RESOLUTION NO. 2614

TOWNSHIP OF EAST NORRITON
MONTGOMERY COUNTY, PENNSYLVANIA

A RESOLUTION REVISING AND RESTATING REGULATIONS REGARDING THE ADMINISTRATION OF THE BUSINESS PRIVILEGE TAX AND THE MERCANTILE TAX

WHEREAS, the Board of Supervisors of East Norriton Township adopted Ordinance No. 236 on October 20, 1986 and subsequent amendments codified at Chapter 182, Article IV of The Code of the Township of East Norriton; and,

WHEREAS, Ordinance 236 provides for the levying of and the administration of the Business Privilege Tax and the Mercantile Tax; and

WHEREAS, the Department of Finance of East Norriton Township issued regulations pursuant to Ordinance 236, setting forth regulations (the "Regulations") for the administration of the aforesaid taxes; and

WHEREAS, the Board of Supervisors has determined that it is necessary to revise and restate its regulations in order to clarify the method by which the aforesaid taxes are administered, consistent with Ordinance 236 and the Local Tax Enabling Act, (P.L. 1257, No. 511), 53 P.S. §§ 6924.101 *et seq.*, and to make minor editorial corrections.

NOW, THEREFORE, BE IT RESOLVED THAT the Regulations set forth in this resolution are for the purpose of the administration of the Business Privilege and/or Mercantile Tax. Where the term "Taxing District" is used in the Regulations, such term shall mean the political subdivision of East Norriton Township.

1. **DEFINITIONS.**

Words used in Ordinance 236 and/or in these Regulations, but not defined in either Ordinance, in these Regulations, by applicable statute or by judicial determination made by the Courts of the Commonwealth of Pennsylvania, shall be interpreted using the common and ordinary meaning ascribed to such words in the context of local taxation. For purposes of these Regulations, the singular shall be deemed to include the plural and the neuter shall be deemed to include the masculine and feminine, and use of the word "he" shall include both masculine and feminine, as the context may require.

As used in these Regulations, the following terms shall have the meanings set forth herein:

"Allocation" of gross receipts is the calculation of a share of total gross receipts for a particular Base of Operations when more than one Base of Operations exists. The allocation formula is based on a single payroll factor.

"Apportionment" of gross receipts is the calculation of a share of gross receipts to be included in the tax base, resulting from the performance of services in Philadelphia and/or outside Pennsylvania, by or in conjunction with a Base of Operations with substantial nexus to East Norriton Township. See Section 5 of these Regulations regarding Interstate Commerce for apportionment formula and applicability.

"Attribution" is the process of specifically identifying gross receipts directly or indirectly connected to a particular Base of Operations of the taxpayer.

"Base of Operations" is a physical location used by a taxpayer to conduct significant business activities. Examples of significant business activities are as follows:

1. Providing workers with a place to work.
2. Providing a base from which operations are managed, directed or controlled.
3. Storage of inventory or other business assets.
4. Administrative, executive or marketing activities, including meetings.
5. Maintaining business records.
6. Business communications via telephone, fax, mail, or electronic means.
7. Utilization of business equipment.
8. The holding out to others, through the use of signage, advertising, legal registry or stationery to indicate a business location.
9. Rental or sublet of real estate by a landlord or tenant.

Whether a location constitutes a Base of Operations is a determination made by an examination of the particular facts and circumstances at issue. A taxpayer with a single location is deemed to have a Base of Operations at that location. A taxpayer claiming that a location is not a Base of Operations must demonstrate that another location functions as a Base of Operations. A taxpayer claiming multiple business locations has the burden of proof to demonstrate that any given location constitutes a Base of Operations under the definition provided herein.

Home Office – An area of a personal residence is recognized as a Base of Operations if it is used for business, and no other Base of Operations is reasonably available to conduct business activities. A home office used for the convenience of an employee, owner, or other worker does not qualify as a Base of Operations. Use of a home office is deemed to be simply for the convenience of any employee or owner, if there is another business office where the same activities are performed.

Use of a customer's or client's facility by a taxpayer does not qualify as a Base of Operations of the taxpayer, if the business activity at issue is incidental with respect to the taxpayer's overall business activity. Business activity of sufficient size, duration and complexity will constitute a Base of Operations of the taxpayer.

Example 1: A consultant with no office in the Township spends three weeks working at a client's location in the Township. The client provides the consultant

with a place to work and access to other facilities during the three weeks. The consultant also works at other client locations and at his own office.

The consultant does not have a Base of Operations at his client's location because the activity in the Township lacks sufficient size, duration and complexity.

Example 2: A property management firm headquartered outside the Township manages a building located in the Township under a three-year service contract. Several full-time employees of the management firm provide maintenance and administrative services, on a daily basis, and exclusively at the building in the Township. The building owner provides office space and a maintenance facility for the use of the property management firm's employees.

The property management firm has a Base of Operations in East Norriton Township because the business activity is of sufficient size, duration and complexity.

Real estate located in East Norriton Township constitutes a Base of Operations of the owner, the lessee, and the operator of the real estate.

2. **BUSINESS.**

a. Carrying on or exercising for gain or profit, in the Taxing District, any trade, business, profession, vocation, or commercial activity, or making sales in the Taxing District. A profession or vocation or any rendering of personal services in the Taxing District in any capacity, except as an employee of another is Business.

