

**TOWNSHIP OF CONEWAGO**

**YORK COUNTY, PENNSYLVANIA**

**BUSINESS PRIVILEGE AND MERCANTILE TAX**

**RULES AND REGULATIONS**

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### BUSINESS PRIVILEGE AND MERCANTILE TAX

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## **BUSINESS PRIVILEGE AND MERCANTILE TAX RULES AND REGULATIONS**

These Rules and Regulations are for the purpose of the administration of the Business Privilege and Mercantile Tax. Where the Taxing District is indicated, that refers to the political subdivision enacting the tax.

1. **DEFINITIONS**

(See appropriate section of ordinance.)

2. **BUSINESS**

Carrying on or exercising for gain or profit, in the Taxing District, any trade, business, profession, vocation or commercial activity, or making sales in the Taxing District. A profession or vocation or any rendering of personal services in the Taxing District in any capacity, except as an employee of another, is Business.

3. **WHAT CONSTITUTES “DOING BUSINESS IN THE TAXING DISTRICT?”**

A. Whether or not a person carries on a taxable activity within the meaning of the Business Privilege and Mercantile Tax Act is essentially a question of fact. In general, taxable activity includes any trade, business, profession, vocation or commercial activity that is carried on in the Taxing District. The tax is imposed on any person who exercises the privilege of carrying on certain activities in the Taxing District and on any wholesale or retail vendor in goods, wares, or merchandise, and is measured by receipts received or allocable to the Taxing District.

- (1) Inter and Intra-State Business: Doing business includes any trade, business, profession, vocation or commercial activity of an interstate or intra-state character.
- (2) Residence or Domicile: A person who engages in a taxable activity in the Taxing District is subject to this tax whether or not he or she is a resident and whether or not he or she has a permanent place of business in the Taxing District.
- (3) Foreign Corporation: A foreign corporation is subject to this tax if it carries on a taxable activity in the Taxing District, whether or not it is licensed to do business in Pennsylvania.

4. **ALLOCATION OF BUSINESS DONE AND GROSS VOLUME OF BUSINESS**

A. Generally, receipts will be considered allocable to the place of business in the Taxing District if any significant aspect of the transaction arises out of the place of business located in the Taxing District.

B. Lessors of tangible personal property. Persons doing business within the Taxing District who own and hold title to tangible personal property

which is leased to others required to report the gross receipts from the rental of or license to use such property according to the following rules:

- (1) Where the original situs of the property is within the Taxing District the receipts from the tangible property leased to others are deemed to be:
    - (a) Wholly taxable receipts, if the property is delivered to lessees inside of Pennsylvania.
    - (b) Non-taxable receipts, if the property is delivered to the lessees outside of Pennsylvania.
  - (2) Where the original situs of the property is outside Pennsylvania, the receipts from the tangible personal property leased to others are deemed to be:
    - (a) Allocable receipts, if the property is delivered to the lessee within the Taxing District.
    - (b) Non-Allocable and non-taxable receipts, if the property is delivered to lessees outside the Taxing District within or without the United States.
    - (c) The term “Original Situs”, as used herein, means the place at which the property is warehoused when not leased to others and to which place the property is returned upon termination of the lease. Where there is no such established place, the term “Original Situs” shall mean the principal office of the taxpayer.
    - (d) This subsection does not apply to conditional sales of tangible personal property.
- C. Lessors of real property. Persons doing business within the Taxing District who own and hold title to real property which is leased to others and are required to report the gross receipts from the rental of all such property which is situated in the Taxing District. This subsection does not apply to conditional sale of real property. Where a lessor has no more than two rental units in his or her principal place of residence such rentals are excluded from taxable receipts provided he or she has no other rental units of realty located within the Taxing District.
- D. Place of origin and delivery outside of the Taxing District. Where the place of origin of goods, wares, and merchandise in a sales transaction is a location owned or leased by the seller outside of the Taxing District and the place of delivery is a location outside the Taxing District regularly maintained by the other party to the transaction, the receipts are non-allocable and non-taxable.

- E. Location of Vendee. Receipts from the sale of goods, wares, and merchandise delivered to a vendee located outside the Taxing District by an employee of the taxpayer who works in or from, or is attached to the Taxing District place of business of the taxpayer, is fully taxable if the vendee and place of delivery is located outside of Pennsylvania.

5. **INTERSTATE COMMERCE**

- A. General. Receipts from transactions involving more than one state are not exempt from tax, but are to be included in the tax base either in their entirety or excluded in their entirety as provided in these regulations. Transactions defined below as interstate commerce are exempt from the tax. Those which do not constitute interstate commerce are taxable in full.
- B. What Constitutes “Interstate Commerce”? Transactions will be deemed to involve interstate commerce only when they directly involve the sale, exchange or transportation of commodities between the states, the transportation of passengers between states, or the transmission of intelligence or communications between the states. The citizenship or residence of the parties to the transaction is of no significance. Where a sale transaction is involved, it is of no importance in which state title to the goods passes, or whether the goods are shipped F.O.B. one state to another.
- C. Sale and Delivery in Pennsylvania. Interstate commerce is not deemed to be involved in sales made by a Taxing District seller to customers located outside of Pennsylvania where the property is delivered directly to the purchaser or his or her agent within Pennsylvania, notwithstanding the fact that the purchaser or his or her agent intends to, and later does, transport the property to a point outside Pennsylvania.
- D. Shipment from Taxing District by Seller. Sales will be considered as having been made in interstate commerce when the seller, as a necessary incident to contract of sale, agrees to, and does, deliver the property to the purchaser at a point outside of Pennsylvania, or delivers the property to a common carrier consigned to the purchaser at a point outside of Pennsylvania.
- E. Shipments into the Taxing District from the Seller’s Out of State Place of Business. With respect to sales made by a taxing district seller, the transaction will be considered to be one in interstate commerce. If, by the express terms of the contract of sale, or the established practice of doing business, the seller is required to deliver by transporting or shipping the property from his or her place of business situated outside of Pennsylvania directly to the purchaser at a point within the Taxing District.

