

***AMENDED TO PROVIDE FOR A CHANGE IN THE DEFINITION OF LICENSE/REGISTRATION AND ARTICLE III TO COMPLY WITH THE CHANGES ADOPTED BY ORDINANCE 4252, OCTOBER 19, 2022.***

**BUSINESS PRIVILEGE TAX AND MERCANTILE LICENSE TAX REGULATIONS**

**TABLE OF CONTENTS**

**ARTICLE I: INTRODUCTION**

- Section 101 - Purpose of Regulations
- Section 102 - Administration of Business Taxes
- Section 103 - Definitions

**ARTICLE II: BUSINESS PRIVILEGE AND MERCANTILE LICENSE TAX**

- Section 201 - Authority
- Section 202 - Who is Liable for Tax
- Section 203 - Businesses Started During a Tax Year
- Section 204 - Persons Selling Goods, Wares, or Merchandise and Providing Service
- Section 205 - Tax Returns Required
- Section 206 - Terminated Businesses

**ARTICLE III: REGISTRATION**

- Section 301 - Registration Deadlines
- Section 302 - Period Covered by Registration
- Section 303 - Registration Fees
- Section 304 - Separate Registration For Each Place of Business
- Section 305 - Multiple Business Entities
- Section 306 - Posting

**ARTICLE IV: RETURNS AND PAYMENT OF TAX**

- Section 401 - Return is Due Each Tax Year
- Section 402 - Time of Filing
- Section 403 - Determining Estimated Gross Receipts
- Section 404 - Required Documentation
- Section 405 - Incomplete Returns and Information
- Section 406 - Math and Clerical Errors

## **ARTICLE V: GROSS RECEIPTS**

- Section 501 - General Definition of Gross Receipts
- Section 502 - Refunds, Credits, or Allowances
- Section 503 - Exclusion of Federal, State and Local Taxes
- Section 504 - Cash or Accrual Basis

1

## **ARTICLE VI: EXEMPTIONS, EXCLUSIONS, LIMITATIONS, AND APPORTIONMENTS**

- Section 601 - Limitations on Taxation
- Section 602 - Non-Profit Entities
- Section 603 - Government Entities
- Section 604 - State Preemption
- Section 605 - Duplicate State Tax
- Section 606 - Manufacturers, Producers and Processors of By-Products of Manufacturing
- Section 607 - Apportionment: Business which has Office Inside and Outside Township
- Section 608 - Interstate Commerce
- Section 609 - Taxpayer with Sole Place of Business within the Township
- Section 610 - Exclusion of Gross Receipts Subject to Payment to Other Jurisdictions.

## **ARTICLE VII: PARTICULAR BUSINESSES OR TRANSACTIONS**

- Section 701 - Base of Operations
- Section 702 - Leased Departments
- Section 703 - Persons Engaged in Professions, Vocations or the Rendering Personal Services
- Section 704 - Principal and Agent
- Section 705 - Insurance Agents, Brokers and Underwriters
- Section 706 - Theaters and Motion Picture Houses
- Section 707 - Persons Erecting Structures or Otherwise Altering, Repairing or Improving Real Property
- Section 708 - Personal Property Contractors
- Section 709 - Real Estate Developers
- Section 710 - Real Estate Agencies and Independent Brokers
- Section 711 - Buildings, Hotels, Apartment Houses, Boarding Houses, Nursing Homes Etc.
- Section 712 - Receipts from Securities Transactions
- Section 713 - Social and Recreational Clubs
- Section 714 - Public Utilities

2

Section 715 - Sale of Capital Assets  
Section 716 - Vending Machines  
Section 717 - Contracts with Governments.

**ARTICLE VIII: ASSESSMENTS, SUITS FOR COLLECTION, PENALTIES, ETC.**

Section 801 - Suits for Recovery of Unpaid Taxes  
Section 802 - Interest for Non-Payment  
Section 803 - Penalty for Non-Payment  
Section 804 - Notice of Underpayment  
Section 805 - Interest and Penalty for Underpayment of Tax  
Section 806 - Abatement of Certain Interest and Penalty  
Section 807 - Application of Payments  
Section 808 - Fines and Penalties for Violations of Act

2

**ARTICLE IX: PAYMENT UNDER PROTEST; REFUNDS**

Section 901 - Payment under Protest  
Section 902 - Refunds for Discontinued Business  
Section 903 - Procedure upon Filing Request for Refund or Credit Section  
904 - Interest on Overpayments

**ARTICLE X: BOOKS AND RECORDS**

Section 1001 - Maintaining Books and Records  
Section 1002 - Inspection and Examination  
Section 1003 - Use of Federal Tax Information

**ARTICLE XI: RULINGS**

Section 1101 - Request for Specific Tax Rulings  
Section 1102 - Penalty and Interest  
Section 1103 - Rulings on Taxpayer Petitions

**ARTICLE XII: INSTALLMENT AGREEMENTS**

Section 1201 - Authorization

**ARTICLE XIII: CONFIDENTIALITY**

3

Section 1301 - Confidentiality of Tax Information

**ARTICLE 1: INTRODUCTION**

Section 101 - Purpose of Regulations. These regulations are issued by the Chief Financial Officer/Director of Finance of Lower Merion Township pursuant to the Code of the Township of Lower Merion, Chapter 138, "Article III, referred to in these regulations as the "Mercantile License Tax" and Article IV, referred to in these Regulations as the "Business Privilege Tax" and together referred to as "Business Taxes". These regulations are issued as an aid to the taxpayer to explain the meaning and scope of certain parts of the Business Tax Code and to illustrate the impact of The Township's Business Taxes on certain businesses. They are not intended to encompass all of the provisions of the Business Privilege Tax or Mercantile License Tax or to be construed as taking the place of the Ordinance. These regulations are intended to conform to the Local Tax Enabling Act and the Local Taxpayers Bill of Rights, 53 Pa.C.S.A.8421, and should be construed accordingly.

Section 102 - Administration of Business Taxes. The Chief Financial Officer/Director of Finance of the Township is charged with the administration and enforcement of Business Taxes. All questions about the Township's Business Taxes should be sent to the Director.

Any taxpayer may request in writing a written determination of taxability from the Chief Financial Officer/Director of Finance with respect to the application of the provisions of the Tax Ordinances or these Regulations.

Section 103 – Definitions. Words used in the Business Privilege Tax Ordinance, the Mercantile License Tax Ordinance, and/or these Regulations, but not defined in the Ordinances, the Regulations, by state statute, or by the Pennsylvania judiciary, will be interpreted using the common and ordinary meaning afforded to such words in a local tax context.

As used in these Regulations:

“Agent” is a Person with the legal authority to act on behalf of another, called a principal.

“Assessment” means the determination of the amount of tax principal, penalty and/or interest due by a taxpayer.

