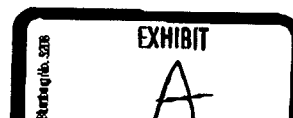


BUSINESS PRIVILEGE TAX
AND
MERCANTILE LICENSE TAX
REGULATIONS

BOROUGH OF NORTH YORK
PENNSYLVANIA



INTRODUCTION

Individuals or entities conducting business in the Borough of North York ("Borough") are required to comply with the Borough's Business Privilege Tax and Mercantile License Tax Ordinances, referred to collectively herein as the "Tax Ordinances" and to pay a business privilege and/or mercantile tax to the Borough. These Regulations provide a formal interpretation of the Tax Ordinances and shall be construed, whenever possible, to be consistent with the Tax Ordinances. In the event that these Regulations are inconsistent with the Tax Ordinances, the provisions of the Tax Ordinances shall prevail.

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ARTICLE I
BUSINESS PRIVILEGE TAX AND MERCANTILE LICENSE TAX

Section 101. Definitions.

Words used in the Business Privilege Tax Ordinance, the Mercantile License Tax Ordinance, and/or these Regulations, but not defined in the Tax Ordinances, the Regulations, by state statute, or by the Pennsylvania judiciary, will be interpreted using the common and ordinary meaning afforded to such words in a local tax context. Any taxpayer may request in writing a written determination of taxability from the Tax Collector with respect to the application of the provisions of the Tax Ordinances or these Regulations.

As used in these Regulations:

"Agent" is a Person with the legal authority to act on behalf of another, called a principal.

"Assessment" means the determination of the amount of tax principal, penalty and/or interest due by a taxpayer.

"Allocation" of gross receipts is the calculation of a share of total Gross Receipts for a particular Base of Operations when more than one Base of Operations exists. The allocation formula is based on a single payroll factor.

"Apportionment" of Gross Receipts is the calculation of a share of Gross Receipts to be included in the tax base, resulting from the performance of services in Philadelphia and/or outside Pennsylvania, by or in conjunction with a Base of Operations with substantial nexus with North York Borough. See Section 207 of these Regulations regarding *Interstate Commerce* for apportionment formula and applicability.

"Attribution" is the process of specifically identifying Gross Receipts directly or indirectly connected to a particular Base of Operations of the taxpayer.

"Base of Operations" is a physical location used by a taxpayer to conduct significant business activities. Indicia of significant business activities include, but are not limited to:

1. Providing workers with a place to work.
2. Providing a base from which operations are managed, directed or controlled.
3. Storage of inventory or other business assets.
4. Administrative, executive, or marketing activities, including meetings.
5. Maintaining business records.
6. Business communications via telephone, fax, mail, or electronic means.
7. Utilization of business equipment.
8. The holding out to others, through the use of signage, advertising, legal registry or stationery to indicate a business location.
9. Rental or sublet of real estate by a landlord or tenant.

Whether a location constitutes a Base of Operations is a factual determination based upon the totality of the circumstances, and no one factor is necessarily controlling. A taxpayer with a single location is deemed to have a Base of Operations at that location. A taxpayer claiming that a location is not a Base of Operations, must demonstrate that another location functions as a Base of Operations. A taxpayer claiming multiple business locations has the burden of proof to demonstrate that any given location constitutes a Base of Operations as defined herein.

Home Office- An area of a personal residence is recognized as a Base of Operations if it is used for business, and no other Base of Operations is reasonably available to conduct business activities. A home office used for the convenience of an employee, owner, or other worker, does not qualify as a Base of Operations. Use of a home office is deemed to be simply for the convenience of an employee or owner, if there is another business office where the same activities are performed.

Use of a customer's or client's facility by a taxpayer does not qualify as a Base of Operations of the taxpayer if the Business Activity at the facility by the taxpayer is incidental with respect to the taxpayer's overall Business Activity. Business activity of sufficient size, duration, and complexity will constitute a Base of Operations of the taxpayer.

Example 1: A consultant with no office in the Borough spends three weeks working at a client's location in the Borough. The client provides the consultant with a place to work and access to other facilities during the three weeks. The consultant also works at other client locations and at his own office.

The consultant does not have a Base of Operations at his client's location because the activity in the Borough lacks sufficient size, duration and complexity.

Example 2: A property management firm headquartered outside the Borough manages a building located in the Borough under a three-year service contract. Several full time employees of the management firm provide maintenance and administrative services, on a daily basis, and exclusively at the building in the Borough. The building owner provides office space and a maintenance facility for the use of the property management firm's employees.

The property management firm has a Base of Operations in North York Borough because the Business Activity is of sufficient size, duration, and complexity.

Real estate located in North York Borough constitutes a Base of Operations of the owner, of the lessee, and of the operator.

"Broker", in general, is one who holds himself out for employment by others, and acts as an intermediate negotiator between parties to a transaction, and in a sense is the Agent of both parties. The determination of who is a Broker is fact specific. In industries that require a

specific license to act as a Broker, Broker is defined by the requirements for the specific license.

"Business Activity" means any significant participation, by a Person, to offer a service or Sale to another, or to engage in commercial transactions.

"Commonwealth" means the Commonwealth of Pennsylvania.

"Exempt from Tax" or "Exempt" refers to the status of Persons not subject to the Borough's Business Privilege Tax and/or Mercantile License Tax under the laws of the Commonwealth of Pennsylvania, for example, Institutions of Purely Public Charity, Government Entities, or manufacturers. See Section 106 of these Regulations.

"Exemption" also refers to certain receipts excluded from Gross Receipts and not subject to tax as provided by state law, Borough Ordinance, or these Regulations. Similarly, nontaxable receipts are also referred to as *"exclusions"* in the Ordinances and Regulations. Any Person claiming exemption from Tax or an exclusion of Gross Receipts has the burden to demonstrate his legal right to such exemption or exclusion.

"Gross Receipts" a term used in the Business Privilege Tax, is defined by the Business Privilege Tax Ordinance.

"Gross Volume of Business", a term used in the Mercantile License Tax and defined by Mercantile License Tax Ordinance, generally is intended to be synonymous with the definition of Gross Receipts as stated in the Business Privilege Tax Ordinance.

"Manufacturing" consists of the application of labor and skill to material whereby the original article is changed into a new, different and useful article. Whether or not an article is a manufactured product depends upon whether or not it has gone through a substantial transformation in form, qualities and adaptability in use from the original material, so that a new article or creation has emerged. See Section 106(F) of these Regulations.

"Person" means any individual, partnership, limited partnership, association, corporation, limited liability company, estate, trust, trustee, fiduciary or any other legally recognized entity, except such as are wholly exempt from taxation under the Act of December 31, 1965, P.L. 1257, as amended (Act 511) and The Institutions of Purely Public Charity Act (Act 55).

"Sale" means the passing or assignment of ownership from the seller to the buyer for a price.

"Tax" means the Business Privilege Tax and/or Mercantile License Tax levied by North York Borough.

"Tax Exempt Nonprofit Corporation or Organization" is an institution that qualifies as a Pennsylvania Purely Public Charity. See Section 106(E) of these Regulations.

"Taxpayer" means a Person subject to the Tax or, in a case where the Borough is seeking to determine whether a Person is subject to Tax, "Taxpayer" also includes such a Person.

"*Borough*" means the Borough of North York, a municipality located in York County and a political subdivision of the Commonwealth of Pennsylvania.

Section 102. Who Must File a Return.

