written application for a refund to the Collector no later than one (1) calendar year after payment of the Tax or three (3) years after the due date for payment of the Tax, whichever is later; provided that said person satisfactorily proves to the Collector that the taxpayer is entitled to the refund.

- (1) The Borough of Pitcairn, in consultation with the Municipal Tax 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 (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 and 00/100 (\$1.00): The Borough of Pitcairn or the Municipal Tax Collector shall determine eligibility for exemption and provide refunds to exempt persons.
- (2) It should be noted that incomplete refund requests will be deferred until the missing or incomplete information is provided. Refunds in the deferred status are only subject to the accrual interest.

4. Duty of employers to collect

- A. Every Employer shall, within thirty (30) days after first becoming an Employer, register with the Tax Office the Employer's name, address and such other information as the Tax Office may require. Failure to register in a timely manner does not relieve the employer of the requirements of this Ordinance.
- B. 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 the 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 Municipal Tax 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 political subdivision.

- C. Employers who withhold the tax from employee earnings, and the person responsible for the transmission of the tax by a corporate employer, shall be a fiduciary charged with all the responsibilities of a fiduciary with respect to taxes withheld, and shall be subject to all duties imposed by law on fiduciaries, including civil and criminal penalties for breach of duties.
- D. 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 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 E 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.
- E. No person shall be subject to the payment of the local services tax by more than one political subdivision during each payroll period.
- F. 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.
- G. Though the Borough of Pitcairn is assessing a tax of \$26.00, the tax shall be no more than Fifty-Two Dollars and 00/100 (\$52.00) on each person for each calendar year, irrespective of the number of political subdivisions within which a person maybe employed. The political subdivision shall provide a taxpayer a receipt of payment upon request by the taxpayer.
- H. 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 plates 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 3, sub-paragraph B of this article and this section and remits the amount so withheld in accordance with this article.

- I. 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 Local Services Tax withheld; and
 - J. 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.
 - K. Employers shall be required to remit the local services taxes thirty (30) days after the end of each quarter of a calendar year. A tax return must be filed for each calendar quarter, regardless of whether withholdings were completed or any tax liability exists.
 - L. Any Employer who discontinues business or ceases operation during the calendar year, shall within thirty (30) days after discontinuing business or ceasing operation, file the return hereinabove required and pay the Tax to the Collector
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 Municipal Tax 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.
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 Municipal Tax Collector on or before the thirtieth day following the end of each calendar quarter of each such tax year.
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 political subdivision shall be required to comply with this article and pay the pro rata portion of the tax due to the Municipal Tax Collector on or before the thirtieth day following the end of each quarter. The pro rata share of the Tax assessed on a Taxpayer for a calendar quarter shall be determined by dividing the rate of the Tax levied (\$52) for the calendar year by four.
8. **Collection of tax** -
- A. Remittances shall be made payable to the Borough of Pitcairn.
 - B. The current Borough of Pitcairn fees will be levied if a check is returned unpaid by the bank
9. **Payment under protest** -A check endorsement shall not qualify as a refund claim. The words "Paid Under Protest" handwritten, typed or otherwise placed on a taxpayer's check or money order, or the check or money order of an employer, shall not qualify as a refund claim as the words are not sufficient to appraise the Tax Collector's personnel of the

taxpayer's intent to seek a refund or of the substance of their claim, or of facts sufficient to permit the Tax Collector to undertake an investigation of the person's claim. If a court of competent jurisdiction thereafter decides that there has been overpayment to the Tax Collector, the Tax Collector shall refund the amount of the overpayment to the person who paid under protest. Refunds shall be made only pursuant to approval of the Monroeville Municipal Council.

10. Withheld taxes are held in trust-

A. Local taxes withheld from employee wages by an employer or business entity or corporation are held in trust for the taxing authority and its tax collector, even in the event of a bankruptcy; said funds withheld shall not be the "property of the bankrupt estate." Said withheld taxes shall not be commingled in the employer's general cash or other accounts.

B. (1) TRUSTEE EX MALEFICIO: One who collects the tax as agent for the taxing authority or the taxing authority's tax collector and fails to pay same over to the appointed collector for the taxing authority is a trustee ex maleficio.

(2) Businesses and Corporations must act through individuals and where such individuals are the acting and controlling officers and agents of the corporation or business, and they fail to administer the trust responsibilities, liabilities are imposed upon the individuals who are responsible for the performance of the trust duty.

