

TOWNSHIP OF UPPER YODER  
CAMBRIA COUNTY  
PENNSYLVANIA

ORDINANCE NO. 238

AN ORDINANCE AMENDING THE BUSINESS PRIVILEGE TAX ORDINANCE NO. 166, ADOPTED DECEMBER 27, 1978, AS THE SAME WAS AMENDED BY ORDINANCE NO. 168, ADOPTED MARCH 1, 1979, AND ORDINANCE NO. 170, ADOPTED MAY 17, 1979, IN ORDER TO DEFINE THE BUSINESS PRIVILEGE TAX FOR THE TOWNSHIP OF UPPER YODER, AND TO IMPOSE THE RATE OF TAX ON ALL BUSINESSES, TRADES, OCCUPATIONS AND PROFESSIONS IN WHICH INDIVIDUALS OFFER ANY SERVICE OR SERVICES TO THE GENERAL PUBLIC OR A LIMITED NUMBER THEREOF WITHIN THE TOWNSHIP OF UPPER YODER, AS THE SAME IS MORE FULLY DEFINED.

WHEREAS, the Board of Supervisors of Upper Yoder Township did on December 27, 1978 adopt Ordinance NO. 166, providing for a business privilege tax upon persons offering services from places, offices or establishments within the Township; and

WHEREAS, said Ordinance No. 166 was amended by the Board of Supervisors of Upper Yoder Township through Ordinance No. 168 adopted March 1, 1979, and Ordinance No. 170 adopted May 17, 1979; and

WHEREAS, the Board of Supervisors, intending to remove any ambiguities in the Business Privilege Tax Ordinance, being Ordinance No. 166 adopted December 27, 1978, as amended by Ordinance No. 168 adopted March 1, 1979, and Ordinance No. 170 adopted May 17, 1979, hereby amend said Ordinance to read 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 a different meaning.

(a) "Person" shall mean any individual, partnership, limited partnership, association or corporation, but shall not include a wage earner, a non-profit corporation organized for religious, charitable or educational purposes, and association for such purposes, any agency of the Government of the United States or of the Commonwealth of Pennsylvania or any public utility.

(b) **"Service"** shall mean any act or instance of helping or benefiting another for a consideration.

(c) **"Privilege year"** shall mean the period beginning January 1, and ending December 31, for each year hereafter..

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

(e) **"Tax Administrator"** shall be the person or firm that the Township of Upper Yoder delegates by Resolution to collect said tax.

**SECTION 2. IMPOSITION AND RATE OF TAX** - The Township of Upper Yoder hereby imposes and levies on all business, trades, occupations, professions and activities carried on or exercised for gain or profit, including without limitation those enterprises engaged in by hotel operators, motel operators, parking lot and garage operators, warehouse operators, lessors of real and/or tangible personal property, social workers, consultants, teachers, nurses, health services, therapists, physicians and surgeons, osteopaths, podiatrists, chiropractors, veterinarians, optometrists, pharmacists, lawyers, dentists, engineers, architects, chemists, certified public accountants, public accountants, funeral directors, promoters, factors, commission merchants, agents, brokers, manufacturer's representatives, advertising and public relations agencies, real estate brokers, insurance brokers and agents, cable television operators, operators of places of amusement providing either passive or active recreation, vending machine operators, barbershop operators, and beauty operators, shoe repair shop operators, tailors, upholsterers, electrical, plastering, bricklaying, carpentry, heat, ventilating, plumbing and painting, contractors engaged in the class of heavy building or other construction of any kind or in the alteration, maintenance or repair thereof, repairers of electrical, electronic and automotive machinery and equipment or other machinery and equipment and other wares and merchandise and other businesses, trades, occupations and professions in which there is offered any service or services to the general public or a limited number thereof, from or on places, offices or establishments within the Township of Upper Yoder, a business privilege tax of one and one-half (1½) mills on the gross receipts derived from all services rendered to clients, patients and customers.



