

MUNICIPALITY OF MONROEVILLE
ALLEGHENY COUNTY, PENNSYLVANIA

ORDINANCE NO. 2766

AN ORDINANCE OF THE MUNICIPALITY OF MONROEVILLE,
ALLEGHENY COUNTY, PENNSYLVANIA ADOPTING AMENDED,
RESTATED AND UPDATED RULES AND REGULATIONS FOR
THE IMPOSITION, COLLECTION AND PAYMENT OF BUSINESS
TAXES.

WHEREAS, the Municipality of Monroeville has imposed various business taxes (the “Business Taxes”) pursuant to Act 511 of 1965 of the Pennsylvania General Assembly, known as the “Local Tax Enabling Act”, 53 P.S. § 6924.501 et seq. (as amended);

WHEREAS, the Local Tax Enabling Act provides for the promulgation and adoption of Rules and Regulations related to the imposition, collection and payment of such Business Taxes;

WHEREAS, the Municipality of Monroeville desires to amend, restate and update its Rules and Regulations to reflect changes in Pennsylvania law;

NOW, THEREFORE, BE IT ENACTED AND ORDAINED AS FOLLOWS:

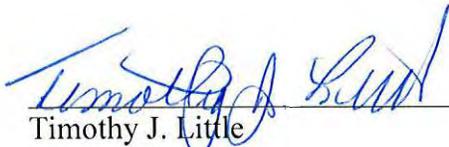
Section 1. The amended, restated and updated Rules and Regulations attached hereto Exhibit A are hereby approved and adopted.

Section 2. This Ordinance shall become effective upon its adoption.

ORDAINED AND ENACTED this 9th day of November, 2022.

ATTEST:

MUNICIPALITY OF MONROEVILLE



Timothy J. Little
Municipal Manager



Dr. Nicholas J. Gresock
Mayor

ENTERED INTO LEGAL BOOK: November 19, 2022

ATTACHED EXHIBIT A
BUSINESS TAX RULES AND REGULATIONS

MUNICIPALITY OF MONROEVILLE

Allegheny County, Pennsylvania

BUSINESS PRIVILEGE AND

MERCANTILE TAX

RULES and REGULATIONS

(BUSINESS TAX REGULATIONS)

INTRODUCTION

Persons desiring to do business in the Municipality of Monroeville are required to obtain a business privilege/mercantile license (business license) and pay a tax on gross receipts.

These Regulations provide a formal interpretation of the Municipality of Monroeville's Business Tax License and Business Privilege and Mercantile Tax Ordinances (Codified Ordinances Chapter 334) and establish procedures for its administration.

These regulations are adopted pursuant to the authority set forth in Chapter 334 of the Codified Ordinances, and shall be interpreted, whenever possible, to be consistent with the Business License and Business Privilege and Mercantile Tax Ordinances. In the event that a provision of these Regulations shall be inconsistent with the Tax Ordinances, the provisions of the Ordinance shall prevail. Compliance with these Rules and Regulations shall be sufficient to bar imposition of penalty by the Municipality of Monroeville.

THESE ARE REVISED REGULATIONS EFFECTIVE AS OF 12:01 A.M., JANUARY 1, 2023. ALL PREVIOUS VERSIONS OF THE BUSINESS PRIVILEGE AND MERCANTILE TAX REGULATIONS ARE VOID.

For information or additional copies, please contact:

Municipality of Monroeville
2700 Monroeville Blvd.
Monroeville, PA. 15146-2388
montax@monroeville.pa.us
www.monroeville.pa.us

BUSINESS PRIVILEGE AND MERCANTILE TAX RULES and REGULATIONS

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Municipality of Monroeville Disclosure Statement and Taxpayer's Rights and Responsibilities

MUNICIPALITY OF MONROEVILLE BUSINESS TAX RULES AND REGULATIONS

ARTICLE I BUSINESS LICENSE

Section 100. License Required.

Persons or businesses desiring to do Business in the Municipality must first obtain a permit from the Municipality, 2700 Monroeville Blvd., Monroeville, PA 15146-2388. Applications can be obtained by calling 412 856-3340 or 412-856-3338. In addition, a complete and correct business registration form must be filed with the Tax Collector.

Section 101. Prerequisites for Issuance of License.

A license shall be issued to persons or businesses upon obtaining approval of the Municipality.

No license will be issued to any person or business in default of any tax due to the Municipality, levied under the Codified Ordinances Chapter 334 Article II (Local Services Tax Ordinance), Article I (Earned Income Tax Ordinance), and/or Article III and IV (Business Privilege and Mercantile Tax Ordinance). Licenses procured through payment by check shall be wholly void and ineffective unless the license fee is actually collected by the Municipality.

Section 102. Fee, Term, and Proration.

The Business License fee is \$ 25.00 for each calendar year beginning January 1 and ending December 31 of the calendar year. The fee shall not be reduced pro rata by the portion of the license year elapsed in the year the license is first procured. The fee may be changed in accordance with amended Ordinances and/or Resolutions or by any act passed or amended by the Pennsylvania General Assembly. If engaged in both wholesale and retail activities a fee of fifty dollar (\$50) for each location. The Tax Collector as the appointed collector of the Business License fee imposed by the Municipality of Monroeville, shall collect and distribute the license fee.

Section 103. Posting. Licenses shall be kept and posted as follows:

Fixed place of business. Licenses shall be posted in a conspicuous place upon the premises where business is conducted. Fair, festival, and/or craft vendors who do business from a stand, booth, and/or other fixed, temporary place of business shall post the license conspicuously upon that fixed, temporary place of business.

Operating from a cart or vehicle. License shall be posted in a conspicuous place upon the cart or vehicle from where business is being conducted.

Contractors domiciled outside the Municipality of Monroeville. Contractors domiciled outside the Municipality, who have obtained a Business License to do business within the Municipality shall keep the license available for inspection at the site where business is being conducted.

Vending machine owners. A person or business who sells goods, wares or merchandise by means of vending machines shall procure one license covering all of the machines, and shall post it at the principal place of business. A person or business operating arcade and video games shall be considered to be a vending machine owner.

Others. Licensees engaged in business, but not operating from a fixed place of business or from a vehicle, shall keep the license with their books of account or other business records and have it available for verification if requested.

Example: Rental business – persons or businesses who rent residential or commercial property within the Municipality are not required to post a license in the individual rental units.

Section 104: License for Branch Establishments.

In the event that a licensee conducts business at more than one location in the Municipality, an additional license is required for each additional place of business (except vending machines). Additional licenses shall be posted in accordance with the provisions of Section 103 of these Regulations. The fee for each additional license is \$ 25.00 in accordance with Section 102 of these Regulations.

Section 105: License for Fairs, Festivals, Carnivals, Craft Shows/Fairs, and Other Temporary Places of Business.

It shall be the obligation of the sponsoring individual, group, Association or Corporation (including non-profit organizations) to provide to all of its vendors, in lieu of a business license, a Municipality Tradeshow License Application and further, to provide the Municipality with the following information at least ninety (90) days prior to any such festival, fair, craft fair or any other temporary place of business:

- (1) the event's scheduled dates and times
- (2) listing of all food, craft, and retail vendors
- (3) schedule of all vendor fees imposed by the sponsoring individual, group, Association, Corporation or non-profit organization, including but not limited to, registration fees, table fees, booth fees, utility fees, etc.

When any such festival, fair, carnival, craft fair or any other temporary place of business (collectively referred to herein as “Temporary Event”) shall issue tickets, coupons, chips, or other

form of "currency" exclusive to their event, it shall be the obligation of the sponsoring individual, group, Association, Corporation, or non-profit organization to provide the Municipality with an accounting of the ticket, coupon, chip, or other form of "currency" exchanged or "cashed in" by its vendors within thirty (30) days of the Event's closure. The sponsoring individual, group, Association, Corporation, or non-profit organization desiring to do business at any Temporary Event within the Municipality must first obtain a Permit from the Municipality. Permits/Licenses issued to persons or businesses under this Section 105 are valid for the oneyear term referenced in Section 102 and no additional licenses need to be obtained for participation in additional Temporary Events within the Municipality during the one year term.

A license to conduct business in the Municipality obtained pursuant to Section 100 herein also shall be deemed to apply to Temporary Events that the license holder participates in and no additional license need be obtained pursuant to this Section 105 so long as the business conducted at the Temporary Event is the same as the business conducted at the license holder's regular place of business.

Permits/Licenses obtained pursuant to this Section 105 for Temporary Events shall be posted in accordance with Section 103 of these Regulations at each Temporary Event location. A copy of a license obtained pursuant to Section 100 shall be posted in accordance with Section 103 of these Regulations at each Temporary Event location.

The sponsoring individual, group, Association, Corporation, or non-profit organization hosting the Temporary Events within the Municipality are required to make and file tax returns and remit tax due after the close of each Temporary Event where they conduct business. Additional information regarding filing requirements can be found in Section 301C of these Regulations.

Section 106: License for Real Estate Rentals.

Any person or business entity desiring to rent residential or commercial real property located within the Municipality must first obtain a Permit from the Municipality. The number of "rental units" in excess of two units and their location(s) is immaterial in determining whether a person or business entity requires a Permit and a Business License. The Municipality will consider the property owner as the person or business entity requiring a Permit and a Business License.

Example: John Public is the sole owner of a home in the Municipality. Mr. Public rents the home as residential rental property. Mr. Public is also in a partner of general public partnership. The Partnership owns three Municipality properties that are rented out as residential units. Mr. Public would be required to obtain a Permit and a Business License for the rental of the home he owns individually. The general public partnership would also be required to obtain a Permit and a Business License for the rental of its three rental properties. Total of two (2) licenses required.

Section 107: Assignment and Transfer Prohibited.

Permits and Business Licenses may not be assigned or transferred. Any purported transfer or assignment shall be void and ineffective.

Section 108: Replacement Licenses.

In the event of loss, defacement or destruction of any license, the licensee shall apply for a replacement license. The fee for a replacement license is \$10.00. The fee is payable to the Municipality.

Section 109: Change of Taxpayer’s Address.

Taxpayer’s change of address must be reported in writing to the Municipality (see Section 100 for address), within ten (10) days after such change becomes effective.

Section 110: Failure to Procure License and License Revocation.

Persons and/or businesses that engage in a business, profession, or other commercial activity without having first procured a Business License are subject to penalty and fine.

The Business License may be suspended or revoked at any time by the Tax Collector on the advice and consent of the Municipal Solicitor if it is determined that the holder of the permit or license secured the same by misrepresentation; failed to maintain qualifications required by Federal, State or Local laws; engaged in fraudulent behavior or misleading advertising; consented to or allowed any behavior which would constitute a crime under Federal, State or Local laws, including but not limited to drug trafficking or drug possession; committed an act of gross negligence, or allowed any manner or form of public nuisance.

To allow for proper due process, the License and Tax Appeal Board is hereby authorized to handle any pre-deprivation and/or appeals from the license and permit holders. A record shall be made of all hearings in order to preserve such information for any appeals to the Courts. The cost of recording, creating and providing copies of the hearings information shall be shared equally between the Municipality and the license and permit holders who initiate any appeals.

Section 111: Regulatory Intent.

The Municipality last issued Business Tax Rules and Regulations on April 15, 2005. The Municipality adopts these current regulations to incorporate developments arising in its authority to levy and collect the Taxes, including, but not by way of limitation:

V.L. Rendina Inc. v. City of Harrisburg, 938 A.2d 988 (Pa. 2007);
Act of May 6, 2014, P.L. 642, No. 42, 53 P.S. §6924.301.1(a.1) (“Act 42 of 2014”);
Glatfelter Pulpwood Co. v. Commonwealth, 61 A.3d 933 (Pa. 2013);
City of Philadelphia v. Lerner, 1515 A.3d 1020, 1024 (Pa. 2016); and
South Dakota v. Wayfair, Inc. 138 S.Ct. 2080 (2018).

The revised Business Tax Rules and Regulations shall be effective on January 1, 2023, and apply to all business transactions occurring in the Municipality on January 1, 2023 and thereafter. The prior adopted rules and regulations shall remain effective for all Tax liability accrued prior to January 1, 2023.

The Rules and Regulations shall be interpreted according to the principles set forth in the Statutory Construction Act, 1 Pa. C.S. §§ 1921-1939.

ARTICLE II

BUSINESS PRIVILEGE TAX AND MERCANTILE TAX (“Business Tax”)

Section 200: Authority.

The Business Tax Ordinance was enacted under the authority of the Local Tax Enabling Act (Act 511 of 1965), 53 P.S. § 6901 *et seq.*, and appears in the Codified Ordinances of the Municipality of Monroeville at Chapter 334.

Section 201: Definitions. As used in these regulations:

“Assessment” – The determination by a local taxing authority’s tax officer of the amount of underpayment by a taxpayer.

“Apportionment” – The application of a multi-factor apportionment formula to the gross volume of business or unitary business, whose actual exercise of the privilege of doing business in the Municipality is not measurable by separate geographic accounting.

“Association” – A partnership, limited partnership, or any other unincorporated group of two or more persons or a limited liability company.

“Base of Operations” – An actual, physical and permanent place of business from which a taxpayer manages, directs and controls its business activities at that location.

“Business” – The carrying on or exercising of any trade, profession, enterprise, activity, other commercial activity, or any other undertaking of any nature conducted for profit or otherwise, whether by an individual, partnership, association, corporation or any other entity, or any activity carried on or exercised for gain or profit in the Municipality, including but not limited, to the sale of merchandise or other tangible property or the performance of services. The business of taxpayers having their principle places of business within the Municipality shall include all activities carried on within the Municipality and those carried on outside the Municipality attributable to the place of business within the Municipality. Employment for a salary or wage is not “business”.

“Business Entity” – An organization formed to conduct business.

"Business Privilege Tax" – The tax on any activity other than business activity subject to the Mercantile Tax

"Business Tax" – The abbreviated term for the business privilege tax and mercantile tax

"Contractor" – Every person engaged in the business of furnishing labor, materials, or both labor and materials, in connection with all or any part of the alteration, construction, repairing, dismantling or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, and every other type of structure as an improvement, alteration or development of real or personal property.