Every Person who has carried on or exercised Business Activity connected to a Base of Operations within the Borough must file a Mercantile and Business Privilege Tax Return, whether or not tax is due. Tax returns are filed at the business entity level. In the case of a partnership, for example, the partnership entity, rather than the individual partners, should file the tax return and pay the tax.

A. Mercantile License Tax. Wholesale and retail vendors or dealers in goods, wares and merchandise and operators of restaurants and other places where food or beverages are sold, are subject to the Mercantile License Tax.

B. Business Privilege Tax. All other persons doing business within the Borough (primarily service providers) are subject to the Business Privilege Tax.

Section 103. Subject and Imposition of Tax.

The Business Privilege Tax and the Mercantile License Tax are levied on the privilege of doing business in the Borough. A person exercises the privilege of doing business by engaging in any commercial or Business Activity with a substantial connection to a Base of Operations in the Borough to promote the Sale of goods or services.

Section 104. Base and Rate of Tax.

A. Tax Base. The tax is based on Gross Receipts attributable or allocable to doing business in the Borough. To determine whether Gross Receipts are attributable to doing business in the Borough, see Section 105, below. Receipts from certain activities are excluded from taxation, see Section 106 (*Exemptions and Exclusions*), and Section 107 (*Interstate Commerce*).

B. Tax Rate. The Business Privilege Tax and the Mercantile License Tax impose tax rates as set forth in the North York Borough Code of Ordinances, Chapter 24 parts 4 and 5, and as may be changed from time to time by ordinance.

Section 105. Determination of Gross Receipts; Attribution, Allocation and Apportionment of Gross Receipts.

Generally, in determining the tax base, the Attribution or Allocation of receipts among multiple Bases of Operations, and the Apportionment of receipts with interstate characteristics, must fairly reflect the Business Activity connected to a Base of Operations in North York Borough and avoid the possibility of double taxation.

A. **Attribution.** Attribution is the process of specifically identifying Gross Receipts directly or indirectly connected to a particular Base of Operations of the taxpayer.

For taxpayers with a single Base of Operations, 100% of intrastate Gross Receipts will be attributed to that single Base of Operations. Receipts cannot be attributed to job sites, or customer or subcontractor locations that do not qualify as a Base of Operations of the taxpayer.

For taxpayers with multiple Bases of Operations, Gross Receipts resulting from Business Activity managed, controlled or directed from a Base of Operations are attributed to that Base of Operations. Receipts will be considered attributable to a Base of Operations in the Borough if any significant aspect of the transaction occurs or arises out of that Base of Operations in the Borough. Generally, receipts paid to a particular Base of Operations will be attributed to that Base of Operations. A taxpayer with more than one Base of Operations must maintain accounting records to support Attribution of receipts to the various business locations.

Example 1: A plumbing contractor has a single business location in North York Borough. He provides services to customers in numerous surrounding municipalities.

100% of his Gross Receipts are attributed to his North York Borough Base of Operations because all work is managed, directed and controlled from his sole business location.

Example 2: An engineering firm has two offices; one in North York Borough and another in Allentown. The firm separately accounts for revenues and expenses for each location.

Gross Receipts separately identified for the North York Borough location are attributed to North York Borough. Gross Receipts attributed to the Allentown Base of Operations are excluded from the North York Borough Tax base, provided no part of the Allentown activity is managed, directed or controlled from the North York Borough office.

Gross Receipts must be determined through Attribution if possible. If determination of Gross Receipts through Attribution is not possible, Gross Receipts are determined through Allocation. If Attribution of receipts under this section does not accurately or

fairly reflect a taxpayer's activity connected to a Base of Operations in the Borough, the Tax Collector may determine Gross Receipts using the Allocation or Apportionment formulas.

B. *Allocation.* Allocation is the calculation of a share of total Gross Receipts for a particular Base of Operations when more than one Base of Operations exist, and the taxpayer is unable to determine Gross Receipts through Attribution. The Allocation formula is based on a single payroll factor.

The Allocation of Gross Receipts for a particular Base of Operations is calculated by multiplying total Gross Receipts by a fraction, the numerator of which is payroll for workers connected with a particular Base of Operations, and the denominator of which is total payroll for all locations.

For the purpose of computing the payroll factor other forms of compensation must be included when relevant. Other forms of compensation may include; self-employment income of a proprietor or a single member of a limited liability company, an active partner's share of partnership income, an active member's share of the income of a limited liability company, or an active shareholder's ordinary income from an "S" corporation.

Example: A law firm is based in North York Borough and has a second office in West Chester. The accounting system does not segregate receipts by location. Gross Receipts total \$1,225,000 for the year. Total payroll and partners' compensation is \$860,000. Payroll and partners' compensation for workers based in North York Borough is \$570,000.

The allocation of Gross Receipts to the North York Borough office is as

follows: Payroll Allocation Factor= $\$570,000/\$860,000$ or 66.3%

Total Gross Receipts	\$1,225,000
Allocation Factor	<u>X</u> 66.3%
Borough Receipts	\$ 812,175

If a taxpayer has no payroll or payroll cannot be identified by location, the square footage of each Base of Operations must be used to determine the Allocation factor.

Furthermore, the Tax Collector may authorize the use of another objective and measurable basis of Allocation when unusual circumstances exist that result in an Allocation that does not fairly reflect the activity connected to a Base of Operations in Springettsbury Township. In such circumstances, the taxpayer must request authorization in writing to use a method of Allocation other than payroll or square footage, and such authorization is prospective in nature.

Example: A taxpayer owns and operates two coin-operated laundromats, one in North York Borough and one in a neighboring municipality. Receipts are not tracked separately for each location. There is no payroll.

The Tax Collector may authorize the taxpayer to allocate Gross Receipts using a formula based on the water usage for each location as reflected on the water or sewer invoices.

C. Apportionment. Apportionment of Gross Receipts is the calculation of a share of Gross Receipts to be included in the tax base, resulting from the performance of services in Philadelphia and/or outside Pennsylvania, by or in conjunction with a Base of Operations in North York Borough. See Section 107 of these Regulations regarding *Interstate Commerce* for Apportionment formula and applicability.

D. Taxpayers Subject to Philadelphia Business Privilege Tax. Philadelphia imposes its Business Privilege Tax under a different state law than other Pennsylvania municipalities. Philadelphia may impose its Business Privilege Tax on taxpayers that do not have a Base of Operations in Philadelphia. In order to avoid the possibility of double taxation, taxpayers subject to the Philadelphia Business Privilege Tax may apportion Gross Receipts subject to tax in Philadelphia.

Apportionment of Gross Receipts subject to tax in Philadelphia will be made under the following formula:

(Receipts within Pennsylvania X 100%) —

(Receipts within Pennsylvania X Philadelphia apportionment factor) =

Gross Receipts included in Tax base.

The Philadelphia apportionment factor shall be the product of averaging the following percentages:

(i) Wages, salaries, commissions, and other compensation in Philadelphia, as a percentage of total Pennsylvania wages, salaries, commissions and other compensation.

(ii) Value of the tangible personal property and real property owned or leased and situated within Philadelphia as a percentage of total Pennsylvania tangible personal and real property owned or leased. The value of leased property is eight times the annual rental, for the purpose of this calculation.

(iii) Philadelphia Gross Receipts, as a percentage of total Pennsylvania Gross Receipts.

