



**MONTGOMERY TOWNSHIP**

**BUSINESS PRIVILEGE AND MERCANTILE TAX REGULATIONS**

**INTRODUCTION**

These regulations are issued as an aid to the taxpayer to explain the meaning and scope of certain parts of Ordinance No. 66 (as amended), Chapter 209, Article II of the Code of Montgomery Township and Ordinance No. 109 (as amended), Chapter 209, Article V of the Code of Montgomery Township and as hereafter amended ("Mercantile Tax Ordinance") ("Business Privilege Tax Ordinance"). 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.

Ordinance No. 66 and 109, Chapter 209, Article II and Article V of the Code of Montgomery Township, have been adopted pursuant to the Local Tax Enabling Act, 53 P.S. 6901 et. seq., and there have been numerous court decisions interpreting the provisions under that Act. These regulations are intended to serve as a guideline for taxpayers and are subject to any changes in the Act or any changes in the interpretation of the law by subsequent court cases. Any questions or disputes over the proper legal interpretation of these ordinances and regulations will be referred to the Township Solicitor by the Business Tax Administrator. Any reference in these regulations to Tax Administrator or Business Tax Administrator shall include all duly appointed deputies and/or designee.

**What Constitutes Doing Business In Montgomery Township**

(a) Whether a person carries on a taxable activity within the meaning of the Business Privilege and Mercantile Tax is essentially a question of fact. Any trade, business, profession, vocation, commercial activity or service directed, controlled, or managed by a Montgomery Township office or location, or which occurs within or has a substantial nexus with the Township, is subject to the tax. The tax is not limited to transactions occurring entirely within the Township.

(b) Persons who perform services in interstate commerce or who maintain bona fide places of business in other jurisdictions may be entitled to some apportionment or allocation of gross receipts.

(c) A person who engages in a taxable activity in Montgomery Township is subject to this tax whether or not there is a permanent place of business in Montgomery Township. A foreign corporation is subject to this tax if it carries on a taxable activity in Montgomery Township regardless of whether it is licensed to do business in Pennsylvania.

(d) It is possible for a single business to be subject to Business Privilege Tax on some receipts and Mercantile Tax on other receipts. Any person required to pay both a Business Privilege Tax and a Mercantile Tax may file one (1) joint return.

(e) The burden is upon the taxpayer to support any claim for excluding any of its gross receipts for the reason that it is not doing business within Montgomery Township.

**ARTICLE I**  
**GENERAL PROVISIONS**

**Section 101. Registration.**

Every person doing business in the Township shall register with the Township, upon a form furnished by the Business Tax Office, which sets forth the name and address of the business, the name and address of the individual responsible for filing, the nature of any business activity, and any other information as may be required.

**Section 102 - License required.**

(a) No person shall engage in any business, trade, profession or other commercial activity without having first applied for and procured a business license.

**Section 103 - Fee and term for license.**

(a) 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. All licenses must be procured on or before the 15th of March or prior to commencing business in any such license year.

(b) License Fee. - A license fee shall be set by resolution of the Board of Supervisors and must be paid to the Business Tax Administrator before a

license will be issued. The license fee shall not be pro-rated for new businesses established during the tax year. (Amended December 22, 1997)

**Section 104 - Multiple Places of Business.**

(a) 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 (i) the same service is performed, goods are sold or business carried out at each location and (ii) 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.

**Section 105 - Posting license.**

The license must be posted conspicuously at each place of business of licensee at all times except as follows:

(1) Vending Machine Owners. - A person who sells goods, wares or merchandise by means of vending machines and who has not otherwise procured a license under this ordinance, shall procure one license covering the principal place of business.

(2) Persons with no place of business. - Persons conducting business within Montgomery Township but having no "place of business" there, shall not be required to post their license. But if such time as such licensee establishes a place of business in the township, the taxpayer shall notify the Business Tax Office of the location of such place of business and shall thereafter post the license at such place of business.

(3) Contractors. Regardless of the number of field offices maintained by a contractor, a contractor shall post its license at its principal place of business.

**Section 106 - Replacement licenses.**

In the case of loss, defacement or destruction of any license, the person to whom the license was issued shall apply to the Business Tax Administrator for a new license for which the standard fee shall be charged.

**Section 107 - Assignment and transfer prohibited.**

Licenses shall not be assigned or transferred. Any purported assignment or transfer shall be void and ineffective.

**Section 108 - Failure to procure license.**

Persons who engage in a business, profession or other commercial activity without having first procured a business license may be convicted of a summary offense and may be subject to a fine of not less than Three Hundred (\$300) nor more than Six Hundred (\$600) dollars or imprisonment of not more than 30 days if such fine and costs are not paid. Each day of a continuing violation is a separate offense.

**Section 109 - Savings clause and severability.**

If a final decision of a court of competent jurisdiction determines that any provision of these regulations, or the application of any provision of these regulations to any circumstance, to be illegal or unconstitutional, the other provisions in these regulations or the application of such provisions to other circumstances, shall remain in full force and effect. The intent of the Township of Montgomery is that the provisions of these regulations shall be severable and that they would have been adopted absent inclusion of any such illegal or unconstitutional provision.

## ARTICLE II

### COMPUTATION AND RATE OF TAX

#### **Section 201 - Tax Year.**

(a) General. The tax year is the same as a calendar year, i.e. January 1st through December 31st. The Business Privilege Tax and Mercantile Tax which is due on or before March 15th of each tax year is measured by the actual gross receipts generated in the calendar year preceding the tax year except in cases of a new business. Although a taxpayer may report other tax liabilities on a fiscal year basis, business taxes shall be computed on a calendar year basis, unless otherwise provided by the Business Tax Administrator or his designee.

(b) Holidays and postmarks. When the due date falls on a Saturday, Sunday, or legal holiday, returns may be filed on the next business day. Tax returns received by the Business Tax Office are considered to be timely filed if they are postmarked on or prior to the deadline date. A taxpayer's presentation of a receipt indicating that the tax return was mailed by registered or certified mail, on or before the due date, will qualify as evidence of timely mailing.

#### **Section 202 - 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 generally accepted methods of accounting and bookkeeping. Even though such method of accounting and bookkeeping may be based on a fiscal year, the Business Privilege Tax and Mercantile Tax must be computed on the basis of the calendar year. A taxpayer who keeps their books on a cash basis will report gross receipts on the basis of amounts received during the period used as the measure of the tax. A taxpayer who keeps their books on an accrual basis will report the same receipts from all services rendered during the period used as the measure of the tax, irrespective of the date when such monies are due or collected from the client or customer.

#### **Section 203 - Period used in computing tax.**

(a) General. The tax is measured by the total amount of gross receipts generated by the taxpayer's business during the entire preceding calendar year.

