

ORDINANCE NO. 2169 of 2012

AN ORDINANCE OF THE TOWNSHIP OF LONGSWAMP, BERKS COUNTY, PENNSYLVANIA, AUTHORIZING LEVYING AND ASSESSING A TEN PERCENT (10%) TAX UPON THE ADMISSION FEE OR UPON THE PRIVILEGE OF ATTENDING OR PARTICIPATING IN AMUSEMENTS; PROVIDED FOR THE ADMINISTRATION AND ENFORCEMENT OF THE ORDINANCE; AND IMPOSING PENALTIES FOR THE VIOLATIONS THEREOF.

BE IT ORDAINED AND ENACTED, by the Board of Supervisors of Longswamp Township, and it is hereby ordained and enacted pursuant to the authority granted by the Local Tax Enabling Act, the Act of December 31, 1965, P.L. 1257; 53 P.S. Section 6901, as amended, and in particular as amended by the Act of October 11, 1984, known as Act 172, hereinafter known as the "Act" as follows:

SECTION 1. This ordinance shall be known as the "Amusement Tax Ordinance of Longswamp Township." The provisions shall become effective on the first day of March, A.D. 2012, and the tax shall continue in force on a calendar year or a taxpayer fiscal year basis, without annual re-enactment, unless the rate of the tax is subsequently changed. Changes in rate become effective on the date specified in the Amending Ordinance.

SECTION 2. Definitions. The following words and phrases when used in this Ordinance shall have the following meaning ascribed to them in this section:

"Admissions" - Any and all charges, donations, contributions or monetary charges or consideration of any character made to or received or collected in any

manner from the general public or from a limited or selected number thereof as a fee for the privilege for attending, viewing, listening, and/or participating in any and all places of amusement, entertainment, athletic events, golf courses, skiing facilities and the like, including but in no way limiting the generality of the foregoing, playing in or upon, passing by or through any coin-operated machine, turnstile or device for amusement.

“Amusement”- All manner and forms of entertainment including by way of illustration and not by way of limitation all theatrical, and operatic performances, concerts, dances, skating, lectures, vaudeville, carnivals, circuses; or athletic events including bowling, boxing, wrestling, baseball, football, basketball, tennis, hockey, golf, skiing, bathing, swimming, archery, shooting, pool, billiards, riding; all forms of entertainment or amusement at fair grounds and amusement parks, in arcades and in or upon coin-operated machines or devices located therein, and all other forms of diversions, sports, recreation, pastime, shows, exhibitions, contests, displays and games and bingo operated, held or presented, indoors or outdoors, and any type of establishment or place, or for the purpose of obtaining something of value for the privilege of attending thereupon and/or of participating therein and/or engaging therein in any manner or form excepting such amusement as operated, held or presented solely for the benefit of charitable and religious organizations including volunteer or paid Firemen’s organizations, public and parochial schools, U.S. Veterans organizations, Police or Municipal Pension Funds.

“Charitable Organization”- As defined by Section 501 (c) of the Internal Revenue Code, 26 U.S.C. Section 501 (c).

“Golf Courses”- All establishments where the game or sport of golf is played, including but not limited to, 18 hole courses, 9 hole courses and par 3 courses.

“Greens Fees” - All costs of admission to golf courses.

"Itinerant Amusement" - An amusement having a proprietor who neither resides in nor has his principal place of business in Longswamp Township, and not operated, held or presented continuously the year round.

"Lift Ticket" - All costs of admission to or use of a ski facility.

"Person" - An individual or individuals, a trust, an estate, a co-partnership, joint venture, syndicate, association, club, group, pool, or corporation. Whenever the word person is used in any clause describing and imposing a penalty or penalties, it shall mean as applied to co-partnerships the partners, as applied to associations, joint ventures, syndicates, groups, pools or clubs, the members thereof and as applied to corporations, the officers thereof.

"Proprietor" - Any person owning, operating, managing or conducting an amusement.

"Refreshments, Services or Merchandise" - Does not include services directly or indirectly attributable to the amusement itself, such as maintenance of buildings, utilities, fire protection, safety precautions, restrooms, water fountains, chairs and the like.

"Skiing Facility" - All establishments where the sport or recreation activity of skiing is engaged in, including but not limited to downhill skiing facility and cross-country skiing facilities.

"Tax Collector" - The amusement, golf course, and ski facility tax collector appointed by the Township.

