

CITY OF HARRISBURG

BUSINESS PRIVILEGE AND MERCANTILE TAX

REGULATIONS



Mayor  

Michael W. Hughes
Tax & Enforcement Administrator

Revised 13/20

INTRODUCTION

Persons desiring to do business in the City of Harrisburg are required to obtain a business license and pay a tax on gross receipts.

These Regulations provide a formal interpretation of the City of Harrisburg's Business Privilege and Mercantile Tax Ordinance (Codified Ordinances Chapter 5-715) and establish procedures for its administration. The Tax Ordinance is attached and set forth as Addendum "A".

These Regulations are adopted pursuant to authority set forth in Chapter 5-715, SECTION 5-715.9 of the Codified Ordinances, and shall be interpreted, whenever possible, to be consistent with the Tax Ordinance. In the event that a provision of these Regulations is inconsistent with the Tax Ordinance, the provisions of the Tax Ordinance shall prevail.

THESE ARE REVISED REGULATIONS. THEY ARE EFFECTIVE AS OF 12:01 AM JANUARY 1, 2002. ALL PREVIOUS VERSIONS OF THE BUSINESS PRIVILEGE AND MERCANTILE TAX REGULATIONS ARE VOID.

For information or additional copies, please contact:

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**BUSINESS PRIVILEGE AND MERCANTILE TAX
REGULATIONS**

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ARTICLE I
THE BUSINESS PRIVILEGE AND MERCANTILE LICENSE

Section 100: License Required

Persons desiring to do business in Harrisburg must first obtain a Business Privilege and Mercantile License from the Office of the Tax and Enforcement Administrator, located in the Martin L. King Jr., City Government Center, 10 North Second Street, Harrisburg, PA 17101. Applications may be obtained by calling (717) 255-6513.

Section 101: Prerequisites for Issuance of License

Regardless of whether or not a business is exempt from paying the tax, a person or entity that operates a business within the City shall obtain a Mercantile License.

Regardless of whether or not a license is procured, the tax required to be paid pursuant to this Chapter is due if a person operates a business within the City.

No license will be issued to persons who are required to obtain approval of the Harrisburg Zoning Administrator and/or Health Officer, unless such approval is first obtained.

No license will be issued to persons in default of payment of any tax due to the City under the Harrisburg Licensing and Taxation Code. Licenses procured through payment by check shall be wholly void and ineffective unless the amount due is actually received by the City.

Section 102: Fee, Term and Proration

The Business Privilege and Mercantile License fee is fifty dollars (\$50.00) for each calendar year. The fee is **not** reduced pro rata by the portion of the license year elapsed in the year first procured.

Section 103: Posting

Licenses shall be kept and posted as follows:

Fixed place of business: License shall be posted in a conspicuous place upon the premises where business is conducted.

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

Other: Licensees engaged in business but not operating from a fixed place of business or from a vehicle shall keep the license upon their person when practicable.

Section 104: License for Branch Establishments

In the event that a licensee conducts business at more than one location in the city, 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 fifty dollars (\$50.00).

Section 105: Assignment and Transfer Prohibited

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

Section 106: 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 107: Change of Taxpayers Address

Taxpayer's change of address must be reported in writing to the Tax and Enforcement Administrator (see SECTION 100, above, for address), within ten (10) days after such change becomes effective.

Section 108: Failure to Procure License

Persons who engage in a business, profession, or other commercial activity without having first procured a license are subject to penalty and fine.

Section 109: Revocation

The Business Privilege and Mercantile License may be suspended or revoked at any time by the Mayor or designee if it is determined that the holder of the permit or license secured the same by misrepresentation; failed to maintain qualifications required by federal, state or local laws; engaged in fraudulent behavior or misleading advertising; consented to or allowed any behavior which would constitute a crime under federal, state or local laws, including, but not limited to, drug trafficking or drug possession; committed an act of gross negligence, or allowed any manner or form of public nuisance.

To allow for proper due process, the License and Tax Appeal Board is hereby authorized to handle any pre-deprivation and/or appeals from the license and permit holders. A record shall be made of all hearings in order to preserve such for any appeals to the Courts.

ARTICLE II THE BUSINESS PRIVILEGE AND MERCANTILE TAX

Section 200: Authority

The Tax Ordinance was enacted under authority of the Local Tax Enabling Act (Act 511 of 1965), 53 P.S. 6901 *et seq.*, and appears in the Codified Ordinances of the City of Harrisburg at Chapter 5-715 (attached as Addendum “A”).

Section 201: Definitions

As used in these regulations:

“**Assessment**” means the determination by the City of the amount of underpayment by a taxpayer.

“**Business**” means an enterprise, activity, profession or any other undertaking of any nature conducted for profit or ordinarily conducted for profit whether by an individual, partnership, association, corporation or any other entity, or any activity carried on or exercised for gain or profit in the City of Harrisburg, including, but not limited to, the sale of merchandise or other tangible personalty or the performance of services. The businesses of taxpayers having their principle places of business within the City of Harrisburg shall include all activities carried on within the City and those carried on outside the City attributable to the place of business within the City.

“**City**” means the City of Harrisburg.

“**Contractor**” means a person engaged in the business of furnishing labor, materials, 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 improvement, alteration or development of real property.

“**Date of Overpayment**” means the later of the date paid or the date tax is deemed to have been overpaid.

“**Date of Resolution**” means the date the overpayment is refunded or credited.

“**Doing Business**” means any act which furthers the purpose of a business, as defined herein.

“**Dwelling**” means 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” means 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 preparation of meals, and arranged for occupancy by one family.

“Gross Receipts” means 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:

- The cost of the merchandise sold;
- The cost of the materials, labor or services furnished;
- The amount of any interest or discount paid;
- Any other business-related expense, as permitted by regulation.

“Landlord” means a person who is in the business of leasing or renting out one or more dwelling units or one or more commercial space(s) on property not occupied by the owner as his/her primary residence. If the property is occupied by the owner as his or her residence, the leasing of more than two dwelling units or one or more commercial space(s) shall mean that the owner is a landlord for purposes of this definition. For the purposes of this Chapter, “commercial” shall include all business uses, including, but not limited to, manufacturing/industrial use, retail/wholesale use, office space and provision of services.

“Lease” means 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. For the purposes of this Chapter, any “rental” of property shall be treated as a lease of property.

“Merchandise” means 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.

“Overpayment” means any payment of tax which is determined in the manner provided by law not to be legally due.

“Person” means any individual, partnership, association, corporation, limited partnership, limited liability company, estate, trust, trustee, fiduciary 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 authority of the Harrisburg Business Privilege and Mercantile Tax.

“Retail Sales” means 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” means the passing of ownership from a seller to a buyer for consideration.

“Services” means any activity (other than retail or wholesale vending of merchandise) done for the benefit of another or others for consideration, including, but not limited to, consulting, maintenance and repairs, construction, engineering, planning, design, installation, commission sales, training, the lease or use of real or personal property (tangible or intangible), and the providing of legal or accounting expertise.

“Tax” or “The Tax” means the Harrisburg Business Privilege and Mercantile Tax.

“Taxpayer” means a person subject to the payment of the tax or one who would be subject to the payment of the same but for an exemption granted by State or local law.

“Underpayment” means the amount or portion of any tax determined to be legally due for which payment or remittance has not been made.

“Voluntary Payment” means a payment of the tax made pursuant to the free will of the taxpayer. The term does not include a payment made as a result of distraint or levy or pursuant to a legal proceeding filed by the City to collect delinquent taxes.

“Wholesale Sales” means sales made by persons engaged, as owners or agents, 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 Harrisburg 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 partnership entity, rather than the individual partners, is responsible to file the tax return and pay 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 Harrisburg. 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 services. It is not necessary to be a resident of the City, 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 Harrisburg. To determine whether gross receipts are attributable to doing business in Harrisburg, (see Attribution of Gross Receipts, SECTION 205, below). Receipts from certain activities are excluded from taxation (see Exclusion from gross Receipts, SECTION 206, below; and Interstate Commerce, SECTION 207, below).
- B. **Tax Rate:** The rate of tax varies depending on the nature of the business activity performed, as follows:
1. **Receipts from the Performance of Services:** On receipts of \$3,300,000 or less, generated by the performance of services, the rate of tax is .002 (\$2.00 per thousand dollars). On receipts in excess of \$3,300,000, the rate of tax is .0005 (\$0.50 per thousand dollars).

Example: Taxpayer, a partnership of consultants, earns \$4,000,000 in gross sales (receipts) by performing services. The tax is calculated:

<u>Gross Receipts</u>		<u>Rate</u>	=	<u>Tax</u>
\$3,300,000.00	x	.002	=	\$6,600.00
700,000.00	x	.0005	=	<u>350.00</u>
		Total Due:		\$6,950.00

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” or “retail” (see definitions, SECTION 201).

