



**RADNOR TOWNSHIP
DELAWARE COUNTY, PENNSYLVANIA**

**BUSINESS PRIVILEGE
AND
MERCANTILE TAX
REGULATIONS**

Radnor Township
301 Iven Avenue
Wayne, PA 19087
(610) 688-5600

Revised: January 1, 2020

INTRODUCTION

Persons desiring to do business in Radnor Township are required to obtain a business license and pay business privilege and/or mercantile taxes, as appropriate.

These Regulations provide an administrative interpretation of the Township's Business Privilege Tax and Mercantile Tax Ordinances, referred to collectively herein as the "Tax Ordinances." These Regulations do not, and are not intended to, expand the subject or rates of the taxes as stated and intended in the Tax Ordinances.

These Regulations shall be interpreted, whenever possible, to be consistent with the Tax Ordinances. In the event that a provision of these Regulations is inconsistent with the Tax Ordinances, the provisions of the Tax Ordinances shall prevail.

THESE REVISED REGULATIONS WERE ADOPTED AS OF JANUARY 1, 2020 AND SUPERSEDE ALL PREVIOUS VERSIONS OF THE TOWNSHIP'S BUSINESS PRIVILEGE TAX REGULATIONS, MERCANTILE TAX REGULATIONS, POSITION STATEMENTS, AND INTERPRETATIONS.

For additional information or copies, please contact:

Radnor Township
Department of Finance

Wayne, PA 19087
(610) 688-5600

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ARTICLE I
BUSINESS LICENSE

Section 100. License Required.

Persons desiring to do business in the Township of Radnor must first obtain a business license from the Department of Finance, Radnor Township Municipal Building, 301 Iven Avenue, Wayne, PA 19087. Applications may be obtained by calling: (610) 688-5600 or through the Township's website at www.radnor.com.

Section 101. Fee, Term and Pro-ration.

The license fee is \$10.00 for each calendar year. The fee is not reduced pro rata by the portion of the license year elapsed in the year procured.

Section 102. Posting.

Licenses shall be kept and posted in a conspicuous place at the Taxpayer's business location.

Section 103. License for Branch Establishments.

In the event that a licensee conducts business at more than one location in the Township, an additional license is required for each additional place of business (except vending machines). Additional licenses shall be posted in accordance with Section 102 above. The fee for each additional license is \$10.00.

Section 104. Assignment and Transfer Prohibited.

Business Licenses may not be assigned or transferred. Any purported assignment or transfer shall be void and ineffective.

Section 105. Change of Licensee's Address.

Licensee's change of address must be reported in writing to the Township Department of Finance within 10 days after such change becomes effective.

Section 106. Failure to Procure License.

Persons who engage in a business, profession, or other commercial activity without a valid license are subject to fine and legal action.

ARTICLE II
BUSINESS PRIVILEGE TAX AND MERCANTILE TAX

Section 200. Authority.

The Business Privilege Tax and Mercantile 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 Home Rule Charter Law, as amended, 53 Pa. C.S. §§ 2901 et seq., and appear in the Codified Ordinances of the Township of Radnor at Chapter 260, Articles II and III.

Section 201. Definitions.

Words used in the Business Privilege Tax Ordinance, the Mercantile 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.

Any Taxpayer may request in writing a written determination of taxability from the Tax Director with respect to the application of the provisions of the Tax Ordinances or these Regulations.

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 exist in Pennsylvania. The allocation formula is contained in Section 205 of these Regulations.

“Apportionment” of gross receipts, is the calculation of a share of gross receipts to be included in the tax base, resulting from the sale of goods or performance of services outside Pennsylvania, by or in conjunction with Conducting Business in Radnor Township. See Section 207 of these Regulations regarding *Interstate Commerce* for apportionment formula and applicability.

“Attribution” is the process of specifically identifying gross receipts directly or indirectly connected to Conducting Business in Radnor Township.

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

1. Providing workers with a place to work.
2. Providing a base from which operations are managed, directed or

- controlled.
3. Storage or maintenance 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 or assets.
 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. Use or maintenance of a site trailer or other temporary workspace.

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 in Radnor Township is not a Base of Operations, must demonstrate both that the location in Radnor is not a base of operations and 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 outside of Radnor Township constitutes a Base of Operations under the definition provided above.

Some types of business have little in the way of traditional indicia of business activity. Even so, there is a basic presumption that a business must exist somewhere and cannot exist without any Base of Operations.

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

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

Example 1: A consultant with no office in the Township spends three weeks working at a client's location in the Township. The client provides the consultant with a place to work and access to other facilities during the three weeks. The consultant also works at other client locations and at his own office.

The consultant does not have a Base of Operations at his client's location because the activity in the Township lacks sufficient size, duration and complexity. Note that the consultant is still subject to tax, however, because

he conducts business in the Township for 15 or more days.

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

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

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

Contractors and subcontractors with offices in the Township have a Base of Operations in the Township. Contractors and subcontractors with no office in the Township may still be subject to Tax if they are Conducting Business in the Township.

Example 1: A builder/contractor whose office is located outside of the Township is contracted by a developer who owns property in the Township to build one single-family custom home. The contractor does not set up any type of construction trailer, comes in the Township, performs his services, and then leaves on a daily basis. The project is managed, directed and controlled from the builder's office located outside of the Township. The construction project lasts 2 months.

The builder/contractor does not have a Base of Operations in the Township since the activity lacks sufficient size, duration and complexity. However, the builder/contractor is still subject to Tax because the contractor has Conducted Business in the Township for 2 months.

Example 2: The same builder in Example 1, whose office is located outside of the Township, is contracted to build a development consisting of thirty (30) single family homes. The project is anticipated to take 2 years. The contractor sets up a construction trailer for the project manager and site supervisors and stores equipment and building materials on site.

The builder has a Base of Operations in the Township, due to the size, duration and complexity of its activities in the Township.

The term Base of Operations includes the maintenance of tangible property or other assets in the Township used for Business Activity.

Example: A communications company erects a tower in the Township equipped

with communication devices or components for use in the conduct of its business. The company also leases the use of the tower to third parties who use it to maintain equipment used in a business activity.

Both the communication company and the third-party lessees have a Base of Operations in the Township due to the presence of business assets at the tower site.

“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.

“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.

“Commonwealth” means the Commonwealth of Pennsylvania.

“Conducting Business” or **“Conducting Business in the Township”** means engaging in Business Activity in the Township for all or part of 15 calendar days or more within the calendar year or engaging in Business Activity from a Base of Operations in the Township for any amount of time.

“Director” or **“Tax Director”** means the Finance Director of the Township of Radnor or his/her duly authorized representative.

“Exempt from Tax” or **“Exempt”** refers to the status of Persons not subject to the Township’s Business Privilege Tax and/or Mercantile Tax under the laws of the Commonwealth of Pennsylvania, for example, Institutions of Purely Public Charities, Government Entities, or manufacturers. See Section 206 of these Regulations.

“Exemption” 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” is one or a group of any separate legally recognizable entity or entities.

“Gross Receipts” means the gross amount of cash, credits or property of any kind or nature received in both cash and credit transactions allocable or attributable to the Township by reason of any sale made (including resales of goods, wares or merchandise taken by a dealer as a trade-in or as part payment for other goods, wares and merchandise), service rendered (including labor and any materials employed in or becoming part of the service) or commercial or business transactions in connection with

any business, trade, occupation or profession.

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

“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. *See Section 206(F) of these Regulations.*

“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).

“Sale” means the passing or assignment of ownership of tangible property from the seller to the buyer for a price.

“Service” means any act or instance of helping or benefiting another for a consideration.

“Tax” means the Business Privilege Tax and/or Mercantile Tax levied by Radnor Township.

“Tax exempt nonprofit corporation or organization” is an institution that qualifies as a Pennsylvania Purely Public Charity. *See Section 206(E) of these Regulations.*

“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.

“Township” means the Township of Radnor, a home rule municipality located in Delaware County, a political subdivision of the Commonwealth of Pennsylvania.

Section 202. Who Must File a Return.

Every Person who has Conducted Business within the Township must file either a Mercantile Tax Return or a Business Privilege Tax Return, depending on the nature of the business. A tax return must be filed whether or not tax is due. Tax returns are filed at the business entity level. In the case of a partnership, for example, the partnership entity, rather than the individual partners, should file the tax return and pay the tax.

A. Mercantile Tax Return. Wholesale and retail vendors or dealers in goods, wares and merchandise and operators of restaurants and other places where food or beverages are sold, are subject to the Mercantile License Tax and must file a Mercantile

Tax Return.

B. Business Privilege Tax Return. All other persons Conducting Business within the Township (primarily service providers) must file a Business Privilege Tax Return. Persons with gross receipts from both services and sales of goods and merchandise may file a Business Privilege Tax return and report gross receipts from all sources thereon.

Section 203. Subject and Imposition of Tax.

The Business Privilege Tax and the Mercantile Tax are both levied on the privilege of doing business in the Township. A person exercises the privilege of doing business by Conducting Business in the Township.

Section 204. Base and Rate of Tax.

A. Tax Base. The tax is based on gross receipts attributable or allocable to doing business in the Township. To determine whether gross receipts are attributable to doing business in the Township, see Section 205, below. Receipts from certain activities are excluded from taxation, see Section 206 (*Exemptions and Exclusions*), and Section 207 (*Interstate Commerce*).

B. Tax Rate. The Business Privilege Tax and the Mercantile Tax impose the same rate of tax on Gross Receipts. The tax rate is 3 mills (\$3 per \$1,000 of gross receipts).

Section 205. Determination of Gross Receipts; Attribution, Allocation and Apportionment of Gross Receipts.

A. Attribution. Attribution is the process of specifically identifying Gross Receipts directly or indirectly connected to Conducting Business in Radnor Township.