"Corporation" – A corporation or joint stock association organized under the laws of the Commonwealth of Pennsylvania or any other state, territory, foreign country or dependency.

"Current Year" – The calendar year for which the tax is being levied.

"Date of Overpayment" – The later of the date paid or the date tax is deemed to be overpaid as follows:

- (1) Any amount overpaid as estimated tax for the tax period shall be deemed to have been overpaid on the last day for filing the final report for the tax period, determined without regard to any extension of time for filing.
- (2) An overpayment made before the last day prescribed for payment shall be deemed to have been paid on the last day.
- (3) Any amount claimed to be overpaid with respect to which lawful administrative review or appellate procedure is initiated shall be deemed to have been overpaid sixty (60) days following the initiation of the review or procedure.

"Date of Resolution" – The date the overpayment is refunded or credited as follows:

- (1) For a cash refund, a date preceding the date of the Monroeville Tax Office refund check by not more than 30 days.
- (2) For a credit for an overpayment:
 - (a) The date of the Municipality's notice to the taxpayer of the determination of the credit; or
 - (b) The due date for payment of the tax against which the credit is applied, whichever first occurs. For a cash refund of a previously determined credit, interest shall be paid on the amount of the credit from a date ninety (90) days after the filing of a request to convert the credit to a cash refund to a date preceding the date of the refund

check by not more than thirty (30) days whether or not the refund check is accepted by the taxpayer after tender.

"Domicile" – The place where one lives and has his or her permanent home and to which he or she has the intention of returning whenever he or she is absent. Domicile is the fixed place of abode which, in the intention of the taxpayer, is permanent rather than transitory. Domicile is the voluntarily fixed place of habitation of a person, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some event occurs to induce him or her to adopt some other permanent home. In the case of a Corporation or Association, the domicile is that place considered as the center of business affairs and the place where its functions are discharged.

"Dwelling" – Any building, structure or single unit intended to provide complete independent living facilities for one or more persons which has permanent provisions for living, sleeping, eating, cooking and sanitation by human occupants, but does not include hotels, boarding and rooming houses.

"Dwelling Unit" – A room or group of rooms within a building, which forms one habitable unit with facilities used or intended to be used for living, sleeping, sanitation and the preparation of meals, and arranged for occupancy by one family.

"Functional Test" – The subjective determination as to whether the gain on the sale of an asset or any other gross receipt is business income, in consideration of whether the acquisition and disposition of the property arose from integral functions of the taxpayer's regular trade or course of business other than the taxpayer's primary or regular course of business or trade.

"Gain" – The disposition of a short-term or long-term capital asset, or any other asset or holding, whereby the gross receipt is realized when the sale price of the asset exceeds the purchase price.

"Gross Receipts" – Cash, credits and/or property of any kind or nature received in exchange for merchandise sold or services performed or other business activity conducted within or allocable to or attributable to the Municipality, without deduction there from on account for costs of property or merchandise sold; materials, labor or services furnished or used; interest or discount paid; or any other business related expense, as permitted by regulation. When a legal obligation of one person is assumed under contract by another person, the amount of the benefit received by the first person is a "Gross Receipt." For example, real estate taxes paid by a lessee under a net lease are gross receipts to the lessor.

"Gross Volume of Business" - the money or money's worth received by any vendor in, or by reason of, the sale of goods, wares, merchandise, or services rendered.

"Interstate Commerce" – Traffic, intercourse, commercial trading, or the transportation of persons or property between and among the several states, or as defined or interpreted by the Supreme Court of the United States.

"License year" means the calendar year beginning January 1 and ending December 31, and each calendar year thereafter.

"Independent Agent, Contractor, or Representative" – A person who, while performing services for another person, is not subject to the direction and control of the other as to the details, methods and means by which a result directed by the other is accomplished.

"Landlord" – A person who is in the business of leasing or renting dwelling units or commercial space(s). For the purpose of this Article, "commercial" shall include all business uses, including, but not limited to, manufacturing/industrial use, retail/wholesale use, office space and provision of services.

"Lease" – A transfer of the right to possession and/or use of real or personal property (including intangible personal property) for a term in return for consideration. A sale, including a sale on approval, or retention or creation of a security interest is not a lease. For purposes of these regulations any "rental" of property shall be treated as a lease.

"Local Taxing Authority" – A political subdivision levying an eligible tax. The term shall include any officer, agent, agency, clerk, Income Tax Officer, employee or other person to whom the governing body has assigned responsibility for the audit, assessment, determination or administration of an eligible tax. The term shall not include a tax collector or collection agency who has no authority to audit a taxpayer or determine the amount of eligible tax or whose only responsibility is to collect an eligible tax on behalf of the governing body.

"Mercantile Tax" – The tax applied to all business activity from the sale of tangible goods, places of amusement, retail and wholesale vendors but excluding services and receipts from intangible business activity.

"Merchandise" – Produce, goods, commodities, food or foodstuffs, wares, items, products, crops, livestock, animals, metals, gems, or any other property of whatever description, whether new or used.

"Month" – A month consists of the period from the beginning to the preceding date of the following month.

Examples:

- (1) A month beginning February 1 ends February 28 except in leap years when it ends February 29;
- (2) A month beginning October 16 ends November 15

"Municipality" – The Municipality of Monroeville, a Home Rule Charter Municipality in Allegheny County, Pennsylvania.

"Nexus" – the legal force which connects the activities of a person, business entity or taxpayer with the taxing authority of the Municipality. The Nexus can be a Physical Presence Nexus or an Economic Presence Nexus as further defined in Section 203.

"Nonresident" – A Person, Association or Corporation or other entity domiciled outside the taxing district.

"Overpayment" – Any payment of tax which is determined in the manner provided by law not to be due.

"Place Of Amusement" -- Any place indoors or outdoors where the general public or a limited or selected number thereof may, upon payment of an established price, attend or engage in any amusement, contest or recreation, including, among other places, theaters, opera houses, motion-picture houses, amusement parks, stadiums, arenas, baseball or football parks or fields, skating rinks, circus or carnival tents or grounds, fairgrounds, bowling alleys, billiard or pool rooms, nine- or tenpin alleys, riding academies, golf courses, bathing and swimming places, dance halls, tennis courts, archery, rifle or shotgun ranges and other like places. The term does not include any exhibition, amusement performance or contest conducted by a nonprofit corporation or association organized for religious, charitable or educational purposes.

"Person" or "Individual" – A natural person, individual, corporation, S-Corporation, limited liability company, partnership, non-profit corporation, association, unincorporated association, estate, trust, trustee, fiduciary, corporate officer, or any other entity subject to or claiming exemption from the tax or under a duty to perform an act for itself or for another under or pursuant to the Business Tax. "Person" as applied to partnerships, shall mean the partners thereof, and as applied to corporations and unincorporated associations, shall mean the officers thereof.

"Preceding Year" – The calendar year before the Current Year.

"Resident" – A person, partnership, association, or corporation or other entity domiciled in the taxing district.

"Retail Sales" – Sales made by persons engaged, as owner or agent, in the business of selling or exchanging merchandise for cash or barter or any consideration on the assumption that the purchaser of such goods has acquired the same for ultimate use and not for resale.

"Resolution" – As adopted by the taxing district levying an "Ordinance" assessing a gross receipts tax.

"Sale" – The passing of ownership from a seller to a buyer for a price, or consideration.

"Service" or "Services" – Any activity that does not involve Retail Sales or Wholesale Sales. It means any act or instance done for the benefit of another, or others, for consideration, including but not limited to, consulting, maintenance and repairs, preparation of forms,

construction, engineering, planning, designing, installation, commission sales, training, the lease or rental or use of real or personal property (tangible or intangible), and the providing of legal, accounting or other professional expertise, services and/or counseling, supplying personnel or material, building, or any other activity not subject to Mercantile Tax.

"Succeeding Year" – The calendar year following the Current Year.

"Tax" or "The Tax" – The Municipality Business Privilege Tax and/or Mercantile Tax.

"Tax Collector" – Person, public employee, or private agency authorized and empowered by the governing body to collect and administer the licensing of businesses and the gross receipts tax.

"Tax Office" – Municipality of Monroeville Tax Office - an office appointed by Monroeville, to license business activity and collect the business tax and administer business privilege and mercantile tax ordinances or resolutions of the Municipality, and any political subdivisions, including a coterminous school district, with which may enter into collection agreements. The Office performs the function of the "Income Tax Officer".

"Taxing District" or "District" – The political subdivisions, including school districts, levying and assessing a gross receipts tax, which have appointed or commissioned the Municipality to license business activity and collect and administer the tax on gross receipts. The operation of the business activity must first be approved by the Municipality.

"Taxpayer" – A natural person, partnership, association, unincorporated association, corporation, S-Corporation, limited liability company or any other entity, required hereunder to file a return of Gross Receipts, or to pay a tax thereon, or one who would be subject to the payment of the same but for exemption granted by State or Local law.

"Tax year" means the calendar year beginning January 1, and ending December 31 inclusive, and each calendar year thereafter.

"Tax Type" refers to the business privilege and/or mercantile retail or wholesale tax

"Temporary, Seasonal or Itinerant Business"- Any business that is conducted at one location for less than sixty (60) consecutive days.

"Underpayment" – The amount or portion of any tax determined to be legally due in the manner provided by law for which payment or remittance has not been made.

"Voluntary Payment" – The payment of an eligible tax made pursuant to the free will of the Taxpayer. The term does not include a payment as a result of distraint or levy or pursuant to a legal proceeding where the taxing authority is seeking to collect taxes or file a claim therefore.

"Wholesale Sales" – Sales made by persons engaged, as owner or agent, in the business of selling to, or exchanging with another person, goods for cash or barter or any consideration, for the purpose of resale by the person acquiring the goods sold or exchanged.

"Wholesale Dealer or Wholesale Vendor" -- Any person who sells to dealers in, or vendors of, goods, wares and merchandise and to no other persons.

Section 202. Who Must File a Return.

Every person who has carried on or exercised business activity within the Municipality must file a tax return. A tax return must be filed whether or not tax is due. Tax returns are filed at the business entity level. In the case of a partnership, for example, the tax is calculated on the gross receipts of the partnership rather than the individual income of the partners. Any or all of the individual partners may be held responsible for the filing of the tax return and payment of the tax. In the case of a corporation, for example, the tax is calculated on the Gross Receipts of the Corporation. Corporate officers shall be held responsible for the filing of the tax return and payment of the tax.

Section 203. Nature and Imposition of Tax.

In accordance with Act 42 of 2014, 53 P.S. § 6924.301.1(a.1)(1)(i), the privilege of doing business is exercised by conducting transactions in the Municipality.

Whether a person carries on a taxable activity within the meaning of the business tax is essentially a question of fact. Any services directed, controlled, or managed by a Municipality location or office, or which occurs within or has a substantial nexus with the Municipality, is subject to the tax. The tax is not limited to transactions occurring entirely within the Municipality.

Any person who engages in a business activity in the Municipality is subject to the tax whether or not he/she/they has a permanent place of business in the Municipality. A foreign corporation is subject to this tax if it carries on a taxable activity in the Municipality regardless of whether it is licensed to do business in Pennsylvania.

- (a) Physical Presence Nexus. Regardless of whether it maintains or maintained a base of Person or Taxpayer has exercised the privilege of doing business in the Municipality if it transacted business or facilitated the transaction of business physically with the Municipality's territorial borders for all or part of fifteen (15) or more calendar days within the calendar year, whether the privilege is exercised by the Business Entity, Person or Taxpayer itself, or by and through its employees, agents, affiliates, subsidiaries, contractors, subcontractors or by the deployment or use of their equipment. Also, regardless of the location of its headquarters, branch office or base of operations, a Business Entity, Person or Taxpayer has exercised the privilege of doing business in the Municipality if it deployed or licensed tangible capital assets for gain or profit in the Municipality, or maintained a leasehold or leaseholds or rental of real or personal property located within the Municipality, or held title to or interest in real

property located within the Municipality, which property was acquired, held or disposed of for gain or profit for all or part of fifteen (15) or more days within the calendar year.

- (b) Economic Presence Nexus. Effective January 1, 2023, and thereafter, a Business Entity, Person or Taxpayer with no physical presence in the Municipality is considered to have an economic nexus in the Municipality and, as such, is subject to the Business Tax if it has generated at least fifteen (15) or more transactions to points within the Municipality totaling at least \$12,000.00 in gross volume or greater within the calendar year, and has sufficient connection to the Municipality to establish a nexus pursuant to the United States Constitution.

- (c) A Business Entity, Person or Taxpayer may have both a physical presence nexus and an economic presence nexus in the Municipality, for which they would be required to report both the gross volume they received as a result of such physical and economic nexuses, provide that such Business Entity, Person or Taxpayer would be eligible to adopt a fair apportionment model that is internally and externally consistent when reporting its gross volume of business in the Municipality.

Economic Nexus Test:

To determine whether a Business Entity, Person or Taxpayer's activities or connections with the Municipality create an economic nexus in the Municipality, such Business Entity, Person or Taxpayer (hereinafter in this subsection "Business") shall employ a two-prong test, the first of which is a determination of whether activities meet or exceed the safe harbor threshold in Section 203(b). If the business consummated fifteen (15) or more transactions to points within the Municipality totaling at least \$12,000.00, the analysis shall continue to the second prong.

The second prong of the economic nexus test shall be a determination, as applied to actual or hypothetical activities, whether the transactions, activities or connections to the Municipality would result in a duty for an out of state business to collect, withhold, file, report, remit or pay any tax levied under the Tax Reform Code of 1971, as amended, 72 P.S. §§ 7101-10004 (i.e. Pennsylvania Commonwealth Taxes, or hereinafter "State Taxes").

For businesses located outside of Pennsylvania, under the second prong, they shall evaluate whether or not the activities creating the nexus under the first prong of this test would create a duty to file or report any State Taxes, including, but not by way of limitation, Personal Income Tax, Sale and Use Tax and/or Corporate Net Income Tax. If the answer is in the affirmative, the business has economic nexus in the Municipality.

