

ORDINANCE NO. 236

EAST NORRITON TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA

AN ORDINANCE REPEALING
RESOLUTION NO. 725 AND ENACTING A
BUSINESS PRIVILEGE TAX BASED UPON
GROSS RECEIPTS OF BUSINESSES, TRADES,
OCCUPATIONS AND PROFESSIONS AND A
MERCANTILE LICENSE TAX UPON PERSONS
ENGAGING IN CERTAIN BUSINESSES
WITHIN THE TOWNSHIP OF EAST NORRITON

The Board of Supervisors of East Norriton Township, Montgomery County, Pennsylvania, under and by the authority granted by the Second Class Township Code and the Local Tax Enabling Act, do hereby enact and ordain:

Section 1. Repealer.

The East Norriton Township Mercantile License Tax, Resolution No. 725, as amended by Resolution No. 731 and Resolution No. 858, is hereby repealed.

Section 2. Title.

This Ordinance shall be known as the "Business Privilege Tax and Mercantile Tax Ordinance."

Section 3. Definitions.

The following words and phrases as used in this Ordinance shall have the meanings ascribed to them in this Section, unless the context clearly indicates a different meaning:

(a) **Business, Trades, Occupations and Professions:** All businesses, trades, occupations and professions in which there is offered any service or services to the general public or a limited number thereof, including, without limitation, those

enterprises engaged in by hotel operators, motel operators, office building operators, apartment and rooming house operators, parking lot and garage operators, warehouse operators, lessors of tangible personal property, social workers, consultants, teachers, nurses, therapists, physicians and surgeons, osteopaths, podiatrists, dentists, lawyers, engineers, architects, chemists, certified public accountants, public accountants, funeral directors, promoters, factories, manufacturers' representatives, agents, brokers, advertising and public relations agencies, real estate brokers, insurance brokers and agents, cable television operators, ~~operators in places of amusement providing either passive or active recreation,~~ vending machine operators, barber shop operators and beauty shop operators, cleaning, pressing and dyeing establishment operators, laundry operators, shoe repair shop operators, tailors, upholsterers, electrical, plastering, bricklaying, carpentry, heat, ventilating, plumbing and painting contractors engaged in the class of heavy building or other construction of any kind or in the alteration, maintenance or repair thereof, repairers of electrical, electronic and automotive machinery and equipment or other machinery and equipment and other wares and merchandise and other businesses, trades, occupations and professions in which there is offered any service or services to the general public or a limited number thereof.

*Amended
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(b) **Collector:** The Director of the Department of Finance of the Township of East Norriton and/or any Township designated agent.

(c) **Department:** The Department of Finance of the Township of East Norriton.

(d) **Gross Receipts:** The gross amount of cash, credit or property of any kind or nature received in both cash and credit transactions allocable or attributable to the Township by reason of any sale made, service rendered (including labor and any materials employed in or becoming part of the service), or commercial or business transactions in connection with any business, trade, occupation or profession.

(e) **Operator:** Includes both the owner of a hotel, motel, office and/or residential apartment building, parking lot, garage, or warehouse, and any person the owner may engage for hire to supervise the operation of such hotel, motel, office and/or residential apartment building, parking lot, garage or warehouse.

(f) **Person:** Any individual, partnership, limited partnership, association, corporation, trust or other legally recognized or recognizable entity except such as are wholly exempt from taxation under the Act of December 31, 1965, P. L. 1257, as amended.

(g) **Retail Dealer or Retail Vendor:** Any person who is a dealer in or a vendor of goods, wares, and merchandise who is not

a wholesale dealer or vendor, or a wholesale and retail dealer or vendor as herein defined.

(h) **Service:** Any act or instance of helping or benefiting another for a consideration.

(i) **Tax Year:** The calendar year.

(j) **Temporary, Seasonal or Itinerant Business, Trade, Occupation or Profession:** Any business, trade, occupation or profession that is conducted within the Township for less than sixty (60) calendar days.

