

ARTICLE III. MERCANTILE TAX***Sec. 22-40. Short title.**

This article shall be known and may be cited as the "Mercantile License Tax Ordinance." (Ord. No. 534, Art. I, § 1, 4-30-68)

Sec. 22-41. Definitions.

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

Collector shall mean the finance director of the township.

Gross volume of business shall include both cash and credit transactions, and trade-in transactions as provided by law.

License year shall mean the twelve-month period beginning the first day of January each year.

Person shall mean any individual, partnership, limited partnership, association or corporation, except such as are wholly exempt from taxation under the Act of the General Assembly No. 511, approved December 31, 1965, P.L.

Retail dealer or retail vendor shall mean 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 as hereinafter defined.

Secretary shall mean the secretary of the township.

Temporary, seasonal business shall mean any business that is conducted at one location for less than sixty (60) consecutive calendar days.

Wholesale and retail dealer or wholesale and retail vendor shall mean any person who sells to dealers in or vendors of goods, wares and merchandise and to other persons.

Wholesale dealer or wholesale vendor shall mean any person who sells to dealers in, or vendors of, goods, wares and merchandise and to no other persons.

*Cross reference—Mercantile licenses, Ch. 12, Art. II.

The terms "person," "retail dealer" or "retail vendor," "wholesale dealer" or "wholesale vendor," "wholesale and retail dealer" or "wholesale and retail vendor," shall not include persons, corporations or associations wholly exempt from taxation under the Pennsylvania Constitution, the Act of May 22, 1933, P.L. 853, article II, section 204, as amended, or the Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257 as amended, agencies of the government of the United States of the state, or any person vending or disposing of articles of his own manufacture for shipment or delivery from the place of the manufacture thereof, or any farmer vending or disposing of his own produce, or other transaction exempted by law. (Ord. No. 534, Art. II, § 1, 4-30-68; Ord. No. 716, § 1, 2-24-75; Ord. No. 1098, § 1, 4-20-92; Ord. No. 1111, § 1, 10-12-92)

Cross reference—Rules of construction and definitions generally, § 1-3.

Sec. 22-42. Levied.

(a) A tax to provide revenue for general township purposes is hereby levied, assessed and imposed upon every person engaging in any of the following occupations or businesses in the township at the rate hereinafter set forth, and such persons shall pay a mercantile license tax for the year beginning January first of each year at such rate, subject to the exemptions hereinafter set forth; provided, however, that in no event shall the annual mercantile license tax herein imposed be less than ten dollars (\$10.00) for each of the places of business of every such person:

- (1) Wholesale vendors or dealers in goods, wares and merchandise of every kind, at the rate of one (1) mill on each dollar of the gross volume of business transacted by him during the license year;
- (2) Retail vendors or dealers of goods, wares and merchandise of every kind, and all persons engaged in conducting restaurants or other places where food, drink or refreshments are sold, at the rate of one and one-half (1½) mills on each dollar of the gross volume of business transacted by him during the license year;
- (3) Wholesale and retail vendors or dealers in goods, wares and merchandise of every kind at the rate of one mill on each dollar of the gross volume of wholesale business transacted by him, and one and one-half (1½) mills on each dollar of the gross volume of retail business transacted by him during the license year.

(b) The tax imposed by this section shall not apply to the dollar volume of annual business transacted by wholesale and retail dealers derived from the resale of goods, wares and merchandise, taken by any dealer as a trade-in or as a part payment for other goods, wares and merchandise, except to the extent that the resale price exceeds the trade-in allowance. (Ord. No. 534, Art. IV, § 1, 4-30-68; Ord. No. 1111, § 2, 10-12-92)

Sec. 22-43. Computation—Estimated.

The paragraphs of this section refer to the computation of the estimated gross volume of business:

- (1) Every person subject to the payment of the tax hereby imposed, who has commenced his business at least a full year prior to January first of the license year shall compute the gross volume of business upon the actual gross amount of business transacted by him during the twelve (12) months preceding January first.
- (2) Every person subject to the payment of the tax hereby imposed, who has commenced his business less than one full year prior to January first of the license year, shall compute the gross volume of business by multiplying by twelve (12) the monthly average of the actual gross amount of business transacted by him during the months he was engaged in business prior to such January first.
- (3) Every person subject to the payment of the tax hereby imposed, who commences his business subsequent to January first of the license year, shall compute the gross volume of business for the license year upon the gross volume of business transacted by him during the first month of his engaging in business, multiplied by the number of months remaining in the license year.
- (4) Every person subject to the payment of the tax hereby imposed who engages in business which is temporary or seasonal by its nature shall compute the gross volume of business upon the actual gross amount of business transacted by him during the license year.