(a) **Receipts from Wholesale Sales:** On receipts of \$5,000,000 or less generated by the wholesale sales of merchandise, the rate of tax is .0005 (\$0.50 per thousand dollars). On receipts in excess of \$5,000,000, the rate of tax is .000125 (\$0.125 per thousand dollars).

Example: Taxpayer, a wholesale distributor of automobile parts, has gross sales (receipts) of \$8,300,000. The tax is calculated:

<u>Gross Receipts</u>		<u>Rate</u>	=	<u>Tax</u>
\$5,000,000.00	x	.0005	=	\$2,500.00
3,300,000.00	x	.000125	=	<u>375.00</u>
		Total Due:		\$2,875.00

(b) **Receipts from Retail Sales:** On receipts of \$3,300,000 or less generated by the retail sales of merchandise, the rate of tax is .00075 (\$0.75 per thousand dollars). On receipts in excess of \$3,300,000, the rate of tax is .000125 (\$0.125 per thousand dollars).

Example: Taxpayer, a retail dealer of automobile parts has gross retail sales (receipts) of \$8,300,000. The tax is calculated:

<u>Gross Receipts</u>		<u>Rate</u>	=	<u>Tax</u>
\$3,300,000.00	x	.00075	=	\$2,475.00
5,000,000.00	x	.000125	=	<u>625.00</u>
		Total Due:		\$3,100.00

Note: The mercantile tax rates shown above are the *effective* tax rates. The Harrisburg School District also imposes a mercantile tax, and Act 511 requires that the mercantile tax rates set forth in the Tax Ordinance be reduced so that the combined rate of the two taxes does not exceed .001 for wholesale dealers, or .0015 for retail dealers and restaurants.

3. **Receipts from Lease, Use, or Rental of Personal or Real Property:** Receipts from the lease, use, or rental of personal or real property (except dwellings and dwelling units) shall be deemed to be receipts from the performance of services and taxed at the rate set forth in SECTION 204.B.1 above. Provided, however, receipts from a “finance lease” as such term is defined under SECTION 2A-103 of the Pennsylvania Commercial Code shall be deemed to be a retail sale and taxes at the rate set forth in SECTION 204.B.2 (b), above.

4. **“Unearned” Business Receipts:** Receipts derived from dividends, interest, gain on the sale of capital assets; and 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 Harrisburg), are subject to the tax at the rate for “services” as set forth in SECTION 204.B.1, above. Capital assets do not include inventory, stock-in-trade or other assets held for sale in the ordinary course of business. For purposes of calculating gain on sale of capital assets, return of capital may be deducted.
5. **Businesses Engaging in More Than One Classification of Business Activity:** Businesses, which engage in more than one classification of business activity (e.g., a service provider whose business includes the sale of products), 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.

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 the Sales of Merchandise

1. **Receipts from Harrisburg Sales Transactions:** All receipts from wholesale or retail sales made or effected within the territorial limits of the City are included in taxable receipts. Sales are “made or effected” when (i) an agreement of sale is concluded within the City, or (ii), 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 Harrisburg:** Receipts from sales made or effected in Harrisburg are taxable whether delivery after sale is made within or outside of the City.

Example: Taxpayer is a distributor of musical instruments whose headquarters and only sales office is located in Harrisburg. Receipts from sales made in Harrisburg for delivery outside of the City are attributed to the City (unless excludable under SECTION 207 below, Interstate Commerce).

Example: Taxpayer, a dealer in scrap copper, enters into an agreement in Harrisburg to sell three tons of metal located in Pittsburgh. The agreement consummated in Harrisburg conveys immediate ownership and possession of the metal to Taxpayer’s customer. The sales proceeds are properly attributed to Harrisburg.

3. **Doing Business Through Local Representative or Sales Office:** Receipts from sales made or effected in Harrisburg by a local representative or sales force are included in taxable receipts.

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

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

B. **Attribution of Gross Receipts from the Sales of Services**

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

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

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

2. **Receipts from Services Directed from Harrisburg:** Except as provided in subparagraph 3 below, receipts from services performed outside of Harrisburg but which are managed, directed or controlled from within the City are attributed to the City. Receipts from services performed outside Harrisburg, earned by persons whose home office is within the City, it will be presumed to have been managed, directed, or controlled from within the City.

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

3. **Receipts from Activities Directed from Harrisburg, but Subject to Business Privilege**

Tax Elsewhere: Receipts from activities managed, directed, or controlled from within the City, 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 taxable to the City.

Example: Taxpayer, an accounting firm whose sole office is in the City, sends junior level personnel to Pittsburgh for several months to complete an audit supervised from Harrisburg. Receipts from the audit are taxed by Pittsburgh under that City's business privilege tax. Harrisburg will allow exclusion of such receipts as are demonstrated to have been taxed by Pittsburgh for services performed in Pittsburgh.

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

- a. The appearance of the taxpayer's name in the telephone and/or building directories;
- b. Stationery and calling cards showing 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 location;
- f. The existence of a business license to operate at the branch office;
- g. **Field Offices:** A field trailer may operate a bona fide branch office where the field trailer bears the name of the taxpayer; the trailer is staffed by 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 Harrisburg, 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 Impossible:** In instances involving the performance of services both within and outside of Harrisburg 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 Harrisburg, divided by the total number of hours of service performed both within and outside of Harrisburg.

Example: Taxpayer, an attorney whose office is in Reading, represents a plaintiff in an automobile accident case. She has a contingent fee agreement with her client. A deposition is held in Harrisburg. The amount of the attorney's time spent in the City equals 10% of the total time spent on the case. If taxpayer obtains a recovery for her client, 10% of her fee is apportioned to Harrisburg.

- C. **Unfair Attribution:** If, in the discretion of the Tax & Enforcement Administrator of the City of Harrisburg, the application of the provisions of this SECTION results in an unfair or inequitable attribution (or apportionment) of receipts, then the Tax & Enforcement 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 taxable receipts. To date, local taxation has been preempted by the Commonwealth only as to the banking industry, the sale of insurance contracts subject to the Pennsylvania gross premiums tax, harness racing and the alcoholic beverage industry. Preemption has been judicially determined not to exist as to attorney's, the real estate industry, nursing homes, and the securities industry.

Limitation: Preemption does not relieve the taxpayer from all municipal taxation. Gross receipts, which are unrelated to the aspect of business operation the taxation and regulation of which has been preempted by the Commonwealth, remain subject to tax by the City. 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 Harrisburg Business Privilege and Mercantile Tax, and such state tax is measured by the same gross receipts sought to be taxed by the City, the State tax shall prevail, and the same subject shall not be also taxed by the City.
- C. **Governmental Entities:** Agencies of the government of the United States, the various states, the Commonwealth, or any political subdivision 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 rate regulation are subject to 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 for a medical examination of his client. The client reimburses the attorney the cost of the examination. The reimbursement is excluded from the attorney's taxable gross receipts.

Example: Taxpayer, an advertisement 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 taxable gross receipts.

F. **Manufacturers, Producers, and Processor of By-Products of Manufacturing:** Receipts generated by engaging in the following activities are not subject to the 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; dyeing and finishing of cloth; purification through pasteurization, filtration and testing for bacteria and impurities; the preparation of potato salad, cole slaw, bread filling, 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 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 consists of secondary or additional products produced in addition to a principal product. Processing of by-products is not taxable activity whether 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 by-products of manufacturing is not subject to the business privilege 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.

2. **Application to Goods and Articles Manufactured Outside of Harrisburg:** Receipts excludable under this subsection are excluded whether the product is manufactured, produced or processed within or outside of Harrisburg.

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

3. **Goods and Articles for Own Use:** Receipts excluded under this subsection are excluded whether the product is sold to others or used by the taxpayer in its own operation.

Example: Taxpayer produces asphalt both for sale to others and for its own use in fulfillment of paving contracts. Taxpayer is entitled to exclude receipts from sale of product to others plus an additional amount equal to the cost of producing product for its own use.

4. **Non-Manufacturing Activities Not Subject to Exclusion:** 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 dispositive, in determining whether receipts are excludable under the Harrisburg Business Privilege and Mercantile Tax.

G. **Nonprofit Organizations:** Gross receipts generated by nonprofit organizations meeting the criteria for institutions of purely public charity⁶ as set forth in the Institution 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 nonprofit 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 taxable gross receipts.