3. **WHAT CONSTITUTES "DOING BUSINESS IN THE TAXING DISTRICT?"**

a. Whether or not a person carries on a taxable activity within the meaning of the Business Privilege Ordinance and/or Mercantile Tax Ordinance is essentially a question of fact. In general, taxable activity includes any trade, business, profession, vocation or commercial activity that is carried on in the Taxing District. The tax is imposed on any person who exercises the privilege of carrying on certain activities in the Taxing District and on any wholesale or retail vendor in goods, wares or merchandise, and is measured by receipts received or allocable to the Taxing District. The term "receipts" includes interest, dividends and capital gains received in or allocable to the Taxing District.

(1) Inter and Intra-State Business. Doing business includes any trade, business, profession, vocation or commercial activity of an intrastate or interstate character.

(2) Residence or Domicile. A person who engages in a taxable activity in the Taxing District is subject to this tax whether or not he is a resident of, and whether or not he has a permanent place of business in, the Taxing District.

(3) Foreign Corporation. A foreign corporation is subject to this tax if it carries on a taxable activity in the Taxing District whether or not it is licensed to do business in Pennsylvania.

(4) The provisions of this section shall not apply to contractors or subcontractors who engage in alteration and repair jobs of a limited scope, including by way of illustration but not limited to, a roofer repairing a damaged roof of a building in the Taxing District, or a painter renovating an apartment in an apartment house located in the Taxing District.

4. **ALLOCATION OF BUSINESS DONE AND GROSS VOLUME OF BUSINESS – INTRASTATE CONSIDERATIONS AND PHILADELPHIA BUSINESS PRIVILEGE TAX.**

a. *General.*

Generally, in determining the Gross Receipts subject to taxation, the attribution or allocation of receipts among multiple bases of operations, and the apportionment of receipts with intrastate characteristics, must fairly reflect the business activity connected to a base of operations in East Norriton Township and thereby avoid the possibility of double taxation. In other words, receipts will be considered allocable to business activities within the Township if such business activities are significant.

(1) **Attribution.** Attribution is the process of specifically identifying Gross Receipts directly or indirectly connected to a particular base of operations of the taxpayer.

For taxpayers with a sole business Base of Operations, 100% of intrastate Gross Receipts will be attributed to that single business location. Receipts cannot be attributed to job sites, or customer or subcontractor locations that do not qualify as a Base of Operations of the taxpayer.

For taxpayers with multiple Bases of Operations, Gross Receipts resulting from business activity managed, controlled or directed from a Base of Operations are attributed to that Base of Operations. Receipts will be considered attributable to a Base of Operations in the Township if any significant aspect of the transaction occurs or arises out of that Base of Operations in the Township. Generally, receipts paid to a particular Base of Operations will be attributed to that Base of Operations. A taxpayer with more than one Base of Operations must maintain accounting records to support attribution of receipts to the various business locations.

Example 1: A plumbing contractor has a single business location in East Norriton Township. He provides services to customers in numerous surrounding municipalities.

100% of his Gross Receipts are attributed to his East Norriton base of operations because all work is managed, directed and controlled from his sole business location.

Example 2: An engineering firm has two offices, one in East Norriton and another in Reading. The firm separately accounts for revenues and expenses for each location.

Gross Receipts separately identified for the East Norriton location are attributed to East Norriton. Gross Receipts attributed to the Reading base of operations are excluded from the East Norriton Gross Receipts, provided no part of the Reading activity is managed, directed or controlled from the East Norriton office.

Gross Receipts must be determined through attribution, if possible. If determination of Gross Receipts through attribution is not possible, Gross Receipts are determined through allocation. If attribution of receipts under this section does not accurately or fairly reflect a taxpayer's activity connected to a base of operations in the Township, the Finance Director may determine Gross Receipts using the allocation or apportionment formula.

(2) **Allocation**. Allocation is the calculation of a share of total Gross Receipts for a particular Base of Operations when more than one Base of Operations exists, and the taxpayer is unable to determine Gross Receipts through Attribution. The allocation formula is based on a single payroll factor.

The allocation of Gross Receipts for a particular base of operations is calculated by multiplying total Gross Receipts by a fraction, the numerator of which is payroll for workers connected with a particular base of operations, and the denominator of which is total payroll for all locations.

For the purpose of computing the payroll factor other forms of compensation must be included when relevant. Other forms of compensation may include self-employment income of a proprietor or a single member of a limited liability company, an active partner's share of partnership income, an active member's share of the income of a limited liability company, or an active shareholder's ordinary income from an "S" corporation.

Example: A law firm is based in East Norriton Township and has a second office in Downingtown. The accounting system does not segregate receipts by location. Gross Receipts total $1,225,000 for

the year. Total payroll and partners' compensation is $860,000. Payroll and partners' compensation for workers based in East Norriton is $570,000.

The allocation of Gross Receipts to the East Norriton office is as follows:

Payroll Allocation Factor = $570,000/$860,000 or 66.3%

Total Gross Receipts	**$1,225,000**
Allocation Factor	**x 66.3%**
East Norriton Receipts	**$ 812,175**

If a taxpayer has no payroll or payroll cannot be identified by location, the square footage of each base of operations must be used to determine the allocation factor.

Furthermore, the Finance Director may authorize the use of another objective and measurable basis of allocation when unusual circumstances exist that result in an allocation that does not fairly reflect the activity connected to a base of operations in East Norriton Township. In such circumstances, the taxpayer must request authorization in writing to use a method of allocation other than payroll or square footage, and such authorization shall be prospective in nature.

Example: A taxpayer owns and operates two coin-operated Laundromats, one in East Norriton and one in a neighboring municipality. Receipts are not tracked separately for each location. There is no payroll.