- F. Shipments into the Taxing District from a Third Party's Out of State Place of Business. Interstate commerce is not deemed to be involved if the Taxing District seller causes direct delivery to be made to the purchaser at a point in the Taxing District from an out of state source of supply owned or operated by a third party (one from whom the seller buys).
- G. Delivery from Seller's Out of State Business via His or Her Office. Interstate commerce is not deemed to be involved with respect to sales made to a Pennsylvania purchaser if the property is shipped from the Seller's place of business in the Taxing District from which point the goods are delivered to the purchaser.

**6. CONTRACTORS DOMICILED WITHIN CONEWAGO TOWNSHIP PERFORMING BUILDING OR CONSTRUCTION WORK OUTSIDE THE TAXING DISTRICT**

- A. Contractors with Field Offices. Taxing District contractors or subcontractors engaged in the performance of building and construction contracts at a point outside the territorial limits of the Taxing District may exclude from the measure of the tax the receipts derived therefrom, provided that a field office was maintained on the premises of the project during the performance of the contract to such extent as to constitute doing local business at the situs of the job.
- B. Alterations and Repairs. The provisions of this section apply only to contractors engaged either in the erection of new buildings or in the complete alteration and remodeling of old buildings. They do not apply to contractors who engage in alteration and repair jobs of a limited scope, such as a roofer repairing a damaged roof of a building situated outside the Taxing District, or a painter renovating apartments in an apartment house located outside the Taxing District.
- C. Engineers and Technicians. The exemption provisions of this section do not apply to engineers and other technicians rendering personal services outside the Taxing District.
- D. Qualifications for Exemptions. To qualify hereunder the contractor must show that he or she established a place of business at the situs of the job by setting up a field office thereat with machinery and equipment for use in the fulfillment of the contract, and performed such other acts as to constitute doing local business at the situs of the job.

**7. BROKERS AND AGENTS WITH DISTRICT OFFICES OUTSIDE OF CONEWAGO TOWNSHIP**

- A. Where a general agent or broker of an insurance, real estate, or other firm maintains a branch office outside of the Taxing District, the commissions attributable to such branch office may be excluded from the gross receipts.



If any significant aspect of the transaction occurs in the Taxing District as a result of the efforts of brokers, subagents or employees who work in, or from, or are attached to the Taxing District, such commissions shall be included in the gross receipts.

8. **TAX RATE AND COMPUTATION OF TAX**

- A. Imposition and Rate of Tax (Business Privilege) Section 5(a), Ordinance No. 193. This Ordinance states that any person engaging in business in Conewago Township shall pay an annual tax of one (1) mill on each dollar of volume of the gross annual receipts.
- B. Levy and Collection of Tax (Mercantile) Section 5(b), Ordinance No. 193. This Ordinance states for the license year the township hereby imposes an annual mercantile license tax in the manner and at the rates herinafter set forth.
- C. Imposition and Rate of Tax (Mercantile) Section 5(b), Ordinance No. 193. 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 on the first day of March at the rate set forth:
  - (1) Wholesale Vendors. The rate is equal to one (1) mill on each dollar of the annual gross business.
  - (2) Retail Vendors. Rate is equal to one and one-half (1 ½) mills on each dollar of the annual gross business.
  - (3) Wholesale and Retail Vendors or Dealers in Goods. Rate is equal to one (1) mill on each dollar of wholesale business, and one and one-half (1 ½) mills on each dollar of annual gross retail business.
  - (4) This tax shall not apply to the dollar volume of annual business covering the resale of items taken in on a trade-in, unless retail price exceeds the trade-in allowance.

9. **PERSONS, BUSINESSES AND RECEIPTS EXEMPTED**

- A. Non-profit Corporations or Associations, Religious, Charitable and Educational Institutions, Persons, Entities, Transactions and Other Matter Exempted by the Provisions of the Act or Other Applicable Law. Business income not excluded. The exclusion from taxation of receipts from the business of non-profit religious, charitable or educational organizations is limited to those receipts derived from activities which are connected with the non-commercial operations of the organization. Commercial activities carried on by such an organization are taxable. All business income of non-profit religious, charitable and educational organizations is taxable.
- B. Receipts from Sales to Governmental Agencies and Non-profit to governmental bodies, and to religious, charitable and educational

corporations and associations shall not be excluded from the tax base. The statute does not grant any exemption to taxpayers transacting business with such agencies or institutions.

10. **STATE TAX OR LICENSE**

- A. Nominal or Registration Fees. The fact that a taxpayer received a certificate or other document which is designated a “license” from the Commonwealth of Pennsylvania for which the taxpayer pays a sum of money does not exempt the taxpayer from the Business Privilege and/or Mercantile Tax. Flat annual fees, fees which are not related to gross income or amount of production, or fees that are nominal in nature are not considered true license fees and hence payment of such fees will not exempt the taxpayer from the Business Privilege and/or Mercantile Tax.
- B. Payment to the Taxing District for Housing Permits, Building and Plumbing Permits, etc. will not exempt the taxpayer from the Business Privilege and/or Mercantile Tax.
- C. Non-licensed Functions Taxable. The receipts of any person who falls within the state tax or license fee exemption, which are derived from any activity which if conducted separate and apart from other business activities would be subject to the state tax or license fee shall not be excluded from the tax base.
- D. Local Tax Under State Authority. Local taxes by counties, municipalities, or other public bodies though authorized by state legislation are not considered state taxes or license fees.
- E. Monies Returned to Municipalities by the State. Any tax which is collected by the state but which, with the exception of administrative costs, is returned to the municipalities, is not considered a state tax or license fee. Such taxes include, but are not limited to:
  - (1) Gross receipts taxes of non-Pennsylvania Fire and Casualty Insurance Companies.
  - (2) License fees for Hotel, Restaurant and Club Liquor Licenses.
- F. State License Fees Which Exempt Receipts Earned Thereunder Include but are not Limited to Those Fees Levied Under the Following Acts:
  - (1) The Pennsylvania Securities Act of June 24, 1939, P.L. 748, as reenacted and amended (70 P.S., Section 31, Et Seq)
  - (2) Small Loan Companies, Act of June 17, 1915, P.L. 1012, as amended (7 P.S., Section 6151, Et Seq)

