ARTICLE V
Mercantile Tax
[Adopted 12-19-1985 by Ord. No. 779; amended in its entirety 12-21-1991 by Ord. No. 832]

§ 267-39. Title.

This article shall be known as the "Media Mercantile Tax Ordinance."

§ 267-40. Definitions.

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

BOROUGH — The Borough of Media.

GROSS VOLUME OF BUSINESS — Includes both cash and credit transactions and trade-in transactions as provided by law.

PERSON — Any individual, partnership, limited partnership, association, corporation, trust or other legally recognizable entity, except such as are wholly exempt from taxation under the Act of December 31, 1965, P.L. 1257, as amended.[1] Persons exempted from taxation under this article shall include agencies of the government of the United States or of the Commonwealth of Pennsylvania or political subdivisions thereof and nonprofit corporations or associations organized solely and exclusively for religious, educational or charitable purposes and not conducting any regular or established business competing commercially with any person subject to the tax imposed by this article.

RETAIL DEALER or RETAIL VENDOR — Any person who is a dealer in or vendor of goods, wares or merchandise who is not a wholesale dealer or vendor or a wholesale and retail dealer or vendor as hereinafter defined.

TAX ADMINISTRATOR — The person or firm contracted with to collect said tax.

TAX YEAR — The twelve-month period beginning the 31st day of January of 1986 and on January 1 of all succeeding years.

TEMPORARY, SEASONAL OR ITINERANT BUSINESS — Any business that is conducted at one location for less than 60 consecutive calendar days.

WHOLESALE AND RETAIL DEALER or WHOLESALE AND RETAIL VENDOR — Any person who sells to dealers in or vendors of goods, wares and merchandise and to other persons.

WHOLESALE DEALER or WHOLESALE VENDOR — Any person who sells to dealers in or vendors of goods, wares and merchandise and to no other persons.

§ 267-41. Registration required; application; fee.

For the tax year beginning January 31, 1986, and for each tax year thereafter, every person desiring to continue to engage in or hereafter to begin to engage in the business of being a wholesale dealer or vendor or retail dealer or vendor or wholesale and retail dealer or vendor at

1. **Editor's Note: See 53 P.S. § 6901 et seq.**

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an actual place of business in the borough shall, on or before the 31st day of January 1986 and by January 15 of each year thereafter or prior to commencing business in such tax year, make application for registration in each place of business in the borough, and if such person has no actual place of business within the borough, then by registration with the Tax Administrator. Such registration shall be made by the completion of an application furnished by the Tax Administrator and the payment of $50 for each person conducting a service. Each application for registration shall be signed by the applicant, if a natural person, and, in the case of an association or partnership, by a member or partner thereof and, in the case of a corporation, by an officer thereof or by the authorized person of any other legal entity. Each applicant shall receive a certificate of registration from the Tax Administrator which shall not be assignable. In the case of loss, defacement or destruction of any certificate, the person to whom the certificate was issued shall apply to the Tax Administrator for a new certificate, for which a fee of $10 shall be charged. Such certificate shall be conspicuously posted at each place of business within the borough at all times.

§ 267-42. Tax imposed; exemptions. [Amended 12-16-1999 by Ord. No. 939; 12-21-2000 by Ord. No. 949][2]

A. A tax to provide revenue for borough purposes is hereby levied, assessed and imposed upon every person engaging in any of the following occupations or businesses in the borough at the rate hereinafter set forth, and such person shall pay a mercantile tax for the year beginning in January 1, 1986, at such rate, subject to the exemptions hereinafter set forth.

(1) Wholesale vendors or dealers of goods, wares and merchandise of every kind; at the rate of three-fourths of one mill on each dollar of the gross volume of business transacted by him during the license year.

(2) Retail vendors or dealers of goods, wares and merchandise of every kind and all persons engaged in conducting restaurants or other places where food, drink or refreshments are sold: at the rate of three-fourths of one mill on each dollar of the gross volume transacted by him during the license year.

(3) Wholesale and retail vendors or dealers of goods, wares and merchandise of every kind: at the rate of three-fourths of one mill on each dollar of the gross volume of wholesale business transacted by him and three-fourths of one mill on each dollar of the gross volume of retail business transacted by him during the license year.