The Finance Director may authorize the taxpayer to allocate Gross Receipts using a formula based on the water usage for each location as reflected on the water or sewer invoices.

b. ***Taxpayers subject to Philadelphia Business Privilege Tax.*** Philadelphia imposes its Business Privilege Tax under a different state law than other Pennsylvania municipalities. Philadelphia may impose its Business Privilege Tax on taxpayers that do not have a base of operations in Philadelphia. In order to avoid the possibility of double taxation, taxpayers subject to the Philadelphia Business Privilege Tax may apportion gross receipts subject to tax in Philadelphia, in accordance with the provisions set forth herein.

Apportionment of gross receipts subject to tax in Philadelphia will be made under the following formula:

(Receipts within Pennsylvania x 100%) [less]

(Receipts within Pennsylvania x Philadelphia apportionment factor) =

Gross Receipts included in tax base.

The Philadelphia apportionment factor shall be the product of averaging the following percentages:

(i) Wages, salaries, commissions and other compensation in Philadelphia, as a percentage of total Pennsylvania wages, salaries, commissions and other compensation.

(ii) Value of the tangible personal property and real property owned or leased and situated within Philadelphia as a percentage of total Pennsylvania tangible personal and real property owned or leased. The value of leased property is eight times the annual rental, for the purpose of this calculation.

(iii) Philadelphia gross receipts, as a percentage of total Pennsylvania gross receipts.

Example: A taxpayer based in East Norriton Township operates a janitorial service and has total Pennsylvania receipts of $1,000,000, and total Pennsylvania payroll of $450,000; the value of owned and leased property in Pennsylvania is $650,000. Gross receipts from services performed in Philadelphia were $220,000, and Philadelphia wages totaled $88,000. Cleaning equipment kept at customer locations in Philadelphia had a value of $7,500. The taxpayer has no Philadelphia base of operations.

Gross receipts subject to East Norriton Township's Business Privilege Tax are as follows:

Pennsylvania gross receipts @ 100% = $1,000.000
Less: Receipts apportioned to Philadelphia by formula:

Philadelphia Wages / Pennsylvania Wages	=	$ 88,000 / $450,000	= 19.56%
Philadelphia Property / Pennsylvania Property	=	$ 7,500 / $650,000	= 1.15%
Philadelphia Receipts / Pennsylvania Receipts	=	$220,000 / $1,000,000	= 22.00%

Total All Percentages: 42.71%

Philadelphia Apportionment Factor = Average of percentages
(divide total by 3) = 14.24% =

Pennsylvania receipts ($1,000,000) x 14.24% = <u>($142,400)</u>
Receipts apportioned to Philadelphia

East Norriton Gross Receipts: $ 857,600

NOTE: The percentages for wages, property and receipts, used in the apportionment formula must be consistent with those reported by a taxpayer on its Philadelphia Business Privilege Tax Return.

c. *Lessors of real property*. Persons doing business within the Taxing District who own and hold title to real property which is leased to others are required to report the gross receipts from the rental of all such property which is situated in the Taxing District. This subsection does not apply to conditional sales of real property. Where a lessor has no more than two rental units in his principal place of residence such rentals are excluded from taxable receipts provided he has no other rental units of realty located within the Taxing District.

5. **RECEIPTS IN INTERSTATE COMMERCE/SALES HAVING ATTRIBUTES OF INTERSTATE COMMERCE.**

Gross Receipts resulting from transactions with interstate characteristics are includable in the tax base on an apportioned basis, provided the activity has substantial nexus to activity within East Norriton Township. Transactions with interstate characteristics include the performance of services by a taxpayer outside Pennsylvania and the sale and delivery of goods to a non-Pennsylvania buyer in another state or country. The sale of interstate passenger tickets constitutes transactions with interstate characteristics.

Apportionment of Gross Receipts will be made under the following formula:

(Total Gross Receipts x apportionment factor) =

Gross Receipts apportioned to Pennsylvania

The apportionment factor shall be the product of averaging the total of the following percentages:

(i) Wages, salaries, commissions, and other compensation in Pennsylvania, as a percentage of total wages, salaries, commissions and other compensation.

For the purpose of computing the payroll factor other forms of compensation must be included when relevant. Other forms of compensation may include: self-employment income of a proprietor or a single member of a limited liability company; an active partner's share of partnership income; an active member's share of the income of a limited liability company; or an active shareholder's ordinary income from an "S" corporation.

(ii) Value of the tangible personal property and real property owned or leased and situated within Pennsylvania as a percentage of total tangible personal and real property owned or leased. The value of leased property is eight times the annual rental, for the purpose of this calculation.

(iii) Gross Receipts from Pennsylvania sales and/or services, as a percentage of total Gross Receipts from sales and/or services.

For taxpayers whose only base of operations is located in East Norriton Township, the tax base constitutes Gross Receipts apportioned to Pennsylvania.

For taxpayers with more than one base of operations in Pennsylvania, Gross Receipts apportioned to Pennsylvania may be further allocated. Refer to Section 4 of these Regulations for provisions governing attribution or allocation of receipts between or among multiple Pennsylvania locations.

All receipts from interstate commerce, whether taxable or non-taxable under the foregoing rules, shall be included on the Return filed by the taxpayer and a deduction for the non-taxable receipts shall be allowed thereon.

This Section 5 of this Resolution shall apply to Business Privilege Tax Returns and Mercantile Tax Returns filed for calendar and fiscal years beginning January 1, 2013 and thereafter.

