

MUNICIPALITY OF MURRYSVILLE
WESTMORELAND COUNTY, PENNSYLVANIA

ORDINANCE NO. 1038 - 21

AN ORDINANCE AMENDING MURRYSVILLE CODE, CHAPTER 206, ARTICLE II, SECTION 206-10 (A) TO INCREASE THE EARNED INCOME TAX RATE FROM ONE HALF (½) OF ONE (1%) PERCENT TO UP TO ONE (1%) PERCENT, FOR TAX YEAR 2022, COMMENCING JANUARY 1, 2022 THROUGH DECEMBER 31, 2022, AND CONTINUING IN EFFECT FOR EACH YEAR THEREAFTER, UNLESS OTHERWISE REVISED BY ORDINANCE OF THE MURRYSVILLE COUNCIL. THE ORDINANCE FURTHER AUTHORIZES THE MUNICIPALITY OF MURRYSVILLE TO INITIATE A DECLARATORY JUDGMENT PROCEEDING TO MEMORIALIZE THE VALIDITY OF THIS ORDINANCE, AND ITS INCREASE IN THE EARNED INCOME TAX RATE FOR TAX YEAR 2022 AND CONTINUING IN EFFECT FROM YEAR TO YEAR THEREAFTER.

WITNESSETH:

WHEREAS, the Municipality of Murrysville is a Home Rule Charter Community. Murrysville’s existence and the extent of its authority is controlled by and subject to the provisions of the, Pennsylvania Home Rule Charter and Official Plan Law, (53 P.S. Section 2901 et.sec), including its right and power to set the rate of taxation.

WHEREAS, the Murrysville Home Rule Charter has substantially expanded the Municipality’s authority and powers under the provisions of the Pennsylvania Home Rule Charter and Optional Plans Law, (53 P.S. Section 2901 et.sec), which includes the power to determine “**rates of taxation**”, with respect to all lawful subjects of taxation (See, Home Rule Charter and Optional Plans Law summary at page 4); and

WHEREAS, the inclusion of an Earned Income Tax in the Pa Tax Enabling Act makes it a permissible “**subject of taxation**” for local municipalities under State law; and

WHEREAS, the Earned Income Tax “**rate of tax**” provided for under the Pennsylvania Tax Enabling Act is one **(1%)** percent for local municipalities such as Boroughs and Township. The Act, however, further provides for it to be equally split between a local municipality and its school district if both enact an Earned Income Tax within their common jurisdictional areas. Therefore, the Municipality of Murrysville and the Franklin Regional School District do equally split the (1%) percent tax which conforms to existing state law. The Pennsylvania Tax Enabling Act, is known as Act 511 of 1965 (53 P.S. Section 6924.101, et seq.); and

WHEREAS, the Murrysville Earned Income Tax “rate of taxation” in the Murrysville Code , Chapter 206, Article II, at Section 206-10 (A) is established at one half (½) of one (1%) percent, and is the maximum rate provided for in the Pennsylvania Tax Enabling Act after the equal split with the School District. This maximum rate was applied by Murrysville in tax year 2021, and in preceding years: and

WHEREAS, the Murrysville Home Rule Charter, Article XVIII, Budget and Fiscal Matters, Section, C-111, refers to a “tax ceiling” on Murrysville taxing power; and

WHEREAS, the Murrysville Home Rule Charter tax ceiling limitation provision approved by the electorate in public referendum on the Home Rule Charter form of government and the Murrysville Home Rule Charter itself, provides in pertinent part, as follows:

§C-111. Tax Ceiling

In fixing the rate of any municipal tax which may be now or hereafter authorized by law, Council shall abide by the limits established by the General Assembly for Townships of the Second Class. All increases in property tax rates must be approved by the electorate or by an affirmative vote of six councilmembers; and

WHEREAS, the Charter tax ceiling limitation, however, is in conflict with both the Pennsylvania Home Rule Charter and Official Plan Law, (53 P.S. Section 2901 et.sec), and the Pennsylvania Appellate Court case law that recognizes a “governing body” has sole authority (*not the electorate*) to set the rate of taxation for it has responsibility for balancing its budget; and

WHEREAS, Murrysville’s right and power to increase the rate of the Earned Income Tax and limitations thereon are found under Section 2962 of the Pennsylvania Home Rule Charter and Official Plan Law, (53 P.S. Section 2901 et.sec), which provides in pertinent part, as follows:

53 P. S. 2962. Limitation on municipal powers.

(b) Taxing power. Unless prohibited by the Constitution of Pennsylvania, the provisions of this subpart or any other statute or its home rule charter, a municipality which has adopted a home rule charter shall have the power and authority to enact and enforce local tax ordinances upon any subject of taxation granted by statute to the class of municipality of which it would be a member but for the adoption of a home rule charter at any rate of taxation determined by the governing body. No home rule municipality shall establish or levy a rate of taxation upon nonresidents which is greater than the rate which a municipality would have been authorized to levy on nonresidents but for the adoption of a home rule charter. The governing body shall not be subject to any limitation on the rates of taxation imposed upon residents.

