

ORDINANCE NO. 167

AN ORDINANCE PROVIDING FOR THE LEVY AND COLLECTION OF A MERCANTILE TAX UPON THE ANNUAL GROSS VALUE VOLUME OF BUSINESS OF WHOLESALE DEALERS, WHOLESALE VENDORS, RETAIL DEALERS AND RETAIL VENDORS, AND PLACES OF AMUSEMENT WITHIN THE TOWNSHIP OF UPPER YODER, PROVIDING FOR ITS LEVY AND COLLECTION, AND CONFERRING AND IMPOSING POWERS AND DUTIES ON THE TREASURER, AND IMPOSING PENALTIES FOR THE VIOLATION THEREOF, WHICH TAX SHALL BE IMPOSED FOR THE 1979 LICENSE YEAR BEGINNING APRIL 1, 1979 AND ENDING DECEMBER 31, 1979, AND FOR EACH LICENSE YEAR THEREAFTER FOR THE FULL CALENDAR YEAR.

BE IT ORDAINED, and it is hereby ordained by the Township of Upper Yoder, Cambria County, Pennsylvania, under and by virtue of the authority vested in it by the Pennsylvania Local Tax Enabling Act, Act No. 511, approved December 31, 1965, P.L. 1257, as amended and supplemented as follows:

SECTION 1. DEFINITIONS. The following words and phrases when used in this ordinance shall have the meanings ascribed to them in this section unless the context clearly indicates different meanings:

(a) "Person" shall mean any individual, partnership, limited partnership, association or corporation.

(b) "Wholesale dealer" or "wholesale vendor" shall mean any person who sells to retail dealers or vendors of goods, wares and merchandise and to no other persons.

(c) "Retail dealer" or "retail vendor" shall mean any person who is a dealer or vendor of goods, wares, and merchandise who is not a wholesale dealer or vendor, and who sells to the general public.

(d) The terms "person," "wholesale dealer," "wholesale vendor," "retail dealer," and "retail vendor," shall not include non-profit corporations organized for religious, charitable or educational purposes, any association organized for such purposes, agencies of the government of the United States or of the Commonwealth, or any person vending or disposing of articles of his

own growth, production or manufacture for shipment or delivery from the place of growth, production or manufacture.

(e) "Place of amusement" shall mean any place, indoors or outdoors, where the general public or a limited or selected number of it may, upon payment of an established price, attend or engage in any amusement, contest, recreation, including among other places, but not limited to: theatres, excepting motion picture theatres, opera houses, amusement parks, stadia, arenas, baseball or football parks or fields, skating rinks, circus or carnival tents or grounds, fair grounds, bowling alleys, billiard or pool rooms, nine-or-ten-pin alleys, riding academies, golf courses, bathing and swimming places, dance halls, tennis courts, archery, rifle or shotgun ranges, trampoline and go-car courts and other like places. The term does not include any exhibition, amusement, performance or contest conducted by a non-profit corporation or association organized for religious, charitable or educational purposes.

(f) "License year" shall mean the period beginning April 1, 1979 and ending December 31, 1979 for the "1979 license year", but shall mean the entire calendar year for the "1980 license year" and for each year thereafter.

(g) "Gross volume of business" shall include cash and credit transactions and mail order business.

(h) "Treasurer" shall mean the Treasurer of the Township of Upper Yoder.

(i) "Temporary," "seasonal" or "itinerant business" shall mean any business that is conducted at one location for less than 60 consecutive days.

SECTION 2. LEVY OF TAX. The township hereby imposes an annual mercantile tax in the manner and at the rates set forth in this ordinance.

SECTION 3. LICENSES. Every person desiring to begin or engage in the business of wholesale or retail vendor, or dealer in goods, wares or merchandise or to conduct a restaurant or other place where food, drink or refreshments are sold, or any place of amusement, whether or not incidental to another business or occupation shall, on or before the 15th day of June of each license year, or prior to commencing business thereafter in such license year, procure from the Treasurer, a mercantile license for his place of business, or, if more than one place, a mercantile license for each of his places of business within the township. The license shall be posted conspicuously at all times at each place of business referred to in this section, by the person to whom the license is issued.