6. PERSONS ERECTING BUILDINGS OR ALTERING, REPAIRING OR IMPROVING REAL PROPERTY.

A contractor or subcontractor with a Base of Operations in East Norriton Township, in the business of erecting buildings, or altering, repairing or improving real property, or any other construction, installation or demolition work, shall include in Gross Receipts all receipts derived from the performance of such contract.

Contractors must include in Gross Receipts 100% of receipts from work in Pennsylvania that is connected to a Base of Operations in East Norriton Township. Gross receipts from work performed outside Pennsylvania may be apportioned in accordance with Section 5 of these Regulations. No exclusion or deduction from Gross Receipts is allowed for receipts attributed from contracts that involve the use of a job-site trailer unless such

trailer qualifies as a Base of Operations as specifically provided in Section 1 of these Regulations, in the definition of "Base of Operations."

Contractors shall be subject to additional regulations set forth in Section 21 of these Regulations.

7. BROKERS AND AGENTS.

a. *Insurance Agents, Brokers and Underwriters.* General agents for insurance companies are required to report as Gross Receipts the entire commissions received as compensation on policies sold by them directly as well as the overriding commissions received by them upon business produced by brokers and subagents. Brokers and subagents are required to report as Gross Receipts the commissions received as compensation for their services. No deduction is permitted for commissions paid to solicitors, subagents, brokers or others.

b. *Real Estate Brokers and Agents.* Real estate brokers and agents are required to report as Gross Receipts the commissions and fees received for services rendered in promoting the purchase, sale, rental and/or management of property for others. Gross Receipts include commissions on properties not located in East Norriton if the transaction is handled through personnel connected to a Base of Operations in the Township. Similarly, Gross Receipts include commissions on transactions managed, controlled or directed through an East Norriton Base of Operations, even though settlement is conducted at a location outside East Norriton.

(1) *Deduction of shared fee.* A real estate broker or agent may exclude from his tax base any commissions paid by him to another broker or agent on account of a contract or purchase or sale initiated, executed or cleared in conjunction with the broker, salesman or agent to whom the commission or part of the commission is paid. Commissions paid to a salesman by a broker or agent, when the salesman is affiliated with the broker or agent, are not excludable from the broker's or agent's tax base.

(2) *Broker's sale of owned property.* If a person is in the business of taking title to real property and selling the property, he is required to include the gross selling price of the property in taxable receipts. The same person may be taxed both as a broker and as a seller, depending on the nature of the transactions. If he acts as a broker, salesman or agent, his tax is based on commissions.

(3) If a broker buys and sells real property whether in his own name or in the name of a straw party, he is taxed on the gross selling price of the real property.

8. TAX RATE AND COMPUTATION OF TAX.

See appropriate Sections of Ordinance 236, as amended.

9. **PERSONS, BUSINESSES AND RECEIPTS EXEMPTED.**

a. Non-profit corporations or associations, religious, charitable and educational institutions, persons, entities, transactions and other matter exempted by the provisions of the act or other applicable law. Business income not excluded. The exclusion from taxation of receipts from the business of non-profit religious, charitable or educational organizations is limited to those receipts derived from activities which are connected with the non-commercial operations of the organization. Commercial activities carried on by such an organization are taxable. All business income of non-profit religious charitable and educational organizations is taxable.

b. Receipts from sales to governmental agencies and non-profit organizations. Sales to institutions, receipts from sales made or services rendered to governmental bodies, and to religious charitable and educational corporations and associations shall not be excluded from the tax base. The statute does not grant any exemption to taxpayers transacting business with such agencies or institutions.

10. **STATE TAX OR LICENSE.**

a. Nominal or registration fees. The fact that a taxpayer receives a certificate or other document which is designated a "license" from the Commonwealth of Pennsylvania for which the taxpayer pays a sum of money down not exempt the taxpayer from the Business Privilege and/or Mercantile tax. Flat annual fees, fees which are not related to gross income or amount of production, or fees that are nominal in nature are not considered true license fees and hence payment of such fees will not exempt the taxpayer from the Business Privilege and/or Mercantile Tax.

b. Payment to the Taxing District for housing permits, building and plumbing permits, etc. will not exempt the taxpayer from the Business Privilege and/or Mercantile Tax.

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

d. Local tax under state authority. Local taxes by counties, municipalities or other public bodies though authorized by state legislation are not considered state taxes or license fees.

e. Monies returned to municipalities by the state. Any tax which is collected by the state but which, with the exception of administrative costs, is returned to the

municipalities, is not considered a state tax or license fee. Such taxes include, but are not limited to:

(1) Gross receipts taxes of non Pennsylvania Fire and Casualty Insurance Companies.

(2) License fees for hotel, restaurant and club liquor licenses.

f. State license fees which exempt receipts earned thereunder include but are not limited to those fees levied under the following acts:

(1) The Pennsylvania Securities Act of 1972, as amended (70 P.S. § 1-101, *et seq.*)

(2) Mortgage Licensing Act, as amended (7 Pa.C.S.A. § 6101, *et seq.*)

(3) Consumer Discount Company Act, as amended (7 P.S. § 6201, *et seq.*)

11. UTILITIES.

Non–utility functions taxable. The receipts of any public utility, operating under the rules and regulations of the Pennsylvania Public Utility Commission, derived from supplying services at rates specified in its tariffs shall be excluded from the tax base. Public utilities shall not exclude from their tax base receipts derived from sales of appliances, equipment, advertising, etc. A contract carrier is not a public utility.