(h) Levying taxes. This section does not limit or take away any right of a municipality which adopts a home rule charter from levying any tax which it had the power to levy had it not adopted a home rule charter.

(i) Establishment of rates of taxation. No provision of this subpart or any other statute shall limit a municipality which adopts a home rule charter from establishing its own rates of taxation upon all authorized subjects of taxation except those specified in subsection (a)(7).

Upon examination of the above Subsections, the following are noted in their order of significance:

First. - Subsection (i) expressly confirms Murrysville the right to set the rate of taxation, and

Second. - Subsections (h) expressly confirms earned income tax would be a valid subject of taxation, as does Subsection (b), and

Third. – Subsection (b) limitations on a municipal power contained in a Home Rule Charter are unlawful if it conflicts with Murrysville’s express right to set rates of taxation. Such a Charter limitation was disposed of by the recent Appellate Court decisions as being superseded by the express right and power of a governing body to set rates to taxation under Subjection (i) which states the Pennsylvania Home Rule Charter and Official Plan Law is the pertinent provision of the State Law that establishes that a governing body of a home rule charter municipality (i.e.; Murrysville) has the right to establish the rate of taxation, not the electorate, for it alone is responsible for balancing its annual budget as noted in recent Appellate Court cases. For this reason, the initial sentence of Section 2962 (b) concerning a limiting provision in the Charter provision as a possible limitation must yield to the Section 2962 (i) mandatory directive that Murrysville has the right and power to set the rate of taxation. Therefore, Murrysville’s Charter tax ceiling limitation is subordinated and must yield to the Subparagraph 2962(i) directive that the right and power to set the rate of taxation decisions rests solely for the governing authority of the Municipality; and

WHEREAS, the Municipality of Murrysville was informed by the Municipal Solicitor of two Appellate Court cases that address a municipality’s right and power as a Home Rule Charter Community to exceed a tax rate limitation contained in its Charter.

Specifically, the Pennsylvania Supreme Court and Commonwealth Courts have rejected attempts to limit the exclusive right of a governing body to set the rate of taxation in the following Appellate Court decisions:

- In re: Allegheny County Drink Tax Referendum pursuant to Ordinance No. 24-08 OR Voter Referendum Petition filed August 5, 2008, 981 A.2d 163, 602 Pa.569; and
- Musewicz v Cordaro, 925 S.2d 172, ___ Pa, ____ (2007) decided by a three judge Commonwealth Court panel that was cited in the Supreme Court decision; and
- In re: City of Lebanon Home Rule Charter. Appeal of Carl and Abigail Jarboe, 2010 WL. 9518784, a 2010 unreported panel decision is cited for its persuasive value, but not as binding precedent.

In the Allegheny County Drink Tax Referendum case, the pertinent points in this 2008 Pa. Supreme Court case include the following:

- Parties in the Allegheny County Drink Tax appeal were the County and Voter Referendum Petitioner , Sean Connolly Casey, with more than 40,000 registered voters, that proposed a rate cap of one half of one percent (.5%).
- The Referendum question proposed by each of the parties was rejected by the Allegheny County Board of Elections which was upheld by the Allegheny County Court and the Commonwealth Court.
- The Supreme Court’s decision sustained the rejection of both Referendum questions. A fair reading of the decision is that:
 - (1) The City Council had exclusive authority to set the rate of the drink tax, and thus a voter referendum was merely advisory and could not be placed on the ballot; and
 - (2) The City Council’s ordinance to place county referendum question on ballot was impermissible delegation of legislative authority.

WHEREAS, the Supreme Court decision makes clear that a governing body alone has the exclusive authority, not the electorate, to set the rate of taxation by reason of its status as a home rule charter community; and

WHEREAS, the Commonwealth Court’s decision in Musewicz v Cordaro, 925 A.2d 172, ___ Pa, ____ (2007) by a three judge panel, was cited in the Supreme Court decision. The Musewicz case involved Lackawanna County’s intention to exceed its “real estate” millage rate cap contained in its Home Rule Charter without benefit of a Referendum question approval.