"Taxpayer" - Any person subject to a tax imposed by this Ordinance.

"Temporary Amusement" - An amusement having a proprietor who neither resides in nor has his principal place of business in Berks County, Pennsylvania, and which amusement is not operated, held or presented continuously the year round.

The singular shall include the plural and the masculine shall include the feminine and the neuter.

SECTION 3. Permanent and Temporary and Itinerant Amusement Permits.

1. After January 1, 2012, any person desiring to conduct or to continue to conduct any amusement within the Township shall first file with the Amusement Tax Collector an application for a permanent amusement permit or a temporary amusement permit or an itinerant amusement permit as the case may be (as hereinafter provided) and shall pay the fee for such permit required by this Section. It shall be unlawful for any person or entity to continue any activity that falls within the provision of this ordinance to continue such activity without obtaining such permit. In the case of an amusement that is to continue for longer than thirty (30) days, a permanent amusement permit shall be issued at a fee as established from time to time by resolution of Board of Supervisors. In the case of any amusement that is to continue for thirty (30) days or less, a temporary permit shall be issued at the fee in an amount as established from time to time by resolution of Board of Supervisors.

2. Permanent permits shall be valid until December 31 of the year in which issued. Temporary permits shall be valid until the last day the amusement is conducted.

3. In the case of temporary or itinerant permits, the application for such permit shall state the name and address of the property and/or facility owner, the custodian or contact person and any additional information necessary for the tax collector to identify the activity proposed.

4. Every permit shall be issued in duplicate. The original shall be given to the person applying for the permit who shall conspicuously display it at the location for which the permit was issued, and the duplicate shall be kept on file by the Amusement Tax Collector. In case of loss, defacement or destruction

of any permit, the person to whom the permit was issued, shall apply immediately to the Amusement Tax Collector who may issue a new permit for which a fee in an amount as established from time to time by resolution of Board of Supervisors shall be charged.

5. Permits obtained pursuant to this Section shall not be assignable but shall apply only to the entity who has applied for such permit. In the event any person shall seek to apply for a permit for any amusement applicable to the terms of this Ordinance shall apply for a new permit pursuant to the terms herein.

SECTIO 4. Failure to File Statement or Obtain a Permit. If any person required to collect and remit the tax imposed by this Ordinance fails to obtain a permit pursuant to Section 3 of this Ordinance or fail to file a statement and a remittance, or if the Amusement Tax Collector has reasonable cause to believe that an erroneous statement has been filed, the Amusement Tax Collector may proceed to determine the amount due to the Township and in connection therewith shall make such investigations and take such testimony and other evidence as may be necessary; provided, however, that notice and opportunity to be heard be given any person who may become liable for the amount owing prior to any determination by the Longswamp Township Amusement Tax Collector.

SECTION 5. Rules and Regulations of the Tax Collector. The Township of Longswamp shall appoint a tax collector who shall be responsible for all permitting and administration of this Ordinance. The Amusement Tax Collector shall have power to adopt rules and regulations not inconsistent with the provisions of this Ordinance for the purpose of carrying out and enforcing the payment, collection and remittance of the tax herein levied; and a copy of such rules and regulations shall be on file and available for public examination in the Amusement Tax Collector's office. Failure or refusal to

comply with any rules and regulations promulgated under this section shall be deemed a violation of this Ordinance.

SECTION 6. Collection and Recording by Tax Collector. The Amusement Tax Collector of Longswamp Township is hereby authorized and empowered to collect and receive the taxes, fines and penalties imposed by this Ordinance and to make returns of funds collected for Longswamp Township. It shall also be the Amusement Tax Collector's duty to keep a record showing the amount received by him or her and the date of receipt.

SECTION 7. Levy and Rate.

1. A tax is hereby imposed for general revenue purposes upon the privilege of attending or engaging in any amusement at the rate of ten per cent (10%) of the admission price to each and every amusement within Longswamp Township for which the individual price of admission is \$0.10 or more, which tax shall be paid by the person acquiring the privilege of attending or engaging in the amusement. The only duties of the owner of the facility where the amusement is being conducted and the party conducting the amusement shall be to acquire an amusement permit as set forth in Section 3 and to timely collect and remit the amusement tax to Longswamp Township, in accordance with the terms and provisions of this article.

