

**BOROUGH OF CONSHOHOCKEN
BUSINESS PRIVILEGE TAX
AND
MERCANTILE TAX REGULATIONS**

INTRODUCTION

The Borough of Conshohocken Business Privilege Tax and Mercantile License Tax ("Mercantile Tax") are levied on the privilege of having a business in the Borough.

These Regulations have been adopted to assist Taxpayers in compliance with the Borough's Mercantile Tax and Business Privilege Tax Ordinances. Both Ordinances are forms of privilege taxes: the Mercantile Tax is a gross receipts tax on the privilege of engaging in a sales business in the Borough and the Business Privilege Tax is a gross receipts tax on the privilege of engaging in other businesses (primarily, but not exclusively, service businesses) in the Borough. Businesses that provide both services and sales are subject to both Ordinances; however, under the Business Privilege Tax Ordinance, an exclusion is permitted for receipts already taxed under the Mercantile Tax Ordinance.

These Regulations provide a formal interpretation of the Borough's Business Privilege Tax and Mercantile Tax. These Regulations are to be interpreted, whenever possible, to be consistent with the Tax Ordinances. In the event that a provision of these Regulations is inconsistent with the Tax Ordinances, the provisions of the Tax Ordinances shall prevail. These Regulations are not intended in any way to amend or modify the Tax Ordinances.

These Regulations are effective as of January 1, 2009. All previous versions of Business Privilege Tax and/or Mercantile Tax Regulations are void.

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ARTICLE 1 BUSINESS LICENSE

Section 100. License Required.

Persons desiring to do business in The Borough of Conshohocken are required to obtain a business license and pay tax on gross receipts. Such persons shall obtain a license prior to commencing business in the Borough and, thereafter, on or before April 15th of each license year. No license will be issued to persons in default of payment of any tax that is due to the Borough. Licenses obtained through payment of check shall be void and ineffective unless the amount due is actually received by the Borough.

The license fee is \$10.00 for each calendar year. The fee is not reduced pro rata by the portion of the license year elapsed in the year procured.

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.

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

Others. Licensees engaged in business but not operating from a fixed place of business or from a vehicle shall keep the license upon their person when practicable.

In the event that a licensee conducts business at more than one location in the Borough, 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 100 of these Regulations. The fee for each additional license is \$10.00.

Business Licenses may not be assigned or transferred. Any purported assignment or transfer shall be void and ineffective. 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 \$5.00. Licensee's change of address must be reported in writing to the Collector within 10 days after such change becomes effective.

Persons who engage in a business, profession, or other commercial activity without a valid license are subject to penalty and fine.

ARTICLE II BUSINESS PRIVILEGE TAX AND MERCANTILE TAX

Section 200. Authority.

The Tax Ordinances were enacted under authority of the Local Tax Enabling Act (Act 511 of 1965), as amended, 53 P.S. 6901 et seq., and appear in the Codified Ordinances of the Borough of Conshohocken at Chapter 100.

Section 201. Definitions.

"Assessment" means the determination by the Borough of the amount of underpayment by a taxpayer.

"Business" means the carrying on or exercising of any trade, profession, or other commercial activity in which there is offered any service or services either to the general public, or to a limited number of persons other than the business entity itself, whether or not such other persons have any affiliation with the business entity in question. Employment for a wage or salary is not "business."

"Collector" means the person appointed to said position in accordance with the Code of the Borough of Conshohocken, or his/her designee.

"Gross Receipts" means the value of all cash, credits or property of any kind received by a person, which is attributable to a business in the Borough, undiminished by any costs of doing business. A receipt generally will be considered attributable to business in the Borough if any part of the transaction or service giving rise to the receipt takes place within the Borough. In general, a business whose only location or only headquarters is in the Borough, will have all of its receipts attributable to its place of business in the Borough, regardless of whether services may be rendered outside of the Borough. The broad reach of this general rule is limited in certain situations by the ordinance and by state and federal law as more fully explained hereinafter.

"Gross Volume of Business" Both cash and credit transactions and trade-in transactions as provided by law.

"Lease" means a transfer of the right to possession and/or use of real or personal property (including tangible 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" or property shall be treated as a lease of property.

"License Year" means the twelve-month period beginning the first day in January of each year.

"Merchandise" means 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.

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

"Retail Dealer or Retail Vendor" means any person who is a dealer in or a vendor of goods, wares, and merchandise who is not a wholesale dealer or vendor, or a wholesale and retail dealer or vendor. In general, a retail vendor is one who sells to the end-user of the product sold. **"Retail Sales"** means 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 consumption or use and not for resale.

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

"Services" means any activity (other than retail or wholesale vending of merchandise) done for the benefit of another, or others, for consideration including, but not limited in any way to, consulting, maintenance and repairs, building, engineering, planning, designing, installation, commission sales, training, investing, the lease or use of real personal property (tangible or Intangible), and the providing of legal or accounting expertise.

"Tax" or "the tax" means the Business Privilege Tax and/or Mercantile Tax levied by the Borough of Conshohocken.

"Temporary, Seasonal or Itinerant Business" means any business that is conducted at one (1) location for less than sixty (60) consecutive calendar days.

"Taxpayer" means a person subject to the tax.

"Borough" means the Borough of Conshohocken, a Borough located in Montgomery County, a political subdivision of the Commonwealth of Pennsylvania.