(b) Businesses not in operation during the entire preceding calendar year. If a business has not been in operation for a full calendar year prior to any tax year, the gross receipts for the tax year shall be computed by multiplying by twelve (12) the monthly average of the actual gross amount of business transacted during the months while in business prior to the tax year.

(c) Businesses begun during the current tax year. If business operations commence after January 1 of the tax year, the gross volume of business shall be estimated by multiplying the actual gross volume of business transacted during the first month in business by the number of months remaining in the tax year. **Section 204 - Tax rate.**

The rate of tax on every dollar of gross volume of business shall be calculated as follows:

(1) Retail. On receipts attributable to retail sales of goods, wares and merchandise, the rate shall be one and one-half (1 1/2) mills, or one dollar and fifty cents (\$1.50) per thousand dollars (\$1,000) of gross volume of

business.

(2) Wholesale. On receipts attributable to wholesale sales of goods, wares and merchandise, the rate shall be one-fifth (1/5) mill, or twenty cents (\$.20) per thousand dollars (\$1,000) of gross volume of business.

(3) Service. On receipts attributable to service transactions, the rate shall be one and one-half (1 1/2) mills, or one dollar and fifty cents (\$1.50) per thousand dollars (\$1,000) of gross volume of business.

(4) Rental. On receipts attributable to rental transactions, the rate shall be one and one-half (1 1/2) mills, or one dollar and fifty cents (\$1.50) per thousand dollars (\$1,000) of gross volume of business.

**Section 205 - Wholesale transactions.**

A wholesale transaction is any transaction involving the sale of goods, wares, or merchandise to dealers or vendors who buy to sell again. Generally, wholesale transactions are sales of goods made to one who intends to resell the goods to the ultimate consumer.

**Section 206 - Retail transactions.**

A retail transaction is any sale of goods made for final consumption to an ultimate consumer. A retail transaction shall also include any sale for use and/or consumption in the making of an entirely different product, sales to contractors for use in a contract providing installation and labor, sales to nonprofit organizations, hospitals and governmental agencies.

**Section 207 - Service transactions.**

(a) Defined. A service transaction is any duty or labor to be rendered by one person to another and includes sales other than those of a wholesale, retail or rental nature. Service transactions include the provision of both labor and materials.

**Section 208 - Rental transactions.**

(a) General. A rental transaction is any consideration paid for the use or occupation of property, real or personal.

(b) Exception. No tax or license fee **shall** be assessed and collected on rental receipts received by an owner from a building of two units or less originally erected as a private dwelling house and occupied as a residence by such owner during the tax year.

**ARTICLE III**

**PAYMENT OF TAX AND FILING OF RETURNS**

**Section 301 - Who Must File A Return.**

(a) Every person, as defined herein, and every receiver, trustee, assignee or other person acting in a fiduciary or representative capacity, and any other combination of persons carrying on or exercising, within the Township of Montgomery or attributable thereto, any business must file a Business Privilege and Mercantile Tax Return.

(b) A partnership is considered to be a taxable unit for purposes of the

Business Privilege Tax and Mercantile Tax. The respective partners are not required to file separate returns as individuals, but they are jointly and severably liable for the payments of the partnership's Business Privilege and Mercantile Tax. Where an individual partner conducts a business activity separate from that of the partnership, the taxpayer must file a separate return indicating gross receipts attributable to non-partnership business activity.

**Section 302 - Annual return.**

(a) Every person subject to the Business Privilege and Mercantile Tax, who has commenced business at least one full year prior to the beginning of the tax year shall, on or before March 15th and annually thereafter, file a return with the Business Tax Administrator, setting forth their name, business name and address and such other information as is required. The return shall set forth the annual gross volume of business transacted during the preceding tax year, as well as the computed amount of tax due. Both the tax return and payment of the tax are due on March 15th of every year.

(b) The Business Privilege and Mercantile 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.

(c) Every return shall be made upon a form furnished by the Business Tax Office.

(d) Tax return forms may be obtained from and must be filed with Montgomery Township's Business Tax Office, 1001 Stump Road, P. O. Box 511, Montgomeryville, Pennsylvania 18936. Failure to obtain or receive the necessary forms will not excuse the taxpayer for failure to file a return and pay the tax in a timely manner.

(e) Where the taxpayer is an individual, the taxpayer shall personally sign the return. If the taxpayer is a partnership, the return shall be signed by at least one of the general partners. Should the taxpayer be a corporation, the return shall be signed by the officer of the corporation authorized to file tax returns.

(f) The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the taxpayer.

(g) One annual return must be filed for each business, even if a taxpayer maintains more than one location for its business. The return shall reflect all receipts from transactions occurring at all locations for the business. Where a business has more than one location a schedule shall be attached to the return depicting the various locations at which business is conducted, and detailing the receipts attributable to each location. If, however, a taxpayer maintains more than one different business in the Township, a separate annual return shall be filed for each different business.

(h) A taxpayer who believes that their business activities are exempt or excluded from the Business Privilege and Mercantile Tax must nevertheless file a return each tax year which includes all information requested, including gross receipts, showing clearly the basis for filing a "no tax due" return.

(i) A complete return shall be accompanied by the appropriate Federal or State tax forms, such as 1040 form Schedule "C" and/or Schedule "E", Form 1099,

Form 1120, and/or any other schedules or forms that may be required by the Tax Office. The veracity of such forms may be verified at any time by the Tax Office with the appropriate Federal or State taxing authority.

(j) A return will not be considered filed unless the taxpayer complies with all the above provisions pertaining to filing of returns and includes all information requested on the return. An incomplete return shall not be considered to be timely filed.

**Section 303 - Initial return.**

(a) Every person subject to the tax who commences business subsequent to January 1 of the tax year, shall within sixty (60) days from the date of commencing such business, file a return with the Business Tax Administrator setting forth their name, business name and address and such other information as may be required by the Business Tax Administrator in order to determine actual gross receipts and the amount of the tax estimated to be due.

**Section 304 - Payment of tax.**

(a) Payment of the tax is to be made in accordance with the filing of the annual return and is due no later than March 15th of each year.

(b) Payment of the tax may be made in cash, by check or by money order made payable to the order of Montgomery Township.

**Section 305 - Acceptance of Tax Return.**

(a) Retention of the return filed by the taxpayer or negotiation by the Business Tax Administrator of the payment tendered therewith does not constitute a final acceptance by the Business Tax Administrator of the accuracy or completeness of the return and tax payment. The Business Tax Administrator may elect to treat any such filing and payment as a partial disposition of the taxpayer's liability.

(b) The Business Tax Administrator reserves the right to make spot checks of returns filed, to make such corrections as appear necessary upon the face of the return, to submit additional billings or request additional information, and to make refunds based on the return without accepting as final any document or payment arising from such cursory examination.

(c) All returns filed, payments negotiated, or refunds remitted are conditional. Acceptance is final only after a duly approved audit or by operation of law.