“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 outside Pennsylvania, by or in conjunction with a Base of Operations with substantial nexus with the Township.

“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. The following is a list of some significant business activities; however, it is not all inclusive.

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.
10. Ownership of real property within the Township which either generates gross receipts or is used as a business location by the Taxpayer.
11. Business activity of substantial size, duration and complexity which occurs at the business location of a third party.

Whether a location constitutes a Base of Operations is a facts and circumstances test. 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 as defined by these regulations or state law. The above list contains examples only and is not intended to identify the sole set of factors considered by the Township.

“Broker” in general, is one who holds himself out for employment by others, and acts as an intermediate negotiator between parties to a transaction, and in a sense is the agent of both parties. The determination of who is a broker is fact specific. In industries that require a specific license to act as a broker, broker is defined by the requirements for the specific license. Regardless of industry terminology, a party who takes title to goods and then sells to another party even if they do not receive physical possession of the goods is not a Broker for Business Tax purposes.

“Business Activity” means any significant participation, by a Person, in efforts to offer a service or sale to another, or to engage in commercial transactions.

“Business Taxes” refers collectively to the Business Privilege Tax and Mercantile License Tax imposed by the Township.

“Commonwealth” means the Commonwealth of Pennsylvania.

“Exempt from Tax” or “Exempt” refers to the status of persons not subject to the Township’s Business Taxes under the laws of the Commonwealth of Pennsylvania. For example, Institutions of Purely Public Charity, Government Entities, or manufacturers. Such organizations may be subject to the Township’s Institution and Service Privilege Tax in Chapter 138, Article VI.

“Exemption” also refers to certain receipts excluded from gross receipts and not subject to tax as provided by state law, Township Ordinance, or these Regulations. Similarly, nontaxable receipts are also referred to as “Exclusions” in the Ordinances and Regulations. Any Person claiming exemption from Tax or an exclusion of gross receipts has the burden to demonstrate his legal right to such exemption or exclusion.

“General Public” includes one entity or a group of separate legally recognizable entities regardless of any commonality of ownership interests.

“Gross Receipts” means cash, credits or property of any kind or nature received in both cash and credit transactions allocable or attributable to any business, or services rendered, sale, or commercial or business transactions without deduction therefore on account of the cost of property sold, materials used, labor, service or other costs, interest or discount paid or any other expense connection with any business, trade, occupation or profession.

“Gross Volume of Business” a term used in the Mercantile License Tax Ordinance, is synonymous with the definition of Gross Receipts above.

“Home Office” is an area within a personal residence used for a business purpose. It is recognized as a Base of Operations if it is used for business. A home office may be deemed to be simply for the convenience of an employee, owner, or other worker, if there is another place of business where the same activities are performed. A home office used solely for the convenience of the employee, owner or other worker is not a Base of Operations under these Regulations.

**“License/Registration” is the certificate issued by the Township upon receipt of the completed Business Privilege Registration/Mercantile License Application together with all applicable fees. A License/Registration shall not be issued to any business which is not in compliance with the Township’s Business Taxes Ordinances and Township Code. The License/Registration must be publicly displayed within each place of business in the Township. All License/Registration fees shall be in accordance with Code Section 167-A.**

“Manufacturing” consists of the application of technology, labor and skill to material whereby the original article is changed into a new, different and useful article. Whether or not an article is a manufactured product depends upon whether or not it has gone through a substantial transformation in form, qualities and adaptability in use from the original material, so that a new article or creation has emerged.

“Person” means any individual, partnership, limited partnership, association, corporation, limited liability company, estate, trust, trustee, fiduciary or any other legally recognized entity, except such as are wholly exempt from taxation under the Act of December 31, 1965, P.L. 1257, as amended (Act 511) and The Institutions of Purely Public Charities Act (Act 55).

“Tax” means the Business Privilege Tax and/or Mercantile License Tax levied by the Township of Lower Merion which are also collectively referred to as “Business Taxes”.

“Tax Collector” means the Chief Financial Officer/Director of Finance or his duly authorized designee.

“Tax exempt nonprofit corporation or organization” is an institution that qualifies as a Pennsylvania Purely Public Charity under Act 55.

“Taxpayer” means a person subject to the Tax or, in a case where the Township is seeking to determine whether a person is subject to Tax, “Taxpayer” also includes such a person.

“Tax Year” means the calendar year running from January 1 to December 31.

“Township” means the Township of Lower Merion, a Township of the first class organized pursuant to the laws of the Commonwealth of Pennsylvania and located in Montgomery County, a political subdivision of the Commonwealth of Pennsylvania.

## **ARTICLE II: BUSINESS PRIVILEGE AND MERCANTILE LICENSE TAX**

Section 201 - Authority. The Business Privilege and Mercantile License Tax Ordinances were enacted under authority of the Local Tax Enabling Act (Act 511 of 1965), as amended, 53 P.S. '6901 et seq., and the First Class Township Code as amended, 53 Pa. C.S.A. §55501 et seq., and appear in the Codified Ordinances of the Township of Lower Merion in Chapter 138, Articles III and IV.

Section 202 - Who is Liable for Tax. The Business Taxes are levied on the privilege of doing business in the Township.

a. Persons Offering Services. The license and tax provisions of the Business Privilege Tax apply to any person engaging in any business, trade, occupation or profession in which there is offered any service or services to the general public or a limited number of the general public except for persons who are wholesale or retail vendors or dealers in goods or who conduct restaurants or other places where food or beverages are sold and who are thus subject to the Mercantile License Tax.

1. Whether a person carries on a taxable activity within the meaning of the Business Tax ordinance is essentially a question of fact. Any service directed, controlled, or managed by a Lower Merion office or location, or which occurs within or has a substantial nexus to the Township or is conducted from a Base of Operations within the Township is subject to the tax. The tax is not limited to transactions occurring entirely within the Township.

2. Persons who perform services in interstate commerce or who maintain bona fide places of business in other jurisdictions may be entitled to some apportionment or allocation of gross receipts upon presentation of such documentation as the Chief Financial Officer/Director of Finance may require.

b. A person who engages in a taxable activity in Lower Merion is subject to this tax whether or not he has a permanent place of business in the Township. A foreign corporation is subject to this tax if it carries on a taxable activity in the Township regardless of whether it is licensed to do business in Pennsylvania.

c. A person who offers for sale goods, wares, food or merchandise at wholesale or retail to the general public or a limited number thereof is subject to mercantile license tax for the goods, wares, food or merchandise sold.

Section 203 - Businesses Started During a Tax Year. The Business Taxes apply not only to businesses in existence at the beginning of the tax year, but also to businesses begun during the tax year or carried on in the Township for any part of the tax year. If the business is not carried on at any one location within the Township for more than sixty (60) days, it is considered to be "temporary, seasonal or itinerant business" subject to special filing requirements as explained in Article IV, Section 402c. Any business which begins operation within the Township during a tax year must file an estimated tax return within forty (40) days of beginning operation within the Township.