(Ord. No. 534, Art. V, §§ 1-4, 4-30-68; Ord. No. 716, § 1, 2-24-75; Ord. No. 1111, § 3, 10-12-92)

Sec. 22-44. Same—Final.

At the end of the license year every person subject to the tax imposed by this article shall make a return to the collector of the actual volume of business transacted by the taxpayer during the period for which the taxpayer is subject to the tax. Such final return shall state the amount of the gross volume of business as set forth in the first return, the amount of tax paid at the time of the filing of the first return, and the amount of tax due upon the final computation. (Ord. No. 534, Art. V, § 5, 4-30-68)

Sec. 22-45. Required returns—Generally.

Every return, as required by sections 22-46 through 22-48, shall be made upon a form furnished by the collector under the penalties of perjury. (Ord. No. 534, Art. VI, § 1, 4-30-68)

Sec. 22-46. Same—First return.

(a) Every person subject to the tax imposed by this article who has commenced his business at least one full year prior to the beginning of the license year shall, on or before the fifteenth day of April following, file with the collector a return setting forth his name, business and business address, and such other information as may be necessary to compute the actual gross volume of business transacted by him during the license year and the amount of tax estimated to be due.

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(b) Every person subject to the tax imposed by this article who has commenced his business less than one full year prior to the beginning of the license year shall, on or before the fifteenth day of April following, file with the collector a return setting forth his name, business, business address and such other information as may be necessary to compute the actual gross volume of business transacted by him during the license year and the amount of tax estimated to be due.

(c) Every person subject to the tax imposed by this article who commences business subsequent to the beginning of the license year shall, within forty-five (45) days from the date of commencing such business, file a return with the collector setting forth his name, business and business address and such information as may be necessary to compute the actual gross volume of business transacted by him during the license year and the amount of tax estimated to be due. (Ord. No. 534, Art. VI, §§ 2-4, 4-30-68; Ord. No. 1111, § 4, 10-12-92)

Sec. 22-47. Same—Transient, temporary businesses.

Every person subject to the payment of the tax imposed by this article who engages in a business which is temporary or seasonal by its nature, shall, within seven (7) days from the day he completes such business, file a return with the collector setting forth his name, business and business address and such information as may be necessary in arriving at the actual gross amount of business transacted by him during such period and the amount of tax due. (Ord. No. 534, Art. IV, § 5, 4-30-68)

Sec. 22-48. Same—Final return.

On or before fifteen (15) days after the end of the license year, every person subject to the tax imposed by this article shall make a final return in the form provided by section 22-44. (Ord. No. 534, Art. VI, § 6, 4-30-68)

Sec. 22-49. Payment.

(a) At the time of filing the first return the person making the same shall pay the amount of the tax levied by this article estimated to be due.

(b) At the time of the filing of the final return, if the full amount of the tax levied by this article due by the taxpayer for the license year has not been paid, the taxpayer shall pay the remaining balance of the tax which will be the difference between the amount of the tax paid at the time of making the first return on the estimated computation, and the amount of the tax finally shown to be due. (Ord. No. 534, Art. VII, §§ 1, 2, 4-30-68)

Sec. 22-50. Powers and duties of collector.

(a) It shall be the duty of the collector to collect and receive the fees, taxes, fines and penalties imposed by this article. It shall also be his duty to keep a record showing the amount of the tax received by him and the date of payment. A receipt shall be given to the person paying the tax.

(b) If the collector is not satisfied with the return and payment of tax made by any taxpayer or supposed taxpayer under the provisions of this article, he is authorized and empowered to make a determination of the tax due by such person, based upon the facts contained in the return, or upon any information within his possession, or that shall come into his possession, and for this purpose, the collector, his deputy or his authorized agent are authorized to examine the books, papers and records of any such person to verify the accuracy of any return or payment made under the provisions of this article or to ascertain whether the taxes imposed by this article have been paid. The collector is hereby authorized and directed to make and keep such records, prepare such forms, and take such other measures as may be necessary or convenient to carry this article into effect, and may, in his discretion, require reasonable deposits to be made by licensees who engage in a business temporary or seasonal by its nature.

