

**EMPLOYER REPORTING INSTRUCTIONS FOR SOUTH MIDDLETON SD'S,
EMERGENCY AND MUNICIPAL SERVICES TAX (EMST)
2005 TAX YEAR**

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VERY IMPORTANT – Procedures have been added and changed with the change to EMST from OPT. Please review these instructions carefully. Pay special attention to Section 3., subsections (D) and (E) as they may have impact on your payroll software and/or procedures; and to Section 4., subsections (C) & (D), since they describe year end reports which may dictate a change to your record keeping and other procedures.

SECTION 1. BACKGROUND

Effective January 1, 2005, the Emergency and Municipal Services Tax (EMST) replaces the Occupational Privilege Tax (OPT). Like the OPT, the new tax is assessed by political subdivisions on individuals with occupations within their jurisdiction. Besides the name change, the maximum possible annual levy for this tax increased from \$10.00 to \$52.00. Because of the lateness of this legislative change you will note that the forms associated with this tax still refer to the OPT. For the 2005 and later tax years, wherever you see the words or acronym of “Occupational Privilege Tax” or “OPT” used, they are synonymous with “Emergency and Municipal Services Tax,” or “EMST”.

SECTION 2. TYPE AND AMOUNT OF TAX

The South Middleton School District’s EMST is an annual, flat **\$10.00** tax levied on individuals with an occupation within the school district.

SECTION 3. DUTY OF EMPLOYERS

(A) AUTHORITY & REQUIREMENT TO WITHHOLD THE EMST - Each employer within the South Middleton School District, as well as those employers situated outside the South Middleton School District but who engage in business within the South Middleton School District, is hereby charged with the duty of collecting from each of his employees engaged by him and performing for him within the South Middleton School District the EMS tax and making a return and payment thereof to the Tax Collector (Capital Tax Collection Bureau). Further, each employer is hereby authorized to deduct this tax from each employee performing services in these taxing jurisdictions whether such employee is paid by salary, wage, or commission. **However, the Supreme Court of Pa. found that the occupation of clergy is exempt from the EMST. Therefore, religious organizations should not withhold the EMST from clergy employees.**

(B) WHICH EMPLOYEES SHOULD HAVE THE TAX WITHHELD - A person is subject to the EMST at his/her “place of employment,” which means the actual location where the individual works. Therefore, the headquarters of the employer, and/or where the payroll checks are prepared, do not determine what EMST is due unless the employee actually works at those locations.

(C) EMPLOYEES WITH MULTIPLE WORK LOCATIONS – Where, for a single employer, an employee works at multiple work locations located in different taxing jurisdictions, such employee is subject to the EMST levied by the taxing jurisdiction of his “principle” work location. Common sense fact and circumstances should be used to determine the principle work location, such as time spent in each taxing jurisdiction and where the employee’s primary duties are performed. These factors should be grouped by each taxing jurisdiction where work is performed. For example, a mail carrier would be subject to the tax where the majority of his regular route is located – not necessarily the taxing jurisdiction where he picks up his mail in the morning. Likewise a temporary assignment of a short duration in a certain taxing jurisdiction would not subject that employee to that jurisdiction’s EMST if the employee clearly had a principle work location in another jurisdiction. An employee can have only one principle work location at a single time, but an employee can have multiple principle work locations during a calendar year. In a case where an employee changes principle work locations during a calendar year, the proper EMST amount must be withheld for each taxing jurisdiction, up to a combined maximum of \$52 in any one calendar year.

(D) AMOUNT AND TIMING OF WITHHOLDINGS FROM SUBJECT EMPLOYEES – The employer is required to withhold South Middleton School District’s entire \$10 EMST from subject employees, with the only exceptions listed below in subsections (E) & (F). Failure to do so makes the employer liable for the tax as if it had been levied against the employer. Because of this possibility for employer liability, it is prudent for the employer to withhold the entire amount of the tax levy as soon as possible in each calendar year.