Section 204 - Persons Selling Goods, Wares, or Merchandise and Providing Service. A person whose business is in part furnishing services and in part dealing in goods, wares, and

merchandise is subject to the Business Privilege Tax with respect to his service business and subject to the Mercantile License Tax with respect to his business in dealing in goods, wares, and merchandise and shall file a combined return in each year showing those receipts subject to Business Privilege Tax and those receipts subject to Mercantile License Tax.

Section 205 - Tax Returns Required. Any person that exercises the privilege of doing business within the Township must file a tax return with the Township by April 15th of each year regardless of whether tax is due or not. Any person who exercises the privilege of doing business, including exempt non-profits, within the Township that is not subject to tax must file a tax return with sufficient documentation to support its position that its gross receipts are either exempt by law or excluded as a matter of law.

Section 206 - Terminated Businesses. Any business which ceases operations within the township during the tax year must file a final return within forty (40) days of ending business activities within the Township. The final return must include an explanation of the reason for terminating activities (i.e. moving to new location, ending business, etc.) and a forwarding address for a responsible officer or other party.

### **ARTICLE III: REGISTRATION AND LICENSURE**

**Section 301 - Registration Deadlines.** Each person doing business in the Township must obtain a separate business license/registration, as appropriate, for each place of business in the Township. If the taxpayer conducts business in Lower Merion Township but does not have an actual place of business maintained by that legal entity in the Township, then a single license/registration must be obtained. The license/registration must be obtained on or before April 15 of each tax year if the business was begun prior to that tax year. If a business is begun or a new place of business established during the tax year the license/registration must be obtained prior to commencing business.

**Section 302 - Period Covered by License/Registration.** License/registration is valid from April 15th to April 14th each year. or a tax year from January 1 to December 31 of each year. A license/registration obtained at any time during the year is valid only from the date of issue until April 15th December 31 of the next each year with respect to which it is issued. Should a business close or leave the Township, it will not receive a refund for the license/registration that was issued.

**Section 303 – License/Registration Fees.** The registration fee must be paid to the Treasurer-Lower Merion Township. The registration fee for each place of business for all or part of a year is twenty dollars (\$20.00) or the amount established by Code Section 167-A. If a business operates for any portion of a year then the full fee is due. License fees are

nonrefundable. If the license fee is not paid by the due date a penalty shall apply. Currently the penalty is an additional \$30 per licensee year.

**Section 304 - Separate License/Registration for Each Place of Business.** If a person does all or a portion of his business at more than one location in the Township, each location may constitute a separate "place of business" for which separate registration application and separate registration fee are required. Any owner of residential real estate that is leased or otherwise used for the generation of gross receipts shall file a registration application and obtain a license/registration for each property and obtain a Residential Rental License from the Township's Building and Planning Department.

**Section 305 - Multiple Business Entities.** Multiple business entities sharing the same location within the Township must each obtain their own separate business registration/mercantile license.

**Section 306 - Posting.** Every license/registration must be posted in a public area of the business location. If the business does not maintain a place of business open to the general public, it is not required to publicly post the registration; however, the business registration/mercantile license must be made available to a Township Representative upon request. Failure to post the license/registration as required is a violation of the Township Business Tax Code and may result in prosecution in accordance with the Code, including but not limited to the issuance of a non-traffic summary citation.

**Section 307 – Change of Address.** Any business which changes its address after obtaining a license/registration must report the change to the Business Tax Office within ten (105) business days after the change becomes effective.

**Section 308 – Failure to Obtain a License/Registration.** Persons who engage in a business, professional or commercial activity without a valid license/registration are subject to fines or legal action in accordance with the Township Code.

#### **ARTICLE IV: RETURNS AND PAYMENT OF TAX**

**Section 401 - Return is Due Each Tax Year.** A return must be filed and an estimated tax must be paid for each tax year at the time set forth in Section 402 below. The estimated tax is computed on the estimated gross receipts for the tax year. At the end of each tax year the actual gross receipts for the year must be determined and an appropriate adjustment made in the tax due. This adjustment will be shown on the final return for the tax year. The final return for the prior tax year will be combined with, and thus filed at the same time as, the estimated return for the current year, and a single payment made in an amount equal to the estimated tax for the current year increased or decreased by the adjustment for actual gross receipts for the prior year.

Section 402 - Time of Filing. Every person subject to the Township's Business Taxes shall file a return as follows:

- a. Every person that has commenced business prior to January 1 of the tax year, shall file a return on or before April 15 of the tax year.
- b. Every person that commences business after January 1 of the tax year, shall file a return within forty (40) days from the date of commencing Business. (If the person commences business in the Township between January 1 and March 15 of the tax year, the return shall be filed on or before April 15 of that tax year.)
- c. Every person that engages in a business which is temporary, seasonal or itinerant in its nature, shall file an estimated return within seven (7) days of beginning operation within the township and shall file a final return within seven (7) days of the completion of such business.
- d. Every person subject to this tax which terminates its business within the Township whether by ending the business or moving from within the Township shall file a final return with the Collector no later than forty (40) days after the business within the Township terminates
- e. To be considered timely filed, a tax return must be delivered to the Township of Lower Merion by the close of business on the due date, or if mailed, must contain a U.S. Postmark on or before the due date.
- f. Extensions. Requests for extensions may be granted for up to four months from the due date of the final return, if the request is made for good cause and is made in writing to the Chief Financial Officer/Director of Finance on or before April 15 of the year the final return is due. Any request for extension must be accompanied by a minimum payment of 80% of the total amount due on the entire tax return for that year. Interest will be assessed against the unpaid balance.

Section 403 - Determining Estimated Gross Receipts. The estimated gross receipts for any tax year shall be determined as follows:

- a. If the taxpayer has been engaged in business in the Township for a full year prior to January 1 of the tax year, the actual gross receipts for that prior year becomes the estimated receipts for the tax year.

- b. If the taxpayer has been engaged in business in the Township prior to January 1 of the tax year but for less than one full year, the estimated gross receipts shall be the average monthly receipts for the prior year multiplied by 12.
- c. If the taxpayer commences business in the Township during the tax year, the estimated gross receipts shall be determined by multiplying the receipts for the first month of business by the number of months remaining in the tax year.
- d. In the case of a temporary, seasonal or itinerant business for which a return is filed as provided in paragraph 402 (c) above, an estimated payment shall be made at the time business commences within the Township based upon the greater of anticipated gross receipts or the value of a contract, if such receipts will be based on a contract between the business and a third party. The tax is imposed on the actual gross receipts during the period covered by the return.
- e. If the estimated payment made in any year is not equal to at least eighty percent (80%) of the final tax found to be due, the Township will collect penalty and interest in accordance with the ordinance upon receipt of the return.

