

**CITY OF BETHLEHEM BUSINESS PRIVILEGE AND
MERCANTILE TAX REGULATIONS**

**ARTICLE I
BUSINESS PRIVILEGE AND MERCANTILE LICENSE**

Section 100. License Required.

Persons or businesses desiring to do Business in the City of Bethlehem must first obtain a Business Privilege and Mercantile Tax License from the City of Bethlehem Tax Bureau located in the City of Bethlehem Government Center, 10 East Church Street, Bethlehem, PA 18018. Applications can be obtained by calling 610-865-7022.

Section 101. Prerequisites for Issuance of License.

No license shall be issued to persons or businesses who are required to obtain approval of the City of Bethlehem Zoning, Building, Fire and/or Health Officials, unless such approval is first obtained, then presented to the Tax Bureau.

No license will be issued to any person or business in default of any tax due to the City of Bethlehem, levied under the Codified Ordinances Article 339 (Occupational Privilege Tax Ordinance), Article 333 (Earned Income Tax Ordinance), and/or Article 341 (Business Privilege and Mercantile Tax Ordinance). Licenses procured through payment by check shall be wholly void and ineffective unless the license fee is actually received by the City of Bethlehem.

Section 102. Fee, Term, and Proration.

The Business Privilege and Mercantile Tax License fee is \$ 25.00 for each fiscal year beginning May 1st and ending April 30th of the succeeding year. The fee shall not be reduced pro rata by the portion of the license year elapsed in the year the license is first procured.

The City of Bethlehem, as the contracted collector of the business privilege and mercantile tax license fee imposed by the Bethlehem Area School District, shall collect and distribute the license fee as follows:

City of Bethlehem Business Privilege and Mercantile Tax License Fee	\$13.00
Bethlehem Area School District Business Privilege and Mercantile Tax License Fee	\$12.00
Total Business Privilege and Mercantile Tax License Fee	\$25.00

Section 103. Posting.

Licenses shall be kept and posted as follows:

Fixed place of business. Licenses shall be posted in a conspicuous place upon the premises where business is conducted. Fair, festival, and/or craft vendors who do business from a stand, booth, and/or other fixed, temporary place of business shall post the license conspicuously upon that fixed, temporary place of business.

Operating from a cart or vehicle. License shall be posted in a conspicuous place upon the cart or vehicle from where business is being conducted.

Contractors domiciled outside the City of Bethlehem. Contractors domiciled outside the City of Bethlehem, who have obtained a Business Privilege and Mercantile Tax License to do business within the City of Bethlehem shall keep the license available for inspection at the site where business is being conducted.

Vending machine owners. A person or business who sells goods, wares or merchandise by means of vending machines shall procure one license covering all of the vending machines, and shall post it at the principal place of business. A person or business operating arcade and video games shall be considered to be a vending machine owner.

Others. Licensees engaged in business, but not operating from a fixed place of business or from a vehicle, shall keep the license with their books of account or other business records and have it available for verification if requested.

Example: Rental business – persons or businesses who rent residential or commercial property within the City of Bethlehem are not required to post a license in the individual rental units.

Section 104: License for Branch Establishments:

In the event that a licensee conducts business at more than one location in the City of Bethlehem, an additional license is required for each additional place of business (except vending machines). Additional licenses shall be posted in accordance with the provisions of Section 103 of these Regulations. The fee for each additional license is \$ 25.00 in accordance with Section 102 of these Regulations.

Section 105: License for Fairs, Festivals, Carnivals, Craft Shows/Fairs, and Other Temporary Places of Business.

It shall be the duty and requirement of the sponsoring individual, group, Association or Corporation (including non-profit organizations) to provide to all of its vendors a City of Bethlehem Business Privilege and Mercantile Tax License Application and further, to provide the City of Bethlehem Tax Bureau with the following information at least ninety (90) days prior to any such festival, fair, carnival, craft fair or any other temporary place of business:

- 1) the event's scheduled dates and times
- 2) listing of all food, craft, and retail vendors
- 3) schedule of all vendor fees imposed by the sponsoring individual, group, Association, Corporation or non-profit organization, including but not limited to, registration fees, table fees, booth fees, utility fees, etc.

When any such festival, fair, carnival, craft fair or any other temporary place of business (collectively referred to herein as "Temporary Event") shall issue tickets, coupons, chips, or other form of "currency" exclusive to their event, it shall be the duty and requirement of the sponsoring individual, group, Association, Corporation, or non-profit organization to provide the City of Bethlehem Tax Bureau with an accounting of the ticket, coupon, chip or other form of "currency" exchanged or "cashed in" by its vendors within sixty (60) days of the Temporary Event's closure.

Any person or business desiring to do business at any Temporary Event within the City of Bethlehem must first obtain a Business Privilege and Mercantile Tax License from the City of Bethlehem Tax Bureau. Licenses issued to persons or businesses under this Section 105 are valid for the one-year term referenced in Section 102 and no additional licenses need to be obtained for participation in additional Temporary Events within the City of Bethlehem during the one year term.

A license to conduct business in the City of Bethlehem obtained pursuant to Section 100 herein also shall be deemed to apply to Temporary Events that the license holder participates in and no additional license need be obtained pursuant to this Section 105 so long as the business conducted at the Temporary Event is the same as the business conducted at the license holder's regular place of business.

Licenses obtained pursuant to this Section 105 for Temporary Events shall be posted in accordance with Section 103 of these Regulations at each Temporary Event location. A copy of a license obtained pursuant to Section 100 shall be posted in accordance with Section 103 of these Regulations at each Temporary Event location.

Participants in Temporary Events within the City are required to make and file tax returns and remit tax due after the close of each Temporary Event where they conduct business. Additional information regarding filing requirements can be found in Section 301C. of these Regulations.

Section 106: License for Real Estate Rentals.

Any person or business renting residential or commercial real property within the geographic boundaries of the City of Bethlehem is considered to be doing business in the City and is subject to the City's Business Privilege Tax. Any person or entity desiring to rent residential or commercial real property located within the City of Bethlehem must first obtain a Business Privilege and Mercantile Tax License from the City of Bethlehem Tax Bureau. Each rental location of a taxpayer is considered to be a separate place of business and in accordance with the Business Privilege Tax Ordinance, a taxpayer must obtain a separate business license for each such place of business. If there are multiple rental units within a single address, the location shall be considered a single place of business. However, each unit of rented space that has its own, identifiable address is considered a separate place of business requiring a separate business license.

Example 1: Taxpayer A owns rental properties located at 100, 102 and 104 Main Street in City of Bethlehem. Taxpayer must obtain three separate business licenses: one for 100 Main Street, a second for 102 Main Street and a third license for 104 Main Street.

Example 2: Taxpayer B owns a three story property located at 400 Main Street in City of Bethlehem. Taxpayer B leases the first floor to Family A, the second Floor to Family B, and the third Floor to Family C. Taxpayer B must obtain only one business license for the property located at 400 Main Street.

Section 107: Assignment and Transfer Prohibited.

Business Privilege and Mercantile Tax Licenses may not be assigned or transferred. Any purported transfer or assignment shall be void and ineffective.

Section 108: Replacement Licenses.

In the event of loss, defacement or destruction of any license, the licensee shall apply for a replacement license. The fee for a replacement license is \$10.00.

Section 109: Change of Taxpayer's Address.

Taxpayer's change of address must be reported in writing to the City of Bethlehem Tax Bureau (see Section 100 for address), within ten (10) days after such change becomes effective.

Section 110: Failure to Procure License.

Persons and/or businesses that engage in a business, profession, or other commercial activity without having first procured a Business Privilege and Mercantile Tax License are subject to penalty and fine.