**SECTION 3. COMPUTATION OF GROSS RECEIPTS** - (a) For the privilege year 1997 and each privilege 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 privilege year shall compute his annual gross receipts of business upon the actual gross amount of business transacted by him during the preceding calendar year.

(b) For the privilege year 1997 and each privilege 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 privilege year, shall compute his annual gross receipts of business for that privilege year upon the gross volume of business transacted by him during the first month he engaged in business multiplied by twelve (12).

(c) Every person subject to the payment of the tax hereby imposed, who commences his business subsequent to the beginning of any privilege year, shall compute his annual gross receipts for such privilege year upon the gross volume of business transacted by him during the first full month of his engaging in business multiplied by the number of months remaining in such privilege year.

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

**SECTION 4. REGISTRATION** - Any person subject to the tax hereby imposed, prior to commencing business, shall register with the Treasurer and having once registered with the Treasurer, registration for any succeeding privilege year shall not be required. Upon such registration, the Treasurer shall issue a business privilege permit.

**SECTION 5. 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 prior to the beginning of the license year of 1997

and at least one (1) full year prior to the beginning of any subsequent license year shall on or before the 15th day of April of the license year, file with the Treasurer a return setting forth his name, his business, his business address and such other information as may be necessary in arriving at the actual gross receipts of business transacted by him during the preceding tax year as computed under Section 3, 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 one (1) full year prior to the beginning of any license year shall, on or before the 15th of April of the license year, file with the Treasurer a return setting forth his name, his business, business address and such other information as may be necessary in arriving at the actual gross receipts of business transacted by him during the first full month of business as computed under Section 3 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 privilege year shall, within sixty-five (65) days from the date of commencing that business, file a return with the Treasurer setting forth his name, business, business address and such other information as may be necessary in arriving at the actual gross receipts of business transacted by him during his first full month of business and the amount of the tax due.

**SECTION 6. 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, or to the Tax Administrator if it is other than the Treasurer.

**SECTION 7. POWERS AND DUTIES OF THE TREASURER AND TAX ADMINISTRATOR** - (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 Tax Administrator is charged with the administration and enforcement of the provisions of this Ordinance and at all times shall follow the Rules and Regulations for the enforcement and collection



procedures for the subject tax as the same are promulgated from time to time by Resolution of the Township of Upper Yoder. Further, the Tax Administrator 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 overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the Tax Administrator shall have the right to appeal to a court of competent jurisdiction as in other cases provided.

(c) The Treasurer and the Tax Administrator or their duly authorized representative or agent are 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 and Tax Administrator the means, facilities and opportunity for such examinations and investigations as are authorized by this section.

**SECTION 8. CONFIDENTIAL NATURE OF RETURNS** - Any information gained by the Treasurer, or any other officer, official, agent or employee of the Township 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 9. SUIT ON COLLECTION; PENALTY** - (a) The Treasurer and the Tax Administrator 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%) percent per annum on the amount of the tax, and an additional penalty of one (1%) percent 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 10. 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 refuses to procure a business privilege permit when so required under this Ordinance as required by Section 4 shall, upon conviction, pay a fine of not more than Three Hundred (\$300.00) Dollars and costs of prosecution for each offense, and in default of payment of fine and costs, to be imprisoned for not more than thirty (30) days for each offense.

**SECTION 11. 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 provision had not been included herein.

**SECTION 12. EFFECTIVE DATE** - This Ordinance shall become effective thirty (30) days after its adoption.

ORDAINED AND ENACTED this 21<sup>st</sup> day of November, 1996.

TOWNSHIP OF UPPER YODER

By 

By 

By 

By 

By 

ATTEST:

  
Secretary



TOWNSHIP OF UPPER YODER

RULES AND REGULATIONS CONCERNING ENFORCEMENT AND COLLECTION PROCEDURES

1. DEFINITIONS

(A) As used herein, "Taxing District" shall refer to and mean the Township of Upper Yoder.

2. ALLOCATION OF BUSINESS DONE AND GROSS VOLUME OF BUSINESS

(A) General. Generally receipts will be considered allocable to the place of business in the Taxing District if any significant aspect of the transactions arise out of the place of business located in the Taxing District.