Section 404 - Required Documentation. The following is required for any tax return to be accepted as complete for processing.

- a. All returns must be signed and by the taxpayer or authorized officer.
- b. Any return prepared by a paid preparer must be signed by the preparer and include his name, address and phone number.
- c. A check or money order for the full amount of the tax due, plus any penalty and interest. Cash payments are accepted only at the Township Building.
- d. Individual taxpayers are required to attach to their annual Business Privilege Tax return a true, correct and complete copy of pages 1 and 2 of form 1040 and a copy of Schedule C and/or Schedule E, if any, filed with such return, together with such other supporting schedules and worksheets as are necessary to substantiate the amount and source of all gross receipts earned by such individuals.
- e. Corporations and partnerships are required to submit the first four pages of their U.S. tax returns with their annual Business Privilege Tax returns, together with such other supporting schedules and worksheets as are necessary to substantiate the amount and source of all gross receipts.

Corporations and Partnerships which file multi-state returns are also required to submit their Pennsylvania tax returns. For all other taxpayers, the corresponding Pennsylvania tax information shall be submitted if requested by the Chief Financial Officer/Director of Finance.

- f. Any taxpayer claiming an exclusion for taxes paid to other jurisdictions must attach a copy of the tax return filed with that jurisdiction together with a narrative stating in full the reason for tax paid to another jurisdiction and proof of payment of any tax paid to another jurisdiction. Acceptable proof of payment includes, canceled checks, official receipts from the taxing authority or other bank records from the taxpayer.
- g. If the taxpayer is using apportionment for the payment of tax, a full explanation, including back-up documentation, must be provided to support the apportionment calculation.
- h. Owners of commercial real estate located in the Township must attach a list of tenants as of January 1 of the year the return is being filed. The list should contain both the names listed on the lease as well as any trade or doing business as names if different, and the business address for each lessee or tenant and current contact name.
- i. Businesses that have headquarters outside of the Township must provide a Profit and Loss statement for the Township location(s) to substantiate the gross receipts reported.
- j. Accrual taxpayers that elect to pay by calendar year must submit a reconciliation together with the applicable federal return of the fiscal and calendar year.

The Chief Financial Officer/Director of Finance may require that additional information be supplied as needed to verify that any tax return is complete and accurate.

Section 405 - Incomplete Returns and Information. Any returns that are filed without the information required by the instructions included with the tax return forms or as set forth in Section 404 above, will be returned to the taxpayer as incomplete and will not be considered to be filed until received with all required information.

Any tax payment that is less than the amount due to the Township will be retained by the Township as a deposit against the total tax due; however, interest and penalty will accrue against the unpaid amount and the return will not be considered as filed until full payment is received.

Section 406 - Math and Clerical Errors. The Township reserves the right to correct any math errors found and will bill the taxpayer for any unpaid tax, accrued penalty and interest. If a credit is due the taxpayer it will be credited towards the estimated payment made by the Taxpayer unless a written demand for refund is received from the Taxpayer.

## **ARTICLE V: GROSS RECEIPTS**

Section 501 - General Definition of Gross Receipts. In general, the gross receipts upon which the tax is imposed is the value of all cash, credits or property received by a person which is attributable to the carrying on of business in the Township or which is attributable to a place of business maintained in the Township, undiminished by any costs of doing business. A receipt generally will be considered attributable to the Township if the business' office is located within the Township or if the transaction giving rise to the receipts are attributable to a base of operations within the Township. If a taxpayer's sole place of business is located within the Township, all receipts will be considered allocable or attributable to the Township no matter where the service giving rise to the receipt was actually performed. If a taxpayer has no office or regular place of business in the Township, a receipt will be considered allocable or attributable to the Township if the taxpayer is engaged in business in the Township at a temporary sales point within the Township, or at a construction site within the Township. If a taxpayer has multiple offices, one or more of which is within the Township, receipts shall be allocated in accordance with the rules set forth in Section 605 and 606 of these regulations.

Section 502 - Refunds, Credits, or Allowances. Refunds, credits, or allowances given by a taxpayer to a customer on account of defects in services rendered, may be deducted from the amount of the gross receipts of the taxpayer. 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 a supplier or some other taxpayer.

Section 503 - Exclusion of Federal, State and Local Taxes. Except for gross receipts taxes validly paid to another political subdivision, federal, state and local taxes are not excluded from gross receipts unless they are collected from the customer and are separately stated on the evidence of charge or sale.

Section 504 - Cash or Accrual Basis. A 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. A person who keeps their books on the

cash basis will report his gross receipts on the basis of amounts actually received during the period used as the measure of the tax.

## **ARTICLE VI: EXEMPTIONS, EXCLUSIONS, LIMITATIONS AND APPORTIONMENTS**

Section 601 - Limitations on Taxation. Lower Merion Township's ability to tax is limited by Federal and State Law. The broad scope of the Township's taxing powers is limited by certain provisions in the Business Tax ordinances and by federal and state law.

Section 602 - Non-Profit Entities. Services performed by non-profit religious, charitable, or educational corporations or associations that are part of their non-profit mission are exempt from Business Tax; however, they may be subject to the Township's Institution and Service Privilege Tax, Township Code Chapter 138, Article VI.

A tax exempt non-profit corporation or organization is an institution that qualifies as a Pennsylvania Purely Public Charity. To qualify, an organization must pass all parts of the following five part test.

The organization must:

1. Advance a charitable purpose (requires I.R.C. non profit status);
2. Operate entirely free from private profit motive;
3. Donate or render gratuitously a substantial portion of its services;
4. Benefit legitimate subjects of charity; and
5. Relieve the government of some of its burden.

The exemption for such Purely Public Charities is limited to activities connected to the organization's charitable purpose. The exemption does not extend to activities competing commercially with any Person subject to the tax.

Receipts from services not related to the non-profit organization's mission are subject to Business Tax and the appropriate Business Privilege or Mercantile License Tax return must be filed reporting the gross receipts.

Section 603 - Government Entities. Agencies of the government of the United States, the various states, and the Commonwealth, and any political subdivision thereof, are not subject to the

Tax. Businesses which provide services to any governmental agency are not exempt because they provide services to government.

Section 604 - State Preemption. Businesses with Gross Receipts from activity which has been judicially determined to be preempted by the Commonwealth of Pennsylvania, may exclude receipts generated by such activity 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, the alcoholic beverage industry and harness racing. Preemption does not relieve a taxpayer from all municipal taxation. Gross receipts which are unrelated to the aspect of business operations, the taxation, and regulation of which has been preempted by the Commonwealth, remain subject to tax by the Township. Taxable activity does not lose its character as such merely through association with preempted activity.