"Wholesale Sales" means 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.

Section 202. Who Must File a Return?

A. **General.** Every person who carries on a business in The Borough of Conshohocken must file a Mercantile License Tax Return and/or a Business Privilege Tax Return, depending on the nature of business transacted. Tax returns are filed at the business

entity level. In the case of a partnership, for example, the partnership entity, rather than the individual partners, will file the tax return and pay the tax.

B. **Mercantile Tax Return.** Wholesale and retail vendors or dealers in goods, wares, and merchandise and operators of restaurants and any other places where food or beverages are sold, are subject to the Mercantile License Tax and must file a Mercantile License Tax Return.

C. **Business Privilege Tax Return.** All other persons doing business within the Borough (primarily, but not in any way limited to, service providers) must file a Business Privilege Tax Return. A tax return must be filed whether or not tax is due.

Section 203. Base and Rate of Tax.

A. **Tax Base.** The tax is based on gross receipts or gross volume of business attributable to doing business in the Borough. To determine whether receipts are attributable to doing business in the Borough, see Attribution of Gross Receipts, (Section 204 below). Receipts from certain activities are excluded from taxation. See Exclusions from Gross Receipts (Section 205, below), and Interstate Commerce (Section 206, below)

B. **Tax Rate.**

1. Mercantile Tax is assessed and imposed on the following occupations or businesses as follows

- (a) Wholesale vendors, or dealers in goods, wares and merchandise of every kind will be at the rate of 1 mill on each dollar of the gross volume of wholesale business.
- (b) Retail vendors, or dealers in goods, wares and merchandise of every kind will be at the rate of 1.5 mills on each dollar of the gross volume of retail business.
- (c) All persons engaged in operating a restaurant or anyplace where food, drink or refreshments are sold at the rate of 1.5 mills on each dollar of gross volume of business.

2. Business Privilege Tax rate is 2 mills for every person engaging in a business, trade, occupation or profession in the Borough.

C. **Receipts from the lease, use or rental of personal or real property** are subject to the Business Privilege Tax. However, receipts from a "finance lease", as such term is defined under the Pennsylvania Commercial Code, shall be deemed to be a retail sale of merchandise and subject to the Mercantile License Tax.

D. **"Unearned" business receipts.** Receipts derived from dividends, interest, gain on the sale of capital assets and real estate and receipts from 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 Borough are subject to the Business Privilege Tax. Capital assets do not include inventory, stock-in-trade or other assets held for sale in the ordinary course of business, for purposes of calculating gain on the sale of capital assets, return of capital may be deducted.

Section 204. Attribution of Gross Receipts.

General. In general, the gross receipts upon which the tax is imposed is the value of all cash, credits or property received by a person which is attributable to the carrying on of business in the Borough, undiminished by any costs of doing business including both services, labor and materials entered into or becoming component parts of the services performed within the Borough. A receipt generally will be considered attributable to the Borough if any part of the transaction or service giving rise to the receipt takes place within the Borough. The broad reach of this general rule is limited in certain situations by the ordinance and by state and federal law as more fully explained hereinafter,

A. Attribution of Gross Receipts from Sales of Merchandise (Mercantile Tax).

1. **Receipts from The Borough of Conshohocken sales transactions.** All receipts from wholesale or retail sales made or effected within the territorial limits of the Borough, or by an office located in the Borough, are attributed to the Borough.

2. **Delivery outside of The Borough of Conshohocken.** Receipts from sales made or affected in the Borough are attributed to the Borough whether delivery after sale is made within or outside of the Borough.

Example. Taxpayer is a distributor of musical instruments whose headquarters and only sales office is located in the Borough. Receipts from sales made to customers on-site are attributed to the Borough even though delivery may be made to locations outside the Borough (unless excludable under Section 206, "Interstate Commerce.")

Example. Taxpayer, a dealer in scrap copper, enters into an agreement in the Borough to sell three tons of metal located in Pittsburgh. The agreement consummated in the Borough conveys immediate ownership and possession of the metal to taxpayer's customer. The sales proceeds are properly attributed to the Borough.

3. **Doing business through a local representative or sales office.** Receipts from sales made or affected in the Borough through a local representative or sales force are attributed to the Borough.

Example. Taxpayer, a distributor of aerospace fasteners whose home office is in Seattle, sells to The Borough of Conshohocken customers through the efforts of a sales representative working from his home within the Borough. Orders are accepted in the

Borough and routinely confirmed in Seattle. Shipments are made from Washington for delivery both within and outside of the Borough. The gross receipts from sales made or affected in the Borough by the representative are attributable to the Borough.

B. Attribution of Gross Receipts from Sale of Services (Business Privilege Tax).

1. **Services performed within The Borough of Conshohocken.** All receipts from performance of services within the territorial limits of The Borough of Conshohocken are attributable to the place of business in the Borough notwithstanding that the contract for such services may have been concluded outside of the Borough, or that services are performed for customers who reside outside the Borough, or that services are performed upon tangible items retrieved from and delivered to locations outside the Borough.

2. **Receipts from services directed from The Borough of Conshohocken.** Receipts from services performed outside of the Borough but managed, directed or controlled from within the Borough are attributed to the Borough. Receipts from services performed outside the Borough, earned by persons whose sole business office is within the Borough, are presumed to be managed, directed, or controlled from within the Borough.

