

**ARTICLE 333: MERCANTILE LICENSE TAX**

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**Editor's note:**

*Act 160 of 1967 removes from Act 511, the Local Tax Enabling Act, the provisions of §§ 4, 5 and 7 of the Act relating to annual re-enactment of taxes and specified that every tax levied under the provisions of the Act would continue in force on a calendar or fiscal year basis without annual re-enactment unless the rate of the tax was subsequently changed.*

Section

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**Cross-reference:**

*Business privilege tax exemptions, see Part Three, § 349.13*

**Statutory reference:**

*Power to tax, see 53 P.S. §§ 6924.101 et seq.)*

**§ 333.01 TITLE.**

This article shall be known and cited as the "Mercantile License Tax Ordinance".

(Ord. 4725, passed 12-18-1975)

**§ 333.02 DEFINITIONS.**

(a) As used in this article, the following words and phrases, unless the context clearly indicates a different meaning,

shall have the meanings set forth below.

**ACTUAL PLACE OF BUSINESS or PLACE OF BUSINESS.** Any location where a business is conducted for a period in excess of five days.

**BUSINESS TRANSACTIONS WITHIN THE CITY.** Receipts from any transaction shall be considered as business taking place within the city if any event forming a part of the transaction occurs within the city.

**CITY.** The City of Williamsport.

**GROSS RECEIPTS.**

(A) Cash, credits, property of any kind or nature, received in or allocable or attributable to the city from any retail dealer, retail vendor, wholesale dealer or wholesale vendor 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 or merchandise, or services rendered, or commercial or business transaction had within the city without deduction therefrom on account of the cost of property sold, materials used, labor, service or other cost, interest or discount paid, or any other expense.

(B) **GROSS RECEIPTS** excludes:

(1) The amount of any allowance made for goods, wares or merchandise taken by a dealer as a trade-in or as part payment for other goods, wares and merchandise in the usual and ordinary course of his or her business;

(2) Receipts by dealers from sales to other dealers in the same line where the dealer transfers title or possession at the same price for which he or she acquired the goods, wares or merchandise;

(3) Receipts or that portion thereof attributable to interstate or foreign commerce or to an office or place of business regularly maintained by the taxpayer, outside the limits of the city and not for the purpose of evading payment of this tax and those receipts which the city is prohibited from taxing by law. Such receipts shall be segregated as set forth in § 333.06; and

(4) The first \$1,000 of such receipts.

**LICENSE TAX OFFICER.** The person authorized and empowered by Council to collect the taxes imposed hereby and to enforce the provisions of this article.

**LICENSE YEAR.** The twelve month period beginning January 1 of the filing year, except that any person who regularly keeps books on a fiscal year basis and files Federal tax returns on such fiscal year basis, may use that period as the taxable year.

**PERSON.** Every natural person, partnership, association, corporation, estate, trust or other form of organization.

**RESTAURANT or OTHER PLACE WHERE FOOD, DURING OR REFRESHMENTS ARE SOLD.** Does not include those facilities of non-profit corporations and/or beneficial associations which are deemed or considered to be services under either statutory or case law, or any other such facility which is exempt by law.

**RETAIL DEALER or RETAIL VENDOR.** Any person who is a dealer in or vendor of goods or merchandise other than a wholesale dealer, wholesale vendor or broker.

**TEMPORARY, SEASONAL OR ITINERANT BUSINESS.** Any business that is conducted at one location for less than 60 consecutive calendar days.

**TREASURER.** The Treasurer of the city.

**WHOLESALE DEALER or WHOLESALE VENDOR.** A person who sells goods, wares or merchandise for resale to dealers in or vendors of goods, wares or merchandise.

(b) The terms defined herein ("person", "retailer dealer or retail vendor" and "wholesale dealer or wholesale vendor") shall not include the following: persons subject to the business privilege tax (Art. 349) on its entire gross receipts or to the extent of that portion of its gross receipts which may be subject to the business privilege tax; a wage earner; agencies or political subdivisions of the government of the United States or the Commonwealth of Pennsylvania; non-profit corporations or associations not conducting any regular or established business competing commercially with any other person subject to the tax hereby imposed; any public utility; or any person disposing of merchandise of merchandise of his own growth, production or manufacture.

