

Chapter 260. Taxation

Article IV. Mercantile Tax

[Adopted 5-1-1979 by Ord. No. 838 (Ch. 24, Part 5, of the 1999 Code of Ordinances)]

§ 260-33. Definitions; word usage.

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

BOROUGH

The area within the corporate limits of the Borough of West Mifflin.

COLLECTOR

The person designated, from time to time, by the Council of the Borough of West Mifflin to enforce and administer this article and collect the taxes provided for hereunder.

GROSS VOLUME OF BUSINESS

Value received, regardless of form.

LICENSE YEAR and TAX YEAR

The fiscal year beginning July 1, 1979, and ending at 12:00 midnight on December 31, 1979, and from then on shall mean the twelve-month period from January 1, 1980, through December 31, 1980, and thereafter on a calendar-year basis from January 1 through December 31.

PERSON

Any individual, partnership, limited partnership, association, corporation, trust or estate. Whenever used in any section prescribing and imposing a penalty, the term "person," as applied to associations or partnerships, shall mean the members or partners thereof, and, as applied to corporations, the officers thereof.

PLACE OF AMUSEMENT OR ENTERTAINMENT

Any place indoors or outdoors where the general public or a limited or selected number thereof may, upon payment of an established price, attend or engage in any amusement, entertainment, exhibition, contest, recreation, including, among other places, theaters, opera houses, amusement parks, stadia, arenas, baseball or football parks or fields, skating rinks, circus or carnival tents or grounds, fairgrounds, bowling alleys billiard or pool rooms, shuffleboard rooms, nine- or ten-pin alleys, riding academies, golf courses, bathing and swimming places, dance halls, tennis courts, archery, rifle, pistol, or shotgun ranges, arcades, and other like places. The term does not include any exhibition, amusement, performance or contest conducted by a nonprofit corporation or association organized for religious, charitable or education purposes.

RESTAURANT OR OTHER PLACES WHERE FOOD, DRINK OR REFRESHMENTS ARE SOLD

Includes such facilities of nonprofit corporations and/or beneficial associations which are deemed or considered to be services under either statutory or case law, or any other such

facility which is exempt by law.

RETAIL DEALER or RETAIL VENDOR

Any person who is a dealer in or vendor of goods, wares and merchandise, who is not a wholesale dealer or vendor, whether or not such vending or dealing is the primary business activity.

TEMPORARY, SEASONAL OR ITINERANT BUSINESS

Any business that is conducted for a limited period of time.

WHOLESALE DEALER or WHOLESALE VENDOR

Any person who sells to dealers in or vendors of goods, wares and merchandise and any merchant broker, factor and commission merchant, and to no other person, whether or not such vending or dealing is the primary business activity of such person.

- B. The terms "persons," "wholesale dealer," "wholesale vendor," "retail dealer," and "retail vendor" shall not include 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 growth, production or manufacture.
- C. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

§ 260-34. Imposition of tax.

For the tax beginning on July 1, 1979, and ending at 12:00 midnight on December 31, 1979, and continuing thereafter on the tax year beginning January 1, 1980, and thereafter continuing on a calendar-year basis from January 1 through December 31, without annual reenactment, a mercantile license tax for general revenue purposes is hereby imposed by the Borough of West Mifflin in the manner and rate hereinafter set forth.

§ 260-35. Licenses.

Every person desiring to continue to engage in, or hereafter to begin to engage in, the business or occupation of wholesale or 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, whether or not the same is incidental to some other business or occupation, and any person conducting or operating a place of amusement or entertainment, whether or not the same be incidental to some other business or occupation, on or before the 31st day of July 1979, and annually thereafter, or prior to commencing business in any license year shall procure a mercantile license for his place of business or occupation in the Borough from the Secretary of the Borough of West Mifflin, as required by law. Such licenses shall be conspicuously posted at the said place of business or occupation by every such person at all times.

§ 260-36. Imposition and rate of tax.

Every person engaged in any of the following occupations or businesses in the Borough shall pay a mercantile license tax for the tax year beginning July 1, 1979, and ending at 12:00 midnight on December 31, 1979, and from January 1, 1980, and ending at 12:00 midnight on December 31, 1980, and annually thereafter on a calendar-tax-year basis, from tax year to tax year, at the rate set forth:

- A. Wholesale vendor or dealer in goods, wares and merchandise, at the rate of one mill (\$0.001) on each dollar of the volume of the annual gross business transacted by them.
- B. Retail vendor or dealer in goods, wares and merchandise and all persons engaged in conducting restaurants or other places where food, drink or refreshments are sold, whether or not the same is incidental to some other business or occupation, and all persons conducting places of amusements

or entertainment, whether or not the same be incidental to some other business or occupation, at the rate of 1 1/2 mills (\$0.0015) on each dollar of the volume of the annual gross business transacted by them.

