

Part 3

Mercantile License

Section 41. Short Title. This ordinance [Sections 41 to 53, this chapter] shall be known and may be cited as the "Mercantile License Tax Ordinance." (Ordinance 3-71, January 27, 1971, Section 1)<sup>36</sup>

Section 42. Definitions. The following words and phrases when used in this ordinance [Sections 41 to 53, this chapter] shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(a) "Person" shall mean any individual, partnership, limited partnership, association or corporation. Whenever used in any section prescribing and imposing a penalty, the term "person" as applied to associations shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

(b) "Wholesale dealer" or "wholesale vendor" shall mean any person who sells to dealers in, or vendors of, goods, wares and merchandise and to no other persons.

(c) "Retail dealer" or "retail vendor" shall mean any person who is a dealer in or vendor of goods, wares and merchandise who is not a wholesale dealer or vendor.

(d) The terms "person," "wholesale dealer," "wholesale vendor," "retail dealer," and "retail vendor" shall not include nonprofit corporations organized for religious, charitable or educational purposes, any association organized for such purposes, agencies of the Government of the United States or of the Commonwealth of Pennsylvania, or any person vending or disposing of articles of his own growth, production or manufacture for shipment or delivery from the place of growth, production or manufacture thereof.

(e) "License year" shall mean the twelve-month period beginning the first day of April in each and every year.

(f) "Gross volume of business" shall include both cash and credit transactions.

(g) "Tax Collector" shall mean the Tax Collector of Spring Garden Township, or his designated agent.

(h) "Temporary, seasonal or itinerant business" shall mean any business that is conducted at one location for less than sixty (60) consecutive days.

(Ordinance 3-71, January 27, 1971, Section 2)

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36. Section 7(e) of this ordinance was repealed by Section 1 of Ordinance 20; Section 14 repealed all inconsistent ordinances and parts of ordinances; Section 15 provided that the ordinance take effect April 1, 1971.

37 to 39. Deleted.

Section 43. Levy and Collection of Tax. For the license year 1971,<sup>40</sup> Spring Garden Township hereby imposes an annual mercantile license tax in the manner and at the rates hereinafter set forth:<sup>41</sup> (Ordinance 3-71, January 27, 1971, Section 3)

Section 44. Licenses. For the license year beginning April 1, 1971, and for each license year thereafter, every person desiring to continue to engage in, or hereafter to begin to engage in the business of wholesale or retail vendor, or dealer in goods, wares and merchandise and any person conducting a restaurant or other place where food, drink, or refreshments are sold, whether or not the same be incidental to some other business or occupation in Spring Garden Township, shall on or before the 15th day of May, 1971, and on or before the 15th day of May for each license year thereafter, or prior to commencing business during such license year, procure a mercantile license for his place of business, or if more than one, for each of his places of business in the Township, from the Tax Collector as required by law. Such license shall be conspicuously posted at the place of business or each of the places of business of every person at all times.

(a) That no one to whom a license has been issued or whoever failed to obtain a license, shall solicit or peddle merchandise from a fixed location within the rights-of-way of any street, road or alley within Spring Garden Township.

(b) Anyone violating the provisions of this section shall, upon conviction before a District Magistrate, be sentenced to pay a fine of not more than fifty (\$50.00) dollars for each offense.

(Ordinance 3-71, January 27, 1971, Section 4, as amended by Ordinance 57, October 8, 1975)

Section 45. Imposition and Rate of Tax. Every person engaged in any of the following occupations or businesses in the Township shall pay an annual mercantile license tax for the license year beginning April 1, 1971, and for each license year thereafter beginning on the first day of April, at the rate set forth:

(a) Wholesale vendors or dealers in goods, wares and merchandise, at the rate of one-half of a mill (1/2) on each dollar of the volume of the annual gross business transacted by him.

(b) Retail vendors, or dealers in goods, wares and merchandise, and all persons engaged in conducting restaurants or other places where food, drink or refreshments are sold, whether or not the same be incidental to some other business or occupation, at the rate of one and one-eighth (1-1/8) mills on each dollar of the volume of the annual gross business transacted by him.

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40. See Sections 42(e), 44 and 45 of this chapter.