- (3) Consumer Discount Companies, Act of April 8, 1937, P.L. 262 as amended (7 P.S., Section 6201, Et Seq)

11. **UTILITIES**

- A. Non-utility Functions Taxable. The receipts of any public utility, operating under the rules and regulations of the Pennsylvania Public Utility Commission, derived from supplying services at rates specified in its tariffs shall be excluded from the tax base. Public Utilities shall not exclude from their tax base receipts derived from sales of appliances, equipment, advertising, etc. A contract carrier is not a public utility.

12. **DETERMINATION OF GROSS OR WHOLE VOLUME OF BUSINESS**

- A. Computation of Gross Amount Receipts (Business Privilege). Section 6, Ordinance No. 193.
  - (1) Every person subject to the payment of the tax hereby imposed who has commenced his or her business at least fourteen (14) full months prior to the beginning of any tax year shall compute his or her annual gross receipts upon the actual receipts received by him or her during the preceding calendar year.
  - (2) Every person subject to payment of the tax hereby imposed who has commenced or who commences his or her business less than fourteen (14) full months prior to the beginning of any tax year shall compute his or her annual gross receipts for such tax year upon the gross receipts generated by the business transacted within the township of Conewago during the first month he or she engages in such business activity multiplied by twelve (12).
  - (3) Where a receipt in its entirety cannot be subjected to the tax imposed by this Ordinance by reason of the provisions of the Constitution of the United States or any other provision of law, including the exemptions within this Ordinance, the Tax Collector shall establish rules and regulations and methods of allocation and evaluation so that only that part of such receipt which is properly attributable and allocable to doing business in the Township of Conewago shall be taxed hereunder. The Tax Collector may make such allocation with due regard to the nature of the business concerned on the basis of mileage division of the receipt according to the number of jurisdictions in which it may be taxed. The ratio of the value of property or assets of the taxpayer owned or situated in the Township of Conewago to the total property or assets of the taxpayer wherever owned and situated, or any other method or methods of calculation to effect a fair and proper allocation.
  - (4) Every person subject to the payment of the tax hereby imposed who engages in a business temporary, seasonal, or itinerant in nature shall compute his or her annual gross receipts upon the actual gross receipts received by him or her during such tax year.

(5) Every person who ceases to carry on a business during any tax year after having paid the Business Privilege Tax for the entire year shall, upon making proper application to the Tax Collector, be entitled to receive a refund of the pro rata amount of the tax paid based upon the period of time he or she was not in business during the license tax year. In the event that a person who discontinues business during any tax year does so before payment of his or her tax becomes due for such tax year, he or she shall be permitted to apportion his or her tax for such tax year and for the preceding full calendar year by a fraction whose numerator shall be the number of months such person was in business during the tax year and whose denominator shall be twelve (12).

B. Computation of Volume of Business (Mercantile) Section 6, Ordinance No. 193.

- (1) Every person subject to the payment of the tax hereby imposed who has commenced his or her business at least fourteen (14) full months prior to the beginning of any tax year shall compute his or her annual gross receipts upon the actual receipts received by him or her during the preceding calendar year.
- (2) Every person subject to the payment of the tax hereby imposed who has commenced or who commences his or her business less than fourteen (14) months prior to the beginning of the license year shall compute his or her 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 or her during the months in the preceding calendar year he or she was engaged in business.
- (3) Every person subject to the payment of the tax hereby imposed who commences his or her business less than one (1) full month prior to the end of the preceding calendar year prior to the beginning of any license year shall compute his or her annual gross volume of business for such license year upon the gross volume of business transacted by him or her during the first month if his or her engaging in business multiplied by the number of months, or fractions thereof, he or she engages in business in the present calendar year.
- (4) Every person subject to the payment of the tax hereby imposed who engages in a business temporary, seasonal, or itinerant in nature shall compute his or her annual gross receipts upon the actual gross receipts received by him or her during such tax year.
- (5) 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 for tax. If it is thereafter judicially determined by a court of competent jurisdiction that the township has been overpaid, the amount of 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.

13. **GENERALLY**

- A. Gross receipts means gross consideration received in or by reason of any sale made, or services rendered, or commercial or business transaction occurring in or attributable to the Taxing District including cash, credits, and property of any kind or nature without deduction on account of the cost of materials, labor, services, or other costs, interest or discount paid, or any other expenses whatsoever.
- B. In general, the word “sale” as used in the definition of the term “gross receipts” includes, but is not limited to, any transfer of title for a consideration. It includes exchange, barter, and bailments.
- C. Products Manufactured or Grown in the Taxing District.
  - (1) Gross volume of business derived from the above mentioned is not subject to the tax.