- C. Wholesale and retail vendors or dealers in goods, wares and merchandise, at the rate of one mill (\$0.001) on each dollar of the volume of the annual gross wholesale business transacted by them, and 1 1/2 mills (\$0.0015) on each dollar of the volume of the annual gross retail business transacted by them.
- D. The tax imposed by this article shall not apply to the dollar volume of annual business covering the resale of goods, wares and merchandise taken by the dealer as a trade-in or part payment for other goods, wares and merchandise, except to the extent that the resale price exceeds the trade-in allowance.

§ 260-37. Computation of volume of business.

- A. Every person subject to the payment of the tax hereby imposed who has commenced his business at least one full year prior to the beginning of any license year shall compute his annual gross volume of business upon the annual gross amount of business transacted by him during the preceding calendar year.
- B. Every person subject to the payment of the tax hereby imposed who has commenced his business less than one full year prior to the beginning of any license year shall compute his annual gross volume of business for such a license year upon the gross volume of business transacted by him during the first month he engages in business multiplied by 12.
- C. Every person subject to the payment of the tax hereby imposed who commences his business subsequent to the beginning of any license year shall compute his annual gross volume of business for such license year upon the gross volume of business transacted by him during the first month of his engaging in business multiplied by the number of months or fractions thereof he engages in business in such license year.
- D. Every person subject to the payment of the tax hereby imposed who engages in a business temporarily, seasonal or itinerant by its nature, shall compute his annual gross volume of business upon the actual gross amount of business transacted by him during such license year.
- E. Every person who shall discontinue business during any license year after having paid the mercantile license tax for the entire year, upon making proper application to the Collector, shall be entitled to receive a refund or pro rata amount of the tax paid, based upon the difference between the amount of tax paid and the amount of tax due based on the actual gross volume transacted by him during the license year.

§ 260-38. Declaration and payment of tax.

- A. Every return shall be made upon a form furnished by the Collector. Every person making a return shall certify the correctness thereof under penalties of perjury.
- B. Returns for the tax year of July 1, 1979, and ending at 12:00 midnight on December 31, 1979. Every person subject to the tax by this article shall make and file with the Collector, on forms prescribed or approved by the Collector, a quarterly return on or before October 31 of the current tax year and January 31 of the succeeding year, setting forth the aggregate amount of the whole volume of business transacted by him. Every taxpayer making such return shall, at the time of filing thereof, pay to the Collector the amount of tax shown as due thereon.
- C. Returns of the tax year commencing January 1, 1980, and ending at 12:00 midnight on December 31, 1980, and annually thereafter, on the calendar-year basis.

- (1) Every person subject to the tax imposed by this article shall, on or before April 15 of the current year, make and file with the Collector, on a form prescribed or approved by the Collector, a declaration of his estimated whole volume of business transacted by him during the period beginning January 1 and ending December 31 of the current tax year and pay to the Collector, in four equal quarterly installments, the tax due thereon as follows: the first installment at the time of filing the declaration, and the other installments on or before June 15 of the current year, September 15 of the current year, and January 15 of the succeeding year, respectively.
- (2) Every person subject to the tax imposed by this article who first anticipates any sale after April 15 of the current tax year shall make and file the declaration hereinabove required on or before June 15 of the current tax year, September 15 of the current tax year, or December 31 of the current tax year, whichever of these dates next follows the date on which the persons subject to the tax imposed by this article first anticipate such sales, and pay to the Collector, in equal installments, the tax due thereon on or before the quarterly payment dates which remain after the filing of the declaration.
- (3) Every person subject to the tax imposed by this article shall, on or before April 15 of the succeeding year, make and file with the Collector, on a form prescribed or approved by the Collector, a final return showing the amount of whole volume of business transacted by him during the period beginning January 1 of the current tax year and ending December 31 of the current tax year, the total amount of tax due thereon and the total amount of tax paid thereon. At the time of filing the final return, the taxpayer shall pay to the Collector the balance of tax due or shall make demand for refund or credit in the case of overpayment. Any taxpayer may, in lieu of making the fourth quarterly installment of his estimated tax, elect to make and file with the Collector, on or before January 31 of the succeeding year, a final return as hereinabove required.
- (4) The Collector is authorized to provide by regulations for the making and filing of adjusted declarations of estimated whole volume business transacted by him where a taxpayer who has filed the declaration hereinabove required anticipates additional sales not previously declared or finds that he has overestimated his anticipated sales.
- (5) Every person subject to the tax imposed by this article who discontinues business prior to December 31 of the current year shall, within 30 days after discontinuance of business, file his final return as hereinabove required and pay the tax due.