**ARTICLE II
BUSINESS PRIVILEGE AND MERCANTILE TAX**

Section 200: Authority.

The Business Privilege and Mercantile Tax Ordinance was enacted under the authority of the Local Tax Enabling Act (Act 511 of 1965), 53 P.S. § 6924.101 *et seq.*, and appears in the Codified Ordinances of the City of Bethlehem at Article 341 (attached as Addendum “A”).

Section 201: Definitions.

As used in these regulations:

“Assessment” – The determination by a local taxing authority of the amount of underpayment by a taxpayer.

"Association" – A partnership, limited partnership, or any other unincorporated group of two or more persons or a limited liability company.

"Business" – The carrying on or exercising of any trade, profession, or other commercial activity. Employment for a salary or wage is not “business”.

"City" – The City of Bethlehem.

"Contractor" – Every person engaged in the business of furnishing labor, or both labor and materials, in connection with all or any part of the construction, alteration, repairing, dismantling or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, and every other type of structure as an improvement, alteration or development of real property.

"Corporation" – A corporation or joint stock association organized under the laws of the Commonwealth of Pennsylvania or any other state, territory, foreign country or dependency.

"Current Year" – The calendar year for which the tax is being levied.

"Date of Overpayment" – The later of the date paid or the date tax is deemed to be overpaid as follows:

- (1) Any amount overpaid as estimated tax for the tax period shall be deemed to have been overpaid on the last day for filing the final report for the tax period, determined without regard to any extension of time for filing.
- (2) An overpayment made before the last day prescribed for payment shall be deemed to have been paid on the last day.

- (3) Any amount claimed to be overpaid with respect to which lawful administrative review or appellate procedure is initiated shall be deemed to have been overpaid 60 days following the initiation of the review or procedure.

“Date of Resolution” – The date the overpayment is refunded or credited as follows:

- (1) For a cash refund, a date preceding the date of the Tax Bureau’s refund check by not more than 30 days.
- (2) For a credit for an overpayment:
 - (a) The date of the Tax Bureau’s notice to the taxpayer of the determination of the credit; or
 - (b) The due date for payment of the tax against which the credit is applied, whichever first occurs. For a cash refund of a previously determined credit, interest shall be paid on the amount of the credit from a date 90 days after the filing of a request to convert the credit to a cash refund to a date preceding the date of the refund check by not more than 30 days whether or not the refund check is accepted by the taxpayer after tender.

"Domicile" – The place where one lives and has his or her permanent home and to which he or she has the intention of returning whenever he or she is absent. Domicile is the fixed place of abode which, in the intention of the taxpayer, is permanent rather than transitory. Domicile is the voluntarily fixed place of habitation of a person, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some event occurs to induce him or her to adopt some other permanent home. In the case of a Corporation or Association, the domicile is that place considered as the center of business affairs and the place where its functions are discharged.

"Dwelling" – Any building, structure or single unit intended to provide complete independent living facilities for one or more persons which has permanent provisions for living, sleeping, eating, cooking and sanitation by human occupants, but does not include hotels, boarding and rooming houses.

"Dwelling Unit" – A room or group of rooms within a building, which forms one habitable unit with facilities used or intended to be used for living, sleeping, sanitation and the preparation of meals, and arranged for occupancy by one family.

"Gross Receipts" – Cash, credits or property of any kind received in exchange for merchandise sold or services performed or other business activity conducted within or attributable to the City, without deduction therefrom on account for costs of property sold; materials, labor or services used; interest or discount paid; or any other expense.

"Independent Agent, Contractor, or Representative" – A person who, while performing services for another person, is not subject to the direction and control of the other as to the details, methods and means by which a result directed by the other is accomplished.

"Landlord" – A person who leases Dwellings or Dwelling Units to others.

"Lease" – A transfer of the right to possession and/or use of real or personal property (including intangible personal property) for a term in return for consideration. A sale, including a sale on approval, or retention or creation of a security interest is not a lease. For purposes of these regulations any "rental" of property shall be treated as a lease.

"Local taxing authority" – A political subdivision levying an eligible tax. The term shall include any officer, agent, agency, clerk, Income Tax Officer, employee or other person to whom the governing body has assigned responsibility for the audit, assessment, determination or administration of an eligible tax. The term shall not include a tax collector or collection agency who has no authority to audit a taxpayer or determine the amount of eligible tax or whose only responsibility is to collect an eligible tax on behalf of the governing body.

"Merchandise" – Produce, goods, commodities, food or foodstuffs, wares, items, products, crops, livestock, animals, metals, gems, or any other property of whatever description, whether new or used.

"Office" – Shall mean the City of Bethlehem Tax Bureau, which is the office established by the City of Bethlehem to license business activity and collect the business privilege and mercantile tax and administer business privilege and mercantile tax ordinances, regulations or resolutions of the City of Bethlehem, and any political subdivisions, including school districts, with which it may enter into collection agreements. The Office performs the function of the "Tax Administrator."

"Overpayment" – Any payment of tax which is determined in the manner provided by law not to be due.

"Nonresident" – A person, Association or Corporation or other entity domiciled outside the taxing district.

"Person" or "Individual" – A natural person, individual, Association, Corporation, limited liability company, estate, trust, trustee, fiduciary, corporate officer, or any other entity subject to or claiming exemption from the tax or under a duty to perform an act for itself or for another under or pursuant to the City of Bethlehem Business Privilege and Mercantile Tax.

"Preceding Year" – The calendar year before the Current Year.

"Resident" – A person, Association, or Corporation or other entity domiciled in the taxing district.

"Retail Sales" – Sales made by persons engaged, as owner or agent, in the business of selling or exchanging merchandise for cash or barter or any consideration on the assumption that the purchaser of such goods has acquired the same for ultimate consumption or use and not for resale.

"Sale" – The passing of ownership from a seller to a buyer for a price.

"Services" – Any activity that does not involve Retail Sales or Wholesale Sales done for the benefit of another, or others, for consideration, including but not limited to, consulting, maintenance and repairs, building, engineering, planning, designing, installation, commission sales, training, the Lease or use of real or personal property (tangible or intangible), and the providing of legal, accounting or other professional expertise.

"Succeeding Year" – The calendar year following the Current Year.

"Tax Administrator" – Person, public employee, or private agency designated by the governing body to collect and administer the licensing of businesses and the tax on gross receipts.

"Taxing District" or "District" – The political subdivisions, including school districts, levying and assessing a gross receipts tax, which have appointed or commissioned the City of Bethlehem's Tax Bureau to license business activity and collect and administer the tax on gross receipts.

"Taxpayer" – A person, Association, Corporation or any other entity, required hereunder to file a return of Gross Receipts, or to pay a tax thereon.

"Underpayment" – The amount or portion of any tax determined to be legally due in the manner provided by law for which payment or remittance has not been made.

"Voluntary Payment" – The payment of an eligible tax made pursuant to the free will of the Taxpayer. The term does not include a payment as a result of distraint or levy or pursuant to a legal proceeding in which the Local taxing authority is seeking to collect its delinquent taxes or file a claim therefor.

"Wholesale Sales" – Sales made by persons engaged, as owner or agent, in the business of selling to, or exchanging with another person, goods for cash or barter or any consideration, for the purpose of resale by the person acquiring the goods sold or exchanged.

Section 202. Who Must File a Return.