Example: A Taxpayer based in North York Borough operates a janitorial service and has total Pennsylvania receipts of \$1,000,000, and total Pennsylvania payroll of \$450,000; the value of owned and leased property in Pennsylvania is \$650,000. Gross Receipts from services performed in Philadelphia were \$220,000, and Philadelphia wages totaled \$88,000. Cleaning equipment kept at customer locations in Philadelphia had a value of \$7,500. The Taxpayer has no Philadelphia Base of Operations.

Gross Receipts subject to North York Borough's Business Privilege Tax are as

follows: Pennsylvania Gross Receipts@ 100% = \$1,000,000

Less: Receipts apportioned to Philadelphia by formula:

<u>Philadelphia Wages</u>	\$88,000	=	19.56%
Pennsylvania Wages	\$450,000		

<u>Philadelphia Property</u>	\$7,500		1.15%
Pennsylvania Property	\$650,000		

Philadelphia Receipts	<u>\$220,000</u>		22.00%
Pennsylvania Receipts	\$1,000,000		

Total All Percentages: 42.71%

Philadelphia Apportionment factor =Average of percentages (divide total by 3) = 14.24%

Pennsylvania receipts (\$1,000,000) X 14.24% = (\$142,400)
receipts apportioned to Philadelphia

Borough Gross Receipts: \$857,600

Note: The percentages for wages, property, and receipts, used in the Apportionment formula must be consistent with those reported by a taxpayer on its Philadelphia Business Privilege Tax Return, a copy of which should be attached to the taxpayer's North York Borough's BP/Mercantile Tax Return.

Section 106. Exemptions and Exclusions.

Any person claiming exemption from Tax or claiming an exclusion of Gross Receipts has the burden to demonstrate his legal right to such exemption or exclusion. As a condition to claiming any exemptions or exclusions, a Taxpayer must disclose on his tax return its total Gross Receipts and then itemize any claimed exclusions and exemptions on a separate schedule that should be attached to and submitted with the tax return.

A. State Preemption. Persons with activity which has been judicially determined to be preempted by the Commonwealth of Pennsylvania may exclude receipts from such activity from taxable receipts. To date, local taxation has been preempted by the Commonwealth only as to the banking industry, the Sale of insurance contracts subject to the Pennsylvania gross premiums tax, the alcoholic beverage industry and harness racing. Preemption has been judicially determined not to exist as to attorneys, the real estate industry, nursing homes, and the securities industry.

Important Note: Preemption does not relieve a taxpayer from all municipal taxation. Gross Receipts which are unrelated to the aspect of business operations the taxation and regulation of which has been preempted by the Commonwealth remain subject to tax by the Borough. Taxable activity does not lose its character as such merely through association with preempted activity.

B. Duplicate State Tax. In the event the Commonwealth imposes a tax on the same subject matter as is taxed by the Borough, and the State tax is measured by the same Gross Receipts sought to be taxed by the Borough, the State tax shall prevail, and the same subject shall not also be taxed by the Borough.

C. Governmental Entities. Agencies of the government of the United States, the various states, and the Commonwealth, and any political subdivision thereof, are not subject to the Tax.

D. Utilities. Receipts from utility services provided by any Person whose rates of service are fixed and regulated by the Pennsylvania Public Utility Commission are excluded from taxable receipts. Receipts from ancillary activities not governed by rate regulation are subject to tax.

E. Tax Exempt Nonprofit Corporations or Associations. A tax exempt nonprofit corporation or organization is an institution that qualifies as a Pennsylvania Purely Public Charity. To qualify, an organization must pass all parts of the following five part test.

An institution must:

1. Advance a charitable purpose (requires I.R.C. 501(c)(3) status);
2. Operate entirely free from private profit motive;
3. Donate or render gratuitously a substantial portion of its services;
4. Benefit legitimate subjects of charity; and
5. Relieve the government of some of its burden.

The exemption for such Purely Public Charities is limited to activities connected to the organization's charitable purpose. The exemption does not extend to activities competing commercially with any Person subject to the tax.

Example: A church meets the five-part test of a Purely Public Charity and is exempt from the Business Privilege Tax. However, this church has a large hall

that is rented to parishioners and/or to non-parishioners for wedding receptions and parties.

The Gross Receipts from the rental activity are subject to Tax because it is unrelated to the church's charitable purpose. Also the rental activity competes with other businesses that are subject to the Tax.

Receipts generated from Sales to religious, charitable, educational, governmental, or other entities not themselves subject to the tax, are not excluded from taxable Gross Receipts.

F. *Manufacturers, Producers, and Processors of By-Products of Manufacture.* Receipts generated by engaging in the following activities (described more fully below) are not subject to the tax: (i) Manufacturing, (ii) producing, and (iii) processing of by-products of Manufacturing.

Manufacturing. Manufacturing consists of the application of labor and skill to material whereby the original article is changed into a new, different and useful article. Whether or not an article is a manufactured product depends upon whether or not it has gone through a substantial transformation in form, qualities and adaptability in use from the original material, so that a new article or creation has emerged.

Whether an activity constitutes Manufacturing for purposes of the Business Privilege or Mercantile Tax depends on the facts involved and each question is reviewed on a case-by-case basis. Pennsylvania Courts have held that Manufacturing includes commercial bookbinding, production of apparel, lithography, commercial printing, oil refining, and steel milling. The Courts have determined that Manufacturing does *not* include: radio and television broadcasting; steel annealing and galvanizing; commercial illustration; work product which is primarily intellectual or clerical in nature (e.g., work of an attorney, architect, computer software engineer, etc.); scrap metal bundling; dyeing and finishing of cloth; purification through pasteurization, filtration and testing for bacteria and impurities; the preparation of potato salad, coleslaw, bread filling, and like examples of "cooking;" adding water to concentrated juice slurry or powdered drink mix to make a finished product; and printing designs and wording on ready-made clothing.

Whether a particular activity qualifies as "Manufacturing" or "processing" under the provisions of the Pennsylvania Capital Stock and Franchise Tax is not dispositive in determining whether receipts are excludable for purposes of the Borough Tax.

Producers. The production, preparation or processing of natural resources or farm products (by manufacturers, producers, and farmers with respect to the goods, articles and products of their own manufacture, production or growth) is not subject to the tax.

Example: Taxpayer owns an organically grown vegetable farm and sells to a specialty grocery store.

Taxpayer's receipts are excluded from the tax.

Processing by-products of Manufacturing. By-products of Manufacturing consist of secondary or additional products produced in addition to a principal product. Processing of by-products is not taxable activity, whether performed by the original manufacturer or by others.

Example 1: Taxpayer takes molten slag, a waste product discarded by a steel manufacturer, and subjects it to a process which enables the iron component to be separated and sold back to the steel manufacturer.

Taxpayer's activity of processing by-products of Manufacturing is not subject to the tax.

Example 2: Taxpayer is in the business of annealing and galvanizing rolls of steel thereby making the steel more malleable.

Taxpayer's activity is not Manufacturing since no "new" product is created; nor is it "processing of a by-product of Manufacturing" because rolls of steel are not secondary or additional products, but are themselves the principal product of the original manufacturer.

Receipts excludable under this subsection are excluded whether the product is manufactured, produced or processed within or outside of the Borough.

Example: Taxpayer manufactures computer equipment in New York. It then leases or sells the equipment to customers within the Borough.

Receipts from Sale or lease of equipment by the manufacturer thereof are not subject to the tax.

Receipts excludable under this subsection are excluded whether the product is sold to others or used by the taxpayer in its own operation.

