

ARTICLE 341

Business Privilege and Mercantile Tax

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CROSS REFERENCES

Power to tax - See Act 511 of 12/31/65 (53 P.S. §6901-6924)

Occupation Privilege Tax - See BUS. REG. Art. 339

341.01 DEFINITIONS.

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

(a) "Business" means the carrying on or exercising of any trade, profession, or other commercial activity. Employment for a salary or wage is not "business".

(b) "City" means the City of Bethlehem.

(c) "License year" means the year commencing May 1 and ending April 30.

(d) "Person" means a natural person, individual, partnership, association, corporation, limited partnership, 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.

(e) "Tax Administrator" means 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. (Ord. 2017-12. Passed 3/7/2017)

(f) "Taxpayer" means a person, partnership, association, or any other entity, required hereunder to file a return of gross receipts, or to pay a tax thereon.

(g) "Tax year" means the calendar year.

(h) "Treasurer" means the Treasurer of the City.

341.02 RATE, BASIS AND COMPUTATION OF TAX.

There is hereby levied for the tax year 1971 and annually thereafter a tax for general revenue purposes on the privilege of doing business as herein defined in the City, as follows:

(a) Rate and Basis of Tax.

The rate of tax on every dollar of the whole or gross volume of business transacted within the territorial limits of the City shall be calculated as follows:

- (1) On receipts attributable to wholesale sales of merchandise the rate shall be one mill or one dollar (\$1.00) per one thousand dollars (\$1,000) of gross volume of business.
- (2) On receipts attributable to all other business the rate shall be one and one-half mills or one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of gross volume of business.
- (3) On receipts attributable to retail sales of merchandise the rate shall be one and one-half mills or one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of gross volume of business.

(b) Computation of Volume of Business.

- (1) Every person subject to the payment of the tax hereby imposed who has commenced business prior to the beginning of the tax year shall compute gross volume of business transacted during the immediately preceding tax year.
- (2) Every person subject to the payment of the tax hereby imposed who has commenced or who commences business subsequent to the beginning of the tax year, shall compute gross volume of business upon the actual gross volume of business transacted during that tax year.
- (3) Every person subject to the payment of the tax hereby imposed who engages in a business' temporary, seasonal or itinerant by nature, shall compute his estimated gross amount of business to be transacted by him for the period the person engages in such temporary, seasonal or itinerant

business within the City by a method to be determined by the Tax Administrator.

- (4) The Tax Administrator is hereby authorized to accept “payment in protest” of the amount of business privilege tax claimed to be due by the Tax Bureau in any case where the taxpayer disputes the validity or the amount of the City’s claim for tax. If it is thereafter judicially determined by the Tax Appeal Hearing Officer or a court of competent jurisdiction that the City has been overpaid, the amount of the overpayment shall be refunded to the taxpayer. The provisions of this section shall be applicable to cases in which the facts are similar to those in a case litigated in a court of competent jurisdiction.

(c) Persons, Business and Receipt Exempted.

(1) Persons and Businesses.

Persons employed for a wage or salary, nonprofit corporations or associations organized for religious, charitable or educational purposes, agencies of the government of the United States or of the Commonwealth of Pennsylvania and the business of any political subdivision, or of any authority created or organized under and pursuant to any act of assembly are exempt from the provisions of this article.

(2) Privileges, Transactions, etc.

No such tax shall be assessed and collected on a privilege, transaction, subject, or occupation which is subject to a State tax of license fee, and which tax or license fee has been held by the Courts of Pennsylvania to be the basis for exemption from the imposition of a business privilege or mercantile tax by a municipality.

(3) Utilities.

No such tax shall be assessed and collected on the gross receipts from utility service of any person or company whose rates of service are fixed and regulated by the Pennsylvania Public Utility Commission or on any public utility service rendered by any such person or company or on any privilege or transaction involving the rendering of any such public utility service.

(4) State Tax on Tangible Property.

No such tax shall be assessed and collected on the privilege of employing such tangible property as is subject to a State tax except on sales of admission to places of amusement or on sales or other transfers of title or possession of property.

(5) Production and Manufacture.