Section 605 - Duplicate State Tax. In the event the Commonwealth imposes a tax on the same subject matter as is taxed by the Township, and the State tax is measured by the same gross receipts sought to be taxed by the Township, the State tax shall prevail, and the same subject shall not also be taxed by the Township.

Section 606 - Manufacturers, Producers, and Processors of By-Products of Manufacture. Receipts generated by engaging in the following activities (described more fully below) are not subject to the tax: (i) manufacturing, (ii) producing, and (iii) processing of by-products of manufacturing.

- a. Manufacturing. Manufacturing consists of the application of labor and skill to material whereby the original article is changed into a new, different and useful article. Whether or not an article is a manufactured product depends upon whether or not it has gone through a substantial transformation in form, qualities and adaptability in use from the original material, so that a new article or creation has emerged. Whether an activity constitutes manufacturing for purposes of the Mercantile License Tax depends on the facts involved and each question is reviewed on a case-by-case basis.

Whether a particular activity qualifies as “manufacturing” or “processing” under the provisions of the Pennsylvania Capital Stock and Franchise Tax is not dispositive in determining whether receipts are excludable for purposes of the Township Business Tax.

- 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.

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

Receipts excludable under this subsection are excluded whether the product is manufactured, produced or processed within or outside of the Township.

A manufacturer's receipts from activities other than manufacturing are not excluded.

Section 607 - Apportionment: Business Which has Office Inside and Outside Township. If the taxpayer has a place of business in the Township and one or more places of business outside the Township, only those receipts properly allocable to the place of business in the Township are taxable. Generally, all of a taxpayer's receipts must be attributable to one of its places of business. Receipts will be considered allocable to the place of business in the Township if any significant aspect of the transaction occurs at or arises out of that place of business.

The fact that the receipts from any transaction may be subject to tax in a jurisdiction outside the Township does not necessarily mean that those receipts are not allocable to the Township and subject to this tax. The Township will, however, allow a taxpayer to exclude gross receipts attributable to the office in Lower Merion to the extent Business Privilege Tax is paid on those same gross receipts to another municipality if the taxpayer provides a true, correct and complete copy of the tax return for the like tax paid to the other municipality together with proof of payment. In appropriate cases, the allocation formula set out in Section 608 below will be applied to allocate business within and outside the Township.

Section 608 - Interstate Commerce. Under certain circumstances, receipts from sales in interstate or foreign commerce may be exempt from tax in whole or in part even though they are allocable to a place of business in the Township under Section 607 above. Receipts are not automatically exempt from tax merely because the sale involves interstate or foreign commerce. The controlling principles in determining whether any such receipts are subject to tax are that there be some connection between the business activity carried on in the Township and the imposition of the tax, and that there be a fair method of allocation of receipts to the business carried on in the Township which will avoid an undue burden on interstate commerce. The following methods of allocation will be followed by the Township:

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:

(1) 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 a "S" corporation.

(2) 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.

(3) 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 the 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.

Section 609 - Taxpayer With Sole Place of Business Within Township. Every person exercising the privilege of having a place of business in the Township shall pay Business Tax and estimated Business Tax on such person's annual gross receipts, including the entire portion of receipts from sales, services or transactions rendered outside the Township, if the taxpayer's sole office is located within the Township.

Section 610 - Exclusion of Gross Receipts Subject To Payment of Tax To Other Jurisdictions. Businesses having gross receipts from a base of operations within the Township, and who are subject to a like tax by another political subdivision in which the non-resident business has its domicile, may exclude the amount of such gross receipts to the extent Business Privilege Tax for the corresponding tax period is paid thereon to the political subdivision in which the business is domiciled.

Allowance of the exclusion shall be conditioned upon the business submitting a true, correct, complete and signed copy of the tax return together with proof of payment for the like tax paid to another political subdivision for the same year.

## **ARTICLE VII: PARTICULAR BUSINESSES OR TRANSACTIONS**

Section 701 - Base of Operations. Receipts of a taxpayer from a Base of Operations as described in Section 103 within the Township, regardless of any other offices located within or with out the Township are subject to the Township's Business Tax unless otherwise excluded or exempt. Passive income, including but not limited to interest, dividend, and capital gains, must be reported as a taxable gross receipt of the Base of Operations within the Township.

### Section 702 - Leased Departments.

- a. Return by Lessor. Where a person leases a department of his business to another, such person shall include in his return all receipts charged to the lessee for rent, services rendered, property furnished or supplies, etc. A schedule must be attached to the return containing the name of the lessee, and a description of the department operated.
- b. Should a change occur in the ownership or status of any leased department, the lessor shall notify the Chief Financial Officer/Director of Finance of such change in writing.
- c. Return by Lessee. Every lessee shall file his own return setting forth his entire gross receipts, without deducting any expense or commissions charged to him by the lessor.

### Section 703 - Persons Engaged in Professions, Vocations in Rendering Personal Services.

- a. General Information. A person who is engaged in a profession, vocation or the rendering of personal services in the Township in any capacity, except as an employee of another, is subject to tax under the Business Privilege Tax.

All compensation, however characterized, received in such capacity must be included in the tax base.

- b. Fiduciaries. Commissions and fees received for acting in a fiduciary or other representative capacity, whether appointed by a Court or otherwise, are to be

reported as taxable receipts if the person acts in that capacity in the normal course of their business.

c. Attorneys. An attorney-client relationship may be equivalent to an agentprincipal relationship. Accordingly, 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 the distribution of funds recovered in a lawsuit, the sale of real estate, or the proceeds in a collection matter, but only in accordance with the provisions of Section 704. An attorney may not exclude expenses reimbursed by a third party from the gross receipts reported.

d. Physicians and other medical professionals. A physician or other medical professional with a Base of Operations in the Township, who also renders services at a hospital or other location outside of the Township, must clearly demonstrate that the other location constitutes a Base of Operations, in order to attribute receipts thereto. If the only Base of Operations is in the Township, all gross receipts will be attributed to the Township. Any physician rendering services at any office, hospital or clinic within the Township is considered to have a Base of Operations within the Township regardless of the location of that physician or medical professional's office.

Section 704 - Principal and Agent. This section shall apply to businesses with agency contracts which clearly set forth the rights, duties and obligations between principal and agent. The Chief Financial Officer/Director of Finance reserves the right to receive a copy of the agency contract to confirm the claim of Principal/Agent exclusions. 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 that:

- a. The contract or agreement between such persons clearly establishes the relationship of principal and agent.
- b. 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.
- c. The books and records of the agent or broker show the amount of gross sales or service charges and the amount of commission due thereon.
- d. Specific incidents of Principal Agent Relationship:
  1. Revenue Collections by Agent. Gross receipts from revenues received by an agent for the account of his principal are to be reported by

the principal. It is immaterial whether the client or customer remits directly to the principal or the agent for transmittal to the principal. The agent is required to report the commission withheld by him as compensation for his services before remitting to his principal and/or any commission paid to him after the receipts are remitted to his principal. An agent is also required to include in gross receipts other receipts not for the account of his principal. No deduction of gross receipts may be taken by the principal for commission paid to or withheld by the agent.