12. DETERMINATION OF GROSS OR WHOLE VOLUME OF BUSINESS.

This section refers to specific deductions from gross receipts as set forth elsewhere herein. See appropriate Sections of Ordinance 236, as amended.

Generally:

a. Gross receipts means gross consideration received in, or by reason of, any sale made, or services rendered. or commercial or business transaction occurring in or attributable to the Taxing District including cash, credits, and property of any kind of nature without deduction on account of the cost of materials, labor, services, or other costs, interest or discount paid, or any other expenses whatsoever.

b. The word "sale" as used in the definition of the term "gross receipts" includes, but is not limited to, any transfer of title for a consideration. It includes exchange, barter, and bailments.

c. Gross volume of business derived from products manufactured or grown in the Taxing District is not subject to the tax.

13. **TRAVEL EXPENSES.**

Reimbursement of travel expenses excluded from gross receipts only if the taxpayer incurred such travel expenses as agent for another from whom the taxpayer receives reimbursement for such expenses.

14. **TRADE DISCOUNTS.**

Deductions allowed. Trade discounts allowed to customers may be deducted from the gross amount charged in ascertaining the amount to be reported as receipts from sales. Trade discounts include:

(1) discounts deducted from the face amount of the bill as a method of adjusting the list price.

(2) discounts unconditionally deducted by customers at settlement of their bills and allowed as a matter of established custom of the trade without regard to the due date of such bills or the farm or terms in which such discounts are described or stated on bills.

15. **OTHER DISCOUNTS.**

Deductions allowed. Discounts allowed to customers as cash discounts for prompt payment of their bills may be deducted from gross receipts.

16. **FREIGHT, DELIVERY, OR OTHER TRANSPORTATION CHARGES.**

a. If seller contracts to deliver. If the seller contracts to deliver the property sold to some designated place, or is obligated under the terms of the contract to pay transportation charges to some designated place, the transportation services are rendered to the seller and the freight, delivery or other transportation charges so incurred by the seller may not be deducted from gross receipts.

b. *If buyer deducts cost of delivery from payment.* If property is sold on terms requiring the seller to deliver such property to a designated place but the purchaser pays the amount of freight, delivery or other transportation charged in the first instance, and deducts such charges from the invoice price in making remittance to the seller, no deduction from gross receipts may be taken therefore by the seller.

c. *If seller advances charges.* Where the seller advances delivery or other transportation charges for the account of the accordance with the terms of the contract of sale, such charges from the gross receipts of the seller provided:

(1) that such charges are the actual charges incurred as such to the purchaser, and the freight, purchaser in may be excluded and are billed

(2) that the books and records of the taxpayer clearly indicate such facts.

17. **PRINCIPAL AND AGENT.**

a. *General.* Receipts from sales made, or services rendered, by an agent for the account of his principal are to be reported by the principal. It is immaterial in such cases whether the customer or client remits directly to the principal, or to the agent for transmittal to the principal. The agent is required to report as gross receipts only the commission withheld by him as compensation for his services before remitting to his principal and any commission paid to him after remitting to his principal. No deduction from gross receipts may be taken by the principal for commission paid to, or withheld by the agent. A manufacturer's representative is taxable on his gross commissions unless his relationship to his principal is that of employer and employee. This relationship of employer and employee exists if the principal pays social security and unemployment compensation taxes on behalf of the person claiming exemption and if, in the event of an accident in the course of unemployment, the manufacturer's representative might become entitled to Workmen's Compensation.

b. *Undisclosed principal.* A person selling property, including real property or rendering services for an unknown or undisclosed principal, is subject to tax as a principal unless there is disclosed in the agent's return the identity of the principal and the amount of the sale made on his behalf.

c. *Condition as to recognition of agency.* A person will be regarded as acting as agent or broker in promoting or soliciting sales or rendering services for the account of a principal when it appears:

(1) that the contract or agreement between such persons clearly establishes the relationship of principal and agent,

(2) that the books and records of the agent or broker show the name of the actual owner of the property on whose behalf the sale is made.

(3) that the books and records of the agent or broker show the amount of gross sales and the amounts of commission due thereon.

d. Collection by agent. Money or property received by a taxpayer, as agent, for transmittal to a third party is not to be reported by such taxpayer as gross receipts, but any commission received by him for his services as agent must be included in gross receipts.

e. This section shall apply to advertising agencies, public relations, and any other service business which meets the agency criteria.

18. CONDITIONAL AND INSTALLMENT SALES.

a. *Reported as Cash Sales.* 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, without regard to the fact that the seller may arrange to receive payment from the purchaser on an installment basis or that such contracts may be discounted or pledged with, or sold to, a finance company.

b. *Property repossessed.* 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. Such deduction shall be allowed upon resale, if the resale price is less than the unpaid balance.

19. EXCHANGES BETWEEN DEALERS IN SIMILAR LINES.

Where dealers engaged in similar lines of business exchange articles of tangible personal property and one of them makes payment to the other in addition to the property exchanged by him, the transactions constitute sales to each other. The receipt of each dealer is measured by the gross value of the consideration received by him. Where a dealer transfers property, such as an automobile, to another dealer with the understanding that property of identical description will be returned at a subsequent date, such transaction does not constitute a sale and the value of the property exchanged need not be included in the gross receipts of either dealer. Receipts by dealers from sales to other dealers in the same line where the dealer transfers title or possession at the same price for which he acquired the merchandise may be excluded from gross receipts.