(E) OPTIONAL MINIMUM 10% WITHHOLDING REQUIREMENT - Current EMST enabling legislation only permits taxing jurisdictions to require a “one-time” withholding of the tax. However, acknowledging that employees may be part-time, and/or that they may be hired near the end of a calendar quarter, an optional minimum withholding schedule has been established, that if followed, will relieve an employer of any liabilities for under-withholding the EMST. Where the entire EMST tax liability is not withheld, but an employer withholds EMST equal to at least of 10% of an employee’s gross wages, the employer will be considered as having met the withholding requirements.

(F) EMPLOYEES WITH MULTIPLE EMPLOYERS/OCCUPATIONS – In cases where an employee is subject to more than one EMST in a tax year due to having more than one occupation (employer or self-employment), all EMST taxes should be withheld/paid if the total of all EMST’s does not exceed \$52. If the withholding of any subsequent full EMST amount would exceed \$52 when added to prior EMST payments, a withholding adjustment of the South Middleton School District EMST’s may be necessary. Any adjustment is based on 2 factors: 1) the employee must provide proof of deduction/payment of the EMST claimed to have been previously paid (see the last paragraph in this subsection (F) for more information); and 2) which taxing jurisdiction has “priority” to the EMST. Per law, the priority of claim to collect an EMST is based on the following 4 factors with such priority going from highest (1), to lowest (4):

1. The employer where the individual first became employed in the calendar year. For the purposes of this rule, if the individual was employed with each employer on January 1 of the tax year, or initially employed on the same day at both employers, this would be a tie, so it proceeds to factor no. 2.
2. The political subdivision in which a person maintains his principal office or is principally employed. A person’s principle employment would be the one in which he earns the most.
3. The political subdivision in which a person resides & works, if such a tax is levied by that political subdivision.

4. The political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home.

Only previously paid EMST having priority over South Middleton School District's levy should be used to reduce such EMST. For example, assuming an employee provided an employer with a receipt of \$52 showing a same year EMST tax paid previously, if the taxing jurisdiction of the receipt does not have priority over the EMST of South Middleton School District then the South Middleton School District's full \$10 EMST should be withheld. To receive a refund of the \$10 overpayment, the employee should contact the taxing jurisdiction to which it had the \$52 withheld and paid. Where the claim priority of a receipt is undeterminable, it is assumed the receipt has priority claim over any "yet to be paid" EMST levy.

An employee must provide proof of a previously paid EMST for it to be even considered as an offset to withholding of another EMST. Such proof may consist of a receipted tax bill paying the tax directly to the tax collector, a "Certificate of Deduction" showing a tax withheld by another employer, or a pay stub showing an EMST has been withheld providing it shows the tax year and taxing jurisdiction, along with the amount withheld. Where an employer is offsetting an EMST due to proof of a previously paid EMST, the employer should make a copy of such proof and retain it with his payroll records for possible verification by the tax collector.

(G) DATES FOR DETERMINING TAX LIABILITY AND TRANSMITTAL OF WITHHELD EMST - Each employer shall use his employment records for each calendar quarter to determine the number of employees from whom said tax shall be deducted and paid to the Tax Collector per the following schedule:

| QUARTER | TRANSMITTAL DUE |
|----------------------------------|----------------------------------|
| 1ST (January 1 thru March 31) | April 30 of the current year |
| 2ND (April 1 thru June 30) | July 31 of the current year |
| 3RD (July 1 thru September 30) | October 31 of the current year |
| 4TH (October 1 thru December 31) | January 31 of the following year |

(H) EFFECT OF LOW INCOME EXEMPTION TO EMPLOYERS REQUIREMENT TO WITHHOLD THE EMST – The South Middleton School District does not have any "low income exemption" in their EMST ordinance.

(I) EMPLOYER WITHHOLDING & TRANSMITTAL COMMISSION – An employer may retain 1% (.01) of the taxes withheld from their employees as a collection fee, providing the tax is transmitted when due.