14. **REAL ESTATE BROKERS**

- A. Generally, Real Estate Brokers and Agents are required to report as taxable receipts, the commissions and fees received for services rendered as agent in promoting the purchase and sale of real property for others. Brokers and agents not having an office in the Taxing District shall report as taxable receipts commissions received on the sale of properties within the Taxing District. Such amount does not include the gross selling price of property, except as set forth in subparagraph C.
- B. Deduction of Shared Fee. A real estate broker or agent may exclude from his or her tax base any commissions paid by him or her to another broker or agent on account of a contract or purchase or sale initiated, executed or cleared in conjunction with the broker, salesman or agent to whom the commission, or part of the commission, is paid. Commissions paid to a salesperson by a broker or agent, when the salesperson is affiliated with the broker or agent, are not excludible from the brokers or agents tax base.
- C. Brokers Sale of Owned Property. If a person is in the business of taking title to real property and selling the property he or she is required to include the gross selling price of the property as taxable receipts. The same person may be taxed both as a broker and as a seller, depending on the nature of the transactions. If he or she acts as the broker, salesperson, or agent, his or her tax is based on commissions.

- D. If he or she buys and sells real estate whether in his or her own name or in the name of a straw party, he or she is taxed on the gross selling price of the real estate.

15. **PRINCIPAL AND AGENT**

- A. General. Receipts from sales made, or services rendered, by an agent for the account of his or her principal are to be reported by the principal. It is immaterial in such cases whether the customer or client remits directly to the principal, or to the agent for transmittal to the principal. The agent is required to report as gross receipts only the commission withheld by him or her as compensation for his or her services before remitting to his or her principal and any commission paid to him or her after remitting to his or her principal. No deduction from gross receipts may be taken by the principal for commission paid to, or withheld by the agent. A manufacturer's representative is taxable on his or her gross commissions unless his or her relationship to his or her principal is that of employer and employee. This relationship of employer and employee exists if the principal pays social security and unemployment compensation taxes on behalf of the person claiming exemption and if, in the event of an accident in the course of unemployment, the manufacturer's representative might be entitled to Workman's Compensation.
- B. Undisclosed Principal. A person selling property, including real property or rendering services for an unknown or disclosed principal, is subject to tax as a principal unless there is disclosed in the agent's return the identity of the principal and the amount of the sale made on his or her behalf.
- C. Condition as to Recognition of Agency. A person will be regarded as acting as agent or broker in promoting or soliciting sales or rendering services for the account of a principal when it appears:
  - (1) That the contract or agreement between such persons clearly establishes the relationship of principal and agent.
  - (2) That the books and records of the agent or broker show the name of the actual owner of the property on whose behalf the sale is made.
  - (3) That the books and records of the agent or broker show the amount of gross sales and the amounts of commission due thereon.
- D. Collection by Agent. Money or property received by a taxpayer, as agent, for transmittal to a third party is not to be reported by such taxpayers as gross receipts, but any commission received by him or her for his services as agent must be included in gross receipts.
- E. This section shall apply to advertising agencies, public relations, and any other service business which meets the agency criteria.

16. **CONDITIONAL AND INSTALLMENT SALES**

- A. Reported as Cash Sales. A person making conditional sales or other installment sales of property is required to report the total selling price of such sales as gross receipts for the tax year in which the contracts of sale are entered into, without regard to the fact that the seller may arrange to receive payment from the purchaser on an installment basis or that such contracts may be discontinued or pledged with, or sold to, a finance company.
- B. Property Repossessed. Where tangible personal property, sold under a conditional or other installment sales contract, is repossessed by the seller, and the repossessed property is subsequently sold, the receipts from such sales are to be included in the measure of tax only to the tax only to the extent that the amount of sale exceeds the balance due on the original sale at the time of repossession. No deduction from the gross receipts may be taken for any unpaid balance due at the time of repossession. Such deduction shall be allowed upon resale, if the resale price is less the unpaid balance.

17. **EXCHANGES BETWEEN DEALERS IN SIMILAR LINES**

- A. Where dealers engaged in similar lines of business exchange articles of tangible personal property, and one of them makes payment to the other in addition to the property exchanged by him or her, the transactions constitute sales to each other. The receipt of each dealer is measured by the gross value of the consideration received by him or her. Where a dealer transfers property, such as an automobile, to another dealer with the understanding that property of identical description will be returned at a subsequent date, such transaction does not constitute a sale and the value of the property exchanged need not be included in the gross receipts of either dealer. Receipts by dealers from sales to other dealers in the same line where the dealer transfers title or possession at the same price for which he or she acquired the merchandise may be excluded from the gross receipts.

18. **LEASED DEPARTMENTS**

- A. Return by Lessor. Where a person leases a department of his or her business to another such person may include in his or her return the gross receipts from business done and sales made by lessee. When the business of such leased department is included in the return made by the lessor, a schedule must be attached to the return containing the names of the lessee, a description of the department operated, and a statement to the effect that the lessor assumes liability for reporting the gross receipts and paying the tax accruing against the lessee of such department. The lessee, however,

is not relieved from his or her liability for business privilege taxes if the lessor fails to make a proper return or fails to pay the tax due. Should a change occur in the ownership or status of any leased department, the lessor shall notify the Collector of Taxes promptly.

- B. Return by Lessee. If the lessee wishes to file returns independently, such lessee is required to include in his or her return the entire gross receipts of said lessee whether collected by the lessor, or the lessee without deducting any expense or commissions charged to him or her by the lessor. To expedite the examination and audit of returns filed by such lessee, the Collector of Taxes may require the lessor to furnish a statement of the entire gross receipts collected on behalf of the lessee.