No such tax shall be assessed and collected on goods, articles and products, or on byproducts of manufacture, or on minerals, timber, natural resources and farm products, manufactured, produced or grown in the City or on the preparation or processing thereof for use or market, or on any privilege, act or transaction related to the business of manufacturing, the production, preparation or processing of minerals, timber and natural resources or farm products, by manufacturers, by producers and by farmers with respect to the goods, articles and products of their own manufacture, production or growth, or any privilege, act or transaction relating to the business of processing byproducts of manufacturer, or on the transportation, loading, unloading or dumping or storage of such goods, articles, products or byproducts.

(d) Determination of Gross or Whole Volume of Business. The gross or whole volume of business upon which the tax hereunder is computed shall include the gross consideration credited or received for or on account of sales made and/or services rendered, subject only to the following allowable deductions and exemptions:

- (1) The dollar volume of business transacted by wholesale and retail dealers derived from the resale of goods, wares and merchandise taken by any dealer as trade-in or as part payment for other goods, wares and merchandise, except to the extent that the resale price exceeds the trade-in allowance.
- (2) Refunds, credits or allowances given by a taxpayer to a purchaser on account of defects in goods, wares or merchandise sold, or on account of goods, wares or merchandise returned.
- (3) Any commissions paid by a broker to another broker on account of a purchase or sales contract initiated, executed or cleared with such other broker.
- (4) Bad debts, where the deduction is also taken in the same year for Federal income taxation purposes.
- (5) Taxes collected as agent for the United States, the Commonwealth or the City.

(e) Partial Exemptions. Where the gross or whole volume of business in its entirety cannot be subjected to the tax imposed by this article by reason of the provisions of the Constitution of the United States, or any other provision of law, the Tax Administrator under the direction of the Business Administrator shall establish rules and regulations and methods of

allocation and evaluation so that only that part of the gross or whole volume of business which is properly attributable and allowable to doing business in the City shall be taxed hereunder.

(f) Rate When Two Taxing Bodies Impose Same Tax. If any person is liable for the same tax on the same subject imposed under Pamphlet Law 1257 and its amendments (Act 511 of 12/31/65 (53 P.S. §6901-6924)), to the City and one or more political subdivisions of the State, then and in that event the tax shall be apportioned by such percentage as may be agreed upon by such political subdivisions, but, in no event, shall the combined taxes of both subdivisions exceed a maximum rate of tax as fixed by the Enabling Act permitting the imposition of such taxes.

(g) Records. The exempt or partially exempt taxpayer, to obtain the foregoing enumerated exclusions and deductions, shall keep books and records of business so as to show clearly, accurately and separately the amount of such sales and services as are excluded from the tax and the amounts of such sales and services, which may be deducted from the gross volume of business as hereinbefore, provided.

341.03 DECLARATION AND INSTALLMENT PAYMENT OF ESTIMATED TAX.

(a) Every person subject to the provisions of this article, whose annual gross receipts can be reasonably expected to exceed two million dollars (\$2,000,000.00), is encouraged to file quarterly declarations of estimated tax and pay twenty-five percent (25%) of the estimated annual tax with each filing.

(b) Every person filing a declaration shall certify the correctness thereof by affidavit. The fact that an individual's name is signed on the return shall be prima facie evidence that the individual is authorized to sign the return on behalf of the taxpayer.

(c) Every person filing a declaration of estimated tax shall file such declaration and make payment of the estimated tax in quarterly installments of twenty-five percent (25%) of the total estimated tax to be due for the year. Payments of the quarterly estimated installments are due on April 30, July 31, October 31 and January 31 of the succeeding year.

(d) An overpayment of the quarterly estimated installments may be credited to the next year's first quarterly installment or refunded directly to the taxpayer.

341.04 RETURNS.

(a) Every return shall be made upon a form furnished by the Tax Administrator. Every person making a return shall certify the correctness thereof by affidavit.

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

(c) Every person subject to the tax imposed by this article who commenced his business subsequent to the beginning of any tax year shall on or before the first Monday of May of the next year, file with the Tax Administrator a return setting forth his name, his business, business

address and such other information as may be necessary in arriving at the actual gross amount of business transacted by him during the preceding tax year and the amount of the tax due.

