

ARTICLE 343
Business Privilege and Mercantile Tax

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CROSS REFERENCES

Power to tax - see Act 511 (53 P.S. 6901 et seq.)
 Itinerant vendors - see BUS. REG. & TAX. Art. 329
 Peddlers and solicitors - see BUS. REG. & TAX. Art. 333
 Occupation Privilege Tax - see BUS. REG. & TAX. Art. 345

343.01 DEFINITIONS.

The following words and phrases, when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) "Business" means any activity carried on or exercised for gain or profit in the City, including but not limited to, the sale of merchandise or other tangible personalty or the performance of services. As to those taxpayers having a place of business within the City, "business" includes all activities carried on within the City and those carried on outside the City attributable to the place of business within the City. (Ord. 28-1993 §1. Passed 11-3-93.)
- (b) "City" means the City of York.
- (c) "License year" means the calendar year beginning January 1, 1987 and each calendar year thereafter.
- (d) "License Tax Officer" means the person authorized and empowered by Council to collect the taxes imposed hereby and to enforce the provisions of this article.
- (e) "Person" means any individual, partnership, limited partnership, association, firm or corporation. Whenever used in any clause prescribing or 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.

- (f) “Gross volume of business” means the money or money’s worth received by any vendor in, or by reason of, the sale of goods, wares, merchandise, or services rendered.
- (g) “Service” means any act or instance of helping or benefitting another for consideration.
- (h) “Taxpayer” means a person subject to the payment of the tax imposed by this article.
- (i) “Tax year” means the calendar year beginning January 1, 1987, and each calendar year thereafter.
- (j) “Treasurer” means the Treasurer of the City of York.
(Ord. 21-1987 §2. Passed 7-21-87.)

343.02 LEVY; RATE; EXEMPTIONS; BUSINESS VOLUME.

There is hereby levied for the tax year beginning January 1, 1997, a tax for general revenue purposes on the privilege of doing business as herein defined in the City.
(Ord. 14-1996. Passed 12-17-96.)

- (a) Rate and Basis of Tax. The rate of tax on every dollar of the whole or gross volume of business transacted within the territorial limits of the City shall be calculated as follows: (Ord. 21-1987 §2. Passed 7-21-87.)
 - (1) Business Privilege Tax. On receipts attributable to the performance of service, including any labor and materials entering into or becoming component parts of the service performed, the rate imposed shall be three and one-half mills or three dollars and fifty cents (\$3.50) per one thousand dollars (\$1,000) of gross volume of business. Collections of past due taxes, penalties and interest shall not be construed to levy an increase on the annual rate of the tax.
(Ord. 14-1996. Passed 12-17-96.)
 - (2) Wholesale mercantile rate. On receipts attributable to wholesale sales of merchandise, the rate imposed shall be one mill or one dollar (\$1.00) per thousand dollars (\$1,000) of gross volume of business. Collections of past due taxes, penalties and interest shall not be construed to levy an increase on the annual rate of the tax.
(Ord. 21-1987 §2. Passed 7-21-87.)
 - (3) Retail mercantile rate. On receipts attributable to retail sales of merchandise, the rate imposed shall be one and one-half mills or one dollar and fifty cents (\$1.50) per thousand dollars (\$1,000) of gross volume of business. Collections of past due taxes, penalties and interest shall not be construed to levy an increase on the annual rate of the tax.
(Ord. 27-1987 §1. Passed 10-6-87.)
- (b) Computation of Volume of Business.
 - (1) For businesses that started in the current “tax year”, the tax shall be due on April 15 of the current year and shall be based on the “gross volume of business” transacted in the first full month of operation multiplied by the number of full months that business shall be in operation for the year. If the business starts operations after April 15 of the current “tax year” that tax shall be computed in the same manner but shall not be due until the fifteenth day of the month following the first full month of operation. At the end of the year every business that started that year shall reconcile the estimated tax payment to the figure they reported on the gross receipts or sales line of their federal tax return. If the amount of the tax paid is less than the figure reported on the federal tax return, the business shall remit payment to the City within thirty days of filing their return. If the estimated amount paid is more than the figure reported on the federal tax return, the business owner shall contact the City for an adjustment.