20. LEASED DEPARTMENTS.

a. *Return by lessor.* Where a person leases a department of his business to another, such person may include in his return the gross receipts from business done and sales made by lessee. When the business of such leased department is included in the return made by the lessor, a schedule must be attached to the return containing the name of the lessee, a description of the department operated, and a statement to the effect that the lessor assumes liability for reporting the gross receipts and paying the tax accruing against the lessee of such department. The lessee, however, is not relieved from his liability for business privilege taxes if the lessor fails to make a proper return or fails to pay the tax due. Should a change occur in

the ownership or status of any leased department, the lessor shall notify the Collector of Taxes promptly.

b. *Return by lessee.* If the lessee wishes to file returns independently, such lessee is required to include in his return the entire gross receipts of said lessee whether collected by the lessor, or the lessee without deducting any expense or commissions charged to him by the lessor. To expedite the examination and audit of returns filed by such lessee, the Collector of Taxes may require the lessor to furnish a statement of the entire gross receipts collected on behalf of the lessee.

21. **PERSONS ERECTING BUILDINGS OR OTHERWISE ALTERING, REPAIRING OR IMPROVING REAL PROPERTY.**

a. *General.* A contractor or subcontractor, resident or nonresident, engaged in the business of erecting buildings, or otherwise altering, repairing or improving real property, or other major construction work, is required to report as gross receipts all receipts derived from the performance of such contract. The amount of receipts to be included in the tax base shall be the full contract price, that is the total amount received or receivable by way of a fixed or determinable amount under the terms of the contract. The contract price will be considered to include all charges made by a contractor, or subcontractor, for materials, labor, supervision, overhead costs, and profit. In the case of the general contractor, prime contractor or subcontractor employing lower—tier subcontractors, no deduction may be made with respect to amounts paid to subcontractors and material men, unless it can be shown that the subcontractor has paid the Business Privilege Tax to the Taxing District on the same gross receipts stemming from the same contract.

b. *Cost-Plus Contracts.* A general contractor performing contracts on the basis of a "cost-plus-a-fixed-fee" or "cost-plus-a-percentage" is required to report as gross receipts the full contract price as explained above, unless he has no connection whatsoever with the purchase of materials and/or the hiring of labor. In cases where the owner of the property buys the materials and hires all labor in his own name and pays the general contractor a fixed fee, or a percentage of the total cost to supervise and direct the construction project, the general contractor will be required to report only the gross amount of the fee or percentage received. Where the owner authorizes the general contractor to make for him such purchases of tangible personal property, or hire such labor or engage such subcontractors as are necessary for the performance of the contract and (1) pledges his credit and is liable in the first instance to the material men, suppliers, laborers or subcontractors, as distinguished from merely guaranteeing payment of them or undertaking to reimburse the general contractor for the cost of such materials, services or subcontracts and (2) agrees to make payment directly to the material men, suppliers, laborers and subcontractors, such sales or services will be regarded as made directly to the owner, and the general contractor will not be required to include such items in his gross receipts.

c. *Contractors or Subcontractors Permanently or Temporarily Doing Business in the Taxing District* - shall register and file a tax return. (General contractors are required to withhold final payment to subcontractors, temporarily doing business in the Taxing District, until proof of payment of the tax is furnished to them by such contractors).

d. *Contractors or Subcontractors with an office in the Taxing District who are engaged in the performance of building, construction or engineering contracts at a point outside the territorial limits of the Taxing District* may exclude from the measure of the tax the gross receipts derived therefrom, provided that a *bona fide* field office was maintained on the premises of the project during the performance of the contract wherein all control over such project vas exercised to the extent that it constituted the doing of local business at the site of the job. Receipts for services performed outside the Taxing District may also be excluded if it can be shown that no part of the service was performed in the Taxing District.

22. CONTRACTORS WHO REPAIR, ALTER AND IMPROVE TANGIBLE PERSONAL PROPERTY.

Persons engaged in business in the Taxing District as contractors who repair, alter and improve tangible personal property for the account of others are subject to tax under the provisions of this ordinance. When contractors perform labor or services on articles of tangible personal property furnished by the other party to the contract, such contractors are required to report only the amount due them for labor or services rendered.

23. BUILDINGS, HOTELS, MOTELS, APARTMENT HOUSES, BOARDING HOUSES, NURSING HOMES, ETC.

a. Persons operating hotels, apartment houses, boarding houses, nursing homes, rooming houses and all other such establishments are taxable on receipts from renting of rooms, furnishing of meals and any other services rendered.

b. Any person carrying on the business of renting buildings, offices, space, stores, dwelling houses, etc., shall include gross rentals received in the tax base. No deductions may be made for depreciation, cost of maintenance, repairs, etc.

(1) Persons who have obtained real property with no affirmative action on their parts, that is, fortuitously through inheritance, gift, reverter, or other legal processes, and who furnish only those elementary services and maintenance which are required by law, are not subject to the tax unless the property was received from a person who engaged in the business of renting the property and that business is continued by the recipient.

(2) Business corporations which hold rental property as a source of income in addition to their regular business, which may or may not be real estate, are subject to the tax whether or not services are rendered.

(3) Persons, corporations or partnerships holding rental property in the Taxing District, who employ rental agents or other such assistance in administering such property are doing business and are subject to the tax whether or not they provide services.

(4) Agencies or entities which manage and/or operate cooperatives and/or condominiums must pay the tax based on all receipts received for maintenance, cleaning, and other service provided, including insurance. Receipts received from owner—tenants for taxes, interest and principal payments may be excluded from the taxable gross receipts.