If the out of state business answered in the negative to the question of the second prong, it must then evaluate whether it so answered in the negative because it concluded that the activities were excluded or exempted from State Taxes. If such an out of state business answered in the negative because its activities were excluded from State Taxes in its self-evaluation under the test, the business does not have an economic nexus in the Municipality. If such a business answered in the

negative because its activities were exempted from the State Taxes under the test, the business has an economic nexus in the Municipality, and such business must look elsewhere in these Rules and Regulations to determine whether or not it is exempt from Business Tax.

Businesses located within Pennsylvania, having no physical presence nexus under these Rules and Regulations, whose activities in the Municipality meet the first prong of this economic nexus test, shall evaluate whether such activities meet the second prong by testing whether the same activities, as applied to a hypothetical out of state location, would result in a duty for the business to file or report any State Taxes. If the answer is in the affirmative, the business has an economic nexus in the Municipality, and it is required to report and pay any applicable tax. If such a business answer in the negative because it is exempt from the State Taxes in its self-evaluation under the test, rather than excluded, the business has an economic nexus in the Municipality, and such business must look elsewhere in these Rules and Regulations to determine whether or not it is exempt from Business Tax.¹

It is the intention of this test that:

1. Persons, taxpayers, businesses and tax professionals are supplied with a clear and objective test for determining whether or not the economic nexus applies to their level of connection with the Municipality.
2. Business activities that do not or would not have a nexus in the Commonwealth of Pennsylvania do not have a nexus in one of its political subdivisions, except in the case where the activities are merely exempted, and not excluded from State Taxes.
3. Businesses located outside of Pennsylvania would not avoid taxation by relocating into Pennsylvania, nor would businesses that located within Pennsylvania avoid the Tax by relocating to another State.

Section 204. Base Rates of Tax, Computation of Volume of Business, and Determination of the Gross or Whole Volume of Business.

- A. **Tax Base.** The tax is based on gross receipts attributable to doing business in the Municipality. To determine whether Gross Receipts are attributable to doing business in the Municipality; see Attribution of Gross Receipts, Section 205. Receipts from certain activities are excluded from taxation, see Exclusion from Gross Receipts, Section 206 and Interstate Commerce, Section 207.

Any person who exercises the privilege of carrying on business activities attributable to the Municipality or where there is no other place of business is liable for the Business Tax. It is measured by the gross receipts or gross volume generated or received in, attributable or allocable to the Municipality or contributed to the

¹ For the purposes of these Rules and Regulations, an exclusion is a subject that an enactment never intended to tax, while an exemption is a subject that would otherwise be taxable, except that it is specifically carved out for exemption.

taxpayer's ultimate business purpose. Where a receipt in its entirety cannot be subjected to the Business Tax by reason of the state or federal constitution or any other provision of law, the part of such receipts which may be taxed, and which is attributable to the doing of business in the Municipality, shall be included in the tax base.

B. Tax Rate. The rate of tax varies depending on the nature of the business activity performed, as follows:

NOTE: The Business Tax rates are the *effective* tax rates. Should the Municipality and its Coterminous School District both impose a business privilege and mercantile tax, Act 511 requires that the tax rates set in the applicable Ordinance be reduced so that the combined rates of the taxes does not exceed .002 for Wholesale Sales, .0025 for Retail Sales, .004 for service performance.

(1) **Receipts from the Performance of Services.** On Gross Receipts generated by the performance of services, the rate of tax is .004 (\$4.00 per one thousand dollars).

Example: Taxpayer, a partnership of consultants, earns \$1,000,000.00 in gross sales (receipts) by performing services. The tax is calculated:

<u>Gross Receipts</u>		<u>Rate</u>	=	<u>Tax</u>
\$1,000,000.00	x	.004		\$4,000.00

(2) **Receipts from Sales of Merchandise.** The rate of tax on receipts from sales of merchandise varies depending on whether such sales are classified as "Wholesale Sales" or "Retail Sales" (see Definitions, Section 201).

a) **Receipts from Wholesale Sales.** On receipts generated by the Wholesale Sales of merchandise, the rate of tax is .002 (\$2.00 per thousand dollars).

Example: Taxpayer, a wholesale dealer of automobile parts, has gross sales (receipts) of \$5,000,000.00. The tax is calculated as follows:

<u>Gross Receipts</u>		<u>Rate</u>	=	<u>Tax</u>
\$5,000,000.00	x	.002		\$10,000.00

b) **Receipts from Retail Sales.** On receipts generated by the Retail Sales of merchandise the rate of tax is .0025 (\$2.50 per thousand dollars).

Example: Taxpayer, a retail dealer of automotive parts, has gross retail sales (receipts) of \$2,000,000.00. The tax is calculated as follows:

<u>Gross Receipts</u>		<u>Rate</u>		<u>Tax</u>
\$2,000,000.00	x	.0025	=	\$5,000.00

- (3) **Receipts from lease, use or rental of personal or real property.** Receipts from the Lease, use or rental of personal or real property shall be deemed to be receipts from the performance of services and taxed at the rate set forth in Section 204. B. 1. (.004 or \$4.00 per thousand dollars). Provided, however, receipts from a “finance lease” on personal property as such term is defined under Section 2 A-103 of the Pennsylvania Uniform Commercial Code shall be deemed to be a retail sale and taxed at the rate set forth in Section 204 .B.2(b), above.
- (4) **“Unearned” business receipts.** Receipts derived from dividends, interest, gain on the sale of capital assets; and the receipts from the license, or use, of intangible property (including, for example, copyrights, trademarks, licenses, patents, royalties, and other intellectual property) received by persons doing business in the Municipality are subject to the tax at the rate for services set forth in Section 204.B.1. Capital assets do not include inventory, stock-in-trade or other assets held for sale in the ordinary course of business. For the purpose of calculating gain on the sale of capital assets, return of capital may be deducted.
- (5) **Businesses engaged in more than one classification of business activity.** Businesses which engage in more than one classification of business activity (for example, a service provider whose business includes the sale of products, or a sales office that provides both retail and wholesale sales), must segregate the receipts from each classification and pay tax at the rate specified for each. Failure to segregate receipts according to classification may result in all receipts being taxed at the highest rate reasonably supportable.
- (6) **Pennsylvania Sales and Use Tax.** Collection and/or payment of Pennsylvania Sales and Use Tax from the taxpayer’s customer or client does not exempt receipts from the Business Tax base

C **Computation of Volume of Business:**

- (1) Every businesses that started in the current “tax year”, the tax shall be based on the “gross volume of business” transacted on the first full month of operation multiplied by the number of full months that the business shall be in operation for the tax year. The business must file and pay the tax by the

last day of the month following the first full month of operation. At the end of the year every business that started that year shall submit an amended return to reconcile the estimated tax payment to the tax based upon the calendar year figure of the gross receipts or volume. If the amount of the tax paid is less than the amended amount due, the business shall remit payment to the Municipality with the adjusted return on or before April 15 of the year following the first "tax year" started by the business. If the estimated amount paid is more than the calendar year figure, the business owner shall file an amended return with the Tax Collector either to credit another tax year or request a refund.

- (2) Every business that started operations in the year preceding the current "tax year" the business shall pay its tax in the current year based on the gross receipts OR gross volume of business upon the actual calendar year receipts or gross amount of business received by him during the preceding calendar year pro-rated to twelve months. The tax shall be paid in full on or before April 15 of the current "tax year". For a business that has been in operation one full year or more prior to the current "tax year", the tax shall be computed based on the gross volume of business transacted in the preceding "tax year" and shall be due in full on or before April 15 of the current year.
- (3) Every person subject to the payment of the tax hereby imposed who engages in a business temporary, seasonal, or itinerant by nature, shall compute his gross amount of business within the Municipality from his actual gross receipts for the license year.

D **Determination of the Gross or Whole Volume of Business:** Gross or whole volume of business upon which the tax hereunder is computed shall include the gross consideration credited or received for or on account of sales made and/or services rendered, subject only to the following allowable deductions and exemptions:

- (1) The dollar volume of business transacted by wholesale and retail dealers derived from the resale of goods, wares and merchandise taken by any dealer as a trade-in or as part payment for other goods, wares or merchandise, except to the extent that the resale price exceeds the trade-in allowance;
- (2) Refunds, credits or allowances given by a taxpayer to a purchaser on account of defects in goods, wares or merchandise sold, or on account of goods, wares or merchandise returned;
- (3) Any commission paid by a broker to another broker on account or a purchase or sales contract initiated, executed or cleared with such broker; and sales contract initiated, executed with such other broker; and

(4) Bad debts, where the deduction is also taken in the same year for Federal income tax purposes.

E. **Partial Exemptions:** Where gross receipts or whole volume of business in its entirety cannot be subjected to the tax imposed by this article by reason of the provisions of the Constitution of the United States, or any other provisions of the law, including, but not limited to, court decisions from Pennsylvania courts of competent jurisdiction, only that part of the gross or whole volume of business which is properly attributable and allowable to doing business in the Municipality shall be taxed hereunder.

F. **Rate When Same Tax is Imposed by Two Taxing Bodies:** If any person is liable for the same tax on the same subject imposed under the Local Tax Enabling Act, 1965, December 31. P.L. 1257 (53 P.S. 6901 et seq.), to the Municipality and one or more political subdivisions of the Commonwealth of Pennsylvania, then in that event, the tax shall be apportioned by such percentage as may be agreed upon by such political subdivisions, but, in no event shall the combined taxes of both subdivisions exceed a maximum rate of tax as fixed by such Enabling Act permitting the imposition of such taxes.

G. **Records:** The exempt or partially exempt taxpayer, to obtain the foregoing enumerated exclusions and deductions, shall keep the books and records of his or her business so as to show clearly, accurately and separately the amount of such sales and services which he is entitled to deduct from the gross volume of business as hereinbefore provided.

Section 205. Attribution of Gross Receipts.

General. Gross receipts which are fairly attributable to exercising the privilege of doing business within the Municipality are subject to tax. There will be no allocation for receipts generated in intrastate commerce unless the receipts sought to be excluded from Business Tax returns are clearly allocable to a bonafide out-of-Municipality branch office or place of business. The burden of proving that any receipt is allocable to an out-of-Municipality office is on the taxpayer and he must be able to support any such exclusion from municipal receipts on the basis of clear and objective evidence shown on his books, record and accounts.

If a taxpayer does not keep their books, records and accounts in a manner which will clearly and objectively show the allocation of receipts to his various branch offices or places of business, the Tax Collector will make an assessment based on the entire amount of gross receipts from all intrastate sources. The Tax Collector will not break out allegedly allocable receipts on the basis of subjective and unrecorded data.

A. **Attribution of Gross Receipts from Sales of Merchandise.**

(1) **Receipts from Municipality sales transactions.** All receipts from Wholesale or Retail Sales made or affected within the territorial limits of the Municipality are to be included in taxable receipts. Sales are “made or affected” when an agreement of sale is concluded within the Municipality, or, when an order is accepted or forwarded for confirmation or approval from a location within the Municipality and, as a matter of business custom or practice, delivery is made and the transaction is consummated on the same terms and conditions as set forth in the order.

(2) **Delivery outside of the Municipality.** Receipts from sales made or affected in Municipality are taxable whether delivery after sale is made within or outside of the Municipality.

Example: Taxpayer is distributor of baked goods whose headquarters and only sales office is located in the Municipality. Receipts from sales made in the Municipality for delivery outside of the Municipality are attributable to the Municipality (unless excludable under Section 207 – Interstate Commerce).

Example: Taxpayer, a dealer in scrap paper, enters into an agreement in the Municipality to sell three tons of paper located in Murrysville. The agreement consummated in the Municipality conveys immediate ownership and possession of the paper to Taxpayer’s customer. The Gross Receipts of the sale are properly attributed to the Municipality.

(3) **Doing business through local representative or sales office.** Receipts from sales made or affected in the Municipality by a local representative or sales force are included in taxable receipts.

Example: Taxpayer, a wholesale distributor of food products has a home office in Baltimore. It operates a “Municipality of Monroeville Territory” from an office within the Municipality where sales are affected for both delivery within and outside the Municipality. Shipments are made directly from West Virginia. Receipts from sales made or affected from a Municipality office are attributed to the Municipality.

Example: Taxpayer, a distributor of motorcycles whose home office is in Wisconsin, sells to local Municipality customers through the efforts of a sales representative working from his home within the Municipality. Orders are accepted in the Municipality and routinely confirmed in Wisconsin. Shipments are made from Wisconsin for delivery both

within and outside of Municipality. The Gross Receipts from sales made or affected in the Municipality by the Municipality representative are attributable to the Municipality.

B. Attribution of Gross Receipts from the Sale of Services.

- (1) **Services performed entirely within the Municipality.** All receipts from services performed within the Municipality are attributable to the Municipality, notwithstanding that a contract for such services may have been entered into outside the Municipality, or that services are performed for customers who reside outside of the Municipality, or that services are performed upon tangible items retrieved from and delivered to locations outside of the Municipality.

Example: Taxpayer, a plumbing and heating contractor whose sole office is in Wilmerding, sends a technician to the Municipality to repair a furnace. The receipts earned by the technician's services performed within the Municipality are attributed to the Municipality.

Example: Taxpayer, an employment agency located in Carnegie, provides staffing to Municipality businesses. Receipts earned as a result of the services performed within the Municipality are attributed to the Municipality.

- (2) **Receipts from services directed from the Municipality.** Except as provided in the following subparagraph 3 below, receipts from services performed outside of the Municipality but which are managed, directed or controlled from within the Municipality are attributed to the Municipality. Receipts from services performed outside the Municipality, earned by persons whose home office is within the Municipality, will be presumed to be managed, directed or controlled from within the Municipality.

Example: Taxpayer, a construction firm whose sole office is within the Municipality, performs services and constructs projects throughout Pennsylvania. All services and projects are managed, directed or controlled from the Municipality. Services will be presumed to have been managed, directed or controlled from the office located within the Municipality, and all receipts will be attributable to the Municipality.