2. Rate of Tax.

A. If the price is one (\$1.00) dollar or more the tax shall be collected on each admission at the rate of ten (10%) percent of each dollar of price plus the following bracket charges upon any fractional part of a dollar in excess of even dollar amounts:

- a) Zero cents to Nine cents No tax
- b) Ten cents to Nineteen cents 1 cent tax
- c) Twenty cents to Twenty-nine cents 2 cents tax

- d) Thirty cents to Thirty-nine cents 3 cents tax
- e) Forty cents to Forty-nine cents 4 cents tax
- f) Fifty cents to Fifty-nine cents 5 cents tax
- g) Sixty cents to Sixty-nine cents 6 cents tax
- h) Seventy cents to Seventy-nine cents 7 cents tax
- i) Eighty cents to Eighty-nine cents 8 cents tax
- j) Ninety cents to Ninety-nine cents 9 cents tax.

B. Where the price is not fixed or established, the tax shall be collected based upon the gross admission fee or fees collected.

C. Where the price of admission is wholly or partly included in the price paid for refreshments, services and/or merchandise, where purchase of such refreshments, services or merchandise is required as a condition for admission, the taxable price shall be deemed to be 50% of the price paid for refreshment, services and/or merchandise.

D. In the case of golf courses and/or skiing facilities, there is imposed a tax of ten (10%) percent upon admission to all golf courses and skiing facilities. The tax base upon which the tax shall be levied pursuant to the terms set forth herein shall not exceed forty (40%) percent of greens fees for golf courses and the tax base shall not exceed forty (40%) percent of the cost of the lift tickets for skiing facilities.

SECTION 8. Exemptions. Notwithstanding the imposition of the tax herein levied and imposed under Section 7 above, the following are hereby exempt from said tax but shall not be excused from applying for such amusement permit and setting for the basis for such exemption in the case of activities set forth in Section 8(1)and (2):

1. Admissions to motion picture theaters and sound motion picture theaters, having no form of live entertainment, vaudeville, or live theatrical

performance in connection therewith; such admissions being exempt in accordance with §2(10) of the Local Tax Enabling Act, 53 P.S. §6902(10).

2. The amount charged and paid for admission to any amusement sponsored by any charitable organization of the type listed in §501(c)(3) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. §501(c)(3), contributions to which are tax-deductible as charitable contributions under other provisions of said Internal Revenue Code.

3. The amount charged and paid for admission to any amusement sponsored by any arm, branch, department or agency of the United States Federal Government, Pennsylvania State government or a local government, County, school district or other political subdivision, where the proceeds collected by such organization from charges paid for admissions to such amusement go directly to said governmental organization.

4. The amount charged and paid for admission to any voluntary, live production, performance, or show. The term "voluntary" as used herein refers to and shall mean one who performs in a live production or show gratuitously and without monetary compensation therefore, including, but not limited, non-paid amateur and student performers.

5. Any person or organization claiming an exemption under one or more of the exemptions set forth herein shall have the burden of establishing his or its entitlement to such exemption. The basis for such exemption shall be clearly delineated on the amusement permit set forth in Section 3 of this Ordinance.

SECTION 9. Pro Rata Reduction of Exemption. With respect to any exemption from amusement tax by virtue of Section 8, above, if any of the proceeds from monetary charges collected for admission to such voluntary productions, performances, or shows are paid over to, or inure to the benefit of, a professional producer or performer(s) or any other producer or performer(s) involved in the production, performance, or show for which the admission charge was collected, then

only a pro rata exemption may be claimed, and the amusement tax payable shall be paid to Longswamp Township as provided in this Ordinance on a pro rata basis, to the extent of the percentage that the amount paid over to or inuring to the benefit of such paid producer or performer(s) bears to the total amount collected as admission charges to the production, performance, or show. Provided that such pro rata reduction of said exemption shall be made only in the case of a prearranged formula for the diversion or allocation of proceeds collected between the voluntary producer or performer(s) and the paid producer or performer(s).

SECTION 10. Initial Collection at Source.

1. The sponsor, by its owner, officers or producer, of any amusement, entertainment, etc., specifically set forth above, is hereby made agent of the Township of Longswamp for the collection of the amusement tax and will make payment of such amounts collected to the Tax Collector on the dates hereinafter set forth. Said payments shall be accompanied by a return on a form to be furnished by, or obtainable from, the Longswamp Township Tax Collector.