Every person who has carried on or exercised business activity within the City of Bethlehem must file a tax return. A tax return must be filed whether or not tax is due. Tax returns are filed at the business entity level. In the case of a partnership, for example, the tax is calculated on the gross receipts of the partnership rather than the individual income of the partners. Any or all of the individual partners may be held responsible for the filing of the tax return and payment of the tax. In the case of a corporation, for example, the tax is calculated on the Gross Receipts of the Corporation. Corporate officers shall be held responsible for the filing of the tax return and payment of the tax.

Section 203. Nature and Imposition of Tax.

The Business Privilege and Mercantile Tax is a tax on the privilege of doing business in the City of Bethlehem. A person exercises the privilege of doing business by engaging in any activity within the limits of the City to promote the sale of goods or the provision of services. It is not necessary to be a Resident of the City of Bethlehem, or to have an office or place of business within the City, to be doing business in the City.

Section 204. Base and Rates of Tax.

A. Tax Base. The tax is based on gross receipts attributable to doing business in the City of Bethlehem. To determine whether Gross Receipts are attributable to doing business in Bethlehem, see Attribution of Gross Receipts, Section 205. Receipts from certain activities are excluded from taxation, see Exclusion from Gross Receipts, Section 206 and Interstate Commerce, Section 207.

B. Tax Rate. The rate of tax varies depending on the nature of the business activity performed, as follows:

NOTE: The Business Privilege and Mercantile Tax rates are the *effective* tax rates. The City of Bethlehem and the Bethlehem Area School District both impose a business privilege and mercantile tax, and Act 511 requires that the tax rates set forth in the Tax Ordinance be reduced so that the combined rates of the two taxes does not exceed 0.001 for Wholesale Sales, or 0.0015 for Retail Sales and for rentals and service providers.

- 1. Receipts from the Performance of Services.** On Gross Receipts generated by the performance of services, the rate of tax is 0.0015 (\$1.50 per thousand dollars).

Example: Taxpayer, a partnership of consultants, earns \$1,000,000.00 in gross sales (receipts) by performing services. The tax is calculated:

$$\begin{array}{rclcl} \text{Gross Receipts} & & \text{Rate} & & \text{Tax} \\ \$1,000,000.00 & \times & 0.0015 & = & \$1,500.00 \end{array}$$

2. Receipts from Sales of Merchandise. The rate of tax on receipts from sales of merchandise varies depending on whether such sales are classified as “Wholesale Sales” or “Retail Sales” (see Definitions, Section 201).

a) **Receipts from Wholesale Sales.** On receipts generated by the Wholesale Sales of merchandise, the rate of tax is 0.001 (\$1.00 per thousand dollars).

Example: Taxpayer, a wholesale dealer of automobile parts, has gross sales (receipts) of \$5,000,000.00. The tax is calculated as follows:

$$\begin{array}{rclcl} \text{Gross Receipts} & & \text{Rate} & & \text{Tax} \\ \$5,000,000.00 & \times & 0.001 & = & \$5,000.00 \end{array}$$

b) **Receipts from Retail Sales.** On receipts generated by the Retail Sales of merchandise the rate of tax is 0.0015 (\$1.50 per thousand dollars).

Example: Taxpayer, a retail dealer of automotive parts, has gross retail sales (receipts) of \$2,000,000.00. The tax is calculated as follows:

$$\begin{array}{rclcl} \text{Gross Receipts} & & \text{Rate} & & \text{Tax} \\ \$2,000,000.00 & \times & 0.0015 & = & \$3,000.00 \end{array}$$

3. Receipts from lease, use or rental of personal or real property.

Receipts from the Lease, use or rental of personal or real property shall be deemed to be receipts from the performance of services and taxed at the rate set forth in Section 204. B. 1. (0.0015 or \$1.50 per thousand dollars).

4. “Unearned” business receipts. Receipts derived from dividends, interest, gain on the sale of capital assets; and the receipts from the license, or use, of intangible property (including, for example, copyrights, trademarks, licenses, patents, royalties, and other intellectual property) received by persons doing business in the City of Bethlehem are subject to the tax at the rate for services set forth in Section 204.B.1. Capital assets do not include inventory, stock-in-trade or other assets held for sale in the ordinary course of business. For the purpose of calculating gain on the

sale of capital assets, return of capital may be deducted.

- 5. Businesses engaged in more than one classification of business activity.** Businesses which engage in more than one classification of business activity (for example, a service provider whose business includes the sale of products, or a sales office that provides both retail and wholesale sales), must segregate the receipts from each classification and pay tax at the rate specified for each. Failure to segregate receipts according to classification may result in all receipts being taxed at the highest rate reasonably supportable.

Section 205. Attribution of Gross Receipts.

General. Gross receipts which are fairly attributable to exercising the privilege of doing business within the City are subject to tax.

A. Attribution of gross receipts from sales of merchandise.

- 1. Receipts from Bethlehem sales transactions.** All receipts from Wholesale or Retail Sales made or effected within the territorial limits of the City of Bethlehem are to be included in taxable receipts. Sales are “made or effected” when an agreement of sale is concluded within the City, or, when an order is accepted or forwarded for confirmation or approval from a location within the City and, as a matter of business custom or practice, delivery is made and the transaction is consummated on the same terms and conditions as set forth in the order.
- 2. Delivery outside of Bethlehem.** Receipts from sales made or effected in Bethlehem are taxable whether delivery after sale is made within or outside of the City.

Example: Taxpayer is distributor of musical instruments whose headquarters and only sales office is located in Bethlehem. Receipts from sales made in Bethlehem for delivery outside the City of Bethlehem are attributable to Bethlehem (unless excludable under Section 207. Interstate Commerce).

Example: Taxpayer, a dealer in scrap copper, enters into an agreement in Bethlehem to sell three tons of metal located in Philadelphia. The agreement consummated in Bethlehem conveys immediate ownership and possession of the metal to Taxpayer’s customer. The Gross Receipts of the sale are properly attributed to Bethlehem.

- 3. Doing business through local representative or sales office.** Receipts from sales made or effected in Bethlehem by a local representative or sales

force are included in taxable receipts.

Example: Taxpayer, a wholesale distributor of food products has a home office in New York. It operates a “Bethlehem Territory” from an office within the City of Bethlehem where sales are effected for both delivery within and outside the City of Bethlehem. Shipments are made directly from Wisconsin. Receipts from sales made or effected from the Bethlehem office are attributed to Bethlehem.

Example: Taxpayer, a distributor of aerospace fasteners whose home office is in Florida, sells to local Bethlehem customers through the efforts of a sales representative working from his home within the City of Bethlehem. Orders are accepted in Bethlehem and routinely confirmed in Florida. Shipments are made from Florida for delivery both within and outside of Bethlehem. The Gross Receipts from sales made or effected in Bethlehem by the Bethlehem representative are attributable to the City of Bethlehem.

B. Attribution of Gross Receipts from the Sale of Services.

1. Services performed entirely within Bethlehem. All receipts from services performed within the City of Bethlehem are attributable to the City of Bethlehem, notwithstanding that a contract for such services may have been entered into outside the City of Bethlehem, or that services are performed for customers who reside outside the City of Bethlehem, or that services are performed upon tangible items retrieved from and delivered to locations outside the City of Bethlehem.

Example: Taxpayer, a plumbing and heating contractor whose sole office is in Erie, sends a technician to Bethlehem to repair a furnace. The receipts earned by the technician’s services performed within Bethlehem are attributed to Bethlehem.

Example: Taxpayer, an employment agency located in Philadelphia, provides staffing to Bethlehem businesses. Receipts earned as a result of the services performed within Bethlehem are attributed to Bethlehem.