(d) Any assistance furnished by agents or employees of the township prior to a completed and duly approved audit does not constitute estoppel against the township for taxes due.

**Section 306 - Confidential nature of return.**

Any information learned by the Business Tax Administrator, or any official, agent or employee of the Business Tax Administrator, as the result of any returns, investigations, hearings or verifications required or authorized by the Business Tax Administrator shall be confidential, except in accordance with proper judicial order or as otherwise provided by law.

**Section 307 - Dishonored checks.**

If any check received in payment of taxes is returned unpaid by the bank, there shall be added to the tax due the sum of ten (\$10.00) dollars.

**ARTICLE IV**  
**DETERMINATION OF TAX BASE**

**Section 401 - Application of tax.**

Any person who exercises the privilege of carrying on business activities attributable to the township is liable for the Business Privilege and Mercantile Tax. It is measured by the gross receipts generated or received in, attributable or allocable to the township. Where a receipt in its entirety cannot be subjected to the Business Privilege and Mercantile Tax by reason of the State or Federal Constitution or any other provision of law, the part of such receipt which may be taxed, and which is attributable to the "doing of business" in the township, shall be included in the tax base.

**Section 402 - Doing business in the township.**

(a) General. A person exercises the privilege of doing business by engaging in any activity for financial profit or gain within the limits of the township.

- (1) "Activity for financial profit or gain" includes, but is not limited to, any trade, business, profession, vocation, lease, rental, service, construction, communication or other commercial activity.
- (2) Meaning of "within the limits of the taxing district":
  - (i) Physical presence required: To exercise the privilege of doing business within the limits of the taxing district, a person must have some physical presence within the taxing district.



- (ii) Directed activities: If physical presence exists, the exercise of the privilege of doing business is not limited to the individual transactions and activities consummated or performed within the territorial limits of the taxing district but shall also be deemed to include such commercial activity as is managed, directed or controlled from within the taxing district.
- (iii) Residency: A person is not relieved from the business privilege tax by reason of Being a nonresident of the taxing district.
- (iv) Office or place of business: Persons who perform services in interstate commerce or who maintain bona fide places of business in other jurisdictions may be entitled to apportionment of their gross receipts. However, application of the business privilege tax is not limited to persons with a permanent place of business in the Township.

**Section 403 - Attribution of gross receipts**

(a) General. Receipts will be considered allocable to the place of business in Montgomery Township if the transaction or any activity in connection therewith occurs within the township; or is generated, directed, managed, or controlled by a township place of business and contributes to the taxpayer's ultimate business purpose.

(b) Gross receipts. Gross receipts or gross volume of business means gross consideration received in, or by reason of, any sale made, or services rendered or commercial or business transaction occurring in or attributable to the township including cash, credits, and property of any kind or nature undiminished by any costs of doing business, including both services, labor and materials entered into or becoming component parts of the services performed.

(c) Inter-company transaction. Receipts from transactions between affiliated companies, other than those of a purely accommodation nature, are subject to inclusion in "gross volume of business".

(d) Branch office. Where a taxpayer maintains a bona fide branch office or place of business outside the township, they will nevertheless be subject to Business Privilege and/or Mercantile Tax liability on those receipts which are the result of services rendered or business activities generated within or attributable to the township. Said taxpayer will be permitted to exclude branch office receipts from taxable gross receipts only where the taxpayer sustains the burden of proving that the township does not have the requisite minimal contact or nexus with those receipts to sustain the imposition of the Business Privilege and/or Mercantile Tax. An appropriate apportionment may be established to

allocate the part of the gross receipts properly attributable to doing business in the township.

(1) The following is a list of factors which are relevant, but not conclusive, for determining whether a person maintains a bona fide non-township branch office within the meaning of this Section.

- (i) name of taxpayer in telephone directory, or building directory if there is one, on door leading to entrance of office or otherwise displayed on the office exterior
- (ii) stationery and calling cards showing address
- (iii) storage of inventories or display samples at location in question
- (iv) a written or oral lease for the space involved and the direct or indirect payment of rent
- (v) a written or oral agreement for the maintenance of an office by an agent or agency on behalf of the taxpayer
- (vi) employees based in or operating out of an out-of-township location
- (vii) the expenses attributable to an out-of-township office are allowed as deductions on the Federal income tax form
- (viii) the taxpayer has paid Business Privilege and/or Mercantile Tax on said gross receipts to another taxing jurisdiction

No single factor will raise a presumption that a bona fide out-of-township office exists.

(2) Use by the taxpayer, agents or employees of facilities provided by the taxpayer's client, employer, customer, or any other person, even for a protracted period of time and even where such use constitutes part of the contractual or business arrangement entered into by the taxpayer with the said client, employer, customer, or any other person does not establish an out-of-township branch office for purposes of allocation of gross receipts.

(3) A field trailer used by contractors can be considered a bona fide out-of-township branch office under the following circumstances:

- (i) it bears the name of the taxpayer
- (ii) it is staffed by taxpayer's employees who report directly to the field site, and who control the operation from that site
- (iii) at least one telephone is present and listed

in the taxpayer's name

- (iv) it is maintained at the same site for no less than sixty days
- (v) it is owned and maintained or rented by the taxpayer or has all the indicia of ownership by the taxpayer

(4) An office maintained in the taxpayer's home which is located out-of-township is a bona fide office or place of business only if it is recognized as such for federal income tax purposes as being the sole office or place of business.

(5) A motel or hotel residence, used on a long-term basis, is not a bona fide out-of-township branch unless it fulfills the criteria set forth in subsection (d) (1) of this Section.

(e) If a taxpayer does not keep books, records and accounts in a manner which will clearly and objectively show the allocation of receipts to various branch offices or places of business, the Business Tax Administrator will make an assessment based on the entire amount of gross receipts from all sources. The Business Tax Administrator will not break out allegedly allocable receipts on the basis of subjective and unrecorded data.

**Section 404 - Interstate Commerce.**

(a) General. Receipts from interstate commerce are subject to Business Privilege and Mercantile Tax but may be subject to apportionment as provided herein. The taxpayer has the burden of proving any allocation, which must be supported by clear and objective evidence from taxpayer's books, records and accounts. Any receipts from a business engaged in interstate commerce are subject to Business Privilege and Mercantile Tax where:

- (1) the business has nexus with the Township;
- (2) the receipts are fairly apportioned;
- (3) the apportionment does not discriminate against interstate commerce; and
- (4) the apportionment is fairly related to the services provided to the business by the Township.

(b) Apportionment of receipts. A taxpayer who has receipts from interstate commerce may make an apportionment of such receipts based on an apportionment formula approved by the Business Tax Administrator. The formula is based on three factors: receipts, property, and wages. This formula will effect a fair and proper apportionment of receipts from interstate commerce so that only part of such receipts which is properly attributable to the township will be included.

