

Chapter A170

BUSINESS PRIVILEGE TAX REGULATIONS

GENERAL REFERENCES

Uniform construction codes — See Ch. 67.

Real estate registry — See Ch. 130.

Contractor licensing — See Ch. 70.

Taxation — See Ch. 149, Art. IV.

ARTICLE I
Introduction

§ A170-1. Explanation of meaning and scope; intent.

These regulations are issued as an aid to the taxpayer to explain the meaning and scope of certain parts of Ordinance No. 81-419, as amended under Ordinance No. 93-608., and as hereafter amended (Business Privilege Tax Ordinance).¹ These regulations are not intended to encompass every provision of the ordinances or to be construed to take the place of the ordinances. In the event of any conflict between these regulations and any provision of any ordinance, the provisions of the ordinance govern.

§ A170-2. Administration and enforcement.

The business tax receiver is charged with the administration and enforcement of the Ordinance. All questions about the ordinance should be directed to the business tax receiver.

1. Editor's Note: See Ch. 149, Art. IV, Business Privilege Tax.

ARTICLE II
Applicability

§ A170-3. Taxable activities.

- A. Whether or not a person carries on a taxable activity within the meaning of the Business Privilege Tax Ordinance is essentially a question of fact. In general, taxable activity includes any trade, business, profession, occupation, vocation or commercial activity that is carried on or exercised for gain or profit within Upper Merion Township or from or attributable to a bona fide office or place of business within Upper Merion Township. The tax is imposed on any person who exercises the privilege of carrying on the aforementioned activities in Upper Merion Township and it is measured by the gross receipts received in or allocable to the Township.
- (1) Intra- and interstate business. Doing business includes any trade, business, profession, vocation or commercial activity of an intrastate or interstate character, except as specifically exempted or excluded by the Business Privilege Tax Ordinance or these regulations.
 - (2) Residence or domicile. A person who engages in taxable activity in Upper Merion Township is subject to the tax, whether or not such person is a resident and whether or not such person has a permanent place of business in the Township.
 - (3) Foreign corporation. A foreign corporation is subject to the tax if it carries on taxable activity in Upper Merion Township, whether or not it is licensed to do business in Pennsylvania.
- B. See Article V for further explanation of exemptions, exclusions and limitations.

§ A170-4. Tax year applicability.

The Business Privilege Tax Ordinance applies not only to businesses in existence at the beginning of the tax year, but also to businesses begun during the tax year or carried on in the Township for any part of the tax year.

ARTICLE III
Business Privilege License and Registration Fees

§ A170-5. Period covered.

The license is issued for a tax year from January 1 to December 31 of each year. A license obtained at any time during the year is valid only from the date of issue until the end of the year with respect to which it is issued.

§ A170-6. Registration fees.

The registration fee must be paid to the business tax receiver before a license will be issued. The registration fee shall not be prorated for new businesses established during the tax year.

§ A170-7. Multiple places of business.

If a person does all or a portion of his business at more than one location in the Township, each location may constitute a separate place of business for which a separate license is required. However, locations which are contiguous to each other will be considered a single place of business. In addition, a location which is a mere adjunct of and in close proximity to the principal place of business of the taxpayer will not be considered a separate place of business if the same service is performed, goods are sold or business carried out at each location and representatives of the business are not regularly or periodically based at the separate location for the purpose of carrying out the business of the taxpayer. The following examples illustrate the preceding sentence:

- A. A taxpayer with a sales office at one location and a leasing or service office at another location not contiguous to the sales office would be considered to have two places of business.
- B. A taxpayer has two offices which are not contiguous and at which the same business is carried out. Each office is staffed by regular full-time employees. Each office is a separate place of business.
- C. A taxpayer has a sales office and in close proximity to it has a lot on which goods or equipment are stored. There are no employees separately based at the lot, although sales personnel may take a customer to the lot to demonstrate the goods or attend to the equipment. The lot does not constitute a separate place of business.

ARTICLE IV
Gross Receipts

§ A170-8. Gross receipts upon which tax is imposed.

In general, the gross receipts upon which the tax is imposed includes all cash, credits or property received by a person which is attributable to the carrying on of business in the Township, undiminished by any costs of doing business except for the limited deductions and exemptions referenced hereinafter.

§ A170-9. Deductions.