H. **Miscellaneous Excluded Receipts:** Excluded from the business privilege tax and mercantile tax are receipts, which constitute:

- Cash discounts to purchasers for prompt payment of bills;
- Freight delivery or transportation charges paid by the seller for the purchaser;
- Sales of trade-ins, up to the amount given the prior owner as a trade-in allowance;
- Refunds, credits or allowances given customers for defective goods returned;

- Taxes collected as agent for the United States of America, the Commonwealth of Pennsylvania, or the City of Harrisburg;
- Exchanges between sellers of identical goods, but not to the extent of any additional cash payment accompanying the exchange;
- Sales to other sellers in the same line at the same price for which the seller acquired the merchandise;
- Transfers between one department, branch or division of a business entity and another, recorded as interdepartmental transfers;
- Receipts received as rent of real property by a “landlord (as defined in Section 201, above) or his agent;
- Receipts from the providing of direct-to-home satellite service;
- Receipts from the sale of interstate passenger tickets;
- Commissions paid by a broker to another broker on account of a purchase or sales contract initiated, executed or cleared with such other broker;
- 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.

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Section 207: Interstate Commerce

General: Gross receipts, which are fairly attributed to the City of Harrisburg (see Section 205, above), earned by persons doing business within the City and having substantial nexus to the City.

- A. **Substantial Nexus with Harrisburg:** Receipts earned by persons having no physical presence or other substantial nexus to the City 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 Harrisburg. The company has no sales offices, salespersons or other physical presence in Harrisburg (except catalogs). The company's 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 a taxing jurisdiction outside the Commonwealth shall be deemed to be fairly attributed to such other taxing jurisdiction and excluded from receipts taxable by the City.

Example: Taxpayer is a wholesale distributor of musical instruments whose sole headquarters and only sales offices are located in Harrisburg. Shipments are made from Harrisburg to mail order customers and independent representatives throughout the United States. Although taxpayer to be subject to a gross receipts tax on the privilege of doing business imposed by a jurisdiction outside of Pennsylvania will be attributed to that jurisdiction and excluded from gross receipts taxable in Harrisburg.

Example: Taxpayer provides consulting services in the area of structural engineering throughout the United States, Pennsylvania and the City. All activities are managed, directed or controlled from taxpayer's home office located within the City. 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 Pennsylvania are attributed to that jurisdiction and excluded from gross receipts taxable by Harrisburg.

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 wholly owned subsidiary of ABC Company. All of ABC's accounting and administrative functions are performed by taxpayer. Taxpayer bills ABC "management fee" equal to its costs and expenses so that, by design, no profit is generated by taxpayer. ABC purports to "reimburse" taxpayer all of its expenses. So long as taxpayer remains a separate legal entity, the inter-company 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 the 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 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 such merchandise. **Please Note:** The commission paid to the jewelry store (the 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 fee for the use of its computer department (personnel and equipment), which it make 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. Payments to subcontractor equal \$50,000.00. Taxpayer may not deduct payments to subcontractors, but must include the entire \$200,000 as gross receipts.

F. **General Agencies, Brokers, and Agents:**

1. **General Agencies and Brokerage Firms:** shall include in gross receipts all revenue received - without deduction for commissions or fees paid to, or withheld by, agents of the general agency or brokerage firm.

Example: Taxpayer, a broker/dealer registered with the National Association of Securities. Dealers earn 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 its 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 on which a real estate commission is generated in the amount of \$7,000. After the commission is split between the real estate brokerage firms representing the buyer and seller, taxpayer is paid an agent's commission by her broker equal to \$1,750. Taxpayer's taxable gross receipts are \$1,750.

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.

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 may reasonably require, to show employment. Receipts earned by independent agents are subject to the tax even though such persons 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 Tax & Enforcement 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 does not relieve the taxpayer of the responsibility to timely file.

Section 301: Due Dates for Filing Returns

- A. **Quarterly Estimated Returns**: Taxpayer's whose annual gross receipts can reasonably be expected to exceed two million dollars (\$2,000,000), must 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 the thirtieth day following each calendar quarter (April 30, July 30, October 30, January 30). The amount of estimated tax remitted with each quarterly return is adjusted so that the full amount of the estimated annual tax is paid with the fourth return.
- B. **Annual Returns**: Annual returns are due on the fifteenth day of April.

Proof of Mailing: The postmark of the United States Postal Service shall constitute proof of mailing.

Section 302: Extension of Time for Filing Returns.

- A. The Tax & Enforcement Administrator, upon proper cause shown, may grant an extension of not more than 60 days for the filing of any tax return. Applications for such extensions shall be made on or before the last day for the payment of the tax, in such form as the Tax & Enforcement Administrator prescribes.
- B. If the Internal Revenue Service grants to any taxpayer an extension for the filing of Federal income tax returns for a period in excess of 60 days, the Tax & Enforcement Administrator may grant an additional extension of time for the filing of any tax returns affected thereby, not to exceed the date of expiration of the federal extension period.
- 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 extension will not relieve the taxpayer from the obligation to pay interest and penalty upon the amount of tax due which exceeds the estimated tax paid.

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; Form 1065 if taxpayer is a partnership; and Form 1120 if taxpayer is a corporation), accompanied by payment of tax and delivered to the Tax & Enforcement Administrator.

Section 304: Business Termination

Any taxpayer going out of business or ceasing to do business shall, within seven (7) 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 at the time of filing said return. In the event that any tax has been previously paid based 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.

Please note that any business holding a “closing-out sale”, a “sale of goods damaged by fire, smoke or water”, a “defunct business sale”, or other such going-out of business sale, must comply with the provisions of the Act of July 31, 1963 (P.L. 410, No. 217), 53 P.S. Section 4471-1, *et seq.*, and the Codified Ordinances of the City of Harrisburg, Chapter 5-715.

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**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 & Enforcement Administrator or designees to verify the accuracy of the declarations or returns filed. Accounts and records are to be preserved for NOT LESS THAN SIX (6) YEARS.

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**ARTICLE V
ADMINISTRATION AND ENFORCEMENT**

Section 500: Collection and Receipt of Tax

The Treasurer, with the assistance of the Tax & Enforcement Administrator, is authorized to collect and receive taxes, fines, penalties and interests on behalf of the City of Harrisburg. Unless otherwise specified by the taxpayer, all voluntary payments shall be applied against amounts owed in the following order: tax, interest, penalty, and other fees or charges.

Section 501: Records of Receipts

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

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

The Tax & Enforcement Administrator shall notify any taxpayer contacted regarding an assessment, audit, determination, review or collection of tax as follows:

You are entitled to receive a written explanation of your rights with regard to the audit, appeal, enforcement, refund and collection of local taxes by calling The Tax and Enforcement Administrator at (717) 255- 6513, weekdays, during the hours of 8:00 am to 4:30 pm.

A Disclosure Statement substantially similar to that attached hereto as Addendum "B" shall be made available to taxpayers upon request at no charge.

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

The Tax & Enforcement Administrator or a designee is authorized to examine any of the books, papers, and records of any person or business entity who the Tax & Enforcement Administrator reasonably believes has engaged in taxable activity within the City of Harrisburg in order to verify the accuracy of any return made, or if no return has been made, to arrive at a reasonable assessment of the amount of tax, interest, penalty, and fine due.

- A. **Cost of Audits:** In the event the City retains the services of tax auditing professionals to verify accuracy of returns, any cost to the City to conduct such an audit shall be assessed against the taxpayer if any amount is found due and owing to the City.

- B. **Issuance of Subpoenas to Compel Attendance and Production**: The Tax & Enforcement Administrator shall have the power and is authorized to (i) issue subpoenas to compel the attendance of persons deemed by the Tax & Enforcement Administrator to be necessary to examine as witnesses, and (ii) 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 30 calendar days from the mailing date to respond to requests for information by the City. The Tax & Enforcement Administrator shall notify any taxpayer from whom 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 3 years prior to the mailing date of the notice of such inquiry. If, after the initial request, the Tax & Enforcement Administrator (or designee) determines that the taxpayer failed to file a tax return, under reported 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 & Enforcement Administrator has sufficient information to indicate that the taxpayer failed to file a required return or pay an eligible tax, which was due more than 3 years prior to the date of the notice.