2. Receipts from services directed from Bethlehem. Except as provided in the following subparagraph 3. below, receipts from services performed outside of Bethlehem but which are managed, directed or controlled from within the City of Bethlehem are attributed to Bethlehem. Receipts from services performed outside the City of Bethlehem, earned by persons

whose home office is within the City of Bethlehem, will be presumed to be managed, directed or controlled from within the City of Bethlehem.

Example: Taxpayer, an architectural firm whose sole office is within the City of Bethlehem, performs services throughout Pennsylvania. All services are managed, directed or controlled from the City of Bethlehem. Services will be presumed to have been managed, directed or controlled from the office located within the City of Bethlehem and all receipts will be attributable to the City of Bethlehem.

3. **Receipts from activities directed from Bethlehem, but subject to business privilege tax elsewhere.** Receipts from activities managed, directed or controlled from within the City of Bethlehem, which the Taxpayer can show are subject to a tax on gross receipts for the privilege of doing business imposed by another local taxing jurisdiction, shall be deemed to be fairly attributed to such other taxing jurisdiction and are excluded from receipts taxed by Bethlehem.

Example: Taxpayer, an accounting firm whose sole office is in the City of Bethlehem, sends junior level personnel to the City of Pittsburgh for several months to complete an audit supervised from Bethlehem. Receipts from the audit are taxed by Pittsburgh under that city's business privilege tax. The City of Bethlehem will allow the exclusion of such receipts provided that proof of filing a tax return and payment of the tax to Pittsburgh is demonstrated to the City of Bethlehem Tax Bureau.

4. **Branch Offices located outside of Bethlehem.** Receipts from services managed, directed or controlled from a bona fide branch office located outside the City of Bethlehem are not attributed to Bethlehem. The following criteria will be considered (as relevant but not conclusive) by the City of Bethlehem Tax Bureau in determining the existence of a bona fide branch office:

- (a) The appearance of the taxpayer's name in telephone and/or building directories.
- (b) Stationary and calling cards showing the branch office address.
- (c) Storage of inventory or display samples at branch office.
- (d) The existence of a rental agreement (or lease) for space used at the branch office.

- (e) Employment of personnel at the branch office.
- (f) The existence of a business license to operate at the branch office.
- (g) Field Office. A field trailer may operate as a bona fide branch office where the trailer bears the name of the taxpayer, the trailer is staffed by the taxpayer's employees who report directly to the field office site, the field office is maintained for not less than 60 days, and a business license is maintained at the field office.

Example: Taxpayer, a contractor whose home office is in Bethlehem, enters into a contract to build a stadium complex in State College. Contractor establishes a bona fide business office in State College for the duration of the project, from which it manages, directs and controls the entire project. Receipts from the project are attributed to State College.

- 5. **Apportionment of receipts where attribution is impossible.** In instances involving the performance of services both within and outside the City of Bethlehem where it is impossible or impracticable to attribute receipts to a specific source location, receipts may be apportioned using a ratio equal to the number of hours of service performed within Bethlehem, divided by the total number of hours of service performed both within and outside the City of Bethlehem.

C. **Unfair Attribution.** If, in the discretion of the Tax Administrator of the City of Bethlehem, the application of the provisions of this Section 205 results in an unfair or inequitable attribution (or apportionment) of receipts, then the Tax Administrator may permit or require the use of other methods of attribution to produce a fair and equitable attribution of gross receipts.

Section 206. Exclusions from Gross Receipts.

Exclusions from taxable gross receipts shall be allowed as follows:

- A. **State Preemption.** Gross receipts from activity which has been judicially determined to be preempted by the Commonwealth of Pennsylvania are excluded from gross receipts.

Limitation. Preemption does not relieve the taxpayer from all municipal taxation. Gross receipts which are unrelated to the aspect of business operations the taxation and regulation of which has been preempted by the Commonwealth remain subject to the tax by the City of Bethlehem. Taxable activity will not lose its character as such merely through association with preempted activity.

- B. **Duplicate State Tax.** In the event the Commonwealth of Pennsylvania imposes a

tax on the same subject matter as is taxed under the City of Bethlehem Business Privilege and Mercantile Tax, and such State tax is measured by the same gross receipts sought to be taxed by the City of Bethlehem, the State tax shall prevail, and the same subject shall not be also taxed by the City of Bethlehem.

- C. **Governmental Entities.** Agencies of the government of the United States, the various individual States, the Commonwealth of Pennsylvania, or any political subdivisions thereof are not subject to the tax.
- D. **Utilities.** Receipts from utility services provided by any person or company whose rates of service are fixed and regulated by the Pennsylvania Public Utility Commission are excluded from taxable receipts. Receipts from ancillary activities not governed by the rate regulation are subject to the tax.
- E. **Reimbursement of expenses incurred as agent.** Dollar-for-dollar reimbursement of "out-of-pocket" expenses incurred by an agent for the benefit of its principal are exempt from taxable receipts.

Example: Taxpayer, an attorney, advances the costs of a medical examination of his client. The client reimburses the attorney the exact cost of the examination. The reimbursement is excluded from the attorney's taxable gross receipts.

Example: Taxpayer, an advertising agency, advances the costs of radio and television advertisement placed by it for the benefit of its client. The amount reimbursed by the client to the agency is excluded from the agency's gross receipts.

- F. **Manufacturers, producers, and processors of by-products of manufacturing.** Receipts generated by engaging in the following activities are not subject to the City of Bethlehem Business Privilege and Mercantile Tax: (i) manufacturing, (ii) producing, and (iii) processing of by-products of manufacturing.

1. **Ordinary and general meaning.** Ordinary and general meaning shall be given to the words "manufacturing", "producing" and "processing".

- (a) **Manufacturing.** Manufacturing means the making of something new and different, involving a substantial (not superficial) change in material, form, composition, or character, resulting in different goods and articles having a distinctive name, character and use.

Examples: Manufacturing has been held to include commercial bookbinding, production of apparel, printing, oil refining, and steel milling. Activities which have been judicially determined **not to be manufacturing** include: radio and television

broadcasting; steel annealing and galvanizing; commercial illustration; work product which is primarily intellectual or clerical in nature (e.g. work of an attorney, architect, computer software engineer, etc.); scrap metal bundling; dying and finishing of cloth; purification through pasteurization, filtration and testing for bacteria and impurities; the preparation of potato salad, cole slaw, bread filing, and like examples of “cooking”; adding water to concentrated juice slurry or powdered drink mix to make a finished product; and printing designs and wording on ready made clothing.

- (b) **Producers.** The production, preparation or processing of natural resources or farm products (by manufacturers, producers, and farmers with respect to the goods, articles and products of their own manufacture, production or growth) is not subject to the tax.

Example: Taxpayer owns an organically grown vegetable farm and sells to a specialty grocery store. Taxpayer’s receipts are excluded from the tax.

Example: Taxpayer buys coffee beans at wholesale, roasts them in a commercial oven, and sells the processed beans to local coffee shops. Since the beans processed by the taxpayer are not grown by the taxpayer, the exclusion does not apply. Receipts from the sale of taxpayer’s coffee beans are taxable.

- (c) **Processing by-products of manufacturing.** By-products of manufacturing consist of secondary or additional products produced in addition to a principal product. Processing of by-products is not taxable activity whether it is performed by the original manufacturer or by others.

Example: Taxpayer takes molten slag, a waste product discarded by a steel manufacturer, and subjects it to a process which enables the iron component to be separated and sold back to the steel manufacturer. Taxpayer’s activity of processing the by-products of manufacturing is not subject to the City of Bethlehem Business Privilege and Mercantile Tax.