(B) Lessors of tangible personal property. Persons doing business within the Taxing District who own and hold title to tangible personal property which is leased to others are required to report the gross receipts from the rental of or license to use such property according to the following rules:

1. Where the original situs of the property is within the Taxing District, the receipts from tangible personal property leased to others are deemed to be:

a. Wholly taxable receipts if the property is delivered to lessees inside of Pennsylvania.

b. Non-taxable receipts if the property is delivered to lessees outside Pennsylvania.

2. Where the original situs of the property is outside Pennsylvania, the receipts from tangible personal property leased to others are deemed to be:

a. Allocable receipts if the property is delivered to lessees within the Taxing District.

b. Non-allocable and non-taxable receipts if the property is delivered to lessees outside the Taxing District within or without the United States.

c. The term "original situs" as used herein means the place at which the property is warehoused when not leased to others and to which place the property is returned upon



termination of the lease. Where there is no such established place, the term "original situs" shall mean principal office of the taxpayer.

d. This subsection does not apply to conditional sales of tangible, personal property.

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

D. Place of origin and delivery outside of the Taxing District. Where the place of origin of goods, wares and merchandise in a sales transaction is a location owned or leased by the seller outside of the Taxing District and the place of delivery is a location outside of the Taxing District regularly maintained by the other party to the transaction, the receipts are non-allocable and non-taxable.

E. Location of Vendee. Receipts from the sale of goods, wares and merchandise delivered to a vendee located outside of the Taxing District by an employee of the taxpayer who works in or from, or is attached to the Taxing District place of business of the taxpayer, is fully taxable if the vendee is located within Pennsylvania and non-taxable if the vendee and place of delivery is located outside of Pennsylvania.

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

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

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

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

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

4. INTERSTATE COMMERCE

A. General. Receipts from transactions involving more than one state are not exempt from tax but are to be included in the tax base either in their entirety or excluded in their entirety as provided in these regulations. Transactions defined below as interstate commerce are exempt from the tax. Those which do not constitute interstate commerce are taxable in full.

B. What constitutes "interstate commerce"?. Transactions will be deemed to involve interstate commerce only when they directly involve the sale, exchange or transportation of commodities between the states, the transportation of passengers between states, or the transmission of intelligence or communications between the states. The citizenship or residence of the parties to the transaction is of no significance. Where a sale transaction is involved, it is of no importance in which state title to the goods passes, or whether the goods are shipped f.o.b. one state or another.

C. Sale and delivery in Pennsylvania. Interstate commerce is not deemed to be involved in sales made by a Taxing District seller to customers located outside of Pennsylvania where the property is delivered directly to the purchaser or his agent within Pennsylvania, notwithstanding the fact that the purchaser or his agent intends to, and later does, transport the property to a point outside Pennsylvania.

D. Shipment from Taxing District by seller. Sales will be considered as having been made in interstate commerce when the seller, as a necessary incident to the contract of sale, agrees to, and does, deliver the



property to the purchaser at a point outside of Pennsylvania, or delivers the property to a common carrier consigned to the purchaser at a point outside Pennsylvania.

E. Shipment into the Taxing District from seller's out-of-state place of business. With respect to sales made by a Taxing District seller, the transaction will be considered to be one in interstate commerce, if, by the express terms of the contract of sale, or the established practice of doing business, the seller is required to deliver by transporting or shipping the property from his place of business situated outside of Pennsylvania directly to the purchaser at a point within the Taxing District.

F. Shipments into the Taxing District from a third party's out-of-state place of business. Interstate commerce is not deemed to be involved if the Taxing District seller causes direct delivery to be made to the purchaser at a point in the Taxing District from an out-of-state source of supply owned or operated by a third party (one for whom the seller buys).

G. Delivery from the seller's out-of-state place of business via his office. Interstate commerce is not deemed to be involved with respect to sales made to a Pennsylvania purchaser if the property is shipped from the seller's place of business located outside of Pennsylvania to the seller's place of business in the Taxing District from which point the goods are delivered to the purchaser.

