

Chapter 209. TAXATION

Article II. Mercantile License Tax

§ 209-16. Title.

This article shall be known and may be cited as the "Mercantile License Tax Ordinance."

§ 209-17. Definitions.

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

GROSS RECEIPTS or GROSS VOLUME OF BUSINESS

In general, the "gross receipts" or "gross volume of business" 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 Township, 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 Township. A receipt generally will be considered attributable to the Township if any part of the transaction or service giving rise to the receipt takes place within the Township or is directed in any part from an office or place of business within the Township.

[Amended 12-10-1990 by Ord. No. 66C]

LICENSE YEAR

The period from January 1 to December 31, inclusive.

[Amended 12-10-1990 by Ord. No. 66C]

PERSON

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. 1257).^[1]

RETAIL DEALER or RETAIL VENDOR

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

The Secretary of the Township of Montgomery.

TAX ADMINISTRATOR

The person duly appointed by the Township Manager of the Township of Montgomery to administer this article and the rules and regulations promulgated thereunder.

[Amended 4-16-1979 by Ord. No. 66A; 12-10-1990 by Ord. No. 66C]

TAX YEAR

The period from January 1 to December 31, inclusive.
[Added 12-10-1990 by Ord. No. 66C]

TEMPORARY, SEASONAL OR ITINERANT BUSINESS

Any business that is conducted at one location for less than 60 consecutive calendar days.

TOWNSHIP

The Township of Montgomery.

WHOLESALE AND RETAIL DEALER or WHOLESALE AND RETAIL VENDOR

Any person who sells to dealers in or vendors of goods, wares and merchandise and to other persons.

WHOLESALE DEALER or WHOLESALE VENDOR

Any person who sells to dealers in or vendors of goods, wares and merchandise.
[Amended 4-16-1979 by Ord. No. 66A]

[1]: *Editor's Note: The Local Tax Enabling Act. See 53 P.S. § 6901 et seq.*

- B. The terms "person," "retail dealer," "wholesale dealer" and "wholesale and retail dealer," hereinbefore defined in this article, shall not include nonprofit corporations or associations organized for religious, charitable or educational purposes, agencies of the government of the United States or of the Commonwealth of Pennsylvania 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 product or any other transaction exempted by law.

§ 209-18. License.

[Amended 12-10-1990 by Ord. No. 66C]

- A. For each license year, every person desiring to engage in the business of wholesale or retail or wholesale and retail vendor or dealer in goods, wares and merchandise and any person conducting a restaurant or other place where food, drink or refreshments are sold in the Township shall, on or before the 15th day of March or prior to commencing business in any such license year, apply for and procure a mercantile license for his place of business or, if more than one, for each of his places of business in the Township from the Tax Administrator, who shall issue the same upon payment of a fee for a license for the place of business or, if more than one, for each of the places of business in the Township for such license year. Each application for a license shall be signed by the applicant, if a natural person, and, in the case of an association or partnership, by a partner thereof and, in the case of a corporation, by an officer thereof. Such license shall not be assignable and shall be conspicuously posted at the place of business at all times. In the case of loss, defacement or destruction of any license, the person to whom the license was issued shall apply to the Tax Administrator for a new license, for which a fee shall be charged. The amount of such fee shall be set by resolution of the Board of Supervisors from time to time.
[Amended 6-22-1992 by Ord. No. 92-1]
- B. Any person required to pay both a Business Privilege License Tax and a Mercantile License Tax needs only one license for each place of business.

§ 209-19. Imposition of tax.

[Amended 4-16-1979 by Ord. No. 66A; 12-20-1982 by Ord. No. 66B; 12-10-1990 by Ord. No. 66C]

A tax to provide revenue for general Township purposes is hereby levied, assessed and imposed upon every person engaged 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 1, 1979, and each year thereafter at such rate, subject to the exceptions hereinafter set forth; provided, however, that in no event shall the annual mercantile license tax herein imposed be less than \$10 for each of the places of business of every such person.

- A. Wholesale vendors or dealers in goods, wares and merchandise of every kind, at the rate of $\frac{1}{5}$ (0.2) of a mill on each dollar of the gross volume of business transacted by him during the license year.
- B. Retail vendors or dealers in 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 $1\frac{1}{2}$ (1.50) of a mill on each dollar of the gross volume of business transacted by him during the license year.
- C. Wholesale and retail vendors or dealers in goods, wares and merchandise of every kind at the rate of $\frac{1}{5}$ (0.2) mill on each dollar of the gross volume of wholesale business transacted by him during license year, and retail vendors or dealers in goods, wares and merchandise of every kind at the rate of one and $1\frac{1}{2}$ (1.50) mill on each dollar of gross volume of retail business transacted by him during the license year.
- D. The tax imposed by this article 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.