Example: Taxpayer is in the business of annealing and galvanizing rolls of steel thereby making the steel

more malleable. Taxpayer's activity is not manufacturing since no "new" product is created; nor is it "processing of a by-product of manufacturing" because rolls of steel are not secondary or additional products, but are themselves the principal product of the original manufacturer. Therefore, taxpayer's receipts are taxable.

2. **Application to goods and articles manufactured outside of the City of Bethlehem.** Receipts excludable under this subsection are excluded whether the product is manufactured, produced or processed within or outside the City of Bethlehem.

Example: Taxpayer manufactures computer equipment in New York. It then leases, or sells, the equipment to customers within the City of Bethlehem. Receipts from the sale or lease of computer equipment by the manufacturer thereof are not subject to the tax.

3. **Goods and articles for own use.** Receipts excludable under this subsection are excluded whether the product is sold to others or used by the taxpayer in its own operations.

Example: Taxpayer produces asphalt both for sale to others and for its own use in fulfillment of paving contracts. Taxpayer's sale of the asphalt product to others is not subject to the business privilege and mercantile tax. With respect to the asphalt used by taxpayer to conduct its own business operations, taxpayer may deduct the cost of producing the asphalt from the receipts generated by such business operations and only this deducted amount will be subject to the tax.

4. **Non-manufacturing activities not subject to exclusions.** A manufacturer's receipts from activities other than manufacturing are not excluded.

Example: Twenty percent of the gross receipts realized by taxpayer, a manufacturer of small engine parts, is generated by providing maintenance services for products not manufactured by taxpayer. Receipts from such unrelated products are not excluded.

5. **Relation to Pennsylvania Capital Stock and Franchise Tax.** Whether a particular activity qualifies as "manufacturing" or "processing", under the provisions of the Pennsylvania Capital Stock and Franchise Tax is

relevant, but not decisive, in determining whether receipts are excludable under the City of Bethlehem Business Privilege and Mercantile Tax.

G. Non-profit Organizations. Gross receipts generated by non-profit organizations meeting the criteria for “institutions of purely public charity” as set forth in the Institutions of Purely Public Charity Act, 1997, P.L. 508, No.55; 10 P.S. §371 et seq., are not subject to the tax. However, gross receipts derived by non-profit organizations from unrelated trade or business, regularly carried on are taxable.

1. **Unrelated trade or business.** An unrelated trade or business is one in which the conduct of business transactions is not substantially related to the exercise or performance of the exempt purposes of the organization (aside from the need for income or the use made of the profits).
2. **Regularly conducted.** Activities will be deemed to be regularly conducted if they manifest a frequency and continuity and are pursued in a manner similar to comparable commercial activities of taxable organizations.
3. **Sales to nonprofit organizations.** Receipts generated from the sales to religious, charitable, educational, governmental, or other entities not themselves subject to the tax, are not excluded from the tax.

H. Miscellaneous excluded receipts. Excluded from the Business Privilege and Mercantile Tax are receipts which constitute:

1. Cash discounts to purchasers for prompt payment of bills.
2. Charges advanced by a seller for freight, delivery or other transportation for the purchaser in accordance with the terms of a contract of sale of goods, wares or merchandise.
3. Sales of trade-ins, up to the amount given the prior owner as a trade-in allowance.
4. Refunds, credits or allowances given customers for defective goods returned.
5. Taxes collected as agent for the United States of America, the Commonwealth of Pennsylvania, or the City of Bethlehem.
6. Exchanges between sellers of identical goods, but not to the extent of any additional cash payment accompanying the exchange.
7. Sales to other sellers in the same line, at the same price for which the seller acquired the merchandise.

8. Transfers between one department, branch or division of a business entity and another, recorded as interdepartmental transfers.
9. Receipts from providing direct-to-home satellite service.
11. Receipts from sales made by a purchasing cooperative acting as the joint agent of its member principals for purchasing in bulk and distributing at cost products sold by its members.

Section 207. Interstate Commerce

General. Gross receipts which are fairly attributed to the City of Bethlehem (see Section 205), earned by any person doing business within the City of Bethlehem and having substantial nexus to the City of Bethlehem, are included in taxable gross receipts.

A. Substantial nexus with Bethlehem. Receipts earned by persons having no physical presence or other substantial nexus to the City of Bethlehem are not subject to the tax.

Example: A large mail order company based in Delaware sells office supplies via catalog sales and common carrier to customers located in Bethlehem. The company has no sales offices, salespersons or other physical presence in the City of Bethlehem (except its catalogs). The company's gross receipts are not subject to the tax.

B. Exclusion of gross receipts subject to tax outside of the Commonwealth. Gross receipts from activities which are demonstrated by the taxpayer to be subject to a tax on gross receipts for the privilege of doing business imposed by another taxing jurisdiction outside the Commonwealth shall be deemed to be fairly attributed to other such taxing jurisdiction and excluded from receipts taxable by the City of Bethlehem.

Example: Taxpayer is a wholesale distributor of musical instruments whose sole headquarters and only sales offices are located in the City of Bethlehem. Shipments are made from Bethlehem to mail order customers and independent representatives throughout the United States. Although taxpayer has physical presence (substantial nexus) within the City of Bethlehem, any receipts shown by the taxpayer to be subject to a gross receipts tax on the privilege of doing business imposed by a jurisdiction outside of the Commonwealth of Pennsylvania will be attributed to that jurisdiction and excluded from the gross receipts taxable in Bethlehem.

Example: Taxpayer provides consulting services in the area of structural engineering throughout the United States, the Commonwealth of

Pennsylvania and the City of Bethlehem. All activities are managed, directed or controlled from Taxpayer's home office located within the City of Bethlehem. Any receipts shown by the taxpayer to be subject to a gross receipts tax on the privilege of doing business imposed by a jurisdiction outside of the Commonwealth of Pennsylvania will be attributed to that jurisdiction and excluded from the gross receipts taxable in Bethlehem.

Section 208. Inclusions in Gross Receipts

A. Affiliated Companies. Receipts from sales to affiliated business entities are included in taxable Gross Receipts.

Example: Taxpayer is a wholly owned subsidiary of ABC Company. Taxpayer performs all of ABC's accounting and administrative functions. Taxpayer bills ABC a "management fee" equal to its costs and expenses so that, by design, no profit is generated by Taxpayer. ABC purports to "reimburse" Taxpayer for all its expenses. So long as Taxpayer remains a separate legal entity, the intercompany management fee it receives constitutes taxable Gross Receipts.

B. Conditional and Installment Sales.

1. A person making conditional sales or other installment sales of property is required to report the total selling price of such sales as gross receipts for the tax year in which the contracts of sale are entered into.
2. Where tangible personal property sold under a conditional or other installment sales contract is repossessed by the seller, and the repossessed property is subsequently sold, the receipts from such sales are to be included in the measure of the tax only to the extent that the amount of sale exceeds the balance due on the original sale at the time of repossession. No deduction from Gross Receipts may be taken for any unpaid balance due at the time of the repossession.

C. Consignment Transactions. Gross Receipts received by a consignor from consignment transactions are subject to the tax.

Example: Taxpayer supplies merchandise to a retail jewelry store for sale on consignment. Taxpayer must include the total Gross Receipts realized from the sale of merchandise. Note: the commission paid to the jewelry store (consignor's agent) is a taxable receipt to the jewelry store.

D. Leased Departments. Gross receipts received from the lease of a department are includable.

Example: Taxpayer receives fees for the use of its computer department (personnel and equipment), which it makes available to other companies. Such fees are includable in Gross Receipts.

E. Persons Erecting Buildings or Altering, Repairing or Improving Property. Persons in the business of erecting buildings, or altering, repairing or improving real property, under contract (i.e., contractors and subcontractors), shall include in their Gross Receipts all sums paid to them under such contract, without deduction for sums paid to suppliers and/or subcontractors.