(Ord. 4725, passed 12-18-1975; Ord. 4873, approved 12-23-1977; Ord. 6337, approved 11-21-2017)

### **§ 333.03 AUTHORITY TO LEVY AND COLLECT TAX.**

The city hereby imposes an annual mercantile license tax for the city's fiscal year commencing 1-1-1978 and ending 12-31-1978, and for each fiscal year thereafter without annual re-enactment. The tax shall be calculated on a calendar or fiscal year basis in the manner and at the rates hereinafter set forth. Except as herein provided, such tax shall be in addition to any other tax levied and collected under any existing ordinances. This article is enacted under the authority of the Local Tax Enabling Act, 53 P.S. §§ 6924.101 et seq.

(Ord. 4873, approved 12-23-1977)

### **§ 333.04 IMPOSITION AND RATES OF TAX.**

(a) *Imposition of tax; continuance.* For the license year beginning 1-1-1978, and each license year thereafter, the city hereby imposes an annual mercantile license tax and registration requirement in the manner and at the fees and rates hereinafter set forth. Such tax shall continue in force on a license year basis, without annual re-enactment, unless the rate of the tax is subsequently changed.

(b) *Registration required; application.* Each person desiring to continue to engage in or hereafter to begin to engage in business as a retail dealer in or retail vendor of goods, wares or merchandise, or in the business of conducting a restaurant or other place where food, drink or refreshments are sold shall, on or before January 1 of the license year, or prior to commencing business in the license year, procure a mercantile license for his or her place of business, or if more than one, for each of his or her places of business in the city, from the Treasurer, who shall issue the same upon payment of a fee of \$10 for each license. A separate license shall be required for each type of business conducted on the same premises. Such license shall be conspicuously posted at each place of business of every person at all times.

(c) *Rate of tax.*

(1) Wholesale vendors or dealers in goods, wares or merchandise shall be taxed at the rate of five-tenths of one mill on each dollar of the gross receipts of the business.

(2) Retail vendors or dealers in goods, wares and merchandise, all persons engaged in conducting restaurants or other places where foods, during or refreshments are sold, whether or not the same are incidental to some other business or occupation shall be taxed at the rate of seven and one-half tenths of one mill on each dollar of the gross receipts of the business.

(3) Wholesale and retail vendors or dealers in goods, wares and merchandise shall be taxed at the rate of five-tenths of one mill on each dollar of the gross receipts of the wholesales business and at the rate of seven and one-half tenths of one mill on each dollar of the gross receipts of the retail business.

(Ord. 4725, passed 12-18-1975; Ord. 4873, approved 12-23-1977; Ord. 5862, approved 12-28-2001; Ord. 6337, approved 11-21-2017)

### **§ 333.05 SEVERAL BUSINESS LOCATIONS.**

If any person conducts a business at more than one location in the city, then for the purpose of this article, the business conducted at each location shall be considered and assessed as a separate and independent business, and shall be subject to registration and mercantile tax as herein provided.

(Ord. 4725, passed 12-18-1975)

### **§ 333.06 DETERMINATION OF GROSS RECEIPT.**

(a) Every person subject to the tax hereby imposed who has commenced his or her business at least one full year prior to the beginning of the license year, shall determine his or her gross receipts for the license year from his or her actual gross receipts for the preceding year, or for that last fully completed fiscal year.

(b) Every person subject to the payment of the tax hereby imposed who has commenced or who commences his or her business less than one full year prior to the beginning of any license year, shall compute his or her annual gross receipt for such license year by dividing his or her actual gross receipt by the number of months in business and

multiplying by 12.

(c) Every person subject to the tax hereby imposed who commences his or her business subsequent to the beginning of the license year shall determine his or her gross receipts for the license year by multiplying his or her actual gross receipts for the first month he engages in business by the number of months he or she engages in business for the license year.

(d) Where a receipt in its entirety cannot be subjected to the tax imposed by this article by reason of the provisions of the Constitution of the United States, or any other provisions of law, including the exemptions with this article, the License Tax Officer shall establish rules and regulations and methods of allocation and evaluation so that only that part of such receipt which is properly attributable and allocable to the doing of business in the city shall be taxed hereunder. The License Tax Officer may make such allocation with due regard to the nature of the business concerned on the basis of millage division of the receipt according to the number of jurisdictions in which it may be taxed, the ratio of the value of the property or assets of the taxpayer owned and situated in the city to the total property or assets of the taxpayer wherever owned and situated, or any other method or methods of calculation other than the foregoing, calculated to effect a fair and proper allocation. The rules and regulations established shall be in writing and a copy filed with the City Clerk.