- A. Deductions allowed. Trade discounts allowed to customers may be deducted from the gross amount charged in determining the amount to be reported as receipts from sales. Trade discounts include:
- (1) Discounts deducted from the face amount of the bill as a method of adjusting the list price; and
 - (2) Discounts unconditionally deducted by customers at settlement of their bills and allowed as a matter of establishing custom of the trade without regard to the due date of such bills or the form or terms in which such discounts are described or stated on bills.
- B. Other discounts. Discounts allowed to customers as cash discounts for prompt payment of their bills may be deducted from gross receipts.
- C. Freight, delivery or other transportation charges. Generally, freight, delivery or other transportation charges paid by the buyer to the seller may not be deducted from gross receipts. If the seller contracts to deliver the property sold to some designated point, or is obligated under the terms of the contract to pay transportation charges to some designated point, and the transportation services are rendered to the seller, the freight, delivery or other transportation charges so incurred by the seller may not be deducted from gross receipts. Similarly, if property is sold on terms requiring the seller to deliver such property to a designated point but the purchaser pays the amount of freight, delivery or other transportation charges in the first instance, and deducts such charges from the invoice price in making remittance to the seller, no deduction from gross receipts may be taken therefor by the seller. Where, however, the seller advances the freight, delivery or other transportation charges for the account of the purchaser in accordance with the terms of the contract of sale, such charges may be excluded from gross receipts of the seller, provided:
- (1) That such charges are the actual charges incurred and are billed as such to the purchaser, and
 - (2) That the books and records of the taxpayer clearly indicate such facts.

§ A170-10. Cash or accrual basis.

A 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. A person who keeps books on the cash basis will report gross receipts on the basis of amounts actually received during the period used as the measure of the tax. A taxpayer who keeps books on the accrual basis will report the receipts from all sales made or services rendered during the period used as the measure of the tax, irrespective of the date when such moneys are collected from the customer. In either case, the taxpayer must file on a calendar-year basis beginning January 1 and ending December 31, regardless of the taxpayer's fiscal year.

§ A170-10.1. Form of tax return.

A tax return filed in accordance with § 149-39 of the ordinance shall include only amounts rounded to the nearest dollar, as required by the tax return form approved by the Township from time to time.

ARTICLE V
Exemptions, Exclusions and Limitations

§ A170-11. Scope of taxing powers limited.

The broad scope of the Township's taxing powers is limited by certain provisions in the ordinance and by federal and state law. The principal exemptions, exclusions and limitations are described in this Article.

§ A170-12. Goods, wares or merchandise outside Township.

The ordinance does not include within the definition of gross receipts from sales of goods, wares, or merchandise attributable to a place of business regularly maintained by the taxpayer outside the Township.

§ A170-13. Service within Township.

The ordinance generally does not include within the definition of gross receipts from the performance or rendering of any service no part of which was performed or rendered within the Township, except gross receipts otherwise includable under § A170-18B.

§ A170-14. Goods taken as trade-in or partial payment.

The ordinance does not include within the definition of gross receipts the amount of any allowance for goods taken by a dealer as a trade-in or as part payment for other goods in the usual and ordinary course of business. However, the entire amount received upon resale of such goods is included in the gross volume of business at the time of resale.

§ A170-15. Sales by nonexempt persons to nonprofit corporations or associations.

Sales by nonexempt persons to nonprofit corporations or associations organized solely for religious, charitable, or educational purposes and not conducting any regular or established business competing commercially with any person and exempt from income tax under the Internal Revenue Code of 1986, as amended, or to federal and Pennsylvania government agencies, political subdivisions and authorities created and organized under and pursuant to any act of assembly are not exempt from this ordinance. In addition, sales of goods or food and beverages by nonprofit organizations other than religious, charitable, or educational organizations are not exempt from this ordinance.

§ A170-16. First sale of goods, wares and merchandise manufactured by taxpayer.

Receipts from the first sale of goods, wares, and merchandise manufactured by the taxpayer are exempt from the ordinance under state law.

§ A170-17. Tax applicable for businesses and commercial activities within Township.

The business privilege tax applies if the taxpayer is carrying on or engaging in business or a commercial activity within the Township. Generally, receipts from sales transactions will be considered allocable to the Township if a part of the transaction involving the receipt and/or acceptance of orders, the shipment of customer goods,

or the receipt of payment for goods takes place within the Township. The place of shipment or delivery of the goods is not determinative of the situs of the sale. Similarly, receipts attributable to provision of services are allocable to the Township if the services are performed and/or payment received within the Township. Receipts attributable to provision of services outside the Township are also allocable to the taxpayer's place of business in the Township, except to the extent such receipts are attributable to an office or place of business regularly maintained by the taxpayer outside the Township.

§ A170-18. Sales in interstate or foreign commerce.

Under certain circumstances, receipts from sales in interstate or foreign commerce may be exempt from tax in whole or in part even though allocable to a place of business in the Township under § A170-17 above. Receipts are not automatically exempt from tax merely because the sale involves interstate or foreign commerce. The controlling principles in determining whether any such receipts are subject to tax are that there be some nexus between the business activity carried on in the Township and the imposition of the tax and that there be a fair method of allocation of receipts to the business carried on in the Township which will avoid an undue burden on foreign or interstate commerce. The burden is generally on the taxpayer to establish that the receipts are exempt from tax. Bearing these principles in mind, the following methods of allocation will be followed by the Township:

- A. Receipts directly payable or paid to a place of business located within the Township shall be considered allocable to the Township and subject to tax.
- B. If the business tax receiver determines, either upon their own initiative or upon application by the taxpayer, that the receipts covered by Subsection A above do not properly reflect all receipts attributable to the activity carried on in the Township, then to the extent possible (bearing in mind the accounting system used by the taxpayer and any other information reasonably capable of being derived from the books and records of the taxpayer), a separate accounting shall be made with respect to each place of business, and all receipts attributable to each such place of business, in the Township shall be considered allocable to the Township and subject to tax.
- C. If the business tax receiver, either on his or her own initiative or upon application by the taxpayer, determines that the provisions of Subsections A and B above do not properly reflect all receipts attributable to the activity carried on in the Township, then gross receipts shall be apportioned to the Township by multiplying all gross receipts of the taxpayer for the tax period by a fraction, the numerator of which is the property factor plus the payroll factor plus the gross receipts factor (such terms being hereinafter defined), and the denominator of which is three.
 - (1) Property factor. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property, owned or rented and used in this Township during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period, but shall not include the security interest of any corporation as seller or lessor in personal property sold or leased under a conditional sales, bailment lease, chattel mortgage or other contract providing for the retention of a lien or title as security for the

sales price of the property.

- (a) Property owned by the taxpayer shall be valued at its fair market value. Solely for the purposes hereof, property rented by the taxpayer shall be valued at eight times the net annual rental rate. Net annual rental rate is the annual rental paid by the taxpayer, less any annual rental rate received by the taxpayer from subrentals.
 - (b) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the business tax receiver may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.
- (2) Payroll factor. The payroll factor is a fraction, the numerator of which is the total amount paid in this Township during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in this Township if:
- (a) The individual's service is performed entirely within the Township;
 - (b) The individual's service is performed both within and without this Township, but the service performed without the Township is incidental to the individual's service within this Township; or
 - (c) Some of the service is performed in this Township and the base of operations (or if there is no base of operations, the place from which the service is directed or controlled) is in this Township, or the base of operations or the place-from which the service is directed or controlled is not in any jurisdiction in which some part of the service is performed, but the individual's residence is in this Township.
- (3) Gross receipts factor. The gross receipts factor is a fraction, the numerator of which is the gross business revenues of the taxpayer in this Township during the tax period, and the denominator of which is the gross business revenues of the taxpayer everywhere during the tax period.
- (a) Sales of tangible personal property are in this Township if the property is delivered or shipped to a purchaser, within this Township regardless of the f.o.b. point or other conditions of the sale.
 - (b) Sales, other than sales of tangible personal property, are in this Township if:
 - [1] The income-producing activity is performed in this Township; or
 - [2] The income-producing activity is performed both in and outside this Township and a greater proportion of the income-producing activity is performed in this Township than in any other jurisdiction, based on costs of performance.
- D. If the business tax receiver, either on his or her own initiative or upon application by the taxpayer, determines that the provisions of Subsections A, B, and C above

do not properly reflect all receipts attributable to the activity carried on in the Township, a different method of allocation may be used, with due regard to the extent of the receipts, property and payroll of the taxpayer within the Township, the nature of the business concerned, the number of jurisdictions in which the receipts may be taxed, and such other factors as may be considered relevant, in order to determine a proper apportionment of revenues attributable to the Township and subject to tax hereunder:

- E. All receipts from interstate commerce, whether taxable or nontaxable under the foregoing rules, must be included on the return filed by the taxpayer, and a deduction for the nontaxable receipts shall be allowed thereon.

§ A170-19. Allocation of gross receipts of particular businesses.

- A. Persons rendering professional, commercial, industrial or personal services. If a person engaged in a profession or vocation or in rendering personal services maintains a place of business only in the Township, the entire receipts from such personal services must be included in the measure of tax, whether or not the services are performed in the Township. Receipts will be deemed attributable to the Township if they result from the efforts of employees who work in, from or are attached to the taxpayer's Township place of business.
- B. Lessors of tangible personal property. Persons doing business within the Township who own and hold title to tangible personal property which is leased to others are required to report the entire gross receipts from the rental of or license to use such property.
- C. Lessors of real property. Persons doing business within the Township who own and hold title to real property which is leased to others are required to report the gross receipts from the rental of all such property which is situated in the Township.

§ A170-20. Commonwealth tax or license; local tax or license.

- A. Nominal or registration fees. The fact that a taxpayer receives a certificate or other document which is designated a license by the Commonwealth of Pennsylvania for which the taxpayer pays a sum of money does not exempt the taxpayer from the tax. Flat annual fees, fees which are not related to gross income or amount of production, or fees that are nominal in nature are not considered true license fees and, hence, payment of such fees will not exempt the taxpayer from the tax.
- B. Local licenses or permits. Payments to the Township for licenses and permits, as required by Township ordinances, will not exempt the taxpayer from the tax.

§ A170-21. Manufacturers.

The gross receipts of any manufacturer, attributable to the business of manufacturing, shall be excluded from the tax base. The business of manufacturing consists of giving new shapes, qualities or combinations to material which has already gone through some other artificial process, creating a new and different article with a distinctive name, character and use.. Manufacturing involves the application of labor and skill which changes a material substantially into a new, different and useful item. Whether

or not an article is a manufactured product depends on whether or not it has gone through a substantial transformation in form, qualities and adaptability in use from the original material, so that a new article or creation has emerged. If there is merely a superficial change in the original materials without any substantial and well-signalized transformation in form, qualities and adaptability in use, it is not a new article or new production. Processing of material which does not result in a new and different product does not constitute manufacturing.