3. **Branch Offices located outside of The Borough of Conshohocken.** Receipts from services managed, directed or controlled from a bona fide branch office located outside the Borough are not attributed to the Borough. The following criteria will be considered (as relevant but not conclusive) by the Collector in determining the existence of a bona fide branch office:

- (a) The appearance of the taxpayer's name in telephone and/or building directories.
- (b) Stationery and calling cards showing 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 location.
- (f) The existence of a business license to operate as a bona fide branch office.

C. **Unfair Attribution.** If, in the discretion of the Collector of the Borough, the application provisions of this section result in an unfair or inequitable attribution (or apportionment) of receipts, then the Collector may permit or require the use of other methods of attribution to produce a fair and equitable attribution of gross receipts.

Section 205. Exclusions from Gross Receipts

Exclusions from taxable gross receipts shall be allowed as follows:

A. **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 to the extent required by the Local Tax Enabling Act, 53 Pa.C.S. §6901, et seq., as amended. Receipts from ancillary activities not governed by rate regulation are subject to tax. Where an entity whose rates of service are not fixed and regulated by the PUC charges and has receipts for utility services, the receipts are taxable.

Example: Owner of leased apartment house receives and pays utility bill for entire building and then charges tenants for reimbursement of utility expenses. Owner is not a regulated utility whose receipts are excluded from tax.

B. **Nonprofit Organizations.** Gross receipts generated by nonprofit entities organized for religious, charitable or educational purposes which meet the criteria for "institutions of purely public charity" as set for 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 nonprofit organizations from unrelated trade or business regularly conducted, 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.

C. **Governmental Entities.** Agencies of the Government of the United States, the various states, the Commonwealth, or any political subdivision thereof are not subject to the tax.

D. **Manufacturers, producers and processors of by-products of manufacture.** Receipts generated by engaging in the following activities are not subject to the tax: (i) manufacturing, (ii) producing, and (iii) processing of by-products of manufacturing.

1. **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; dyeing 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.

The fact that an entity might qualify as a manufacturer for purposes of Commonwealth taxes, does not necessarily mean that it qualifies for purposes of local taxes. Any taxpayer who believes it might qualify as a manufacturer for purposes of the Mercantile or Business Privilege Tax, is encouraged to seek an official tax determination from the Borough.

2. **Producing.** 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.

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

Example. Taxpayer takes molten slag, a waste product discarded by a steel manufacturer, and subjects it to a process which enables the iron component to be separated and sold back to the steel manufacturer. Taxpayer's activity of processing by-products of manufacturing is not subject to the tax.

Example. 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 byproduct of manufacturing" because rolls of steel are not secondary or additional products, but are themselves the principal product of the original manufacturer.

E. **Receipts from services performed from a place of business regularly maintained outside the Borough.** Receipts from services performed from a place of business regularly maintained outside the Borough by the taxpayer to a place of business regularly maintained outside the Borough by the customer, may be excluded provided that such performance is not made for the purpose of evading the tax.

F. **Reserved.**

G. **Miscellaneous excluded receipts.** To the extent required by the Local Tax Enabling Act, the following receipts are excluded from the tax:

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 an agent for the United States of America, the Commonwealth of Pennsylvania, or the Borough of Conshohocken.
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 branch or division of the same entity and recorded as interdepartmental transfers.
9. In the case of a financial business, the costs of securities and other property sold, exchanged, paid at maturity or redeemed and moneys or credits received in repayment of advances, credits and loans (not to exceed the principal amount of such advances, credits and loans) and deposits.

Section 206. Interstate Commerce

Where a taxpayer has receipts from interstate commerce, taxable receipts will be calculated as follows:

$(\text{Receipts within Pennsylvania} \times 100\%) + (\text{Receipts outside Pennsylvania} \times \text{Apportionment Factor}) = \text{Gross receipts to which Tax is applied}$

The "Apportionment Factor" is calculated by averaging the following percentages:

- (i) wages, salaries, commissions and other compensation attributable to the Borough office, as a percentage of total wages, salaries, commissions and other compensation
- (ii) Pennsylvania receipts attributable to the Borough office as a percentage of total receipts
- (iii) Value of tangible personal and real property owned and located in the Borough, plus property leased and located in the Borough, and all other property attributable to taxpayer's location in the Borough, as a percentage of total tangible personal and real property owned or leased.

Section 207. Inclusion in Gross Receipts.

A. **Affiliated Companies.** Receipts from sales made to affiliated business entities are included in taxable gross receipts.

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

profit is generated by taxpayer. ABC purports to "reimburse" taxpayer all of its expenses. So long as taxpayer and ABC Company are separate legal entities, the intercompany management fee paid by ABC to taxpayer are taxable gross receipts.

B. Conditional and Installment Sales.

1. A taxpayer making an installment sale of property is required to report the total selling price of such sale as gross receipts for the tax year in which the contract of sale is 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 the 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 repossession.

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

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 the 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), shall include in their gross receipts all sums paid to them under such contract, without deduction for sums paid to suppliers and/or subcontractors.

F. General Agencies, Brokers and Agents.

1. **General Agencies, Brokers, Agents and Sub-Agents** 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.