24. PARTICULAR BUSINESSES OR TRANSACTIONS.

Administrative or Executive Offices — Receipts of a taxpayer whose only office in the Taxing District is an administrative or executive office may or may not be taxable depending on the activity performed in the office. The general rule is that receipts for services will not be taxable in the Taxing District if no part of the service is performed in the Taxing District. If the activity at such an office relates only to internal bookkeeping functions of the taxpayer, then those activities are not part of the "service" which is being rendered to customers. However, administrative matters which do relate to the service rendered--e.g., processing of orders, arranging shipments, making telephone calls to customers or clients, or overseeing or controlling employees engaged in performing such services--are generally part of the service for which payment is received. Accordingly, if any of these kinds of services are performed at the place of business in the Taxing District, then the entire receipt for that service is a taxable receipt unless an allocation is appropriate.

25. PERSONS ENGAGED IN PROFESSIONS, OR VOCATIONS, OR IN RENDERING PERSONAL SERVICES.

a. *General.* A person who is engaged in a profession or vocation or in rendering personal services in the Taxing District in any capacity, except as an employee of another, is subject to the tax. All compensation, however characterized, received in such capacity must be included in the tax base.

b. *Attorneys.* An attorney may exclude that portion of the receipts from legal services which are distributed directly to or on behalf of a client such as a distribution of a sum of money recovered in a lawsuit, the sale of real estate, or a collection matter. An attorney may exclude any foe or portion of a fee paid to another attorney where a matter has been forwarded either from or to the first attorney to or by the second attorney except where either is an employee of the other.

c. *Accountants.* An accountant may exclude services rendered to clients outside of the Taxing District only if all activity connected with the rendering of such

services, including the audit, summary and completion of the financial statement, takes place at the client's business sites outside the Taxing District.

d. *Physicians and Surgeons.*

(1) A physician with offices in the Taxing District must include in his gross receipts all revenues derived from such offices, i.e., place of business.

(2) A physician with offices located outside the Taxing District may exclude from gross receipts revenues derived from such offices, i.e., place of business.

(3) A physician with hospital affiliations within the Taxing District must include in his gross receipts all revenue derived or generated by his connection with such hospitals.

(4) A physician with hospital affiliations outside the Taxing District may deduct from gross receipts all revenues derived or generated by his connection with such hospitals.

26. THEATERS AND MOTION PICTURE HOUSES.

Persons operating theaters or motion picture houses and other places of amusement where admission is charged in the Taxing District, whether owner or lessee, are subject to the Business Privilege Tax on the gross receipts from house or film rentals and from commissions received on vending machine sales, public telephone booths and sources of revenue other than sale of tickets of admission (which are exempt from tax by state law).

27. SOCIAL AND RECREATIONAL CLUBS.

a. Under state law the Taxing District may not tax "membership in or membership duos, foes, or assessments of charitable, religious, beneficial or nonprofit organizations including but not limited to. Sportsmen's, recreational, golf, and tennis clubs, girl and boy scout troops and councils." Accordingly, receipts from such sources are not subject to the tax.

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

28. PUBLIC OFFICIALS.

Persons who act as agents or officials of the United States, Commonwealth of Pennsylvania or any political subdivision thereof are not subject to the tax with respect to their activities as such agents or officials. For this purpose, notaries public are considered agents of the Commonwealth.

29. **PUBLIC UTILITIES.**

The Taxing District may not tax the gross receipts of a public utility subject to the Pennsylvania Public Utility Commission which are derived from supplying services at rates specified in tariffs authorized or approved by the PUC. Receipts derived from advertising and rentals or charges levied for services not subject to PUC regulations are subject to tax.

30. **GOVERNMENT CONTRACTS.**

Receipts from the performance of contracts entered into with the Taxing District, or the Commonwealth of Pennsylvania, or the United States of America or any subdivision of such governments are to be included in the measure of the tax.

31. **UNDERTAKERS, MORTICIANS, AND FUNERAL DIRECTORS.**

Persons engaged in business as undertakers, morticians or funeral directors are required to report as gross receipts the total charges made to clients, without deducting therefrom any costs or expenses whatsoever. Both the sale of tangible personal property and a charge for rendering service must be included in the tax base.

32. **SALE OF CAPITAL ASSETS.**

a. Generally. The profits (not gross proceeds) resulting from the sale of capital assets, including real property and improvements thereon, such as plant, machinery and equipment, furniture, fixtures, delivery equipment, etc., are to be included in the tax base. If a loss is sustained on such sales, it may not be offset against gross receipts from other sources. In computing the profits to be included in the tax base, the costs of the asset, less allowable depreciation, is to be deducted from the gross proceeds of the sale.

b. Asset located outside Taxing District. Where the capital asset sold was located at an established place of business of the taxpayer outside the Taxing District, the profit realized on the sale thereof may be excluded from the tax base.

c. Bulk sale or exchange, merger. Where a corporation realizes a gain as the result of a sale or exchange of substantially all of its assets, or as the result of a merger or consolidation with another corporation, the amount of such gain must be included in the tax base.

33. **DEPOSIT ON CONTAINER.**

A person making a sale of products in a container on which there is a deposit to insure the return of the container is required to report only the gross selling price of the product in the container.

34. **VENDING MACHINES.**

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

35. **INTERCOMPANY TRANSACTIONS.**

Receipts from transactions between affiliated companies, other than those of a purely accommodation nature, are subject to inclusion in "gross volume of business".