- (2) For a business that started operations in the year preceding the current "tax year" the business shall pay its tax in the current year based on the gross receipts sales line of their federal tax return for the preceding year prorated to twelve months. The tax shall be paid in full on or before April 15 of the current "tax year".
 - (3) For a business that has been in operation one full year or more prior to the current "tax year", the tax shall be computed based on the gross volume of business transacted in the preceding "tax year" and shall be due in full on or before April 15 of the current year.
(Ord. 1-1993 §1. Passed 1-19-93.)
 - (4) Every person subject to the payment of the tax hereby imposed who engages in a business temporary, seasonal or itinerant by nature, shall compute his gross amount of business within the City from his actual gross receipts for the license year.
- (c) Persons, Business and Receipts Exempted from the Payment of Tax.
- (1) Persons and businesses. Persons employed for a wage or salary, nonprofit corporations or associations organized for religious, charitable or educational purposes, agencies of the government of the United States or of the Commonwealth of Pennsylvania and any political subdivision, or of any authority created or organized under and pursuant to any act of assembly are exempt from the provisions of this article.
 - (2) Court exemptions. No such tax shall be assessed and collected on a privilege, transaction, subject or occupation which is subject to a revenue producing State tax or license fee, and which tax or license fee has been held by the courts of Pennsylvania to be the basis for exemption from the imposition of a business privilege or mercantile tax by a municipality.
 - (3) Utilities. No such tax shall be assessed and collected on the gross receipts from utility service of any person or company whose rates of service are fixed and regulated by the Pennsylvania Public Utility Commission, or on any public utility service rendered by any such person or company or on any privilege or transaction involving the rendering of any such public utility service.
 - (4) State tax on tangible property. No such tax shall be assessed and collected on the privilege of employing such tangible property as is subject to a State tax except on sales of admission to places of amusement or on sales of other transfers of title or possession of property.
 - (5) Landlords and rental property. No such tax shall be assessed and collected on the gross receipts received as rent by a landlord or his agent.
 - (6) Production and manufacture. No such tax shall be assessed and collected on goods, articles and products or on by-products of manufacture, or on minerals, timber, natural resources and farm products, manufactured, produced or grown in the City, or on the preparation or processing thereof for use or market, or on any privilege, act or transaction related to the business of manufacturing, the production, preparation or processing of minerals, timber and natural resources or farm products, by manufacturers, by producers and by farmers with respect to the goods, articles and products of their own manufacture, production or growth, or any privilege, act or transaction relating to the business of processing by-products of manufacture, or on the transportation, loading or dumping or storage of such goods, articles or products of by-products.

- (7) Gross receipts tax or fee. No such tax or fee shall be assessed or collected on any receipts which are subject to a gross receipts tax or fee under any other ordinance of the City.
- (d) Determination of Gross or Whole Volume of Business. Gross or whole volume of business upon which the tax hereunder is computed shall include the gross consideration credited or received for or on account of sales made and/or services rendered, subject only to the following allowable deductions and exemptions:
- (1) The dollar volume of business transacted by wholesale and retail dealers derived from the resale of goods, wares and merchandise taken by any dealer as a trade-in or as part payment for other goods, wares and merchandise, except to the extent that the resale price exceeds the trade-in allowance;
 - (2) Refunds, credits or allowances given by a taxpayer to a purchaser in account of defects in goods, wares or merchandise sold, or on account of goods, wares or merchandise returned;
 - (3) Any commissions paid by a broker to another broker on account or a purchase or sales contract initiated, executed or cleared with such other broker; and
 - (4) Bad debts, where the deduction is also taken in the same year for Federal income taxation purposes.
(Ord. 21-1987 §2. Passed 7-21-87.)
- (e) Partial Exemptions. Where gross or whole volume of business in its entirety cannot be subjected to the tax imposed by this article by reason of the provisions of the Constitution of the United States, or any other provisions of law, including, but not limited to, Court decisions from Pennsylvania Courts of competent jurisdiction, only that part of the gross or whole volume of business which is properly attributable and allowable to doing business in the City shall be taxed hereunder. (Ord. 7-1993 §1. Passed 3-16-93.)
- (f) Rate When Same Tax is Imposed by Two Taxing Bodies. If any person is liable for the same tax on the same subject imposed under the Local Tax Enabling Act, 1965, December 31, P.L. 1257 (53 P.S. 6901 et seq.), to the City and one or more political subdivisions of the State, then and in that event, the tax shall be apportioned by such percentage as may be agreed upon by such political subdivisions, but, in no event shall the combined taxes of both subdivisions exceed a maximum rate of tax as fixed by such Enabling Act permitting the imposition of such taxes.
- (g) Records. The exempt or partially exempt taxpayer, to obtain the foregoing enumerated exclusions and deductions, shall keep the books and records of his business so as to show clearly, accurately and separately the amount of such sales and services which he is entitled to deduct from the gross volume of business as hereinbefore provided. (Ord. 21-1987 §2. Passed 7-21-87.)