#### 5. CONTRACTORS PERFORMING BUILDING OR CONSTRUCTION WORK OUTSIDE THE TAXING DISTRICT

A. Contractors with field offices. Taxing District contractors or subcontractors engaged in the performance of building and construction contracts at a point outside the territorial limits of the Taxing District may exclude from the measure of the tax the receipts derived therefrom, provided that a field office was maintained on the premises of the project during the performance of the contract to such an extent as to constitute doing local business at the situs of the job.

B. Alterations and repairs. The provisions of this section apply only to contractors engaged either in the erection of new buildings or in the complete alteration and remodeling of old buildings. They do not apply to contractors who engage in emergency repair jobs or basic maintenance of a limited scope, such as a roofer repairing a damaged roof of a building

situated outside the Taxing District, or a painter renovating an apartment in an apartment house located outside the Taxing District.

C. Engineers and technicians. The exemption provisions of this section do not apply to engineers and other technicians rendering personal services outside the Taxing District.

D. Qualifications for Exemptions. To qualify hereunder the contractor must show that he established a place of business at the situs of the job by setting up a field office thereat with machinery and equipment for use in the fulfillment of the contract, and performed such other act as to constitute doing local business at the situs of the job.

6. BROKERS AND AGENTS WITH OUT-OF-TAXING DISTRICT OFFICES Where a general agent or broker of an insurance, real estate, or other firm maintains a branch office outside of the Taxing District, the commissions attributable to such branch office may be excluded from gross receipts. If any significant aspect of the transaction occurs in the Taxing District as a result of the efforts of brokers, sub-agents or employees who work in, or from, or are attached to the Taxing District, such commissions shall be included in gross receipts.

7. PERSONS, BUSINESS AND RECEIPTS EXEMPTED

A. Non-profit corporation or associations, religious, charitable and educational institutions, persons, entities, transactions and other matters specifically exempted by the provisions of Act 511 as amended or other applicable law are exempt from taxation. However the exclusion from taxation of receipts from the business of non-profit religious, charitable or educational organizations is limited to those receipts derived from activities which are connected with the non-commercial operations of the organization. Commercial activities carried on by such an organization are taxable. All business income of non-profit religious, charitable and educational organizations is taxable.

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



8. STATE TAX OR LICENSE

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

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

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

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

E. Monies returned to municipalities by the state. Any tax which is collected by the state but which, with the exception of administrative costs, is returned to the municipalities, is not considered a state tax or license fee. Such taxes include, but are not limited to:

1. Gross receipts taxes of non-Pennsylvania fire and Casualty Insurance Companies.

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

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

1 The Pennsylvania Securities Act of June 24, 1939, P.L. 748, as reenacted and amended (70 P.S. §31, et seq.).

2. Small loan companies, Act of June 17, 1915, P.L. 1012, as amended (7 P.S. §6251, et seq.).

3. Consumer discount companies, Act of April 8, 1937, P.L. 262, as amended (7 P.S. §6201, et seq.).

9. UTILITIES

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

10. GENERALLY

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

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

C. Gross volume of business derived from the sale of products wholly manufactured or grown within the Taxing District is not subject to the tax.

11. REAL ESTATE BROKERS

A. Generally, Real Estate Brokers, and agents are required to report as taxable receipts, the commissions and fees received for services rendered as agent in promoting the purchase and sale of real property for others. Brokers and agents not having an office in the Taxing District shall report as taxable receipts commissions received on the sale of properties within the Taxing District. Such amount does not include the gross selling price of property, except as set forth in subparagraph (C).

(B) Deduction of shared fee. A real estate broker or agent may exclude from his tax base any commissions paid by him to another broker or agent on account of a contract or purchase or sale initiated, executed or cleared in conjunction with the broker, salesman or agent to whom the commission or part of the commission is paid. Commissions paid to a salesman



by a broker or agent when the salesman is affiliated with the broker or agent are not excludable from the brokers or agents tax base.