Example: Taxpayer produces asphalt both for Sale to others and for its own use in fulfillment of paving contracts.

Taxpayer is entitled to exclude receipts from Sale of product to others, plus an additional amount equal to the cost of producing product for its own use.

A manufacturer's receipts from activities other than Manufacturing are not excluded.

Example: Twenty percent of the Gross Receipts realized by taxpayer, a manufacturer of small engine parts, are generated by providing maintenance services for products not manufactured by taxpayer.

Receipts from such unrelated activity are not excluded.

G. *Receipts Excluded From Gross Receipts (Exclusions).* State Law or the Tax Ordinances provide that the following specified receipts are excluded in the computation of Tax.

- (1) Freight delivery or transportation charges paid by the seller for the purchaser.
- (2) Sales of trade-ins, up to the amount given the prior owner as a trade-in allowance.
- (3) Refunds, credits or allowances given customers for defective goods returned.
- (4) Taxes collected as agent for the United States of America or the Commonwealth of Pennsylvania or North York Borough other than for the payment of the North York Borough Business Privilege or Mercantile Tax.
- (5) Exchanges between sellers of identical goods, but not to the extent of any additional cash payment accompanying the exchange.
- (6) Sales to other sellers in the same line of business at the same price for which the seller acquired the merchandise.
- (7) Transfers between one department, branch or division of a business entity and another, recorded as interdepartmental transfers.
- (8) In the case of a financial business, the costs of securities and other property sold, exchanged, paid at maturity or redeemed and moneys or credits received in repayment of advances, credits and loans (not to exceed the principal amount of such advances, credits and loans) and deposits.
- (9) Payments received by an Agent for the account of his principal are excluded by the Agent. The exclusion is limited to the amount subsequently remitted to such principal. *See Section 207 of these Regulations.*

Important Note: Section 300-39 of the North York Borough Business Privilege Tax Ordinance excludes from Gross Receipts certain commissions and fees between Brokers. It has been judicially determined that this type of Broker exclusion violates the uniformity requirement, and is therefore unconstitutional in Pennsylvania. Consequently, the invalid provision is severed and the Broker exclusion is no longer allowed.

Section 107. Interstate Commerce

Gross Receipts resulting from transactions with interstate characteristics are includable in the tax base on an apportioned basis, provided the activity that produced the receipts had a substantial nexus to a Base of Operations in North York Borough. "Transactions with interstate characteristics" within the meaning of this Section 107 include the performance of services by a

taxpayer outside Pennsylvania and the Sale and delivery of goods to a non-Pennsylvania buyer in another state or country. The Sale of interstate passenger tickets constitutes transactions with interstate characteristics.

Apportionment of Gross Receipts will be made under the following formula:

$$(\text{Total Gross Receipts} \times \text{Apportionment factor}) =$$

Gross Receipts apportioned to Pennsylvania.

The Apportionment factor shall be the product of averaging the total of the following percentages:

- (i) Wages, salaries, commissions, and other compensation in Pennsylvania, as a percentage of total wages, salaries, commissions and other compensation.

For the purpose of computing the payroll factor other forms of compensation must be included when relevant. Other forms of compensation may include; self-employment income of a proprietor or a single member of a limited liability company, an active partner's share of partnership income, an active member's share of the income of a limited liability company, or an active shareholder's ordinary income from an "S" corporation.

- (ii) Value of the tangible personal property and real property owned or leased and situated within Pennsylvania as a percentage of total tangible personal and real property owned or leased. The value of leased property is eight times the annual rental, for the purpose of this calculation.
- (iii) Gross Receipts from Pennsylvania Sales and/or services, as a percentage of total Gross Receipts from Sales and/or services.

The Tax Collector may authorize unequal weighting of the three factors when unusual circumstances exist such that a straight average results in an Apportionment that does not fairly reflect the activity connected to a Base of Operations in North York Borough. In such circumstances, the taxpayer must request authorization in writing to use an unequal weighting of the factors and the Tax Collector, in his or her discretion, may grant or deny such authorization in writing. In no event shall any of the three factors be weighted less than 20%.

For taxpayers whose only Base of Operations is located in North York Borough, the tax base constitutes Gross Receipts apportioned to Pennsylvania.

For taxpayers with more than one Base of Operations in Pennsylvania, Gross Receipts apportioned to Pennsylvania may be further allocated. Refer to Section 105 of these Regulations for provisions governing Attribution or Allocation of receipts between or among multiple Pennsylvania locations.

**ARTICLE II
PARTICULAR BUSINESSES OR TRANSACTIONS**

Section 201. General Applicability.

Gross Receipts of any taxpayer include the gross amount of cash, credit or property of any kind or nature received in both cash and credit transactions allocable or attributable to the Borough by reason of any Sale made, service rendered, or commercial or business transactions in connection with any business, trade, occupation or profession.

Gross Receipts upon which the Tax is imposed are undiminished by any costs of doing business, other than as specifically provided in Section 106 of these Regulations.

Gross Receipts may be measured using the cash or accrual method of accounting, provided the return is filed in accordance with the method of accounting regularly employed in keeping the books of the taxpayer and the method is consistent from year to year. Use of the completed-contract or percentage-of-completion methods of accounting is prohibited for the purpose of determining Gross Receipts.

Section 202. Administrative or Executive Offices.

Maintaining a Base of Operations in North York Borough used for administrative or executive activities is an exercise of a business privilege and is subject to the Tax. Administrative and executive functions contribute to the management and control of business operations. Gross Receipts attributed to administrative or executive offices are determined in accordance with Section 105 of these Regulations (*Determination of Gross Receipts*).

Section 203. Affiliated Companies.

Gross Receipts from transactions between separate entities, affiliated through direct or indirect common ownership, are included in taxable Gross Receipts.

Example: Taxpayer is a wholly-owned corporate subsidiary of ABC Company. All of ABC's accounting and administrative functions are performed by Taxpayer. Taxpayer bills ABC a "management fee" equal to its costs and expenses so that, by design, no profit is generated by taxpayer. ABC purports to "reimburse" taxpayer all of its expenses.

So long as taxpayer and ABC Company are separate legal entities, the inter-company management fees paid by ABC to taxpayer are taxable Gross Receipts.

Section 204. Receipts from Lease, Use, or Rental of Personal or Real Property.

Receipts from the lease, use, or rental of personal or real property are deemed to be receipts from

the performance of services and subject to the Business Privilege Tax.

Section 205. "Unearned" Receipts.

Gross Receipts from unearned investment income, such as interest, dividends, and gain on the Sale of capital assets, are generally included in the tax base if the receipts are in connection with a Business Activity or business transactions. The investment of business assets is deemed to be in connection with business transactions. For purposes of calculating gain on Sale of capital assets, adjusted cost basis may be deducted from the gross Sales price.

Unearned investment income may be excluded if any one of the following conditions is met:

1. The taxpayer has no Business Activity (See Section 101 Definitions-*Business Activity*).
2. The investment activity does not qualify as a Business Activity, and the taxpayer has no other Business Activity.
3. The taxpayer's Business Activity is exempt from the Business Privilege Tax. In the case where the taxpayer has both exempt and non-exempt Business Activities, Gross Receipts from unearned investment income may be pro-rated.

Example 1: A taxpayer owns and operates an apartment building. The taxpayer sells the building for \$2.5 million. The original cost of the building was \$1.2 million. Because of capital improvements and depreciation taken, the adjusted cost basis of the building was \$700,000 at the time of Sale.