B. The registration fee of § 267-41 shall be credited against the tax due.

§ 267-43. Computation of volume of business; payment under protest.

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2. Editor's Note: Sections 3 and 4 of this ordinance stated as follows:Section 3. Savings and severability.a. Nothing contained in the ordinance shall be construed to empower the borough 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 borough under the Constitution of the Commonwealth of Pennsylvania.b. If the tax, or any portion thereof, imposed upon any person under the provisions of this ordinance shall be held by any court of competent power or jurisdiction to be in violation of the Constitution of the Untied States or of the Commonwealth of Pennsylvania or any other provision of law, the decisions of the court shall not affect or impair the right to impose the taxes, or the validity of the taxes or the validity of the taxes so imposed upon other persons as herein provided.c. The provisions of this ordinance are severable, and if any of its provisions shall be held illegal, invalid or unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this ordinance. It is hereby declared to be the intention of the Council of the Borough of Media that this ordinance would have been adopted if such illegal, invalid or unconstitutional provisions had not been included herein.Section 4. Effective date.This Amendatory Ordinance is enacted pursuant to the authority of the Local Tax Enabling Act, 1965, December 31, Pamphlet Law 1275, as amended, and as provided by the Local Tax Reform Act, 1988, December 31, P.L. 1121, No. 145. It shall become effective on January 1, 2000, and shall continue thereafter unless amended or repealed.

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A. Every person subject to the payment of the tax hereby imposed who has commenced his business prior to the full calendar year prior to the tax year shall compute his annual estimated gross volume of business upon the actual gross amount of business transacted by him during said immediately preceding calendar year.

B. Every person subject to the payment of the tax hereby imposed who has commenced or who commences his business less than one full year prior to the beginning of the license year shall compute his annual gross volume of business for such license year upon the gross volume of business transacted by him during the first month in business multiplied by 12.

C. Every person subject to the payment of the tax hereby imposed who commences his business subsequent to the beginning of the license year shall compute his annual gross volume of business for such license year upon the gross volume of business transacted by him during the first month of his engaging in business multiplied by the number of months he engages in business in such license year.

D. Every person subject to the payment of the tax hereby imposed who engages in a business temporary, seasonal or itinerant by its nature shall compute his annual gross volume of business upon the actual gross amount of business transacted by him during the license year. The aforementioned shall be required to make a deposit in an amount determined by the Tax Administrator prior to his engaging in business.

E. The Tax Administrator is hereby authorized to accept payment under protest of the amount of mercantile tax claimed by the borough in any case where the taxpayer disputes the validity or amount of the borough's claim for tax. If it is thereafter judicially determined by a court of competent jurisdiction that the borough has been overpaid, the amount of the overpayment shall be refunded to the taxpayer. The provisions of this subsection shall be applicable to cases in which the facts are similar to those in a case litigated in a court of competent jurisdiction.

§ 267-44. Persons, businesses and receipts exempted.

A. Persons and businesses. Persons employed for a wage or salary, nonprofit corporations or associations organized for religious, charitable or educational purposes, agencies of the government of the United States or of the Commonwealth of Pennsylvania and the business of any political subdivision or of any authority created or organized under and pursuant to any act of Assembly are exempt from the provisions of this article.

B. No such tax shall be assessed and collected on a privilege, transaction, subject or occupation which is subject to a state tax or license fee and which tax or license fee has been held by the courts of Pennsylvania to be the basis for exemption from the imposition of a mercantile tax by a municipality.

C. Utilities. No such tax shall be assessed and collected on the gross receipts from utility service of any person or company whose rates of service are fixed and regulated by the Pennsylvania Public Utility Commission or on any public utility service rendered by any such person or company or on any privilege or transaction involving the rendering of any such public utility service.

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D. State tax on tangible property. No such tax shall be assessed and collected on the privilege of employing such tangible property as is subject to a state tax, except on sales of admission to places of amusement or on sales or other transfers of title or possession of property.

E. No such tax shall be assessed and collected from any other person exempt by law from the imposition of this tax.

§ 267-45. Determination of gross or whole volume of business.