1. Taxpayers with a base of operations in Radnor. A Taxpayer that maintains a Base of Operations in the Township must pay tax based on all receipts attributable to the Base of Operations in the Township, regardless of where the transactions may occur. Generally, in determining the tax base for a Taxpayer with a Base of Operations in the Township, the attribution or allocation of receipts among multiple Bases of Operations, and the apportionment of receipts with interstate characteristics, must fairly reflect the Business Activity connected to a Base of Operations in the Township and avoid the possibility of double taxation.

a. For a Taxpayer with its sole business Base of Operations in the Township, 100% of Gross Receipts will be attributed to that single business location. (Interstate Gross Receipts are to be apportioned in accordance with Section 207 of these Regulations). Receipts cannot be attributed to job sites, or customer or subcontractor locations that do not qualify as a

Base of Operations of the Taxpayer.

Note: Gross receipts which are properly subject to gross receipts business privilege tax in another municipality based on transactions within that municipality may be excluded from the Township Tax base.

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

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

100% of the taxpayer's Gross Receipts are attributed to his Base of Operations within the Township because all work is managed, directed and controlled from his sole business location.

Note that where another municipality has properly imposed and collected a business privilege tax upon the plumber based on transactions within that municipality, receipts subject to said tax may be excluded from the tax base of the Township's Tax.

Example 2: An engineering firm has two offices; one in Radnor Township and another in Upper Merion Township. The firm separately accounts for revenues and expenses for each location.

Gross Receipts separately identified for the location within Radnor Township are attributed to the Township. Gross Receipts attributed to the Upper Merion Township Base of Operations are excluded from the Radnor Township Tax base, provided no part of the Upper Merion Township activity is managed, directed or controlled from the Radnor Township office.

2. Taxpayers with no base of operations in Radnor. A Taxpayer with no Base of Operations in the Township must pay tax based on its receipts from transactions conducted in whole or in part within the jurisdiction of the Township, so long as the Taxpayer conducts business in the Township no fewer than 15 full or partial days during the calendar year.

Example: Taxpayer is a beverage bottling company located in Lower Merion Township, providing beverages to restaurants and other commercial establishments. Taxpayer also provides repair and maintenance services for associated equipment. Seventy Five percent (75%) of Taxpayer's sales and services are to customers located within Radnor Township and are delivered weekly to those customers within Radnor Township.

Although Taxpayer does not have a Base of Operations within Radnor Township, because Taxpayer conducts business within Radnor Township more than 15 days in the calendar year, Taxpayer is subject to the Business Privilege and Mercantile Taxes. Taxpayer must report as Gross Receipts to the Township the receipts from its 75% of sales to customers within Radnor Township.

3. Gross Receipts must be determined through Attribution if possible. If determination of Gross Receipts through Attribution is not possible, Gross Receipts are determined through Allocation. If Attribution of receipts under this section does not accurately or fairly reflect a Taxpayer's activity connected to a Base of Operations in the Township, the Finance Director may determine Gross Receipts using the Allocation or Apportionment formulas.

When it is impossible or impractical to reasonably identify a specific stream of revenue for the purpose of attributing gross receipts to a particular Base of Operations, Gross Receipts will be determined under the Allocation formula provided in paragraph B, below.

B. Allocation. Allocation is the calculation of a share of total Gross Receipts for a particular Base of Operations when Taxpayer has more than one Base of Operations in Pennsylvania and is unable to determine Gross Receipts reasonably through Attribution. The Allocation formula is based on two factors: property and payroll. *Use Radnor Form BPM 205 to determine Gross Receipts by Allocation.*

1. **Property Factor:** The numerator of the property factor is the value of the tangible personal property and real property owned or leased and situated within Radnor Township and the denominator of the property factor is the value of tangible personal property and real property owned or leased and situated at all of Taxpayer's Bases of Operations in Pennsylvania. For purposes of this calculation, the value of leased property is eight (8) times the annual rental.

2. **Payroll Factor:** The numerator of the payroll factor is payroll for workers connected with the office located in Radnor Township and the denominator of the payroll factor is payroll for workers connected with all of Taxpayer's Bases of Operation in Pennsylvania. 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, guaranteed payments to a partner, an active partner's share of partnership income, an active member's share of the income of a limited liability company, or an active shareholder's ordinary income from an "S" corporation.

The payroll factor will include payroll outsourced to a professional employer organization, a/k/a PEO, and/or payroll managed by an affiliated entity acting as common paymaster or pay agent, provided the payroll activity is fairly attributed to a taxpayer's business activity in Radnor and Pennsylvania.

The Property Factor and Payroll Factor are averaged to determine the **Allocation Factor**. Gross Receipts to be allocated to the Base of Operations in Radnor Township are determined by multiplying Taxpayer's total Gross Receipts by the Allocation Factor.

Example 1: A law firm is based in Radnor Township and has a second office located in Springfield Township. The accounting system does not segregate receipts by location. Gross Receipts total \$1,225,000 for the year. Total payroll and partners' compensation is \$860,000 and total property owned (and annual rent x 8) is \$1,150,000. Payroll and partners' compensation for workers based in Radnor Township is \$570,000 and property and annual rent (x 8) in the Township is \$862,500.

The Allocation of Gross Receipts to the Radnor office is as follows:

Property Factor = \$862,500/\$1,150,000 = 75%
Payroll Factor = \$570,000/\$860,000 = 66.3%
Allocation Factor = average of 75% and 66.3% = 70.65%

Total Gross Receipts	\$1,225,000
Allocation Factor	x 70.65%
Township Receipts	\$865,462.50

Example 2: A Taxpayer operates nine auto centers throughout Pennsylvania. Each location sells parts and accessories and provides auto repair services. Taxpayer maintains its headquarters in the Township; however, none of the auto centers is located in Radnor Township. None of the auto centers is located in a municipality that imposes a business privilege and/or mercantile gross receipts tax. Business activities at Taxpayer's headquarters in the Township include executive and administrative services, corporate governance, finance, information technology, human resources, and marketing to support the operations at the nine auto centers. Taxpayer's office in the Township constitutes a Base of Operations for Business Privilege Tax purposes. No customer sales or

services occur in the Township. Total sales and service revenue for all stores is \$12,400,000. The Taxpayer's total payroll is \$3,800,000. Payroll for workers based at the office in Radnor Township is \$1,900,000. Total property, (inventory and fixed assets) is \$2,700,000. Annual rent expense for all stores and the main office totals \$840,000. Property at the office in Radnor consists of fixed assets of \$140,000, and the annual rent is \$180,000.

The Allocation of Gross Receipts to Taxpayer's Base of Operations in Radnor Township is as follows:

Property Factor = \$1,580,000*/\$9,420,000 = 16.7%**

Payroll Factor = \$1,900,000/\$3,800,000 = 50.0%

Allocation Factor = 33.4% (Avg. of 16.7% and 50%)

Total Gross Receipts	\$12,400,000
Allocation Factor	33.4%
Gross Receipts Allocated to Township	\$ 4,141,600

* Radnor property (\$140,000) + Radnor Rent x 8 (\$1,440,000)

**Total Property (\$2,700,000) + Total Rent x 8 (\$6,720,000)

Gross Receipts allocated to the Township are limited to gross receipts not taxed elsewhere in Pennsylvania.

Example 3: Same facts as Example 2, except seven of the Auto Centers are located in municipalities that impose a gross receipts tax. The Taxpayer correctly files annual returns and pays the tax based on \$9,300,000 of gross receipts directly attributed to those stores.

In order to avoid the potential for double-taxation Radnor receipts under the allocation calculation (above) are limited as follows:

Total Gross Receipts	\$12,400,000
Less: Gross Receipts Taxed Elsewhere in Pa.	-9,300,000
Gross Receipts not Taxed Elsewhere in Pa.	\$ 3,100,000

Gross Receipts allocated to Radnor are limited to \$3,100,000, because gross receipts under the allocation formula (\$4,141,600) would result in double taxation of some Pa. receipts.

Furthermore, the Tax Director may authorize the use of another objective and measurable basis of Allocation, such as a single factor based on payroll, or a three factor based on payroll, property and sales, when unusual circumstances may result in an Allocation that does not fairly reflect the activity connected to a Base of Operations in the Township. In such circumstances, the Taxpayer must request authorization in writing to use a method

of Allocation other than as provided for herein and such authorization is prospective in nature.

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

The Tax Director may authorize the Taxpayer to allocate gross receipts using a formula based on the water usage for each location as reflected on the water or sewer invoices.

C. Apportionment. Apportionment of Gross Receipts is the calculation of a share of Gross Receipts to be included in the tax base, resulting from interstate activity, by or in conjunction with a Base of Operations in Radnor Township. See Section 207 of these Regulations regarding *Interstate Commerce* for Apportionment formula and applicability.

D. Taxpayers Subject to the Business Privilege Taxes of Other Municipalities. In order to avoid the possibility of a Taxpayer being subject to a double privilege tax, the Township will allow a Taxpayer to exclude receipts generated in another jurisdiction **if** (1) the Taxpayer is properly subject to the gross receipts privilege tax in that jurisdiction **and** (2) the Taxpayer actually pays a business privilege tax on gross receipts to that other jurisdiction on 100% of those receipts, and provides documentation evidencing such payment. See Example 3, above.

E. Determination of the Tax Base Using Estimates. Under certain circumstances the Tax Director is authorized to determine the Tax Base using estimates. Such circumstances include any of the following:

1. Taxpayer has no records or insufficient records to clearly reflect gross receipts,
2. Taxpayer refuses or neglects to make records available,
3. Taxpayer's gross receipts do not fairly reflect its business activities in Radnor Township, or
4. Taxpayer fails to file a timely Business Privilege or Mercantile Tax Return, or otherwise make a declaration of self-assessed Tax.
5. Taxpayer transacts business with affiliated entities for consideration which is less than arm's-length.

In determining the Tax Base, the Tax Director may consider a taxpayer's gross receipts from business transactions other than recorded revenue, such as, additional paid-in-capital, debt proceeds, intercompany receivables, sale of stock, expense reimbursements or offsets, or other sources used to fund operating expenses.

Example: Able Company, Inc. (“Able”) is the parent company of 10 operating subsidiaries. Able is headquartered in Radnor Township. None of the operating subsidiaries have a presence in Radnor. Able’s business operations are mainly related to corporate governance and administrative functions. The 100 employees working at Able’s Radnor headquarters staff the following departments: Executive, Finance, HR, Legal, IT, Strategic Planning, and Marketing. Able’s business activities are provided to, or on behalf of, Able and its affiliated subsidiaries. No services are offered to unaffiliated third parties. Able’s unconsolidated financial statements show zero revenue and \$140 million in net operating expenses. Some costs are directly reimbursed by certain subsidiaries and some costs are allocated among the affiliates. Reimbursed or allocated costs are posted to intercompany receivables for each subsidiary. Able files a Business Privilege Tax Return and reports zero gross receipts.