(c) Apportionment for Professional Services. A taxpayer engaged in the provision of professional services in interstate commerce shall apportion its receipts as follows:

- (1) Professional fees derived from services billed on an hourly basis shall be apportioned by excluding receipts attributable to charges to the client for services performed out-of-state.
- (2) Professional services rendered on a flat or fixed fee basis or a contingent-fee basis shall be apportioned according to a ratio whose numerator consists of hours spent on the engagement while out-of-state and whose denominator consists of total hours spent on the same engagement for the same client.
- (3) Professional services performed under a contract which sets forth the percentage or amount of the total contract price attributable to a specific activity to be performed out-of-state shall be apportioned according to the contract terms, as long as such amount is a reasonable allocation.

(d) Other Apportionment Formulas. Whenever the Business Tax Administrator determines, either upon his own initiative or upon application by the taxpayer, that an apportionment is appropriate for a particular taxpayer, class of taxpayer or for the township, he may provide for a method of apportionment with due regard to the nature of the business concerned, mileage, wages, property, the number of jurisdictions in which the receipts are taxed, or any other pertinent factors; or he may adopt any method or methods of apportionment which are calculated to effect a fair, proper and reasonable apportionment for all the parties involved. The taxpayer may participate in proposing and developing a fair and equitable formula, but the final decision will rest with the Business Tax Administrator.

(e) Factors supporting determination of interstate commerce. The following is a list of factors which are relevant, but not conclusive, for determining whether a person's activities in another State constitute interstate commerce.

- (1) A nexus in the foreign jurisdiction sufficient to support the imposition of a similar tax by the foreign jurisdiction.
- (2) A provision in the contract or agreement between the taxpayer and client or customer which specifically assigns a reasonable portion of the overall fee to activities required to be performed in the foreign jurisdiction.
- (3) The length of time spent by the taxpayer in the out-of-state location.
- (4) The necessity for the services that are performed out-of-state in generating the overall gross receipts.
- (5) The inability of the taxpayer to perform the service which generates gross receipts in its entirety in Pennsylvania.
- (6) The number of employees who are required to perform the activities in the foreign jurisdiction. (However, utilizing a sub-contractor located in the foreign jurisdiction to carry out the taxpayer's out-of-state activities does not constitute the taxpayer's presence in a foreign jurisdiction for purposes of excluding

receipts from Business Privilege Tax and Mercantile Tax).

## ARTICLE V

### APPLICABILITY TO PARTICULAR ACTIVITIES

#### Section 501 - Conditional and installment contracts.

(a) Installment Contracts. The total receipts of any contract shall be reported as gross receipts for the year in which the contract is performed. The fact that such contract may be discounted, pledged or sold to a finance company, bank or other the purchaser of such commercial paper shall not affect the total gross receipts reported.

(b) Conditional Contracts. When a service intended to be completed in a period exceeding twelve months is entered into on the basis of a contract which calls for payment to be made according to the percentage of work completed during the year, such payment shall be reported as receipts for the year in which they were received.

(c) Commission Fee. When a conditional or installment contract is made by a person as a commission agent, said person will be required to report the total gross commission earned in accordance with subsections (a) and (b).

(d) Credit and finance charges. Credit and/or finance charges received pursuant to contract may not be excluded from gross receipts.

#### **Section 502 - Consignment sales.**

A taxpayer accounting for the receipts from consignment sales occurring within the township must report as gross receipts the amount withheld from the principal as compensation.

#### **Section 503 - Vending machine sales.**

The entire gross receipts of vending machines and other mechanical devices which dispense goods, wares, and merchandise are to be included in the gross volume of business of the owner or lessor thereof. No deduction may be made therefrom for splits, rentals, commissions or other remuneration to persons in charge of the machines and/or to the lessee of the premises upon which the machines are located.

#### **Section 504 - Commissions paid by brokers.**

Any broker who splits or otherwise divides a commission with another broker 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 the gross receipts that portion of the fee paid to the other broker. This section does not exempt so-called finders fees, kickbacks, commissions, or other remuneration paid by the broker to another individual not in the same type of business as the broker. Nor does this section exempt from the gross receipts of a broker a commission paid by said broker to a salesman affiliated with him.

#### **Section 505 - Sale of capital assets.**

(a) General. 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) Bulk sale or exchange, merger. Where a corporation realized 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.

(c) Sale of Rental Real Estate. The gain on the sale of rental real estate may be subject to the Business Privilege Tax depending upon whether the acquisition, management or disposition of the real estate was for the purpose of

gain or profit regardless as to whether an actual gain or profit was realized.

**Section 506 - Professions, trades and other vocations.**

(a) **General.** A person who is engaged in a profession, trade or other vocation, other than as an employee of another, who is associated with an office or place of business in the township is subject to Business Privilege and/or Mercantile Tax. All compensation, however characterized, received from the practice of a trade or other vocation, constitutes a receipt and is subject to Business Privilege Tax and/or Mercantile Tax.

(b) The following are limited examples of professions, trades and other vocations:

- (1) 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 without regard to the location of property or persons for which or for whom the fiduciary relationship exists.
- (2) Attorneys. All fees received by an attorney, whether Court appointed or otherwise, constitute taxable receipts based on the location of the attorney. 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, in the sale of real estate, or from a collection matter. Attorneys may also exclude all court and row office costs incurred as agent for the client where such charges are fully reimbursed.
- (3) Physicians, surgeons, dentists and other health professionals. Physicians, surgeons, dentists and other health professionals doing business in the Township are subject to Business Privilege and/or Mercantile Taxes. All compensation received in the course of business constitutes a receipt and is subject to the tax.
- (4) Accountants, engineers, designers, consultants, Etc. Accountants, engineers, designers, consultants and other such professionals doing business in the township are subject to Business Privilege and/or Mercantile Taxes, regardless of the location of their clientele. All compensation received in the course of business constitutes a receipt subject to the tax, with the possible exception of those receipts earned through interstate commerce.
- (5) Undertakers, morticians and funeral directors. Undertakers, morticians and funeral directors doing business in the township are subject to the Business Privilege and/or Mercantile Tax. All compensation received in the course

of business constitutes a receipt subject to the tax without any deductions for costs or expenses. Both sales of tangible personal property and services shall be included in calculating the gross receipts.

**Section 507 - Principal and Agent.**

(a) General. Gross receipts from sales made or services rendered by an agent for the account of a 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 the agent for transmittal to the principal. The agent is required to report as gross receipts only the commission withheld by him as compensation for his services before remitting to the principal and/or any commissions received after the receipts are remitted to the principal. No deduction from gross receipts may be taken by the principal for commission paid to or withheld by the agent nor shall the agent deduct from gross receipts any expenses that have not been reimbursed by the principal.

(b) Collections by Agent.