- (3) **Receipts from activities directed from the Municipality, but subject to business privilege tax elsewhere.** Receipts from activities managed, directed or controlled from within the Municipality, which the Taxpayer can

show are subject to a tax on gross receipts for the privilege of doing business imposed by another local taxing jurisdiction, shall be deemed to be fairly attributed to such other taxing jurisdiction and are excluded from receipts taxed by the Municipality.

Example: Taxpayer, an accounting firm whose sole office is in the Municipality, sends junior level personnel to the City of Harrisburg for several months to complete an audit supervised from the Municipality. Receipts from the audit are taxed by Harrisburg under that City's business privilege tax. The Municipality will allow the exclusion of such receipts provided that proof of filing a tax return and payment of the tax to Harrisburg is demonstrated to the Municipality.

(4) **Branch Offices located outside of the Municipality.** Receipts from services managed, directed or controlled from a bona fide branch office located outside the Municipality are not attributed to the Municipality. The following criteria will be considered (as relevant but not conclusive) by the Municipality in determining the existence of a bona fide branch office (no single factor will raise a presumption that a bona fide out of the Municipality office exists):

- (a) The appearance of the taxpayer's name in telephone and/or building directories.
- (b) Stationary and calling cards showing the branch office address.
- (c) Storage of inventory or display samples at branch office.
- (d) The existence of a rental agreement (or lease) for space used at the branch office.
- (e) Employment of personnel at the branch office.
- (f) The existence of a business license to operate at the branch office.
- (g) **Field Office.** A field trailer may operate as a bona fide branch office where the trailer bears the name of the taxpayer, the trailer is staffed by the taxpayer's employees who report directly to the field office site, the field office is maintained for not less than 60 days continuously, and the field office maintains a business license.

Use by the taxpayer or his agents or employees of facilities provided by the taxpayer's client, employer, customer, or any other person, even for a protracted period of time and even where such use constitutes part of the contractual or business arrangement entered into by the taxpayer with the said client, employer, customer, or any other person does not establish an out-of-Municipality branch office for purposes of gross receipt allocation.

An office maintained in the taxpayer's home which is located out-of-Municipality is a bona fide office or place of business only if it is recognized as such for federal income tax purposes under the Federal Tax Reform Act of 1976, as amended, as being his sole office or place of business. A motel or hotel residence, used on a long-term basis, is not a bona fide out-of-Municipality branch unless it fulfills the criteria set forth in subsection 4 of this Section.

Example: Taxpayer, a contractor whose home office is in the Municipality, enters into a contract to build a court house complex in Greensburg. Contractor establishes a bona fide business office in Greensburg for the duration of the project, from which it manages, directs and controls the entire project. Receipts from the project are attributed to Greensburg.

- (5) **Apportionment of receipts where attribution is impossible.** In instances involving the performance of services both within and outside the Municipality where it is impossible or impracticable to attribute receipts to a specific source location, receipts may be apportioned using a ratio equal to the number of hours of service performed within the Municipality, divided by the total number of hours of service performed both within and outside the Municipality.

Example: Taxpayer, an attorney whose office is in Allentown, represents a plaintiff in an automobile accident case. She has a contingent fee agreement with the client. A deposition is conducted in the Municipality. The amount of the attorney's time spent in the Municipality equates to 14% of the total time spent on this case. If the taxpayer obtains a recovery for the client, 14% of the attorney's fee is to be apportioned to the Municipality.

- C. **Unfair Attribution.** If, in the discretion of the Tax Collector, the application of the provisions of this Section 205 results in an unfair or inequitable attribution (or apportionment) of receipts, then the Tax Collector may permit or require the use of other methods of attribution to produce a fair and equitable attribution of gross receipts. The opinion of the Municipality Solicitor may be involved in this decision process.

Section 206. Exclusions from Gross Receipts.

Exclusions from taxable gross receipts shall be allowed as follows:

- A. **State Preemption.** Gross receipts from activity which has been judicially determined to be preempted by the Commonwealth of Pennsylvania are excluded from gross receipts. However, collection and/or payment of Pennsylvania Sales and Use Tax from the taxpayer's customer or client does not exempt or exclude receipts from the business tax.
- Limitation.** Preemption does not relieve the 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 the tax by the Municipality. Taxable activity will not lose its character as such merely through association with preempted activity.
- B. **Duplicate State Tax and Court Exemptions.** In the event the Commonwealth of Pennsylvania imposes a tax on the same subject matter as is taxed under the Municipality Business Tax, and such State tax is measured by the same gross receipts sought to be taxed by the Municipality, the State tax shall prevail, and the same subject shall not be also taxed by the Municipality, except on sales of admission to places of amusement or on sales of other transfers of title or possession of property. Any tax or license fee which has been held by the Common Pleas or Appellate Courts of Pennsylvania to be the basis for exemption from the imposition of a business privilege or mercantile tax by a taxing district.
- C. **Governmental Entities.** Agencies of the government of the United States, the various individual States, the Commonwealth of Pennsylvania, or any political subdivisions thereof are not subject to the tax.
- D. **Utilities.** Receipts from utility services provided by any person or company 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 the rate regulation are subject to the tax.
- E. **Reimbursement of expenses incurred as agent.** Dollar-for-dollar reimbursements of "out-of-pocket" expenses incurred by an agent for the benefit of its principal are exempt from taxable receipts.

Example: Taxpayer, an attorney, advances the costs of a medical examination of his client. The client reimburses the attorney the exact cost of the examination. The reimbursement is excluded from the attorney's taxable gross receipts.

Example: Taxpayer, an advertising agency, advances the costs of radio and television advertisement placed by it for the benefit of its client. The amount reimbursed by the client to the agency is excluded from the agency's gross receipts.

F. **Manufacturers, producers, and processors of by-products of manufacturing.**

Receipts generated by engaging in the following activities are not subject to the Business Tax: (i) manufacturing, (ii) producing, and (iii) processing of by-products of manufacturing.

(1) **Ordinary and general meaning.** Ordinary and general meaning shall be given to the words "manufacturing", "producing" and "processing".

(a) **Manufacturing.** Manufacturing means the making of something new and different, involving a substantial (not superficial) change in material, form, composition, or character, resulting in different goods and articles having a distinctive name, character and use.

Examples: Manufacturing has been held to include commercial bookbinding, production of apparel, printing, oil refining, and steel milling. Activities which have been judicially determined **not to be manufacturing** 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; dying and finishing of cloth; purification through pasteurization, filtration and testing for bacteria and impurities; the preparation of potato salad, cole slaw, 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.

(b) **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.

Example: Taxpayer buys coffee beans at wholesale, roasts them in a commercial oven, and sells the processed beans to local coffee shops. Since the beans processed by the taxpayer are not grown by the taxpayer, the exclusion does not apply. Receipts from the sale of taxpayer's coffee beans are taxable.

(c) **Processing by-products of manufacturing.** By-products of manufacturing consist of secondary or additional products produced in addition to a principal product. Processing of byproducts is not taxable activity whether it is performed by the original manufacturer or by others.

Example: 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 the by-products of manufacturing is not subject to the Business Tax.

Example: 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. Therefore, taxpayer's receipts are taxable.

(2) **Application to goods and articles manufactured outside of the Municipality.** Receipts excludable under this subsection are excluded whether the product is manufactured, produced or processed within or outside the Municipality.

Example: Taxpayer manufactures computer equipment in California. It then leases, or sells, the equipment to customers within the Municipality. Receipts from the sale or lease of computer equipment by the manufacturer thereof are not subject to the tax.

- (3) **Goods and articles for own use.** Receipts excludable under this subsection are excluded whether the product is sold to others or used by the taxpayer in its own operations.

Example: Taxpayer produces asphalt both for sale to others and for its own use in fulfillment of paving contracts. Taxpayer's sale of the asphalt product to others is not subject to the business tax. With respect to the asphalt used by taxpayer to conduct its own business operations, taxpayer may deduct the cost of producing the asphalt from the receipts generated by such business operations and only this deducted amount will be subject to the tax.

- (4) **Non-manufacturing activities not subject to exclusions.** 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 products are not excluded.

- (5) **Relation to Pennsylvania Capital Stock and Franchise Tax.** Whether a particular activity qualifies as "manufacturing" or "processing", under the provisions of the Pennsylvania Capital Stock and Franchise Tax is relevant, but not decisive, in determining whether receipts are excludable under the Business Tax.

G. Non-Profit Organizations. Gross receipts generated by non-profit organizations meeting the criteria for "institutions of purely public charity" as set forth in the Institutions of Purely Public Charity Act, 1997, P.L. 508, No.55; 10 P.S. §371 et seq., are not subject to the tax. However, gross receipts derived by non-profit organizations from unrelated trade or business, regularly carried on are taxable.

- (1) **Unrelated trade or business.** An unrelated trade or business is one in which the conduct of business transactions is not substantially related to the exercise or performance of the exempt purposes of the organization (aside from the need for income or the use made of the profits).
- (2) **Regularly conducted.** Activities will be deemed to be regularly conducted if they manifest a frequency and continuity and are pursued in a manner similar to comparable commercial activities of taxable organizations.

- (3) **Sales to nonprofit organizations.** Receipts generated from the sales to religious, charitable, educational, governmental, or other entities not themselves subject to the tax, are not excluded from the tax.

H. Miscellaneous excluded receipts. Excluded from the Business Tax are receipts which constitute:

- (1) Cash discounts to purchasers for prompt payment of bills.
- (2) Freight delivery or transportation charges paid by the seller for the purchaser.
- (3) Sales of trade-ins, up to the amount given the prior owner as a trade-in allowance.
- (4) Refunds, credits or allowances given customers for defective goods returned.
- (5) Taxes collected as agent for the United States of America, the Commonwealth of Pennsylvania, or the Municipality, or other member taxing authorities utilizing the services of the Municipality.
- (6) Exchanges between sellers of identical goods, but not to the extent of any additional cash payment accompanying the exchange.
- (7) Sales to other sellers in the same line, at the same price for which the seller acquired the merchandise.
- (8) Transfers between one department, branch or division of a business entity and another, recorded as interdepartmental transfers.
- (9) Receipts from providing direct-to-home satellite service.
- (10) Commissions paid by one broker to another broker on account of a purchase or sales contract initiated, executed or cleared with such other broker.
- (11) Receipts from sales made by a purchasing cooperative acting as the joint agent of its member principals for purchasing in bulk and distributing at cost products sold by its members.
- (12) Persons employed for wage or salary are exempt from the provisions of this tax.

- (13) No such tax or fee shall be assessed or collected on any receipts which are subject to a gross receipts tax or fee under any other ordinance of the Municipality of Monroeville.
- (14) In the case of a financial business, the cost of securities and other similar property sold, exchanged, paid at maturity, or redeemed, and any money or credits received by a financial business shall also be excluded from its tax base.

Section 207. Interstate Commerce

General. Gross receipts which are fairly attributed to the Municipality (see Section 205), earned by any person doing business within the Municipality and/or having substantial Nexus to the Municipality, are included in taxable gross receipts. Any receipts from a business which operated interstate are taxable where the tax is applied to an activity with a sufficient Nexus with the Municipality, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the Municipality.

- A. **Economic Presence Nexus or Physical Presence Nexus within the Municipality.**
Receipts earned by persons having no Economic Presence Nexus or Physical Presence Nexus are not subject to the tax.
- B. **Exclusion of gross receipts subject to tax outside of the Commonwealth.**
Gross receipts from activities which are demonstrated by the taxpayer to be subject to a tax on gross receipts for the privilege of doing business imposed by another taxing jurisdiction outside the Commonwealth shall be deemed to be fairly attributed to other such taxing jurisdiction and excluded from receipts taxable by the Municipality. The following is a list of factors which are relevant, but not conclusive, for determining whether a person's activities in another state constitute interstate commerce:
 - (1) A nexus in the foreign jurisdiction sufficient to support the imposition of a similar tax by the state.
 - (2) A provision in the contract or agreement between the taxpayer and his client or customer which specifically assigns a reasonable portion of the overall fee to activities required to be performed in the foreign jurisdiction.
 - (3) The length of time spent by the taxpayer in the out-of-state location.
 - (4) The necessity for the services that are performed out-of-state in generating the overall gross receipts.

- (5) The inability of the taxpayer to perform the service which generated gross receipts in its entirety in Pennsylvania.
- (6) The number of employees who are required to perform the activities in the foreign jurisdiction. (However, utilizing a sub-contractor located in the foreign jurisdiction to carry out the taxpayer's out-of-state activities does not constitute the taxpayer's presence in a foreign jurisdiction for purposes of excluding receipts from the Business Tax).

Example: Taxpayer is a wholesale distributor of musical instruments whose sole headquarters and only sales offices are located in the Municipality. Shipments are made from Municipality to mail order customers and independent representatives throughout the United States. Although taxpayer has physical presence (substantial nexus) within the Municipality, any receipts shown by the taxpayer to be subject to a gross receipts tax on the privilege of doing business imposed by a jurisdiction outside of the Commonwealth of Pennsylvania will be attributed to that jurisdiction and excluded from the gross receipts taxable in Municipality.

Example: Taxpayer provides consulting services in the area of structural engineering throughout the United States, the Commonwealth of Pennsylvania and the Municipality. All activities are managed, directed or controlled from Taxpayer's home office located within the Municipality. Any receipts shown by the taxpayer to be subject to a gross receipts tax on the privilege of doing business imposed by a jurisdiction outside of the Commonwealth of Pennsylvania will be attributed to that jurisdiction and excluded from the gross receipts taxable in the Municipality.

C. Apportionment of Receipts from Interstate Commerce

A taxpayer who has receipts from interstate commerce may make an apportionment of such receipts. The formula is based on three factors: receipts, property and wages. In most cases, this formula will effect a fair and proper apportionment of receipts from interstate commerce so that only that part of such receipts which is properly attributable to the Municipality will be included in the measure of the tax.

D. Apportionment of Professional Services

Professional fees derived from services billed on an hourly basis shall be apportioned by excluding receipts attributable to charges to the client for services performed out-of-state.