41. See Sections 44 to 46 of this chapter.

(c) Wholesale and retail vendors or dealers in goods, wares, merchandise, at the rate of one-half (1/2) of a mill on each dollar of the volume of the annual gross wholesale business transacted by him, and one and one-eighth (1-1/8) mills on each dollar of the volume of the annual gross retail business transacted by him.

(d) The tax imposed by this section shall not apply to the dollar volume of annual business covering the resale of goods, wares or merchandise taken by a dealer as a trade-in or part payment for other goods, wares and merchandise, except to the extent that the resale price exceeds the trade-in allowance.

(Ordinance 3-71, January 27, 1971, Section 5)

Section 46. Computation of Volume of Business.

(a) Every person subject to the payment of the tax hereby imposed<sup>42</sup> who has commenced his business at least fifteen (15) full months prior to the beginning of the license year shall compute his annual gross volume of business upon the actual gross amount of business transacted by him during the preceding calendar year.

(b) Every person subject to the payment of the tax hereby imposed who has commenced or who commences his business less than fifteen (15) full months prior to the beginning of the license year, shall compute his annual gross volume of business for such license year by multiplying by twelve the monthly average of the actual gross amount of business transacted by him during the months in the preceding calendar year he was engaged in business.

(c) Every person subject to the payment of the tax hereby imposed who commences his business less than one (1) full month prior to the end of the preceding calendar year or prior to the beginning of any license year shall compute his annual gross volume of business for such license year upon the gross volume of business transacted by him during the first month of his engaging in business multiplied by the number of months, or fractions thereof, he engages in business in the present calendar year.

(d) Every person subject to the payment of the tax hereby imposed who engages in a business temporary, seasonal or itinerant by its nature, shall compute his annual gross volume of business upon the actual gross amount of business transacted by him during the license year.

(e) The Tax Collector is hereby authorized to accept payment under protest of the amount of mercantile tax claimed by the Township in any case where the taxpayer disputes the validity or amount of the Township's claim

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42. See Sections 43 to 45 of this chapter.

for tax. If it is thereafter judicially determined by a court of competent jurisdiction that the Township has been overpaid, the amount of the overpayment shall be refunded to the taxpayer. The provisions of this section shall be applicable to cases in which the facts are similar to those in a case litigated in a court of competent jurisdiction.

(Ordinance 3-71, January 27, 1971, Section 6)

Section 47. Returns.

(a) Every return shall be made upon a form furnished by the Tax Collector. Every person making a return shall certify the correctness thereof by affidavit.

(b) Every person subject to the tax imposed by this ordinance<sup>43</sup> who commenced his business at least fifteen (15) full months prior to the beginning of any license year shall on or before the 15th day of May, file with the Tax Collector a return setting forth his name, his business and business address, and such other information as may be necessary in arriving at the actual gross amount of business transacted by him during the preceding calendar year, and the amount of the tax due.

(c) Every person subject to the tax imposed by this ordinance who has commenced his business less than fifteen (15) full months prior to the beginning of any license year shall on or before the 15th day of May, 1971,<sup>44</sup> file with the Tax Collector a return setting forth his name, his business, business address, and such other information as may be necessary in arriving at the monthly average of the actual gross amount of business transacted by him during the months in the preceding calendar year he was engaged in business and the amount of tax due.

(d) Every person subject to the tax imposed by this ordinance who commences business less than one full month prior to the end of the preceding calendar year or prior to the beginning of any license year shall within sixty (60) days from the date of commencing such business file a return with the Tax Collector setting forth his name, his business and business address, and such information as may be necessary in arriving at the actual gross amount of business transacted by him during his first month of business and the amount of the tax due.

(Ordinance 3-71, January 27, 1971, Section 7, as amended by Ordinance 20, December 31, 1974, Section 1)

Section 48. Payment. At the time of the filing of the return,<sup>45</sup> the person making the same shall pay the amount of tax shown as due thereon to the Tax Collector. (Ordinance 3-71, January 27, 1971, Section 8)

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43. Sections 41 to 53 of this chapter; see especially Sections 43 to 45.

44. See Sections 44 and 45 of this chapter.

45. See Section 47 of this chapter.

Section 49. Powers and Duties of Tax Collector.