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 its registered representatives. Similarly, business brokers, real estate brokers, and insurance general agencies may not deduct commissions paid to selling agents.

For the purpose of excluding insurance commissions or fees paid by a broker to another broker, these guidelines will be followed:

- a. Both the payer and the payee must have been licensed as an insurance agent, broker, or producer in Pennsylvania or another state at the time the insurance contract was completed.
 - (i) a person who held a license prior to the contract date does not qualify.
- b. The licensee must be acting as a broker by representing more than one insurer.
 - (i) a licensee representing a single insurer is not acting as a broker.
 - (ii) a licensee must have appointments with insurers to establish that he/she is acting as a broker.

The broker claiming the exclusion has the burden of proof to document the licensing and appointment qualifications set forth above in order to obtain the exclusion.

2. Agents 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 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 an agent's commission by her broker equal to \$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.

Example. Taxpayer is an insurance agent. Gross commission receipts received by taxpayer are taxable.

3. Agent as employee. Income earned as an employee is not subject to the tax. Any agent asserting status as an employee must provide a copy of federal form W2 and/or such other documentation as the Collector may reasonably require to show employment. Receipts earned by independent agents are subject to the tax even though such persons qualify as "statutory employees" for purposes of federal income taxation.

4. Reimbursement of expenses incurred as agent. Dollar-for-dollar reimbursement of out-of-pocket expenses incurred by an agent for the benefit of its principal are

exempt from taxable receipts provided that the agent/principal relationship and the reimbursement arrangement are evidenced in writing.

G. **Buildings, Hotels, Apartment Houses, Boarding Houses, Nursing Homes, etc.** Persons operating hotels, apartment houses, boarding houses, nursing homes, rooming houses and all other such establishments are taxable on receipts from renting of rooms, furnishing of meals and any other services rendered. Any person carrying on the business of renting buildings, offices, space, stores, dwelling houses, etc., shall include gross rentals received in the tax base. No deductions may be made for depreciation, cost of maintenance, repairs, taxes, utilities, reimbursements by tenants, deductions from security deposits, etc.

1. Businesses which hold rental property as a source of income in addition to their regular business, which may or may not be real estate, are subject to the tax whether or not services are rendered.

2. Persons, corporations or partnerships holding rental property in the Borough, who employ rental agents or other such assistance in administering such property are doing business within the meaning of this ordinance and are subject to the tax whether or not they provide services.

3. Agencies or entities which manage and/or operate cooperatives and/or condominiums must pay the tax based on all receipts received for maintenance, cleaning, and other service provided, including insurance.

H. **Undertakers Morticians, and Funeral Directors.** Persons engaged in business as undertakers, morticians or funeral directors are required to report as gross receipts the total charges made to clients, without deducting therefrom any costs or expenses whatsoever.

I. **Persons Engaged In Professions or Vocations or in Rendering Personal Services.**

1. **General.** A person who is engaged in a profession or vocation or in rendering personal services from a base of operations in the Borough, in any capacity, except as an employee of another, is subject to tax under this ordinance. All compensation, however characterized, received in such capacity must be included in the tax base.

2. **Physicians and Surgeons.** A physician with offices in the Borough must include in his gross receipts all revenues derived from such offices, i.e., place of business.

(a) **Hospital affiliations within the Borough.** A physician with hospital affiliations within the Borough must include in his gross receipts all revenue derived or generated by his connection with such hospitals.

(b) **Hospital affiliations outside the Borough.** A physician with hospital affiliations outside the Borough may deduct from gross

receipts all revenues derived or generated by his connection with such hospitals.

J. **Social and Recreational Clubs**. Under state law the Borough may not tax "membership in or membership dues, fees, or assessments of charitable, religious, beneficial, or nonprofit organizations including but not limited to sportsmen's, recreational, golf and tennis clubs, girl and boy scout troops and councils." Accordingly, receipts from such sources are not subject to the Business Privilege Tax.

Many such organizations, however, perform non-charitable services (such as catering services) for members as a regular part of their activities. Although such items may be exempt from federal income tax, they are not exempt from the Borough taxes. Accordingly, any such organization which does offer its member such services must register under the ordinance and pay the tax as appropriate. (This rule does not apply to "religious, charitable or educational" organizations which are entirely exempt from tax.)

ARTICLE III DECLARATION AND PAYMENT OF TAX

Section 300. Tax Returns.

A. **Mercantile Tax Return** is due annually on or before April 15th.

B. **Business Privilege Tax Return** is due annually on or before April 15th,

C. **General.** Returns require payment of tax based on estimated gross receipts for the current tax year, as adjusted for actual gross receipts earned and payment made in the preceding tax year. Tax returns must be filed whether or not tax is due. The failure to receive a tax return from the Borough does not relieve the taxpayer of the responsibility to timely file.

Section 301. Other Due Dates.

A. **Mercantile Tax**

1. **Persons in business for more than one full year.** Persons who have been in business at least one full year prior to January 1 of the license year shall file a Mercantile Tax Return on or before April 15th of the following year, as stated above.

2. **Persons in business for less than one full year.** Persons who have been in business less than one full year prior to January 1 shall file on or before the following April 15th their first return. The estimated gross volume of business for the tax year shall be computed by multiplying by 12 the monthly average of actual gross earned during the months preceding January 1.

