

**EMPLOYER REPORTING INSTRUCTIONS FOR SWATARA  
TWP.'S  
**EMERGENCY AND MUNICIPAL SERVICES TAX (EMST)**  
**2007 TAX YEAR****

**DIRECT PAYMENTS TO:**  
CAPITAL TAX COLLECTION  
BUREAU  
CENTRAL DAUPHIN DIVISION  
PO BOX 6477  
HARRISBURG PA 17112-0477

**DIRECT NON-PAYMENTS TO:**  
CAPITAL TAX COLLECTION  
BUREAU  
CENTRAL DAUPHIN DIVISION  
425 PRINCE ST  
HARRISBURG PA 17109-1734

PHONE (717) 545-2791  
FAX (717) 545-3028

WEBSITE – [WWW.CAPTAX.COM](http://WWW.CAPTAX.COM)  
E-MAIL – [CAPTAX@CAPTAX.COM](mailto:CAPTAX@CAPTAX.COM)

**IMPORTANT** – This mailing contains EMST information and forms for both the 2007 and 2006 tax years. The EMST-4 Forms enclosed are for the 2007 tax year. The EMST-5 and ND-1 Forms enclosed are for the 2006 tax year. These instructions contain information for both the 2007 and 2006 tax years.

**SECTION 1. BACKGROUND**

The Emergency and Municipal Services Tax (EMST) replaced the Occupational Privilege Tax (OPT) in the 2005 tax year. Like the OPT, the new tax is assessed by political subdivisions on individuals with occupations within their jurisdiction. 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 Township of Swatara’s EMST is an annual, flat \$52.00 tax levied individuals with an occupation within the Township.

**SECTION 3. DUTY OF EMPLOYERS**

**(A) AUTHORITY & REQUIREMENT TO WITHHOLD THE EMST** - Each employer within the Township of Swatara, as well as those employers situated outside the Township of Swatara but who engage in business within the Township of Swatara, is hereby charged with the duty of collecting from each of his employees engaged by him and performing for him within the Township of Swatara 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 the Township of Swatara 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 EMST must be withheld for each taxing jurisdiction, up to a maximum of \$52 in any one calendar year.

(D) AMOUNT AND TIMING OF WITHHOLDINGS FROM SUBJECT EMPLOYEES – The employer is required to withhold the Township of Swatara’s entire \$52 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 to have met the withholding requirements. However, if you are issuing a final paycheck to a departing employee, you must deduct as much of the employee’s remaining EMST liability as possible, even if such deduction would result in netting the paycheck to \$0.00. Note that this does not relieve the employee from the liability of any remaining balance due. Employers who make no deduction or deduct less than 10% of an employee’s gross pay (when pay is insufficient) are responsible for the difference between what was deducted and the employee’s full EMST liability.

(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 Swatara EMST 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 the Township of Swatara levy should be used to reduce the Swatara EMST. For example, assuming an employee provided an employer with 3 receipts, each of \$10, showing a same year EMST tax paid previously, if only the 2nd and 3rd receipt have priority over the Swatara EMST, then the combined total of those 2, or \$20, should be offset the \$52 Swatara EMST, thus deducting only \$32. To receive a refund of the overpayment, which is the employee's 1st receipt, he/she should contact the taxing jurisdiction to which it was 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:

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

(H) EFFECT OF LOW INCOME EXPEMPTION TO EMPLOYERS REQUIREMENT TO WITHHOLD THE EMST – The Township of Swatara’s EMST ordinance provides that a taxpayer may be exempted from the EMST if their “total income from all sources is less than Twelve Thousand (\$12,000.00) Dollars per annum.” Since this exemption is based on information impossible to be known by the employer or employee at the time the tax is required to be deducted, it never alleviates the employer from the withholding requirement. If your employee eventually meets this requirement, they must apply for a refund and provide appropriate earnings information to the tax collector after the close of the tax year.

(I) EMPLOYER WITHHOLDING & TRANSMITTAL COMMISSION – The 2007 EMST ordinance for Swatara Township does not permit an “employer commission” for the withholding and transmittal of their EMST.

(J) ERRONEOUS AMOUNTS WITHHELD FROM AN EMPLOYEE – Once an employer withholds an EMST and such withholding appears or will appear on any of the employee’s pay-stubs the employer should never refund an EMST back to the employee. In case of an erroneous withholding, the employee should apply for a refund from our Bureau. Our EMST refund application forms are available through our web site or by phoning our office.

**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., 2007 EMST, Swatara Twp. \$52.00). 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 the form. Some taxing jurisdictions permit the employer to retain a small percentage of the money withheld as a collection fee (if the tax is transmitted when due). If such a collection commission is allowed it will be identified on Line 3 of the Form EMST 4. Partial deductions of the tax are possible either from the "10% Rule" (see Section 3., (E) herein) and/or offsets against the Swatara 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 - An employee subject to Swatara Township's EMST who does not have any, or a portion, of the \$52.00 tax withheld by his employer must be listed on this report. The 2006 ND-1(a) & (b) forms are included in this mailing. They are on a single sheet of paper with the one side being the ND-1(a) form and the reverse side being the ND-1(b) form. The reverse side of the EMST-5 form contains instructions for the both the ND-1 (a) & (b) forms. Your 2007 tax year ND-1 forms will be mailed out in late 2007 or early 2008 with your 2008 tax year EMST-4 forms. The 2006 ND-1 form, if applicable, must be filed along with the 2006 annual employer reconciliation form EMST-5 by March 15, 2007.

(D) FORM EMST-5 – The 2006 EMST-5 Form (an 8.5 by 11 inch sheet of paper) is included in this mailing. This EMST-5 form reconciles the annual total of EMST paid, adjusted by any ND-1 report totals and any employer commission taken; to the number of same tax year W-2's submitted to our Bureau for EIT purposes, multiplied by the appropriate EMST tax rate. This form must be filed by March 15 following the tax year.

#### **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 for non-payment thereof, of 5% (.05) on the flat amount of the tax owed. 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.

<p><b><u>DISCLOSURE STATEMENT:</u></b> 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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