Example: Taxpayer, a general contractor, builds and sells a new home for \$200,000.00. Payments to subcontractors equal \$50,000.00. Taxpayer may not deduct the payments to subcontractors, but must include the entire \$200,000.00 as taxable Gross Receipts.

F. General Agencies, Brokers, and Agents.

1. General Agencies and Brokerage Firms. All general agencies and brokerage firms shall include in Gross Receipts all revenues received - without deduction for commissions or fees paid to, or withheld by, agents of the general agency or brokerage form.

Example: Taxpayer, a broker/dealer registered with the National Association of Securities Dealers, earns commissions on sales of securities made through the efforts of affiliated registered representatives (stock brokers). Taxpayer may not deduct from its Gross Receipts the commissions paid to registered representatives. Similarly, business brokers, real estate brokers, and insurance general agencies may not deduct commissions paid to selling agents.

2. Agent's commissions. Independent agents shall include in Gross Receipts all fees, commissions, or other remuneration received for services performed as an agent.

Example: Taxpayer is a real estate agent who sells a home for \$100,000.00 on which a real estate commission is generated in the amount of \$7,000.00. After the commission is split between the real estate brokerage firms representing the buyer and seller, taxpayer is paid a commission from her broker of \$1,750.00. Taxpayer's taxable Gross Receipts are \$1,750.00.

Example: Taxpayer sells lottery tickets from his convenience store. Gross commission receipts paid to taxpayer as a lottery agent are taxable.

Example: Taxpayer works as a registered representative ("stock broker") for a NASD broker/dealer. Gross commission receipts received by taxpayer are taxable Gross Receipts.

3. **Agent as employees.** Income earned as an employee is not subject to the tax. Any agent asserting status as an employee must provide a copy of Federal Form W2 and/or such other documentation as the City of Bethlehem Tax Bureau may reasonably require to show employment. Receipts earned by independent agents are subject to the tax even though such persons may qualify as "statutory employees" for purposes of federal income taxation.

**ARTICLE III
DECLARATION AND PAYMENT OF TAX**

Section 300. Tax Returns.

Tax returns shall be made using forms approved by the City of Bethlehem Tax Administrator and may inquire as to business name, type of activity, business receipts, and any other information reasonably necessary to accurately determine taxpayer identity and liability. Tax returns must be filed whether or not tax is due. The failure to receive a tax return, or form, by mail from the City of Bethlehem does not relieve the taxpayer of the responsibility to timely file a tax return.

Section 301. Due Dates for Filing Returns.

A. Quarterly Estimated Returns. Taxpayers whose annual gross receipts can reasonably be expected to exceed two million dollars (\$ 2,000,000.00), are encouraged to file quarterly declarations of estimated tax and pay twenty-five percent (25%) of the estimated annual tax with each filing. Quarterly returns are due on or before April 30, July 31, October 31, and January 31 of the Succeeding Year. Any overpayment of tax may either be credited to the next year's first quarterly installment or refunded to the taxpayer.

B. Annual Returns. Annual returns are due the first Monday in May of the Succeeding Year.

C. Returns of Temporary, Seasonal or Itinerant Business. Every person or business engaged in business activity who does not intend to continue such activity within the City of Bethlehem for a full year or which business activity by its very nature is not permanent shall make and file with the Tax Administrator a tax return, as set forth in Section 300, and pay the tax due thereon within 45 days of the close of the temporary, seasonal or itinerant business activity. For purposes of these regulations vendors at fairs, festivals, and craft shows/fairs shall be considered to be temporary, seasonal or itinerant businesses.

D. Proof of Mailing. The postmark of the United States Postal Service shall constitute proof of mailing. The postmarked date shall constitute the filing date of the tax return.

Section 302. Extension of Time for Filing Returns.

A. The Tax Administrator, upon proper cause shown, may grant an extension of not more than sixty (60) days for the filing of any tax return. Applications for extensions shall be made on or before the last day for payment of the tax (the first Monday of May), in such form as the Tax Administrator prescribes.

B. If the Taxpayer files a request for extension of time to file returns with the Internal Revenue Service and is granted such extension by the Internal Revenue Service, the extension will not be honored by the City of Bethlehem Tax Bureau unless a copy of the Taxpayer's request

is filed with the City of Bethlehem Tax Bureau on or before the last day for payment of the tax (the first Monday of May).

C. In order for an extension to be granted the Taxpayer must file an Extension Request Form and pay 100% of the tax estimated to be due on or before the due date. The granting of any extension will not relieve the Taxpayer from the obligation to pay interest and penalty upon any tax that remains outstanding after the due date (the first Monday of May). Extensions are granted for filing of the tax return only. There are no extensions for payment of the tax.

Section 303. Filing to be Complete.

Returns shall be completed in full and certified as true and correct by the taxpayer, supported by all additional forms or schedules required (including Federal Income Tax Schedule C if Taxpayer is a sole proprietor; Federal Form 1065 if Taxpayer is a partnership; Federal Form 1120/1120S if Taxpayer is a corporation; Federal Form 990 if Taxpayer is a non-profit organization). In cases where the taxable Gross Receipts, as calculated by the taxpayer, differ from Gross Receipts reported on the Federal Tax Form a reconciliation that fully explains the difference must accompany the tax return.

Completed tax returns must be accompanied by payment of tax and delivered to the City of Bethlehem Tax Bureau on or before first Monday of May of the succeeding year.

Section 304. Business Termination.

Any taxpayer going out of business or ceasing to do business shall, within thirty (30) days from the date of ceasing to do business, file a return showing the actual gross volume of business generated during the tax year in which said taxpayer ceased doing business and pay the tax due thereon at the time of filing the tax return. In the event that any tax has been paid upon estimated Gross Receipts, the taxpayer shall be entitled to a refund of any excess tax paid in the tax year for which business was terminated.

ARTICLE IV
ACCOUNTING, BOOKS, AND RECORDS

Section 400. Accounting Methods and Periods.

Cash or Accrual Basis. The tax return may be filed on a cash basis or on an accrual basis, but the return must be prepared in accordance with the method of accounting regularly employed in keeping the books of the taxpayer.

Section 401. Records to be kept.

Every taxpayer is required to keep such accounts and records as will enable the filing of true and accurate declarations and returns. Such accounts and records shall be sufficiently complete to enable the Tax Administrator or his designees to verify the accuracy of declarations and/or returns filed. Accounts and records are to be preserved for **NOT LESS THAN SIX (6) YEARS.**

**ARTICLE V
ADMINISTRATION AND ENFORCEMENT**

Section 500. Collection and Receipt of Tax.

The Treasurer, with the assistance of the Tax Administrator, is authorized to collect and receive taxes, fines, penalties and interest on behalf of the City of Bethlehem. Unless otherwise specified by the taxpayer, all voluntary payments shall be applied against amounts owed as follows: tax, penalties, and other fees, interest or charges.

Section 501. Records of Receipts.

The Tax Administrator is authorized and required to keep a record showing the amount received by the City of Bethlehem from each taxpayer and the date of such collection and receipt.

Section 502. Disclosure Statement of Taxpayer's Rights and Obligations.

The Tax Bureau shall notify any taxpayer contacted of their rights regarding an assessment, audit, determination, review, refund, appeal or collection of tax by supplying a copy of the City of Bethlehem Disclosure Statement with any correspondence regarding an assessment, audit, determination, review, refund or collection of tax.

The Disclosure Statement, attached hereto as Addendum "B", is available to taxpayers upon request at no charge by calling 610-865-7022 between the hours of 8:00am and 4:30pm, weekdays.