3. **Persons commencing business after January 1 of the tax year.** Persons who commence business subsequent to January 1 shall file within 40 days from the date of commencing such business and shall compute gross volume of business by multiplying the actual gross volume of business for the first month of business by the number of months remaining in the tax year.

4. **Temporary, seasonal, or itinerant business.** Persons who engage in temporary, seasonal or itinerant business shall file within 7 days from the date of completion of such business. Gross volume of business shall be based on actual, not estimated, receipts.

5. **Final Returns.** On or before April 15th, every person subject to the tax, shall make a final return of the gross volume of business earned during the preceding year.

B. Business Privilege Tax

1. **Persons in business for more than one full year.** Persons who have been in business at least one full year prior to January 1 of the license year shall file a Business Privilege Tax Return on or before April 15th of the following year, as stated above.

2. **Persons in business for less than one full year.** Persons who have been in business less than one full year prior to January 1 shall file on or before the following April 15th their first return. The estimated gross receipts for the tax year shall be computed by multiplying by 12 the monthly average of actual gross receipts earned during the months preceding January 1.

3. **Persons commencing business after January 1 of the tax year.** Persons who commence business subsequent to January 1 shall file within 60 days from the date of commencing such business and shall compute gross receipts by multiplying the actual gross receipts for the first month of business by the number of months remaining in the tax year.

4. **Temporary, seasonal, or itinerant business.** Persons who engage in temporary, seasonal or itinerant business shall file within 7 days from the date of completion of such business. Gross receipts shall be based on actual, not estimated, receipts.

5. **Final Returns.** On or before April 15th, every person subject to the tax shall make a final return of the gross receipts earned during the preceding year.

Section 302. Extension of Time for Filing Returns.

A. **Extension of time to file.** The Collector, upon good cause shown, may grant an extension of not more than 60 days for the filing of any tax return. Applications for such extensions shall be made on or before the last day for the payment of the tax, in such form as the Collector prescribes. Regardless of extension, payment of tax must be made on or before the original due date of the return. An extension of time to file does not extend the time to pay tax.

B. **Additional extension of time to file.** If the Internal Revenue Service grants to any taxpayer an extension for the filing of Federal income tax returns for a period in excess of 60 days, the Collector may grant an additional extension of time for the filing of any tax returns affected thereby, not to exceed the date of expiration of the federal extension period.

C. **Extension Request Form Required.** Before an extension may be granted, the taxpayer must file an Extension Request Form and pay 100% of the tax estimated to be due on or before the due date. The extension will not relieve the taxpayer from the obligation to pay interest and penalty upon the amount of tax due which exceeds the estimated tax paid.

Section 303. Filing to be Complete.

Returns shall be completed in full and certified as true and correct by the taxpayer, supported by all additional forms or schedules required to be attached (including Federal Income Tax Schedule "C" if taxpayer is a sole proprietor; Form 1065 if taxpayer is a partnership; and Form 1120 if taxpayer is a corporation), accompanied by payment of tax and delivered to the Collector.

Section 304. Business Termination.

Any taxpayer going out of business or ceasing to do business shall, within 7 days from the date of ceasing to do business, file a return showing the actual gross volume of business or gross receipts generated during the tax year in which said taxpayer ceased doing business and pay the tax due at the time of filing said return. In the event that any tax has been previously paid based 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.

1. **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.

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 Collector to verify the accuracy of the declarations or returns filed. Accounts and records are to be preserved for a period of not less than 6 years.

ARTICLE V ADMINISTRATION AND ENFORCEMENT

Section 500. Collection and Receipt of Tax.

The Collector or other designated representative is authorized to examine the books, papers and records of any taxpayer or supposed taxpayer in order to verify the accuracy of any return made, or if no return was made, to ascertain whether a tax should be imposed and, if so, the amount of such tax. He is further authorized to examine any person connected with any business concerning any gross receipts of the business which were or should have been returned for taxation, and for this purpose, may compel the production of books, papers, records and the attendance of all persons before him, whether as parties or witnesses, whom he believes to have knowledge of such business or gross receipts.

Section 501. Records of Receipts.

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

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

Every taxpayer is entitled to receive a written explanation of rights with regard to the audit, appeal, enforcement, refund and collection of taxes by The Borough of Conshohocken and may obtain said written explanation by calling the Collector at 610-993-8609, weekdays during the hours of 9:00 a.m. to 4:00 p.m. Monday through Friday.

The Disclosure Statement shall be made available to taxpayers upon request at no charge. A copy of the Borough's current Disclosure Statement is attached hereto as Addendum "A" and the provisions of the Disclosure Statement are incorporated herein by reference.

Section 503. Payment Under Protest.

The Collector is authorized to accept "payment under protest" of the amount of tax in order for the taxpayer to avoid liability for additional interest, penalties and fines.

Section 504. Violations, Interest on Underpayment and Penalties.

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

A. **Revocation of License.** The business license of any person who fails to file a declaration of estimated tax or any tax return required under the Tax Ordinance of these Regulations, or who files a false declaration of estimated tax or a false return, may, after notice and hearing, be revoked.

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

C. **Penalty.** All taxes due under this Article shall bear interest at the rate of one percent (1%) per month or fractional part of a month, from the date they are due and payable until paid. If any taxpayer shall neglect or refuse to make any return or payment as and when required herein, an additional ten percent (10%) of the amount of the tax shall be added by the Collector and shall be collected where such taxes remain delinquent for four (4) months after the date of the tax notice.