Gross or whole volume of business upon which the tax hereunder is computed shall include the gross consideration credited or received for or on account of sales made.

§ 267-46. Partial exemptions.

Where gross or whole volume of business in its entirety cannot be subjected to the tax imposed by this article by reason of the provisions of the Constitution of the United States or any other provision of law, the Tax Administrator, with the approval of the borough, shall establish rules and regulations and methods of allocation and evaluation so that only that part of the gross or whole volume of business which is properly attributable and allowable to doing business in the borough shall be taxed hereunder.

§ 267-47. Taxes imposed by multiple 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, and its amendments[3] to the borough and one or more political subdivisions of the state, then and in that event the tax shall be apportioned by such political subdivisions, but in no event shall the combined taxes of both subdivisions exceed a maximum rate of tax as fixed by said Enabling Act permitting the imposition of such taxes.

§ 267-48. Records to be kept by taxpayer.

The taxpayer, to obtain the foregoing enumerated exclusions and deductions, shall keep books and records of his business so as to show clearly, accurately and separately the amount of such sales and services as are excluded from the tax and the amounts of such sales and services which he is entitled to deduct from the gross volume of business as hereinbefore provided.

§ 267-49. Returns.

A. Every return shall be made upon a form furnished by the Tax Administrator. Every person making a return shall certify the correctness thereof by affidavit. Each return shall be documented by an appropriate schedule to verify its accuracy.

B. Every person subject to the tax imposed by this article who commenced his business at least one full year prior to the beginning of any license year shall, on or before the 15th day of April of each year, file with the Tax Administrator a return setting forth his name, his business and business address and such other information as may be necessary in arriving at the actual gross amount of business transacted by him during the preceding calendar year and

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3. **Editor's Note: See 53 P.S. § 6901 et seq.**

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the amount of the tax due.

C. Every person subject to the tax imposed by this article who has commenced his business less than one full year prior to the beginning of any license year shall, on or before the 15th day of April of each year, file with the Tax Administrator a return setting forth his name, his business, business address and such information as may be necessary in arriving at the actual gross amount of business transacted by him during the first month of business and the amount of the tax due.

D. Every person subject to the tax imposed by this article who commences business subsequent to the beginning of any license year shall, within 60 days from date of commencing such business, file a return with the Tax Administrator setting forth his name, his business and business address and such information as may be necessary in arriving at the actual gross amount of business transacted by him during his first month of business and the amount of the tax due.

E. Every person subject to the payment of the tax imposed by this article who engages in a business temporary, seasonal or itinerant by its nature shall, within seven days from the day he completed such business, file a return with the Tax Administrator setting forth his name, his business address and such information as may be necessary in arriving at the actual gross amount of business transacted by him during such period and the amount of tax due.

F. Any person going out of or ceasing to do business shall, within 14 days from the date of ceasing to do business, file a return showing the actual gross volume of business conducted and done by such person during that tax year in which said person ceased doing business and pay the tax due as computed thereon at the rate herein provided for at the time of filing said return. If such tax has been previously paid based upon estimated gross receipts, the taxpayer shall be entitled to a refund, without interest, of any excess tax paid for the tax year in which business was terminated.

§ 267-50. Issuance of receipt.

The Tax Administrator shall, upon payment to him of the mercantile tax, give the person paying the same a receipt therefor or the Tax Administrator, as the case may be.

§ 267-51. Payment of tax; penalty for late payment. [Amended 2-16-1995 by Ord. No. 885]

A. The mercantile tax levied pursuant to this article shall be computed on the date on which the taxpayer is required to file a return as set forth above. The tax so computed shall be paid in quarterly installments on or before April 30, July 31, October 31 and January 31. If the tax is not paid by the dates set forth, a penalty of 10% of the tax due shall be added thereto, plus interest of 11/4% of the tax due for each month or fractional part thereof from the day it is due and payable until paid. Where suit is brought for the recovery of tax, penalty or interest, the taxpayer shall be liable for an additional amount equal to the costs of collection.

B. The Tax Administrator, or his authorized agent, shall be authorized to waive interest, or penalty, or both, in whole or in part, under the following circumstances only:

(1) Where litigation of the amount of taxes due is pending or threatened and waiver of

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interest, or penalty, or both, on past amounts owed is proposed as part of an overall settlement of the litigation.