ARTICLE VI
Particular Businesses or Transactions

§ A170-22. Administrative or executive offices.

Receipts of a taxpayer whose only office in the Township is an administrative or executive office may or may not be taxable depending on the activity performed in the office. If the activity at such an office relates only to internal bookkeeping functions of the taxpayer, then those activities are not part of the service which is being rendered to customers. However, administrative matters which do relate to the service rendered, e.g., processing of orders, arranging shipments, making telephone calls to customers or clients, or overseeing or controlling employees engaged in performing such services, are generally part of the service for which payment is received. Accordingly, if any of these kinds of services are performed at the place of business in the Township, then the entire receipt for that service is a taxable receipt unless an allocation pursuant to §§ A170-17 and A170-18 is appropriate.

§ A170-23. Leased departments.

- A. Return by lessor. Where a person leases a department of their business to another, such person shall include in their return the gross receipts from business done and sales made by the lessee. A schedule must be attached to the return containing the name of the lessee, a description of the department operated, and a statement verifying that the lessor assumes liability for reporting the gross receipts and paying the tax accruing against the lessee of such department. The lessee, however, is not relieved from liability for the tax if the lessor fails to make a proper return or fails to pay the tax due. Should a change occur in the ownership or status of any leased department, the lessor shall notify the business tax receiver within 15 days.
- B. Return by lessee. If the lessee wishes to file returns independently, such lessee is required to include in their return the entire gross receipts of said lessee, whether collected by the lessor or the lessee, without deducting any expenses or commissions charged to him by the lessor. To expedite the examination of returns filed by such lessee, the Tax Administrator may require the lessor to furnish a statement of the entire gross receipts on behalf of the lessee.

§ A170-24. Persons engaged in professions, or vocations, or in rendering personal services.

- A. General. A person who is engaged in a profession or vocation or in rendering personal services in the Township 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.
- B. Fiduciaries. Commissions and fees received for acting in a fiduciary or other representative capacity, whether appointed by a Court or otherwise, are to be reported as taxable receipts if the person acts in that capacity in the normal course of his business.
- C. Attorneys. An attorney may exclude that portion of the receipts from legal services which are distributed directly to or on behalf of a client such as a distribution of a

sum of money recovered in a lawsuit, the sale of real estate, or a collection matter. An attorney may exclude any fee or portion of a fee paid to another attorney where a matter has been forwarded either from or to the first attorney to or by the second attorney except where either is an employee of the other. (See generally § A170-25.)

- D. Accountants. An accountant may exclude services rendered to clients outside of the Township only if all activity connected with the rendering of such services, including the audit, summary and completion of the financial statement, takes place at the client's business situs outside the Township.
- E. Physicians and surgeons.
 - (1) A physician with offices in the Township must include in gross receipts all revenues derived from such office, i.e., place of business.
 - (2) A physician with offices located outside the Township may exclude from gross receipts revenues derived from such offices, i.e., place of business.
 - (3) A physician with hospital affiliations within the Township must include in gross receipts all revenue derived or generated by his connection with such hospitals.
 - (4) A physician with hospital affiliations outside the Township may deduct from gross receipts all revenues derived or generated by his connection with such hospitals.

§ A170-25. Principal and agent.

- A. General. Receipts from sales made, or services rendered, by an agent for the account of such agent's principal are to be reported by the principal. It is immaterial in such cases whether the customer or client remits directly to the principal, or to the agent for transmittal to the principal. The agent is required to report as gross receipts only the commissions withheld as compensation for services before remitting to such agent's principal and any commission paid after remitting to the principal. No deduction from gross receipts may be taken by the principal for commission paid to, or withheld by, the agent.
- B. Manufacturer's representative. Gross commissions received by a manufacturer's representative are taxable unless the relationship to such representative's principal is that of employer and employee. This relationship of employer and employee exists if the principal pays social security and unemployment compensation taxes on behalf of the person claiming exemption and if, in the event of an accident in the course of employment, the manufacturer's representative might become entitled to workmen's compensation. (See also § A170-23.)
- C. Undisclosed principal. A person selling property, including real property, or rendering services, for an unknown or undisclosed principal, is subject to tax as a principal, unless there is disclosed in the agent's return the identity of the principal and the amount of the sale made on the principal's behalf.
- D. Conditions as to recognition of agency. A person will be regarded as acting as agent

or broker in promoting or soliciting sales or rendering services for the account of a principal when it appears:

- (1) That the contract or agreement between such persons clearly establishes the relationship of principal and agent;
 - (2) That the books and records of the agent or broker show the name of the actual owner of the property on whose behalf the sale is made; and
 - (3) That the books and records of the agent or broker show the amount of gross sales or service charges and the amount of commission due thereon.
- E. Collections by agent. Money or property received by a taxpayer as agent, for transmittal to a third party, is not to be reported by such taxpayer as gross receipts, but any commission received for services as agent must be included in gross receipts.
- F. This section shall apply to advertising agencies, public relations, and any other service business which meets the agency criteria set forth herein.