(d) Every person subject to the payment of the tax imposed by this article who engages in a business activity that is temporary, seasonal or itinerant by its nature or who does not intend to continue such activity within the City of Bethlehem for a full year, shall within forty-five (45) days of the close of the temporary, seasonal or itinerant business activity, file a return with the Tax Administrator setting forth his name, his business name, his business address and such information as may be necessary in arriving at the actual gross amount of business transacted. At the time of filing the tax return the taxpayer shall make payment of the tax due or make claim for credit or refund of any overpayment. For purposes of this paragraph, vendors at fairs, festivals, and craft shows/fairs shall be considered temporary, seasonal or itinerant businesses required to file such returns within forty-five (45) days of the close of the fair, festival or craft show/fair.

(e) Any person going out of 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 conducted and done by such person during that tax year in which the person ceased doing business, and pay the tax due as computed thereon at the rate herein provided for at the time of filing the return. If such tax has been previously paid based upon estimated gross receipts, the taxpayer shall be entitled to a refund of any excess tax paid for the tax year in which business was terminated.

(f) Every person required to file a return by this article shall attach to such return a copy of the Internal Revenue Service schedule or form that said person uses to report the business activity to the Internal Revenue Service.

341.05 PAYMENT OF TAX AND PENALTIES FOR LATE PAYMENT.

(a) The Business Privilege tax levied pursuant to this article shall be due and payable on the first Monday of May of the year following the tax year.

(b) The Treasurer shall, upon payment to him of the Business Privilege Tax, give the person paying the same a receipt therefore.

(c) The Tax Administrator is hereby authorized to accept "payment in protest" of the amount of business privilege tax claimed to be due by the Tax Bureau in any case where the taxpayer disputes the validity or the amount of the City's claim for tax. Such payment must be clearly marked as a "payment in protest" and must include the taxpayer's name, address, identification number, and tax period for which the payment is being made.

(d) If there is an underpayment of the tax, late payment of the tax, or a failure to pay the tax due on or before the due date for filing a return and paying the tax, as set forth above, a penalty of ten percent (10%) shall be added thereto, plus an additional penalty of one percent (1%) per month or fractional part of a month until the tax is paid.

341.06 LICENSE.

(a) Any person desiring to conduct, or to continue to conduct any business, as herein defined, within the City shall file, prior to the commencement of such conduct, with the Tax Administrator an application for a business privilege license and shall pay a fee of thirteen dollars (\$13.00) for the initial license and thirteen dollars (\$13.00) for each renewal thereof.

(b) The license issued shall be conspicuously posted in the place of business for which the license is issued, and shall remain in effect for the license year or fraction of year for which the license was issued.

(c) In cases where business is conducted in more than one place, a separate license shall be issued for each place of business.

(d) Whenever any licensee under this article shall change the address of the business for which such license is issued, the licensee shall immediately notify the Tax Administrator of such change of address and the new address or location where the business will be conducted.

(e) Whenever the ownership of any such business shall be changed, the new owner, upon taking possession thereof, shall notify the Tax Administrator of such fact within ten (10) days after such change becomes effective.

(f) No license issued under the provisions of this article shall be transferred or assigned to any other person, firm or corporation.

(g) Any taxpayer who is in default of payment of tax due hereunder shall be refused a license until such tax is paid in full.

(h) A City business which obtains a business privilege and mercantile tax license will not be required to obtain a separate license to participate in any festival, fair, carnival, craft fair or any other temporary place of business (referred to herein as a "Temporary Event") so long as the business conducted at such Temporary Event is the same as the business conducted at the license holder's regular place of business in Bethlehem.

(i) It shall be the duty and requirement of the sponsoring individual, group, association or corporation (including non-profit organizations) of a Temporary Event 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 Temporary 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.

(j) When any such Temporary Event shall involve the issuance of 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.

341.07 CONTINUING OFFENSE.

Each day on which a person violates any of the provisions of this article may be considered as a separate offense and punishable as such as provided in Section 341.99.