19. **PERSONS ERECTING BUILDINGS OR OTHERWISE ALTERING, REPAIRING OR IMPROVING REAL PROPERTY**

- A. General. A contractor or subcontractor, resident or nonresident, engaged in the business of erecting buildings or otherwise altering, repairing, or improving real property, or other major construction work, is required to report as gross receipts all receipts derived from the performance of such contract. The amount of receipts to be included in the tax base shall be the full contract price; that is the total amount received or receivable by way of a fixed or determinable amount under the terms of the contract. The contract price will be considered to include all charges made by a contractor, or subcontractor, for materials, labor, supervision, overhead costs, and profit. In the case of general contractor, prime contractor, or subcontractor employing lower tier subcontractors, no deduction may be made with respect to amounts paid to subcontractors and material men, unless it can be shown that the subcontractor has paid the Business Privilege Tax to the Taxing District on the same gross receipts stemming from the same contract.
- B. Cost-Plus Contracts. A general contractor performing contracts on the basis of a “cost plus a fixed fee” or “cost plus percentage” is required to report as gross receipts the full contract price as explained above, unless he or she has no connection whatsoever with the purchase of materials and/or the hiring of labor. In cases where the owner of the property buys the materials and hires all labor in his or her name and pays the general contractors a fixed fee, or a percentage of the total cost to supervise and direct the construction project, the general contractor will be required to report only the gross amount of fee or percentage received. Where the owner authorized the general contractor to make for him or her such purchases of tangible personal property, or hire such labor or engage such subcontractors as are necessary for the performance of the contract and (1) pledges his or her credit and is liable in the first instance to the material men, suppliers, laborers, or subcontractors, as distinguished from merely guaranteeing payment of them or undertaking to reimburse the



general contractor for the cost of such materials, services of subcontracts, and (2) agrees to make payment directly to the material men, suppliers, laborers, and subcontractors, such sales or services will be regarded as made directly to the owner, and the general contractor will not be required to include such items in his or her gross receipts.

- C. Contractors or Subcontractors Permanently or Temporarily Doing Business in the Taxing District shall register and file a tax return. General contractors are required to withhold final payment to subcontractors, temporarily doing business in the Taxing District, until proof of payment of the tax is furnished to them by such contractors.
- D. Contractors or Subcontractors with an office in the Taxing District who are engaged in the performance of building, construction, or engineering contracts at a point outside the territorial limits of the Taxing District may exclude from the measure of the tax the gross receipts derived therefrom, provided that a bona fide field office was maintained on the premises of the project during the performance of the contract wherein all control over such project was exercised to the extent that it constituted the doing of local business at the situs of the job. Receipts for services performed outside the Taxing District may also be excluded if it can be shown that no part of the service was performed in the Taxing District.

20. **CONTRACTORS WHO REPAIR, ALTER AND IMPROVE TANGIBLE PERSONAL PROPERTY**

- A. Persons engaged in business in the Taxing District as contractors who repair, alter, and improve tangible personal property for the account of others are subject to the tax under the provisions of this Ordinance. When contractors perform labor or services on articles of tangible personal property furnished by the other party to the contract, such contractors are required to report only the amount due them for labor or services rendered.

21. **BUILDINGS, HOTELS, MOTELS, APARTMENT HOUSES, BOARDING HOUSES, NURSING HOMES, ETC.**

- A. Persons operating hotels, apartment houses, boarding houses, nursing homes, rooming houses and all other such establishments are taxable on receipts from renting of rooms, furnishing of meals, and any other services rendered.
- B. Any person carrying on the business of renting buildings, offices, space, stores, dwelling houses, etc. shall include the gross rentals received in the tax base. No deductions may be made for depreciation, cost of maintenance, repairs, etc.

(1) Persons who have obtained real property with no affirmative action on their parts, that is, fortuitously through inheritance, gift, reverter, or

other legal processes, and who furnish only those elementary services and maintenance which are required by law, are not subject to the tax unless the property was received from a person engaged in the business of renting the property and that business is continued by the recipient.

- (2) Business Corporations which hold rental property as a source of income in addition to their regular business, which may or may not be real estate, are subject to the tax whether or not services are rendered.
- (3) Persons, corporations, or partnerships holding rental property in the Taxing District, who employ rental agents or other such assistance in administering such property are doing business and are subject to the tax whether or not they provide services.
- (4) Agencies or entities which manage and/or operate cooperatives and/or condominiums must pay the tax based on all receipts received for maintenance, cleaning, and other service provided, including insurance. Receipts received from owner-tenants for taxes, interest and principal payments may be excluded from the taxable gross receipts.

22. **INSURANCE AGENTS, BROKERS, AND UNDERWRITERS**

- A. General Agents. General agents for insurance companies are required to report as gross receipts the entire commissions received as compensation for their own efforts on policies sold by them directly and overriding commissions received by them upon business produced by brokers or subagents.
- B. Brokers or Subagents. Brokers or subagents are required to report as gross receipts the commissions received as compensation for their services.
- C. Employee of Single Company. A person who represents a single insurance company is subject to tax hereunder unless he or she:
  - (1) Devotes his or her entire time to the company,
  - (2) Is considered by the company to be its employee, and the company pays Social Security and Unemployment Compensation Taxes on behalf of the person claiming the exemption and in the event of an accident in the course of employment, said person is entitled to Workmen's Compensation, and
  - (3) Does not employ solicitors, subagents, or other persons to whom he or she pays salaries, commissions or other compensation in connection with insurance business solicited.

23. **PARTICULAR BUSINESS OR TRANSACTIONS**

- A. Administrative or Executive Office Receipts of a taxpayer whose only office in the Taxing District is an administrative or executive office may or may not be taxable depending on the activity performed in the office.

The general rule is that receipts for services will not be taxable in the Taxing District if no part of the service is performed in the Taxing District. If the activity at such an office relates only to internal bookkeeping functions of the taxpayer, then those activities are not part of the “service” which is being rendered to customers. However, administrative matters which do relate to the service rendered, e.g. arranging shipments, making telephone calls to customers or clients, or overseeing or controlling employees engaged in performing such services are generally part of the service for which payment is received. Accordingly, if any of these kinds of services are performed at the place of business in the Taxing District, then the entire receipt for that service is a taxable receipt unless an allocation is appropriate.