D. **Fines and Imprisonment.** Any taxpayer (including any officer, agent, or employee thereof) who knowingly fails to obtain a license, fails to remit any tax due, fails to file complete and correct reports or returns when due, makes a false or fraudulent return, or fails to comply in any way with the Borough's Tax Ordinance may be subjected to a fine of not more than \$600.00 plus costs of prosecution for each offense, and in default of payment of such fine and costs, to imprisonment for a term not exceeding thirty days.

Section 505. Confidential Nature of Tax Information.

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

Section 506. Dishonored Checks.

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

Section 507. Taxpayer's Administrative Appeals.

A. **General.** To appeal any assessment, determination or denial of refund of the tax, the taxpayer must file a Petition for Administrative Appeal with the Collector. All petitions should be mailed or delivered to: Borough of Conshohocken, One West First Avenue, Suite 200, Conshohocken, PA 19428.

B.. **Petitions for Administrative Appeal.** Petitions shall be in writing on a form substantially similar to that attached hereto as Addendum "B." A petition is timely filed if the letter transmitting the petition is postmarked by the United States Postal Service on or before the final day on which the petition is required to be filed. If hand delivered, a Petition will be deemed to be filed on the date it is received in the Office of Manager at the address shown above.

C. **Deadlines for Filing Petition for Administrative Appeal.**

1. **Refund Petitions** shall be filed within 3 years after the due date for filing the report as extended, or one year after actual payment of an eligible tax, whichever is later.

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

D. **Administrative Appeals Process and Procedure.** See Disclosure Statement.

Section 508. Construction.

If any sentence, clause, 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.

EXHIBIT "A"

BOROUGH OF CONSHOHOCKEN
LOCAL TAXPAYER BILL OF RIGHTS

This Local Taxpayer Bill of Rights applies with respect to all taxes imposed by the Borough pursuant to the Local Tax Enabling Act, local services taxes, income taxes; gross receipts taxes; privilege taxes, amusement taxes and earned income and net profits taxes.

I. Rights of the Taxpayer and Obligations of the Borough During an Audit or Administrative Review of the Taxpayer's Books and Records.

A. Borough Requests for Information.

1. The Borough, its Auditor, its Solicitor, or other designated representative, is authorized to examine the books and records of any taxpayer in order to verify the accuracy of any return made, or if no return was made, to ascertain whether the tax should be imposed and, if so, the amount of the tax due.
2. The Borough may request information from a taxpayer concerning the taxpayer's compliance with Borough tax ordinances. Books, journals, invoices, documents and other accounting records utilized by the taxpayer in the ordinary course of business must be kept in a manner which will reflect actual business operations. 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. A taxpayer claiming an exemption or exclusion for any portion of gross receipts or other taxes, must maintain complete records which will support the validity of such claims. Such claims will be disallowed if not sufficiently proven by the taxpayer.
3. Except as otherwise provided herein, an initial inquiry by the Borough for information regarding the taxpayer's compliance with Borough tax ordinances may include taxes required to be paid or tax returns required to be filed no more than three years prior to the mailing date of the inquiry notice.
4. However, the Borough may make a subsequent request for tax returns or supporting information if, after the initial request, the Borough determines that the taxpayer has failed to file a tax return, has underreported income or receipts, or has failed to pay a tax for one or more of the tax periods covered by the initial request.
5. In the event the Borough has sufficient information to indicate that the taxpayer has failed to file a required return or to pay a tax which was due more than three years prior to the date of the notice, the three year

limitation shall not apply and the Borough may request information for any such tax years.

6. The Borough may require any taxpayer to provide copies of the taxpayer's federal and state income tax return(s), and all other documents necessary for verification of the taxpayer's compliance status. The Borough shall require individuals to provide federal tax returns only where the federal tax information is reasonably necessary for the enforcement or collection of an eligible tax and the information is not available from other sources or the Department of Revenue.
7. Any information obtained by the Borough as a result of any audit return, report, investigation, hearing or verification shall be confidential tax information, except as provided by law. However, the information concerning any license application shall be a public record.

B. Taxpayer Response.

1. *Thirty days to respond:* When the Borough makes an initial request for information from the taxpayer, the taxpayer shall have at least 30 calendar days from the mailing date of the request, to respond.
2. *Extensions.* Upon written application by the taxpayer submitted to the Borough (or its Auditor, if the request for information is from the Auditor) within the initial 30 day period, and where good cause for an extension exists, the Borough shall grant an extension of time to respond for a reasonable amount of time.
3. *No action by the Borough within the response period.* The Borough shall take no lawful action against a taxpayer for the tax year(s) in question, until the expiration of the response period.
4. The books, journals, invoices, and other accounting records of the taxpayer as used in its ordinary course of business must be kept in a manner which will reflect actual business operations of the taxpayer. The books and records of the taxpayer must contain objective criteria to support the returns filed by the taxpayer. A taxpayer claiming an exemption or exclusion for any portion of gross receipts or other taxes, must maintain complete records which will support the validity of such claims. Such claims will be disallowed if not sufficiently proven by the taxpayer.
5. The taxpayer is required, at its cost, to make all records available to the Borough to support the returns which were filed, or should have been filed, by the taxpayer. If the taxpayer does not have records for the entire period requested for review, the Borough may utilize whatever

information or records are available to reconstruct, as accurately as possible, the figures that reflect the business activity of the taxpayer for the period involved.