§ A170-26. Insurance agents, brokers and underwriters.

- A. General agents. General agents for insurance companies are required to report as gross receipts the entire commissions received as compensation for their own efforts on policies sold by them directly, and the overriding commissions received by them upon business produced by brokers or subagents.
- B. Brokers or subagents. Brokers or subagents are required to report as gross receipts the commissions received as compensation for their services.
- C. Offices outside Township. Where a general agent or an insurance broker maintains a branch office outside the Township, the commissions attributable to such branch office may be excluded from gross receipts. Commissions will be deemed attributable to the Township office, and hence subject to inclusion in the measure of the tax, if they result from the efforts of brokers, subagents or employees who work in, or from, or are attached to the Township.
- D. Employee of single company. An employee of a single company is not subject to the business privilege tax on such employee's earnings from that company, but must file a return showing any additional gross commissions received for services rendered on behalf of other companies. Factors indicating employee relationship are as follows:
- (1) The agent devotes his or her entire time to a particular company except for writing an occasional policy with another company because his or her prime company does not carry the requested coverage or has rejected such coverage.
 - (2) The agent is considered to be an employee by his or her prime company. He or she receives pension benefits, makes social security payments through them, is subject to all fringe benefits, and is otherwise treated as an employee of the company.
 - (3) The agent does not employ solicitors, subagents or others other than clerical

help, to whom he or she pays salaries, commissions or other compensation.

- (4) The agent is housed by his or her prime company.
- (5) The agent is not a general agent of his or her prime company.

§ A170-27. Theaters and motion picture houses.

Persons operating theaters or motion-picture houses and other places of amusement where admission is charged in the Township, whether owner or lessee, are subject to the business privilege tax on the gross receipts from house or film. rentals and from commissions received on vending machine sales, public telephone booths and other sources of revenue.

§ A170-28. Persons erecting buildings or otherwise altering, repairing or improving real property.

- A. General. A contractor or subcontractor, resident or nonresident, engaged in the Township in the business of erecting buildings, or otherwise altering, repairing or improving real property, or other major construction work, is required to report as gross receipts all receipts derived from the performance of such contracts. Except as otherwise determined by the business tax receiver, contractors must include in gross receipts the amounts of subcontracts let as part of the general contract. The amount of receipts to be included in the tax base shall be the full contract price, that is, the total amount received or receivable by way of a fixed or determinable amount under the terms of the contract. The contract price will be considered to include all charges made by a contractor, or subcontractor, for materials, labor, supervision, overhead costs, profit, and other obligations for which the contractor becomes liable in the performance of the contract. In the case of the general contractor, prime contractor or subcontractor' employing lower-tier subcontractors, no deduction may be made with respect to amounts paid to subcontractors and materialmen, unless it can be shown that the subcontractor has paid the business privilege tax to the Township on the same gross receipts stemming from the same contract.
- B. Cost-plus contracts. A general contractor performing contracts on the basis of a cost-plus-a-fixed fee or cost-plus-a-percentage is required to report as gross receipts the full contract price as explained above, unless such contractor has no connection whatsoever with the purchase of materials and/or the hiring of labor. In cases where the owner of the property buys the materials and hires all labor in his own name and pays the general contractor a fixed fee, or a percentage of the total cost to supervise and direct the construction project, the general contractor will be required to report only the gross amount of the fee or percentage received. Where the owner authorizes the general contractor to make such purchases of tangible personal property, or hire such labor or engage such subcontractors as are necessary for the performance of the contract and pledges such owner's credit and is liable in the first instance to the materialmen, suppliers, laborers or subcontractors, as distinguished from merely guaranteeing payment to them or undertaking to reimburse the general contractor for the cost of such materials, services or subcontracts, and agrees to make payment directly to the materialmen, suppliers, laborers and subcontractors, such sales or services will be regarded as made directly to the owner, and the general contractor will not be required to include such items in his gross receipts.

- C. Contractors or subcontractors permanently or temporarily doing business in the township shall register and file a tax return.
- D. Contractors or subcontractors with an office in the Township who are engaged in the performance of building, construction or engineering contracts at a point outside the territorial limits of the Township, may exclude from the measure of the tax the gross receipts derived therefrom, provided that a bona fide field office was maintained on the premises of the project during the performance of the contract wherein all control over such project was exercised to the extent that it constituted the doing of local business at the situs of the job. Receipts for services performed outside the Township may also be excluded if it can be shown that no part of the service was performed in the Township in accordance with §§ A170-17 and A170-22 of these regulations.

§ A170-29. Contractors who repair, alter and improve tangible personal property.

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

§ A170-30. Real estate brokers.