2. Dollar-for-Dollar Payments and Reimbursements. Money or property derived by an agent for transmittal to a third party on behalf of his principal or as a reimbursement of such a transmittal, is not to be reported by the agent as gross receipts, provided the receipt and/or subsequent payment contains no commission, markup, or rebate. The dollar-for-dollar requirement of such pass-through payments or reimbursements must be documented in a written agent-principal arrangement or evidenced as a separate item on governing invoices.

3. Manufacturer's Representative. Gross compensation is taxable unless the relationship to the principal is that of employer and employee in accordance with the Internal Revenue Code and State Worker's Compensation law.

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

5. Collections 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 for services as agent must be included in gross receipts.

Section 705 - Insurance Agents, Brokers and Underwriters.

a. General Agents. General Agents for insurance companies are required to report as gross receipts the entire commissions received as compensation for their own efforts on policies sold by them directly, and the overriding commissions received by them upon business produced by brokers or sub-agents.

b. Brokers or Sub-Agents. Brokers or sub-agents are required to report as gross receipts the commissions received as compensation for their services.

c. Offices Outside Township. Where a general agent or an insurance broker maintains a branch office outside the Township, the commissions attributable to such branch office may be excluded from gross receipts. Commissions will be deemed attributable to the Township office, and hence subject to inclusion in the measure of the tax, if they result from the efforts of brokers, sub-agents or employees who work in, or from, or are attached to the Township office.

d. Employee of Single Company. An employee of a single company is not subject to the Business Privilege Tax on earnings from that company, but must file a return showing any additional gross commissions received for services rendered on behalf of other companies. Factors indicating an employee relationship are as follows:

1. The agent' entire time is devoted to a particular company, except for writing an occasional policy with another company because the prime company does not carry the requested coverage or has rejected such coverage.
2. The agent is considered to be an employee of the prime company in that the company pays pension benefits, withholds social security, provides fringe benefits, and otherwise treats the agent as an employee of the company.
3. The agent does not pay salaries, commissions or other compensation to solicitors or sub-agents, although such payments may be made to clerical help.
4. The agent is housed by the prime company.
5. The agent is not a general agent of the prime company.

Section 706 - Theaters and Motion Picture Houses. Persons operating theaters or motion picture houses and other places of amusement where admission is charged in the Township, 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 the sale of tickets or the sale of goods, wares and merchandise subject to the Mercantile License Tax.

Section 707 - Persons Erecting Structures or Otherwise Altering, Repairing or Improving Real Property.

- a. General Information. A contractor, resident or nonresident, engaged in the Township in the business of erecting structures, or otherwise altering, repairing or improving real property, or performing other major construction work, is required to report as gross receipts all receipts derived from the performance of such contract and is obligated to pay Business Tax on the entirety of such receipts. 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, without deduction for sums paid to subcontractors or other contractors. The contract price will be considered to include all charges made by a contractor for materials, labor, supervision, overhead costs, and profit. Lower-tier contractors are not required to report as gross receipts sums paid by a general or prime contractor which has reported such sums as gross receipts on a Business Privilege Tax return filed with the Township and paid the tax due thereon; however, lower-tier contractors are required to identify those general or prime contractors who have made such payments.
- 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.
- c. Contractors or Subcontractors Permanently or Temporarily Doing Business in the Township. Contractors or subcontractors temporarily doing business in the Township shall register and file a tax return.

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 under Section 103

Section 708 - Personal Property Contractors. Persons engaged in business in the Township as contractors who repair, alter and improve tangible personal property for the account of others are subject to tax under the provisions of the Business Privilege Tax. 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.

Section 709 - Real Estate Developers. Real Estate Developers who develop property outside of the Township but maintain an office within the Township must report the gross receipts derived from such development on a Business Tax Return filed with the Township and are subject to the Township's Business Tax unless the tax is validly paid to another jurisdiction and proof of such payment is provided to the Township. Real Estate Developers who develop property within the Township are subject to the Township's business Tax regardless of the location of their office.

Section 710 - Real Estate Agencies and Independent Brokers.

a. Real estate agencies and independent brokers are required to report as taxable receipts the commissions and fees received for the services rendered by the agency and/or including all associated brokers, agents and salespersons in promoting the purchase, sale, rental, and or management of real property for others, no matter where the real property is located. Brokers, agents and salespersons associated with an agency are required to report as gross receipts commissions paid by an agency which has reported such sums as gross receipts on a business privilege tax return filed with the Township and paid the tax due thereon and specify to whom the tax was paid.

b. Agents that receive additional commission income not paid or reported by a broker must file a Business Tax return and pay the Business Privilege Tax due as calculated by such commission.

c. If a real estate broker takes title to real property in the name of the broker or a straw name and sells the property, the broker is required to include the gross selling price of the property as taxable receipts, reduced by the purchase price of the real property. Closing, transfer and any other expenses or purchase cost may not be deducted.

d. Multi-list dealers or brokers, resident or non-resident, are subject to the tax on commissions or sales on real property located in the Township.

e. Listing fees received by agencies, brokers or agents in the Township are taxable gross receipts, even if the sale is made by an office outside the Township, and even if the property is located outside of the Township.

f. Brokers must submit a list of all licensed real estate agents working within its office with its annual Business Tax return and must update said list at any time during the tax year that a new agent is added or an agent leaves the office.

g. All real estate agents are required to obtain and maintain a Business Registration and are subject to the Township's Local Services Tax.

Section 711- Buildings, Hotels, 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 which are subject to Business Tax.

(b) Any person carrying on the business of renting buildings, offices, space, stores, dwelling houses, etc., shall include gross rentals received, including any payments made on their behalf, including but not limited to payments for common area expense and real estate taxes. No deductions may be made for depreciation, cost of maintenance, repairs, etc.

1. Businesses which hold rental property as a source of income in addition to their regular business, are subject to the tax whether or not services are rendered.

2. Persons, corporations or partnerships holding rental property in the Township, who employ rental agents or other such assistance in administering such property are doing business within the meaning of the Business Privilege Tax and are subject to the tax whether or not they provide services.

3. Agencies or entities which manage and/or operate co-operatives 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.

4. Agencies or entities which manage and/or operate co-operatives, condominiums, shopping centers or other real estate developments whose base of operations is within the Township are taxable on receipts for such services regardless of where the property is located, subject to the provisions of regarding allocation.