343.03 RETURNS.

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

(b) The fact that an individual's name is signed on the return shall be prima-facie evidence that such individual is authorized to sign the return on behalf of the taxpayer. (Ord. 21-1987 §2. Passed 7-21-87.)

(c) Every person subject to the tax imposed by this article who commences business prior to the beginning of any tax year shall file a return with the License Tax Officer, setting forth his name, his business and business address and such other information as may be required by the License Tax Officer in order to determine his actual gross receipts as prescribed in Section 343.02 and the amount of the tax due by the 15th of April of every tax year.

(d) Every person subject to the tax imposed by this article who commences business subsequent to the beginning of any tax year, shall within forty days from the date of commencing such business, file a return with the License Tax Officer setting forth his name, his business and business address and such other information as may be required by the License Tax Officer in order to determine his actual gross receipts as prescribed in Section 343.02 and the amount of the tax due.

(e) Every person subject to the tax imposed by this article, who engages in a trade, occupation, business or profession, that is temporary, seasonal or itinerant in nature, shall, within seven days from the date he completes such business, file with the License Tax Officer a return setting forth his name, his business and business address and such other information as may be required by the License Tax Officer in order to determine his actual gross receipts for the period he engages in business during the license year and the amount of tax due.

(f) Any person required to file a return by this article shall attach to such return the Internal Revenue Service Schedule "C", Form 1065, or Form 1120. (Ord. 1-1990 §1. Passed 3-6-90.)

343.04 PAYMENT.

(a) The business privilege and mercantile tax levied pursuant to this article shall be due and payable without further notice or demand on the date which the taxpayer is required to file a declaration of estimated tax. (Ord. 21-1987 §2. Passed 7-21-87.)

(b) All taxes, interest and penalties imposed under the provisions of this article shall be payable to the License Tax Officer who, upon payment of the tax imposed, together with any interest and penalties due thereon, shall give to the person paying the same a receipt therefor. (Ord. 12-1988 §1. Passed 7-19-88.)

(c) The License Tax Officer is hereby authorized to accept payment under protest of the amount of business privilege and or mercantile tax claimed by the City in any case where the taxpayer disputes the validity or amount of the City's claimed tax. If it is thereafter judicially determined by a court of competent jurisdiction that the City has been overpaid, the amount of the overpayment shall be refunded to the taxpayer. The provisions of this section shall be applicable to cases clearly analogous to those in a case litigated in a court of competent jurisdiction. (Ord. 21-1987 §2. Passed 7-21-87.)

343.05 DELINQUENT INTEREST AND PENALTY.

In the event that any taxpayer is delinquent in filing his return, neglects or refuses to pay any of the tax imposed by this article, interest shall be paid upon the total amount determined by the License Tax Officer to be due from such taxpayer at the rate of one-half of one percent (1/2%) per month or fractional part thereof from the day such tax was due and payable until the day the tax is fully paid. In addition thereto, a penalty in the amount of ten percent (10%) of the amount of the tax determined to be due shall be added thereto and collected by the License Tax Officer. Such penalty shall be in addition to any other penalty imposed by this article. For purposes of this provision, the tax imposed by this article shall be deemed due and payable on April 15 of the license year; or in the case of taxpayers who file returns under Section 343.03(c), such tax shall be deemed due and payable at the time of filing the return. (Ord. 21-1987 §2. Passed 7-21-87.)

343.06 BUSINESS PRIVILEGE AND MERCANTILE LICENSE.

After the effective date of this section, any person desiring to conduct, or to continue to conduct any business, as herein defined, within the City shall file with the License Tax Officer an application for a business privilege and mercantile license. The license issued shall be conspicuously posted in the place of business for which the license is issued. In cases where more than one business is conducted, a separate license shall be issued for each business. Any taxpayer who is in default in payment due hereunder shall be refused a license until such tax is paid in full. A business privilege and mercantile license once issued, shall remain valid until the end of the tax year. Such license is not transferable with transfer of ownership of the business. The annual fee for such license shall initially be \$25.00, and may be later amended by resolution of City Council. (Ord. 25-2004. Passed 7-6-04.)