Professional services rendered on a flat or fixed fee basis of a contingent-fee basis shall be apportioned according to a ratio whose numerator consists of hours spent

on the engagement while out-of-state and whose denominator consists of total hours spent on the same engagement for the same client.

Professional services performed under a contract which sets forth the percentage or amount of the total contract price attributable to a specific activity to be performed out-of-state shall be apportioned according to the contract terms, as long as such amount is a reasonable allocation.

Section 208. Inclusions in Gross Receipts

- A. Affiliated Companies.** Receipts from sales to affiliated business entities are included in taxable Gross Receipts.

Example: Taxpayer is a wholly owned subsidiary of ABC Company. Taxpayer performs all of ABC's accounting and administrative functions. 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 for all its expenses. So long as Taxpayer remains a separate legal entity, the intercompany management fee it receives constitutes taxable Gross Receipts.

- B. Conditional and Installment Sales.**

- (1) 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.
- (2) 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 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 Gross Receipts may be taken for any unpaid balance due at the time of the repossession.

- C. Consignment Transactions.** Gross Receipts received by a consignor from consignment transactions are subject to the tax.

Example: Taxpayer supplies merchandise to a retail jewelry store for sale on consignment. Taxpayer must include the total Gross Receipts realized from the sale of merchandise. Note: the commission paid to the jewelry store (consignor's agent) is a taxable receipt to the jewelry store.

D. Leased Departments. Gross receipts received from the lease of a department are includable.

Example: Taxpayer receives fees for the use of its computer department (personnel and equipment), which it makes available to other companies. Such fees are includable in Gross Receipts.

E. Persons Erecting Buildings or Altering, Repairing or Improving Property. Persons in the business of erecting buildings, or altering, repairing or improving real property, under contract (i.e., contractors and subcontractors) resident or nonresident, shall include in their Gross Receipts all sums paid to them under such contract, without deduction for sums paid to suppliers and/or subcontractors.

(1) **Cost-Plus Contracts.** A contractor performing contracts on the basis of a “cost-plus-a-fixed-fee” or “cost-plus-a-percentage” contract is required to report as gross receipts the full contract price as explained above.

(2) **Supervisory Contracts.** Where the owner of the property or contracting customer buys or furnishes the material, hires all labor in his own name, and pays the contractor a fixed fee or percentage of the total cost to supervise and direct the construction or installation project, the supervising contractor will be required to report only the gross amount of the fee or percentage received.

(3) Where such owner or customer authorizes the contractor to make for him such purchases of tangible personal property, or hire such labor or engage such subcontractors as are necessary for the performance of the contract, and

(a) pledges his (owner or customer) own credit or is liable in the first instance to the materialmen, suppliers, laborers, or subcontractors, as distinguished from (1) merely guaranteeing payment to them or (2) undertaking to reimburse the contractor for the cost of such materials, services or subcontracts; and

(b) agrees to make payment directly to the materialmen, suppliers, laborers or subcontractors, such sales or services will be regarded as made directly to the owner or customer and the contractor will not be required to include such items in his gross receipts.

(3) **Suppliers’ Contracts for Installation.** A vendor who supplies materials for installation in construction, repair, alteration or improvement of real property and furnishes the actual installation, whether personally or through a subcontractor, to the owner or customer under a unitary contract where such installation is an integral part of the sale is a contractor within the

meaning of this section and is subject to the Business Privilege Tax in the same manner as a general contractor.

A supplier who makes no extra charge for installation is subject to the Retail (Mercantile Tax) on the entire price of the sales contract regardless of the location of the real property at which the materials are installed.

Example: Taxpayer, a general contractor, builds and sells a new home for \$200,000.00. Payments to subcontractors equal \$50,000.00. Taxpayer may not deduct the payments to subcontractors, but must include the entire \$200,000.00 as taxable Gross Receipts. Each subcontractor must also file and pay the applicable tax owing on their gross receipts.

F. Persons Who Repair, Alter and Improve Tangible Personal Property. Persons who repair, alter and improve the tangible personal property of others, including but not limited to artisans, home-improvement contractors, auto repair shops and others are required to report the total charge made for the entire service including labor and materials where there is a unitary charge for the entire service. Where a person is primarily a vendor of goods, wares and merchandise and is subject to the retail Mercantile Tax on such sales, he must also report receipts from installation, repair and other labor for service Business Privilege Tax purposes. The materials used to repair, alter or improve the personal property owned by the customer is subject to the retail Mercantile Tax.

G. General Agencies, Brokers, and Agents.

(1) **General Agencies and Brokerage Firms.** All general agencies and brokerage firms shall include in Gross Receipts all revenues received - without deduction for commissions or fees paid to, or withheld by, agents of the general agency or brokerage firm. This section shall apply to advertising agencies, public relations firms, and any other service business which meets the Agency criteria.

(a) The contract or agreement between such persons clearly and legally establishes the relationship of principal and agent.

(b) The books and records of the agent or representative show the name of the actual owner of the property on whose behalf the sale is made or the service is rendered.

(c) The credit risk is assumed by the actual owner of the property or the person for whom the service is rendered.

- (d) The books and records of the agent or representative show the amount of gross receipts and the amount of commission due thereon.

Undisclosed Principal. A person selling property, including real property, or rendering services for an unknown or undisclosed principal is subject to the tax as principal, unless there is disclosed in the agent's return and substantiated by his records, the identity of the principal and the amount of sales on his behalf.

Example: Taxpayer, a broker/dealer registered with the National Association of Securities Dealers, earns commissions on sales of securities made through the efforts of affiliated registered representatives (stock brokers). Taxpayer may not deduct from its Gross Receipts the commissions paid to registered representatives. Similarly, business brokers, real estate brokers, and insurance general agencies may not deduct commissions paid to selling agents.

- (2) **Agent's commissions.** Independent agents shall include in Gross Receipts all fees, commissions, or other remuneration received for services performed as an agent.

Example: Taxpayer is a real estate agent who sells a home for \$100,000.00 on which a real estate commission is generated in the amount of \$7,000.00. After the commission is split between the real estate brokerage firms representing the buyer and seller, taxpayer is paid a commission from her broker of \$1,750.00. Taxpayer's taxable Gross Receipts are \$1,750.00.

Example: Taxpayer sells lottery tickets from his convenience store. Gross commission receipts paid to taxpayer as a lottery agent are taxable.

Example: Taxpayer works as a registered representative ("stock broker") for a NASD broker/dealer. Gross commission receipts received by taxpayer are taxable Gross Receipts.

Agent as employees. 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 Municipality may reasonably require to show employment. Receipts earned by independent agents are subject to the tax even though such persons may qualify as "statutory employees" for purposes of federal income taxation.

H. Manufacturer's Representative.

- (1) Where a manufacturer's representative maintains a bonafide office or place of business within the Municipality, he must include commissions earned on sales to customers located in Pennsylvania in his gross receipts. Expenses attributable to an office in his home which are deducted as business expenses on his federal income tax return constitute a place of business in the Municipality.
- (2) If the manufacturer's representative will be taxable on his gross office or place of business in the Municipality, only those commissions earned from sales to customers located in the Municipality are to be included in gross receipts.
- (3) A manufacturer's representative will be taxable on his gross commissions unless his relationship to his principal is that of employer-employee. Factors which establish an employer-employee relationship include, but are not limited to the following:
 - (i) The payment by the company of social securities and unemployment compensation taxes on behalf of the person claiming to be a manufacturer's representative;
 - (ii) The entitlement, in the event of an accident in the course of his business activities, of workmen's compensation to the representative;
 - (iii) The participation by such representative in a pension plan offered to other employees of the employer.
 - (iv) Collection of withheld federal and/or state and local tax;
- (4) Where an agent is issued a Form 1099 for federal income tax purposes, all receipts shown thereon are subject to Business Tax.

I. Insurance Agents, Brokers and Underwriters.

- (1) **General Agents.** General agents 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 or subagents.
- (2) **Brokers and Subagents.** Brokers or subagents are required to report as gross receipts the commissions received as compensation for services.

- (3) **Employee of Single Company.** A person who is an employee under the criteria set forth in Section 805F. (3) is not subject to the Business Tax on his earnings from the company, but must file a return showing any additional gross commission he receives as an independent contractor for services rendered on behalf of other companies.

J. Theaters and Motion Picture House. Persons operating theaters or motion picture houses and other places of amusement in the Municipality, whether as owner or lessee, are subject to the Business Tax on 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 or the sale of goods, wares, or merchandise subject to the Mercantile Tax.

K. Real Estate Brokers and Developers.

- (1) Real estate brokers are required to report as taxable gross receipts the commissions and fees received for services rendered in promoting the purchase, sale, rental and/or management of property of others.
- (2) A real estate broker who owns and operates his own agency may exclude from his tax base the amount he is required to remit to a similar broker in the normal distribution of the commission for said transaction. No other exclusions from gross receipts are permitted.
- (3) If a real estate broker takes title to real property in his own or in a straw name and sells the property, he is required to include the gross selling price of the property as taxable receipts, reduced by the purchase price of the real property. Closing, transfer and any other expenses may not be deducted.
- (4) Real estate dealers, whether they are residents or non-residents, are subject to the tax on commissions on sales of real property located in the Municipality. The following conditions are defined in more detail:
 - (a) When a broker maintains its only real estate office in the Municipality, all bookkeeping, administration and executive functions are performed from that office, tax is due on all commissions.
 - (b) When a real estate firm has a branch office in the Municipality, all receipts of the branch office are included as income and taxed under this act.
 - (c) When a real estate company has its main office in the Municipality and has branch offices in other communities, then the income from the branch offices are excluded from the Business Tax.

- (d) When a real estate office that does not have its main office in the Municipality, but makes a sale on a property in the Municipality, then the commission earned on that sale is taxable.
- (5) Any person or entity who is in the land developing business is liable for Business Tax on the entire amount received from any customer either as the result of the sale of real estate to that customer or from the rental of the unit, commercial, industrial or residential, that has been erected, improved or remodeled as part of the development plan.

L. Rental Activities.

- (1) Persons operating hotels, apartment houses, boarding houses, nursing homes, rooming houses and all other such establishments are taxable on receipts from renting of space, furnishing of meals and any other services which are not subject to the Mercantile Tax.
- (2) Any person who rents out any property, including, but not limited to buildings, offices, stores, dwelling houses, or any portion thereof, shall include gross rentals received in his Business tax base with no deductions there from for depreciation, cost of maintenance, repairs, taxes, utilities or any other cost or expense.
 - (a) Any person-individual, partnership, limited partnership, corporation, or association-who acquires property for the purpose of obtaining rentals or other fees or for any other business purpose is subject to the Business Tax on the entire gross receipts, even though the tenant or user of the property has assumed responsibilities normally discharged by the owner or lessor. Thus, the gross receipts from any lease, including a net, net-net-net lease, are fully subject to the tax.
 - (b) The provisions of subsection (1) apply without regard to whether such rental is a primary source of income or only a secondary source.
 - (c) Any person who acquires property through inheritance, gift, reverted trust or other legal process, and who provides absolutely no services, other than maintenance required by law, is not subject to the Business Privilege Tax on rentals from that particular property. If, however, disposition is not made by the recipient within a reasonable amount of time, taking into consideration the property size, location and market, it will be presumed that the retention of the property so acquired is for a business purpose and the receipts shall be subject to the tax.
 - (d) When a corporation which is not in the business of renting property ceases its regular business operations, sells its assets and retains

ownership of its real property, it is not liable for rentals received from leasing this property only during the period in which the real property is retained as an asset pending disposition to a purchaser. If disposition is not made within a reasonable amount of time, taking into consideration the property size, location and market, it will be presumed the retention of the real property is not for the purpose of merely maintaining a corporate asset pending disposition, but is for the business of obtaining rentals and/or other business income which will be subject to the Business Privilege Tax.

- (e) Persons or agencies which manage and/or operate cooperative and/or condominiums must pay the tax based on all receipts received for maintenance, cleaning, security insurance and all other services provided. A cooperative or condominium organization is considered to be a “person” within the meaning of this Section.

M. Financial Business.

- (1) A financial business subject to the Business Tax consists of the services and transactions of any trust. (Except as provided in subsection D; credit or investment company; holding company, dealers and brokers in money, credits, commercial paper, bonds, notes, securities, stocks and monetary metals, pawnbrokers, factors and commission merchants; or any other business does not pay a revenue-producing tax to the Commonwealth and is not subject to regulation by the State Department of Banking). Notwithstanding the fact of state taxation and regulation by the Department of Banking, any such business shall pay the Business Tax on any receipts from non-regulated activities.
- (2) The word “receipts” as applied to financial business shall not include a return of capital or the redemption of collateral the value for which it was pledged, nor are deposits retained to the account of another considered to be “receipts” within the meaning of this Section.
- (3) Receipts of a financial business to be included in the tax base consists of:
 - (a) Fees, commissions, or other compensation received for services rendered as a financial business;
 - (b) Gross profit realized from trading in stocks, bonds, and/or other securities, commodities, commercial paper, notes or other evidences of indebtedness, monetary metals, royalties, interest in oil, gas and mineral deposits, et cetera;
 - (c) Dividends and interest received;

(d) Any other gains, profits or emoluments by whatsoever term designated resulting from the operation of a financial business without deduction for overhead or other costs of production.

N. Trusts.

- (1) Estates and trusts, whether inter-vivos or testamentary, in which a trustee merely invests funds under usual fiduciary practices for the purpose of conserving trust assets prior to disposition within a reasonable time are, generally speaking, not subject to the Business Privilege Tax. A trust which operates a business, however, is subject to the tax.
- (2) Trustees managing investment trusts, mutual funds or any similar type of trust, or other fiduciaries actively engaged in operating an estate for business purposes are subject to Business Privilege Tax on the gross receipts they receive for their services.