SECTION 4. FORMS, REPORTINGS & RETURNS

Each employer shall prepare and file (where required) the following returns (to be supplied by Capital Tax Collection Bureau).

(A) FORM EMST-2, EVIDENCE OF DEDUCTION (Not contained in this mailing) This form **MUST** be completed by an employer for **ONLY** those employees who have more than one occupation during the calendar year and request a "Certificate of Deduction". In all other cases the employer has an **OPTION** of either completing this form or preparing their own "Certificate of Deduction" for the employee. An employee's pay stub can qualify as the "Certificate of Deduction" if it clearly shows the amount and a description of the deduction. As a minimum, an employer's substitute "Certificate of Deduction" must contain the year and type of the tax, the municipality which is levying the tax, and the amount deducted (e.g., 2005 EMST, S. Middleton SD. \$10.00). An employer must continue to maintain a record of employees that have had the EMST tax withheld. However a reporting of individual

employees that have had the EMST tax withheld need not be filed with the Capital Tax Collection Bureau. Where EMST 2 forms are issued, Copy "A" should be retained by the employer for his records, and Copy "B" should be given to the employee for whom the deduction was taken. If you need a supply of EMST 2 forms contact the EMST Department at Capital Tax Collection Bureau.

(B) FORM EMST-4, WITHHOLDING TRANSMITTAL - This return is an employer's summary of tax withheld from his employees for a calendar quarter. Instructions for filing FORM EMST 4 are listed on the reverse side of this form. Since the 2005 tax year forms were ordered prior to the EMST being adopted into law, the calculation on line 2 will not always hold true. Partial deductions of the tax are possible either from the "10% Rule" (see Section 3., (E) herein) and/or offsets against the herein named taxing jurisdictions' EMST based on previously paid/deducted, EMST (see Section 3., (F) herein). If this is the case, enter the total of the tax withheld in line 2 and write the word "PARTIAL" boldly over the instructions for this line.

(C) FORM ND-1, NON-DEDUCTION - The current ND-1 form, which is the 3rd part of the OPT 4 form packet, will not be used. Due to changes in the EMST a new ND-1 Report form will be developed and supplied later in the tax year along with the new EMST-5. An employee subject to a herein named taxing jurisdiction's EMST, who does not have any, or a portion, of the \$10.00 tax withheld by his employer, must be listed on this report. This report, at a minimum will require the employee's name and SSN, the amount of the EMST not withheld, and the reason why such tax was not withheld. This new form will be filed along with the annual reconciliation form OPT-5 after the tax year. If an employer is going out of existence, and they need to file this report before year-end, contact our Bureau and one, or a useable facsimile, will be provided.

(D) FORM EMST-5 – (Not contained in this mailing) This will be a new form and procedure for tax year 2005 that will be provided to the employer later in this tax year along with a new ND-1 Report form. They may be sent to employers with our mailing for the 2006 EMST. This form will embody a worksheet to reconcile the annual total of EMST paid, adjusted by any ND-1 report totals and any employer commission taken; to the number of 2005 W-2's submitted to our Bureau for EIT purposes, multiplied by the EMST tax rate.

SECTION 5. INTEREST AND PENALTIES—OVERDUE TAX

If for any reason this tax is not paid when due, interest at the rate of six per cent (6%) per annum on the amount of said tax shall be due, beginning with the due date of said tax, and a penalty of five percent (5%) shall be added to the flat rate of said tax in addition to any interest. Where suit is brought for the recovery of this tax, the individual liable therefore shall, in addition, be responsible and liable for the costs of collection.

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| <p><u>DISCLOSURE STATEMENT:</u> You are entitled to receive a written explanation of your rights with regard to the audit, appeal, enforcement, refund and collection of local taxes by calling Capital Tax Collection Bureau's Harrisburg Division at (717) 234-3217 during the hours of 8 a.m. – 4 p.m., Monday through Thursday and 8:30 a.m. – 4 p.m., Friday.</p> |
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