(2) Where the waiver of interest, or penalty, or both, is part of an agreement under which the entire principal amount of the taxes due shall be paid to the borough whether litigation is pending or threatened or not.

§ 267-52. Final returns.

On or before April 15 of each year, beginning in 1987, every person subject to the tax hereby imposed shall make a final return to the Collector showing the actual volume of business transacted by the taxpayer during the preceding license year. Such final return shall state the amount of gross volume of business as set forth in the first tax return, § 267-49, Returns, the amount of tax paid since the filing of the first tax return and the amount of tax due upon the final computation. Each final return shall be documented by an appropriate schedule to verify the accuracy thereof.

§ 267-53. Violations and penalties. [Amended 11-19-1992 by Ord. No. 846; 8-15-1996 by Ord. No. 907]

A. Any person who shall conduct, transact or engage in any of the businesses subject to the tax imposed by this article without having first secured a mercantile tax license for the year or any person who shall fail to file a tax return as required by the provisions of this article or any person who shall willfully file a false return, shall pay a civil penalty of not more than $600 for each offense plus costs of collection, including attorney's fees.

B. Each day on which such person violated this article will be considered as a separate offense and subject to penalty as aforeprovided.

§ 267-54. Tax Administrator.

A. The Tax Administrator is charged with the duties of receiving the taxes, fines and penalties imposed by this article. It shall be his duty to keep a record showing the amount received by him from each person paying the tax and the date of such receipt.

B. The Tax Administrator and his duly appointed Deputies shall recommend to the Councilmen of the Borough of Media rules and regulations relating to any matter pertaining to the collection, administration and enforcement of this article, including provisions for the examination and correction of returns and payments alleged or found to be incorrect or as to which an overpayment is claimed or found to have occurred, and be charged with enforcing the provisions of this article and any rules and/or regulations promulgated pursuant hereto.

C. In the event that the person to be assessed neglects or refuses to make a return, then in such case the Tax Administrator or his duly appointed Deputies shall assess said person or persons on such an amount of whole or gross volume of business as said Tax Administrator or his Deputies deem reasonable and appropriate. In all cases of assessment the Tax Administrator or his duly appointed Deputies shall give the parties assessed a notice in which shall be stated the trade, business, occupation or class and the amount of the mercantile tax imposed or levied.

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

E. Any person aggrieved by any decision of the Tax Administrator shall have the right to appeal to the Court of Common Pleas, as in other cases.

§ 267-55. Confidential nature of returns.

Any information gained by the Tax Administrator or any other official, agent or employee of the borough as a result of any 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 and not for any other purpose.

§ 267-56. Recovery of unpaid taxes.

A. The Tax Administrator or his duly appointed Deputies shall have the power, in the name of the borough, to institute proceedings against any and all persons who violate the provisions of this article.

B. If for any reason the tax is not paid when due and suit is brought for the recovery of any such tax, the person liable therefor shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

§ 267-57. Construal of provisions; severability of tax.

A. Nothing contained in this article shall be construed to empower the borough 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 borough under 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 shall be held by any court of competent power or jurisdiction to be in violation of the Constitution of the United States or of the Commonwealth of Pennsylvania or any other provision of law, the decision of the court shall not affect or impair the right to impose the taxes or the validity of the taxes or the validity of the taxes so imposed upon other persons as herein provided.

§ 267-58. Effective date.

This article is enacted pursuant to the authority of the Local Tax Enabling Act, 1965, December 31, P.L. 1257, as amended, and as provided by the Local Tax Reform Act, 1988, December 13, P.L. 1121, No. 145.[4] It shall become effective on the earliest date permitted by the Acts and shall continue thereafter unless amended or repealed. In the alternative, Ordinance No. 779 is

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reenacted pursuant to the authority of the Local Tax Enabling Act, 1965, December 31, P.L. 1257, as amended and as provided by the Local Tax Reform Act, 1988, December 13, P.L. 1121, No. 145, effective on the earliest date permitted by the Acts, and shall continue thereafter unless amended or repealed.

4. **Editor's Note: See 53 P.S. § 6901 et seq.**

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