Upon review of the Tax return the Tax Director concludes that the reporting of zero gross receipts does not fairly reflect Able’s business activities in Radnor Township. Furthermore, the unconsolidated financial statements are insufficient records for the purpose of determining the tax base because there is no matching of costs to a related revenue stream. The Tax Director assesses Able Business Privilege Tax using an estimate of the tax base to calculate the amount of tax due. The Tax Director’s estimate of the tax base considers the total costs charged to or allocated to the affiliates and a cost-plus amount based on non-allocated operating costs, as follows:

Net Operating Costs	\$140,000,000
Costs Allocated to Subsidiaries	200,000,000
Costs Reimbursed by Subsidiaries	80,000,000
Gross-up of All Costs at 15%	<u>63,000,000</u>
Total Estimated Gross Receipts	\$ 483,000,000

Section 206. Exemptions and Exclusions.

Any Taxpayer claiming exemption from Tax or claiming an exclusion from Gross Receipts has the burden to demonstrate its legal right to such exemption or exclusion. As a condition to claiming any exemptions or exclusions, a Taxpayer must disclose on its tax return its total gross receipts and then itemize any claimed exclusions and exemptions.

A. State Preemption. Persons with Gross Receipts from activity which has been judicially determined to be preempted by the Commonwealth of Pennsylvania may exclude receipts from such activity from taxable receipts. As of the adoption of these Regulations, local taxation has been preempted by the Commonwealth only as to the banking industry, the alcoholic beverage industry and harness racing. Despite significant state regulation, preemption has been judicially determined not to exist in the securities

industry, the insurance industry, the nursing home industry, the real estate industry, and in the legal profession.

Important Note: *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.*

B. 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.

Example 1: Taxpayer is an insurance company, registered and authorized to do business in Pennsylvania. Taxpayer has receipts from the sale of insurance contracts and also from the rental of real estate owned as an investment. Taxpayer files and pays the Pennsylvania Gross Premiums Tax.

The gross receipts from the premiums, subject to taxation by Pennsylvania, are not subject to Radnor’s Business Privilege Tax. The receipts from real estate rental are subject to tax. In order to claim the exemption for the premiums, Taxpayer must provide copies of its Pennsylvania Gross Premiums filings for the period in which the exemption is claimed.

Example 2: Taxpayer is a telecommunications provider. Taxpayer files and pays the Pennsylvania Gross Receipts Tax on its intrastate service revenue.

The gross receipts subject to taxation by Pennsylvania, are not subject to Radnor’s Business Privilege Tax. Any receipts that are not subject to taxation by Pennsylvania are subject to the Radnor Business Privilege Tax. In order to claim the exemption for receipts upon which state tax is paid, Taxpayer must provide copies of its Pennsylvania Gross Receipts Tax filings for the period in which the exemption is claimed.

C. Governmental 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. Independent contractors or appointees do not qualify as agencies of the government.

D. Utilities. State law prohibits taxation with respect to certain public utility receipts. Gross receipts from utility service of a taxpayer who constitutes a “public utility” as that term is defined by the Public Utility Code, and whose rates of service are fixed and regulated by the Pennsylvania Public Utility Commission are exempt from tax. Gross receipts from the utility service of a taxpayer whose rates of service are not fixed and

regulated by the Pennsylvania Public Utility Commission are not exempt from tax. Where a taxpayer has receipts from utility services some of which service rates are fixed by the Pennsylvania Public Utility Commission and some of which service rates are not fixed by the Pennsylvania Public Utility Commission, only those receipts from the rendering of services with rates fixed by the Pennsylvania Public Utility Commission are exempt from tax, even if the non-fixed rate services are regulated by the Pennsylvania Public Utility Commission.

A Person claiming exemption as a Pennsylvania Public Utility must provide documentation sufficient to establish its entitlement to such exclusion including, but not limited to, certificates of public convenience, registration certificates, and copies of Assessment Reports showing gross intrastate operating revenues.

E. Tax Exempt Nonprofit Corporations or Associations. A tax-exempt nonprofit 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.

An institution must:

1. Advance a charitable purpose (requires I.R.C. § 501(c)(3) 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.

Example 1: A church meets the five-part test of a Purely Public Charity and is exempt from the Business Privilege Tax. However, this church has a large hall that is rented to parishioners and/or to non-parishioners for wedding receptions and parties.

The gross receipts from the rental activity are subject to Tax because it is unrelated to the church's charitable purpose. Also, the rental activity competes with other businesses that are subject to the Tax.

Example 2: A College meets the five-part test of a purely public charity and is exempt from the Business Privilege Tax, on gross receipts from activities directly related to its charitable purpose (education). The College has gross receipts from other activities, such as, advertising related to athletics, rental of its sport facilities for camps and sporting events, rental of roof space to telecommunication providers, and travel tour commissions.

The College is subject to the Business Privilege Tax on its other gross receipts, to the extent that such receipts are not directly related to the College's educational purpose.

Receipts generated from sales to religious, charitable, educational, governmental, or other entities not themselves subject to the tax, are not excluded from taxable gross receipts.

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

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 Tax depends on the facts involved and each question is reviewed on a case-by-case basis. Pennsylvania Courts have held that manufacturing includes commercial bookbinding, production of apparel, lithography, commercial printing, oil refining, and steel milling. The Courts have determined that manufacturing does *not* include: radio and television broadcasting; steel annealing and galvanizing; commercial illustration; work product which is primarily intellectual or clerical in nature (*e.g.*, work of an attorney, architect, computer software engineer, etc.); scrap metal bundling; dyeing and finishing of cloth; purification through pasteurization, filtration and testing for bacteria and impurities; the preparation of potato salad, coleslaw, bread filling, and like examples of "cooking;" adding water to concentrated juice slurry or powdered drink mix to make a finished product; and printing designs and wording on ready-made clothing.

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 Tax. Generally, research and development activities alone, and processing of materials other than by-products of manufacture do not constitute manufacturing for local tax purposes.

The manufacturing exclusion only applies to manufacturing activities by manufacturers with respect to goods, articles and products of their own manufacture. The exemption does not extend to activities by non-manufacturers that may be related to the manufacturing processes of entities that qualify as manufacturers for purposes of the Tax Ordinances.

Construction, including the construction of buildings and roads, does not qualify as manufacturing.

Generally, the performance of limited steps as part of an overall manufacturing operation do not constitute manufacturing.

Example: Taxpayer specializes in the application of industrial coatings to a variety of products being manufactured. A manufacturer of farming equipment provides Taxpayer with uncoated steel frames, to which Taxpayer applies powder-coating, then bakes the frames in large ovens.

This service by Taxpayer does not qualify as manufacturing.

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.

Example: Taxpayer owns an organically grown vegetable farm and sells to a specialty grocery store.

Taxpayer's receipts are excluded from the tax.

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.

Example 1: Taxpayer takes molten slag, a waste product discarded by a steel manufacturer, and subjects it to a process which enables the iron component to be separated and sold back to the steel manufacturer.

Taxpayer's activity of processing by-products of manufacturing is not subject to the tax.

Example 2: Taxpayer is in the business of annealing and galvanizing rolls of steel thereby making the steel more malleable.

Taxpayer's activity is not manufacturing since no "new" product is created; nor is it "processing of a by-product of manufacturing" because rolls of steel are not secondary or additional products but are themselves the principal product of the original manufacturer.

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

Example: Taxpayer manufactures computer equipment in New York. It then leases or sells the equipment to customers within the Township.

Receipts from sale or lease of equipment by the manufacturer thereof are not subject to the tax.

Receipts excludable under this subsection are excluded whether the product is sold to others or used by the Taxpayer in its own operation.

Example: Taxpayer produces asphalt both for sale to others and for its own use in fulfillment of paving contracts.

Taxpayer is entitled to exclude receipts from sale of product to others, plus an additional amount equal to the cost of producing product for its own use.

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

Example: Twenty percent of the gross receipts realized by Taxpayer, a manufacturer of small engine parts, are generated by providing maintenance services for products not manufactured by Taxpayer.

Receipts from services related to products not manufactured by the Taxpayer are not excluded.

G. Receipts Excluded From Gross Receipts. State Law or Radnor's Ordinances provide that the following specified receipts are excluded in the computation of Tax.

- (1) The first \$25,000 received in a tax year.

Note: Any Taxpayer subject to both the Business Privilege Tax and the Mercantile Tax may claim the \$25,000 exclusion only once annually.

- (2) Cash discounts to purchasers for prompt payment of bills.
- (3) Reimbursements at cost of freight, delivery or transportation charges advanced by the seller for the purchaser in connection with a contract for the sale of goods.
- (4) Sales of trade-ins, up to the amount given the prior owner as a trade-in allowance.
- (5) Refunds, credits or allowances given customers for defective goods returned.
- (6) Taxes imposed by the United States of America or by the Commonwealth of Pennsylvania upon third persons (as opposed to taxes imposed on Taxpayer) and collected from such third persons by Taxpayer as agent for

the United States of America or the Commonwealth of Pennsylvania, such as sales tax. Excise, franchise, and other taxes imposed by the United States of America or Commonwealth of Pennsylvania upon Taxpayer may not be excluded.

Example: A Taxpayer operates a full-service gas station and convenience store in the Township. Taxpayer charges and remits to the Commonwealth of Pennsylvania sales tax on its auto repair services as well as on the sale of food and beverages. Taxpayer pays Pennsylvania Capital Stock Tax on its revenue.

Sales tax that the Taxpayer collects on behalf of the Commonwealth is excluded from Gross Receipts. Federal and State taxes on gasoline and other fuels are imposed on the fuel or gasoline producer or distributor, even if they are shown at the gas pumps. Federal and State gas taxes are not excluded, since such taxes on gasoline and fuels are not imposed on Taxpayer's customers, Taxpayer does not collect and remit such taxes to the Commonwealth, and Taxpayer is not charged with the duty of collecting from its customers and remitting such taxes.