SECTION 4. IMPOSITION AND RATE OF TAX. Every person engaged in any of the following occupations or businesses in the township shall pay an annual mercantile license tax for each license year, at the rate set forth:

(a) Wholesale vendors or dealers in goods, wares and merchandise, at the rate of one (1) mill on each dollar of the volume of the annual gross business transacted by him;

(b) Retail vendors or dealers in goods, wares and merchandise, all persons engaged in conducting restaurants or other places where food, drink or refreshments are sold, and all persons conducting places of amusement, whether or not incidental to another business or occupation, at the rate of one and one-half (1-1/2) mills on each dollar of the volume of the annual gross retail business transacted by him;

(c) Wholesale and retail vendors or dealers in goods, wares and merchandise, at the rate of one (1) mill on each dollar of the annual gross whole-

sale business conducted by him, and one and one-half (1-1/2) mills on each dollar of the volume of the annual gross retail business transacted by him.

SECTION 5. COMPUTATION OF VOLUME OF BUSINESS.

(a) For the license year 1979 only, every person subject to the payment of the tax imposed by this ordinance who has commenced his business at least nine (9) months before April 1, 1979 shall compute his annual gross amount of business transacted by him during the preceding nine month period from July 1, 1978 to March 31, 1979.

(b) For the license year 1979 only, every person subject to the tax imposed by this ordinance who commenced his business less than nine (9) months before the beginning of the license year, shall compute his annual gross volume of business for that license year upon the gross volume of business transacted by him during the first month he engaged in business multiplied by 9.

(c) For the license year 1980 and each license year thereafter, every person subject to the payment of the tax imposed by this ordinance who has commenced his business at least one (1) year before the beginning of the license year shall compute his annual gross volume of business upon the actual gross amount of business transacted by him during the preceding calendar year.

(d) For the license year 1980 and each succeeding license year thereafter, every person subject to the payment of the tax imposed by this ordinance who has commenced his business less than one (1) year before the beginning of the license year, shall compute his annual gross volume of business for that license year upon the gross volume of business transacted by him during

the first month he engaged in business multiplied by 12.

(e) Every person subject to the payment of the tax imposed by this ordinance who commences his business after the beginning of any license year, shall compute his annual gross volume of business for that license year upon the gross volume of business transacted by him during the first month of his engaging in business multiplied by the number of months remaining in that license year.

(f) Every person subject to the payment of the tax imposed by this ordinance who engages in a business temporary, seasonal or itinerant by its nature, shall compute his annual gross volume of business upon the actual gross amount of business transacted by him during the license year.

(g) Every person who shall discontinue business during the license year after having paid the mercantile tax for the entire license year, upon making application to the Treasurer, shall be entitled to receive a refund of a pro-rata amount of the tax paid, based upon the period of time he was not in business during the license year

(h) In computing volume of business, where a trade-in is involved the person subject to payment of the tax imposed shall deduct from his gross receipts the part of the gross receipts represented by the trade-in allowance.

SECTION 6. RETURNS.

(a) Every return shall be made upon a form furnished by the Treasurer. Every person making a return shall certify the correctness of the return, but no affidavit shall be required.

(b) Every person subject to the tax imposed by this ordinance who commenced his business at least nine (9) months prior to the beginning of

the license year 1979 and at least one (1) full year prior to the beginning of any subsequent license year shall on or before the 15th day of June of the license year, file with the Treasurer a return setting forth his name, his business and business address and such other information as may be necessary in arriving at the actual gross amount of business transacted by him during the preceding tax year as computed under Section 5, and the amount of the tax due.

(c) Every person subject to the tax imposed by this ordinance who has commenced his business less than nine (9) months prior to the beginning of the license year 1979 and less than one (1) full year prior to the beginning of any subsequent license year shall, on or before the 15th of June of the license year, file with the Treasurer, a return setting forth his name, his address, business address and such other information as may be necessary in arriving at the actual gross amount of business transacted by him during the first full month of business as computed under Section 5 and the amount of tax due.