§ 209-20. Exemptions, deductions and exclusions.

[Added 12-10-1990 by Ord. No. 66C]

- A. All persons required to pay a mercantile tax under the provisions of this article shall be exempted from paying such tax upon the same subject matter of taxation upon which such persons are required to pay a business privilege tax under the Business Privilege Tax Ordinance.^[1] Any person required to pay both a business privilege tax and a mercantile tax may file one joint return. In addition, any portion of a taxpayer's gross receipts which is subject to a gross receipts tax under any other Township ordinance may not be taxed under this article.
[1]: Editor's Note: See Article V of this chapter.
- B. Persons employed for a wage or salary, nonprofit corporations or associations organized for religious, charitable or educational purposes, agencies of the government of the United States, the Commonwealth of Pennsylvania, the County of Montgomery and the North Penn School District and the business of any political subdivision or any authority created or organized under and pursuant to any Act of Assembly are exempt from the provisions of this article.
- C. No such tax shall be assessed and collected on the gross receipts from utility service to any person or company whose rates of service are fixed and regulated by the Pennsylvania Public Utility Commission or on any privilege or transaction involving the rendering of any such public utility service.

- D. No such tax shall be assessed and collected on goods and articles manufactured in the Township or the by-products of manufacture or on minerals, timber, natural resources and farm products produced in the Township or on the preparation or processing thereof for use or market or on any privilege, act or transaction related to the business of manufacturing, the production, preparation or processing of minerals, timber and natural resources or farm products by manufacturers, by producers and by farmers with respect to the goods, articles and products of their own manufacture, production or growth or on any privilege, act or transaction relating to the business of processing by-products of manufacture or on the transportation, loading, unloading or dumping or storage of such goods, articles, products or by-products.
- E. Refunds, credits or allowances given by a person to a customer on account of defects in services rendered or in goods, wares and merchandise sold or returned may be deducted from the amount of the gross receipts of the person.
- F. Adjustments allowed to customers may be deducted from gross receipts if they are deducted on the face of the invoice as a medium of adjusting the price or fee for the service and if they are not reimbursed to the person by his supplier or some other person.
- G. Federal, state and local taxes are not included in gross receipts if they are collected from the customer and are separately stated on the evidence of charge or sale or the customer produces satisfactory proof of payment of the federal, state or local taxes.
- H. This article excludes from the definition of gross receipts the receipts from services performed from a place of business regularly maintained outside the Township by the taxpayer to a place of business regularly maintained outside the Township by the customer, provided that such performance is not made for the purpose of evading the tax. Services or deliveries of services to a residence or place of business located outside the Township do not qualify for this exclusion.
- I. Where the gross receipts of the taxpayer cannot in their entirety be subjected to the tax imposed by this article by reason of provisions of the Constitution of the United States, the Constitution of the Commonwealth of Pennsylvania or any other provision of law, the Tax Administrator shall establish rules and regulations and methods of allocation and evaluation so that only that part of the gross receipts which is properly attributable to doing business in the Township shall be taxed by this article.

§ 209-21. Computation of tax.

[Amended 12-10-1990 by Ord. No. 66C]

- A. Estimated taxes.
 - (1) Every person subject to the payment of the tax hereby imposed who has commenced business at least a full year prior to the tax year shall compute the gross volume of business upon the actual gross amount of business transacted by him during the 12 months preceding the tax year.
 - (2) Every person subject to the payment of the tax hereby imposed who has commenced business less than one full year prior to the tax year shall compute the gross volume of business by multiplying by 12 the monthly average of the actual gross amount of business transacted by him during the months while he was in business prior to the tax year.
 - (3) Every person subject to the payment of the tax hereby imposed who commences business subsequent to January 1 of the tax year shall compute the gross volume of business by multiplying the actual gross volume of business transacted by him

during the first month of his engaging in business by the number of months remaining in the tax year.

- (4) Every person subject to the payment of the tax hereby imposed who engages in business which is temporary, seasonal or itinerant by its nature, except for any person licensed to engage in a temporary retail business under Ordinance No. 83, as amended,^[1] shall compute the gross volume of business upon the actual gross amount of business transacted by him during the tax year.