WHEREAS, the Musewicz case holding at 925 A.2d 172, (___ Pa ___) is that the Home Rule Charter and Optional Plans Law prohibited limitations on fixing of tax rates on residents, and thus superseded the Lackawanna County's Charter limitation. Specifically, under Subsection 2962 (i) the right and power of a home rule charter community to establish the rate of taxation, supersedes a Subsection 2962 (b) home rule charter rate of tax limitation

WHEREAS, Real estate taxes are a regressive and unsustainable method of taxation to fund municipal operations for the residents of the Municipality because the assessed value of property has grown at a rate disproportionate to the increase in the cost of delivery of services to the community; and

WHEREAS, the Municipality of Murrysville has relied upon year over year growth in its Earned Income Tax to cover its annual budgets as real estate tax revenues have continued to be stagnant in recent years; and

WHEREAS, The Municipality of Murrysville shall need to increase the Earned Income Tax rate for Tax Year 2022, in order balance its annual budget for Tax Year 2022; and

WHEREAS, Murrysville's anticipated Tax Year 2022 budget shortfall compels this Ordinance to be enacted at this time, so as to afford sufficient lead time to memorialize the validity of this Ordinance and its increase in Earned Income Tax for Tax Year 2022 to insure a significant reduction in all budget categories, both discretionary and non-discretionary expenditures, which the governing body has determined shall result in an undue adverse impact to the general health, welfare and safety of the residents of the Municipality of Murrysville does not occur; and

WHEREAS, the Municipal Solicitor upon review of aforesaid Appellate Court decisions has concluded that the legal precedent contained therein would similarly apply to the tax ceiling limitation contained in the Murrysville Home Rule Charter. Further, the enactment of this Ordinance for an increase in the Earned Income Tax for Tax Year 2022, in conjunction with the filing of a timely Declaratory Judgement Proceeding in the Court of Common Pleas of

Westmoreland County, Pa. would be a prudent course of action to affirm the validity of this Ordinance and the increase in the Earned Income Tax for Tax Year 2022; and

WHEREAS, the Municipality of Murrysville, in reliance upon the Opinion of the Municipal Solicitor, conditioned as aforesaid, and based upon Murrysville's compelling need to balance its Tax Year 2022 budget in the face of stagnant real estate revenue, shall proceed to enact this Earned Income Tax amendment of Murrysville Code , Chapter 206, Article II, at Section 206-10 (A) to increase the annual earned income tax rate from ½ of one (1%) percent to up to (1%) percent commencing, January 1, 2022 and ending December 31, 2022, for said tax year and each year thereafter, unless otherwise revised by Ordinance.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING PREMISES, BE IT ORDAINED AND ENACTED, AND IT IS HEREBY ORDAINED AND ENACTED, by the Council of the Municipality of Murrysville, under and pursuant to its authority and status as a Home Rule Charter community, its Home Rule Charter, and the overarching authority vested in the Murrysville Council as its governing body under Home Rule Charter and Optional Plans Law, the legal precedent of the abovementioned Appellate Court cases decided pertaining thereto, and its consideration and reliance upon all of the matters set forth in the foregoing premises, does herein set forth the terms and conditions of this authorization (i) amending the Murrysville Code to increase the Earned Income Tax income tax rate for Tax Year 2022, etc., and for (ii) a contemporaneous filing of a Declaratory Judgement proceeding to memorialize the validity of this Ordinance, and its increase in the Earned Income Tax rate for Tax Year 2022, and continuing in effect from year to year thereafter, as follows:

Section 1. The Municipality of Murrysville declares that during Tax Year 2020, the Murrysville Administrative Staff (i) has altered and/or delayed undertaking municipal projects and purchases, and (ii) has carefully managed budgeted expenditures, allocations of funds and reserves so as to avoid a tax increase in Tax Year 2021.

Section 2. The Municipality of Murrysville herein further declares, as follows:

- A. Real estate tax assessment appeals continue to increase in number each year.
- B. The collective effect of same is stagnation in Murrysville's residential and commercial real estate tax assessment base of existing properties located in the Municipality.
- C. The Municipality of Murrysville has relied upon increases in its Earned Income Tax to cover its annual budgets as real estate tax revenues have continued to stagnate in recent years.