Section 712 - Receipts from Securities Transactions. For the purpose of determining the gross receipts from the sale of stocks, bond and/or other securities for a person engaged in a financial business, the cost thereof shall be deducted from the amount realized on the sale. Such cost shall consist of the purchase price of the property plus any brokerage commission paid on acquisition. The amount realized on the sale shall consist of the gross receipts therefrom without deducting stamp or transfer taxes or any brokerage commission paid.

Section 713 - Social and Recreational Clubs. Under state law the Township may not tax "membership in or membership dues, fees, or assessments of charitable, religious, beneficial or nonprofit organizations including but not limited to sportsmen, recreational, golf and tennis clubs, girl and boy scout troops and councils." Accordingly, gross receipts from such sources are not subject to either the Business Privilege Tax or the Mercantile License Tax. 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 Township taxes. Accordingly, any such organization which does offer its members such goods or services must register under the Institution and Service Privilege Tax set forth in Article VI of Chapter 138 of the Township Code and pay the tax as appropriate. (This rule does not apply to "religious, charitable or educational" organizations which are entirely exempt from tax.)

Section 714 - Public Utilities. The Township 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 regulation are subject to tax.

Section 715 - Sale of Capital Assets.

- a. General Information. The profits (not gross proceeds) resulting from the sale of capital assets, such as plant machinery and equipment, furniture, fixtures, delivery equipment, etc., are to be included in the reported gross receipts. 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 Township of Lower Merion. Where the capital asset sold was located at an established place of business of the taxpayer outside the Township of Lower Merion, the profit realized on the sale thereof may be excluded from the tax base unless the taxpayer's primary office is in the Township and the

taxpayer receives an installment note or mortgage for a portion of the sale price, in which case the profit shall be apportioned among the payments made on such note or mortgage and shall be subject to Business Privilege Tax.

c. Bulk Sale, 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 reported gross receipts.

Section 716 - 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.

Section 717 - Contracts With Governments. Receipts from the performance of contracts entered into with the Township of Lower Merion or the Commonwealth of Pennsylvania, or the U.S.A. or any subdivision or agency of such governments must be included in gross receipts.

## **ARTICLE VIII: ASSESSMENTS, SUITS FOR COLLECTION, PENALTIES, ETC.**

Section 801 - Suits for Recovery of Unpaid Taxes. Pursuant to the Local Tax Enabling Act, no assessment of any tax may be made more than five (5) years after the date on which such taxes should have been paid, unless a fraudulent return or no return is filed, in which case there shall be no limitations. Suits for recovery of taxes may be brought within five years of the date of assessment or date due, whichever is later.

Section 802 - Interest for Non-Payment. In accordance with the Township Code, if for any reason the tax is not paid when due, interest at the rate of one and one-half percent (1.5%) of the amount of unpaid tax shall be assessed by the Chief Financial Officer/Director of Finance, for each month or fraction thereof during which the tax remains unpaid, and shall be added to the tax.

Section 803 - Penalty for Non-Payment. In accordance with the Township Code, if for any reason the tax is not paid when due, a penalty will be assessed in the amount of ten percent (10%) of tax due, including underpayment of estimated taxes.

Section 804 - Notice of Underpayment. The Township shall notify the taxpayer in writing of the basis for any underpayment that the Township has determined to exist. The notification shall include:

- a. The tax period or periods for which the underpayment is asserted.
- b. The amount of the underpayment detailed by tax period.
- c. The legal basis upon which the Township has relied to determine that an underpayment exists.
- d. An itemization of the revisions made by the Township to a return or report filed by the taxpayer that results in the determination that an underpayment exists.

Section 805 - Interest and Penalty for Underpayment of Tax.

- a. Who May be Liable. Interest at the rate contained in Section 802 and penalty at the rate contained in Section 803 will be imposed if:
  - 1. Fails to pay all tax due when the return is filed.
  - 2. Thorough inspection and examination (Section 1002) it is determined that the taxpayer under reported tax due.
  - 3. Upon filing a tax return after the extension has been granted, it is determined that the taxpayer did not pay 80% of tax due with the extension request.
  - 4. Upon taxpayer filing an amended return it is determined that the taxpayer under reported tax due on the original return.
  - 5. Upon any taxpayer who fails to file a return when due or obtain an extension, interest and penalty shall be assessed against the unpaid portion of the tax.
- b. Calculation of Interest. Interest accrues from the date the payment was due (determined without regard to any extensions of time) until it is received by the Township of Lower Merion.

Section 806 - Abatement of Certain Interest and Penalty.

- a. Errors and Delays. In the case of any underpayment, the Chief Financial Officer/Director of Finance 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 Township in the performance of a ministerial act. For purposes of this paragraph, an error or delay shall be taken into account only if no significant aspect of the error or delay can be attributed to the taxpayer and after the Township 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 Township being erroneous or dilatory in performance of a ministerial act. The Chief Financial Officer/Director of Finance shall determine what constitutes timely performance of ministerial acts performed under this subchapter.
- b. Abatement Due to Erroneous Written Advice by the Township. The Chief Financial Officer/Director of Finance 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 Township acting in the officer's employee's or agent's official capacity if:
  - 1. The written advice was reasonably relied upon by the taxpayer and was in response to specific written request of the taxpayer; and
  - 2. The portion of the penalty or addition to tax or excess interest did not result from a failure by the taxpayer to provide adequate or accurate information.

Section 807 - Application of Payments. Unless otherwise specified by the taxpayer, all voluntary payments of tax shall be prioritized by the Chief Financial Officer/Director of Finance as follows:

- a. Tax.
- b. License fees

- c. Interest.
- d. Penalty.
- e. Any other fees or charges.

Section 808 - Fines and Penalties for Violations of Act. Any person who fails or refuses to comply with the provisions of the Business Tax ordinances may be punishable by a civil fine of not more than six hundred dollars (\$600.00) plus costs of prosecution, upon the verdict of a court of competent jurisdiction.

### **ARTICLE IX: PAYMENT UNDER PROTEST; REFUNDS**

Section 901 - Payment Under Protest. The Chief Financial Officer/Director of Finance will accept payment under protest of the amount of Business Tax claimed by the Township in any case where the taxpayer disputes the validity or amount of the Township's claim for tax. If it is thereafter determined by the Hearing Officer or if it is judicially determined by a court of competent jurisdiction that the Township has been overpaid, the amount of the overpayment shall be refunded to the taxpayer.

Section 902 - Refunds for Discontinued Business. In the event a taxpayer discontinues business during any tax year before payment of the tax becomes due for such tax year, the taxpayer shall be permitted to file a return showing the actual gross receipts received during the tax year prior to termination of business. A refund will only be issued after the Chief Financial Officer/Director of Finance has determined that all taxes due from the business have been received by the Township.