Money or property received by an agent for transmittal to a third party is not to be reported by the agent as gross receipts, but any commission received for services as agent must be included in gross receipts.

(c) Factors Establishing a principal/agent relationship.

A person will be regarded as acting as an agent or representative in promoting or soliciting sales or rendering services for the account of a principal under the following conditions:

- (1) The contract or agreement between such persons clearly and legally establishes the relationship of principal and agent.
- (2) The books and records of the agent or representative show the name of the actual owner of the property on whose behalf the sale is made or the service is rendered.
- (3) The credit risk is assumed by the actual owner of the property or the person for whom the service is rendered.
- (4) The books and records of the agent or representative show the amount of gross receipts and the amount of commission due thereon.

(d) Undisclosed Principal. A person selling property, including real property, or rendering services for an unknown or undisclosed principal is subject to the tax as a principal, unless there is disclosed in the agent's return and substantiated by records, the identity of the principal and the amount of sale made on their behalf.

(e) Manufacturer's Representative. Where a manufacturer's representative maintains a place of business within the township as an agent, his reportable receipts shall include all commissions earned from sales to Pennsylvania customers. If a manufacturer's representative does not maintain a place of business within the township, his reportable receipts shall include only those



commissions earned from sales to customer located within the township.

(f) Insurance agents, brokers, and underwriters.

- (1) General agents for insurance companies are required to report as gross receipts the entire commissions received as compensation on policies sold by them directly as well as the overriding commissions received by them upon business produced by brokers and subagents.
- (2) Brokers or subagents are required to report as gross receipts the commissions received as compensation for their services.
- (3) Commissions will be deemed attributable to the township office for inclusion in the tax base if they result from the efforts of brokers subagents, or employees who work in, are directed or managed from, or are attached to the township office. The mere issuance of policies to out-of-township customers will not exclude the commissions earned therefrom.

(g) Real estate brokers, agents and developers.

(1) All commissions and fees received for services rendered in promoting the purchase, sale, rental and/or management of property are reportable as receipts subject to the Business Privilege Tax. Brokers and agents not having an office in the township shall report as taxable receipts commissions received on the sale of properties within the taxing district.

(i) A broker who is a member of a multi-list organization may exclude from its receipts the amount required to be remitted to another broker who originally listed the property which generated the commission. No other exclusions are permitted.

(ii) Any compensation received from the sale of real property owned by a broker or agent is fully reportable as a receipt. No deductions are permitted for closing, transfer or other expenses of sale.

(iii) Commissions are attributable to the township if resulting from the efforts of brokers or agents doing business in the township. The fact that the sale property is located outside the township will not exclude the commissions earned therefrom.

(2) The entire amount received by a developer as the result of the sale of real estate or rental of any real property, commercial, industrial or residential, that has been erected, improved or remodeled as part of a development plan is subject to Business Privilege Tax as a taxable receipt.

(h) Employer/employee relationships.

(1) Agents shall not be subject to the Business Privilege Tax where their relationship is that of employee of the principal. Factors which establish an employer/employee relationship include the following:

- (i) The payment by the principal of social security and unemployment compensation taxes on behalf of the agent;
- (ii) The entitlement, in the event of an accident in the course of business activities, of the agent to worker's compensation;
- (iii) The participation by the agent in a pension plan offered to other employees of the principal; and
- (iv) Collection of withheld federal, state or local taxes.

(2) Persons issued a Form 1099 for Federal income tax purposes shall be considered to be agents whose receipts are subject to the Business Privilege and/or Mercantile Tax.

(3) Statutory employees are considered to be agents whose receipts are subject to the Business Privilege and/or Mercantile Tax. Statutory employees are individuals in certain occupational groups who are not considered by the Internal Revenue Code to be common law employees. Such individuals are permitted by the IRS to fully deduct expenses attributable to a trade or business carried on by the individual, as the trade/business does not consist of the performance of services by the individual as an employee. The deductions are taken on Schedule C of the 1040 Federal income tax forms. See Revenue-Ruling 9093.

**Section 508 - Recreational facilities.**

(a) Theaters and Motion Picture Houses. Persons operating theaters or motion picture houses in Montgomery Township, whether as owner or lessee, are subject to the Business Privilege and/or Mercantile Tax on gross receipts from ticket sales, house or film rentals, commissions received on vending machine sales, concession sales, public telephone booths, advertising fees and sources of revenue. The prior exemption of gross receipts from ticket sales has been removed as a result of Cheltenham Township v. Cheltenham Cinema, Inc., 697 .2d 258 (Pa 1997). Amended December 22, 1997.

(b) Social and recreational clubs. Under state law the taxing district 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 tax. However, many such organizations, sell food, beverages **and** recreational equipment to, or perform non-charitable services (such as catering services) for, members as a regular part of their activities. Although such items may be exempt from federal income tax, they are not exempt from the taxing district taxes. Accordingly, any such organization which does offer its members such goods or services must register and pay the tax. (This rule does not apply to "religious, charitable or educational" organizations which are entirely exempt from tax).

**Section 509 - Construction, alteration or repair of real property.**

(a) General. Any contractor, resident or nonresident, doing business in the township in which it constructs, alters, repairs or improves real property is subject to the Business Privilege Tax. All compensation received from the

performance of a contract to construct, alter, repair or improve real property constitutes receipts subject to Business Privilege Tax. The gross receipts shall reflect the total contract price received or receivable as stated by the terms of a contract. The contract price shall reflect any consideration made for the entire service provided by the contractor, including tangible personal property, labor, materials, supervision, overhead costs and profits, without deduction therefrom. No deductions shall be made with respect to amounts paid to subcontractors or suppliers.

(b) Cost-Plus Contracts. A contractor performing contracts on the basis of a "cost-plus-a-fixed-fee" or "cost-plus-a-percentage" contract is required to report as gross receipts the full contract price as explained above.

(c) Supervisory Contracts.

(1) Where the owner of the property or contracting customer buys or furnishes the material, hires all labor in their own name, and pays the contractor a fixed fee or percentage of the total cost to supervise and direct the construction or installation project, the supervising contractor will be required to report only the gross amount of the fee or percentage received.

(2) Where such owner or customer authorizes the 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:

(i) pledges their own credit or is liable in the first instance to the materialmen, suppliers, laborers, or subcontractors, as distinguished from (1) merely guaranteeing payment to them or (2) undertaking to reimburse the contractor for the cost of such materials, services or subcontracts; and

(ii) agrees to make payment directly to the materialmen, suppliers, laborers or subcontractors; such sales or services will be regarded as made directly to the owner or customer and the contractor will not be required to include such items in their gross receipts.