The taxpayer must include \$1.8 million (\$2.5 million - \$700,000 NBV) as Gross Receipts from the Sale of the building for Business Privilege Tax purposes. The building is a business asset connected to the taxpayer's Business Activity of apartment leasing.

Example 2: An individual actively manages his own portfolio of stocks, bonds and other investment instruments on his own account. Interest, dividends, and capital gains from the investment activity exceed \$100,000 annually. The investor has no other Business Activity.

The Gross Receipts from the investment activity are not subject to the Business Privilege Tax because the investment activity does not qualify as a Business Activity, and the taxpayer has no other Business Activity. A Business Activity must involve offering a service or Sale to another. Self-management by an individual of his own investments is not a Business Activity.

Example 3: An educational institution is exempt from tax as a Purely Public Charity. 80% of the institution's Gross Receipts are from educational related sources, and 20% are from rental activities involving third parties. The institution also received \$50,000 in interest income during the year.

The institution is subject to the Business Privilege Tax on its non-exempt rental receipts. Also included in the tax base is \$10,000 of interest income on a pro-rated basis (\$50,000 X 20%).

Section 206. Accountants, Architects, Engineers, Attorneys, Consultants, and other Persons Providing Professional Services.

Any professional who maintains a Base of Operations in the Borough, except as an employee of another, is subject to tax on his/her entire Gross Receipts regardless of the location of his client, except for receipts allocated or apportioned in accordance with Article I of these Regulations.

Example 1: Physicians - A physician with a Base of Operations in North York Borough, who also renders services at a hospital or other location outside of North York Borough, must clearly demonstrate that the other location constitutes a Base of Operations, in order to attribute receipts thereto. If the only Base of Operations is in North York Borough, all Gross Receipts will be attributed to North York Borough.

Example 2: Attorneys - An attorney-client relationship may be equivalent to an agent-principal relationship. Accordingly, 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 the distribution of funds recovered in a lawsuit, the Sale of real estate, or the proceeds in a collection matter, but only in accordance with the provisions of Section 207 (*Principal and Agent*).

Section 207. Principals and Agents.

A. Revenue Collections by Agent. Gross Receipts from revenues received by an Agent for the account of his principal are to be reported by the principal. It is immaterial whether the client or customer remits directly to the principal or the Agent for transmittal to the principal. The Agent is required to report the commission withheld by him as compensation for his services before remitting to his principal and/or any commission paid to him after the receipts are remitted to his principal. An Agent is also required to include in Gross Receipts other receipts not for the account of his principal. No deduction from Gross Receipts may be taken by the principal for commission paid to or withheld by the Agent.

B. Dollar-for-Dollar Payments and Reimbursements. Money or property received by an Agent for transmittal to a third party on behalf of his principal or as a reimbursement of such a transmittal, is not to be reported by the Agent as Gross Receipts, provided the receipt and/or subsequent payment contains no commission, markup, or rebate. The dollar-for-dollar

requirement of such pass-through payments or reimbursements must be documented in a written agent-principal arrangement or evidenced as a separate item on governing invoices.

Example: Taxpayer Allen (agent) is retained by Paul (principal) to locate, purchase and arrange delivery of a specific work of art. The agreement provides for a 10% finder's fee and the reimbursement of certain expenses. Allen finds, inspects, and purchases the artwork in Paul's name and has it delivered. Allen is paid by Paul as follows:

Cost of Artwork	\$50,000 (remitted to seller)
Finder's fee	\$ 5,000
Delivery cost	\$ 1,200 (paid to delivery company)
Allen's travel expenses	\$ 1,147 (actual airfare, lodging, etc.)
Total	\$60,697

Allen must include the finder's fee and the reimbursed travel expenses (\$6,147) in Gross Receipts for Business Privilege Tax purposes. The cost of the artwork, and the delivery charge are excluded, since these costs were paid to third parties by Allen on behalf of Paul. Allen's travel expenses were incurred and paid in connection with services rendered by Allen, but these expenses were not paid to third parties on behalf of Paul and therefore, are not excludable.

C. *Factors to be Considered in Establishing an Agency Relationship.* A person will be regarded as acting as an Agent for the purpose of collecting revenue or receiving reimbursement of an expense on behalf of a principal when all of the following conditions are met:

- I. The contract or agreement between such persons clearly and legally establishes the relationship of principal and Agent and is evidenced in writing.
2. The books and records of the agent show the name of the principal on whose behalf the Sale is made or the expense is incurred.
3. The credit risk is assumed by the actual owner of the property or the person for whom the service is rendered.
4. The books and records of the agent show the amount of Gross Receipts and an itemization of commission due and/or other revenue or expenses.

D. *Manufacturer's Representative.* A manufacturer's representative will be taxed on his gross commissions provided he does not take title to the property being sold. Persons who take title to the property being sold will be treated as vendors-dealers under the Mercantile License Tax Ordinance. No deduction is allowed for commissions paid to independent Sales representatives or subagents.

E. Agent as Employee. Income earned as an employee is not subject to the Tax. Any Agent asserting status as an employee must provide a copy of federal form W-2 and/or such other documentation as the Tax Collector may reasonably require to establish employment. Receipts earned by independent Agents are subject to the tax even though such persons qualify as "statutory employees" for purposes of federal income taxation.

F. Advertising and Marketing Agencies. Advertising and marketing agencies must include all Gross Receipts from consulting services and/or the development and production of marketing programs and materials. No exclusion is allowed for production costs, such as printing. Gross Receipts representing the reimbursement of advertising costs incurred by the agency on behalf of its client (principal) may be excluded, provided that the reimbursement is dollar-for-dollar, and the reimbursement is separately stated at cost on the agency's invoice.

Example 1: A vendor retains a marketing agency to develop an advertising concept, design a printed flyer, and arrange for the flyer to be distributed as an insert through a newspaper publisher. The marketing agency also subcontracts the printing of the flyer as part of the engagement. The contract between the vendor and the marketing firm clearly establishes a principal agent relationship and provides for a fixed fee of \$30,000 for the design, printing and placement of 450,000 flyers, plus the advertising fee paid to the newspaper at cost. The agency incurs costs for subcontracted photography (\$1,250), printing (\$4,675), and placement fees paid to the newspaper (\$18,000). The marketing agency invoices the vendor \$48,000, showing the exact cost of the placement fee on the face of the invoice.

The marketing agency may exclude the \$18,000 dollar-for-dollar reimbursement of the advertising cost from Gross Receipts.

Example 2: Same facts as Example 1, except the marketing agency takes a 15% agency discount on the placement fee, paying the newspaper \$15,300, but charges the vendor \$48,000, showing the advertising cost as \$18,000 on the invoice.

No exclusion from Gross Receipts is allowed by the agency because the reimbursement was not dollar-for-dollar.

G. Insurance Agents, Brokers and Underwriters. General agents for insurance companies are required to report as Gross Receipts the entire commissions received as compensation on policies sold by them directly as well as the overriding commissions received by them upon business produced by Brokers and subagents. Brokers and subagents are required to report as Gross Receipts the commissions received as compensation for their services. No deduction is allowed for commissions paid to solicitors, subagents, Brokers, or others.