(3) LIABILITIES OF CORPORATIONS AND OFFICERS: Where a corporation does not remit the tax withheld from its employees and subsequently is dissolved in bankruptcy, the corporate officers shall be held personally liable, jointly or severally, for the payment of the tax withheld.

C. The employer, the business, or the corporation shall not characterize the tax withheld simply as creating a debtor-creditor relationship between the employer, business or corporation and the Borough of Pitcairn as collector for the taxing authority. Therefore the employer, business or corporation is the conduit for its employees' tax payments. Consequently, these taxes are withheld in "express trust" or in "constructive trust" for the taxing authority and its collector of these taxes.

D. LOWEST INTERMEDIATE BALANCE TEST (L.I.B.T.): This is a judicial test which the Tax Collector will apply to ease the burden of the beneficiary (the tax collector) to trace the funds if or when a trustee commingles trust funds due to the Borough of Pitcairn with other monies in a single account. The L.I.B.T. allows trust beneficiaries to assume that trust funds are withheld last from a commingled account. Therefore the lowest intermediate balance in an account represents trust funds that have never been dissipated and which are reasonably identifiable. The Borough of Pitcairn will take the position that the Court will keep in mind a broad policy against allowing a party unilaterally to make a trust unenforceable by commingling assets. Also, in the event of a bankruptcy filing the L.I.B.T. is intended to provide a method for the Tax Collector to demonstrate that amounts of

withheld taxes were/are still in the possession of the debtor at the commencement of the case.

- E. **INTERLOCKING BUSINESS ENTITIES:** A company that maintains separate payrolls for its employees on a separate checking account or general ledger system and reported to the Tax Collector that it has withheld payroll tax from its employees shall be liable for the tax, plus penalty, plus interest, when the tax has not been remitted to the Tax Collector.

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

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 residents 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.

13. **Administration of tax**

- A. The Municipal Tax Collector shall be appointed by resolution of the political subdivision. It shall be the duty of the Municipal Tax Collector to accept and receive payments of this tax and to keep a record thereof showing the amount received by

him from each employer of self-employed person, together with the date the tax was received.

- B. The Municipal Tax Collector is hereby charged with the administration and enforcement of 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 person aggrieved by any decision of the Municipal Tax Collector shall have the right to appeal consistent with the Local Taxpayers Bill of Rights under Act 50 of 1998 (municipalities may detail their appeal processes).
- C. The Municipal 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 tax due. Each employer is hereby directed and required to give the Municipal Tax Collector the means, facilities and opportunity for such examination. Any such examination shall be conducted within this municipality or at the office where the tax return is processed.
- D. All employers who have a place of business located within the Taxing Authority shall maintain complete records of all employees for a period of six (6) years in such form as to enable the Tax Collector to determine the employers' liability to withhold for each employee, the actual amount withheld, the actual amount transmitted to the Tax Collector and such other information available to such employers as will enable the Tax Collector to carry out its responsibilities.
- E. The limitations set forth in section B. should not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:
 - (1) Where no return was filed, there shall be no limitation;
 - (2) Where the return is fraudulent, there shall be no limitation; or
 - (3) Where there is an understatement of tax liability of twenty-five (25%) or more, and not due to fraud, suit shall begin within six years.
- F. If as a result of research or investigation conducted by or on behalf of the Tax Collector, a declaration or return is found or is reasonably believed to be incorrect, the Tax Collector is authorized to assess and collect underpayments of taxes withheld at the source, or any underpayments of tax owed by any employer or taxpayer with respect to the tax. If no declaration or return has been filed and a tax is found or determined to be due, the tax actually due may be assessed and collected without the formality of obtaining a delinquent declaration or return from the employer or taxpayer.

G. HEARINGS/MEETINGS: Any person aggrieved by an assessment made by the Tax Collector may, within thirty days after receipt of notice of the assessment, appeal the assessment by forwarding a letter to the Tax Collector stating in detail why the taxpayer believes the assessment to be incorrect and including documentation to support the appellant's position. A meeting or hearing will be arranged within thirty days of the receipt of the appeal notice, unless both parties consent to a continuance. The appeal meeting or hearing may be recorded at the decision of the Tax Collector. A decision on the appeal shall be rendered by the Tax Collector within thirty days of the close of the meeting or hearing, unless both parties agree to an extension to render a determination. The person aggrieved may also properly file all applicable returns and provide all needed supporting documentation if this was not previously done by the aggrieved person. This may also permit promptly amending the assessment to the satisfaction of both parties.