(d) Contracts for installation. A vendor who supplies and installs materials in the construction, alteration, repair or improvement of real property in which the materials become an integral part of the real property upon installation is subject to Business Privilege Tax. The vendor's gross receipts shall reflect the total contract price received or receivable as stated by the terms of a contract. The contract price shall reflect the consideration made for the entire service provided by the vendor, including tangible personal property, labor, materials, supervision, overhead costs and profits, without deduction therefrom. No deductions shall be made with respect to amounts paid to subcontractors or suppliers.

(e) Receipts from services to governmental agencies and non-profit agencies and non-profit organizations. Receipts made from any transaction rendered to any governmental body or authority or to religious, charitable, beneficial, educational and other non-profit entities shall be included in the tax base whether such services are performed for profit or otherwise. The statute does not grant any exemption to taxpayers transacting business with such agencies or institutions.

(f) Montgomery Township Contractors or Subcontractors.

A township resident contractor or subcontractor engaged in the performance of building, construction, improvement, repair, alteration, or installation contracts at a point outside the territorial limits of Montgomery Township may exclude from the measure of the tax base the gross receipts derived therefrom, provided that a bona fide branch office was maintained on the premises of **the** project during the performance of the contract, wherein **all** activities associated with such project were directed, controlled and managed from the job site to the extent that it constituted a branch office or place of business and that the Business Privilege Tax was paid to the foreign jurisdiction on the receipts derived from the activities located therein, as provided in Section 403 (d), relating to branch offices.

**Section 510-Alteration, repair or improvement of tangible personal property.**

Persons who repair, alter and improve the tangible personal property of others, including but not limited to artisans, home improvement contractors, auto repair shops and others are required to report the total charge made for the entire service including labor and materials without deduction therefrom.

**Section 511 - Rental and lease transactions.**

(a) Rental of space. Receipts earned from the rental/lease of space and the furnishing of associated services including, but not limited to, hotels, boarding houses, nursing homes, rooming houses and other such establishments, are subject to Business Privilege Tax. No deductions shall be permitted therefrom.

(b) Rental real estate. Receipts earned from the rental/lease of real property, including, but not limited to, dwelling units, buildings, offices, retail space or any portion thereof, are subject to the Business Privilege Tax. No deductions shall be permitted therefrom for depreciation, maintenance, repairs, taxes, utilities, mortgage payments or other expenses of operation. The Business Tax Administrator will consider the nature of the rental activity in determining whether the rental activity constitutes "doing business" under the ordinance.

(c) Rental of tangible personal property. Receipts earned from the rental/lease of tangible personal property, including but not limited to office equipment, machinery, and other such property, are subject to Business Privilege Tax. No deductions shall be permitted therefrom.

**Section 512 - State and local tax or licenses.**

(1) Nominal or registration fees. The fact that a taxpayer receives a certificate or other document which is designated a "license" from the Commonwealth of Pennsylvania for which the taxpayer pays a sum of money does not

exempt the taxpayer from the Business Privilege and Mercantile 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 Business Privilege and Mercantile Tax.

(2) Non-licensed functions taxable. The receipts of any person who falls within the State tax or license fee exemption, which are derived from any activity which if conducted separate and apart from other business activities would not be subject to the State tax or license fee shall not be excluded from the tax base.

(3) Local tax under State Authority. Local taxes by counties, municipalities or other public bodies, though authorized by State legislation are not considered State taxes or license fees.

(4) Monies returned to municipalities by the State. Any tax which is collected by the State which, with the exception of administrative costs, is returned to the municipalities, is not considered a State tax or license fee.

(5) Township Permits. Payment to the Township of Montgomery for housing permits, building and plumbing permits, etc., as required by township ordinances, will not exempt the taxpayer from the Business Privilege and Mercantile Tax.

#### **Section 513 - Financial institutions.**

(a) Pre-emption. Financial institutions engaged in banking operations are exempted from Business Privilege and/or Mercantile Taxes due to State preemption. Therefore, where a financial institution is (1) exclusively regulated by a State or Federal agency and (2) pays a Bank Shares Tax or its equivalent on its gross receipts, the Business Privilege and/or Mercantile Tax is inapplicable. This exemption does not apply to Consumer Discount Companies.

(b) Non-regulated activities. Receipts earned by financial institutions on non-regulated activities are subject to Business Privilege and/or Mercantile Tax.

(1) Reportable receipts shall include the following:

- (i) Fees, commissions, or other compensation received for services rendered;
- (ii) Gross profit realized from trading in stocks, bonds and/or other securities, commodities, commercial paper, notes or other evidence of indebtedness, monetary metals, royalties, interest in oil, gas and mineral deposits;
- (iii) Dividends and interest received;
- (iv) Any other gains, profits or emoluments by whatsoever term designated resulting from the operation of a financial business without deduction for overhead or other costs of production.

(2) Reportable receipts shall not include the following:

- (i) returns of capital,
- (ii) the redemption of collateral at the value for which it was pledged, or
- (iii) deposits retained to the account of another.

**Section 514 - Holding companies.**

(a) General. Dividends and royalties earned by subsidiaries of holding companies doing business in the township are reportable as receipts of the holding company for Business Privilege Tax. Dividends and royalties from subsidiaries located wholly outside Pennsylvania are not receipts of the holding company subject to the tax.

(b) Apportionment. Dividends and royalties earned by subsidiaries located partially outside Pennsylvania are taxable receipts of the holding company based on the following apportionment formula:

(1) Property factor - the numerator is the average value of real and tangible personal property owned or rented and used in Pennsylvania during the tax year of the taxpayer and all subsidiaries subject to the Pennsylvania Corporate Net Income Tax; the denominator is the average value of all real and tangible personal property owned or rented and used during the tax year of the taxpayer and all subsidiaries.

(2) Wages and salaries factor - the numerator is the compensation paid in Pennsylvania during the tax year by the taxpayer and all subsidiaries subject to the Pennsylvania Corporate Net Income Tax; the denominator is the total compensation paid during the tax year by the taxpayer and all subsidiaries.

(3) Sales factor - the numerator is the sales in Pennsylvania during the tax year by the taxpayer and all subsidiaries subject to the Pennsylvania Corporate Net Income Tax; the denominator is the total sales during the year by the taxpayer and its subsidiaries.

The total of the above three percentages divided by three will determine the average percentage to be used. The average percentage will then be applied in the appropriate circumstances described above.

**Section 515 - Financial transactions.**

(a) Businesses subject to Business Privilege Tax must include in its tax base receipts from dividends, interest, income from stocks, bonds, credit obligations, and other security transactions, which are obtained by investing the funds of such business.

(b) Proceeds derived by a corporation from the original sale of its own shares do not constitute receipts subject to Business Privilege Tax. However, receipts realized from sales of a corporation's own stock, after issuance and repurchase by the corporation must be included in the tax base.

(c) Receipts shall not include return of capital or redemption of collateral at the value for which it was pledged.

(d) If sales of investments result in a loss, the loss may be offset against gains from similar financial transactions in the same tax year, but the

loss may not be used to diminish receipts realized in the ordinary course of business.