343.07 LICENSE TAX OFFICER AND TREASURER DUTIES; RECORDS; APPEALS.

(a) The License Tax Officer is charged with the duties of receiving the taxes, fines and penalties imposed by this article. (Ord. 12-1988 §1. Passed 7-19-88.)

(b) The License Tax Officer and his duly appointed deputies, under the direction of the Business Administrator, are hereby empowered to promulgate rules and regulations relating to the enforcement of this article, including provisions for the examination and correction of declarations and returns, and payments alleged or found to be incorrect, or as to which an overpayment is claimed, or found to have occurred, and charged with enforcing the provisions of this article and any rules and/or regulations promulgated pursuant hereto. (Ord. 7- 1993 §2. Passed 3-16-93.)

(c) The taxpayer shall maintain such records and books of account as shall enable him to make a true and accurate declaration and return in accordance with the provisions of the article. Such accounts and records shall disclose in detail the gross receipts and other data pertaining to the taxpayer's gross volume of business, and shall be sufficiently complete to enable the License Tax Officer or his deputies to verify all transactions. The License Tax Officer or his deputies are hereby authorized to examine the books, papers and records of any person or persons subject to or supposed to be subject to the tax imposed by this article, in order to verify the accuracy of the declaration or return made, or if no declaration or return was made, ascertain the tax due.

(d) Any person aggrieved by any decision of the License Tax Officer shall have the right to appeal to the Court of Common Pleas.
(Ord. 21-1987 §2. Passed 7-21-87.)

343.08 CONFIDENTIALITY.

Any information gained by the License Tax Officer or any other official, agent or employee of the City, as a result of any declarations, returns, investigations, hearings or verifications required or authorized by this article, shall be confidential, except in accordance with proper judicial order or as otherwise provided by law.
(Ord. 21-1987 §2. Passed 7-21-87.)

343.09 LEGAL PROCEEDINGS AUTHORIZED.

The License Tax Officer or his duly appointed deputies shall have the power in the name of the City to institute proceedings against any and all persons who violate the provisions of this article or to take any other action provided by law. (Ord. 21-1987 §2. Passed 7-21-87.)

343.10 SAVINGS AND SEVERABILITY CLAUSES.

(a) Nothing contained in this article shall be construed to empower the City 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 City under the Constitution of the United States and the laws of the Constitution of the Commonwealth of Pennsylvania.

(b) If the tax, or any portion thereof, imposed upon any person under the provisions of this article is held by any court of competent power or jurisdiction to be in violation of the Constitution of the United States or of the Commonwealth of Pennsylvania or any other provision of the law, the decisions 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 article 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 article. It is hereby declared to be the intention of the Council that this article would have been adopted if such illegal, invalid or unconstitutional provisions had not been included herein. (Ord. 21-1987 §2. Passed 7-21-87.)

343.11 ENFORCEMENT.

It shall be the duty of the Business Administrator, the License Tax Officer or any duly appointed designee to ensure the proper enforcement of the provisions of this article, and any such officer shall have the power, in the name of the City, to institute proceedings against any or all persons for the collection of any taxes or license fees or for violation of any of the provisions of this article. If such suits are by process of summary conviction, in addition to the requirements for normal service and notice and in accordance with the police powers authorized by Rule 51 of the Pennsylvania Rules of Criminal Procedure, the Business Administrator, License Tax Officer or any duly appointed designee acting within the scope of his employment may issue an immediate citation for violation of those sections for which summary criminal proceedings are authorized. (Ord. 21-1987 §2. Passed 7-21-87.)

343.12 AUTHORITY.

This article was enacted under the authority of the Local Tax Enabling Act of December 31, 1965, P.L. 1257 (53 P.S. 6901 et seq.), and the Third Class City Code, Act of June 23, 1931, P.L. 932, as amended and reenacted by Act of August 24, 1953, P.L. 1337 (53 P.S. 37403 (60)). (Ord. 21-1987 §2. Passed 7-21-87.)

343.99 PENALTY.

Whoever conducts, transacts or engages in any of the businesses subject to the tax imposed by this article, without having first secured a business privilege and mercantile license, or any person who fails to file a declaration of estimated tax or a tax return as required by the provisions of this article, or any person who willfully files a false declaration of estimated tax or a false return, shall upon summary conviction before any District Justice be fined not more than one thousand dollars (\$1,000) for any one offense, recoverable with costs, or imprisoned not more than ninety days (90 days), or both. (Ord. 1-2009. Passed 1-6-09.)