- (7) Exchanges between sellers of identical goods, but not to the extent of any additional cash payment accompanying the exchange.
- (8) Sales to other sellers in the same line at the same price for which the seller acquired the merchandise.
- (9) Transfers between one department, branch or division of a business entity and another, recorded as interdepartmental transfers.
- (10) In the case of a financial business, the costs of securities and other property sold, exchanged, paid at maturity or redeemed and moneys or credits received in repayment of advances, credits and loans (not to exceed the principal amount of such advances, credits and loans) and deposits.

Important Note: Section 260-40 of Radnor's Business Privilege Tax Ordinance excludes from Gross Receipts certain commissions and fees between brokers. It has been judicially determined that this type of broker exclusion violates the uniformity requirement, and is therefore unconstitutional, in Pennsylvania. Consequently, the invalid provision is severed in accordance with the Savings Clause of the Ordinance, and the broker exclusion is not allowed.

Section 207. Interstate Commerce Apportionment.

Gross receipts resulting from transactions with interstate characteristics are includable

in the tax base on an apportioned basis, provided the activity has substantial nexus to Conducting Business in Radnor Township. Transactions with interstate characteristics include the performance of services by a Taxpayer outside Pennsylvania and the sale and delivery of goods to a non-Pennsylvania buyer in another state or country. The sale of interstate passenger tickets constitutes transactions with interstate characteristics. *Use Radnor Form BPM 207 to determine gross receipts using apportionment.*

Apportionment of gross receipts will be made under the following formula:

$(\text{Total Gross Receipts} \times \text{Apportionment Factor}) = \text{Gross Receipts apportioned to Pennsylvania}$
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The apportionment factor shall be the product of averaging a payroll factor, a property factor and a sales factor, each of which shall be computed as a percentage as follows:

- (i) Payroll Factor - 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, guaranteed payments to partners, an active partner's share of partnership income, an active member's share of the income of a limited liability company, or an active shareholder's ordinary income from an "S" corporation. Other compensation does not include payments to independent third parties, such as subcontractors or agents, unless the payees are determined to be misclassified employees.

The payroll factor will include payroll outsourced to a professional employer organization, a/k/a PEO, and/or payroll managed by an affiliated entity acting as common paymaster or pay agent, provided the payroll activity is fairly attributed to a taxpayer's business activity in Radnor and Pennsylvania.

- (ii) Property Factor - 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. The value of tangible and real property shall be determined by averaging the beginning and ending book value at cost for each tax year.

- (iii) Sales Factor - Gross receipts from Pennsylvania sales and/or services, as a percentage of total gross receipts from sales and/or services. For purposes of this calculation, Pennsylvania sales in the Mercantile Tax context means sales shipped to or sold to a Pennsylvania customer. In the Business Privilege Tax context, Pennsylvania sales means revenue from Pennsylvania customers.

The Tax Director may authorize unequal weighting of the three factors when unusual circumstances exist such that a straight average results in an apportionment that does not fairly reflect the activity connected to Conducting Business in Radnor Township. In such circumstances, the Taxpayer must request authorization in writing to use an unequal weighting of the factors and the Tax Director, in his or her discretion, may grant or deny such authorization in writing. In no event shall any of the three factors be weighted less than 20 percent.

For Taxpayers whose only Base of Operations in Pennsylvania is located in Radnor Township, the Tax Base constitutes Gross Receipts apportioned to Pennsylvania.

For Taxpayers with more than one Base of Operations in Pennsylvania, Gross Receipts apportioned to Pennsylvania may be further allocated. Refer to Section 205 of these Regulations for provisions governing attribution or allocation of receipts between or among multiple Pennsylvania locations.

Example 1: AutoGo is a business headquartered in Tupelo, Mississippi. It operates 27 auto rental centers and 19 used car centers throughout the country. Three rental centers and two used car centers are in Pennsylvania. Regional operations are managed through five District Offices. AutoGo's only Pennsylvania District Office is its Mid-Atlantic District Office located in Radnor Township. One of its rental centers is also in Radnor Township. The land and buildings for all offices, rental centers and used car centers are leased from landlords.

AutoGo's gross receipts with interstate characteristics are subject to apportionment as follows:

Salaries and wages for workers based at the three Pennsylvania rental centers, the two Pennsylvania used car centers, and the Pennsylvania District Office totals \$6 million. Total salaries and wages for AutoGo is \$30 million.

The Pennsylvania Payroll Factor = 20% (\$6M / \$30M).

AutoGo's Pennsylvania inventory and fixed assets total \$3.2 million. Annual rents on the Pennsylvania rental centers and used car centers, and the District Office in Pennsylvania total \$600,000. AutoGo's total inventory and fixed assets is \$16 million, and its total rent paid on leased property is \$3 million.

The Pennsylvania Property Factor = 20% (\$8M* / \$40M)**

* Penna. Property = \$3.2M + (\$600K x 8) = \$3.2M + \$4.8M = \$8M

** Total Property = \$16M + (\$3M x 8) = \$16M + \$24M = \$40M

AutoGo's Revenue from Pennsylvania locations and from sales or rentals to Pennsylvania customers totaled \$11.2 million. AutoGo's total revenue was \$80 million.

The Pennsylvania Sales Factor = 14% (\$11.2M / \$80M)

The Pennsylvania Apportionment Factor = 18% (20%+20%+14%=54%/3)

Total Gross Receipts	\$80,000,000
Pennsylvania Apportionment Factor	x 18%
Gross Receipts Apportioned to Pennsylvania	<u>\$14,400,000</u>

Because AutoGo has multiple Bases of Operations in Pennsylvania, Gross Receipts Apportioned to Pennsylvania may then be allocated in accordance with Section 205 of the Regulations, as follows:

Property within Radnor Township consists of inventory and fixed assets totaling \$960,000. Annual rent on the District Office and rental center in Radnor Township totaled \$280,000.

Total Pennsylvania Property as calculated above is \$8 million.

The Property Allocation Factor = 40% (\$3.2M* / \$8M)

* Radnor property = \$960K + (\$280,000 x 8) = \$3.2M

Salaries and Wages for the workers at the rental center and District Office in Radnor Township totaled \$3.6 million. Total Pennsylvania payroll is \$6 million.

The Payroll Allocation Factor = 60% (\$3.6M / \$6M)

The Radnor Township Allocation factor = 50% (40%+60%=100% / 2)

Gross Receipts Apportioned to Pennsylvania	\$14,400,000
Allocation Factor	x 50%
Gross Receipts Allocated to Radnor Township	<u>\$ 7,200,000</u>

The Tax Director may authorize the use of another objective and measurable basis of Apportionment when unusual circumstances may result in an Apportionment that does

not fairly reflect the activity connected to Conducting Business in the Township. In such circumstances, the Taxpayer must request authorization in writing to use a method of Apportionment other than as provided for herein and such authorization is prospective in nature. *See also Section 205(E)*

ARTICLE III

PARTICULAR BUSINESSES OR TRANSACTIONS

Section 300. General Applicability.

Gross Receipts of any Taxpayer include the gross amount of cash, credit or property of any kind or nature received in both cash and credit transactions allocable or attributable to the Township by reason of any sale made, service rendered, or commercial or business transactions in connection with any business, trade, occupation or profession.

Gross Receipts upon which the Tax is imposed are undiminished by any costs of doing business, other than as specifically provided in Section 206 of these Regulations.

Gross Receipts may be measured using the cash or accrual method of accounting, provided the return is filed in accordance with the method of accounting regularly employed in keeping the books of the Taxpayer and the method is consistent from year to year. Use of the completed-contracts or percentage-of-completion methods of accounting is prohibited for the purpose of determining Gross Receipts.

Section 301. Administrative or Executive Offices.

Maintaining a Base of Operations in Radnor Township used for administrative or executive activities is an exercise of a business privilege and is subject to the Tax. Administrative and executive functions contribute to the management and control of business operations. Gross Receipts attributed to administrative or executive offices are determined in accordance with Section 205 of these Regulations (*Determination of Gross Receipts*).

Section 302. Affiliated Companies.

Gross Receipts from transactions between separate entities, affiliated through direct or indirect common ownership, are included in taxable gross receipts.

Example: Taxpayer is a wholly-owned corporate subsidiary of ABC Company. All of ABC's accounting and administrative functions are performed by Taxpayer. Taxpayer bills ABC a "management fee" equal to its costs and expenses so that, by design, no profit is generated by Taxpayer. ABC purports to "reimburse" Taxpayer all of its expenses.

So long as Taxpayer and ABC Company are separate legal entities, the inter-company management fees paid by ABC to Taxpayer and the reimbursed expenses are taxable Gross Receipts.

It is common for a consolidated group of companies to use separate legal entities to pursue business objectives. Some of the affiliated entities do not have a well-defined

stream of revenue, thereby acting as cost centers for a parent company or operating affiliates. The business activities of such cost centers could include any one, or a number of non-revenue producing functions, such as, research and development, facilities management, payroll and benefits administration, corporate governance, or finance, among others. In some cases, revenue for services provided by the cost centers to the affiliates are not recognized or recorded on an arm's-length basis. That is because intercompany transactions are eliminated upon consolidated. In the context of a gross receipts tax, if the revenue recorded by cost-center entities does not fairly reflect the business activity in Radnor, the Tax Director is authorized to determine the tax base using estimates in accordance with Section 205 D. of these Regulations.

Section 303. Receipts from Lease, Use, or Rental of Personal or Real Property.

Receipts from the lease, use, or rental of personal or real property are deemed to be receipts from the performance of services and subject to the Business Privilege Tax. The Tax is on the privilege of engaging in leasing operations business activity and not a tax directly on receipts from leasing. Even if the Tax were considered to be one imposed on leasing transactions, Radnor Township's Business Privilege Tax with regard to receipts from leases has been grandfathered by state law because it was imposed on leasing transactions prior to 2008.

Section 304. "Unearned" or "Passive" Receipts.