[1]: *Editor's Note: See Ch. 215, Temporary Retail Businesses.*

- B. Final taxes. On or before March 15 of the year following the end of the tax year, every person subject to the tax hereby imposed shall make a return to the Tax Administrator of the Township of the actual gross receipts of the taxpayer during the period for which the taxpayer is subject to the tax. Such final return shall state the amount of tax paid at the time of filing the estimated return and the amount of tax due upon the final computation.

§ 209-22. Returns.

[Amended 4-16-1979 by Ord. No. 66A; 12-10-1990 by Ord. No. 66C]

- A. Every return as required by this article shall be made upon a form furnished by the Tax Administrator. Every person making such return shall certify the correctness thereof under the penalties of perjury.
- B. Every person subject to the tax imposed by this article shall be required to file two tax returns each year; an estimated return and a final return, unless otherwise provided for in this article. Each time an estimated return is required to be filed, the final return shall be filed the following calendar year. If it is determined that the amount of tax paid in the estimated return was greater than required by the final return, the taxpayer shall be entitled to apply the overpayment to the estimated return in the same calendar year in which the final return in question is being filed. In the event that the tax was less than the amount finally determined to be owed in the final return, the taxpayer shall be liable to pay said tax upon the filing of the final return. In the event that the amount paid at the time of the filing of the estimated return is less than 80% of the amount due in the final return, a penalty shall also be paid by the taxpayer in the amount of 10% of the difference between the final tax due and the estimated tax paid.
- C. Every person subject to the tax imposed by this article who has commenced business at least one full year prior to the beginning of the tax year shall, on or before the 15th day of March following, file with the Tax Administrator a return setting forth such person's name, business and business address and such other information as may be necessary to compute the actual gross receipts of such person during the preceding year and the amount of tax estimated to be due.
- D. Every person subject to the tax imposed by this article who has commenced business less than one full year prior to the beginning of the tax year shall, on or before the 15th day of March following, file with the Tax Administrator a return setting forth such person's name, business and business address and such other information as may be necessary to compute the actual gross receipts of such person during the preceding year and the amount of tax estimated to be due.
- E. Every person subject to the tax imposed by this article who has commenced business subsequent to the beginning of the tax year shall, within 60 days from the date of commencing such business, file with the Tax Administrator a return setting forth such person's name, business and business address and such other information as may be

necessary to compute the actual gross receipts of such person during the first month of business and the amount of tax estimated to be due.

- F. Every person subject to the payment of the tax imposed by this article who is engaged in a business which is temporary, seasonal or itinerant by its nature, except for any person licensed to engage in a temporary retail business under Ordinance No. 83, as amended,^[1] shall, within seven days from the date of completion of such business, file with the Tax Administrator a return setting forth such person's name, business and business address and such information as may be necessary in arriving at the actual gross receipts of such person during such period and the amount of the tax due.
[1]: Editor's Note: See Ch. 215, Temporary Retail Businesses.
- G. Any person going out of or ceasing to do business shall, within seven days from the date of ceasing to do business, file a return showing the actual gross volume of business conducted and done by such person during the tax year in which said person ceased doing business and pay the tax due as computed thereon at the rate herein provided for at the time of filing said return. If such tax has been previously paid based upon estimated gross receipts, the taxpayer shall be entitled to a refund, without interest, of any excess tax paid for the tax year in which business was terminated.
- H. Receipt. The Tax Administrator, upon request to him, will provide a receipt of payment of the tax.
- I. On or before March 15 of the year following the tax year, every person subject to the tax hereby imposed shall make a final return as required by § 209-21B.

§ 209-23. Payment.

- A. At the time of filing the first return, the person making the same shall pay the amount of the tax estimated to be due.
- B. At the time of filing the final return, if the full amount of the tax due by the taxpayer for the tax year has not been paid, the taxpayer shall pay the remaining balance of the tax, which shall be the difference between the amount of the tax paid at the time of making the estimated return on the estimated computation and the amount of the tax finally shown to be due. If the balance shall be a credit, the amount of the credit shall be applied towards the current year's estimated tax.
[Amended 12-10-1990 by Ord. No. 66C]

§ 209-24. Duties of the Tax Administrator.

[Amended 12-10-1990 by Ord. No. 66C]

- A. The Tax Administrator is charged with the duties of collecting and receiving the taxes, fines and penalties imposed by this article. It shall be his duty to keep a record showing the amount received by him from each person paying the tax and the date of such receipt.
- B. The Board of Supervisors of Montgomery Township, by resolution, may prescribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this article and charging the Tax Administrator with the responsibility for enforcing the provisions of this article and any rules and/or regulations promulgated pursuant hereto.
- C. In the event that the person to be assessed neglects or refuses to make a return, then in such case the Tax Administrator or his duly appointed deputies shall assess said

person or persons on such an amount of whole or gross volume of business as said Tax Administrator or his deputies deem reasonable and appropriate. In all cases of such assessment, the Tax Administrator or his duly appointed deputies shall give the parties assessed a notice in which shall be stated the trade, business, occupation or class and the amount of the mercantile tax imposed or levied.