(c) If any taxpayer or supposed taxpayer shall neglect or refuse to make any return and payment of tax required by this article, or if, as a result of an investigation by the collector, a return is found to be incorrect, the collector shall estimate the tax due by such person, and determine the amount due from such person for taxes, penalties and interest thereon.
(Ord. No. 534, Art. VIII, §§ 1—3, 4-30-1968)

Sec. 22-51. Taxpayer to prove exemption.

The burden is hereby imposed upon any person claiming an exemption from the payment of the tax imposed by this article to convince the collector of his legal right to such exemption.
(Ord. No. 534, Art. VIII, § 4, 4-30-1968)

Sec. 22-52. Refunds.

If the final return of the taxpayer shows an overpayment of the tax by this article by reason of the fact that the gross volume of business as stated in the estimated computation was less than the actual volume of business for the license year or by reason of the fact that the taxpayer did not continue to engage in business throughout the license year, the collector shall refund to the taxpayer the amount of such overpayment which shall be the difference between the amount of tax paid upon the filing of the first return and the amount of the tax finally shown to be due.
(Ord. No. 534, Art. VIII, § 5, 4-30-1968; Ord. No. 1111, § 5, 10-12-1992)

Sec. 22-53. Method of recovery.

All taxes due and unpaid under this article shall be recoverable by the township solicitor as other debts due the township are now by law recoverable. (Ord. No. 534, Art. IX, § 1, 4-30-1968)

Sec. 22-54. Interest and penalty.

(a) All taxes due under this article shall bear interest at the rate of one and one-quarter ($1\frac{1}{4}$) per cent per month or a fractional part of a month from the due date until date of receipt of payment. Any taxpayer who shall neglect or refuse to make payment as herein required shall be assessed an additional ten (10) per cent of the amount of the tax due as a penalty.

(b) If legal action is brought for the recovery of this tax, interest and penalty, the taxpayer thereafter shall, in addition, be responsible and liable for collection costs, including court costs and attorney fees.

(Ord. No. 534, Art. X, § 1, 4-30-1968; Ord. No. 899, § 1, 7-11-1983; Ord. No. 1129, § 1, 8-16-1993)

Sec. 22-55. Receipts to be paid into general fund.

All taxes, interest and penalties received, collected or recovered under the provisions of this article shall be paid into the general fund of the township for the use and benefit of the township. (Ord. No. 534, Art. XI, § 1, 4-30-1968)

Sec. 22-56. Limitations.

Nothing contained in this article shall be construed to empower the township to levy and collect the taxes hereby imposed on any person, or any business, or any portion of any business not within the taxing power of the township under the Constitution of the United States and the constitution and laws of the state. (Ord. No. 534, Art. XII, § 1, 4-30-1968)

Sec. 22-57. Sales having attributes of interstate commerce.

When a taxpayer has sales in another state or states than Pennsylvania, and regardless of whether or not the taxpayer has an office or place of business in that other state, the following principles shall apply:

(a) Receipts from sales made within the Commonwealth of Pennsylvania, but not properly allocable to another place of business within the Commonwealth of Pennsylvania, shall be allocable to Plymouth Township.

(b) Receipts from sales made within other states shall be apportioned to Plymouth Township by multiplying the total gross receipts of the taxpayer for the taxing period by a fraction, the numerator of which is the Property Factor, plus the Payroll Factor, plus the Gross Receipts Factor (such capitalized terms being hereinafter defined), and the denominator of which is three (3).

(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 of 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.

(i) 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 (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(ii) The average value of the property shall be determined by averaging the values at the beginning and ending of the tax period, but the collector 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.

(i) Compensation is paid in this township if:

- 1) The individual's service is performed entirely within the township; or
- 2) The individual's service is performed both within and without the township but the service performed without the township is incidental to the individual's service within this Township; or,
- 3) Some of the service is performed in the 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 if 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 the 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.

(c) 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.

(d) This Section 22-57 shall apply to Mercantile Tax Returns filed for calendar and fiscal years beginning January 1, 2006, and thereafter.
(Ord. No. 1448, § 1, 11-14-2005)

Sec. 22-58—22-67. Reserved.