(k) **Township:** The Township of East Norriton.

(l) **Wholesale Dealer or Wholesale Vendor:** Any person who sells to dealers in, or vendors of, goods, wares and merchandise and to no other persons.

Section 4. Registration.

For the tax year beginning January 1, 1987, and for each tax year thereafter, every person desiring to continue to engage in or hereafter to begin to engage in a business, trade, occupation or profession at a place of business in the Township shall, on or before the 15th day of April of the tax year or prior to commencing business in such tax year, make application for registration for each place of business in the Township, and if such person has no place of business within the Township, then such person shall apply for one registration with the Collector. Such registration shall be made by the completion of an application furnished by the Collector and the payment of a fee of Ten Dollars (\$10.00) for each place of business. Each

application for registration shall be signed by the applicant, if an actual person, and in the case of an association or a partnership, by a member or partner thereof, and in the case of a corporation, by an officer thereof, or by the authorized person of any other legal entity. Each applicant shall receive a Certificate of Registration from the Collector which shall not be assignable. Those persons subject to both the Business Privilege Tax and the Mercantile Tax hereunder need only obtain one Certificate of Registration for each place of business. In case of loss, defacement or destruction of any certificate, the person to whom the certificate was issued shall apply to the Collector for a new certificate, for which a fee of Ten Dollars (\$10.00) shall be charged. Such certificate shall be conspicuously posted at each place of business in the Township at all times.

Section 5. Tax Rate.

The following tax rates shall be applicable to businesses, trades, occupations and professions in the Township.

(a) **Imposition of Mercantile Tax:**

(1) **Wholesale Vendors:** Wholesale Vendors, or dealers in goods, wares and merchandise of every kind shall be taxed at the rate of One (1) Mill on each dollar of Gross Receipts of business transacted by him during the tax year.

(2) **Retail Vendors:** Retail Vendors, or dealers of goods, wares and merchandise of every kind, and all persons engaged in conducting restaurants or other places where food, drink or refreshments are sold, shall be taxed at the rate of One

and One-Half (1 1/2) Mills on each dollar of Gross Receipts of business transacted by him during the tax year.

(3) **Wholesale and Retail Vendors:** Wholesale and Retail Vendors or dealers in goods, wares and merchandise of every kind shall be taxed at the rate of One (1) Mill on each dollar of the gross volume of wholesale business transacted by him, and One and One-Half (1 1/2) Mills on each dollar of the Gross Receipts of retail business transacted by him during the tax year.

(4) **Resale:** The tax imposed by this Section shall not apply to the dollar volume of annual business transacted by wholesale and retail dealers derived from the resale of goods, wares and merchandise, taken by any dealer as a trade-in or as a partial payment for other goods, wares and merchandise, except to the extent that the resale price exceeds the trade-in allowance.

(b) **Imposition of Business Privilege Tax:** Every person engaged in the offering of services to the general public as defined by Section 3(a) above and subject to the tax imposed by this Ordinance shall be taxed at the rate of One and One-Half (1 1/2) Mills on each dollar of Gross Receipts.

Section 6. Returns.

(a) **Form:** Every return as hereinafter required by this Article shall be made upon a form furnished by the Collector and in accordance with such regulations as may hereafter be issued by the Department. Each person making such return shall certify the correctness thereof under the penalties of perjury and shall

supply the Collector with a copy of the appropriate schedule of such person's Federal Tax Return indicating such person's Gross Receipts for prior tax year.

(b) **First Return:**

(1) Every person subject to the tax imposed by this Ordinance who engaged in business at least one (1) full year prior to the beginning of any tax year shall, on or before the fifteenth day of April of each year, file with the Township a return setting forth such person's name and business address, and such information as may be necessary to compute the actual gross receipts of such person during the preceding year and the amount of tax estimated to be due.

(2) Every person subject to the tax imposed by this Ordinance who has commenced business less than one (1) full year prior to the beginning of any tax year shall, on or before the fifteenth day of April of each year, file with the Township a return setting forth such person's name and business address, and such information as may be necessary in arriving at the actual gross amount of business transacted during the first month of business and the amount of tax estimated to be due.