Section 3. The Murrysville Council by its enactment of this Ordinance has determined a reduction in all budget categories, both discretionary and/or non-discretionary expenditures, shall result in an undue adverse impact to the general health, welfare and safety of the residents of the Municipality of Murrysville which can be avoided by a modest increase in the Earned Income Tax

Section 4. The Municipality of Murrysville declares the anticipated Tax Year 2022 annual budget shall be unable to be funded without an increase in Murrysville's share of the Earned Income Tax Rate of up to 1% for Tax Year 2022

Section 5. The Municipality of Murrysville shall increase its overall tax revenues by an increase in the Earned Income Tax rate for Tax Year 2022, in order to balance its annual budget for Tax Year 2022. The Municipality's enactment of this Ordinance No. 1038-21 at this time, serves to afford sufficient lead time to memorialize the validity of this Ordinance and the increase in the Earned Income Tax rate for Tax Year 2022, notwithstanding the above mentioned Charter Tax Ceiling limitations contained in the Murrysville Home Charter.

Section 6. The Municipality of Murrysville herein amends MURRYSVILLE CODE, CHAPTER 206, ARTICLE II, SECTION 206-10 (A) to increase THE EARNED INCOME TAX RATE from one half (½) of one (1%) percent to up to (1%) percent, for Tax Year 2022, commencing January 1, 2022 through December 31, 2022, and continuing in effect for each year thereafter, unless otherwise revised by Ordinance of the Murrysville Council, **PROVIDED FURTHER, HOWEVER, as follows:**

- A. It is expressly understood, agreed and prescribed that the prevailing rate of one half (½) of one (1%) percent shall continue to remain in force for all of Tax Year 2021.
- B. Murrysville Code Section 206-10 (A) shall reflect the text of the above mentioned tax increase for Tax Year 2022, and the continuation of the current prevailing rate for Tax Year 2021.
- C. That NO PORTION of the Earned Income Tax “increase” by the Municipality of Murrysville shall be shared with the Franklin Regional School District for Tax Year 2022, or any subsequent years.
- D. The Franklin Regional School Districts annual share of the Earned Income Tax shall remain at one half (½) of one (1%) percent in Tax Year 2021, Tax Year 2022, and each year thereafter.
- E. If all or any part of Ordinance No. 1038-21 and/or the increase in the annual Earned Income Tax rate of up to (1%) is determined to be invalid and of no legal force and effect, the Municipality of Murrysville herein expressly preserves and reserves its right and power to receive at a minimum the current prevailing rate of one half (½) of one (1%) percent for Tax Year 2022 and thereafter, or in the alternative , to receive the maximum allowable amount as may be so determined by Court as a valid exercise of the Murrysville Council’s (governing body) right and power to establish the Earned Income rate of taxation for Tax Year 2022, and each year thereafter until otherwise revised by Ordinance.

Section 7. Enactment of this Ordinance No. 1038-21 for an increase in the Earned Income Tax for Tax Year 2022, shall be in conjunction with the filing of a Declaratory Judgement proceeding in the Court of Common Pleas of Westmoreland County, Pa. which is herein authorized to affirm the validity of this Ordinance and the increase in the Earned Income Tax for Tax Year 2022.

Section 8. The effective date of this Ordinance No. 1038 – 21 is its date of enactment for purposes of vesting jurisdiction in the Westmoreland County Court of Common Pleas for its consideration of a Declaratory Judgment proceeding

initialed by the Municipality of Murrysville, or for an aggrieved resident with standing as a party in any such proceeding.

Section 9. The effective date(s) for payment of up to 1% tax due dates to the Tax Collector of the Murrysville Earned Income Tax for Tax Year 2022, the administrative and collection process for same, as well as all other provisions of the Murrysville Code, Chapter 206, and Article II, at Section 206-8 through and including Section 206-15 are preserved but of the abovementioned increase in the rate of tax

THIS ORDINANCE ORDAINED AND ENACTED AT A REGULARLY CONSTITUTED DULY CONVENEED MEETING OF THE COUNCIL OF THE MUNICIPALITY OF MURRYSVILLE, THIS _____ DAY OF _____, 2021.

COUNCIL OF THE MUNICIPALITY OF MURRYSVILLE

Dayne F. Dice, Council President

ATTEST:

James R. Morrison, Municipal Secretary

(SEAL)

APPROVED/REJECTED:

Regis J. Synan, Mayor

Dated: _____, 2021