O. Factors and Commission Merchants.

- (1) A factor, or commission merchant, is an agent employed to sell goods or merchandise consigned or delivered to him, by or for his principal, for a consideration, commonly called a factorage or commission.
- (2) A factor, or commission merchant, differs from a selling agent, or merchandise broker, in the following respect:
 - (a) A factor or commission merchant, may sell for his own name as well as in the name of his principal while a selling agent or merchandise broker, acting as such, may sell only in the name of the principal.
 - (b) A factor, or commission merchant, is entrusted with possession, management and control of the goods, and has a special property in, and lien on, the goods. The selling agent, or merchandise broker, usually has no such possession, management or control of the goods, nor any special property or lien.
 - (c) Factors, or commission merchants, as distinguished from selling agents, or merchandise brokers are deemed to be engaged in a financial business, and shall include in the tax base the gross income derived from operations carried on in such capacity.

P. Holding Companies. A holding company is any corporation which has an equity interest in another corporation. Holding companies located in the Municipality are taxable on dividends and royalties from subsidiary companies located within Pennsylvania regardless of the place of incorporation. Dividends and royalties from

subsidiary companies located wholly outside Pennsylvania are not subject to the tax.

A holding company performing services such as management services for any subsidiary located in Pennsylvania shall include those fees in their tax base. Where the subsidiary is wholly or partially located outside of Pennsylvania, the fees for those services shall be apportioned on the basis of a three factor formula consisting of real and tangible personal property, wages and salaries, and sales of the subsidiary.

- (1) **Apportionment Formula:** Dividends and royalties from subsidiary companies located partially outside Pennsylvania are taxable based upon the apportionment formula set forth below.
 - (a) Property factor - the numerator is the average value of the real and tangible personal property owned or rented and used in Pennsylvania during the tax year if the taxpayer and all subsidiaries subject to the Pennsylvania Corporate net Income Tax; the denominator is the average value of all real and tangible personal property owned or rented and used during the tax year of the taxpayer and all subsidiaries.
 - (b) Wages and salaries factor - the numerator is the compensation paid in Pennsylvania during the tax year by the taxpayer and all subsidiaries subject to the Pennsylvania Corporate Net Income Tax; the denominator is the total compensation paid during the tax year by the taxpayer and all subsidiaries.
 - (c) Sales factor - the numerator is the sales in Pennsylvania during the tax year by the taxpayer and all subsidiaries subject to the Pennsylvania Corporate Net Income Tax; the denominator is the sales during the year by the taxpayer and its subsidiaries.

The total of the above three percentages should be divided by three to arrive at the average percentage. This average percentage will then be applied in the appropriate circumstances described above. Although the average percentage may be determined by using the fiscal year of the taxpayer and/or its subsidiaries falling within the calendar year in question, the tax must be calculated and paid on a calendar year basis.

EXAMPLE 1: Holding Company “Z”, located wholly in the Municipality, receives dividends from two subsidiaries: “A”, located wholly in Erie, PA; and “B”, located wholly in Buffalo, NY. The dividends received from subsidiary “A” are included in the tax base of the holding company “Z” for purposes of the

Business Privilege Tax; the dividends received from subsidiary “B” are not subject to the tax.

EXAMPLE 2: Holding company “Z”, located wholly in the Municipality, provides management and legal services to subsidiary “C”, located in both Washington, PA and Wheeling, W.Va. “Z” receives \$10,000 annually from “C.” The amounts of property, wages and sales to be included in the apportionment formula and the application of the formula is as follows:

Total Property	<u>\$ 75,000</u>			
	\$100,000	=	75%	+
Pennsylvania wages	<u>\$60,000</u>			
Total wages	\$65,000	=	92%	+
Pennsylvania sales	<u>\$ 850,000</u>			
Total sales	\$1,000,000	=	85%	
Total Percentage			<u>252%</u>	
Divided by 3 =	Average Percentage		<u>84%</u>	

Therefore, 84% or \$8,400 of \$10,000 received by “Z”, would be considered as taxable for Business Tax purposes.

Q. Financial Transactions of Non-Financial Businesses.

- (1) A non-financial business subject to Business Tax must include in its tax base receipts from dividends, interest, income from stocks, bonds, credit obligations, and other security transactions, which are obtained by investing the funds of such business.
- (2) Proceeds derived by a corporation from the original sale of its own shares do not constitute receipts subject to Business Tax. However, receipts realized from sales of a corporation’s own stock, after issuance and repurchase by the corporation (treasury stock), must be included in the tax base.
- (3) Receipts do not include return of capital or redemption of collateral at the value for which it was pledged.

- (4) If sales of any investments result in a loss, the loss may be offset against gains from similar financial transactions in the same tax year, but the loss may not be used to diminish receipts realized in the ordinary course of business.
- (5) **Retirement of Bonds.** Where a taxpayer purchases its own bonds for retirement at a price either less than the issuance price as adjusted for the amortization of bond premium, if any, or less than face value, whichever is less, the difference between the purchase price and the carrying value must be included in the tax base.

Conversely, if a taxpayer purchases its own bonds for retirement at a price greater than the carrying value, the difference between the purchase price and the carrying value may be deducted from the tax base, but only to the extent of the gains realized on similar classes of transactions.
- (6) **Hedging Transactions.** Gains or losses realized on hedging transactions are gains or losses from securities transactions within the meaning of this Section.

R. Radio and Television Broadcasters.

- (1) **Normal Transmission.**
 - (a) Radio and television broadcasters located in the Municipality may apportion their receipts for Business Tax purposes on the basis of a three factor formula consisting of real and tangible personal property, wages and salaries, and listening families. The formula is subject, however, to a fifty percent (50%) maximum where the average percentage arrived at through the calculation exceeds fifty percent (50%). Where the average percentage is less than fifty percent (50%), the actual percentage will be used.
- (2) **Cable Transmission.** Any person operating a cable television station in the Municipality shall include the gross receipts from all rates, fees or charges of any kind collected from subscribers without deduction there from for the franchise fees paid to the Municipality or for any other costs of operation including those prescribed by law.

**ARTICLE III
DECLARATION AND PAYMENT OF TAX**

Section 300. Tax Returns: A return will not be considered filed unless the taxpayer complies with all of the provisions pertaining to the filing of returns and includes all information requested on the return.

- A. Tax returns shall be made using forms approved by the Municipality and the tax collector may inquire as to business name, type of activity, business receipts, and any other information reasonably necessary to accurately determine taxpayer identity and liability. Tax returns must be filed whether or not tax is due. The failure to receive a tax return, or form, by mail from the Municipality does not relieve the taxpayer of the responsibility to timely file a tax return. Every person making a return shall certify the correctness thereof by affidavit. The fact that an individual's name is signed on the return shall be prima-facie evidence that such individual is authorized to sign the return on behalf of the taxpayer.
- B. Every person subject to the tax imposed by this article who commences business prior to the beginning of any tax year shall file a return with the Tax Collector, setting forth his name, his business and business address and such other information as may be required by the Tax Collector in order to determine his actual gross receipts as prescribed in said Ordinance and the amount of the tax due by the 15th of April of every tax year.
- C. Every person subject to the tax imposed by this article who commences business subsequent to the beginning of any tax year, shall by the last day of the month following the first full month of operation, file a return with the Tax Collector setting forth his name, his business and business address and such other information as may be required by the Tax Collector in order to determine his actual gross receipts as prescribed in said Ordinance and the amount of the tax due.
- D. Any person required to file a return by this article shall attach to such return the Pennsylvania or Internal Revenue Service Schedule "C", Form 1065, or Form 1120.
- E. If a business maintains more than one place of business in the Municipality, the taxpayer must file a separate return for each business location. A schedule must be attached to the return showing the various locations at which the taxpayer conducts business in Monroeville and detailing receipts attributable to each location and each tax type.

Section 301. Due Dates for Filing Returns.

- A. **Annual Returns.** Returns are due on April 15 of the Succeeding Year or as detailed in Section 204 C.
- B. **Returns of Temporary, Seasonal or Itinerant Business.** Every person or business engaged in business activity who does not intend to continue such activity within the Municipality of Monroeville for a full year or which business activity by its very nature is not permanent shall make and file with the Municipality a tax

return, as set forth in Section 300, and pay the tax due thereon within 7 days of the close of the temporary, seasonal or itinerant business activity. For purposes of these regulations vendors at fairs, festivals, and craft shows/fairs shall be considered to be temporary, seasonal or itinerant businesses. Each such business is required to file with the Tax Collector a return setting forth his name, his business and business address and such other information as may be required by the Tax Collector in order to determine his actual gross receipts for the period he engages in business during the tax year and the amount of tax due.

- C. **Proof of Mailing.** The postmark of the United States Postal Service shall constitute proof of mailing. The postmarked date may constitute the filing date of the tax return.

Section 302. Extension of Time for Filing Returns.

Local law does not provide for an extension to file. The Municipality recommends that you file and pay a tentative return and file an amended return later, if necessary. However, tax owed and not paid by the due date must include interest and penalty charges. Returns must include appropriate documentation of gross receipts and exclusions to be accepted as filed.

Section 303. Filing to be Complete.

- A. **Business Registration** Within 30 days of commencing business in the Municipality, every person shall forthwith register with the tax collector and set forth his name, address, business address, tax identification number, and the nature of the business activity in which he is engaged. Every person making a business registration shall certify the correctness thereof by affidavit. Such registration shall be made by the completion of an application furnished by the Tax Collector and the payment of a registration fee to be established by the Municipality. If an individual or business entity conducts business under a fictitious name, such individual or entity shall apply for registration in both the true and fictitious names of the individual and entity and shall list the fictitious name first on the application. Each separate individual or business entity shall apply for a separate registration.
- B. **Tax Returns** Forms shall be completed in full and certified as true and correct by the taxpayer, supported by all additional forms or schedules required (including Federal Income Tax Schedule C if Taxpayer is a sole proprietor; Federal Form 1065 if Taxpayer is a partnership; Federal Form 1120/1120S if Taxpayer is a corporation; Federal Form 990 if Taxpayer is a non-profit organization). In cases where the taxable Gross Receipts, as calculated by the taxpayer, differ from Gross Receipts reported on the Federal Tax Form a reconciliation that fully explains the difference must accompany the tax return.

Completed tax returns must be accompanied by payment of tax and delivered to the Municipality on or before April fifteenth of the succeeding year other than businesses who commence in the current "tax year" which file according to Section

204 C. Retention of the return filed by the taxpayer and/or negotiation by the Tax Collector of the payment tendered therewith does not constitute a final acceptance by the Tax Collector of the accuracy or completeness of the self-addressed return and tax payment. The Tax Collector may elect to treat any such filing and/or payment as a partial disposition of the taxpayer's liability. All returns filed, payment negotiated, or refunds remitted are conditional. Acceptance is final only after a duly approved audit or by operation of law.

Section 304. Business Termination.

Any taxpayer going out of business or ceasing to do business shall, within thirty (30) days from the date of ceasing to do business, file a return showing the actual gross volume of business generated during the tax year in which said taxpayer ceased doing business and pay the tax due thereon at the time of filing the tax return. In the event that any tax has been paid upon estimated Gross Receipts, the taxpayer shall be entitled to a refund of any excess tax paid in the tax year for which business was terminated.

ARTICLE IV ACCOUNTING, BOOKS, AND RECORDS

Section 400. Accounting Methods and Periods.

Cash or Accrual Basis. 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. Even though such method of accounting and bookkeeping may be based on a fiscal year, the Business Tax must be computed on the basis of the calendar year.

Section 401. 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 Municipality of Monroeville Tax Collector or his designees to verify the accuracy of declarations and/or returns filed. There must be objective criteria in these books and records, as well as in underlying documents, such as invoices, to support the returns filed by the taxpayer. The taxpayer claiming exemptions or exclusions for any portion of his gross receipts must maintain complete records which will support the validity of the claim. Such claims will be disallowed if not sufficiently proven by the taxpayer. Accounts and records are to be preserved for **NOT LESS THAN SIX (6) YEARS**.

If records are not available for the entire period requested for review, the Tax Collector may utilize whatever records or information available to reconstruct, as accurately as possible, figures that reflect the business activity of the taxpayer for the period involved.

If records are not available in the Municipality to support the returns which were filed or which should have been filed, the taxpayer will be required to make them available to the Tax

Collector either by producing them in a Municipal location or by paying for the expenses incurred by the manager in traveling to the place where the records are regularly kept.

ARTICLE V ADMINISTRATION AND ENFORCEMENT

Section 500. Collection and Receipt of Tax.

The Tax Collector is authorized to collect and receive taxes, fines, penalties and interest on behalf of the Municipality. Unless otherwise specified by the taxpayer, all voluntary payments shall be applied against amounts owed as follows: tax, interest, penalties, and other fees or charges.

Section 501. Records of Receipts.

The Tax Collector is authorized and required to keep a record showing the amount received by the Municipality from each taxpayer and the date of such collection and receipt.

Section 502. Disclosure Statement of Taxpayer's Rights and Obligations.

The Municipality shall notify any taxpayer contacted of their rights regarding an assessment, audit, determination, review, refund, appeal or collection of tax as follows: You are entitled to receive a written explanation of your rights with regard to the audit, appeal, enforcement, refund and collection of local taxes by contacting the Municipality on weekdays between the tax office hours. The Web Site is www.monroeville.pa.us.

The Disclosure Statement, attached hereto as Addendum "B", is available to taxpayers upon request at no charge by contacting the tax office weekdays.

Section 503. Verification of Records, Audits, Response Periods and Prior Year Returns.

The Municipality, or agents of the Tax Office designated in writing, are authorized to examine the books, papers, and records of any person or business entity whom the Tax Collector reasonably believes has engaged in taxable business activity within the Municipality in order to verify the accuracy of any return made or, if no return has been filed, to arrive at a reasonable assessment of tax, interest, penalty, and fine due.

- A. **Cost of audits.** In the event the Municipality retains the services of tax auditing professionals to verify the accuracy of returns filed or, if no return has been filed, to arrive at a reasonable assessment of tax, interest, penalty, and fine due, any cost to the Municipality to conduct such an audit shall be assessed against the Taxpayer if any amount is found to be due and owing to the Municipality.
- B. **Issuance of subpoenas to compel attendance and production of records.** The Tax Office, with the assistance of the Municipality's Solicitor, shall have the power and is authorized to (1) issue subpoenas to compel the attendance of persons deemed by the Tax Office to be necessary to examine as witnesses, and (2) compel

the production of books, records, and papers relating to any person or business entity under examination. The documents shall be delivered to the Municipality.