(3) Every person subject to the tax imposed by this Ordinance who commences business subsequent to the beginning of the tax year shall within forty five (45) days from the date of commencing such business file a return with the Collector setting forth his name, business, and business address and such information as may be necessary to compute the actual gross

volume of business transacted by him during the tax year and the amount of tax estimated to be due.

(4) Every person subject to the payment of the tax imposed by this Ordinance who engages in a business which is temporary, seasonal or itinerant by its nature shall, within seven (7) days from the date of completion of such business, file with the Township a return setting forth such person's name, business and business address, and such information as may be necessary in arriving at the actual gross receipts of such person during such period and the amount of tax due. Such persons shall deposit with the Collector, prior to the commencement of business, funds in such amount as may be determined by the Collector pursuant to Section 10(c) below.

(5) Every person subject to the tax imposed by this Ordinance who ceases to do business which is subject to the tax imposed by this Ordinance shall, within fourteen (14) 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 the tax year in which the person ceased doing business, and pay the tax due as computed thereon at the rate herein provided for at the time of filing said Return. If such tax has been previously paid based upon estimated gross receipts, the taxpayer shall be entitled to a refund, without interest, of any excess tax paid for the tax year in which the business was terminated.

(c) **Final Return:**

On or before April 15 following the end of the tax year, every person shall file a final return as provided in Section 7(b) below. The initial such final return under this Ordinance shall be filed on or before April 15, 1987, by those persons who were subject to the Mercantile License Tax during the year 1986. Otherwise, the initial final return shall be filed on or before April 15, 1988.

Section 7. Computation of Tax.

(a) **Estimated Tax:**

(1) Every person subject to the payment of the tax hereby imposed, who has engaged in business at least a full year prior to January 1, 1987, shall compute the Gross Receipts of business upon the actual gross amount of business transacted during the twelve (12) months preceding January 1, 1987.

(2) Every person subject to the payment of the tax hereby imposed, who has commenced business less than one (1) full year prior to January 1, 1987, shall compute the Gross Receipts of business by multiplying by twelve (12) the monthly average of the actual gross amount of business transacted during the months prior to January 1, 1987.

(3) Every person subject to the payment of the tax hereby imposed, who commences business subsequent to January 1, 1987, shall compute the Gross Receipts of business for the tax year upon the gross volume of business transacted by them during

the first month of engaging in business, multiplied by the number of months remaining in the tax year.

(b) **Actual Tax:** At the end of the tax year, every person subject to the tax hereby imposed shall make a final return to the Collector of the actual volume of business transacted by the taxpayer during the period for which the taxpayer is subject to the tax. Such final return shall state the amount of Gross Receipts of business as set forth in the first return, the amount of tax paid at the time of the filing of the first return, and the amount of tax due upon the final computation. The initial such final return under this Ordinance shall be filed on or before April 15, 1987 by those persons subject to the Mercantile License Tax during the year 1986. Such final return shall be filed in addition to the first return due pursuant to Section 6(b) above.

Section 8. Payment of Tax.

(a) **First Return:** At the time of filing the first return, the person making the same shall pay the amount of the tax estimated to be due.

(b) **Final Return:** At the time of the filing of the final return, if the full amount of the tax due by the taxpayer for the tax year has not been paid, the taxpayer shall pay the remaining balance of the tax which will be the difference between the amount of the tax paid at the time of making the first return on the estimated computation, and the amount of the tax finally shown to be due. Payment of the tax due on Gross Receipts earned

during the year 1986 shall be remitted with the initial final return required under Section 7(b) above.

Section 9. Deductions and Exemptions.

(a) **Joint Returns:** All persons required to pay a Business Privilege Tax under the provisions of this Ordinance shall be exempted from paying such tax upon the same subject matter of taxation upon which such persons are required to pay a Mercantile Tax hereunder. Any person required to pay both a Business Privilege Tax and a Mercantile Tax may file one joint return.