(a) It shall be the duty of the Tax Collector to collect and receive the taxes, fines and penalties imposed by this ordinance.<sup>46</sup> It shall also be his duty to keep a record showing the amount received by him from each person paying the tax and the date of each receipt.

(b) The Tax Collector is hereby charged with the administration and enforcement of the provisions of this ordinance, and is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this ordinance, including provisions for the re-examination and correction of returns, and payments alleged or found to be incorrect, or as to which an overpayment is claimed, or found to be incorrect or found to have occurred. Any person aggrieved by any decision of the Tax Collector shall have the right to appeal to a court or courts of competent jurisdiction as in other cases provided.

(c) The Tax Collector is hereby authorized to examine the books, papers and records of any taxpayer or supposed taxpayer in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax due. Every such taxpayer, or supposed taxpayer, is hereby directed and required to give to the Tax Collector the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

(Ordinance 3-71, January 27, 1971, Section 9)

Section 50. Confidential Nature of Returns. Any information gained by the Tax Collector, or any other officer, official, agent or employe of the Township as a result of any returns, investigations, hearings, or verifications, required or authorized by this ordinance<sup>47</sup> shall be confidential except in accordance with proper judicial order or as otherwise provided by law, and divulgence of any information so gained is hereby declared to be a violation of this ordinance, which may be punishable by dismissal from office or employment. (Ordinance 3-71, January 27, 1971, Section 10)

Section 51. Suit on Collection; Penalty.

(a) The Tax Collector may sue for the recovery of taxes due and unpaid under this ordinance.<sup>48</sup>

(b) If for any reason the tax is not paid when due in each year, interest at the rate of six percent (6%) per annum on the amount of said tax, and an additional penalty of one-half of one percent (1/2 of 1%) of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid shall be added and collected. Where suit is brought for

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46. Sections 41 to 53 of this chapter.

47. Sections 41 to 53 of this chapter.

48. Sections 41 to 53 of this chapter.

the recovery of any such tax, the person liable therefor shall, in addition, be liable for the costs of collection and interest and penalties herein imposed.

(Ordinance 3-71, January 27, 1971, Section 11, as amended by Ordinance 20, December 31, 1974, Section 2)

Section 52. Fine and Penalties. Whoever makes any false or untrue statement on his return, or who refuses to permit inspection of the books, records or accounts of any business in his custody or control, when the right to make such inspection by the Tax Collector is requested, and whoever fails or refuses to file a return required by this ordinance,<sup>49</sup> and whoever fails or refuses to procure a mercantile license when so required under this ordinance<sup>50</sup> or fails to keep his license conspicuously posted at his place of business as herein required,<sup>51</sup> shall, upon conviction thereof, be sentenced to pay a fine of not more than three hundred dollars (\$300.00) and costs of prosecution, and, in default of payment of such fine and costs, to imprisonment for not more than thirty (30) days. Provided: each violation of any provision of this ordinance,<sup>52</sup> and each day the same is continued, shall be deemed a separate offense. (Ordinance 3-71, January 27, 1971, Section 12, as amended by Ordinance 20, December 31, 1974, Section 3)

Section 53. Saving and Severability Clauses.

(a) Nothing contained in this ordinance<sup>53</sup> shall be construed to empower the Township to levy and collect the taxes hereby imposed on any person, or any business, or any portion of any business not within the taxing power of the Township under the Constitution of the United States and the laws and Constitution of the Commonwealth of Pennsylvania.

(b) If the tax, or any portion thereof, imposed upon any person under the provisions of this ordinance shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United States or of the Commonwealth of Pennsylvania, the decision of the court shall not affect or impair the right to impose the taxes, or the validity of the taxes so imposed upon other persons as herein provided.

(c) The provisions of this ordinance are severable, and, if any of its provisions shall be held illegal, invalid or unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this ordinance. It is hereby declared to be the intention of the Commissioners of Spring Garden Township that this ordinance would have been adopted if such illegal, invalid or unconstitutional provisions had not been included herein.

(Ordinance 3-71, January 27, 1971, Section 13)

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49. See Sections 45 and 47 of this chapter.

50. See Section 44 of this chapter.

51. See Section 44 of this chapter.

52. Sections 41 to 53 of this chapter.

53. Sections 41 to 53 of this chapter.