Section 503. Verification of Records, Audits, Response Periods and Prior Year Returns.

The Tax Administrator, or agents of the Tax Administrator designated in writing, are authorized to examine the books, papers, and records of any person or business entity whom the Tax Administrator reasonably believes has engaged in taxable business activity within the City of Bethlehem in order to verify the accuracy of any return made or, if no return has been filed, to arrive at a reasonable assessment of tax, interest, penalty, and fine due.

A. Cost of audits. In the event the City of Bethlehem retains the services of tax auditing professionals to verify the accuracy of returns filed or, if no return has been filed, to arrive at a reasonable assessment of tax, interest, penalty, and fine due, any cost to the City of Bethlehem to conduct such an audit shall be assessed against the Taxpayer if any amount is found to be due and owing to the City of Bethlehem.

B. Issuance of subpoenas to compel attendance and production of records. The Tax Administrator, through the assistance of the City of Bethlehem Law Bureau, shall have the power and is authorized to (1) issue subpoenas to compel the attendance of persons deemed by the Tax Administrator to be necessary to examine as witnesses, and (2) compel the production of books, records, and papers relating to any person or business entity under examination.

C. Minimum time periods for taxpayer response. Taxpayers shall have at least thirty (30) calendar days from the mailing date to respond with requests for information by the City of Bethlehem Tax Bureau. The Tax Administrator shall notify any taxpayer from whom the information is initially requested of the procedures to obtain an extension of time in which to respond, and shall grant reasonable extensions of time in which to respond upon application for good cause. No action shall be taken against a taxpayer for the tax year in question until the expiration of the response period, including extensions.

D. Inquiry as to prior year returns. Except as provided below, an *initial* inquiry regarding a taxpayer's compliance with the Tax 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 of such inquiry. If, after the initial request, the Tax Administrator (or designee) determines that the taxpayer failed to file a tax return, underreported income or failed to pay a tax for one or more of the tax periods covered by the initial request, *subsequent* requests for tax returns or supporting information may be made. This subsection shall not apply if the Tax Administrator has sufficient evidence to support his or her belief that the taxpayer has failed to file a required return or pay an eligible tax which was due more than three (3) years prior to the date of the initial notice.

Section 504. Procedures for the Conduct of Taxpayer Audit.

The following procedures shall be followed during the conduct of an audit or examination of a taxpayer's books and records:

A. Notice of Audit. The taxpayer shall be notified in writing of a scheduled audit at least thirty (30) days in advance. The notice of audit shall contain the following information:

1. The reason for the audit;
2. The tax years subject to audit;
3. The date, place and time for the audit to be conducted;
4. A description of the information, books and records to be produced;
5. A copy of the City of Bethlehem Tax Bureau Disclosure Statement.

B. Rescheduling audit. The taxpayer may request that the audit be rescheduled, provided that it is rescheduled within a reasonable time not to exceed sixty (60) days.

C. Representation at audit. The taxpayer may have a representative present during the audit.

D. Audit results. In the event a Notice of Assessment (Section 505.A.1) is issued as a result of an audit, the Taxpayer shall be provided with a copy of the auditor's report of findings and conclusions, including the calculation of any tax, interest and/or penalty found to be due.

Section 505. Examination of Return, Notice of Assessment.

A. Examination of Return. The Tax Administrator shall examine every return as soon after filing as is practical to determine the correct amount of tax.

- 1. Notice of Assessment for underpayment.** If the Tax Administrator finds that the amount of tax shown on a return is less than the correct amount, the Tax Administrator shall notify the taxpayer in writing of the amount of the underpayment (deficiency) assessed. A Notice of Assessment shall be in writing and shall include:
 - (a)** The tax period or periods for which the underpayment is asserted.
 - (b)** The amount of the underpayment detailed by tax period.
 - (c)** The legal basis upon which the City has relied to determine that an underpayment exists.
 - (d)** An itemization of the revisions made by the City of Bethlehem Tax Bureau to a return or report filed by the taxpayer that results in the determination that an underpayment exists.
- 2. Notice of Overpayment.** If the Tax Administrator finds that the tax that has been paid by the taxpayer is more than the correct amount, the Tax Administrator shall credit the overpayment against any taxes owed by the taxpayer to the City of Bethlehem and shall refund the difference to the taxpayer. Written notice of such action by the Tax Administrator shall be provided to the taxpayer.

B. No Return Filed. If the taxpayer fails to file any return of tax required to be filed, the Tax Administrator may estimate from any available information the taxpayer's gross receipts and the tax thereon and notify the taxpayer in writing of the amount assessed against the taxpayer as a deficiency.

Section 506. Petition for Reassessment.

Within ninety (90) days of the date of the Notice of Assessment, the taxpayer may file a Petition of Reassessment setting forth the grounds upon which reassessment is requested. Petitions for Reassessment shall be filed with the City of Bethlehem Tax Bureau for submission to the City of Bethlehem Tax Appeal Hearing Officer for hearing and determination (see Section 514).

Section 507. Refund of Overpayments, Interest on Overpayments.

A. Taxpayer Request for Refund of Overpayments. Any taxpayer who has made an overpayment of tax to the City of Bethlehem Tax Bureau may file a written request with the Tax Administrator for a refund or credit. A request for a refund shall be made within three (3) years of the due date for filing the tax return, or one year after actual payment of the tax, whichever is later. If no return or report is required, the request shall be made within three (3) years after the due date for payment of the tax or within one year after actual payment of the tax, whichever is later.

1. **Overpayment on tax return.** For purposes of this section, a tax return filed by the taxpayer with the City of Bethlehem showing an overpayment of tax shall be deemed to be a written request for a cash refund unless otherwise indicated on the tax return.
2. **Refund request not a petition for appeal.** A request for refund under this section shall not be considered a petition for appeal to the Tax Appeal Hearing Officer and shall not preclude the taxpayer from submitting a petition for appeal (see Section 514).
3. **Refund after Notice of Assessment.** For amounts paid as a result of a notice asserting or informing a taxpayer of an underpayment, a written request for refund shall be filed with the City within one year of the date of payment.

B. Interest on overpayments. All overpayments of tax due to the City of Bethlehem shall bear simple interest from the date of overpayment until the date of resolution.

1. **Rate of interest.** Interest on overpayments shall be allowed and paid at the same rate as the Commonwealth is required to pay pursuant to Section 806.1 of the Act of April 9, 1929 (P.L. 343, No. 176), known as the Fiscal Code.
2. **75 Days before interest accrues.** No interest shall be allowed if an overpayment is refunded (or applied against any other tax, interest, or penalty due the City of Bethlehem) within seventy-five (75) days after the last prescribed date for filing the tax return or report of liability or within 75 days after the date the tax return or report of liability due is filed, whichever is later.
3. **No interest on Overpayments of Interest and Penalty.** Overpayments of interest and penalty shall not bear interest.

C. Acceptance of refund check. The taxpayer's acceptance of the City's refund check shall not prejudice any right of the taxpayer to claim any additional overpayment and

interest thereon. Tender of a refund check by the City shall be deemed to be acceptance of the check by the taxpayer.

Section 508. Abatement of Certain Interest and Penalty.

A. Errors and Delays. In the case of any underpayment, the Tax Administrator may abate all or any part of interest for any period for the following:

1. Any underpayment of tax finally determined to be attributable in whole or in part to any error or delay by the City of Bethlehem Tax Bureau in the performance of a ministerial act; provided, however, that no significant aspect of the error or delay is caused by the taxpayer after the City has contacted the taxpayer in writing with respect to the underpayment of tax finally determined to be due or payable.
2. Any payment of tax to the extent that any error or delay in the payment is attributable to an officer, employee or agent of the City of Bethlehem Tax Bureau being erroneous or dilatory in the performance of a ministerial act. The Tax Administrator shall determine what constitutes timely performance of ministerial acts.