(b) **Governmental or Educational Purposes:** The business of any political subdivision or of any authority created or organized under and pursuant to any Act of Assembly are exempt from the provisions of this Ordinance.

(c) **Utilities:** No tax shall be assessed and collected on the gross receipts from utilities service to any company whose rates of service are fixed and regulated by the Pennsylvania Public Utility Commission; or on any privilege or transaction involving the rendering of any such public utility service.

(d) **Production and Manufacture:** No tax shall be assessed and collected hereunder on goods, articles, and products, or on materials, timber, natural resources, and farm products, manufactured, produced, or grown in the Township, 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, 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 or by-products.

(e) **Religious and Charitable Organizations:** Non-profit corporations or associations organized solely and exclusively for religious, educational and charitable purposes are exempt from the provisions of this Ordinance generally, except that such exemptions shall not apply to the receipts from any regular or established business competing commercially with any persons subject to the tax imposed by this Ordinance, nor shall such exemption apply to receipts from any non-charitable services or non-traditional activities.

(f) **Adjustments:** Refunds, credits, or allowances given by a person to a customer on account of defects in services rendered or in goods, wares, and merchandise sold or returned, may be deducted from the amount of the Gross Receipts of the person. Adjustments allowed to customers may be deducted from gross receipts if they are deducted on the face of the invoice as a medium of adjusting the price or fee for the service, and if they are not reimbursed to the person by his supplier or some other person. Federal, state and local taxes are not included in "gross receipts" if they are collected from the customer and are separately stated on the evidence of charge or sale, or the

customer produces satisfactory proof of payment of the federal, state or local taxes.

(g) **Services Performed Outside the Township:** Specifically excluded from the definition of Gross Receipts hereunder are receipts from services performed from a place of business regularly maintained outside the Township by the taxpayer to a place of business regularly maintained outside the Township by the customer, provided that such performance is not made for the purpose of evading the tax. Services or deliveries to a residence located outside the Township do not qualify for this exclusion.

(h) **Limited Taxation:** Where the Gross Receipts of the taxpayer cannot in their entirety be subjected to the tax imposed by this Ordinance by reasons of provisions of the Constitution of the United States, the Constitution of the Commonwealth of Pennsylvania, or any other provisions of law, the Manager shall establish rules and regulations and methods of allocation and evaluation so that only that part of the gross receipts which is properly attributable to doing business in the Township shall be taxed by this Ordinance.

Section 10. Duties of Collector.

(a) It shall be the duty of the Collector to collect and receive the taxes, fines and penalties imposed by this Ordinance. It shall also be the duty of the Collector to keep a record showing the amount of tax received and the date of payment.

(b) The Collector or any agent designated by the Collector

and/or the Department are hereby authorized to examine the books, papers and records of any taxpayer or of any person whom the Collector reasonably believes to be a taxpayer, in order to verify the accuracy of any return, or if no return was filed, to ascertain the tax due. Every taxpayer and every person whom the officer reasonably believes to be a taxpayer is hereby directed and required to give to the Collector, or any agent designated by the Collector, the means, the facilities and opportunity for such examination and investigations as are hereby authorized.

(c) If the Collector is not satisfied with the return and the payment of tax made by any taxpayer under the provisions of this Ordinance, the Collector is hereby authorized and empowered to make a determination of the tax due by such person based upon the facts contained in the return or upon any information obtained by the Collector. The Collector is hereby authorized and directed to make and keep such records, prepare such forms and take such other measures as may be necessary or convenient to carry this Ordinance into effect, and may, at his discretion, require reasonable deposits to be made by persons who engage in a business which is temporary, seasonal or itinerant by its nature.

(d) If any person shall neglect or refuse to make any return or payment of tax required by this Ordinance, or if, as a result of any investigation by the Collector, a return is found to be incorrect, the Collector shall estimate the tax due by such person and determine the amount due for taxes, penalties and interest thereon.