- D. The taxpayer shall maintain such records and books of account as will enable him to make a true and accurate return in accordance with the provisions of this article. Such accounts and records must disclose in detail the gross receipts and other data pertaining to the taxpayer's gross volume of business and must be sufficiently complete to enable the Tax Administrator or his deputies to verify all transactions. The Tax Administrator or his deputies are hereby authorized to examine the books, papers and records of any person or persons subject to or supposed to be subject to the tax imposed by this article in order to verify the accuracy of the return made or, if no return was made, ascertain the tax due.
- E. The burden is hereby imposed upon any person, firm or corporation claiming an exemption from the payment of the tax hereby imposed to convince the Tax Administrator of his legal right to such exemption.
- F. Any person aggrieved by a decision of the Tax Administrator shall have the right to appeal to the Court of Common Pleas, as in other cases.
- G. Any information gained by the Tax Administrator or any other official agent or member of the Board of Supervisors of the Township of Montgomery as a result of any returns, investigations, hearings or verifications required or authorized by this article shall be confidential except in accordance with a proper judicial order or as otherwise provided by law.
- H. If the final return of the taxpayer shows an overpayment of the tax by reason of the fact that the taxpayer did not continue to engage in business throughout the year, the Tax Administrator shall refund to the taxpayer the amount of such overpayment, without interest, 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.

§ 209-25. Recovery of taxes.

- A. 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.
- B. The Tax Administrator or his duly appointed deputies shall have the power in the name of the Board of Supervisors of Montgomery Township to institute proceedings against any and all persons who violate the provisions of this article.
[Added 12-10-1990 by Ord. No. 66C]
- C. If and for any reason the tax is not paid when due and suit is brought for the recovery of any such tax, the person liable therefor shall, in addition, be liable for the costs of collection, interest and penalties herein imposed.
[Added 12-10-1990 by Ord. No. 66C]

§ 209-26. Interest and penalty.

[Amended 12-10-1990 by Ord. No. 66C]

- A. The mercantile license tax levied pursuant to this article shall be due and payable on the date on which the taxpayer is required to file a return as set forth above, and if the

same is not filed and paid on said date, 10% shall be added thereto, plus an additional 1% per month or fractional part of a month until paid.

- B. Shortages in the amount paid from the amount due are subject to the same penalties and interest as set forth in Subsection **A** above. This also includes shortages discovered after audit.

§ 209-27. Receipts to be paid to 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 of Montgomery for the use and benefit of the Township of Montgomery.

§ 209-28. Limitations; saving clause.

[Amended 12-10-1990 by Ord. No. 66C]

- A. Nothing contained in this article, as amended, shall be construed to empower the Board of Supervisors of Montgomery 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 Laws and Constitution of the Commonwealth of Pennsylvania.
- B. If the tax or any portion thereof imposed upon any person under the provisions of this article, as amended, shall be held by any court of competent power or jurisdiction to be in violation of the Constitution of the United States or of the Commonwealth of Pennsylvania or any other provision of the law, the decisions of the court shall not affect or impair the right to impose the taxes or the validity of the taxes so imposed upon other persons as herein provided.

§ 209-29. Violations and penalties.

[Amended 12-10-1990 by Ord. No. 66C]

- A. Any person, as defined in this article, or any officer, agent, servant or employee thereof who shall fail, neglect or refuse to comply with any of the terms or provisions of this article shall be guilty of a summary offense and, upon conviction thereof before a District Justice, be sentenced to pay a fine of not less than \$300 nor more than \$600 and costs of prosecution for each offense. Upon judgment by summary conviction or by proceedings by summons on default of the payment of the fine or penalty imposed and costs, the defendant may be sentenced and committed to the Township lockup for a period not exceeding five days or to the county jail or workhouse for a period not exceeding 30 days. The fine imposed by this article shall be in addition to any other penalty imposed by any other section of this article.
- B. Each day on which such person violates this article may be considered as a separate offense and punishable as hereinabove provided.

§ 209-30. Effect on other provisions.

It is the intent of the Board of Supervisors that any ordinance now in effect which imposes a special license fee or tax on specific types or kinds of business not covered by the provisions

of this article shall be and remain in full force and effect.