Section 504: Procedures for the Conduct of Taxpayer Audit

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

- A. **Notice of Audit**: The taxpayer shall be notified in writing of a scheduled audit at least 30 days in advance. The notice of audit shall contain the following information:
- The reason for the audit;
 - The tax years subject to audit;
 - The date, place, and time for the audit to be conducted;
 - A description of the information, books and records to be produced;
 - The notice set forth in subsection 502, above.
- B. **Rescheduling Audit**: The taxpayer may request that the audit be rescheduled, provided that it is rescheduled within a reasonable time not exceeding 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 (see below) 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 & Enforcement Administrator shall examine every return as soon after the filing as practical to determine the correct amount of tax.
1. **Notice of Assessment for Underpayment**: If the Tax & Enforcement Administrator finds that the amount of tax shown on the return is less than the correct amount, the Tax & Enforcement Administrator shall notify the taxpayer in writing of the amount of the underpayment (deficiency) assessed. A Notice of Assessment shall be in writing and include:
- The tax period or periods for which the underpayment is asserted;
 - The amount of the underpayment detailed by tax period;
 - The legal basis upon which the City has relied to determine that an underpayment exists;
 - An itemization of the revisions made by the City 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 & Enforcement Administrator finds that the tax has been paid by the taxpayer is more than the correct amount, the Tax & Enforcement Administrator shall credit the overpayment against any taxes owed by the taxpayer to the City and shall refund the difference to the taxpayer. Written notice of such action by the Tax & Enforcement 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 & Enforcement 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 **90 days** of the date of the Notice of Assessment, the taxpayer may file a Petition for Reassessment setting forth the ground upon which reassessment is requested. Petitions for Reassessment shall be filed with the Tax & Enforcement Administrator for submission to the Harrisburg License and Tax Appeal Board pursuant to Chapter 5-101, *et seq.* of the codified Ordinances of the City of Harrisburg for hearing and determination. See Taxpayer's Administrative Appeals, SECTION 514, below.

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 may file a written request with the Tax & Enforcement Administrator for a refund or credit. A request for refund shall be made within 3 years of the due date for filing the tax return (as extended), 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 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 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 administrative hearing officer and shall not preclude a taxpayer from submitting a Petition for appeal. (See Taxpayer's Administrative Appeals, SECTION 514, below.)
 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 the payment.
- B. **Interest on Overpayments**: All overpayments of tax due to the City shall bear simple interest from the date of overpayment until the date of resolution. (See definitions, Section 201, for meaning of "date of overpayment" and "date of resolution").
1. **Rate of Interest**: Interest on overpayment 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 to the City) within 75 days after the last date prescribed for filing the report of the tax liability or within 75 days after the date the return or report of the liability due is filed, whichever is later.
 3. **No Interest on Overpayments of Interest and Penalty**: Overpayments of interest or penalty shall not bear any 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 & Enforcement Administrator may abate all or any part of interest for any period for the following:
1. Any underpayment of tax finally determined to be due attributable in whole or in part to any error or delay by the City 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 a tax to the extent that any error or delay in the payment is attributable to an officer, employee or agent of the City, being erroneous or dilatory in performance of a ministerial act. The Tax & Enforcement Administrator shall determine what constitutes timely performance of ministerial acts.
- B. **Erroneous Written Advice by City**: 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, acting in their official capacity if:
- The written advice was reasonably relied upon by the taxpayer and was in response to specific written request of the taxpayer; and
 - The portion of the penalty or addition to tax or excess interest did not result from a failure by the taxpayer to provide adequate or accurate information.

Section 509: Installment Agreements:

If, in the sole opinion of the Tax & Enforcement Administrator it will facilitate collection, the City may enter into a written agreement with any taxpayer under which the taxpayer is allowed to satisfy liability for the tax in installment payments. Except as provided below, any agreement entered into for installment payments shall remain in effect for the term of the agreement.

- A. **Termination of Installment Agreement**: The Tax & Enforcement Administrator may terminate any installment agreement if:
- Information provided to the City prior to the date of the agreement was inaccurate or incomplete, or
 - The Tax & Enforcement Administrator believes that collection of the tax under the agreement is in jeopardy.

- B. **Alteration of Installment Agreement**: If the Tax & Enforcement Administrator finds that the financial condition of the taxpayer has significantly changed, the Tax & Enforcement Administrator may alter, modify or terminate the agreement, but only if:
- Notice of the Tax & Enforcement Administrator’s finding is provided to the taxpayer no later than 30 days prior to the date of such action; and
 - The notice contains the reasons why the Tax & Enforcement Administrator believes a significant change has occurred.
- C. **Breach of Installment Agreement**: The Tax & Enforcement Administrator may alter, modify or terminate an installment agreement if the taxpayer fails to do any of the following:
- Pay any installment at the time the installment is due under the agreement;
 - Pay any other tax liability at the time the liability is due;
 - Provide a financial condition update as requested by the City.
- D. **Prepayment Permitted**: Taxpayer may prepay, in whole or in part, any tax under any agreement with the city.

Section 510: Payment Under Protest

The Tax & Enforcement Administrator is authorized to accept “payment under protest” of the amount of tax in order for the taxpayer to avoid liability for additional interest, penalties, and fines.

Section 511: Violations and Penalties

Failure to comply with the provisions of the Harrisburg Licensing and Taxation Code may result in both civil and criminal sanctions, including:

- A. **Administrative Penalty**: If any person fails to pay the tax when due, a penalty in the amount of thirty percent (30%) of the tax due and unpaid shall be added thereto plus interest.
- B. **Revocation of License**: The Business Privilege and Mercantile License of any person who fails to file a declaration of estimated tax or any tax return required under the Licensing and Taxation Code, or who files a false declaration of estimated tax or a false return, may, after notice and hearing, be revoked.

- C. **Civil Penalty:** Any person who fails to obtain a license, or who fails to remit any tax due, or fails to file complete and correct reports or returns when due or knowingly makes a false or fraudulent report or violates or attempts to violate any provision of the Licensing and Taxation Code, may be assessed a civil penalty of not more than five-hundred dollars (\$500.00) per day of violation. Each twenty-four (24) hour period during which a violation continues shall be considered a separate and distinct offense under this provision and punishable as such.
- D. **Criminal Penalty:** Any person who fails to obtain a license; fails to remit any tax due; fails to file complete and correct reports or returns when due; knowingly makes a false or fraudulent report; or violates or attempts to violate any provision of the Licensing and Taxation Code, may be fined not more than six hundred dollars (\$600.00) for any offense, recoverable with costs, or imprisoned not more than ninety days, or both. Each day that a violation continues, shall be deemed a separable offense punishable by like fine or penalty. Any fine or penalty shall be in addition to the ten percent (10%) administrative penalty and any other fine or penalty levied.

Section 512: Confidential Nature of Tax Information

Any information learned by the Tax & Enforcement Administrator or any official, agent or employee of the City as a result of any audit, return, report, investigation, hearing or verification required or authorized by the Tax & Enforcement Administrator shall be confidential tax information.

Section 513: Dishonored Checks

If any check received in payment of taxes is returned unpaid by the bank, there shall be added to the tax due the sum charged for dishonored checks established by the City's Office of the Treasurer.

Section 514: Taxpayer's Administrative Appeals

General: To appeal any assessment, determination or denial of refund of the tax, the taxpayer must file a Petition for Administrative Appeal with the Harrisburg License and Tax Appeal Board (Board) pursuant to Chapter 5-101, *et seq.*, of the Codified Ordinances of the City of Harrisburg. All Petitions shall be mailed or delivered to the Office of the Tax & Enforcement Administrator for filing with the Board.

- A. **Petitions for Administrative Appeal:** Petitions shall be in writing on a form substantially similar to that attached hereto as Addendum "C". A Petition is timely filed if the letter transmitting the Petition is postmarked by the United States Postal Service on or before the final day on which the Petition is required to be filed. If hand delivered, a Petition will be deemed to be filed on the date received in the Office of the Tax & Enforcement Administrator.

B. **Contents of Petition for Administrative Appeal:** Petitions shall:

1. State the name, address and telephone number of the taxpayer and taxpayer's authorized representative (if any);
2. Identify the tax and tax period(s), to which the Petition pertains;
3. State the amount and legal basis for the appeal (i.e., state how or why the assessment is incorrect; or why a refund request should have been granted);
4. Provide copies of all supporting documentation and calculations;
5. State whether an oral hearing is requested; and
6. Certify under penalty of perjury that the facts in the Petition are true and correct and that the Petition is not filed for purposes of delay.

C. **Deadlines for Filing Petition for Administrative Appeal:**

1. **Refund Petitions** shall be filed within **3 years** after the due date for filing the report as extended or one year after actual payment of an eligible tax, whichever is later. If no report is required, the Petition shall be filed within 3 years after the due date for payment of the tax or within one year after actual payment, whichever is later.
2. **Petitions for reassessment** of the tax shall be filed within **90 days** of the date of the assessment notice.

D. **Filing Fee:** The fee for filing an Administrative Appeal is \$40.00. In the event of a decision favorable to the taxpayer, the filing fee will be refunded.