24. **PERSONS ENGAGED IN PROFESSIONS, OR VOCATIONS, OR IN RENDERING PERSONAL SERVICES**
- A. General. A person who is engaged in a profession or vocation or in rendering personal services in the Taxing District in any capacity, except as an employee of another, is subject to the tax. All compensation, however characterized, received in such capacity must be included in the tax base.
  - B. Attorneys. An attorney may exclude that portion of the receipts from legal services which are distributed directly to or on behalf of a client such as a distribution of a sum of money recovered in a lawsuit, the sale of real estate, or a collection matter. An attorney may exclude any fee or portion of a fee paid to another attorney where a matter has been forwarded either from or to the first attorney to or by the second attorney except where either is an employee of the other.
  - C. Accountants. An accountant may exclude services rendered to clients outside of the Taxing District only if all activity connected with the rendering of such services, including the audit, summary and completion of the financial statement, takes place at the client’s business situs outside the Taxing District.
  - D. Physicians and Surgeons.
    - (1) A physician with offices in the Taxing District must include in his or her gross receipts all revenues derived from such offices, i.e., place of business.
    - (2) A physician with offices located outside the Taxing District may exclude from gross receipts revenues derived from such offices, i.e., place of business.
    - (3) A physician with hospital affiliations within the Taxing District must include in his or her gross receipts all revenue derived or generated by his or her connection with such hospitals.

(4) A physician with hospital affiliations outside the Taxing District may deduct from gross receipts all revenues derived or generated by his or her connection with such hospitals.

25. **THEATERS AND MOTION PICTURE HOUSES**

A. Persons operating theaters or motion picture houses and other places of amusement where admission is charged in the Taxing District, whether owner or lessee, are subject to the Business Privilege Tax on the gross receipts from house or film rentals and from commissions received on vending machine sales, public telephone booths and sources of revenue other than sale of tickets of admission (which are exempt from tax by state law).

26. **SOCIAL AND RECREATIONAL CLUBS**

A. Under state law the Taxing District may not tax “membership in or membership dues, fees, or assessments of charitable, religious, beneficial or non-profit organizations including but not limited to sportsmen’s, recreational, golf and tennis clubs, girl and boy scout troops and councils.” Accordingly, receipts from such sources are not subject to the tax.

B. Many such organizations, however, sell food, beverages, and recreational equipment to, or perform non-charitable services (such as catering services) for members as a regular part of their activities. Although such items may be exempt from federal income tax, they are exempt from the Taxing District taxes. Accordingly, any such organization which does offer its members such goods or services must register and pay the tax. (This rule does not apply to “religious, charitable, or educational” organizations which are entirely exempt from the tax.)

27. **PUBLIC OFFICIALS**

A. Persons who act as agents or officials of the United States, Commonwealth of Pennsylvania, or any political subdivision thereof are not subject to the tax with respect to their activities as such agents or officials. For this purpose, notaries public are considered agents of the Commonwealth.

28. **PUBLIC UTILITIES**

A. The Taxing District may not tax the gross receipts of a public utility subject to the Pennsylvania Public Utility Commission which are derived from supplying services at rates specified in tariffs authorized or approved by PUC. Receipts derived from advertising and rentals or charges levied for services not subject to PUC regulations are subject to tax.

29. **GOVERNMENT CONTRACTS**
- A. Receipts from the performance of contracts entered into with the Taxing District, or the Commonwealth of Pennsylvania, or the United States of America, or any subdivision of such governments are to be included in the measure of the tax.
30. **UNDERTAKERS, MORTICIANS, AND FUNERAL DIRECTORS**
- A. Persons engaged in business as undertakers, morticians, or funeral directors are required to report as gross receipts the total charges made to clients, without deducting therefrom any costs or expenses whatsoever. Both the sale of the tangible personal property and a charge for rendering service must be included in the tax base.
31. **SALE OF CAPITAL ASSETS**
- A. Generally. The profits, not gross proceeds, resulting from the sale of capital assets, such as plant machinery and equipment, furniture, fixtures, delivery equipment, etc. are to be included in the tax base. If a loss is sustained on such sales, it may not be offset against gross receipts from other sources. In computing the profits to be included in the tax base, the costs of the asset, less allowable depreciation, is to be deducted from the gross proceeds of the sale.
- B. Asset Located Outside the Taxing District. Where the capital asset sold was located at an established place of business of the taxpayer outside the Taxing District, the profit realized on the sale thereof may be excluded from the tax base.
- C. Bulk Sale or Exchange, Merger. Where a corporation realizes a gain as the result of a sale or exchange of substantially all of its assets, or as the result of a merger or consolidation with another corporation, the amount of such gain must be included in the tax base.
32. **DEPOSIT ON CONTAINER**
- A. A person making a sale of products in a container on which there is a deposit to insure the return of the container is required to report only the gross selling price of the product in the container.
33. **VENDING MACHINES**
- A. The entire gross receipts of vending machines and other mechanical devices which dispense goods, wares, and merchandise are to be included in the gross volume of business of the owner or lessor thereof. No deduction may be made therefrom for splits, rentals, commissions, or other remuneration to persons in charge of the machines and/or to the lessee of the premises upon which the machines are located.