Gross Receipts from unearned investment income, such as interest, dividends, and gain on the sale of capital assets, are generally included in the tax base if the receipts are in connection with a business activity or business transactions. The investment of business assets is deemed to be in connection with business transactions. For purposes of calculating gain on sale of capital assets, net book value may be deducted from the gross sales price.

Unearned investment income may be excluded if any one of the following conditions is met:

1. The Taxpayer has no Business Activity (see Section 201 Definitions – *Business Activity*).
2. The investment activity does not qualify as a Business Activity, and the Taxpayer has no other Business Activity.
3. The Taxpayer's Business Activity is exempt from the Business Privilege Tax. In the case where the Taxpayer has both exempt and non-exempt Business Activities, gross receipts from unearned investment income may be pro-rated.

Example 1: A Taxpayer owns and operates an apartment building. The Taxpayer sells the building for \$2.5 million. The original cost of the building

was \$1.2 million. Because of capital improvements and depreciation taken, the net book value of the building was \$700,000 at the time of sale.

The Taxpayer must include \$1.8 million (\$2.5 million - \$700,000 NBV) as Gross Receipts from the sale of the building for Business Privilege Tax purposes. The building is a business asset connected to the Taxpayer's business activity of apartment leasing.

Example 2: An individual actively manages his own portfolio of stocks, bonds and other investment instruments on his own account. Interest, dividends, and capital gains from the investment activity exceed \$100,000 annually. The investor has no other business activity.

The Gross Receipts from the investment activity are not subject to the Business Privilege Tax because the investment activity does not qualify as a Business Activity, and the Taxpayer has no other Business Activity. A Business Activity must involve offering a service or sale to another. Self-management by an individual of his own investments is not a Business Activity.

Example 3: An educational institution is exempt from tax as a Purely Public Charity. Eighty percent (80%) of the institution's Gross receipts are from educational related sources, and 20% are from rental activities involving third parties. The institution also received \$50,000 in interest income during the year.

The institution is subject to the Business Privilege Tax on its non-exempt rental receipts. Also included in the tax base is \$10,000 of interest income on a pro-rated basis (\$50,000 * 20%).

Section 305. Professional Service Providers.

Any professional who Conducts Business in the Township, except as an employee of another, is subject to tax on his/her entire Gross Receipts regardless of the location of his client, except for receipts allocated or apportioned in accordance with Article II of these Regulations.

Example 1: Physicians - A physician with a Base of Operations in Radnor, who also renders services at a hospital or other location outside of Radnor, 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 Radnor, all Gross Receipts will be attributed to Radnor.

Example 2: Attorneys - An attorney-client relationship may be equivalent to an agent-principal relationship. Accordingly, an attorney may exclude that portion of the receipts from legal services that 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 306 (*Principal and Agent*).

Section 306. Principals and Agents.

In certain circumstances, a taxpayer that is a bona fide Agent of a principal may exclude the receipts of its principal which it collects and then pays on behalf of its principal. In order to qualify for such an exclusion, the agent must be acting in a bona fide agency relationship as described more fully below.

A. Factors to be Demonstrated in Establishing an Agency Relationship.

A person will be regarded as acting as an Agent for the purpose of collecting and remitting revenue, or for the purpose of receiving reimbursement of an expense made on behalf of a principal, only if all of the following conditions are met:

1. There is a written contract or agreement between such persons which clearly and legally establishes the relationship of principal and Agent.
2. The credit risk is assumed by the actual owner of the property or the person for whom the service is ultimately rendered.
3. The books and records of the Agent show the name of the principal on whose behalf the sale is made or the expense is incurred.
4. The books and records of the Agent show the amount of gross receipts and an itemization of commission due and/or other revenue or expenses.

B. Revenue Collections by Agent. An agent in a bona fide principal/agent relationship, who receives revenues for the account of his principal, is required to report only the amount of such revenues withheld by or paid to him as compensation for his services. An agent must also include in Gross Receipts any other receipts that are 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.

Example 1: A lawyer successfully represents a client in a personal injury lawsuit. The damage award to the client of \$100,000 is paid to his lawyer. The lawyer pays the client \$65,000 and retains \$35,000 as the legal fee. The lawyer seeks to exclude the \$65,000 for Business Privilege Tax purposes.

The exclusion is valid, because an agent-principal relationship exists between a lawyer and his client. As a party to a lawsuit, the client is a principal, and he is legally entitled to the damage award. The lawyer received the funds as agent for his client.

Example 2: A Real Estate Agent finds a buyer for a property and assists the

parties in completing an agreement of sale. The Agent is affiliated with a Real Estate Broker. At settlement, the Broker is paid a \$10,000 sales commission. The Broker pays \$5,000 to the Agent. The Broker seeks to exclude the \$5,000 claiming that the Agent is legally entitled to the \$5,000 commission, and the Broker was acting as an agent in collecting the fee on behalf of the Agent.

The Broker is not allowed to exclude the payment to the Agent. There is no agent-principal relationship between the Broker and Agent in connection with the collection and partial disbursement of the commission. The commission split is governed by a service agreement between the Broker and Agent. Under state law, only a licensed real estate broker may be directly paid a commission on the sale of real estate.

C. Dollar-for-Dollar Payments and Reimbursements. Money or property received by an Agent in a bona fide agency relationship, for transmittal to a third party on behalf of his principal or as a reimbursement of such a transmittal, may be excluded by the agent from 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.

Example: Taxpayer Allen (agent) is retainer by Paul (principal) to locate, purchase and arrange delivery of a specific work of art. The agreement provides for a 10% finders fee and the reimbursement of certain expenses. Allen finds, inspects, and purchases the artwork in Paul's name and has it delivered. Allen is paid by Paul as follows:

Cost of Artwork	\$50,000	(remitted to seller)
Finders Fee	\$5,000	
Delivery Charges	\$1,200	(paid to shipper/delivery company)
Allen's Travel Expenses	\$1,147	(actual airfare, lodging, etc.)
Total	\$60,697	

Allen must include the finder's fee and the reimbursed travel expenses (\$6,147) in Gross Receipts for Business Privilege Tax purposes. The cost of the artwork and the delivery charges are excluded, since these costs were paid to third parties by Allen on behalf of Paul. Allen's travel expenses were incurred and paid in connection with services rendered by Allen, but these expenses were not paid to third parties on behalf of Paul and therefore, are not excludable.

D. Sales Representative. A sales representative must include in Gross Receipts only his gross commission, provided he does not take title to the property being sold. Persons who take title to the property being sold will be treated as vendors-dealers under the Mercantile Tax Ordinance. No deduction is allowed for commissions paid to independent sales representatives or subagents.

E. Agent as Employee. Income earned as an employee is not subject to the Tax. Any agent asserting status as an employee must provide a copy of federal Form W-2 and/or such other documentation as the Finance Director may reasonably require to show employment. Receipts earned by independent agents are subject to the Tax even though such persons qualify as “statutory employees” for purposes of federal income taxation.

F. Advertising and Marketing Agencies. Advertising and marketing agencies must include all Gross Receipts from consulting services and/or the development and production of marketing programs and materials. No exclusion is allowed for production costs, such as printing. Gross Receipts representing the reimbursement of advertising costs incurred by the agency on behalf of its client (principal) may be excluded, provided that the reimbursement is dollar-for-dollar, and the reimbursement is separately stated at cost on the agency’s invoice.

Example 1: A vendor retains a marketing agency to develop an advertising concept, design a printed flyer, and arrange for the flyer to be distributed as an insert through a newspaper publisher. The marketing agency also subcontracts the printing of the flyer as part of the engagement. The contract between the vendor and the marketing firm clearly establishes a principal-agent relationship and provides for a fixed fee of \$30,000 for the design, printing and placement of 450,000 flyers, plus the advertising fee paid to the newspaper at cost. The agency incurs costs for subcontracted photography (\$1,250), printing (\$4,675), and placement fees paid to the newspaper (\$18,000). The marketing agency invoices the vendor \$48,000, showing the exact cost of the placement fee on the face of the invoice.

The marketing agency may exclude the \$18,000 dollar-for-dollar reimbursement of the advertising cost from Gross Receipts.

Example 2: Same facts as Example 1, except the marketing agency takes a 15% agency discount on the placement fee, paying the newspaper \$15,300, but charges the vendor \$48,000, showing the advertising cost as \$18,000 on the invoice.

No exclusion from Gross Receipts is allowed by the agency because the reimbursement was not dollar-for-dollar.

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

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

No deduction from Gross Receipts is allowed for commissions paid by real estate brokers to real estate agents.

If a real estate broker takes title to real property in his own name or in a straw name and sells the property, he is required to include the gross selling price of the property as taxable receipts, undiminished by the cost of the property or other expenses. However, if the sale qualifies as the sale of a capital asset under the Internal Revenue Code, the cost of the property may be deducted from Gross Receipts. See Section 304 of these Regulations.

Section 307. Persons Who Repair, Alter or Improve Tangible Personal Property.

Persons Conducting Business in Radnor Township, who repair, alter, or improve tangible personal property are required to include total customer charges in Gross Receipts without deduction of materials or costs of any kind. This provision applies regardless of whether or not there is a mark-up of the costs to the customer. Gross Receipts from work performed outside the Township are included in the tax base unless they may be excluded through allocation or apportionment as provided in Section 205 of these Regulations.

Section 308. Persons Erecting Buildings or Altering, Repairing, or Improving Real Property.

A contractor or subcontractor with a Base of Operations in Radnor Township, in the business of erecting buildings, or altering, repairing or improving real property, or any other construction, installation, or demolition work, shall include in Gross Receipts all receipts derived from the performance of such contract. In the case of a general contractor, prime contractor or subcontractor, no deduction or exclusion from Gross Receipts is allowed for amounts paid for land, materials, suppliers and/or subcontractors.

Contractors must include in Gross Receipts 100% of receipts from work in Pennsylvania that is connected to a Base of Operations in Radnor Township. Gross Receipts from work performed outside of Pennsylvania may be apportioned in accordance with Section 207 of these Regulations.