H. Real Estate Brokers and Agents. Real estate Brokers and agents are required to report as Gross Receipts the commissions and fees received for services rendered in promoting the purchase, Sale, rental and/or management of property for others. Gross Receipts include commissions on properties not located in the Borough if the transaction is handled through

personnel connected to a Base of Operations in the Borough. Similarly, Gross Receipts include commissions on transactions managed, controlled, or directed through a North York Borough Base of Operations, even though settlement is conducted at a location outside the Borough.

No deduction from Gross Receipts is allowed for commissions paid by real estate Brokers to real estate agents.

If a real estate Broker takes title to real property in his own name or in a straw name and sells the property, he is required to include the gross selling price of the property as taxable receipts, undiminished by the cost of the property or other expenses. However, if the Sale qualifies as the Sale of a capital asset under the Internal Revenue Code, the cost of the property may be deducted from Gross Receipts. *See Section 205 of these Regulations.*

Section 208. Persons Who Repair, Alter or Improve Tangible Personal Property.

Persons with a Base of Operations in North York Borough, who repair, alter, or improve tangible personal property are required to include total customer charges in Gross Receipts without deduction of materials or costs of any kind. This provision applies regardless of whether or not there is a markup of the costs to the customer. Gross Receipts from work performed outside the Borough are included in the tax base unless they may be excluded through Allocation or Apportionment as provided in these Regulations.

Section 209. Persons Erecting Buildings or Altering, Repairing, or Improving Real Property.

A contractor or subcontractor with a Base of Operations in North York Borough, in the business of erecting buildings, or altering, repairing or improving real property, or any other construction, installation, or demolition work, shall include in Gross Receipts all receipts derived from the performance of such contract. In the case of a general contractor, prime contractor or subcontractor, no deduction or exclusion from Gross Receipts is allowed for amounts paid for materials, suppliers, and/or subcontractors.

Contractors must include in Gross Receipts 100% of receipts from work in Pennsylvania that is connected to a Base of Operations in North York Borough. Gross receipts from work performed outside of Pennsylvania may be apportioned in accordance with Section 107 of these Regulations.

No exclusion or deduction from Gross Receipts is allowed for receipts attributed from contracts that involve the use of a job-site trailer unless such trailer qualifies as a Base of Operations as specifically provided under Section 101 (definition: Base of Operations) of these Regulations.

Section 210. Persons Paying Taxes to Other Municipalities.

Where a taxpayer files a return and pays a business privilege or mercantile tax to another municipality, receipts reported to that municipality may be excluded only if the taxpayer has a Base of Operations in such other municipality and has properly attributed receipts to the Base of Operations in that municipality.

Section 211. Building Operators

Persons operating hotels, apartment houses, boarding houses, nursing homes, eldercare facilities, offices, or commercial real property are subject to the Business Privilege Tax. Gross Receipts include rents, management fees, expense reimbursements (including utilities, insurance and taxes), commissions, common area maintenance charges, furnishing of meals, and charges for any other services rendered, and receipts connected to any Business Activity attributed to a Base of Operations in North York Borough.

Persons holding real property who employ rental agents or a real estate management company to assist with the rental and/or management of the property are subject to the Tax.

Persons with a Base of Operations in North York Borough and operating buildings or other real property outside North York Borough must allocate receipts in accordance with Section 105 of these Regulations.

Co-operatives and/or condominium associations may exclude from Gross Receipts membership dues received from unit owners so long as the receipts are not connected to services that could be in competition with a commercial business subject to the Business Privilege Tax.

Section 212. Intellectual Property

The development of intellectual property, whether for Sale, use or lease, is a service and is subject to the Business Privilege Tax. Intellectual property includes, but is not limited to, works of art, inventions, software, information systems, manuscripts and other works of authors, and other property that can be protected by patent or copyright.

ARTICLE III
DECLARATION AND PAYMENT OF TAX

Section 301. Extension of Time for Filing Returns.

North York Borough will recognize any Federal extension of time to file returns for Business Privilege and Mercantile License Tax purposes, so long as all Tax is paid to the Borough by the original due date for the return(s), and a copy of the Federal extension is submitted. An extension of time to file a return is not an extension of time to pay Tax associated with the return. No extension of time to pay Tax is allowed.

Section 302. Filing to Be Complete.

Returns shall be completed in full and certified as true and correct by the taxpayer. Taxpayers must attach copies of Federal tax returns, schedules and worksheets, to support the Gross Receipts that are reported and to support any claimed exclusions or exemptions. Tax returns that omit proper supporting documentation are considered incomplete and not properly filed.

Section 303. Business Termination.

Any taxpayer going out of business or ceasing to do business must file a final return within thirty days from the date the operations cease. The final return must show the actual Gross Receipts generated during the tax year in which the taxpayer ceased doing business. At the time of filing the final return, the taxpayer must pay any tax properly due. If the final return properly shows that excess tax has been paid due to estimated taxes previously paid for the final year, the taxpayer shall be entitled to a refund of the excess tax paid.

Section 304. Accounting Methods (Cash or Accrual).

The tax return may be filed on a cash basis or on an accrual basis, but the return must be prepared in accordance with the method of accounting regularly employed in keeping the books of the taxpayer.

Section 305. Records to be Kept.

Every Taxpayer is required to keep such accounts and records as will enable the filing of true and accurate declarations and returns. Such accounts and records shall be sufficiently complete to enable the Tax Collector to verify the accuracy of the declarations or returns filed. Accounts and records are to be preserved for a period of not less than 6 years from the end of the taxable year in question.

ARTICLE IV
ADMINISTRATION AND ENFORCEMENT

Section 401. Verification of Records, Audits, Response Periods, Prior Year Returns.

The Tax Collector, or authorized designee, is authorized to examine any of the books, papers, and records of any Person or business entity who the Tax Collector reasonably believes has engaged in taxable activity within the Borough, in order to verify the accuracy of any return made or, if no return has been made, to arrive at a reasonable assessment of the amount of tax, interest, and penalty due.

A. Issuance of Subpoenas to Compel Attendance and Production. The Tax Collector is authorized to issue subpoenas to compel the attendance of persons deemed by the Tax Collector to be necessary to examine as witnesses, and to compel the production of books, records, and papers relating to any person or business entity under examination.

B. Minimum Time Periods (or Taxpayer Response). Taxpayers shall have at least 30 calendar days from the mailing date to respond to an initial request for information from the Borough. The Tax Collector shall notify any Taxpayer from whom information is initially requested of the procedures to obtain an extension of time in which to respond, and shall grant reasonable extensions of time in which to respond for good cause shown. No action shall be taken against a Taxpayer for the tax year in question until the expiration of the response period, including extensions.

C. Inquiry as to Prior Year Returns. Except as provided below, an initial inquiry regarding a Taxpayer's compliance with the Tax Ordinances may include taxes required to be paid or tax returns required to be filed no more than three years prior to the mailing date of the notice of such inquiry. If, after the initial request, the Tax Collector determines that the taxpayer failed to file a tax return, underreported income, or failed to pay a Tax for one or more of the tax periods covered by the initial request, subsequent requests for tax returns or supporting information may be made. Subsequent requests will be limited to two additional years (for a total of five years prior to the first date of initial inquiry), unless the taxpayer filed no return or filed a fraudulent return, in which case the Borough may request information for another additional year (for a total of six years prior to the first date of initial inquiry). Note, however, that in the event the Tax Collector has sufficient information to indicate that a taxpayer has failed to file a required return or pay tax which was due more than three years prior to the date of the notice, an *initial* request is not limited to three years and may include as many as 6 years prior to the date of the initial inquiry.