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

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

12. TRAVELING EXPENSES Reimbursement of traveling expenses is excluded from gross receipts only if the taxpayer incurred such traveling expenses as agent for another from whom the taxpayer receives reimbursement for such expenses.

13. TRADE DISCOUNTS

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

1. Discounts deducted from the face amount of the bill as a method of adjusting the list price.

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

14. OTHER DISCOUNTS

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

15. FREIGHT, DELIVERY, OR OTHER TRANSPORTATION CHARGES

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

deducted from gross receipts.

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

C. If seller advances charges. Where the seller advances the freight, delivery or other transportation charges for the account of the purchaser in accordance with the terms of the contract of sale, such charges may be excluded from the gross receipts of the seller provided:

1. That such charges are the actual charges incurred and are billed as such to the purchaser; and

2. That the books and records of the taxpayer clearly indicate such facts.

#### 16. PRINCIPAL AND AGENT

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

B. Undisclosed principal. A person selling property, including real property or rendering services for an unknown or undisclosed principal, is subject to tax as a principal unless there is disclosed in the agent's



return the identity of the principal and the amount of the sale made on his behalf.

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

1. That the contract or agreement between such persons clearly establishes the relationship of principal and agent.

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

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

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

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

#### 17. CONDITIONAL AND INSTALLMENT SALES

A. Reported as Cash sales. A person making conditional sales or other installment sales of property is required to report the total selling price of such sales as gross receipts for the tax year in which the contracts of sale are entered into, without regard to the fact that the seller may arrange to receive payment from the purchaser on an installment basis or that such contracts may be discounted or pledged with, or sold to, a finance company.

B. Property repossessed. Where tangible personal property sold under a conditional or other installment sales contract is repossessed by the seller, and the repossessed property is subsequently sold, the receipts from such sales are to be included in the measure of the tax only to the extent that the amount of the sale exceeds the balance due on the original sale at the time of repossession. No deduction from gross receipts may be taken from any unpaid balance due at the time of repossession. Such deduction shall be allowed upon resale, if the resale price is less than the unpaid balance.

18. EXCHANGES BETWEEN DEALERS IN SIMILAR LINES

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

19. LEASED DEPARTMENTS

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

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

20. PERSONS ERECTING BUILDINGS OR OTHERWISE ALTERING REPAIRING OR IMPROVING REAL PROPERTY



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

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

C. Contractors or subcontractors permanently or temporarily doing business in the Taxing District shall register and file a tax return. (General contractors are required to withhold final payment to subcontractors temporarily doing business in the Taxing District, until proof of payment of the tax is furnished to them by such contractors.)

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

21. CONTRACTORS WHO REPAIR, ALTER AND IMPROVE TANGIBLE PERSONAL PROPERTY Persons engaged in business in the Taxing District as contractors who repair, alter and improve tangible personal property for the account of others are subject to tax under the provisions of these Rules and Regulations. 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.

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

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

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

1. Persons who have obtained real property with no affirmative action on their parts, that is, fortuitously



through inheritance, gift, reverter, or other legal processes, and who furnished only those elementary services and maintenance which are required by law, are not subject to the tax unless the property was received from a person who engaged in the business of renting the property and that business is continued by the recipient.

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

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

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

23. 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 subagents.

B. Brokers or subagents. Brokers or subagents are required to report as gross receipts the commissions received as compensation for their service.

C. Employee of single company. A person who represents a single insurance company is subject to tax hereunder unless he:

1. Devotes his entire time to the company,

2. Is considered by the company to be its employee, and the company pays Social Security and Unemployment Compensation taxes on behalf of the person claiming the exemption and in the event of an accident in the course of employment, said person is entitled to Workmen's Compensation; and

3. Does not employ solicitors, subagents or other

persons to whom he pays salaries, commissions or other compensation in connection with insurance business solicited.

24. PARTICULAR BUSINESS OR TRANSACTIONS

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

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

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

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

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



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

**D. Physicians and Surgeons.**

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

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

3. A physician with nursing home affiliation within the Taxing District must include in his gross receipts all revenue derived or generated by his connection with such nursing homes.