E. **Administrative Appeals Process and Procedure:** Upon receipt of a timely filed Petition for Administrative Appeal, the Tax & Enforcement Administrator will:

- Promptly schedule a hearing *if* a hearing has been requested by the taxpayer (if a hearing is not requested, the Petition will be determined on the record before the Board);
- Provide the taxpayer with a Notice of Hearing (setting forth the time, date, and location of the hearing); and
- Forward the taxpayer's Petition to the Board. Unless the date of the hearing is agreed upon by all parties, the Tax & Enforcement Administrator shall give at least 15 days written notice of the hearing to all parties. The Board, at their discretion, may schedule an informal preliminary conference with the parties.

1. **Hearings:** Hearings will be held at the Office of the Tax & Enforcement Administrator, City Government Center, 10 North Second Street, Suite 305-A, Harrisburg, PA 17101 unless otherwise directed by the Board. Hearings will be informal in nature and technical rules of evidence will not be applicable. All information provided by the taxpayer to the City prior to the hearing shall be provided to the Board.
 - a. **Representation:** Taxpayers may appear before the Board with or without benefit of representation. Persons seeking to represent a taxpayer at the hearing must first be so authorized by the taxpayer in writing. Taxpayer representatives need not be professionally trained, but should be familiar with the tax, these Regulations and the facts of the case.
 - b. **Presentation of Evidence:** Evidence may be submitted and considered which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Unless waived by the parties, testimony shall be under oath or affirmation, administered by the Board. Copies or photographs of all records and other exhibits shall be provided to all parties and to the Board. Any party may have a recording or transcript made of the hearing at the party's expense.
 - c. **Adjournment of Hearing:** The Board, at their discretion, may adjourn the hearing for not more than 10 days.
 - d. **Failure to Appear:** The hearing may proceed in the absence of any party who fails to appear, after notice, but the Board's decision shall not be based solely upon the failure of a party to appear.
2. **Decision:** After the conclusion of the hearing, the Board shall issue a written decision to the parties stating findings of fact and conclusions of law. The decision shall be mailed by regular mail to the parties (and representative, if any) at their last known addresses.

Section 515: Judicial Appeal

Any person aggrieved by a decision of the License and Tax Appeal Board who has a direct interest in the decision shall have the right to appeal to the court vested with the jurisdiction of local tax appeals by or pursuant to 42 Pa. C.S. (relating to judiciary and judicial procedure).

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 had not been included herein.

END

OFFICE OF THE BUSINESS ADMINISTRATOR
CITY OF HARRISBURG

TO ALL TO WHOM THESE PRESENTS SHALL COME, KNOW THAT:

Reposing special confidence and trust in the abilities and qualifications of

MICHAEL W. HUGHES
TAX ENFORCEMENT ADMINISTRATOR

I herewith certify that such persons have been duly appointed DESIGNEE(S) for the Administration and Enforcement of the Business Privilege and Mercantile Tax Rules and Regulations in and for the City of Harrisburg in the Commonwealth of Pennsylvania and that such persons shall exercise all duties and privileges related thereto during such term of office or until qualified successors have been chosen.

/s/

Marita Kelley
Finance Director

/s/

Wanda R.D. Williams
Mayor

Before me, the undersigned authority, a notary public, personally appeared **Marita Kelley, Finance Director, and Wanda R.D. Williams, Mayor** of the City of Harrisburg and that they have executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal this ____ day of _____, 2014.

SEAL:

/s/

Notary Republic

ADDENDUM “A”

CHAPTER 5-715

BUSINESS PRIVILEGE AND MERCANTILE TAX

SECTION 5-715.1	Definitions
SECTION 5-715.2	Levy of Tax
SECTION 5-715.3	Rate and Basis of Tax
SECTION 5-715.4	Declaration and Installment Payment of Estimated Tax
SECTION 5-715.5	Returns
SECTION 5-715.6	Payment of Tax
SECTION 5-715.7	Underpayment or Late Payment
SECTION 5-715.8	Business Privilege and Mercantile License
SECTION 5-715.9	Duties of Business Administrator and Treasurer
SECTION 5-715.10	Legal Proceedings Authorized
SECTION 5-715.11	Confidentiality of Returns
SECTION 5-715.99	Penalty

CROSS REFERENCES

Local Agency Law, Subchapter B of Chapters 5 and 7 of Act of April 28, 1975, P.L. 202 (2 Pa.C.S.A. §§105; 551-55, 751-54).
Occupational Privilege Tax: See Chapter 5-705.
Power to Tax: See Local Tax Enabling Act, Act of Dec. 31, 1965, P.L. 1257, as amended (53 P.S. §6901 et seq.).
Transient Wholesale and Retail Business: See Chapter 5-303.

5-715.1 DEFINITIONS

See Glossary of Terms, Chapter 1-302.

5-715.2 LEVY OF TAX

There is hereby levied for the tax year beginning January 1, 1983 a tax for general revenue purposes on the privilege of doing business, as herein defined, in the City. (Ord. 31-1982.)

5-715.3 RATE AND BASIS OF TAX

A. Rate of Tax

1. Business Privilege Tax

On receipts attributable to the performance of service, the rate imposed shall be two (2) mills, or two dollars

\$2.00) per one thousand dollars (\$1,000) of gross volume of business, up to gross receipts of three million three hundred thousand dollars (\$3,300,000); the rate imposed shall be one-half (1/2) mill or fifty cents (\$.50) per one thousand dollars (\$1,000). Collection of estimated tax shall not be construed to levy an increase in the annual rate of the tax.

2. **Wholesale Mercantile Tax**

On receipts attributable to wholesale sales of merchandise, the rate imposed shall be one (1) mill or one dollar (\$1.00) per thousand dollars (\$1,000) gross volume of business, up to gross receipts of five million dollars (\$5,000,000); for gross receipts in excess of five million dollars (\$5,000,000), the rate imposed shall be one-eighth (1/8) mill or twelve and one-half cents (\$.125) per one thousand dollars (\$1,000). Collection of past due taxes, penalties or estimated tax shall not be construed to levy an increase in the annual rate of the tax.

3. **Retail Mercantile Tax**

On receipts attributable to retail sales of merchandise, the rate imposed shall be one and one-half (1 2) mills or one dollar and fifty center (\$1.50) per one thousand dollars (\$1,000) up to gross receipts of three million three hundred thousand dollars (\$3,300,000); for gross receipts in excess of three million three hundred thousand dollars (\$3,300,000), the rate imposed shall be one-eighth (1/8) mill or twelve and one-half cents (\$.125) per one thousand dollars (\$1,000). Collection of past due taxes, penalties or estimated tax shall not be construed to levy an increase in the annual rate of the tax.

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 upon the actual gross volume of business transacted during such immediately preceding tax year.
2. Every person subject to the payment of the tax hereby imposed who has commenced or commences business subsequent to the beginning of the tax year, shall compute gross volume of business upon the actual gross amount of business transacted during that tax year.

Every person subject to the payment of the tax hereby imposed who engages in a business temporary, seasonal or itinerant in nature shall compute estimated gross amount of business within the City by a method to be determined by the Business Administrator or designee.

C. **Exemptions**

1. **Persons and Business**

Persons employed for a wage or salary, non-profit corporations or associations organized for religious, charitable or educational purposes, agencies of the government of the United States or the Commonwealth of Pennsylvania and any political subdivision thereof, or any authority created or organized under and pursuant to any law are exempt from the provisions of this chapter.

2. **State Preemption**

No such tax shall be assessed and collected on a privilege, transaction, subject, or occupation which is subject to a revenue-producing state tax or license fee, 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 tangible property 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. **Landlords and Rental Property**

No such tax shall be assessed and collected on the gross receipts received as rent by a landlord or his agent.

6. **Production and Manufacture**

No such tax shall be assessed and collected on goods, articles, products, or by-products 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, producers, and farmers with respect to the goods, articles and products of their own manufacture, production or growth; any privilege, act or transaction relating to the business of production or growth; or any privilege, act or transaction relating to the business of processing by-products of manufacture; or on the transportation, loading, unloading, dumping or storage of such goods, articles, products or by-products.

7. **Gross Receipts Tax or Fee**

No such tax shall be assessed or collected on any receipts, which are subject to a gross receipts tax or fee under any other ordinance of the City.

D. **Determination of Gross or Whole Volume of Business**

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 exemption:

- 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 and taxation purposes; and
- 5) Taxes collected as agent for the United State of America, the Commonwealth of Pennsylvania or the City.

E. Partial Exemptions

Where gross or whole volume of business in its entirety cannot be subjected to the tax imposed by this chapter by reason of the provisions of the Constitution of the United States, or any other provisions of law, the Business Administrator or designee, under the direction of the Mayor, 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 Same Tax is Imposed by Two Taxing Bodies

If any person is liable for the same tax on the same subject to the City and one or more political subdivisions of the Commonwealth, 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, if any, fixed by law.