- A. Real estate brokers and agents are required to report as taxable receipts the commissions and fees received for the services rendered as agent in promoting the purchase and sale, the rental of the lease and/or management of real property for others. Brokers and agents not having an office in Upper Merion Township shall report as taxable receipts commissions received on the sale of properties within the Township. Such amount does not include the gross selling price of the property, except as set forth below.
- B. Real estate brokers or agents may exclude from their tax base any commissions paid to another broker or agent on account of a contract of purchase or sale initiated, executed or cleared in conjunction with the broker to whom the commission or part of the commission is paid. Commissions paid to a salesperson by a broker or agent are not excludable from the broker's or agent's tax base.
- C. Real estate brokers taking title to real property in their own or a straw name and selling the property are 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 or purchase cost may not be deducted. The same person may be taxed both as a broker and as a seller, depending on the nature of the transaction. If any person acts as a broker, salesperson or agent, the tax is based on commissions received. If any person buys and sells real estate, either in his or her own name or in the name of a straw party, such person is taxed on the gross selling price of the real estate.
- D. Multilist dealers or brokers, resident or nonresident, are subject to the tax on commissions on sales of real property located in the Township.

- E. Listing fees received by dealers, brokers or agents in the township are taxable gross receipts, even if the sale is made by an office outside the Township.
- F. Expenses. Reimbursement of expenses may be excluded from gross receipts only if the taxpayer actually incurred such expenses as agent for another from whom the taxpayer receives reimbursement in the exact amount he or she expended.

§ A170-31. Buildings, hotels, apartment houses, boarding houses, nursing homes, etc.

- A. Persons operating hotels, apartment houses, boardinghouses, nursing homes, rooming houses and all other such establishments are taxable on receipts from renting of rooms, furnishing of meals and any other services rendered.
- B. Any person carrying on the business of renting buildings, offices, space, stores, dwelling houses, etc., shall include gross rentals received in the tax base. No deductions may be made for depreciation, cost of maintenance, repairs, etc.
 - (1) Natural persons who have obtained real property with no affirmative action on their parts, that is, fortuitously through inheritance, gift, reverter, or other legal processes, and who furnish only those elementary services and maintenance which are required by law, are not subject to the tax unless the property was received from a person who engaged in the business of renting the property and that business is continued by the recipient.
 - (2) Business corporations which hold rental property as a source of income in addition to their regular business, which may or may not be real estate, are subject to the tax whether or not services are rendered.
 - (3) Persons, corporations or partnerships holding rental property in the Township, 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.
 - (4) Agencies or entities which manage and/or operate cooperatives and/or condominiums must pay the tax based on all receipts received for maintenance, cleaning, and other service provided, including insurance. Receipts received from owner-tenants for taxes, interest, and principal payments may be excluded from the taxable gross receipts.
 - (5) Agencies or entities which manage and/or operate cooperatives, condominiums, shopping centers or other real estate developments are taxable on receipts for such services regardless of where the property is located, subject to the provisions of §§ A170-17, A170-18 and A170-22 of these regulations.

§ A170-32. Receipts from securities transactions.

For the purpose of determining the gross receipts from the sale of stocks, bonds and/or other securities for a person engaged in a financial business, the cost thereof shall be deducted from the amount realized on the sale. Such cost shall consist of the purchase price of the property plus any brokerage paid on acquisition. The amount realized on

the sale shall consist of the gross receipts therefrom without deducting stamp or transfer taxes or any brokerage paid.

§ A170-33. Social and recreational clubs.

- A. Under state law the Township 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.
- B. Many such organizations, however, sell food, beverages and recreational equipment to, or perform noncharitable 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 Township taxes. Accordingly, any such organization which does offer its members such goods or 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 under § A170-15 hereof.)

§ A170-34. Public officials.

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

§ A170-35. Public utilities.

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

§ A170-36. Contractors performing building or construction work outside Township.

- A. Contractors with field offices. Upper Merion Township contractors or subcontractors engaged in the performance of building and construction contracts at a point outside the territorial limits of Upper Merion Township may exclude from the measure of the tax the receipts derived therefrom, but only if a field office was maintained on the premises of the project during the performance of the contract to such an extent as to constitute doing local business at the situs of the job.
- B. Alterations and repairs. The provisions of this section apply only to contractors engaged either in the erection of new buildings or in the complete alteration and remodeling of old buildings. They do not apply to contractors who engage in alteration and repair jobs of a limited scope, such as a roofer repairing a damaged roof of a building situated outside Upper Merion Township or a painter renovating an apartment in an apartment house located outside Upper Merion Township.

- C. Engineers and technicians. The exemption provisions of this section do not apply to engineers and other technicians rendering personal services outside Upper Merion Township.
- D. Qualifications for exemptions. In order to qualify for the exclusion above, it must be shown that the taxpayer has established a place of business at the situs of the job by maintaining a bona fide field office outside Upper Merion Township with machinery and equipment for use in the fulfillment of the contract together with the performance of such other acts or functions so as to constitute doing local business at the situs of the job.

§ A170-37. Out-of-Township branch offices.