- C. **Audit.** The Borough has the right to have a designated representative audit or examine any tax return and any taxpayer's books and records, to verify accuracy and to assess or reassess the amount of tax due. In the event a taxpayer has failed to file a required return, the Borough has the right to have its auditor examine the books and records of the taxpayer, or such other information as is available, to determine and assess the amount of tax due.
- D. **Notice of Basis of Underpayment.**
1. The Borough will notify the taxpayer in writing of the basis for any underpayment that the Borough has determined to exist, including: (a) the tax period(s) for which the underpayment is asserted; (b) the amount of the underpayment detailed by tax period; (c) the legal basis upon which the Borough has relied to determine that an underpayment exists; and (d) an itemization of the revisions made by the Borough to a return or report filed by the taxpayer that results in the determination that an underpayment exists.
 2. Unless otherwise specified by the taxpayer, the Borough shall apply all voluntary payments of taxes first to taxes owed, then to interest, then to penalty; and then to any other fees and charges.
- E. **Abatement of Certain Interest and Penalties.**
1. Errors and delays. In the case of an underpayment, where the Borough has contacted the taxpayer in writing with respect to the underpayment of tax finally determined to be due or payable, the Borough may abate all or any part of interest for any period, if the underpayment is attributable in whole or in part to any error or delay by the Borough in the performance of a ministerial act; provided, that no significant aspect of the error or delay is attributable to the taxpayer. The Borough shall determine what constitutes timely performance of ministerial acts.
 2. Erroneous written advice by the Borough. The Borough is not required by law to provide written advice to taxpayers. However, the Borough shall abate any portion of penalty or interest which is attributable to erroneous advice furnished to the taxpayer in writing by an officer, employee or agent of the Borough acting in his or her official capacity, in the following circumstances:
 - a. the written advice was in response to a specific written request of the taxpayer; and

- b. the taxpayer reasonably relied upon the written advice; and
- c. the portion of the penalty or addition to tax or excess interest did not result from a failure by the taxpayer to provide adequate or accurate information.

Taxpayer should not rely on advice given which is not in writing and in response to a specific written request.

F. Installment Agreements.

In order to facilitate collection, the Borough, at its discretion, may enter into written agreements with any taxpayer under which the taxpayer is allowed to satisfy a tax liability in installment payments. The Borough, at its election, may modify or terminate any installment agreement where:

- 1. the taxpayer has provided inaccurate or incomplete information;
- 2. the Borough believes that collection of the tax under the agreement is in jeopardy;
- 3. the Borough finds that the financial condition of the taxpayer has significantly changed and has given 30 days notice of the finding and reasons for the finding to the taxpayer;
- 4. the taxpayer fails to pay any installment at the time due under the agreement;
- 5. the taxpayer fails to pay any other tax liability at the time the liability is due; or
- 6. the taxpayer fails to provide a financial condition update as requested by the Borough.

II. Procedure for Filing and Processing Refund Claims and Taxpayer Complaints.

A. Requests for Refunds. A taxpayer who has paid a tax to the Borough may file a written request with the Borough for refund or credit of the tax.

- 1. Except as otherwise provided herein, all refund requests must be made within three years of the due date for filing the return or report, as extended, or one year after actual payment of the tax, whichever is later.
- 2. For amounts paid as a result of a notice asserting or informing a taxpayer of an underpayment, a written request for refund must be filed with the Borough within one year of the date of payment.

3. If no report or return is required, the refund request must be made within three years after the due date for payment of the tax, or within one year after actual payment of the tax, whichever is later.
4. For purposes of this section, a tax return filed by the taxpayer with the Borough which shows an overpayment of tax shall be deemed to be a written request for a cash refund if the taxpayer provides all necessary documentation to support taxpayer's right to refund. If the taxpayer indicates on the return that taxpayer desires the overpayment to be applied as a credit toward other taxes, the return showing the overpayment shall not be deemed a written request for cash refund.
5. A request for refund under this section is not considered a petition for administrative appeal, as described in section III hereof, and shall not preclude a taxpayer from submitting a petition under section III hereof.

<p>B. Interest on overpayment. All overpayments of a tax due to the Borough shall bear simple interest from the date of overpayment until the date of resolution.</p>

1. **Interest rate.** Interest on overpayments shall be allowed and paid at the same rate as the Commonwealth is required to pay pursuant to Section 806.1 of the Act known as the Fiscal Code.
2. **Exceptions.** No interest shall be allowed if an overpayment is refunded or applied against any other tax, interest or penalty due to the Borough within 75 days after the last date prescribed for filing the report of the tax liability, or within 75 days after the date the return or report of the liability due is filed, whichever is later.
3. **Overpayments of interest or penalty.** Overpayments of interest or penalty shall not bear any interest.
4. **Acceptance of Refund Check.** Tender of a refund check by the Borough shall be deemed to be acceptance of the check by the taxpayer for purposes of this section. The taxpayer's acceptance of the Borough's check shall not prejudice any right of the taxpayer to claim any additional overpayment and interest thereon. "Date of overpayment" and "date of resolution" shall be defined in accordance with Pennsylvania Act 50-1998.