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 which may be deducted from the gross volume of business as herein before provided. (Ord. 31-1982.)

5-715.4 DECLARATION AND INSTALLMENT PAYMENT OF ESTIMATED TAX

- A. Every person subject to the provisions of this chapter shall file a declaration of estimated tax in the form and manner prescribed by the Business Administrator or designee; provided, that this section shall apply only to taxpayers whose estimated annual gross volume of business can reasonably be expected to exceed two million dollars (\$2,000,000).
- 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 such individual is authorized to sign the return on behalf of the taxpayer. (Ord. 31-1982)

- C. Any person required under Subsection (A) hereof to file 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 tax estimated to be due for the year, which payment shall be made on or before the thirtieth day of the month following a quarter, that is, before the thirtieth day of April, July, October, and January, respectively. (Ord. 33-1993.)
- D. If, after a declaration is filed, the estimated tax due is substantially increased or decreased, an amended declaration shall be filed on or before the next date for payment of an installment of the estimated tax. The remaining unpaid installments shall be proportionately increased or decreased, as the case may be, to reflect any increase or decrease in the estimated tax.
- E. An overpayment of tax due may be credited to the next year's first installment of estimated tax or may be applied evenly over all installments. (Ord. 31-1982.)

5-715.5 RETURNS

- A. Every return shall be made upon a form furnished by the Business Administrator or designee. 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 chapter who commences business subsequent to the beginning of any tax year and/or continues a business into another tax year shall, on or before the 15th day of April of the next year, file with the Business Administrator or designee a return setting forth the taxpayer's name, business, business address, the amount of estimated tax paid, which is attributed to the tax, year and such information as may be necessary in arriving at the actual gross amount of business transacted and the tax due.
- D. Any person going out of or ceasing to do business shall, within seven (7) 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 said person ceased doing business and pay the tax due as computed thereon at the rate herein provided 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.

E. Any person required to file a return by this chapter shall attach to such return the Internal Revenue Service Schedule "C", Form 1065 or Form 1120. (Ord. 31-1982)

5-715.6 PAYMENT OF TAX

A. The tax levied pursuant to this chapter shall be due and payable without further notice or demand on the date, which the taxpayer is required to file a declaration of estimated tax.

B. If the taxpayer is not required to file a declaration of estimated tax or if for some other reason a declaration was not filed, the full tax is due and payable without further notice or demand on April 15th of the succeeding year, with interest and penalties, where applicable.

C. At the time of filing the final return after proper filing of declarations of estimated tax, the taxpayer shall pay the balance of tax due.

D. At the election of the taxpayer, any installment of the estimated tax may be paid before the date prescribed for its payment.

E. Payment of the tax shall be made to the City Treasurer. The Treasurer shall, upon payment of said tax, give the person paying the same a receipt therefore.

F. The business Administrator is hereby authorized to accept payment under protest of the amount of business privilege and/or mercantile tax claimed by the City in any case where the taxpayer disputes the validity or amount of the City's claimed tax. If it is thereafter judicially determined by 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 clearly analogous to those in a case litigated in a court of competent jurisdiction. (Ord. 31-1982)

5-715.7 UNDERPAYMENT OR LATE PAYMENT

A. If there is an underpayment of or failure to pay any installment of estimated tax or to pay the entire tax due, an addition to the tax due at the rate of thirty percent (30%) per annum for the period of the underpayment or nonpayment shall be imposed.

B. An underpayment is determined to be the excess of the installment payment that would be required if the estimated tax were eighty percent (80%) of the tax due for the year over the amount of the installments paid by the due date. (Or. 31-1982)

5-715.8**BUSINESS PRIVILEGE AND MERCANTILE LICENSE**

- A. Any person desiring to conduct, or to continue to conduct, any business within the City shall file with the Business Administrator or designee an application for a Business Privilege and Mercantile License and shall pay a fee of fifty dollars (\$50.00) for license and fifty dollars (\$50.00) for each renewal thereof. The license issued shall be conspicuously posted in the place of business for which the license is issued. In cases where more than one place of business is conducted, a separate license shall be issued for each place of business. Any taxpayer, who is in default in payment of tax due hereunder, shall be refused a license until such tax is paid in full. A Business Privilege License, once issued, shall remain valid until the indicated activity or business changes owner, goes out of business or until the end of the tax year. (Ord. 31-1982)
- B. The issuance of a Business Privilege and Mercantile License is predicated upon the applicant first receiving the approval of the Zoning Administrator and/or Health Officer, where applicable, for the operation of his/her business.
- C. Regardless of whether or not a license is procured, the tax required to be paid pursuant to this chapter is due if a person operates a business within the City. (Ord. 33-1993)
- D. Any Business Privilege/Mercantile License issued by the City is subject to revocation by the issuing officer upon a determination that the licensee has violated one or more provisions of the Codified Ordinances of the City. (Ord. 5-1995)
- E. Any person whose license is subject to revocation shall have the right to request an administrative hearing before the Business Administrator within ten (10) days of the notice of violation and prior to revocation. The decision of the Business Administrator may be appealed in accordance with the Local Agency Law. (Ord. 5-1995)

5-715.9**DUTIES OF THE BUSINESS ADMINISTRATOR AND CITY TREASURER**

- A. The City Treasurer is charged with the duties of receiving the taxes, fines and penalties imposed by this chapter.
- B. The Business Administrator and/or duly appointed designee, under the direction of the Mayor, is hereby empowered with the approval of the Mayor to prescribe, adopt, and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this chapter, including provisions for the examination and correction of declarations and returns and payments alleged or found to be incorrect, or as

CHAPTER 5-717

ENFORCEMENT AND PENALTIES

Section 5-717.1 Enforcement
Section 5-717.99 Licensing and Taxation Code Penalty

CROSS REFERENCES

General Code Penalty, Chapter 1-301

5-717.1 ENFORCEMENT

It shall be the duty of the Business Administrator or the Tax Enforcement Administrator or other duly appointed designee to see to the proper enforcement of the provisions of this Code, and the Business Administrator or designated official shall have the power, in the name of the City, to institute proceedings against any or all persons for the collection of any taxes or license fees or for violation of any of the provisions of this Code. If such suits be by process of summary conviction, in addition to the requirements for normal service and notice and in accordance with the police powers authorized by Rules 51 and 52 of the Pennsylvania Rules of Criminal Procedure, the Business Administrator, the Tax Enforcement Administrator or any duly appointed designee acting within the scope of employment may issue an immediate citation for violations of those Sections for which summary criminal proceedings are authorized. (Ord. 17-1983)

5-717.99 PENALTY

A. Administrative Penalty

1. If any person fails to pay, when due, a tax owed under this Code, a penalty of thirty percent (30%) of the amount of tax due and unpaid shall be added thereto for any delinquency lasting in duration for up to one year, and an additional fifteen percent (15%) per year for any delinquency exceeding one year in duration and interest shall accrue at the legal federal rate.
2. Any person who fails to file a declaration of estimated tax return as required by the provisions of any tax imposed in Part Seven, or any person who files a false declaration of estimated tax or a false return, upon determination of the Tax Enforcement Administrator, may have his/her permit revoked.

3. The Tax Enforcement Administrator shall serve or cause to be served upon such person a written notice stating the nature of the violation and requiring compliance within 30 days of the date of the notice.
4. The individual who is being charged with such noncompliance has the right to appeal such decisions to the Business Administrator.
5. Decisions of the Business Administrator are deemed final for the purpose of appeal.

B. Civil Penalty

1. Any person who fails to obtain a permit and/or license; fails to collect and/or remit any tax due; fails to file complete and correct reports or returns when due; knowingly makes a false or fraudulent report or violates or attempts to violate any provisions of this Code may be assessed a civil penalty of not more than five hundred dollars (\$500.00) per day of violation. Each 24-hour period during which a violation continues, shall be considered a separate and distinct offense under this provision and is punishable as such.

C. Criminal Penalty

1. Any person who fails to obtain a permit and/or licenses; fails to collect and/or remit any tax due; fails to file complete and correct reports or returns when due; knowingly makes a false or fraudulent report; or violates or attempts to violate any provision of this article, may be served by the Business Administrator, Tax Enforcement Administrator or duly-appointed designee, acting within the scope of employment, a citation for violations of those ordinances for which summary criminal proceedings are authorized in accordance with the police power under Rule 51 of the Pennsylvania Rules of Criminal Procedure.
2. Such a person shall, upon summary conviction before and District Justice, be fined not more than six hundred dollars (\$600.00) for any one offense, recoverable with costs, or imprisonment not more than 90 days, or both. Each day that a violation continues shall be deemed a separable offense punishable by like fine or penalty. Any fine or penalty hereunder, shall be in addition to the thirty percent (30%) unpaid tax penalty, and any other fine or penalty levied hereunder or under any other applicable law.