Section 309. Taxpayers Subject to Business Privilege Tax in other Pennsylvania Jurisdictions. In order to avoid the potential of double taxation, Taxpayers subject to a

business privilege gross receipts tax in another Pennsylvania jurisdiction may exclude gross receipts subject to tax in said other jurisdiction *provided* (1) the taxpayer is properly subject to tax in said other jurisdiction; (2) the taxpayer files returns in said jurisdiction; (3) the taxpayer pays the tax to said other jurisdiction when due; (4) the taxpayer properly attributes receipts to said other jurisdiction in a manner that fairly reflects the business activity in said other jurisdiction; and (5) taxpayer is not paying tax to said jurisdiction in order to avoid paying a higher rate of tax in Radnor Township.

Example: A service company located in Radnor Township tracks its revenue by job location. Thirty-five percent of total gross receipts result from work in other Pennsylvania municipalities where a business privilege tax is imposed. The Taxpayer does not file business privilege tax returns with any municipality other than Radnor. The Taxpayer claimed an exclusion for the receipts attributed to the other municipalities.

The Taxpayer's claimed exclusion is denied, because failure to file in the other municipalities avoids the potential of double taxation, and Radnor is entitled to tax all gross receipts managed, directed or controlled from a Base of Operation in the Township.

Section 310. Investment Limited Partnerships.

Investment limited partnerships are exempt if they meet ALL of the following conditions:

- A. The entity is organized as a limited partnership for the purpose of investing the funds of the limited partnership; and
- B. The only persons to whom the partnership offers the investment are duly constituted limited partners; and
- C. No service is offered by the limited partnership to anyone who is not a limited partner; and
- D. No service is rendered by the limited partnership to any separate legal entity.

Section 311. Building Operators.

Persons operating hotels, apartment houses, boarding houses, nursing homes, eldercare facilities, offices, or commercial real property are subject to the Business Privilege Tax. Gross Receipts include rents, management fees, expense reimbursements (including utilities, insurance and taxes), commissions, common area maintenance charges, furnishing of meals, and charges for any other services rendered, and receipts connected to Conducting Business in Radnor Township.

Persons holding real property who employ rental agents or a real estate management

company to assist with the rental and/or management of the property are also subject to the Tax. See Section 303 of these Regulations.

Persons with a Base of Operations in Radnor Township and operating buildings or other real property outside Radnor must allocate receipts in accordance with Section 205 of these Regulations.

Co-operatives and/or condominium associations may exclude from Gross Receipts membership dues received from unit owners so long as the receipts are not connected to services that could be in competition with a commercial business subject to the Business Privilege Tax.

Section 312. Intellectual Property.

The development of intellectual property, whether for sale, use or lease, is deemed to be a service and is subject to the Business Privilege Tax. Intellectual property includes, but is not limited to, works of art, inventions, software, information systems, manuscripts and other works of authors, and other property that can be protected by patent or copyright.

Section 313 – Professional Employer Organizations, Common Paymasters, Payroll Agents & Job Placement or Temporary Employment Agencies.

Providing human resource services to third parties or affiliated entities constitutes Business Activity and is subject to the Business Privilege Tax in accordance with Sections 203 and 205 of these Regulations.

Example 1. A professional employer organization (“PEO”) has its sole Business Base of Operations in Radnor. The PEO provides comprehensive human resource services to numerous clients located in Radnor and elsewhere in Southeastern Pennsylvania. Services include hiring, payroll processing, tax compliance, and the administration of workers compensation, employee benefits, and retirement plans. The PEO’s gross receipts consist of all direct costs for payroll, taxes, insurance, benefits and other human resource expenses incurred on behalf of the clients, plus a service fee.

The PEO is subject to the Business Privilege Tax on 100% of its gross receipts because all business activities are managed, controlled and directed from its sole business base of operations in Radnor. The PEO may qualify for a partial exclusion of certain gross receipts which are subject to a business privilege tax elsewhere in Pennsylvania as provided under Section 309 of these Regulations.

Example 2. A temporary employment agency (“Taxpayer”) is based in West Chester, Pennsylvania. Taxpayer recruits and screens workers, then makes these personnel available to clients, for work assignments at the clients’ locations in

Chester and Delaware Counties. The duration of work assignments ranges from a few days to several months. The workers are employees of the Taxpayer while on work assignments. During a tax year, Taxpayer placed four workers for assignments at clients' locations in Radnor. The aggregate duration of the work assignments in Radnor was 126 days.

Taxpayer is subject to Radnor's Business Privilege Tax because it conducted business in Radnor for more than 15 days in a calendar year. Taxpayer must file a return and report 100% of its gross receipts. Taxpayer may exclude all receipts other than those attributed to the Radnor work assignments.

Example 3. Petrol is a publically held corporation with a global presence in the petroleum industry. Petrol conducts business through 74 separate affiliated entities. Two operating affiliates share an office in Radnor. These affiliates properly file and pay the Radnor Business Privilege Tax. Petrol centralizes its domestic human resource functions through PetroPay, LP, a subsidiary which acts as a common paymaster for numerous affiliates. All workers at the Radnor offices of the operating affiliates are paid by PetroPay, LP. PetroPay, LP manages the human resource activities for all of Petrol's USA-based affiliates from regional offices in Nashville, St. Louis and Dallas. PetroPay, LP charges the cost of the payroll and all payroll-related costs to whichever affiliates utilized the work force. These costs are grossed up 15% to cover PetroPay, LP's costs to administer their activities. The charges for all costs including the gross-up amounts are recorded as payroll service revenue on PetroPay's income statement.

PetroPay, LP is subject to Radnor's Business Privilege Tax because it conducts business in Radnor by providing payroll services to the affiliates at the Radnor office. The tax base includes the payroll service revenue attributed to the Radnor-based workers.

ARTICLE IV
DECLARATION AND PAYMENT OF TAX

Section 400. Tax Returns.

Mercantile Tax Returns and Business Privilege Tax Returns are due annually on or before May 15th. The date a return is filed is determined by the postmark or the date received by the Township, whichever is earlier.

Each year's Tax Return has two components: (1) the current year's estimated tax and (2) the prior year's final tax. The current year's tax is estimated based on actual Gross Receipts from the immediate prior year. The prior year's final tax is a reconciliation using the actual Gross Receipts from the immediate prior year, less the estimated tax paid from the previous year's return.

Persons that have been in business less than a full year must calculate estimated Gross Receipts for the current year in accordance with Sections 260-25 and 260-44 of Radnor's Tax Ordinance. Copies of any and all sections of the Tax Code are available and may be obtained from the Township's Finance Department, as well as the Township's website www.radnor.com.

Section 401. Extension of Time for Filing Returns.

Radnor Township will recognize any valid Federal extension of time to file returns for Business Privilege and Mercantile Tax purposes so long as all Tax is paid to the Township by the original due date for the return(s), and a copy of the Federal extension is submitted. An extension of time to file a return is not an extension of time to pay Tax associated with the return. No extension of time to pay Tax is allowed. Extensions of time to file are valid for a maximum of 5 (five) months from the original filing due date.

Section 402. Filing to Be Complete.

Returns shall be completed in full and certified as true and correct by the Taxpayer. Taxpayers must attach copies of Federal tax returns, and/or schedules and worksheets, to support the Gross Receipts that are reported and to support any claimed exclusions or exemptions. Tax returns that omit proper supporting documentation are considered incomplete and not properly filed.

Section 403. Business Termination.

Any Taxpayer ceasing to do business in Radnor Township must file a final return within seven (7) days from the date the operations cease. The final return must show the actual Gross Receipts generated during the tax year in which the Taxpayer ceased doing business. At the time of filing the final return, the Taxpayer must pay any tax due. If the final return properly shows that excess tax has been paid due to estimated taxes previously paid, the Taxpayer shall be entitled to a refund of the excess tax paid.

Section 404. Accounting Methods (Cash or Accrual).

The 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.

Section 405. Adequate Records to be Maintained and Retained.

Every Taxpayer is required to keep such accounts and records as will enable the filing of true and accurate declarations and returns. Such accounts and records must clearly show gross receipts attributed or allocable to Radnor Township and sufficient detail to support any claimed exclusions or exemptions. Accounts and records are to be preserved for a period of NOT LESS THAN SIX (6) YEARS.

ARTICLE V
ADMINISTRATION AND ENFORCEMENT

Section 500. Disclosure Statement of Taxpayers' Rights and Obligations.

Taxpayers are entitled to receive a written explanation of their rights and obligations with regard to any audit, appeal, enforcement, refund or collection of local taxes by Radnor Township. The Disclosure Statement is attached hereto as Addendum "A." Additional copies are available to Taxpayers at no charge from the Finance Department.

Section 501. Verification of Records, Audits, Response Periods, Prior Year Returns.

The Tax Director, or authorized designee, is authorized to examine any of the books, papers, and records of any Person or business entity who the Tax Director reasonably believes has engaged in taxable activity within the Township, in order to verify the accuracy of any return made or, if no return has been made, to arrive at a reasonable assessment of the amount of tax, interest, and penalty due.

A. Issuance of Subpoenas to Compel Attendance and Production. The Tax Director is authorized to issue subpoenas to compel the attendance of persons deemed by the Tax Director to be necessary to examine as witnesses, and to compel the production of books, records, and papers relating to any person or business entity under examination.

B. Minimum Time Periods for Taxpayer Response. Taxpayers shall have at least 30 calendar days from the mailing date to respond to an initial request for information from the Township. The Tax Director shall notify any Taxpayer from whom information is initially requested of the procedures to obtain an extension of time in which to respond and shall grant reasonable extensions of time in which to respond for good cause shown. No action shall be taken against a Taxpayer for the tax year in question until the expiration of the response period, including extensions.

C. Inquiry as to Prior Year Returns. Except as provided below, an initial inquiry regarding a Taxpayer's compliance with the Tax 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 of such inquiry. If, after the initial request, the Tax Director determines that the Taxpayer failed to file a tax return, underreported income, or failed to pay a Tax for one or more of the tax periods covered by the initial request, subsequent requests for tax returns or supporting information may be made. Subsequent requests will be limited to two additional years (for a total of five years prior to the first date of initial inquiry), unless the Taxpayer filed no return or filed a fraudulent return, in which case the Township may request information for another additional year (for a total of six years prior to the first date of initial inquiry). Note, however, that in the event the Tax Director has sufficient information to indicate that a Taxpayer has failed to file a required return or pay tax which was due more than three years prior to the date of the notice, an initial request is not

limited to three years and may include as many as six years prior to the date of the initial inquiry.