H. ADMINISTRATIVE REVIEW PROCEDURE: Upon receipt of a written request for an Administrative Review (hereinafter referred to as "the Review"), the review will be scheduled within thirty (30) days from the date such request is received by the Tax Collector.

(1) The Review may be recorded at the option of the Tax Collector and the appellant may be required to provide verification that all factual information presented, including oral statements, are true, correct and complete to the best of their knowledge and belief. If a record is made of the Review, the appellant may obtain a copy of the record by paying a fee equal to 50% of all costs incurred in the preparation and transcription of the record.

(2) The purpose of the Review shall include, but not be limited to a review of all documents, data and records produced by appellant and an opportunity for appellant to explain his or her position and be heard on issues directly relating to the filing of the tax return and payment of taxes. The Tax Collector, or his authorized representative, shall have ample opportunity to make such inquiries of appellant as will enable the Tax Collector to fully understand appellant's information and documents and to make other inquiries as may be appropriate in examining and understanding appellant's position.

(3) Appellant shall file with the Tax Collector the properly completed and signed proposed tax returns for each tax year in question and such returns, along with any supporting data and documents, shall be reviewed. A reasonable effort shall be made to reach a fair and equitable accommodation with the appellant. In the event this can not be done, the Tax Collector, after a review of all the data and records submitted and of the record of the hearing, shall make such determination as he believes in his opinion to be appropriate and notify the appellant of his determination in writing, which shall be sent to the appellant at appellant's last known address by ordinary mail and which shall then become appellant's formal notice of appellant's tax liability as of the date of that determination.

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 Municipal Tax Collector may sue for the recovery of any such tax due or unpaid under this article, together with interest and penalty and costs of collection as prescribed by Ordinance No. 2374, as amended.
- 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 therefore shall, in addition, be responsible and liable for the costs of collection.
- C. The failure of a taxpayer to receive a tax return does not relieve their filing or payment responsibility.

15. **Violations and penalties** - Whoever makes any false or untrue statement on any return required by this article, or whoever fails, neglects, or refuses to make a return required, any employer who fails, neglects or refuses to register or to pay the tax deducted from employees, or fails, neglects, or refuses to deduct or withhold the tax from employees 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 Six Hundred Dollars and 00/100 (\$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.

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 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 II: 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

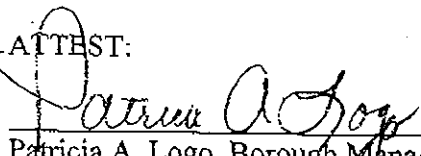
calendar year 2005 and all prior calendar years, or of an emergency and municipal services tax, plus applicable penalties and interest, for calendar years 2006 and 2007, as the same exist prior to this amendment. The amendments made by this Ordinance shall be effective with respect to the calendar year 2008 and each year thereafter.

SECTION III: All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed. The following Ordinance or parts thereof are specifically repealed;

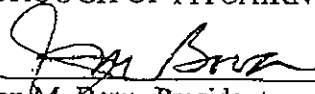
SECTION IV: If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Municipality that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

THIS ORDINANCE ORDAINED AND ENACTED BY THE COUNCIL OF THE BOROUGH OF PITCAIRN ON THIS 23 DAY OF December, 2008.

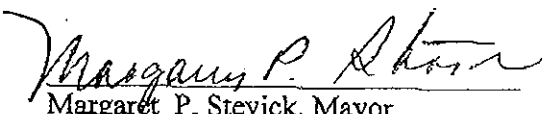
ATTEST:


Patricia A. Logo, Borough Manager

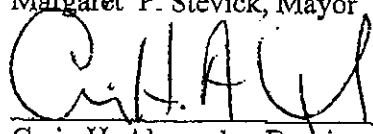
BOROUGH OF PITCAIRN:


John M. Bova, President
Pitcairn Borough Council

EXAMINED AND APPROVED by me this _____ day of _____, 2008


Margaret P. Stevick, Mayor

APPROVED AS TO FORM:


Craig H. Alexander, Esquire
Solicitor