- A. Brokers and agents with out-of-Township branch offices.
 - (1) Where an Upper Merion Township general agent or broker of an insurance, real estate or other firm establishes and maintains a bona fide branch office out the Township, the commissions attributable to such branch office may be excluded from gross receipts. Commissions will be deemed attributable to the Township and hence subject to inclusion in the measure of the tax, if they result from the efforts of brokers, subagents or employees who work in, from or are attached to the Upper Merion office.
 - (2) In order to qualify for exclusion hereunder, the agent or broker must show that it has established and maintained a bona fide place of business outside the Township by owning or leasing realty thereat together with the performance of such other functions so as to clearly constitute doing local business at such location.
- B. Businesses with out-of-Township branch offices, stores, etc.
 - (1) Where an Upper Merion Township business establishes and maintains a bona fide branch office, store or other place of business outside the Township, the receipts attributable to such branch offices or stores may be excluded from the gross volume of business. Receipts will be deemed attributable to the Township, and hence subject to inclusion in the measure of the tax, if they result from the efforts of persons who work in, from or are attached to Upper Merion Township place of business.
 - (2) In order to qualify for exclusion hereunder, the taxpayer must show that it established and maintained a bona fide place of business outside the Township by owning or leasing realty thereat together with the performance of such other functions so as to clearly constitute doing local business at such location.

§ A170-38. Conditional and installment sales.

- A. Reported as cash sales. A person making conditional sales or other installment sales of property is required to report the total selling price of such sales as gross receipts for the tax year in which the contracts of sale are entered into, without regard to the fact that the seller may arrange to receive payment from the purchaser on an installment basis or that such contracts may be discounted, pledged with, or sold to, a finance company.

- B. Property repossessed. Where tangible personal property, sold under a conditional or other installment sales contract, is repossessed by the seller, and the repossessed property is subsequently sold, the receipts from such sales are to be included in the measure of 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. Such a deduction shall be allowed upon resale, if the resale price is less than the unpaid balance.

[Example: "A" sells personal property to "B" for \$10,000.00 under a conditional agreement of sale. "B" makes several installment payments to "A" totaling \$6,000.00. "B" subsequently defaults and the property is repossessed by "A." "A" is required to report gross receipts of \$10,000.00. He may not deduct from gross receipts the unpaid balance of \$4,000.00 due from "B" at the time of repossession. If the property repossessed by "A" is subsequently sold, the receipts from the sale thereof are to be reported only to the extent which the amount of the sale exceeds the unpaid balance of \$4,000.00. Thus, if the repossessed property is sold for \$5,000.00, "A" is required to report only \$1,000.00 as additional receipts; if the property is sold for \$3,000.00, "A" is not required to report any portion of such receipts and is entitled to \$1,000.00 deduction from his current year's gross receipts.)

§ A170-39. Exchanges between dealers in similar lines.

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

§ A170-40. Consignment transactions.

The tax status of a person accounting for receipts from consignment transactions will depend on the terms and conditions expressly set forth in the contract between the consignor and the consignee. In all cases, the substance rather than the form of the relationship between the parties shall be the determining factor. Where the contract does not clearly set forth the status of the parties thereto, the following principles shall apply:

- A. Upper Merion Township consignor. If a person located in Upper Merion Township ships goods on consignment to a person located outside the Township for subsequent sale by such consignee, the consignor is not deemed to be doing business at the location of the consignee, nor will such location be recognized as a branch of the consignor. When the consignee makes a sale of the consignor's goods, the consignee will be deemed to have purchased the goods from the consignor at such time for resale to his (the consignee's) customer. Such transactions are deemed

to result in either wholly taxable or wholly excludable receipts to the consignor at the time the consignee consummates the sale with the consignee's customer. If the consignee is located within Pennsylvania, the receipts will be considered wholly taxable receipts. If the consignee is located outside Pennsylvania, the receipts will be considered either wholly taxable or excludable, according to Article VI of these regulations, as if the consignee is considered the buyer.

- B. Out-of-Upper Merion Township consignor. If a person located outside the Township ships goods on consignment to a person located in the Township for subsequent sale by such consignee, the consignor will be deemed to have sold the goods to the consignee at the time the consignee sells the goods to the consignee's customer. Such transactions are deemed to result in either wholly taxable or wholly excludable receipts to the consignor, depending upon the location of such consignor. If the consignor is located within Pennsylvania, the receipts will be considered wholly taxable receipts; if the consignor is located outside of Pennsylvania, the receipts will be considered wholly excludable receipts.

§ A170-41. 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. Both the sale of tangible personal property and charges for rendering service must be included in the tax base.

§ A170-42. Sale of capital assets.

- A. Generally. The profits (not gross proceeds) resulting from the sale of capital assets, such as plant machinery and equipment, furniture, fixtures, delivery equipment, etc., are to be included in the tax base. If a loss is sustained on such sales, it may not be offset against gross receipts from other sources. In computing the profits to be included in the tax base, the costs of the asset, less allowable depreciation, is to be deducted from the gross proceeds of the sale.
- B. Asset located outside Upper Merion Township. Where the capital asset sold was located at an established place of business of the taxpayer outside Upper Merion Township, the profit realized on the sale thereof may be excluded from the tax base.
- C. Bulk sale or exchange merger. Where a corporation realizes a gain as the result of a sale or exchange of substantially all of its assets, or as the result of a merger or consolidation with another corporation, the amount of such gain must be included in the tax base.