Section 402. Procedures for the Conduct of Taxpayer Audits.

The following procedures shall be followed during the conduct of an audit of a taxpayer's books and records:

A. Notice of Audit. The taxpayer shall be notified in writing of a scheduled audit at

least 30 days in advance. The notice of audit shall contain the following information:

- I. The tax years subject to audit;
 2. The date, place, and time for the audit to be conducted;
 3. A description of the information, books and records to be produced; and
 4. A copy of the Borough's Local Taxpayer's Bill of Rights Disclosure Statement or a fair summary of the taxpayer's rights and obligations under the Local Taxpayers Bill of Rights Act, together with a reference to where the taxpayer can obtain a complete copy of the Disclosure Statement.
- B. *Rescheduling Audit.* The taxpayer may request that the audit be rescheduled, provided that it is rescheduled within a reasonable time not exceeding 30 days.
- C. *Representation at Audit.* The taxpayer may have a representative present during the audit.
- D. *Use of Estimates.* In the event that the information, books and records provided by the taxpayer, are not sufficient for the purpose of verifying the correct amount of tax, the Tax Collector is authorized to ascertain the amount of tax due through the use of estimates.
- E. *Audit Results.* In the event a notice of Assessment is issued as a result of an audit, the taxpayer shall be provided with a copy of the auditor's report of findings and conclusions, including the calculation of any tax, interest and/or penalty found to be due.

Section 403. Examination of Return, Notice of Assessment.

A. *Examination of Return.* The Tax Collector shall examine every return as soon after filing as practical to determine the correct amount of tax according to the filing. If the Tax Collector finds that the amount of tax shown on the return is less than the correct amount, the Tax Collector shall notify the taxpayer in writing of the amount of the underpayment (deficiency) assessed. A Notice of Assessment, whether as a result of an examination of a return, as a result of an audit, or otherwise, shall be in writing and include:

- I. The tax period or periods for which the underpayment is asserted.
2. The amount of the underpayment detailed by tax period.
3. The legal basis upon which the Borough has relied to determine that an underpayment exists.
4. An itemization of the revisions made by the Borough to a return filed by the taxpayer that result in the determination that an underpayment exists.

5. A copy of the Borough's Local Taxpayer's Bill of Rights Disclosure Statement or a fair summary of the taxpayer's rights and obligations under the Local Taxpayers Bill of Rights Act, together with a reference to where the taxpayer can obtain a complete copy of the Disclosure Statement.

If the Tax Collector finds that the tax that has been paid by the taxpayer is more than the correct amount, the Tax Collector shall credit the overpayment against any taxes owed by the taxpayer to the Township and shall refund the difference to the taxpayer. Written notice of such action by the Tax Collector shall be provided to the taxpayer.

B. *No Return Filed.* If a taxpayer fails to file any return of tax required to be filed, the Tax Collector may estimate from any available information, the taxpayer's Gross Receipts and the tax due thereon, and notify the taxpayer in writing of the amount assessed against the taxpayer as a deficiency.

Section 404. Petition for Reassessment.

Within 90 days of the date of a Notice of Assessment, the taxpayer may make a request for reassessment by completing and submitting a Petition for Administrative Appeal which will be forwarded for decision to an administrative hearing officer appointed by the Borough. See Section 412 (*Taxpayer's Administrative Appeals*).

Section 405. Refund of Overpayments, Interest on Overpayments.

A. *Taxpayer Request (or Refund of Overpayments)*. Any taxpayer who has made an overpayment of tax to the Borough may file a written request with the Tax Collector for a refund or credit. A request for refund shall be made within 3 years of the due date for filing the tax return (as extended), or one year after actual payment of the tax, whichever is later. If no return (or report) is required, the request shall be made within 3 years after the due date for payment of the tax or within one year after actual payment of the tax, whichever is later. A request for refund shall not be considered complete and filed unless and until all information necessary for the Borough to determine the merits of the request have been received by the Borough.

1. *Overpayment on tax return.* For purposes of this section, a tax return filed by the taxpayer with the Borough showing an overpayment of tax shall be deemed to be a written request for a cash refund unless otherwise indicated on the tax return.
2. *Refund request not a petition for appeal.* A request for refund under this section shall not be considered a Petition for Administrative Appeal and shall not preclude a taxpayer from submitting a Petition for Administrative Appeal. See Section 412 (*Taxpayer's Administrative Appeals*).

3. *Refund after Notice of Assessment.* For amounts paid as a result of a notice asserting or informing a taxpayer of an underpayment, a written request for refund shall be filed with the Borough within one year of the date of the payment.

B. *Interest on Overpayments.* All overpayments of tax due to the Borough shall bear simple interest from the date of the overpayment until the date of resolution. (See 53 Pa. C.S. § 8426).

1. *Rate of interest.* Interest on overpayments shall be allowed and paid at the same rate as the Commonwealth is required to pay pursuant to Section 806.1 of the Act of April 9, 1929 (P.L. 343, No.176), known as The Fiscal Code, or any successor statute governing such rate of interest.
2. *75 days before interest accrues.* No interest shall be allowed if an overpayment is refunded (or applied against any other tax, interest or penalty due the Borough) within 75 days after the last date prescribed for filing the report of the tax liability or within 75 days after the date the return or report of the liability due is filed, whichever is later.
3. *No interest on Overpayments of Interest and Penalty.* Overpayments of interest or penalty shall not bear any interest.

C. *Acceptance of Refund Check.* The taxpayer's acceptance of the Borough's refund check shall not prejudice any right of the taxpayer to claim any additional overpayment and interest thereon. Tender of a refund check by the Borough shall be deemed to be acceptance of the check by the taxpayer.

Section 406. Abatement of Certain Interest and Penalty.

A. *Errors and Delays.* In the case of any underpayment, the Tax Collector may abate all or any part of interest for any period for the following:

1. Any underpayment of tax finally determined to be due attributable in whole or in part to any error or delay by the Borough in the performance of a ministerial act, provided, however, that no significant aspect of the error or delay is caused by the taxpayer after the Borough has contacted the taxpayer in writing with respect to the underpayment of tax finally determined to be due or payable.
2. Any payment of a tax to the extent that any error or delay in the payment is attributable to an officer, employee or Agent of the Borough being erroneous or dilatory in performance of a ministerial act. The Tax Director shall determine what constitutes timely performance of ministerial acts.

B. *Erroneous Written Advice by Borough.* The Borough shall abate any portion of any penalty or interest attributable to erroneous advice furnished to the taxpayer in writing by an

officer, employee or Agent of the Borough, acting in his or her official capacity if:

- I. the written advice was reasonably relied upon by the taxpayer and was in response to specific written request of the taxpayer; and
2. the portion of the penalty or addition to tax or excess interest did not result from a failure by the taxpayer to provide adequate or accurate information.

Section 407. Installment Agreements.

If, in the sole opinion of the Tax Collector, it will facilitate collection, the Borough may enter into a written agreement with any taxpayer under which the taxpayer is allowed to satisfy liability for the tax in installment payments.

A. Termination of Installment Agreement The Tax Collector may terminate any installment agreement if: (a) information provided to the Borough prior to the date of the agreement was inaccurate or incomplete, or (b) the Tax Collector believes that collection of the tax under the agreement is in jeopardy.