(e) Where a taxpayer purchases its own bonds for retirement at a price either less than the issuance price as adjusted for the amortization of bond premium, if any, or less than face value, whichever is less, the difference between the purchase price and the carrying value must be included in the tax base.

(f) Gains or losses realized on hedging transactions are gains or losses from securities transactions within the meaning of this Section.

**Section 516 - Exclusions from receipts:**

(a) State pre-emption.

(1) General. No Business Privilege and/or Mercantile tax shall be applied to a business which is subject to a State or Federal tax or license fee on gross receipts and which tax or license fee has been determined to be the basis for exemption from the imposition of a Business Privilege and/or Mercantile Tax.

(2) Banking. Financial institutions engaged in banking operations are excluded from Business Privilege Tax where regulated by the Department of Banking and where payment of the Bank Shares Tax or its equivalent is required. The exclusion does not apply to non-banking or non-regulated activities.

(3) Distribution of malt and brewed beverages. Businesses engaged in the distribution of malt and brewed beverages are excluded from Business Privilege and/or Mercantile Tax. Although gross receipts from beer sales are excludable, sales of soft beverages and food are not. This exemption is not extended to restaurant sales of alcoholic beverages.

(b) Public Utility. The receipts of any public utility, operating under the rules and regulations of the Pennsylvania Utility Commission, derived from supplying services at rates specified in the tariffs, shall be excluded from the tax base. **Public utilities shall not exclude from their tax base receipts derived from non-regulated advertising and rentals or charges levied for the use of servicing of equipment, or any other non-regulated receipts.**

(c) Taxes. 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.

(d) Non-profit. Nonprofit corporations or associations organized for religious, charitable or educational purposes are exempt. The exclusion from taxation is limited to those receipts derived from activities which are connected with the non-commercial operations of the organization. Commercial activities carried on by such an organization are taxable. All business income of nonprofit religious, charitable and educational organizations is taxable.

(e) Government Agencies. Agencies of the Government of the U.S., the Commonwealth of PA, the County of Montgomery and the North Penn School District and the business of any political subdivision, or any authority created or organized under the pursuant to any act of assembly are exempt.

(f) Manufacturers.

- (1) Defined. 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 signaled 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.

If claiming a manufacturing exemption, a written request, detailing the nature of the operation, must be made to the Business Tax Administrator. An inspection of the operation may be required prior to a decision being rendered. Acceptance or rejection of the request will be issued by the Business Tax Administrator in writing. All gross receipts will be considered taxable until said decision regarding exemption is issued. A manufacturer is required to file an annual tax return and obtain an annual business license. The tax return must indicate total gross receipts segregating manufacturing non-taxable receipts from non-manufacturing taxable receipts. The manufacturer should also indicate whether there has been any changes to their business activity since their last filing.

**Section 517 - Miscellaneous excluded receipts.**

The following transactions may be deducted from gross receipts:

- (i) Cash discounts to purchasers for prompt payment of bills
- (ii) Freight delivery or transportation charges paid by the seller for the purchaser;
- (iii) Sales of trade-ins up to the amount given the prior owner as a trade-in allowance;
- (iv) Refunds or credits given customers for defective goods returned;
- (v) Taxes collected as an agent for the United States government, the Commonwealth of Pennsylvania, or the Township of Montgomery.



- (vi) Trades between sellers of identical goods, but the exemption does not extend to any additional cash payment accompanying the trade;
- (vii) Transfers between one department, branch or division of a business entity and another recorded on the books as an interdepartmental transfer;
- (viii) Trade discounts allowed to purchasers as adjustments to a price including the following:
  - (a) Discounts deducted from the face amount of a bill as a method of adjusting the list price, not including prompt payment;
  - (b) Discounts unconditionally made upon settlement of the bill and allowed as a matter of established customer of trade;

(g) Other. In addition to the other exclusions set forth in these regulations, a person shall be excluded from the Business Privilege Tax and/or Mercantile Tax where he is specifically exempted or excluded from all local taxation by the express terms of a particular Act of Congress of the United States or of the Legislature of the Commonwealth of Pennsylvania. Where a taxpayer claims any exemption or exclusion from the Business Privilege Tax and/or Mercantile Tax, he must file a tax return, and citing the Act under which exclusion or exemption is authorized. The taxpayer must be able to substantiate his exemption or exclusion by the facts of his operation supported by valid business records. Any aspect of a taxpayer's business which is not specifically exempted or excluded by law will be subject the tax.

**ARTICLE VI**

**ADMINISTRATION & ENFORCEMENT**

Chapter One. Department Powers

**Section 601 - Books and Records**

(a) Books, journals, invoices, documents and other accounting records utilized by the taxpayer in the ordinary course of business must be kept in a manner which will reflect actual business operations. There must be objective criteria such as invoices, to support the returns filed by the taxpayer. The taxpayer claiming exemptions or exclusions for any portion of gross receipts must maintain complete records which will support the validity of the claim. Such claims will be disallowed if not sufficiently proven by the taxpayer.

(b) If records are not available for the entire period requested for review, the Business Tax Administrator may utilize whatever records or information are available to reconstruct, as accurately as possible, figures that reflect the business activity of the taxpayer for the period involved.

(c) If records are not available in the township to support the returns which were filed or which should have been filed, the taxpayer will be required to make them available to the Business Tax Administrator either by producing them in a township location or by paying for the expenses incurred by the Business Tax Administrator in traveling to the place where the records are regularly kept.

**Section 602 - Inspection and Examination**

The Business Tax Administrator is authorized to examine the books, papers and records of any taxpayer or putative taxpayer in order to verify the accuracy of any return made, or if no return was made, to ascertain whether the tax should be imposed and, if so, the amount of the tax due. The Business Tax Administrator is further authorized to examine any person connected with any business concerning gross receipts of the business which were or should have been included in the return for taxation and may compel the production of books, papers and records and the attendance of all persons, whether as parties or witnesses, who is believed to have knowledge of such business or gross receipts. Failure to appear or produce the requested document will result in the fines and penalties set forth in Section 610 of these regulations and/or a suit in equity to compel production.

### **Section 603 - Audits**

(a) The Business Tax Administrator has the right to review any tax return filed for a period of five years following its filing and to verify its accuracy or assess a deficiency, together with penalty and interest, upon the completion of that review.

(b) If no return was filed where an inspection and examination by the Business Tax Administrator indicates such a return should have been filed and tax paid, or if the return filed was fraudulent, there is no limit to the number of years for which a deficiency assessment, plus penalty and interest, be made.