34. **INTER-COMPANY TRANSACTIONS**  
A. Receipts from transactions between affiliated companies, other than those of a purely accommodation nature, are subject to inclusion in “gross volume of business.”
35. **INTER-DEPARTMENT TRANSACTIONS**  
A. Where one department, branch or division of a corporation or other business entity, furnishes goods, wares, and merchandise to another department, branch or division of the same corporation or business entity, the amounts recorded on the books to reflect such interdepartmental transactions shall not be included in the “gross volume of business” of the taxpayer.
36. **PROPERTY TRADED IN**  
A. In the case of a trade in or part payment in goods, wares and merchandise in a transaction in which goods, wares and merchandise are sold and allowances made, the taxpayer may at his or her option deduct the value of the trade in or part payment from the gross receipts so long as done on the face of the invoice at the time of the original transaction as a medium for adjusting the price of the goods, wares or merchandise. Allowance for the trade in or part payment in goods, wares or merchandise must be deducted by the dealer at the time of resale of the trade in or part payment so that no tax is levied or collected on the dollar volume of business derived from the resale of goods, wares and merchandise taken by the dealer as a trade in or as part payment for other goods, wares and merchandise, except to the extent that the retail price exceeds the trade in allowance.
37. **REFUNDS OR CREDITS**  
A. Refunds or credits will be issued upon appropriate verification of overpayment.
38. **COMMISSIONS PAID BY BROKERS**  
A. Any broker, agent or salesperson who splits or otherwise divides a commission with another broker, agent or salesperson in the same type of business by reason of the fact that the second broker initiated, executed, cleared or completed a portion of the transaction for which the fee is paid shall be permitted to exclude from the gross receipts that portion of the fee paid to the other broker, agent or salesperson. This section does not exempt so called finders fees, kickbacks, commissions, or other remuneration paid by the broker, agent or salesperson to another individual not in the same type of business as the broker, agent or salesperson. Nor does this section exempt from the gross receipts of a broker or agent a commission paid by said broker or agent to a salesperson affiliated with him or her.

39. **BAD DEBTS**  
A. Bad debts may be taken from the gross volume of business where the deduction is also taken in the same year for IRS purposes.
40. **TAXES COLLECTED AS AGENT FOR THE UNITED STATES OF AMERICA, COMMONWEALTH OF PENNSYLVANIA, OR THE TAXING DISTRICT**  
A. Taxes collected as agent for the United States of America, Commonwealth of Pennsylvania, or the Taxing District are excludible from taxable receipts.
41. **PARTIAL EXEMPTION**  
A. Where gross or whole volume of business in its entirety cannot be subjected to the tax imposed by this Ordinance by reason of the provisions of the Constitution of the United States or any other provision of law, the Collector of Taxes with the approval of the Taxing District shall establish rules and regulations and methods of allocation and evaluation so that only that part of the gross or whole volume of business which is properly attributable and allowable to doing business in the Taxing District shall be taxed hereunder.
42. **WHEN SAME TAX IS IMPOSED BY TWO TAXING BODIES**  
A. If any person is liable for the same tax on the same subject imposed under Local Tax Enabling Act of 1965, December 31, Pamphlet Law 1257 and its amendments, to the Taxing District 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 the said Enabling Act permitting the imposition of such taxes.
43. **RECORDS**  
A. The taxpayer shall keep books and records of his or her business so as to show clearly and accurately the amount of taxable gross receipts minus any allowable deductions pertaining to the Business Privilege and/or Mercantile Tax. Such records shall be preserved for a period of not less than six (6) years in order to enable the Bureau staff to verify the correctness and accuracy of the returns filed.
44. **FILING RETURNS**  
A. Returns and Registration. Section 7, Ordinance No.193.  
  
(1) Every person subject to the tax imposed by this Ordinance shall forthwith register with the Tax Collector and set forth his or her name, address, business address and the nature of the business activity in which he or she is engaged.

- (2) Every return shall be made upon a form furnished by the Tax Collector. Every person making a return shall certify to the correctness thereof.
- (3) Every person subject to the tax imposed by this Ordinance who has commenced his or her business at least fourteen (14) full months prior to the beginning of any tax year shall, on or before the fifteenth (15<sup>th</sup>) day of April following and annually thereafter, file with the Tax Collector a return setting forth his or her name, residence, business, business address and such other information as may be necessary in arriving at the annual gross volume of business transacted by him or her during the preceding year and the amount of the tax due.
- (4) Every person subject to the tax imposed by this Ordinance who has commenced his or her business less than fourteen (14) full months prior to the beginning of any tax year shall, on or before the fifteenth (15<sup>th</sup>) day of April following and annually thereafter, file with the Tax Collector a return setting forth his or her name, residence, business, business address and such other information as may be necessary in arriving at the actual volume of business transacted by him or her during the period of operation prior to January 1<sup>st</sup> of that year, and the amount of the tax due.
- (5) Every person subject to the tax imposed by this Ordinance who commences business subsequent to the beginning of any tax year for such tax year shall, within forty (40) days from the date of commencing such business, file a return with the Tax Collector setting forth his or her name, residence, business, business address and such other information as may be necessary in arriving at the actual volume of business transacted by him or her during the first month of business and the amount of tax due.
- (6) Every person subject to the payment of the tax imposed by this Ordinance who engages in a business temporary, seasonal or itinerant by its nature shall, within seven (7) days from the day he or she completes such business, file a return with the Tax Collector setting forth his or her name, residence, business, business address and such other information as may be necessary in arriving at the actual gross volume of business during the tax period and the amount of the tax due.

45. **PARTNERSHIPS**

- A. A partnership is considered to be a taxable unit. The respective partners are not required to file separate returns as individuals, but they are jointly and severally liable for payment of the tax.



46. **SIGNATURE**

- A. If the taxpayer is an individual, he or she shall sign the return. If the taxpayer is a partnership, the return should be signed by an officer of the corporation.

47. **MULTIPLE PLACES OF BUSINESS**

- A. If a taxpayer maintains more than one place of business in the Taxing District he or she is required to file only one return and may include therein the receipts from transactions occurring in all of the places of business in the Taxing District.

48. **TIME AND PLACE OF FILING**

- A. Payment at Time of Filing Return.

- (1) At the time of filing the return the person making the same shall pay the amount of tax shown as due thereon to the Tax Collector. (York Area Earned Income Tax Bureau)
- (2) Tax returns received without the applicable tax, and penalty, and interest shall be considered as being an incomplete filings as the returns cannot be processed without payments.