(e) The burden is hereby imposed upon any person claiming an exemption from the payment of the tax hereby imposed to prove by clear and convincing evidence the legal right of such exemption to the satisfaction of the Collector.

(f) Any information contained on the returns of a taxpayer, and any information obtained as a result of the examination of the books and records of the taxpayer through any returns, investigations, hearings or verifications shall be confidential except for official purposes and except in accordance with a proper judicial order, or as otherwise provided by law.

(g) Every person subject to the taxation under this Ordinance shall maintain such records and books of account as will enable such person to make a true and accurate return in accordance with the provisions of this Ordinance. Such accounts and records must disclose detail of the Gross Receipts and other data pertaining to the taxpayer's gross volume of business, and must be sufficiently complete to enable the Collector or his deputies to verify all transactions.

(h) The Collector is hereby empowered to prescribe, adopt, promulgate and enforce, rules and regulations relating to any matter pertaining to the administration and enforcement of the Ordinance, including provisions for the reexamination and correction of returns, and all payments alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred and to make refunds in case of overpayment, for any period of time not to exceed six (6) years subsequent to the date

of payment of the sum involved, and to prescribe forms necessary for the administration of the Ordinance. A copy of such rules and regulations currently enforced shall be available for a public inspection.

Section 11. Method of Recovery.

(a) All taxes due and unpaid under this Ordinance shall be recoverable by the Township Solicitor as other debts due the Township are now by law recoverable. Persons liable for tax hereunder which remains unpaid when due shall be liable for the cost of collection and interest and penalties herein imposed.

(b) All taxes due under this Ordinance shall bear interest at the rate of one and one half (1 1/2%) percent per month or a fractional part of a month from the day they are due and payable until paid. If any taxpayer shall neglect or refuse to make any return or payment as herein required, an additional ten (10%) percent of the amount of the tax shall be added by the Collector and collected.

(c) All taxes, interests and penalties received, collected or recovered under the provisions of this Ordinance shall be paid into the treasury of the Township for the use and benefit of the Township.

Section 12. Limitations.

Nothing contained in this Ordinance shall be construed to empower the Township to levy and collect the taxes hereby imposed on any person or any business or any portion of any business not within taxing power of the Township under the Constitution of the

United States and the Constitution and Laws of the Commonwealth of Pennsylvania.

Section 13. Severability.

The provisions of this Ordinance are severable, and if any of its provisions or exemptions shall be held to be illegal, invalid or unconstitutional, or invalid or unconstitutional as to any part of the period designated herein as the tax year, the decisions of any court shall not affect or impair any of the remaining provisions of this Ordinance or affect or impair its application as to any other part of the said tax year, and the requirements as to the tax shall operate as of the effective date of this Ordinance and the computation of tax in payment thereof shall be applied and adjusted accordingly.

Section 14. Violations and Penalties.

Any person or any officer, agent, servant or employee thereof who shall fail, neglect or refuse to comply with any of the terms or provisions of this Ordinance shall, upon conviction before a District Justice, be sentenced to pay a fine of not less than Twenty Five Dollars (\$25.00) nor more than Three Hundred Dollars (\$300.00) and costs of prosecution for each offense to be collected as other fines and costs are now by law collectible, or imprisonment not exceeding ninety (90) days, if the amount of said fine and costs shall not be paid. The fine imposed by this Section shall be in addition to any other penalty imposed by any other Section of this Ordinance. Each day on which such person

violated the Ordinance will be considered as a separate offense and punishable as provided herein.

Section 15. Effective Date.

(a) This Ordinance and the taxes levied hereby shall become effective January 1, 1987.

ENACTED AND ORDAINED by the Board of Supervisors of East Norriton Township, Montgomery County, Pennsylvania, this 20th day of October, 1986.

BOARD OF SUPERVISORS OF
EAST NORRITON TOWNSHIP

Attest: *Samuel J. Rameal* Secretary By: *John W. Tichter* Chairman