- C. **Minimum time periods for taxpayer response.** Taxpayers shall have at least thirty (30) calendar days from the mailing date to respond with requests for information by the Municipality. The Municipality may notify any taxpayer from whom the 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 upon application for good cause. No action shall be taken against a taxpayer for the tax year in question until the expiration of the response period, including extensions.
- D. **Inquiry as to prior year returns.** Except as provided below, an *initial* inquiry regarding a taxpayer's compliance with the Tax may include taxes required to be paid or tax returns required to be filed no more than three (3) years prior to the mailing date of the notice of such inquiry. If, after the initial request, the Municipality (or designee) 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. This subsection shall not apply if the Municipality has sufficient evidence to support his or her belief that the taxpayer has failed to file a required return or pay an eligible tax which was due more than three (3) years prior to the date of the initial notice. If no return was filed where an inspection and examination indicated such a return should have been filed and tax paid, or if the return was fraudulent, there is no limit to the number of years for which a deficiency assessment, plus penalty and interest, can be made.

Section 504. Procedures for the Conduct of Taxpayer Audit.

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

- A. **Notice of Audit.** The taxpayer shall be notified in writing of a scheduled audit at least thirty (30) days in advance. The notice of audit shall contain the following information:
- (1) The reason for the audit;
 - (2) The tax years subject to audit;
 - (3) The date, place and time for the audit to be conducted;
 - (4) A description of the information, books and records to be produced;
 - (5) A copy of the Municipality Disclosure Statement information.

- B. **Rescheduling audit.** The taxpayer may request that the audit be rescheduled, provided that it is rescheduled within a reasonable time not to exceed sixty (60) days, and the request is accepted by the Municipality.
- C. **Representation at audit.** The taxpayer may have a representative present during the audit.
- D. **Audit results.** In the event a Notice of Assessment (Section 505.A.1) 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 505. Examination of Return, Notice of Assessment.

- A. **Examination of Return.** The Municipality personnel shall examine every return as soon after filing as is practical to determine the correct amount of tax.
 - (1) **Notice of Assessment for underpayment.** If the Municipality personnel find that the amount of tax shown on a return is less than the correct amount, the Municipality shall notify the taxpayer in writing of the amount of the underpayment (deficiency) assessed. A Notice of Assessment shall be in writing and shall include:
 - (a) The tax period or periods for which the underpayment is asserted.
 - (b) The amount of the underpayment detailed by tax period.
 - (c) The legal basis upon which the Municipality has relied to determine that an underpayment exists.
 - (d) An itemization of the revisions made by the Municipality to a return or report filed by the taxpayer that results in the determination that an underpayment exists.
 - (2) **Notice of Overpayment.** If the Municipality finds that the tax that has been paid by the taxpayer is more than the correct amount, the Municipality shall credit the overpayment against any taxes owed by the taxpayer, or the Municipality shall refund the difference to the taxpayer. Written notice of such action by the tax office may be provided to the taxpayer.
- B. **No Return Filed.** If the 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 thereon and notify the taxpayer in writing of the amount assessed against the taxpayer as a deficiency.

Section 506. Petition for Reassessment.

Within thirty (30) days of the date of the Notice of Assessment, the taxpayer may file a Petition of Reassessment setting forth the grounds upon which a reassessment is requested. Petitions for Reassessment shall be filed with the Municipality for submission to the Tax Appeal Hearing Officer for hearing and determination (see Section 516).

Section 507. Refund of Overpayments, Interest on Overpayments.

A. **Taxpayer Request for Refund of Overpayments.** Any taxpayer who has made an overpayment of tax to the Municipality may file a written request with the Tax Collector for a refund or credit. A request for a refund shall be made within three (3) years of the due date for filing the tax return, 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 three (3) years after the due date for payment of the tax or within one year after actual payment of the tax, whichever is later.

(1) **Overpayment on tax return.** For purposes of this section, a tax return filed by the taxpayer with the Municipality 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 appeal to the Tax Appeal Hearing Officer and shall not preclude the taxpayer from submitting a petition for appeal (see Section 516).

(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 Municipality within one year of the date of payment.

B. **Interest on overpayments.** All overpayments of tax due to the Municipality shall bear simple interest from the date of overpayment until the date of resolution.

(1) **Rate of interest.** Interest on overpayments shall be allowed and paid at the same rate as the Commonwealth of Pennsylvania 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.

(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 Municipality) within seventy-five (75) days after the last prescribed date for filing the tax return or report of liability or within 75 days after the date the tax return or report of liability due is filed, whichever is later.

(3) **No interest on Overpayments of Interest and Penalty.** Overpayments of interest and penalty shall not bear interest.

C. **Acceptance of refund check.** The taxpayer's acceptance of the Municipality'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 Municipality shall be deemed to be acceptance of the check by the taxpayer.

Section 508. 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 and penalty for any period for the following:

(1) Any underpayment of tax finally determined to be attributable in whole or in part to any error or delay by the Municipality 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 Municipality has contacted the taxpayer in writing with respect to the underpayment of tax finally determined to be due or payable.

(2) Any payment of tax to the extent that any error or delay in the payment is attributable to an officer, employee or agent of the Municipality being erroneous or dilatory in the performance of a ministerial act. The Municipality Solicitor or the Tax Collector shall determine what constitutes timely performance of ministerial acts.

B. **Erroneous written advice by the Municipality.** The Municipality 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 Municipality, acting in their official capacity if:

(1) The written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer; and

(2) The portion of the additional tax, penalty and interest did not result from the failure of the taxpayer to provide adequate or accurate information.

Section 509. Installment Agreements.

The Municipality may enter into written "payment agreement contracts" with any taxpayer under which the taxpayer is allowed to satisfy liability for any eligible tax in installment payments if the Tax Collector determines that the agreement will facilitate collection. The following terms and conditions shall apply to installment plans:

- A.** The taxpayer must file an annual tax return for the current tax year and any delinquent tax years to be covered under the installment plan. These annual tax returns must include a copy of the taxpayer's Federal Tax Return and all supporting documentation as verification that all taxable income has been reported. In cases where a Federal Tax Return cannot be produced, the taxpayer must complete a Federal Form 4506 "Request for Copies of Tax Return" naming the Municipality as recipient of the requested copy. The costs to procure the Federal Tax Return and related information shall be the sole responsibility of the taxpayer.
- B.** Installment plans will not be approved for tax amounts less than \$100.00.
- C.** Installment Plans will not be approved for more than six months. Payment amounts will be calculated by dividing the total tax liability by six and adding the applicable penalty, interest, fines, and costs to each payment.
- D.** Taxpayers will be required to verify that their current year's tax liability has been satisfied to date by direct payment from the taxpayer.
- E.** Installment Plans will be granted only one time to any taxpayer.
- F.** Installment Plans will be revoked and immediate civil action or garnishment of wages or other assets for collection of the tax due will be initiated if any of the aforementioned terms and conditions are not met.
- G.** The Municipality may terminate any prior agreement if:

 - (1) The information the taxpayer provided to the Tax Collector prior to the date of the agreement was inaccurate or incomplete, or
 - (2) If the Tax Collector believes that collection of any eligible tax under the Installment Plan is in jeopardy.
- H.** 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:

 - (1) 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
 - (2) The notice contains the reasons why the Tax Collector believes a change has occurred.
- I.** The Tax Collector may alter, modify or terminate an Installment Plan agreement if the taxpayer fails to do any of the following:

- (1) Pay any installment at the time the installment is due.
 - (2) Pay any other tax liability at the time the liability is due.
 - (3) Provide a financial condition update as requested by the Tax Collector.
- J.** Nothing in this subsection shall prevent a taxpayer from pre-paying in whole or in part any eligible tax under any installment agreement with the Tax Collector.

Section 510. Payment.

- A.** The business privilege and mercantile tax levied pursuant to this article shall be due and payable without further notice or demand on the date which the taxpayer is required to file a declaration of estimated tax.
- B.** All taxes, interest and penalties imposed under the provisions of this article shall be payable to the Tax Collector who, upon payment of the tax imposed, together with any interest and penalties due thereon, shall give to the person paying the same a receipts therefore. All tax shall always be deemed due and payable not later than at the time of filing the return.

Section 511. Payment under Protest.

The Tax Collector is authorized to accept “payment under protest” of the amount of tax in order to avoid liability for additional penalty, interest and fines. Notice of Payments made under protest will be forwarded to the Tax Collector for informational purposes. The payment will be deposited and distributed to the Municipality along with the next tax remittance distribution. If it is thereafter judicially determined that the Municipality has been overpaid, the amount if the overpayment shall be refunded to the taxpayer. The provisions of this section shall be applicable to cases clearly analogous to those in a case litigated in a court of competent jurisdiction.

Section 512. Violations and Penalties.

Failure to comply with the provisions of the Municipality Ordinances, (Business Privilege and Mercantile Tax Ordinance) may result in both civil and criminal sanctions, including:

- A.** **Administrative Penalty and Interest.** If a person fails to pay the tax when due, a penalty of ten percent (10 %) of the tax due and unpaid shall be added thereto plus additional penalty and interest of one percent (1 %) per month, for each month the tax, or part of the tax, remains unpaid. This 10% administrative penalty shall be in addition to any other penalty imposed by this article.
- B.** **Revocation of License.** The Business Tax License of any person or business entity who fails to file any declaration of estimated tax or any tax return required under

all tax ordinances of the Municipality, or who files a false declaration of estimated tax or a false tax return, may, after notice and hearing, be revoked.

C. **Issuance of Non-Traffic Citation.** The Tax Collector may file a Non-Traffic Citation against any taxpayer who violates any provision of the Codified Ordinances of the Municipality. Each twenty-four (24) hour period during which such violation continues shall be considered a separate and distinct offense punishable as outlined in the Business Tax Ordinance. Such violations include, but are not limited to:

- (1) Failure to obtain a Business License.
- (2) Failure to make and file a required report or return.
- (3) Failure to remit any tax due.
- (4) Knowingly making false or fraudulent report or return.

D. **Suits for Recovery of Unpaid Taxes.** The remedies provided in this section and Section 523 are not mutually exclusive, the utilization by the Tax Collector of one remedy does not preclude utilization of the other. Moreover, use of either or both of the remedies provided in these Sections does not preclude the use by the Municipality of any other legal or administrative procedure which can bring about compliance by the taxpayer with the provisions of the Business Tax.

The Tax Collector may sue in the name of the Municipality, in law or in equity, for the recovery of those taxes due and unpaid under the provisions of the Business Tax, to compel the production of records or to enforce any other provision of the tax. The following periods of limitations shall apply to suits for collection of taxes:

- (1) Any suit brought to recover the tax due and unpaid shall be begun within three (3) years after the return was due or filed, whichever is later.
- (2) In the case of a deficiency assessment, within three (3) years after the assessment has been made.

Deficiency assessments (i.e. where a taxpayer has filed a return in good faith but is found to be owing additional tax) may include taxes for five (5) years prior to the date when the deficiency is assessed. Where no return was filed, there shall be no limit to the period of the assessment.

The limitations set forth should not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:

- (1) Where no return was filed, there shall be no limitation.

- (2) Where the return is fraudulent, there shall be no limitation.
- (3) Where there is an understatement of tax liability of twenty-five percent (25%) or more, and not due to fraud, suit shall begin within six years.

A return filed before the due date is deemed to be filed on the due date. The provision is for initiation of suits only.

- E. Penalty and Interest.** If for any reason the tax is not paid when due, interest at the rate of 6% per annum on the amount of said tax, plus additional penalty of 1/2 of 1% of the amount of unpaid tax for each month or fraction thereof during which the tax remains unpaid shall be added to the tax.

Section 513. Confidential Nature of Tax Information.

Any information gained by the Tax Collector as a result of any audit, return, report, investigation, hearing or verification shall be confidential tax information. It shall be unlawful, except for official purposes or as provided by law, for the Tax Collector to:

- (1) Divulge or make known in any manner confidential information gained in any return investigation, hearing or verification to any person.
- (2) Permit confidential tax information or any book containing any abstract or particulars thereof to be seen or examined by any person.
- (3) Print, publish, or make known in any manner, any confidential tax information.

Section 514. Dishonored Checks.

The current applicable Municipality fee will be levied by the Tax Collector each time a check is returned from the bank unpaid. Checks issued in violation of the Pennsylvania Crimes Code will be referred to appropriate authorities for possible criminal prosecution.

Section 515. License Tax Officer and Tax Collector Duties and Records.

- A.** The Tax Collector is charged with the duties of receiving the taxes, fines and penalties imposed by this article.
- B.** The Tax Collector and all duly appointed deputies, with the approval of the Municipality, are hereby empowered to promulgate rules and regulations relating to the enforcement of this article, including provisions for the examination and correction on declarations and returns, and payments alleged or found to be incorrect, or as to which an overpayment is claimed, or found to have occurred, and

charged with enforcing the provisions of this article and any rules and/or regulations promulgated pursuant hereto.

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

Section 516. Administrative Appeals.

- A. The Municipality encourages any taxpayer or employer desiring a specific ruling concerning the applicable Ordinances, Resolutions or these Rules and Regulations to submit all pertinent facts in writing to the Tax Collector who shall issue a written ruling, or seek a legal opinion from the Municipality Solicitor.
- B. The Municipality had established an administrative process to receive and make determinations on petitions from taxpayers relating to the assessment, determination and refund of eligible taxes as required by ACT 50 of 1998. The Hearing Officer shall rule on all petitions submitted based on the regulations set forth governing the practice and procedures of the Administrative Appeal Process.
- C. Any taxpayer who is aggrieved by an assessment or determination of delinquency of any of the eligible taxes has 90 days from the date of the assessment or determination notice to file a petition for reassessment or re-determination with the Hearing Officer.
- D. The petition shall be typed or legibly handwritten on plain paper. The petition should contain a brief summary of the action and the "legal basis" that precipitated the filing for reassessment or re-determination, along with any pertinent information (copies of tax returns, supporting information, tax schedules, expense records, etc.).
- E. The petition shall be mailed via First Class Mail, or delivered in person to the Tax Office. Hand delivered petitions will be received by the Tax Office and will be considered filed as of the date received. Petitions received by mail will be considered filed as of the date of the US Postal Service postmark stamped on the envelope.