C. *Taxpayer Complaints.* All taxpayer complaints shall be directed to the Borough Manager at the Borough Manager's Office.

III. Administrative and Judicial Procedures by Which a Taxpayer May Appeal or Seek Review of Any Adverse Decision of the Borough.

- A. Petitions. A taxpayer may file a petition for review of assessment determination, or refund, with the Borough Council.
1. A petition is timely filed if the letter transmitting the petition is postmarked by the United States Postal Service on or before the final day on which the petition is required to be filed.
 2. A petition for refund must be filed within three years after the due date for filing the report or return, as extended, or within one year after actual payment of the tax, whichever is later. If no report or return is required, the petition shall be filed within three years after the due date for payment of the tax or within one year after actual payment, whichever is later.
 3. A petition for reassessment of a tax shall be filed within 90 days of the date of the assessment notice or notice of underpayment.
 4. The Borough Council shall deny all petitions not timely filed.
 5. All petitions must be submitted on the Petition Form provided by the Borough.
 6. Requests for review of assessment determination, or refund, which are not submitted on the designated form are null and void, and the Borough is not required to respond to them.
 7. The Borough Council will consider the Petition in an executive session. The Council shall render its decision in writing to the taxpayer within 60 days of the date of actual receipt of the complete and accurate petition by the Borough. Failure of the Borough to render a decision within 60 days shall result in the petition being deemed approved. In its discretion, the Council may require testimony, which shall be under oath, but is not required to be recorded.
 8. The Council shall determine the petition according to the Conshohocken Borough tax ordinances, rules, regulations, and principles of Pennsylvania law and equity. The decision of the Borough Council shall be timely made if notice of the decision is mailed to the taxpayer, postmarked no later than 60 days after the date of actual receipt of the complete and accurate petition by the Borough.

9. Any person aggrieved by a decision of the Borough Council, who has a direct interest in the decision, shall have the right to appeal to the Court of Common Pleas, and there shall receive a hearing de novo.

IV. Enforcement Procedures.

- A. The Borough, its designee, or the Borough Solicitor has the power to collect unpaid taxes, interest and penalties in the name of the Borough from the persons owing such amounts, by institution of a civil action, by imposition of a municipal lien, or by any other appropriate remedy.
- B. The Borough, its designee, or the Borough Solicitor, has the power to file a criminal summary offense citation in the District Court having jurisdiction, for violation of any Borough tax ordinance. The tax ordinances provide for fines in the amount of \$1,000 per day, per violation.
- C. In all legal actions, the Borough has the power to demand costs and attorneys fees from the taxpayer.

BOROUGH OF CONSHOHOCKEN
MONTGOMERY COUNTY, PENNSYLVANIA

RESOLUTION NO. 26 of 2008

A RESOLUTION OF THE BOROUGH OF CONSHOHOCKEN, MONTGOMERY COUNTY, COMMONWEALTH OF PENNSYLVANIA, ADOPTING BUSINESS PRIVILEGE TAX AND MERCANTILE LICENSE TAX REGULATIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on February 10, 1971, the Borough Council of Conshohocken Borough enacted Ordinance No. 2 of 1971 which levied a Mercantile License Tax on qualified persons, said Ordinance having been amended from time to time by the Borough Council of Conshohocken Borough; and

WHEREAS, on December 30, 1985, the Borough Council of Conshohocken Borough enacted Ordinance No. 6 of 1985 which levied a Business Privilege Tax on qualified persons, said Ordinance having been amended from time to time by the Borough Council of Conshohocken Borough; and

WHEREAS, the Borough Council finds it to be in the best interests and general welfare of the residents of the Borough and those persons to whom the Mercantile License Tax and Business Privilege Tax apply, to promulgate regulations regarding the Mercantile License Tax and Business Privilege Tax levied by the above-referenced Ordinances of the Borough of Conshohocken;

NOW THEREFORE, be it, and it is hereby **RESOLVED** by the Council of the Borough of Conshohocken as follows:

**SECTION I. ADOPTION OF BUSINESS PRIVILEGE TAX AND
 MERCANTILE LICENSE TAX REGULATIONS**

1. The Business Privilege Tax and Mercantile License Tax Regulations, attached hereto as Exhibit "A" and incorporated herein by reference, are hereby adopted as the regulations governing the Business Privilege Tax and the Mercantile License Tax in Conshohocken Borough.
2. The Business Privilege Tax and Mercantile License Tax Regulations shall include all the terms, conditions and provisions of the attached Exhibit "A."

SECTION II. REPEALER

Any and all other prior resolutions or parts of resolutions inconsistent with the terms, conditions and provisions of this resolution are hereby repealed to the extent of such inconsistency.

SECTION III. EFFECTIVE DATE

This Resolution shall take effect on January 1, 2009.

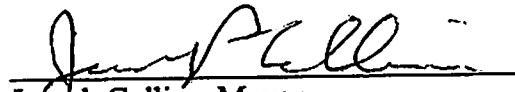
RESOLVED in Council chambers this 19th day of November, 2008.

ATTEST:


Pearl Duckett, Assistant Secretary

BOROUGH OF CONSHOHOCKEN


Sandra Caterbone, Council President


Joseph Collins, Mayor