2. Subject to the next-preceding paragraph, the tax shall be calculated and payable on a calendar month basis from the first day of each month, any revenue generating activity upon which the amusement tax is imposed under the terms of this Ordinance occurs, the amusement tax on said activity occurring during such month shall be due and payable not later than the last day of the next-succeeding month.

3. Notwithstanding the preceding paragraph, in the case of any amusement:

A. Whose owner or sponsor neither resides nor maintains a permanent place of business within Longswamp Township; or

B. Upon which the Tax Collector determines collection of the amusement tax on a regular monthly basis to be unreasonably difficult as

a practical matter, then, in either of such cases, a return shall be made and the tax paid on demand of the Longswamp Township Amusement Tax Collector.

SECTION 11. Failure to Comply. Upon failure of the sponsor or person responsible for of any amusement subject to the tax set forth herein to make payment of the amounts due under this Ordinance, in addition to any other penalty set forth herein, a penalty of 5% of the total amount due shall be imposed, and the unpaid principal balance shall bear interest at the rate of 6% per annum until paid in full.

SECTION 12. Means For Recovery. The Longswamp Township Amusement Tax Collector is hereby authorized to sue for the recovery of taxes due and unpaid under this Ordinance and to enforce such judgments therein obtained as provided by law for the enforcement of judgments of like amount. Where suit is brought for the recovery of any such tax, the person liable therefore shall, in addition, be liable for the costs of collection and the penalties herein imposed.

SECTION 13. Tax Collector May Examine Books. The Longswamp Township Tax Collector is hereby authorized to inspect and examine, either in person or by representative, the books, papers and records of any sponsor of any amusement in order to ascertain the tax imposed by this Ordinance. Every such owner or producer is hereby directed and required to give to the said Tax Collector, or his or her duly authorized agent or employee, the means, facilities and opportunity for such examination and investigations as are hereby authorized.

SECTION 14. Penalties. Any person, partnership or corporation who or which has violated or permitted the violation of any provision of this Ordinance, upon being found liable therefor in a civil enforcement proceeding commenced by the Township, shall pay a judgment of not less than \$100 nor more than \$600 plus all court costs. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by a magisterial district judge. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment

pursuant to the applicable rules of civil procedure, at which time, in addition to any penalties, the violator shall be liable for any attorney's fees and costs incurred by the Township. Each day that a violation continues or each Section of this Ordinance which shall be found to have been violated shall constitute a separate violation.

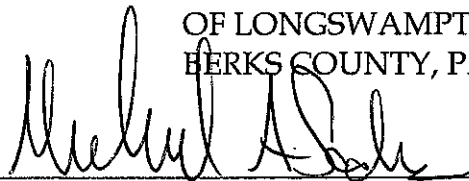
SECTION 15. Severability. The provisions of this Ordinance shall be severable, if any of the provisions hereof shall be found invalid or unenforceable, the remaining provisions of this Ordinance shall remain in effect.

SECTION 16. Repealer. All Ordinances or parts of Ordinances or Resolutions conflicting or inconsistent with any of the provisions of this Ordinance are hereby repealed insofar as same affect this Ordinance.

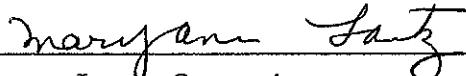
SECTION 17. Effective Date. This Ordinance shall become effective five (5) days after the date below.

ORDAINED and ENACTED as an Ordinance by the Board of Supervisors of the Township of Longswamp, Berks County, Pennsylvania, in lawful session duly assembled this 14th day of February, 2012.

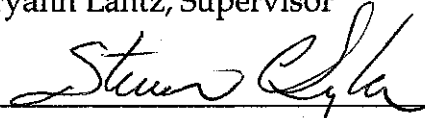
BOARD OF SUPERVISORS
OF LONGSWAMPTOWNSHIP,
BERKS COUNTY, PA



Michael A. Sacks, Chairman

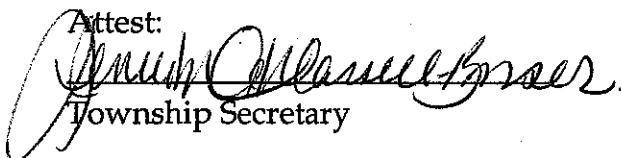


Maryann Lantz, Supervisor



Steven C. Wyka, Supervisor

Attest:



Township Secretary