B. Erroneous written advice by the City of Bethlehem Tax Bureau. The City shall abate any portion of any penalty or excess interest attributable to erroneous advice furnished to the taxpayer in writing by an officer, employee or agent of the City of Bethlehem, acting in their official capacity if:

1. The written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer; and
2. The portion of the penalty or addition to tax or excess interest did not result from a failure of the taxpayer to provide adequate or accurate information.

Section 509. Installment Agreements.

The Tax Bureau may enter into written agreements with any taxpayer under which the taxpayer is allowed to satisfy liability for any eligible tax in installment payments if the Tax Bureau determines that the agreement will facilitate collection. The following terms and conditions shall apply to installment plans:

A. The taxpayer must file an annual tax return for the current tax year and any delinquent tax years to be covered under the installment plan. These annual tax returns must include a copy of the taxpayer's Federal Tax Return and all supporting documentation as verification that all taxable income has been reported. In cases where a Federal Tax Return cannot be produced, the taxpayer must complete a Federal Form 4506 "Request for Copies of Tax Return" naming the City of Bethlehem Tax Bureau as recipient of the requested copy. The

costs to procure the Federal Tax Return and related information are the sole responsibility of the taxpayer.

- B.** Installment plans will not be approved for tax amounts less than \$100.00.
- C.** Taxpayers will be required to verify that their current year's tax liability has been satisfied to date either by proof of employer withholding or by direct payment from the taxpayer.
- D.** Installment Plans will be granted only 1 time to any taxpayer.
- E.** Installment Plans will be revoked and immediate civil action or garnishment of wages for collection of the tax due will be initiated if any of the aforementioned terms and conditions are not met.
- F.** The Tax Bureau may terminate any prior agreement if:
 - (1) The information the taxpayer provided to the Tax Bureau prior to the date of the agreement was inaccurate or incomplete, or
 - (2) If the Tax Bureau believes that collection of any eligible tax under the Installment Plan is in jeopardy.
- G.** If the Tax Bureau finds that the financial condition of the taxpayer has significantly changed, the Tax Bureau may alter, modify or terminate the agreement, but only if:
 - (1) Notice of the Tax Bureau's finding is provided to the taxpayer no later than 30 days prior to the date of such action; and
 - (2) The notice contains the reasons why the Tax Bureau believes a change has occurred.
- H.** The Tax Bureau may alter, modify or terminate an Installment Plan agreement if the taxpayer fails to do any of the following:
 - (1) Pay any installment at the time the installment is due.
 - (2) Pay any other tax liability at the time the liability is due.
 - (3) Provide a financial condition update as requested by the Tax Bureau.
- I.** Nothing in this subsection shall prevent a taxpayer from pre-paying in whole or in part any eligible tax under any installment agreement with the Tax Bureau.

Section 510. Payment under Protest.

The Tax Administrator is authorized to accept “payment under protest” of the amount of tax in order to avoid liability for additional penalty, interest and fines. Payments made under protest will be forwarded to the City of Bethlehem Law Bureau for deposit to escrow account.

Section 511. Violations and Penalties.

Failure to comply with the provisions of the City of Bethlehem Codified Ordinance, Article 341 (Business Privilege and Mercantile Tax Ordinance) may result in both civil and criminal sanctions, including:

A. Administrative Penalty and Interest. If a person fails to pay the tax when due, a penalty of ten percent (10 %) of the tax due and unpaid shall be added thereto plus additional penalty of one percent (1%) per month for each month the tax, or part of the tax, remains unpaid.

B. Revocation of License. The Business Privilege and Mercantile Tax License of any person or business entity who fails to file any declaration of estimated tax or any tax return required under Article 341 of the Codified Ordinances of the City of Bethlehem, or who files a false declaration of estimated tax or a false tax return, may, after notice and hearing, be revoked.

C. Issuance of Non-Traffic Citation. The Tax Administrator may file a Non-Traffic Citation against any taxpayer who violates any provision of Article 341 of the Codified Ordinances of the City of Bethlehem. Each twenty-four (24) hour period during which such violation continues shall be considered a separate and distinct offense punishable as outlined in the Business Privilege and Mercantile Tax Ordinance. Such violations include, but are not limited to:

1. Failure to obtain a Business Privilege and Mercantile Tax License.
2. Failure to make and file a required report or return.
3. Failure to remit any tax due.
4. Knowingly making false or fraudulent report or return.

Section 512. Confidential Nature of Tax Information.

Any information gained by the Tax Bureau as a result of any audit, return, report, investigation, hearing or verification shall be confidential tax information. It shall be unlawful, except for official purposes or as provided by law, for the Tax Bureau to:

A. Divulge or make known in any manner confidential information gained in any return investigation, hearing or verification to any person.

B. Permit confidential tax information or any book containing any abstract or particulars thereof to be seen or examined by any person.

C. Print, publish or make known in any manner any confidential tax information.

Section 513. Dishonored Checks.

A \$20.00 charge will be levied each time a check is returned from the bank unpaid. Checks issued in violation of the Pennsylvania Crimes Code will be referred to appropriate authorities for possible criminal prosecution.

Section 514. Administrative Appeals.

A. The City of Bethlehem Tax Bureau encourages any taxpayer or employer desiring a specific ruling concerning the applicable Ordinances, Resolutions or these Rules and Regulations to submit all pertinent facts in writing to the Tax Administrator who shall issue a written ruling.

B. The City of Bethlehem Tax Bureau has established an administrative process to receive and make determinations on petitions from taxpayers relating to the assessment, determination and refund of eligible taxes as required by Act 50 of 1998. The Hearing Officer shall rule on all petitions submitted based on the regulations set forth governing the practice and procedures of the Administrative Appeal Process.

C. Any taxpayer who is aggrieved by an assessment or determination of delinquency of any of the eligible taxes has 90 days from the date of the assessment or determination notice to file a petition for reassessment or re-determination with the Hearing Officer.

D. The petition shall be double-spaced and typed or legibly handwritten on plain paper. The petition should contain a brief summary of the action and the “legal basis” that precipitated the filing for reassessment or re-determination, along with any pertinent information (copies of tax returns, supporting information, tax schedules, expense records, etc.).

E. The petition shall be mailed via First Class Mail, or delivered in person to the Hearing Officer c/o the City of Bethlehem Tax Bureau. Hand delivered petitions will be received by the Tax Bureau and will be considered filed as of the date received. Petitions received by mail will be considered filed as of the date of the United States Postal Service postmark stamped on the envelope.

F. Petitions will be photocopied by the Tax Bureau and immediately forwarded to the Hearing Officer. Within 10 days of the petition filing date, the Tax Bureau will submit its position and all relevant facts pertaining to the action that precipitated the petition to the Hearing Officer.

G. Within 60 days of the petition’s filing date a “Final Decision” must be issued by the Hearing Officer. Failure to issue a “Final Decision” within 60 days will result in the petition

being deemed approved.

Section 515. Judicial Appeal.

Any person aggrieved by a decision of the Hearing Officer, who has a direct interest in the decision shall have the right to appeal to the Court of Common Pleas of Northampton County.

Section 516. Construction.

If any sentence, clause, or section or part of these regulations is, for any reason, found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, or sections or parts of these regulations. These regulations would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

END

ADDENDUM “A”

ADDENDUM “B”