49. **PAYMENT OF TAX AND PENALTIES FOR LATE PAYMENT**

- A. Suit on collection; Penalty.

- (1) The Tax Collector may sue for the recovery of taxes due and unpaid under this Ordinance.
- (2) If for any reason the tax is not paid when due in each year, interest at the rate of six percent (6%) per annum, and an additional penalty of one-half of one percent 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 the recovery of any such tax, the person liable therefore shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

- B. Fine and Penalties.

- (1) Whoever makes any false or untrue statement on his or her return or who refuses to permit inspection of the books, records or accounts of any such business in his or her 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 the Ordinance and whoever fails or refuses to procure a mercantile license when so required under the Ordinance or fails to keep his or her license conspicuously posted at the place of business as herein required shall, upon conviction before any District Justice, be sentenced to pay a fine of not more than

five hundred dollars (\$500.00) for each offense and, in default of payment of said fine, to be imprisoned in the York County Prison for a period not exceeding thirty (30) days for each offense.

50. **REFUND**

- A. Any tax payment made under protest which the Taxing District thereafter determines to have been improperly paid shall be refunded to the taxpayer upon request and with the filing of proper forms.

51. **POSTING REGISTRATION FORM/MERCANTILE LICENSE**

- A. Generally. The registration form and/or license must be posted conspicuously at each place of business of licensee at all times.
- B. Vending Machine Owners. A person who sells goods, wares or merchandise by means of vending machines and who has not otherwise procured a license under this ordinance shall procure one license covering all of his or her vending machines and, shall post it at its principal place of business.
- C. Persons With No Place Of Business In The Taxing District. Persons conducting business within the Taxing District but having no “place of business” there shall not be required to post their registrations. But if such time as such person establishes a place of business within the Taxing District, he or she shall notify the Collector of Taxes of the location of such business and shall thereafter post the registration for such place of business.
- D. Contractors. Contractors, regardless of the number of field offices maintained within the Taxing District, shall be considered to have one place of business for the purpose of registering.

52. **REQUESTS FOR RULINGS**

- A. Any taxpayer or employer or tax preparer desiring a specific ruling concerning the Resolution, Ordinance, or these Rules and Regulations shall submit all relevant facts in writing to the Administrator of the York Area Earned Income Tax Bureau who shall issue a written ruling.

53. **EXAMINATION OF BOOKS AND RECORDS OF TAXPAYERS AND EMPLOYERS**

- A. The Administrator and agents or staff members of the Bureau designated in writing by him are authorized to examine the books, papers and records of any taxpayer or supposed taxpayer or of any employer or supposed employer in order to verify the accuracy of any return; or, if no return was filed, to ascertain the tax due, if any. Every taxpayer or supposed taxpayer and every employer or supposed employer is required to give the Administrator or any agent or staff member so designated by him the

means, facilities and opportunity for such examinations and investigations as are authorized. In addition to all other powers, the Administrator and staff shall have the power, on behalf of the Taxing jurisdiction to examine any person under oath concerning the Businesses Privilege/Mercantile Tax; to compel the production of books, papers and records, and the attendance of persons (whether as parties, principals, agents or witnesses) before him.

- B. Information obtained by the Administrator or any other official, staff member or agent of the Bureau as a result of any return, examination, investigation, hearing, or verification required or authorized, is confidential and may not be disclosed to any person, except for official use in connection with administration or enforcement of the Resolutions and Ordinances, or as otherwise provided by law.

54. **CONCURRENT REMEDIES**

- A. Imposition of any fine or imprisonment shall not bar either civil liability for tax, penalty or interest, or criminal prosecution for embezzlement, fraudulent conversion, theft or other offense under the Pennsylvania Crime Code, or criminal prosecution for failure to file a properly prepared tax return under Act 511.

55. **FAILURE TO RECEIVE FORMS**

- A. Failure of a taxpayer or employer to receive forms or returns required by the Resolutions and Ordinances does not excuse any failure to file any reports or returns required or to pay any tax due, including penalty and interest.

56. **BAD CHECKS**

- A. A \$20.00 penalty will be levied if a check is returned unpaid by the bank, plus the issuer/maker may have a criminal complaint action filed against him or her.

57. **CHANGES IN ACT 511 BY THE PENNSYLVANIA GENERAL ASSEMBLY**

- A. Should Act 511 language be amended by the Pennsylvania General Assembly, the amended language shall be incorporated into these Rules and Regulations.

58. **ASSESSMENT AND COLLECTION OF UNDERPAYMENT OF THE TAX**

- A. If as the result of research or investigation conducted by or on behalf of the Administrator of the Bureau, a declaration or return is found or is reasonably believed to be incorrect, the Administrator is authorized to assess and collect any underpayments of taxes owed by any taxpayer with respect to Business Privilege/Mercantile Tax. If no declaration or

return has been filed and a tax is found or determined to be due , the tax actually due may be assessed and collected with or without the formality of obtaining a delinquent declaration or return from the taxpayer.

- B. Hearings/Meetings. Any person aggrieved by an assessment made by the Administrator may, within thirty days after receipt of notice of the assessment, appeal the assessment by forwarding a letter to the Administrator stating in detail why the taxpayer believes the assessment to be incorrect and including documentation to support the appellant's position. A meeting or hearing will be arranged within thirty days of the receipt of the appeal notice. The appeal meeting or hearing may be recorded at the decision of the Administrator. A decision on the appeal shall be rendered by the Administrator within thirty days of the close of the meeting or hearing. The person aggrieved may also properly file all applicable returns and provide all needed supporting documentation if this was not previously done by the aggrieved person. This may also permit promptly amending the assessment to the satisfaction of both parties.