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

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

27. **SOCIAL AND RECREATIONAL CLUBS**

A. Under state law the Taxing District may not tax "membership in or membership dues, fees, or assessments of charitable, religious, beneficial or non-profit organizations, including but not limited to sportsmen's, recreational, golf and tennis clubs, girl and boy scout troops and councils". Accordingly, receipts from such sources are not subject to the tax.

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

tax. (This rule does not apply to "religious, charitable or educational" organizations which are entirely exempt from tax.)

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

29. PUBLIC UTILITIES

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

30. GOVERNMENT CONTRACTS

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

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

32. SALE OF CAPITAL ASSETS

A. General. 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 tax base. If a loss is sustained in 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 cost of the asset, less allowable depreciation, is to be deducted from the gross proceeds of the sale.

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



from the tax base.

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

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

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

35. INTER-COMPANY TRANSACTION Receipts from transactions between affiliated companies other than those of a purely accommodation nature are subject to including in "gross volume of business".

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

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

taken by any dealer as a trade-in or as part payment for other goods, wares and merchandise, except to the extent that the retail price exceeds the trade-in allowance.

38. REFUNDS OR CREDITS Refunds or credits will be issued upon appropriate verification of overpayment.

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

40. BAD DEBTS Bad debts may be taken from the gross volume of business where the deductions also taken in the same year for IRS purposes.

41. TAXES COLLECTED AS AGENT FOR THE UNITED STATES OF AMERICA, COMMONWEALTH OF PENNSYLVANIA, OR THE TAXING DISTRICT Taxes collected as agent for the United States of America, Commonwealth of Pennsylvania, or the Taxing District are excludable from taxable receipts.

42. PARTIAL EXEMPTION Where gross or whole volume of business in its entirety cannot be subjected to the tax imposed by this Ordinance by reason of the provisions of the Constitution of the United States or any other provision of law, the Collector of Taxes with the approval of the Taxing District shall establish rules and regulations and methods of allocation and evaluation so that only that part of the gross or whole volume of business which is properly attributable and allowable to doing business in the Taxing District shall be taxed hereunder.

43. WHEN SAME TAX IS IMPOSED BY TWO TAXING BODIES If any person is liable for the same tax on the same subject imposed under the Local Tax Enabling Act of 1965, December 31, Pamphlet Law 1257 and its amendments, to the Taxing District and one or more political subdivisions of the State, then and in that event the tax shall be apportioned by such percentage as may be



agreed upon by such political subdivisions, but in no event shall the combined taxes of both subdivisions exceed a maximum rate of tax as fixed by the said Enabling Act permitting the imposition of such taxes.

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

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

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

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

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

49. POSTING REGISTRATION FORM/MERCANTILE LICENSE

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

B. Vending machine owners. A person who sells goods, wares or merchandise by means of vending machines and who has not otherwise procured a license under this Ordinance shall procure one license covering all of his vending machines and shall post it at its principal place of business.

C. Persons with no place of business in the Taxing District. Persons conducting business within the Taxing District but having no "place of business" there, shall not be required to post their registrations. But each time as such person establishes a place of business within the Taxing District, he shall notify the Collector of Taxes of the location of such place of business and shall thereafter post his registration at such place of

business.

D. Contractors. Contractors, regardless of the number of field offices maintained within the Taxing District, shall be considered to have one place of business for the purpose of registering.

THESE RULES AND REGULATIONS SHALL BE SUPPLEMENTAL TO THE MERCANTILE TAX AND BUSINESS PRIVILEGE TAX ORDINANCES OF THE TOWNSHIP OF UPPER YODER AND SHALL BE INTERPRETED FOR THE PURPOSE OF COLLECTION OF THE TAXES IMPOSED BY SAID ORDINANCES. IN THE EVENT ANY CONFLICT SHOULD ARISE BETWEEN RULES AND REGULATIONS AND THE SUBJECT ORDINANCES, THE PROVISIONS OF THE MERCANTILE TAX AND BUSINESS PRIVILEGE TAX ORDINANCES SHALL AT ALL TIMES BE CONTROLLING.