36. **INTER-DEPARTMENT TRANSACTIONS.**

Where one department, branch or division of a corporation or other business entity, furnishes goods, wares, and merchandise to another department, branch or division of the same corporation or business entity, the amounts recorded on the books to reflect such inter-departmental transactions shall not be included in the "gross volume of business" of the taxpayer.

37. **PROPERTY TRADED IN.**

In the case of a trade-in or part payment in goods, wares and merchandise in a transaction in which goods, wares and merchandise are sold and allowances made, the taxpayer may at his option deduct the value of the trade-in or part payment from gross receipts so long as done on the face of the invoice at the time of the original transaction as a medium for adjusting the price of the goods, wares or merchandise; provided, however, that if no such deduction is taken by the merchant, then the value allowed for the trade-in or part payment in goods, wares or merchandise must be deducted by the dealer at the time of resale of the trade-in or part payment so that no tax is levied or collected on the dollar volume of business derived from the resale of goods, wares and merchandise taken by any dealer as a trade-in or as part payment for other goods, wares and merchandise, except to the extent that the retail price exceeds the trade-in allowance.

38. **REFUNDS OR CREDITS.**

Refunds or credits will be issued upon appropriate verification of over-payment.

39. **COMMISSIONS PAID BY BROKERS.**

Any broker, agent or salesman who splits or otherwise divides a commission with another broker, agent or salesman in the same type of business by reason of the fact that the second broker initiated, executed, cleared or completed a portion of the transaction for which the fee is paid shall be permitted to exclude from the gross receipts that portion of the fee paid to the other broker, agent or salesman. This section does not exempt so-called finders fees, kickbacks, commissions, or other remuneration paid by the broker, agent or salesman to another individual not in the same type of business as the broker, agent or salesman. Nor does this section exempt from the gross receipts of a broker or agent a commission paid by said broker or agent to a salesman affiliated with him.

40. **BAD DEBTS.**

Bad debts may be taken from the gross volume of business where the deduction is also taken in the same year for IRS purposes.

41. **TAXES COLLECTED AS AGENT FOR TILE UNITED STATES OF AMERICA, COMMONWEALTH OF PENNSYLVANIA, OR THE TAXING DISTRICT.**

Taxes collected as agent for the United States of America, Commonwealth of Pennsylvania, or the Taxing District are excludable from taxable receipts.

42. **PARTIAL EXEMPTION.**

Where gross or whole volume of business in its entirety cannot be subjected to the tax imposed by this ordinance by reason of the provisions of the Constitution of the United States or any other provision of law, the Collector of Taxes with the approval of the Taxing District 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 Taxing District shall be taxed hereunder.

43. **WHEN SAME TAX IS IMPOSED BY TWO TAXING BODIES.**

If any person is liable for the same tar on the same subject imposed under the Local Tax Enabling Act of 1965, and its amendments, to the Taxing District and one or more political subdivisions of the Commonwealth of Pennsylvania, then and in that event the tax shall be apportioned by such percentage as may be agreed upon by such political subdivisions, but, in no event, shall the combined taxes of both subdivisions exceed a maximum rate of tax as fixed by the said Enabling Act permitting the imposition of such taxes.

44. **RECORDS.**

The taxpayer shall keep books and records of his business so as to show clearly and accurately the amount of taxable gross receipts minus any allowable deductions pertaining to the Business Privilege and/or Mercantile Tax.

45. **RETURNS.**

See appropriate Sections of Ordinance 236, as amended.

46. **FILING RETURNS.**

See appropriate sections of Ordinance 236, as amended.

47. **WHO MUST FILE A RETURN?**

See appropriate sections of Ordinance 236, as amended.

48. **PARTNERSHIPS.**

A partnership is considered to be a taxable unit. The respective partners are not required to file separate returns as individuals, but they are jointly and severally liable for payment of the tax.

49. **SIGNATURE.**

If the taxpayer is an individual, he shall sign the return. If the taxpayer is a partnership, the return should be signed by at least one of the general partners. If the taxpayer is a corporation, the return should be signed by an authorized officer of the corporation.

50. **MULTIPLE PLACES OF BUSINESS.**

If a taxpayer maintains more than one place of business in the Taxing District he is required to file only one return and may include therein the receipts from transactions occurring in all of his places of business in the Taxing District.

51. **TIME AND PLACE OF FILING.**

See appropriate sections of Ordinance 236, as amended.

52. **PAYMENT OF TAX AND PENALTIES FOR LATE PAYMENT.**

See appropriate sections of Ordinance 236, as amended.

53. **REFUND.**

Any tax payment made under protest which the Taxing District thereafter determines to have been improperly paid shall be refunded to the taxpayer upon request and with the filing of proper forms.

54. **REGISTRATION.**

See appropriate sections of Ordinance 236, as amended.

55. **TO WHOM ORDINANCE APPLIES.**

See appropriate sections of Ordinance 236, as amended.

56: **POSTING REGISTRATION FORM/MERCANTILE LICENSE. .**

Generally, the registration form and/or license must be posted conspicuously at each place of business of licensee at all times.

IN WITNESS WHEREOF, we, the undersigned authorized officials of the Township of East Norriton, Montgomery County, Commonwealth of Pennsylvania, have hereunto set our signatures and affixed hereto the Seal of the Township.

Dated: August 27, 2013

EAST NORRITON TOWNSHIP
BOARD OF SUPERVISORS

By: _____
John A Zurzola, Chairman

[Seal]

ATTEST:

_____
Donald D. Delamater, Secretary