Section 517. Judicial Appeal.

Any person aggrieved by a decision of the Hearing Officer, who has a direct interest in the decision shall have the right to appeal to the court vested with the jurisdiction of local tax appeals by or pursuant to 42 Pa.C.S. § 5571(b).

Section 518. Confidentiality.

Any information gained by the Tax Collector or any other official, agent, or employee of the Municipality, as a result of any declarations returns, investigations, hearings, or verifications required or authorized by this article, shall be confidential, except in accordance with proper judicial order or as otherwise provided by law.

Section 519. Legal Proceedings Authorized.

The Tax Collector or the duly appointed staff of the Municipality shall have the power in the name of the Municipality to institute proceedings against any and all persons who violate the provisions of this article or to take any other action provided by law.

Section 520. Savings and Severability Clauses.

- A. Nothing contained in this article shall be construed to empower the Municipality to levy and collect the taxes hereby imposed on any person, or any business, or any portion of any business not within the taxing power of the Municipality under the Constitution of the United States and the laws of the Constitution of the Commonwealth of Pennsylvania.
- B. If the tax, or any portion thereof, imposed upon any person under the provisions of this article is held by any court of competent power or jurisdiction to be in violation of the Constitution of the United States or of the Constitution of the Commonwealth of Pennsylvania or any other provision of the law, the decisions of the court shall not affect or impair the right to impose the taxes, or the validity of the taxes so imposed upon other persons as herein provided.
- C. The provisions of this article are severable, and if any of its provisions shall be held illegal, invalid or unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this article. It is hereby declared to be the intention of the Council that this article would have been adopted if such illegal, invalid or unconstitutional provisions had not been included herein.

Section 521. Enforcement.

It shall be the duty of the Tax Collector any duly appointed designee to ensure the proper enforcement of the provisions of this article, and any such officer shall have the power, in the name of the Municipality, to institute proceedings against any or all persons for the collection of any taxes or license fees for violation of any of the provisions of this article. If such suits are by process

of summary conviction, in addition to the requirements for normal service and notice and in accordance with the police powers authorized by Rule 51 of the Pennsylvania Rules of Criminal Procedure, the Tax Collector or duly appointed designee acting within the scope of his employment may issue an immediate citation for violation of those sections for which summary criminal proceedings are authorized.

Section 522. Authority.

This article was enacted under the authority of the Local Tax Enabling Act of December 31, 1965, P.L. 1257 (53 P.S. 6901 et seq.), as subsequently amended and reenacted.

Section 523. Penalty.

Whoever conducts, transacts, or engages in any of the businesses subject to the tax imposed by this article, without having first secured a Business License, or any person who fails to file a declaration of estimated tax or a tax return as required by the provisions of this article, or any person who willfully files a false declaration of estimated tax or a false return, shall upon summary conviction before any Magisterial District Justice be fined not more than six hundred dollars (\$600.00) for any one offense, recoverable with costs, or imprisoned not more than ninety days, or both.

Section 524. 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. These regulations would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

END.

ADDENDUM "A"

Municipality of Monroeville Disclosure Statement and Taxpayer's Rights and Responsibilities

Addendum "A"
MUNICIPALITY OF MONROEVILLE

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**MUNICIPALITY OF MONROEVILLE POLICY REGARDING
LOCAL TAXPAYERS BILL OF RIGHTS**

Local Taxpayers Bill of Rights provides for and sets forth: (1) taxpayer rights and the obligation of the Municipality of Monroeville during an audit or an administrative review of the records of the taxpayer; (2) the administrative and judicial procedures by which a taxpayer may appeal or seek review of an adverse decision of the Municipality of Monroeville; (3) the procedure for filing and processing refund claims and complaints; (4) the enforcement procedures.

Municipality of Monroeville requests requirements:

- (1) Taxpayers have thirty (30) days from the mailing date to respond to requests for information. Additional extension time must be granted upon application for good cause.
- (2) The Tax Collector must inform the taxpayer how to obtain an extension in its initial requests.
- (3) The Tax Collector shall take no lawful action against a taxpayer for the tax year in question until the expiration of the applicable response period and extensions.

Tax Collector requests for prior year tax returns:

- (1) Initial inquiries by the Tax Collector regarding a taxpayer's compliance are limited to no more than three (3) years prior to the notice mailing date.
- (2) Subsequent requests are permitted if after the initial request it is determined that the taxpayer failed to file a tax return or underreported income or failed to pay a tax for one or more of the tax periods covered by the initial request.

(3) If the Tax Collector has sufficient information which indicated a taxpayer failed to file a return or pay an eligible tax which was due more than 3 years prior to the date of the notice, the requirements in (1) and (2) above do not apply.

(4) The Tax Collector may require a taxpayer to provide copies of the taxpayer's federal tax returns if the Municipality can demonstrate that the federal tax information is reasonably necessary and the information is not available elsewhere, or from the Pa. Dept. of Revenue.

Refunds:

(1) If a taxpayer determines that they have paid a tax to the Municipality to which the taxpayer is not subject, a request for refund of overpaid tax must be filed in writing.

(2) Requests for refunds of tax paid must be filed in writing within three (3) years of the due date or one (1) year after actual payment of the eligible local tax, whichever is later. If no tax was due the request must be made within 3 years after the due date for payment of the eligible tax or within 1 year after actual payment of the tax, whichever is later.

(3) A local tax return filed, and showing an overpayment, shall be deemed to be a written request for a cash refund unless otherwise indicated on the tax return.

(4) A refund request shall not be considered as an administrative appeal and shall not preclude a taxpayer from submitting a petition with the local tax officer.

(5) For amounts paid as a result of a notice asserting or informing a taxpayer of an underpayment, a written refund request must be filed within one (1) year with the Municipality.

Interest on overpayment:

(1) 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 Fiscal Code (P.L. 343, Act 176) 1929; 72P.S. 806.1.

(2) All tax overpayments due on behalf of a local taxing authority, including tax on real property, shall bear simple interest from the date of overpayment until the date of resolution.

Interest on overpayments - exceptions:

(1) No interest is allowed if an overpayment is refunded or applied against any other tax, interest, or penalty due the Municipality on behalf of a local taxing authority within 75 days after the last date for filing a return or within seventy-five (75) days after the report of liability due is filed.

(2) Interest and penalty overpayments shall not bear any interest.

- (3) A taxpayer's acceptance of a refund check shall not prejudice the taxpayer's right to claim any additional overpayment, plus interest. Tender of a refund check by the Municipality shall be deemed to be acceptance of the check by the taxpayer.
- (4) Tax actually deducted and withheld at the source shall be deemed to have been overpaid on the last day for filing the report for the tax period, without regard to any extension of time for filing.
- (5) Estimated tax overpaid, shall be deemed to have been paid on the last day for filing for the tax period without regard for an extension.
- (6) Overpayment made before the prescribed due date shall be deemed to have been paid on the due date.
- (7) Any amount claimed to be overpaid with respect to an administrative review or appellate procedure being initiated, shall be deemed to have been overpaid sixty (60) days following the date of initiation of the review or procedure.
- (8) Any amount shown not to be due on an amended earned income/net profits tax return shall be deemed to have been overpaid sixty (60) days after filing the amended return.
- (9) The date of resolution for overpayment refunds or credits is as follows:
 - (a) For a cash refund, a date preceding the date of the Municipality's refund check by not more than 30 days.
 - (b) For a credit of an overpayment, (i) the date of the Municipality notice to the taxpayer of the credit determination, or; (ii) the due date for payment of the tax against which the credit is applied, whichever first occurs.
 - (c) For a cash refund of a previously determined credit, interest shall be paid on the credit amount from a date 90 days after filing the request to convert the credit to a cash refund, to a date preceding the date of the refund check by not more than 30 days whether or not the refund check is accepted by the taxpayer after tender.

Municipality of Monroeville notice of basis of underpayment:

When the Tax Collector notifies a taxpayer in writing of the basis for an underpayment, the notice must contain:

- (1) Applicable tax periods.
- (2) Tax underpayment amount detailed by tax period.

- (3) The legal basis upon which the Tax Collector has relied to determine that an underpayment exists.
- (4) An itemization of revisions made to a return by the Tax Collector.

Abatement of interest and penalty:

In the case of any underpayment, the local taxing authority may abate all or part of interest for the following:

- (1) Any underpayment or tax due attributed to error or delay by the Municipality, but only if no significant aspect of the error or delay can be attributed to the taxpayer, after notification to the taxpayer in writing.
- (2) Any payment of a tax due to error or delay attributed to a ministerial act of an officer, employee, or agent of the local taxing authority, which shall determine what constitutes timely performance.
- (3) Abatement due to erroneous written advice by municipal personnel.

The Municipality shall abate any portion of any penalty or excess interest attributed to erroneous advice to the taxpayer in writing by an officer, employee or agent of the Municipality acting in any official capacity of the Municipality:

- (a) If the written advice was reasonably relied upon by the taxpayer, and
- (b) If any portion of interest, tax or penalty did not result from failure by taxpayer to provide adequate or accurate information.

The local taxing authority is not required to provide written advice to taxpayers.

Voluntary payment application priority required as follows:

- (1) Tax
- (2) Interest
- (3) Penalty
- (4) Any other fees or charges

Installment Agreements:

- (1) Are authorized, if the agreement will facilitate collection.

- (2) Agreements remain in effect for the full term.
- (3) Of course, the prepayment of tax is also permitted when an agreement has been made.
- (4) The Municipality can terminate the agreement, if:
 - (a) Taxpayer provided inaccurate or incomplete data.
 - (b) The Municipality believes collection of tax is in jeopardy.
 - (c) If taxpayer's financial condition significantly changes, the agreement may be modified, altered, or terminated if the notice of the Tax Collector's finding is provided at least thirty (30) days prior to the date of action and notice contains the reasons.
 - (d) If taxpayer fails to pay any installment when due, or fails to pay any other tax when due, or provide a financial condition update as requested by the Tax Collector.

Administrative appeals:

The Tax Collector has established and provides for an administrative process to receive and produce a determination on petitions from taxpayers pertaining to the assessment, determination, or refund of an eligible tax. The administrative process consists of the provision for a hearing and decision by a hearing officer who shall be the Tax Collector, or his authorized representative who is appointed by the Tax Collector, who shall determine the qualifications and compensation of the hearing officer.

In the case of "an assessment and collection of underpayment of the Tax," the Tax Collector's provisions within Section 516 of the Rules and Regulations, shall be the applicable process to be utilized to resolve the appeal.

Petitions:

Timely petition filing is determined by the postmark by the United States postal service on or before the deadline for filing a petition. Deadlines are as follows:

- (1) Refund petitions within 3 years after due date for filing the report as extended or 1 year after actual payment of tax, whichever is later.
- (2) Petitions for reassessment of an eligible tax shall be filed within 90 days of the assessment notice date, and the Tax Collector shall adopt regulations specifying the form and content of petitions, including the process and deadlines. These regulations shall not be governed

by 2 PA.C.S. Chapter 5 sub.ch. B (relating to judicial review of local agencies) as the Municipality has adopted regulations governing practice and procedure under Act 50 of 1998.

Decisions:

Decisions on petitions submitted under Act 50 of 1998 shall be issued within sixty (60) days of the date a complete petition is received. Failure to act within 60 days shall result in the petition being deemed approved.

Appeals:

Appeals of decisions by any person who has a direct interest in the decision may be filed with the court vested with jurisdiction of local tax appeals pursuant to 42 PA. C.S. (relating to judiciary and judicial procedure).

Taxpayer rights if you are audited:

Upon examining a taxpayer's records at the Municipality, the applicable employee will:

- (1) Provide the taxpayer with a written explanation of the audit process as it relates to that taxpayer, and his or her rights during the audit process.
- (2) Prepare a written explanation of the assessment of any tax liability determined during the audit.
- (3) Explain the taxpayer's right to appeal the assessment of any tax liability determined during the audit.
- (4) Conduct a post audit conference at which an employee or representative will explain the audit findings and make recommendations on how to correct areas of noncompliance.
- (5) Process the audit timely upon receipt of all the applicable information.

The Tax Collector may require a taxpayer to provide exact copies or certified copies of the person's federal tax returns if the Tax Collector can demonstrate that the federal tax information is reasonably necessary and the information is not available elsewhere, or from the Pennsylvania Department of Revenue.

The taxpayer is solely responsible for obtaining the information and for any costs associated with obtaining the records or information.

What may the Tax Collector do to enforce collection of taxes:

If a taxpayer or business entity or employer has not filed a timely and properly completed tax return form and/or paid a tax liability determined to be due and the taxpayer has not filed a timely appeal of the liability, the Tax Collector may take the following actions:

- (1) The Tax Collector may contact a taxpayer or delinquent taxpayer and attempt to resolve the liability through payment in full, payment plan, or compromises. The Tax Collector may utilize outside legal counsel to assist in collecting taxes deemed to be delinquent.
- (2) If a taxpayer owes delinquent taxes or has not filed a properly completed tax return form, the Tax Collector may deny the issuance of any applicable license for any tax collected on behalf of a taxing authority.
- (3) The Tax Collector may file a civil law suit against the person responsible for filing the tax return form and/or for payment of the tax or delinquent tax, employer withholding, etc., and obtain a judgment which would be the basis of a levy to seize the property of the taxpayer.
- (4) The Tax Collector may file a criminal complaint or action against a taxpayer, or employer, business owner, etc., when a properly prepared tax return form has not been received by the Municipality.
- (5) The Tax Collector may also investigate and assess and advance through the Courts of Common Pleas actions against delinquent taxpayers violating criminal statutes and governing legislation.
- (6) The Tax Collector may also prepare and issue a wage attachment to employers of a taxpayer when a taxpayer does not remit to the Tax Collector timely payment of tax due on behalf of a member taxing authority.