Section 903 - Procedure Upon Filing Request for Refund or Credit. A taxpayer who has overpaid Business Privilege Tax to the Township may file a written request to the Chief Financial Officer/Director of Finance for refund or credit of such tax. A request for refund shall be made within three (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. A refund will only be issued after the Chief Financial Officer/Director of Finance has determined that all taxes due from the business have been received by the Township.

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 Chief Financial Officer/Director of Finance within one year of the date of the payment. For purposes of this section, a tax return filed by the taxpayer with the Township showing an overpayment of tax shall be deemed to be a written request for a cash refund, unless otherwise indicated on the tax return.

Section 904 - Interest on Overpayments. Pursuant to the Taxpayer's Bill of Rights, no interest shall be owed by the Township to a taxpayer for overpayments of tax unless the Township fails to take action within seventy-five (75) days of the date of the refund request.

- a. General Rule. All overpayments of tax due the Township shall bear simple interest from the date of overpayment until the date of resolution.
- b. Interest Rate. Interest on overpayments shall be allowed and paid at the same rate as the Commonwealth of Pennsylvania is required to pay pursuant to Section 806.1 of the Act of April 9, 1929, known as The Fiscal Code.
- c. Exceptions.
  - (1) No interest shall be allowed if an overpayment is refunded or applied against any other tax, interest or penalty due the Township within 75 days after the date the return or a report of the liability due is filed.
  - (2) Overpayment of interest or penalty shall not bear any interest.
- d. Acceptance of Refund Check. The taxpayer's acceptance of the Township'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 Township shall be deemed to be acceptance of the check by the taxpayer for purposes of this section.

- e. Definitions. As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

Date of Overpayment - The later of the date paid or the date tax is deemed to have been overpaid as follows:

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

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

Date of Resolution -- The date the overpayment is refunded or credited as follows:

- (1) For a cash refund, a date preceding the date of the Township's refund check by not more than thirty (30) days.

- (2) For a credit for an overpayment:

- (i) The date of the Township's notice to the taxpayer of determination of the credit; or

- (ii) The due date for payment of the tax against which the credit is applied, whichever first occurs. For a cash refund of a previously determined credit, interest shall be paid on the amount of the credit from a date ninety (90) days after the filing of a request to convert the credit to a cash refund to a date preceding the date of the refund check by not more than thirty (30) days whether or not the refund check is accepted by the taxpayer after tender.

## **ARTICLE X: BOOKS AND RECORDS**

Section 1001 - Maintaining Books and Records. The Chief Financial Officer/Director of Finance may request such books and accounting records as will enable him or his authorized designee to determine the accuracy of the taxpayer's return. The taxpayer claiming exemptions or exclusions for any portion of his/her gross receipts must maintain complete records of such items; otherwise, such claims will be disallowed.

Section 1002 - Inspection and Examination. The Chief Financial Officer/Director of Finance is authorized to examine not only the books, papers and records of any taxpayer or supposed taxpayer in order to verify the accuracy of any return made, or if no return was made, to ascertain whether a tax should be imposed and, if so, the amount of such tax. The Chief Financial Officer/Director of Finance is further authorized to examine any person connected with any business concerning any gross receipts of the business which were or should have been returned for taxation, and for this purpose, may compel the production of books, papers, records and the

attendance of all persons before him/her, whether as parties or witnesses, whom, he believes to have knowledge of such business or gross receipts.

- a. Time periods for taxpayer response.
  - (1) The taxpayer shall have 30 calendar days from the mailing date to respond to requests for information by the Township. Reasonable extensions shall be granted by the Chief Financial Officer/Director of Finance upon written application, for good cause.
  - (2) The Township shall take no lawful action against a taxpayer for the tax year in question until the expiration of the applicable response period, including extensions.
  
- b. Requests for prior year returns. Except where the Township has sufficient information to indicate that the taxpayer failed to file a required return or pay tax due more than three years prior to the date the Township sends a notice to file:
  - (1) An initial inquiry by the Township regarding a taxpayer's compliance with Business Taxes may include taxes required to be paid or tax returns required to be filed no more than three years prior to the mailing date of the notice.
  
  - (2) The Township may make a subsequent request for a tax return or supporting information if, after the initial request, the Chief Financial Officer/Director of Finance determines that the taxpayer failed to file a tax return, under-reported income or failed to pay tax for one or more of the tax periods covered by the initial request.

Section 1003 - Use of Federal Tax Information. The Township shall require a taxpayer to provide copies of the taxpayer's Federal individual income tax return if the Federal tax information is reasonably necessary for the enforcement or collection of the tax and the information is not available from other sources.

## **ARTICLE XI: RULINGS**

Section 1101 - Request for Specific Tax Rulings. Any taxpayer may request in writing a ruling on his taxable status under the Business Privilege Tax. Any such request shall be made to the Chief Financial Officer/Director of Finance and shall set forth a detailed description of the nature of the taxpayer's business, the taxpayer's view of his taxable status, and the provisions of the Business Privilege Tax, Mercantile License Tax or other applicable law on which the taxpayer relies. A ruling shall only be made if the Chief Financial Officer/Director of Finance determines that these regulations are unclear with respect to the application of the Business Privilege Tax and/or Mercantile License Tax to the taxpayer. Rulings shall be rendered by the Chief Financial Officer/Director of Finance, in consultation with the Township Solicitor, and may be used only in conjunction with proceedings affecting the taxpayer requesting the ruling.

Section 1102 - Penalty and Interest. No request for a ruling shall operate to suspend penalty or interest from the due date of any tax found to be owing.

Section 1103 - Rulings on Taxpayer Petitions. Taxpayers wishing to appeal the decision of the Chief Financial Officer/Director of Finance shall file a Petition For Review and Decision as provided in Article VII of Chapter 138 of the Lower Merion Township Code. All such petitions shall be heard by a Hearing Officer appointed by the Board of Commissioners.

## **ARTICLE XII: INSTALLMENT AGREEMENTS:**

Section 1201 - Authorization. The Chief Financial Officer/Director of Finance may enter into written agreements with any taxpayer under which the taxpayer is allowed to satisfy liability for the Business Privilege Tax, interest and penalties in installment payments if the Chief Financial Officer/Director of Finance determines that the agreement will facilitate collection and if the agreement includes provisions for payment of any and all taxes, licenses, registrations, interest and penalties assessed by the Township under the Local Tax Enabling Act. The Agreement may include, in addition to the terms and conditions of payment and accrual of interest, reasons for termination of the agreement and other terms and conditions deemed necessary by the Chief Financial Officer/Director of Finance.

## **ARTICLE XIII: CONFIDENTIALITY**

Section 1301 -- Confidentiality of Tax Information. Any information gained by the Township as a result of any audit, return, report, investigation, hearing or verification shall be confidential tax information. The Township shall not, except for official purposes or as provided by law:

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

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

(c) Print, publish or make known in any manner any confidential tax information.