§ A170-43. Deposit on container.

A person making sales of products in a container on which there is a deposit to insure the return of the container is required to report only the gross selling price of the product in the container.

§ A170-44. Vending machines.

The entire gross receipts of vending machines and other mechanical devices which

dispense goods, wares and merchandise or render a service are to be included in the gross volume of business of the owner or lessor thereof. No deductions may be made therefrom for splits, rentals, commissions or other remunerations to persons in charge of the machines and/or to the lessees of the premises upon which the machines are located.

§ A170-45. Intercompany transactions.

Receipts from transactions between affiliated companies, other than those of a purely accommodational nature, are subject to inclusion in the gross volume of business.

§ A170-46. Interdepartment transactions.

Where one department, branch or division of a corporation or other business entity furnishes goods, wares and merchandise or services to another department, branch or division of the same corporation or business entity, the amounts recorded on the books to reflect such interdepartmental transactions shall not be included in the gross volume of business of the taxpayer.

§ A170-47. Property traded in.

In the case of trade-in transactions in which goods, wares and merchandise are sold and allowances made for other property which is traded in and is accepted by the sender or dealer in part payment of the property sold, the allowance made for the property traded in shall not be deducted from the selling price of the property sold in computing the gross receipts upon which the tax is based. The vendor or dealer must include in gross volume of business the full selling price of the property sold without any deduction therefrom for any allowance made or property traded in. Where the property traded is subsequently sold by the vendor or dealer, the latter must include in gross receipts only the amount by which the sale price of the property exceeds the trade-in allowance.

§ A170-48. Refunds, credits or allowances.

Refunds, credits or allowances given by the seller to a purchaser on account of defects in goods, wares or merchandise sold or on account of goods, wares or merchandise returned may be excluded from gross receipts in determining the gross volume of business subject to the tax.

§ A170-49. Commissions paid by brokers.

Any broker, agent or salesman who splits or otherwise divides a commission with another broker, agent or salesman in the same type of business by reason of the fact that the second broker initiated, executed, cleared or completed a portion of the transaction for which the fee is paid shall be permitted to exclude from his gross receipts that portion of the fee paid to the other broker, agent or salesman. This section does not exempt so-called finders fees, kick-backs, commissions or other remuneration paid by a broker, agent or salesman to another individual not in the same type of business as the broker, agent or salesman, nor does this Section exempt from the gross receipts of a broker or agent a commission paid by said broker or agent to a salesman affiliated with such broker or agent.

§ A170-50. Sales of alcoholic beverages by restaurants, taverns and clubs.

Gross receipts from the sale of beer, wine or liquor by persons carrying on the business of sales of alcoholic beverages in the Township are not subject to the business privilege tax. Gross receipts derived from sales of other goods and services are subject to such tax absent any other exclusion or exemption. Persons carrying on the business of sales of alcoholic beverages in the Township shall allocate all gross receipts between sales of beer, wine or liquor and sales of other goods and services by deducting from all gross receipts only the taxpayer's cost of beer, wine or liquor for the period covered by the tax return. If the business tax receiver, either on his or her own initiative or upon application by the taxpayer, determines that the foregoing method of allocation does not properly reflect gross receipts from the sale of beer, wine or liquor and from the sale of other goods and services, a different method of allocation may be used.

ARTICLE VII
Assessments and Suits for Collection

§ A170-51. Suits for recovery of unpaid taxes.

No assessment of any tax may be made more than five years after the date on which such taxes should have been paid, unless a fraudulent return or no return is filed, in which case there shall be no limitation period. Suits for recovery of taxes may be brought within five years of the date of assessment or date due, whichever is later.

ARTICLE VIII
Books and Records

§ A170-52. Books and records.

The business tax receiver may request such books and accounting records as will enable him to determine the accuracy of the taxpayer's return. The taxpayer claiming exemptions or exclusions for any portion of his gross receipts must maintain complete records of such items, otherwise, such claims will be disallowed.

§ A170-53. Inspection and examination.

The business tax receiver is authorized to examine not only 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. The business tax receiver 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, inter alia, books, papers, records and the attendance before the business tax receiver of all persons, whether as parties or witnesses, believed to have knowledge of such business or gross receipts.

ARTICLE IX
Rulings and Hearings

§ A170-54. Taxable status ruling.

Any taxpayer may request in writing a ruling on his taxable status under this ordinance. Any such request shall be made to the business tax receiver and shall set forth a detailed description of the nature of the taxpayer's business, the taxpayer's view of his taxable status, and the provisions of the ordinance or other applicable law on which the taxpayer relies.

§ A170-55. Request for ruling not to suspend penalty or interest.

No request for a ruling shall operate to suspend penalty or interest from the due date of any tax found to be owing.