B. Alteration of Installment Agreement If the Tax Collector finds that the financial condition of the taxpayer has significantly changed, the Tax Collector may alter, modify or terminate the agreement, but only if: (a) notice of the Tax Collector's finding is provided to the taxpayer no later than 30 days prior to the date of such action; and (b) the notice contains the reasons why the Tax Collector believes a significant change has occurred.

C. Breach of Installment Agreement The Tax Collector may alter, modify or terminate an installment agreement if the taxpayer fails to do any of the following:

- I. Pay any installment at the time the installment is due under the agreement;
2. Pay any other tax liability at the time the liability is due;
3. Provide a financial condition update as requested by the Borough.

D. Prepayment Permitted Taxpayer may prepay, in whole or in part, any tax under any agreement with the Borough.

Section 408. Payment Under Protest.

The Tax Collector is authorized to accept "payment under protest" of the amount of tax in order for the taxpayer to avoid liability for additional interest, penalties, and fines. Further, the Tax Collector may accept partial payment of any amount due without waiver of the Borough's right to collect the balance due.

Section 409. Violations, Interest on Underpayment and Penalties.

Failure to comply with the provisions of the Tax Ordinance or these Regulations may result in sanctions, including:

A. Interest on underpayment. If any amount of tax imposed by the Tax Ordinance is not paid on or before the last date prescribed for payment, interest on such amount at the rate of 1 % per month, or fraction of a month, shall be payable for the period from such last date to the date such amount is paid.

B. Penalty. If any amount of tax imposed by the Tax Ordinance is not paid on or before the last date prescribed for payment, there shall be added to the tax for the taxable year an amount equal to 10% of the amount of the tax due.

C. Fine. Any taxpayer (including any officer, Agent, or employee thereof) who knowingly fails to obtain a license, fails to remit any tax due, fails to file complete and correct reports or returns when due, or makes a false or fraudulent return, may be subjected to a fine of \$600.00 and costs of enforcement for each offense, and, in default of payment of such fine and costs, to imprisonment for a term not exceeding thirty days.

Section 410. Confidential Nature of Tax Information.

Any information obtained by the Tax Collector or any official, Agent or employee of the Borough as a result of any audit, return, report, investigation, hearing or verification required or authorized by the Tax Collector shall be confidential tax information.

Section 411. Dishonored Checks.

If any check received in payment of taxes is returned unpaid by the bank, there shall be added to the tax due the sum charged for dishonored checks established by the Borough.

Section 412. Taxpayer's Administrative Appeals.

In order to appeal any Assessment, determination or denial of refund of tax, the taxpayer must file a Petition for Administrative Appeal with the York Area Tax Bureau. All Petitions shall be mailed or delivered to: York Area Tax Bureau, 1415 North Duke Street, York, PA 17404.

A. Petitions (or Administrative Appeal). Petitions shall be in writing on a form substantially similar to that attached as an addendum. A petition is timely filed if the envelope transmitting the petition is postmarked by the United States Postal Service on or before the final day on which the petition is required to be filed. If hand delivered, a Petition will be deemed to

be filed on the date received at the address shown above.

B. Contents of Petition (or Administrative Appeal). Petitions shall: (1) state the name, address and telephone number of the taxpayer and taxpayer's authorized representative (if any), (2) identify the tax and tax period(s) to which the Petition pertains, (3) state the amount of tax appealed and the legal basis for the appeal (i.e., state how or why the Assessment is incorrect; or why a refund request should have been granted), (4) provide copies of all supporting documentation and calculations, (5) state whether a hearing is requested, and (6) certify under penalty of perjury that the facts in the Petition are true and correct and that the Petition is not filed for purposes of delay.

C. Deadlines for Filing Petition (or Administrative Appeal).

I. Refund Petitions shall be filed within 3 years after the due date for filing the report as extended, or one year after actual payment of an eligible tax, whichever is later. If no report is required, the petition shall be filed within 3 years after the due date for payment of the tax or within one year after actual payment, whichever is later.

2. Petitions for Reassessment of tax shall be filed within 90 days of the date of the Assessment notice.

D. Administrative Appeals Process and Procedure. Upon receipt of a timely filed Petition for Administrative Appeal, the Tax Collector will: (a) promptly schedule a hearing if a hearing has been requested by the taxpayer (if a hearing is not requested, the Petition will be determined on the record before the hearing officer), (b) provide the taxpayer with a Notice of Hearing (setting forth the time, date, and location of the hearing), and (c) forward the taxpayer's petition to an administrative hearing officer appointed by the Borough. Unless the date of the hearing is agreed upon by all parties, the Tax Collector shall give at least 7 days written notice of the hearing to all parties.

I. Hearings. Hearings will be held at the Borough Municipal Building, unless otherwise directed by the hearing officer. Hearings will be informal in nature and technical rules of evidence will not be applicable.

(a) Representation. Taxpayers may appear before the administrative hearing officer with or without benefit of representation. Any person seeking to represent a taxpayer at the hearing must first be so authorized by the taxpayer in writing. A taxpayer's representative need not be a licensed professional, but should be familiar with the Tax Ordinance, these Regulations and the facts of the case.

(b) Presentation of Evidence. Evidence may be submitted and considered which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Unless waived by the parties, testimony shall be under oath or affirmation, administered by the hearing officer. Copies or photographs of all records and other exhibits shall be provided to all parties and to the hearing officer. Any party may have a recording or a transcript made of the hearing at the party's expense.

(c) Failure to Appear. The hearing may proceed in the absence of any party who fails to appear, after notice, but the hearing officer's decision shall not be based solely upon the failure of a party to appear.

2. Hearing Officer's Decision. After the conclusion of the hearing, the hearing officer shall issue a written decision to the parties. The decision shall be issued within sixty days of the filing of the petition, unless both parties waive the sixty-day deadline. The decision is timely issued so long as it is mailed, faxed, emailed or otherwise transmitted to the parties on or before the deadline.

Section 413. Judicial Appeal.

A Taxpayer aggrieved by a decision of the administrative hearing officer has the right to appeal to the Court of Common Pleas of York County, Pennsylvania.

Section 414. Construction.

If any sentence, clause, or section or part of these regulations is, for any reason, found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, or sections or parts of these regulations. In such event, these regulations shall be construed as if adopted without including such unconstitutional, illegal, or invalid sentence, clause, section, or part.

ORDINANCE NO. 2015 - 5

AN ORDINANCE OF NORTH YORK BOROUGH ADOPTING REGULATIONS FOR ITS' BUSINESS PRIVILEGE TAX AND MERCANTILE LICENSE TAX ORDINANCES

WHEREAS, in conjunction with discussions with the York Adams Tax Bureau, the Borough of North York Borough Council has determined it is in the best interest of the Borough to adopt regulations relating to its' Business Privilege Tax and Mercantile License Tax Ordinances concerning their interpretation and to allow and regulate independent audits to verify that the proper amount of taxes are collected.

NOW, THEREFORE, BE IT ORDAINED THAT

The Business Privilege and Mercantile Tax Regulations attached hereto as "Exhibit A" are hereby adopted as the formal interpretation of the Borough's Mercantile License Tax and Business Privilege Tax, Code of Ordinances, Chapter 24 parts 4 and 5 respectively.

This Ordinance shall become effective as provided by law.

ENACTED AND ORDAINED this 28th day of April, 2015.

ATTEST:

Harriet C. Thomas

BOROUGH OF NORTH YORK

Vincent J. Anspach
President, Borough Council

Approved by me ✓ ; Disapproved by me _____
this 28 day of APRIL 2015.

Donald D. Duncan
Mayor