(c) The initial inquiry may include taxes required to be paid or tax returns required to be filed no more than three **(3)** years prior to the mailing date of the notice. If, after the initial request, it is determined that a return was not filed, income was underreported or taxes were not paid for one or more of the tax periods covered by the initial request, the Township may make subsequent request for a tax return or supporting information. This section does not apply if there is sufficient information to indicate that the taxpayer failed to file a required return or pay an eligible tax which was due more than three years prior to the date of the notice. **(See Section 103, Rules & Regulations, Taxpayer Bill of Rights)**

### **Section 604 - Examination of return, refunds and assessments.**

(a) Deficiency. The Business Tax Administrator shall examine every return as soon after filing as practical to determine the correct amount of tax. If the Business Tax Administrator finds that the amount of tax shown on the return is less than the correct amount, the Business Tax Administrator shall notify the taxpayer in writing of the amount of the deficiency proposed to be assessed, and the reasons therefore. **(See Section 105, Rules & Regulations, Taxpayer Bill of Rights)**

(b) No return filed. If the taxpayer fails to file any return of tax required to be filed, the Business Tax Administrator shall estimate from any available information the taxpayer's gross receipts, and the tax thereon, and shall notify the taxpayer in writing of the amount proposed to be assessed against the taxpayer as a deficiency, and the reasons therefore.

(c) Notice of proposed assessment. A notice of proposed assessment shall: **(See Section 105, Rules & Regulations, Taxpayer Bill of Rights)**

- (1) be in writing;
- (2) state the tax, interest, penalty, additional amount, or addition to tax which is proposed for assessment and is due; and
- (3) set forth the amount and reason for the proposed assessment.

(d) Penalty and interest abatement. Penalty abatement may be requested for exercise of due diligence when computing the original return. Such penalty abatement shall be made at the discretion of the Business Tax Administrator. There shall be no abatement of interest. **(See Section 106, Rules & Regulations, Taxpayer Bill of Rights)**

(e) Refunds If the Business Tax Administrator finds that the tax that has

been paid by the taxpayer is more than the correct amount, the Business Tax Administrator may issue a refund to the taxpayer. However, the Business Tax Administrator shall make no refund unless a certified written claim is filed and the appropriate supporting documentation (i.e. Federal tax returns, etc.) is provided by the taxpayer within three (3) years of the due date for filing the tax return, or one year (1) after actual payment, whichever is later. The Business Tax Administrator may determine that the refund amount is to be verified by audit. Following the expiration of three years from the date of any payment identified as a possible overpayment, if no certified written claim has been received by the Business Tax Administrator, the payment shall be treated as no longer subject to refund and any credit representing the refund shall be canceled, unless otherwise specified by any Act of the General Assembly of Pennsylvania. **(See Section 201, Rules & Regulations, Taxpayer Bill of Rights)**

**Section 605. Assessment final if no protest.**

Ninety (90) days after the date on which it was mailed, a notice of proposed assessment shall constitute a final assessment of the amount of tax, interest, penalties, additional amounts and additions to the tax specified in such notice, excepting only those amounts as to which the taxpayer has filed a timely protest with the Business Tax Administrator.

**Chapter Two. Violations, suits for tax collection, penalties, interest and fines.**

**Section 606. General.**

The remedies provided in this chapter are not mutually exclusive. The utilization by the Business Tax Administrator of one remedy does not preclude utilization of the other. Moreover, use of either or both of the remedies provided in these Sections does not preclude the use by the township of any other legal or administrative procedure which can bring about compliance by the taxpayer with the provisions of the Business Privilege Tax and/or Mercantile Tax.

**Section 607. Violations.**

It shall be a violation of the business tax ordinances and these regulations to:

- (1) Fail, neglect or refuse to make any declaration or file a return as required;
- (2) Refuse to permit the Business Tax Administrator to examine the books, records or accounts of any business;
- (3) Make any incomplete, false or fraudulent return or to attempt to avoid full disclosure of the amount of receipts to avoid payment in whole or in part of the Mercantile/Business Privilege Tax; or
- (4) Fail to make any payment when due.
- (5) Fail to comply with any other provisions of the Ordinances or these regulations.

**Section 608 - Suits for Recovery of Unpaid Taxes**

The Business Tax Administrator may sue in the name of the Township, in law or in equity, for the recovery of those taxes due and unpaid under the provisions of the Business Privilege Tax and/or Mercantile Tax, to compel the production of

records or to enforce any other provision of the tax.

**Section 609 - Penalty and Interest**

(a) Penalty and Interest for Non-Payment

- (1) If for any reason the tax is not paid when due or additional tax is determined to be due as a result of a deficiency assessment, penalty at the rate of ten percent (10%) on the amount of such tax, and additional interest of one percent (1%) per month for each month or fraction of month during the period in which the tax remains unpaid shall be added to the tax due.
- (2) Where suit is brought for the recovery of such tax, the person liable therefore shall, in addition, be liable for the costs of collection and the penalty and interest herein imposed.
- (3) Once due and owing, penalty and interest become part of the tax and shall be collected as such. A person's belief that no tax is due and owing, or the failure of any person to receive or obtain the forms required for making the returns required under the Ordinances is not a valid defense to the imposition of penalty and interest herein for violation. Good faith shall not be a defense to the imposition of penalty and interest.
- (4) No hearing or appeal shall operate to suspend the accrual of penalty and interest from the date the tax was due to the date of actual payment.

(b) Penalty and Interest on Deficiency Assessment.

- (1) On any additional tax determined to be due as a result of a deficiency assessment, penalty and interest will be assessed from the day the tax should have been paid to the date of payment. Penalty is calculated at the rate of ten percent (10%) on the amount of such tax, and an additional one percent (1%) per month or fractional part of a month until paid.

**Section 610 - Fines and Penalties for Violation of Applicable Provisions of Ordinance #109 & #66, Chapter 209, Article V and Article II of the Code of Montgomery Township.**

(a) Any person, as defined in this Ordinance 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 Ordinance, 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 three hundred dollars (\$300) nor more than six hundred dollars (\$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 thirty (30) days.

(b) The fine imposed by the Section shall be in addition to any other penalty imposed by any other section of this Ordinance.

(c) Each day on which such person violates the Ordinance may be considered

as a separate offense and punishable as hereinabove provided.

Chapter Three. Taxpayer Remedies.

**Section 611 - Legal Opinions and Hearings**

Any taxpayer who believes that the deficiency assessment is improper, incorrect or illegal, may request a review of his tax liability, with the Business Tax Administrator. The Business Tax Administrator shall have the authority to seek rulings, or opinion from the Township Solicitor. **(See Section 301 - Rules & Regulations, Taxpayer Bill of Rights)**

**Section 612 - Appeals**

Any person aggrieved by a final decision of the Business Tax Administrator may, after receipt of the notice of such decision, appeal the decision by filing a Petition to the Board of Supervisors. No hearing or appeal will operate to suspend the accrual of penalty and interest from the date the tax was due to the date it is actually paid. **(See Section 302 - Rules & Regulations, Taxpayer Bill of Rights)**