Section 502. Procedures for the Conduct of Taxpayer Audits.

The following procedures shall be followed during the conduct of an audit of a Taxpayer's books and records:

A. Notice of Audit. The Taxpayer shall be notified in writing of a scheduled audit at least 30 days in advance. The notice of audit shall contain the following information:

1. The tax years subject to audit;
2. The date, place, and time for the audit to be conducted;
3. A description of the information, books and records to be produced; and
4. The notice as to the availability of the disclosure statement of the Taxpayer's rights and obligations.

B. Rescheduling Audit. The Taxpayer may request that the audit be rescheduled, provided that it is rescheduled within a reasonable time not exceeding 30 days.

C. Representation at Audit. The Taxpayer may have a representative present during the audit.

D. Use of Estimates. In the event that the information, books and records provided by the Taxpayer, are not sufficient for the purpose of verifying the correct amount of tax, the Tax Director is authorized to ascertain the amount of tax due through the use of estimates.

E. Audit Results. In the event a notice of assessment is issued as a result of an audit, the Taxpayer shall be provided with a copy of the auditor's report of findings and conclusions, including the calculation of any tax, interest and/or penalty found to be due.

Section 503. Examination of Tax Return; Notice of Assessment.

A. Examination of Return. The Tax Director shall examine every tax return as soon after filing as practical to determine the correct amount of tax according to the filing. If the Tax Director finds that the amount of tax shown on the tax return is less than the correct amount, the Tax Director shall notify the Taxpayer in writing of the amount of the underpayment (deficiency) assessed. A Notice of Assessment, whether as a result

of an examination of a return, as a result of an audit, or otherwise, shall be in writing and include:

1. The tax period or periods for which the underpayment is asserted.
2. The amount of the underpayment detailed by tax period.
3. The legal basis upon which the Township has relied to determine that an underpayment exists.
4. An itemization of the revisions made by the Township to a return filed by the Taxpayer that result in the determination that an underpayment exists.

If the Tax Director finds that the tax that has been paid by the Taxpayer is more than the correct amount, the Tax Director shall credit the overpayment against any taxes owed by the Taxpayer to the Township and shall refund the difference to the Taxpayer. Written notice of such action by the Tax Director shall be provided to the Taxpayer.

B. No Return Filed. If a Taxpayer fails to file any return of tax required to be filed, the Tax Director may estimate from any available information, the Taxpayer's Gross Receipts and the tax due thereon, and notify the Taxpayer in writing of the amount assessed against the Taxpayer as a deficiency.

Section 504. Petition for Reassessment.

Within 90 days of the date of a Notice of Assessment, the Taxpayer may make a request for reassessment by completing and submitting a Petition for Administrative Appeal which will be forwarded for decision to an administrative hearing officer appointed by the Township. See Section 512 (*Taxpayer's Administrative Appeals*).

Section 505. Refund of Overpayments; Interest on Overpayments.

A. Taxpayer Request for Refund of Overpayments. Any Taxpayer who has made an overpayment of tax to the Township may file a written request with the Tax Director for a refund or credit. A request for refund shall be made within three years of the due date for filing the tax return (as extended), or one year after actual payment of the tax, whichever is later. If no return (or report) is required, the request shall be made within three years after the due date for payment of the tax or within one year after actual payment of the tax, whichever is later. A request for refund shall not be considered complete and filed unless and until all information necessary for the Township to determine the merits of the request have been received by the Township.

1. **Overpayment on tax return.** 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.

2. **Refund request not a petition for appeal.** A request for refund under this section shall not be considered a Petition for Administrative Appeal and shall not preclude a Taxpayer from submitting a Petition for Administrative Appeal. See Section 512 (Taxpayer's Administrative Appeals).

3. **Refund after Notice of Assessment.** 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 Township within one year of the date of the payment.

B. Interest on Overpayments. All overpayments of tax due to the Township shall bear simple interest from the date of the overpayment until the date of resolution. (See 53 Pa. C.S. § 8426.)

1. **Rate of interest.** Interest on overpayments shall be allowed and paid at the same rate as the Commonwealth is required to pay pursuant to Section 806.1 of the Act of April 9, 1929 (P.L. 343, No.176), known as The Fiscal Code.

2. **75 Days before interest accrues.** 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 last date prescribed for filing the report of the tax liability or within 75 days after the date the return or report of the liability due is filed, whichever is later.

3. **No interest on Overpayments of Interest and Penalty.** Overpayments of interest or penalty shall not bear any interest.

C. 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.

Section 506. Abatement of Certain Interest and Penalty.

Pennsylvania law only allows the Township to abate penalty and interest in limited circumstances. Penalty and interest will not be abated unless authorized or required by state law.

A. Errors and Delays. In the case of any underpayment, the Tax Director 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. Provided, however, that no significant aspect of the error or delay is caused by the Taxpayer 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 Tax Director shall determine what constitutes timely performance of ministerial acts.

B. Erroneous Written Advice by Township. The Township 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 his or her 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 507. Installment Agreements.

If, in the sole opinion of the Tax Director, it will facilitate collection, the Township may enter into a written agreement with any Taxpayer under which the Taxpayer is allowed to satisfy liability for the Tax in installment payments. Except as provided below, any agreement entered into for installment payments shall remain in effect for the term of the agreement. Payments shall be applied first to tax principal, then to interest, then to penalties and finally to other fees and costs. Interest shall continue to accrue on the declining balance of the tax principal until the tax principal has been paid in full.

A. Termination of Installment Agreement. The Tax Director may terminate any installment agreement if: (a) information provided to the Township prior to the date of the agreement was inaccurate or incomplete, or (b) the Tax Director believes that collection of the tax under the agreement is in jeopardy.

B. Alteration of Installment Agreement. If the Tax Director finds that the financial condition of the Taxpayer has significantly changed, the Tax Director may alter, modify or terminate the agreement, but only if: (a) notice of the Tax Director's finding is provided to the Taxpayer no later than 30 days prior to the date of such action; and (b) the notice contains the reasons why the Tax Director believes a significant change has occurred.

C. Breach of Installment Agreement. The Tax Director may alter, modify or terminate an installment agreement if the Taxpayer fails to do any of the following:

1. Pay any installment at the time the installment is due under the agreement;

2. Pay any other tax liability at the time the liability is due;

3. Provide a financial condition update as requested by the Township.

D. Prepayment Permitted. Taxpayer may prepay, in whole or in part, any tax under any agreement with the Township.

Section 508. Payment Under Protest.

The Tax Director is authorized to accept “payment under protest” of the amount of tax in order for the Taxpayer to avoid liability for additional interest, penalties, and fines. Further, the Tax Director may accept partial payment of any amount due without waiver of the Township’s right to collect the balance due.

Section 509. Violations, Interest on Underpayment and Penalties.

Failure to comply with the provisions of the Tax Ordinance or these Regulations may result in sanctions, including:

A. Interest on underpayment. If any amount of tax imposed by the Tax Ordinance is not paid on or before the last date prescribed for payment, interest on such amount at the rate of 1% per month, or fraction of a month, shall be payable for the period from such last date to the date such amount is paid.

B. Penalty. If any amount of tax imposed by the Tax Ordinance is not paid on or before the last date prescribed for payment, there shall be added to the tax for the taxable year an amount equal to 10% of the amount of the tax due.

C. Fine. Any Taxpayer (including any officer, agent, or employee thereof) who knowingly fails to obtain a license, fails to remit any tax due, fails to file complete and correct reports or returns when due, or makes a false or fraudulent return, may be subjected to a fine of \$600.00 and costs of enforcement for each offense, and, in default of payment of such fine and costs, to imprisonment for a term not exceeding 30 days.

Section 510. Confidential Nature of Tax Information.

Any information learned by the Tax Director or any official, agent or employee of the Township as a result of any audit, return, report, investigation, hearing or verification required or authorized by the Tax Director shall be confidential tax information.

Section 511. Dishonored Checks.

If any check received in payment of Taxes is returned unpaid by the bank, there shall be added to the Tax due the sum charged for dishonored checks established by the Township.

Section 512. Taxpayer’s Administrative Appeals.

In order to appeal any assessment, determination or denial of refund of tax, the Taxpayer must file a Petition for Administrative Appeal with the Tax Director. All Petitions shall be mailed or delivered to: Tax Director, Radnor Township, P.O. Box 155, Wayne, PA 19087.

A. Petitions for Administrative Appeal. Petitions shall be in writing on a form substantially similar to that attached hereto as Addendum "B." A Petition is timely filed if the letter transmitting the Petition is postmarked by the United States Postal Service on or before the final day on which the Petition is required to be filed. If hand delivered, a Petition will be deemed to be filed on the date received in the Office of the Department of Finance at the address shown above.

B. Contents of Petition for Administrative Appeal. Petitions shall: (1) state the name, address and telephone number of the Taxpayer and Taxpayer's authorized representative (if any), (2) identify the tax and tax period(s) to which the Petition pertains, (3) state the amount of tax appealed and the legal basis for the appeal (i.e., state how or why the assessment is incorrect; or why a refund request should have been granted), (4) provide copies of all supporting documentation and calculations, (5) state whether an oral hearing is requested, and (6) certify under penalty of perjury that the facts in the Petition are true and correct and that the Petition is not filed for purposes of delay.

C. Deadlines for Filing Petition for Administrative Appeal.

1. Refund Petitions shall be filed within three years after the due date for filing the report as extended, or one year after actual payment of an eligible tax, whichever is later. If no report is required, the petition shall be filed within three years after the due date for payment of the tax or within one year after actual payment, whichever is later.

2. Petitions for Reassessment of tax shall be filed within 90 days of the date of the assessment notice.

D. Administrative Appeals Process and Procedure. Upon receipt of a timely filed Petition for Administrative Appeal, the Tax Director will: (a) promptly schedule a hearing if a hearing has been requested by the Taxpayer (if a hearing is not requested, the Petition will be determined on the record before the hearing officer), (b) provide the Taxpayer with a Notice of Hearing (setting forth the time, date, and location of the hearing), and (c) forward the Taxpayer's Petition to an administrative hearing officer appointed by the Township. Unless the date of the hearing is agreed upon by all parties, the Tax Director shall give at least seven days written notice of the hearing to all parties.