§ 260-39. Payment at time of filing return.

At the time of filing the return, the person making the same shall pay the amount of tax shown as due thereon to the Collector of Taxes.

§ 260-40. Duties of Collector; administration and enforcement.

- A. It shall be the duty of the Collector to collect and receive the taxes, fines and penalties imposed by this article. It shall also 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 Collector is hereby charged with the administration and enforcement of the provisions of this article and is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this article, including provisions for the reexamination and correction of returns, and payments alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred. Before exercising any power granted by Section 18 of the Local Tax Enabling Act, Act No. 511 of 1965,^[1] it shall be the duty of the Collector of Taxes to afford any person a hearing, after giving at least 10 days' written notice to such person of intention to exercise such power and of the right of such hearing.

Any person aggrieved by any decision of the Collector of Taxes shall have the right of appeal as provided by law.

[1] *Editor's Note: See 53 P.S. § 6924.701.1.*

- C. The Collector of Taxes is hereby authorized to examine the books, papers, and records of any taxpayer, or supposed taxpayer, in order to verify the accuracy of any return made or, if no return was made, to ascertain the tax due. Every such taxpayer, or supposed taxpayer, is hereby directed and required to give to the Collector, or his authorized agent, the means, facilities and opportunity for such examination and investigation as are hereby authorized.
- D. Any information gained by any Councilman or any other official, employee or agent of the Borough of West Mifflin as a result of any return, investigation, hearing, or verification required or authorized by this article shall be confidential, except for official purposes, and except in accordance with proper judicial order, or as otherwise provided by law. Any disclosure of any such information contrary to the provisions of this section shall constitute a violation of this article. Any employee or agent of the Borough may be dismissed from his or her employment for the disclosure of any such information.
- E. The Collector is hereby instructed and authorized to impound all returns, verifications and records that come into his custody through the operation of this article.

§ 260-41. Recovery of delinquent taxes; interest and penalties.

- A. All taxes imposed by this article, together with all penalties imposed under this article, shall be recoverable by the Borough Solicitor as other debts are recoverable. Nothing in this section shall be construed to limit the Borough from recovering delinquent taxes by other means provided by the Local Tax Collection Law, Act of May 25, 1945, P.L. 1050, and its amendments.^[1]
[1] *Editor's Note: See 72 P.S. § 5511.1 et seq.*
- B. If for any reason the tax is not paid when due, interest at the rate of 6% per annum on the amount of said tax, and an additional penalty of 1% on the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid, shall be added and collected. Where suit is brought for the recovery of any such tax, the person liable therefor shall, in addition, be liable for the cost of collection and the interest and penalties herein imposed.

§ 260-42. Collector of Taxes.

The Collector of Taxes shall be designated and appointed from time to time by ordinance of, and shall receive such compensation for his services and expenses as determined from time to time by, the Council of the Borough of West Mifflin. The Collector of Taxes shall furnish a bond with corporate surety acceptable to the Council of the Borough of West Mifflin, conditioned upon the faithful performance of his duties as prescribed by this article. The amount of the bond shall be set by ordinance of the Council of the Borough of West Mifflin.

§ 260-43. Violations and penalties.

[Amended 3-16-1999 by Ord. No. 1094]

Whoever makes any false or untrue statements on his return or refuses to permit inspection of the books, records or accounts of any business in his custody or control when the right to make such inspection by the Collector or his authorized agent is requested and whoever fails or refuses to procure a mercantile license when so required under this article or fails to keep his license conspicuously posted at his place of business as required herein shall, upon conviction thereof, be sentenced to pay a fine of not more than \$600, plus costs, and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 30 days. Each day that a violation of this article continues shall constitute a

separate offense. In cases of firms or associations, the penalty may be imposed upon the partners or members thereof, and, in the case of corporations, upon the officers thereof.

§ 260-44. Applicability.

- A. Nothing contained in this article shall be construed to empower the Borough 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 Borough of West Mifflin under the Constitution of the United States and the laws and Constitution of the Commonwealth of Pennsylvania.
- B. The provisions of this article shall not apply to nonprofit corporations or associations organized for religious, charitable or educational purposes, agencies of the government of the United States or of any person whose rates and services are fixed and regulated by the Public Utility Commission.

§ 260-45. Effective date.

This article shall become effective July 1, 1979, and shall remain in effect thereafter, from tax year to tax year, on a fiscal-year basis, and thereafter annually on a calendar-year basis, from tax year to tax year.