D. Auditing Requirements

1. The Business Administrator or designee is hereby authorized to examine the books, papers and records of any person(s) subject to our supposed to be subject to one or more taxes imposed by this Title in order to verify the accuracy of the declaration or return made or, if no declaration or return is made, ascertain the tax due. An accountant or certified accounting professional or firm may be retained to perform such an audit. Any cost to the City to conduct such an audit shall be assessed upon the subject if any amount is found due and owing to the City and shall be collectable in the same manner as taxes or, if no tax is due, in the manner of any obligation owed the City.

2. Any person who is in possession of an amusement permit shall produce, at the place designated within ten (10) days, all records for inspection requested by the Business Administrator or his/her designee. Failure to do so will constitute a violation, which is subject to the above penalties. (Ord. 33-1993)

E. General Code Penalty

See Chapter 1-301.

CHAPTER 5-101

LICENSE AND TAX APPEAL BOARD

Section	5-101.1	Creation
Section	5-101.2	Authority
Section	5-101.3	Time and Procedure for Appeal
Section	5-101.4	Hearing Before the Board
Section	5-101.5	Compensation
Section	5-101.6	Appeal Fees
Section	5-101.7	Appeal of Board Orders

CROSS REFERENCES

Conduct of Hearings: See Local Agency Law, Subchapter B of Chapters 5 and 7 of Act of April 28, 1978, P.L. 202 (2 Pa.C.S.A. §§105; 551-55; 751-54 (1996 Supp.))

General Power to Levy License Taxes: See 3rd Class Code §3201 (53 P.S. §37601)

5-101.1

CREATION

There is hereby created the License and Tax Appeal Board, which shall have the powers set forth in this chapter and whose membership shall consist of three residents of the City who shall be appointed by the Mayor with the advice and consent of Council. Their terms of office shall be three years and shall be so fixed that the term of office of one member shall expire each year. The Board shall promptly notify the Mayor of any vacancies, which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the Board shall hold no other office in the City. At least one member of the Board shall be a Certified Public Accountant.

5-101.2

AUTHORITY

The authority of the License and Appeal Board shall be:

- (A) To hear all appeals due to the action of the person(s) designated to administer any ordinance of the City relating to the issuance of licenses or the imposition of taxes other than real estate taxes;
- (B) After a hearing, and based upon findings of fact, to issue an order affirming, modifying, amending, or revoking the action of the aforesaid administrator or administrators;
- (C) To hear and determine any requests for the refund of taxes, license fees, interest, or penalties paid to the City relative to the imposition of any taxes or license fees other than real estate taxes. (Ord. 1-1971)

5-101.3**TIME AND PROCEDURE FOR APPEAL**

Any person aggrieved by the actions of any person(s) responsible for the administration of ordinances of the City requiring the issuance of a license or imposing a tax shall file with the Tax Enforcement Administrator a written appeal within ten days after the action has taken place. The appeal shall be filed on a form, which shall be provided by said Administrator. The person so aggrieved shall sign the appeal. (Ord. 1-1971)

5-101.4**HEARING BEFORE THE BOARD**

- D. Within 30 days from the date on which any appeal to the Board has been filed, the Board shall schedule a hearing to consider any and all matters relating to the appeal. The hearing shall be public, and the appellant shall receive written notice of the hearing at least fifteen (15) days prior to the date on which the hearing is scheduled. Similar notice shall be given to the official whose action is the subject of the appeal. Notice to the appellant shall be directed by certified mail, return receipt requested.
- E. The Board shall conduct the hearing, or the Board may appoint any member as a hearing officer to take testimony and certify the same to the Board for a decision.
- F. The hearing will be conducted in accordance with the Local Agency Law.
- G. Copies of graphic or written material received in evidence shall be made available to the appellant at cost. (Ord. 1-1971)

5-101.5**COMPENSATION**

Within the limits of funds appropriated by Council, members of the Board may employ or contract for clerical services and may receive compensation for performance of their duties, as may be fixed by Council. (Ord. 1-1971)

5-101.6**APPEAL FEE**

Upon filing an appeal, the appellant shall pay a fee of forty dollars (\$40.00) to the City. Said fee shall be refunded to the appellant in the event that a final decision or order is rendered in favor of the appellant, but not otherwise. (Ord 1-1971)

5-101.7**APPEAL BOARD ORDER**

Any appeal from the decision and order of the Board shall be in accordance with the Local Agency Law, as amended. (Ord. 1-1971)

ADDENDUM “B”

***DISCLOSURE STATEMENT UNDER
THE LOCAL TAXPAYERS BILL OF RIGHTS
C BUSINESS PRIVILEGE AND MERCANTILE TAX C***

It is the obligation of all taxpayers to file all local tax returns voluntarily and pay all local taxes to which they are subject. However, when the duly-appointed or elected tax collector or tax collection agency for the municipality and/or school district in which the taxpayer resides determines that a required return has not been filed, or a tax liability has not been paid, the Local Taxpayers Bill of Rights grants certain legal rights to taxpayers, and imposes obligations on taxing authorities to ensure that equity and fairness guide local governments in the collection of taxes. In addition, the Local Taxpayers Bill of Rights provides the local government entity with certain legal methods to enforce taxpayer obligations.

This Disclosure Statement sets forth a summary of your rights as a taxpayer in connection with any audit, examination, appeal or refund claim of Business Privilege and Mercantile Tax levied by the City of Harrisburg (“City”) and any enforcement or collection actions on behalf of the City.

For more information, please contact the Tax and Enforcement Administrator, City of Harrisburg, City Government Center, Suite 305-A, 10 North Second Street, Harrisburg, PA 17101. Telephone: (717) 255-6513 / Fax: (717) 255-6509.

Applicability/Eligible Taxes

This Disclosure Statement applies to the Business Privilege and Mercantile Tax only. Please call the Tax and Enforcement Administrator for a copy of Disclosure Statements relating to other eligible taxes.

Unless expressly provided in the Local Taxpayers Bill of Rights, the failure of any person(s) acting on behalf of the City to comply with any provisions of this Disclosure Statement, related regulations or the Local Taxpayers Bill of Rights, will not excuse the taxpayer from paying the taxes owed.

Audit/or Examinations

If we contact you about your tax return or payment of any eligible taxes, we will send you a letter with either a request for more information or a reason why we believe a change to your return or taxes may be needed. If we request information, you will have at least 30 calendar days from the date of the mailing to respond. Reasonable extensions of time will be granted upon application for good cause. We will notify you of the procedures to obtain an extension with our initial request for tax information. Our initial inquiry may include taxes required to be paid or tax returns required to be filed no more than 3 years prior to the mailing date of our notice. If you give us the requested information or provide an explanation, we may or may not agree with you. If we do not agree with you, we will explain in writing our reasons for asserting that you owe us tax (which we call an “assessment” or “underpayment”). Our explanation will include:

- The tax period(s) for which the underpayment is asserted;
- The amount of the underpayment detailed by tax period;
- The legal basis upon which we have relied to determine that an underpayment exists; and
- An itemization of the revisions made by us to your return or report that results in our decision that an underpayment exists. If you agree with our changes, you should pay the additional tax.

Requests for Prior Year Returns

An initial request by us into prior year returns may cover tax returns required to be filed as far back as 3 years prior to the mailing date of the notice. If we determine that you failed to file a tax return, under reported income (or receipts) or failed to pay a tax for one or more of the tax periods covered by the initial request, we may request additional information. We may also require you to provide copies of Federal and Pennsylvania Tax Returns when your Federal Tax Return(s) are reasonably necessary for the enforcement or collection of tax, and the information is not available from other sources or the Pennsylvania Department of Revenue.

Appeals of Decisions

If we notify you that you owe more tax (what we call an “assessment”) and you do not agree with our decision, you may appeal or seek review by filing a Petition for Reassessment within 90 days of the date of the mailing of the Assessment Notice. The Petition must either be in our hands or postmarked by the United States Postal Service within this 90-day period.

Your Petition must explain the legal basis for your position and include all supporting documents. For your convenience, a form for submission of a Petition is available by contacting the Tax and Enforcement Administrator (see above). After your Petition is received, we will notify you of your hearing date, if you requested a hearing. A decision by the Harrisburg License and Tax Appeal Board (“Board”) will be made within 60 days of the date your complete and accurate Petition is received. If you do not agree with the decision of the Board, you may appeal to the Court of Common Pleas.