(d) Every person subject to the tax imposed by this ordinance who commences business after the beginning of any license year, shall within 65 days from the date of commencing that business, file a return with the Treasurer setting forth his name, business and business address, and such information as may be necessary in arriving at the actual gross amount of business transacted by him during his first full month of business and the amount of the tax due.

(e) Every person subject to the payment of the tax imposed by this ordinance who engaged in a business temporary, seasonal or itinerant by its nature, shall within seven (7) days from the day he completes that business,

file a return with the Treasurer setting forth his name, business address and such information as may be necessary in arriving at the actual gross amount of business transacted by him during that period and the amount of the tax due.

SECTION 7. PAYMENT. At the time of filing of the return, the person making the return shall pay the amount of tax shown on the return as due to the Treasurer.

SECTION 8. POWERS AND DUTIES OF THE TREASURER.

(a) It shall be the duty of the Treasurer to collect and receive the taxes, fines and penalties imposed by this ordinance. It shall also be his duty to keep a record showing the amount of tax received by him from each person paying the tax and the date of each receipt.

(b) The Treasurer is charged with the administration and enforcement of the provisions of this ordinance and is empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this ordinance, including provisions for the re-examination and correction of returns and payments alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the Treasurer, shall have the right of appeal to a court of competent jurisdiction as in other cases provided.

(c) The Treasurer or his duly authorized representative or agent is authorized to examine 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 is made, to ascertain the tax due. Every such taxpayer, or supposed taxpayer, is directed and required to give to the Treasurer the means, facili-

ties and opportunity for such examinations and investigations as are authorized by this section.

SECTION 9. CONFIDENTIAL NATURE OF RETURNS.

Any information gained by the Treasurer, or any other officer, official, agent or employee of the borough as a result of any returns, investigations, hearings or verifications required or authorized by this ordinance, shall be confidential except in accordance with proper judicial order or as otherwise provided by law, and divulgence of any information so gained is hereby declared to be a violation of this ordinance, which may be punished by dismissal from office or employment.

SECTION 10. SUIT ON COLLECTION; PENALTY.

(a) The Treasurer may sue for the recovery of taxes due and unpaid by or under this ordinance.

(b) If, for any reason the tax is not paid when due in any year, interest at the rate of six (6%) per cent per annum on the amount of the tax and an additional penalty of one (1%) per cent per annum of the amount of the unpaid tax for each month or fraction of a month during which the tax remains unpaid shall be added and collected. Where suit is brought for the recovery of any such tax, the person liable, shall, in addition, be liable for the costs of collection and interest and penalties imposed by this subsection.

SECTION 11. FINES AND PENALTIES. Whoever makes any false or untrue statement on his return, or who refuses to permit inspection of the books, records or accounts of any business in his custody or control, when the right to make that inspection by the Treasurer is requested, and whoever fails or refuses to file a return required by this ordinance, and whoever fails or re-

fuses to procure a mercantile license when so required under this ordinance, or fails to keep his license conspicuously posted at his place of business as required by Section 3, shall, upon conviction pay a fine of not more than Five Hundred (\$500.00) Dollars and costs of prosecution for each offense, and in default of payment of fine and costs, to be imprisoned for not more than 30 days for each offense.

SECTION 12. SAVINGS AND SEVERABILITY CLAUSES.

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

(b) If the tax, or any portion of it, imposed upon any person under the provisions of this ordinance shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United States or of the Commonwealth, the decision of the court shall not affect or impair the right to impose the taxes, or the validity of the taxes so imposed upon other persons as provided in this ordinance.

(c) The provisions of this ordinance are severable, and, if any of its provisions shall be held illegal, invalid, or unconstitutional, the decision of the Court shall not affect or impair any of the remaining provisions of this Ordinance. It is hereby declared to be the intention of the Supervisors of the Township of Upper Yoder that this ordinance would have been adopted if such illegal, invalid or unconstitutional provisions had not been included therein.

SECTION 13. EFFECTIVE DATE. This ordinance shall become effective thirty (30) days after its adoption.

Adopted this 27th day of December 1978
TOWNSHIP OF UPPER YODER

By

Robert W. Hunt

Marlene L. Gillin

Ernest J. Glover

Supervisors

ATTEST:

Audrey J. Peterson
Secretary