341.08 DUTIES OF THE TAX ADMINISTRATOR AND TREASURER.

(a) The Treasurer is charged with the duties of collecting and receiving the taxes, license fees, fines and penalties imposed by this article. It shall be the duty of the Treasurer or his delegates to keep a record showing the amount received by him from each person paying the tax, fees, and the date of such receipt.

(b) The Tax Administrator and his duly appointed deputies under the direction of the Business Administrator are hereby empowered with the approval of the Business Administrator to prescribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this article, including provisions for the examination 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, and charged with enforcing the provisions of this article and any rules and/or regulations promulgated pursuant hereto.

(c) In the event the person to be assessed neglects or refuses to make a return, then in such case the Tax Administrator or his duly appointed deputies shall assess the person or persons on such an amount of whole or gross volume of business as the Tax Administrator or his deputies deem reasonable and appropriate. In all cases of assessment, the Tax Administrator or his duly appointed deputies shall give the parties assessed a notice in which shall be stated the trade, business, occupation or class and the amount of the Business Privilege Tax imposed or levied.

(d) The taxpayer shall maintain such records and books of account as will enable him to make a true and accurate return in accordance with the provisions of this article. Such accounts and records must disclose in detail the gross receipts and other data pertaining to the taxpayer's gross volume of business and must be sufficiently complete to enable the Tax Administrator or his deputies to verify all transactions.

(e) The Tax Administrator or his deputies are hereby authorized to examine the books, papers and records of any person or persons subject to or supposed to be subject to the tax imposed by this article, in order to verify the accuracy of the return made, or if no return was made, ascertain the tax due.

(f) Any person aggrieved by any decision of the Tax Administrator shall have the right to appeal to the Court of Common Pleas, as in other cases.

341.09 CONFIDENTIAL NATURE OF RETURNS, ETC.

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

341.10 SUITS ON COLLECTION AND PENALTY.

(a) The Tax Administrator or his duly appointed deputies shall have the power in the name of the City to institute proceedings against any and all persons who violate the provisions of this article.

(b) If for any reason the tax is not paid when due and suit is brought for the recovery of any such tax, the person liable therefore, shall, in addition, be liable for the costs of collection and interest and penalties herein imposed.

341.11 SAVINGS AND SEVERABILITY CLAUSES.

(a) Nothing contained in this article shall be construed to empower the City to levy and collect the taxes hereby imposed on any person, business or any portion of any business not within the taxing power of the City under the Constitution of the United States and the laws and Constitution of the Commonwealth.

(b) If the tax or any portion thereof, imposed upon any person under the provisions of this article shall be held by any court of competent power or jurisdiction to be in violation of the Constitution of the United States or of the Commonwealth or any other provision of the law, the decisions of the court shall not affect or impair the right to impose taxes, or the validity of the taxes so imposed upon other persons herein provided.

(c) The provisions of this article are severable, and if any of its provisions shall be held illegal, invalid or unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this article. It is hereby declared to be the intention of Council that this article would have been adopted if such illegal, invalid or unconstitutional provisions had not been included herein.

341.12 DUTIES OF OTHER CITY DEPARTMENTS.

(a) Upon request by the Tax Administrator, it shall be the duty of any City employees having access thereto to examine all places of business and persons within their respective employment duties and territories subject to the provision of this Article, to determine whether the license provisions of this Article have been complied with.

(b) The above requests shall be made to the various department heads responsible for the supervision of said employees and those department heads shall report to the Tax Administrator any license violations under the provisions of this Article.

341.99 PENALTY.

Any person who conducts, transacts or engages in any of the businesses subject to the tax imposed by this article, without having first secured a business privilege license for the year, or any person who fails to file a tax return as required by the provisions of this article, or any person who willfully files a false return, shall, upon summary conviction before any Justice of the Peace, be sentenced to pay a fine of six hundred dollars (\$600.00) for any one offense, recoverable with costs, or imprisoned not more than ninety days, if the amount of the fine and costs are not paid. (Ord. 2230 §6. Passed 12/22/70; Ord. 3242. Passed 2/7/89; Ord. 4130. Passed 4/16/02)