1. **Hearings.** Hearings will be held at the Township Municipal Building, 301 Iven Avenue, Wayne, Pennsylvania, unless otherwise directed by the hearing officer. Hearings will be informal in nature and technical rules of evidence will not be applicable.

(a) Representation. Taxpayers may appear before the

administrative hearing officer with or without benefit of representation. Any person seeking to represent a Taxpayer at the hearing must first be so authorized by the Taxpayer in writing. A Taxpayer's representative need not be professionally trained, but should be familiar with the Tax Ordinance, these Regulations and the facts of the case.

(b) Presentation of Evidence. Evidence may be submitted and considered that possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Testimony shall be under oath or affirmation, administered by the hearing officer. Copies or photographs of all records and other exhibits shall be provided to all parties and to the hearing officer. Any party may have a recording, or a transcript made of the hearing at the party's expense.

(c) Failure to Appear. The hearing may proceed in the absence of any party who fails to appear, after notice, but the hearing officer's Decision shall not be based solely upon the failure of a party to appear.

2. **Hearing Officer's Decision.** After the conclusion of the hearing, the hearing officer shall issue a written Decision to the parties. The Decision shall be issued within 60 days of the filing of the Petition, unless both parties waive the 60-day deadline. The Decision is timely issued so long as it is mailed, faxed, emailed or otherwise transmitted to the parties on or before the deadline.

Section 513. Judicial Appeal.

Any person aggrieved by a decision of the administrative hearing officer who has a direct interest in the Decision has the right to appeal to the Court of Common Pleas of Delaware County, Pennsylvania within 30 days.

Section 514. Construction.

If any sentence, clause, or section or part of these Regulations is, for any reason, found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, or sections or parts of these Regulations. These Regulations would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

END

ADDENDUM "A"

**RADNOR TOWNSHIP
LOCAL TAXPAYERS BILL OF RIGHTS
DISCLOSURE STATEMENT**

It is the obligation of all Taxpayers to file all local tax returns voluntarily and pay all local taxes to which they are subject. However, when the duly appointed or elected tax collector determines that a required return has not been filed, or a tax liability has not been paid, the Local Taxpayers Bill of Rights grants certain legal rights to Taxpayers, and imposes obligations on taxing authorities to ensure that equity and fairness guide local governments in the collection of taxes. In addition, the Local Taxpayers Bill of Rights provides the local government entity with certain legal methods to enforce Taxpayer obligations. This Disclosure Statement sets forth your rights as a Taxpayer in connection with any audit, examination, appeal or refund claim of taxes for the Radnor Township and any enforcement or collection actions on behalf of the Township.

To obtain forms and/or more information, please contact:

Radnor Township
Department of Finance
301 Iven Avenue
Wayne, PA 19087
(610) 688-5600

Applicability of Disclosure Statement

This Disclosure Statement applies to all eligible taxes levied by the Township. For this purpose, eligible taxes do not include real property taxes. The specific eligible taxes levied by Radnor Township are:

- (1) Amusement Tax
- (2) Mercantile Tax
- (3) Business Privilege Tax
- (4) Amusement Devices Tax
- (5) Realty Transfer Tax
- (6) Local Services Tax

Unless expressly provided in the Local Taxpayers Bill of Rights, the failure of any person acting on behalf of the Township to comply with any provisions of this Disclosure Statement, related Regulations, or the Local Taxpayers Bill of Rights, will not excuse the Taxpayer from paying the taxes owed.

Audits or Examinations

If we contact you about your tax return or payment of any eligible taxes, we will send you a letter with either a request for more information or a reason why we believe a change to your return or taxes may be needed. If we request information, you will have at least 30 calendar days from the date of the mailing to respond. Reasonable extensions of time will be granted upon application for good cause. We will notify you of the procedures to obtain an extension with our initial request for tax information. In general, our initial inquiry 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 our notice. However, if you have failed to file returns in any of the six years prior to the mailing date of our notice, or if we have sufficient information to indicate that taxes are owed and have not been paid in that period, we may initially request information for tax returns required to be filed or taxes required to be paid six years prior to the mailing date of our notice.

If you give us the requested information or provide an explanation, we may or may not agree with you. If we do not agree with you, we will explain in writing our reasons for asserting that you owe us tax (which we call an “assessment” or “underpayment”). Our explanation will include: (1) the tax period or periods for which the underpayment is asserted; (2) the amount of the underpayment detailed by tax period; (3) the legal basis upon which we have relied to determine that an underpayment exists; and (4) an itemization of the revisions made by us to your return or report that results in our decision that an underpayment exists.

We may require you to provide copies of Federal and Pennsylvania tax returns when that information is reasonably necessary for the enforcement or collection of tax, and the information is not reasonably available from other sources or the Pennsylvania Department of Revenue. For purposes of Business Privilege and Mercantile Taxes, you will be required to provide your federal and or state tax returns because this information is not otherwise available to the Township.

Appeals of Decisions

If we notify you that you owe more tax (what we call an “assessment”) and you do not agree with our decision, you may appeal or seek review by filing a Petition for Administrative Appeal within 90 days of the date of the mailing of the assessment notice. The Petition must either be delivered to and received by the Township Finance Director, or postmarked by the U.S. Postal Service, within this 90-day period.

Your Petition must explain the legal basis for your position and include all supporting documents. A form for submission of a Petition is available from the Township. After your Petition is received, we will notify you of your hearing date, if you requested a hearing. A Decision by an administrative hearing officer, who has been appointed by the Township, will be made within 60 days of the date your complete and accurate Petition is received. If you do not agree with the Decision of the hearing officer, you may appeal to the Court of Common Pleas of Delaware County.

Refunds

You may file a claim for refund (“Refund Claim”) if you think you paid too much tax (what we call an “overpayment”). You must file the Refund Claim within three years of the due date for filing the return as extended, or one year after actual payment of the tax, whichever is later. If no report or local tax return is required for the tax, the Refund Claim must be made within three years after the due date for payment of the tax or within one year after actual payment of the tax, whichever is later. If your Refund Claim relates to amounts paid as a result of a notice asserting an underpayment of tax, your request for Refund Claim must be filed within one year of the date of payment. Refund Claims must be made on forms prescribed by us and must include supporting documentation. You may obtain a form for your Refund Claim by contacting the Township. If you file a tax return showing an overpayment of tax, we will treat that as a request for cash refund unless you indicate otherwise. If your Refund Claim is denied, you may file a Petition contesting the denial of the refund. A Petition must be filed within the same time limits that apply for a Refund Claim. Alternatively, you may file a Petition for Administrative Appeal without first filing a Refund Claim. If you file a Petition and request a hearing, a hearing date will be set after your Petition is received. A Decision by the hearing officer will be made within 60 days of the date your complete and accurate petition is received.

Enforcement Procedures

Once it has been determined that you owe a tax, we will take action we are legally permitted to take to enforce our claim. Such action may include obtaining additional information from you, auditing your records, entering into a settlement with you of the disputed amount of the tax, or filing a collection action and obtaining judgments and/or liens on your property, levies, and seizure and sale of your property in appropriate circumstances. We may enter into a written agreement with you for payment of the tax in installments if we believe that such an agreement will facilitate collection. We impose interest and applicable penalties on the tax you owe and may also seek a court to impose fines for noncompliance.

Tax Information Confidentiality

Information gained by us, or by the hearing officer, or any person acting on our behalf, as a result of any audit, return, report, investigation, hearing, appeal or verification, shall be kept confidential. However, confidentiality will not preclude disclosure for official

purposes, whether in connection with legal proceedings or otherwise, and it will not preclude disclosure to the extent required by applicable law.

Taxpayer Complaints

If you have a complaint about any action relating to the Township's taxes, please contact the Township Finance Director, at 301 Iven Ave., Wayne, PA 19087. The Township's main telephone number is (610) 688-5600.

ADDENDUM "B"

For administrative use only: Date Petition Received: _____ Manner in which received: _____ Finance Department Initials: _____
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**RADNOR TOWNSHIP
PETITION FOR ADMINISTRATIVE APPEAL**

This form is to be used by Taxpayers to appeal an assessment of tax (other than real property taxes) levied by Radnor Township (the "Township") and/or to appeal a denial of a claim for refund of taxes previously paid. Please type or print legibly.

IMPORTANT INSTRUCTIONS: You must attach a copy of the Notice of Assessment being appealed, or if seeking a refund, proof that such tax was paid. Petitions appealing a Notice of Assessment must be received by the Township within 90 days of the date of the Notice of Assessment. Petitions for refunds must be received by the Township no later than: (a) three years of the due date for filing the tax return; or (b) one year after the actual payment of the tax (whichever is later). Petitions filed by mail will be considered filed as of the postmark date. Answer all questions on this form as fully as possible. If an item is not applicable, enter "N/A." Mail or hand-deliver the Petition to: Director of Finance, Radnor Township, P.O. Box 155, Wayne, PA 19807. For additional information call: (610) 688-5600.

SECTION A: TAXPAYER INFORMATION

Proper Legal Name of Business

Trading as (if applicable)

Mailing Address

_____ City	_____ State	_____ Zip Code
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Email Address

Physical Street Address in Radnor Township – if different from above

_____ City	_____ State	_____ Zip Code
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Taxpayer Identification Number: _____

My Representative is a/an: _____ Attorney
_____ CPA
_____ Other Tax Advisor

Firm Name: _____

Street/Mailing Address _____

City State Zip Code

Phone Number: _____ Fax Number: _____

Email Address: _____

I would like copies of all correspondence sent to my representative.

SECTION D: HEARING REQUEST

Indicate whether you request a hearing. If no choice is indicated, a hearing will not be scheduled, and the matter will be determined based on the Petition and Record.

_____ I request a hearing on this matter. (Check if Taxpayer desires a hearing in person).

_____ I do not request a hearing on this matter. (If a hearing is not requested, the Decision in this matter will be based on the information contained in this Petition and on the Record provided by the Township. No hearing will be scheduled).