Refunds

You may file a claim for refund (“Refund Claim”) if you think you paid too much tax (what we call an “overpayment”). You must file the Refund Claim within 3 years of the due date for filing the return as extended or one year after actual payment of the tax, whichever is later. If no report or local tax return is required for the tax, the Refund Claim must be made within 3 years after the due date for payment of the tax or within one year after actual payment of the tax, whichever is later.

If your Refund Claim relates to amounts paid as a result of a notice asserting an underpayment of tax, your request for Refund Claim must be filed within one year of the date of payment. Refund Claims must be made on forms prescribed by us and must include supporting documentation. You may obtain forms for Refund Claims by contacting the Tax and Enforcement Administrator (see above). You will also need to file your Refund Claim with the Tax and Enforcement Administrator.

If you file a tax return showing an overpayment of tax, we will treat that as a request for cash refund unless you indicate otherwise. If your Refund Claim is denied, you may file a Petition contesting the denial of the refund. Any Petition must be filed within the same time limits that apply for a Refund Claim. Alternatively, you may file a Petition for a refund without first filing a Refund Claim. A hearing date will be set after your Petition is received and a decision by the Board will be made within 60 days of the date your complete and accurate Petition is received.

Enforcement Procedures

Once it has been determined that you owe a tax, we will take all action we are legally permitted to take to enforce our claim. Such action may include obtaining additional information from you, auditing your records, entering into a settlement with you of the disputed amount of the tax, or obtaining liens on your property, wage attachments, levies, and seizures and sales of your property in appropriate circumstance. We may enter into a written agreement with you for payment of the tax in installments if we believe that such an agreement will facilitate collection. We may also impose interest and applicable penalties on the tax you owe, and may seek criminal prosecution of you in appropriate circumstances.

Tax Information Confidentiality

Information gained by us, or by the hearing officer, or any person acting on our behalf, as a result of any audit, return, report, investigation, hearing, appeal or verification shall be kept confidential. However, confidentiality will not preclude disclosure for official purposes, whether in connection with legal proceedings or otherwise, and it will not preclude disclosure to the extent required by applicable law.

Taxpayer Complaints

If you have a complaint about any action relating to the Business Privilege and Mercantile Tax, please contact the Tax and Enforcement Administrator (see above).

ADDENDUM “C”

SECTION B: TAX INFORMATION

Type of Tax: _____

Is this Petition for a Refund? _____ If so, in what amount? _____

Tax Year(s): _____ Quarter(s): _____

Is this Petition for Reassessment? _____ If so, in what amount? _____

Tax Year(s): _____ Quarter(s): _____

Assessment Notice Mailing Date: _____

SECTION C: TAX REPRESENTATIVE INFORMATION

COMPLETE INFORMATION FOR REPRESENTATIVE (if applicable)

I hereby nominate the following as my representative:

Last Name First Name Middle Initial

Is representative an _____ Attorney _____ Certified Public Accountant _____ Other Accountant
_____ Other Tax Advisor

Business Name

Street Address

City State County Zip Code

Phone Number: _____ Fax Number: _____

I would like copies of all correspondence sent to my representatives.

SECTION D: HEARING REQUEST

_____ Hearing Requested. (Check if taxpayer desires a hearing in person.)

_____ Hearing is **NOT** Requested. The Decision in this matter will be based on the information contained in this Petition and on the Record provided by the City of Harrisburg. No hearing will be scheduled. (If choice is not indicated, hearing will be conducted based on Petition and Record and without a hearing in person.)

SECTION E: RELIEF REQUESTED & ARGUMENTS

Explain the relief requested:

Explain in detail why the relief requested above should be granted. Attach additional pages if necessary. Enclose copies of any documents you feel will support your arguments. Petitions for refund must be accompanied by proof of payment of the tax.

SECTION F: SIGNATURE

All Petitions must be signed by Petitioner or authorized representative. If signed by an authorized representative, written authorization for the representative to sign on Petitioner’s behalf must be accompanied by the Petition.

Under penalties prescribed by law, I hereby certify that this Petition has been examined by me and that to the best of my knowledge, information and belief, the facts contained in the Petition are true and correct and this Petition is not filed for purposes of delay.

Signature: _____ Date _____
(Taxpayer or Authorized Representative)

Print Name: _____ Date _____
(Taxpayer or Authorized Representative)

Filing Fee (\$40.00) enclosed: _____
Make checks payable to: “City Treasurer”

**ADMINISTRATIVE APPEAL PROCEDURES APPLICABLE TO
PETITIONS FOR ADMINISTRATIVE APPEAL**

General: To appeal any assessment, determination or denial of refund of the tax, taxpayers must file a Petition for Administrative Appeal with the Office of the Tax & Enforcement Administrator for the City of Harrisburg. The Tax & Enforcement Administrator will forward the Petition to the Harrisburg License and Tax Appeal Board (Board) for hearing and decision.

A. **Petitions for Administrative Appeal:** Petitions shall be in writing on a form substantially similar to the Petition for Administrative Appeal form attached hereto. A Petition is timely filed if the letter transmitting the Petition is postmarked by the United States Postal Service on or before the final day on which the Petition is required to be filed. If hand delivered, a Petition will be deemed to be filed on the date received in the Office of the Tax & Enforcement Administrator.

B. **Contents of Petitions for Administrative Appeal:** Petitions shall:

- 1) State the name, address and telephone number of the taxpayer and taxpayer's authorized representative (if any);
- 2) Identify the tax and tax period(s) to which the Petition pertains;
- 3) State the amount and legal basis for the appeal (i.e., state how or why the assessment is incorrect; or why a refund request should have been granted);
- 4) Provide copies of all supporting documentation and calculations;
- 5) State whether an oral hearing is required; and
- 6) Certify under penalty of perjury that the facts in the Petition are true and correct and that the Petition is not filed for purposes of delay.

C. **Deadlines for Filing Petition for Administrative Appeal:**

1. **Refund Petitions** shall be filed within **3 years** after the due date for filing the report as extended or one year after actual payment of an eligible tax, whichever is later. If no report is required, the Petition shall be filed within 3 years after the due date for payment of the tax or within one year after actual payment, whichever is later.
2. **Petitions for reassessment** of the tax shall be filed within **90 days** of the date of the assessment notice.

D. **Filing Fee:** The fee for filing an Administrative Appeal is \$40.00. In the event of a decision favorable to the taxpayer, the filing fee will be refunded.

E. **Administrative Appeals Process and Procedure:** Upon receipt of a timely filed Petition for Administrative Appeal, the Tax and Enforcement Administrator will:

- 1) Promptly schedule a hearing if a hearing has been requested by the taxpayer (if a hearing is not requested, the Petition will be determined on the record before the Board);

- 2) Provide the taxpayer with a Notice of Hearing (setting forth the time, date, and location of the hearing); and
 - 3) Forward the taxpayer's Petition to the Board. Unless the date of the hearing is agreed upon by all parties, the Tax & Enforcement Administrator shall give at least 15 days written notice of the hearing to all parties. The Board, in the Board's discretion, may schedule an informal preliminary conference with the parties.
1. **Hearings**: Hearings will be held at the Office of the Tax & Enforcement Administrator, City Government Center, 10 North Second Street, Suite 305-A, Harrisburg, PA 17101 unless otherwise directed by the Board. Hearings will be informal in nature and technical rules of evidence will not be applicable. All information provided by the taxpayer to the City prior to the hearing shall be provided to the Board.
 - a. **Representation**: Taxpayers may appear before the Board with or without benefit of representation. Persons seeking to represent a taxpayer at the hearing must first be so authorized by the taxpayer in writing. Taxpayer representatives need not be professionally trained, but should be familiar with the tax, these Regulations and the facts of the case.
 - b. **Presentation of Evidence**: Evidence may be submitted and considered which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Unless waived by the parties, testimony shall be under oath or affirmation, administered by the Board. Copies or photographs of all records and other exhibits shall be provided to all parties and to the Board. Any party may have a recording or a transcript made of the hearing at the party's expense.
 - c. **Adjournment of Hearing**: The Board, in the Board's discretion, may adjourn the hearing for not more than 10 days.
 - d. **Failure to Appear**: The hearing may proceed in the absence of any party who fails to appear, after notice, but the Board's Decision shall not be based solely upon the failure of a party to appear.
 2. **Decision**: After the conclusion of the hearing, the Board shall issue a written decision to the parties stating findings of fact and conclusions of law. The Decision shall be mailed by regular mail to the parties (and representatives, if any) at their last know addresses.

Judicial Appeal:

Any person aggrieved by a decision of the License and Tax Appeal Board who has a direct interest in the decision shall have the right to appeal to the Court vested with the jurisdiction of local tax appeals by or pursuant to 42 Pa.C.S. (Relating to judiciary and judicial procedure).