(e) Every person who ceases to carry on a business during any tax year after having paid the mercantile license tax for the entire year shall, upon making proper application to the License Tax Officer, be entitled to receive a refund of the pro rata amount of the tax paid based upon the period of time he or she was not in business during the license year. In the event that a person who discontinues business during any tax year does so before payment of his or her tax becomes due for such tax year, he or she shall be permitted to apportion his or her tax for such tax year and shall pay an amount to be computed by multiplying his or her gross receipts for the preceding full calendar year by a fraction whose numerator shall be the number of months such person was in business during the tax year and whose denominator shall be 12.

(f) Every person subject to the tax hereby imposed who engages in a business that is temporary, seasonal or itinerant in nature, shall determine his or her gross receipts for the license year from his or her actual gross receipts for the license year.

(Ord. 4725, passed 12-18-1975; Ord. 4873, approved 12-23-1977; Ord. 6337, approved 11-21-2017)

### **§ 333.07 RETURNS.**

(a) Every return shall be made upon a form prescribed by the License Tax Officer. Every person making a return shall certify the correctness thereof.

(b) Every person subject to the tax hereby imposed who had commenced his or her business at least one full year prior to the beginning of the license year, shall, on or before April 15 of the license year, file with the License Tax Officer a return setting forth his or her name, his or her business and business address and such other information as may be required by the License Tax Officer in order to determine his or her actual gross receipts for the preceding calendar or fiscal year and the amount of the tax due.

(c) Every person subject to the tax hereby imposed who had commenced his or her business less than one full year prior to the beginning of the license year shall, on or before April 15 of the license year, file with the License Tax Officer a return setting forth his or her name, his or her business address and such other information as may be required by the License Tax Officer in order to determine his or her actual gross receipts for the preceding calendar or fiscal year and the amount of tax due.

(d) Every person subject to the tax hereby imposed who commences business subsequent to the beginning of the license year shall, within 40 days from the date of commencing such business, file a return with the License Tax Officer setting forth his or her name, his or her business and business address and such other information as may be required by the License Tax Officer in order to determine his or her actual gross receipt for his or her first month of business and the amount of tax due.

(e) Every person subject to the tax hereby imposed who engages in a business that is temporary, seasonal or itinerant in nature shall, within seven days from the date he or she completes such business, file with the License Tax Officer a return setting forth his or her name, his or her business and business address and such other information as may be required by the License Tax Officer in order to determine his or her actual gross receipt for the period he or she engages in business during the license year and the amount of the tax due.

(Ord. 4725, passed 12-18-1975)

### **§ 333.08 PAYMENTS.**

(a) At the time of filing a return, the person making the same shall pay the amount of tax shown as due thereof to the License Tax Officer.

(b) All taxes, interest and penalties imposed under the provisions of this article shall be payable to the License Tax Officer who, upon payment of the tax imposed together with any interest and penalties due thereon, shall give to the person paying the same a receipt therefor.

(Ord. 4873, approved 12-23-1977)

### **§ 333.09 ASSESSMENT OF TAX; ENFORCEMENT; APPEALS.**

(a) The License Tax Officer is hereby charged with the administration and enforcement of the provisions of this article and is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this article. Such rules and regulations shall be in writing and a copy shall be filed with the City Clerk.

(b) If the License Tax Officer is not satisfied with the return made by any taxpayer or supposed taxpayer, or if any taxpayer or supposed taxpayer neglects or refuses to file any return required by this article, the License Tax Officer is hereby authorized and empowered to determine or redetermine the tax due by such person based upon the facts contained in the return or upon any information within his or her possession or that comes into his or her possession, and for this purpose he or she or his or her representative or any duly authorized tax examiner of the city is authorized to examine any books, papers and records of any such person in order to verify the accuracy of any return or payment made under the provisions hereof, or to ascertain whether the taxes imposed by this article have been paid; and every such person is hereby required to submit his or her books, papers and records to such examination upon request of the License Tax Officer and to give him or her or his or her representative or any duly authorized tax examiner of the city the means, facilities and opportunity for such examination. The License Tax Officer is hereby authorized and directed to make and keep such records and prepare such forms as may be necessary or convenient to carry this article into effect and may, in his or her discretion, require reasonable deposits to be made by licensees who engage in a business that is temporary, seasonal or itinerant by its nature to secure payment of the tax imposed by this article to the city.

(c) If any taxpayer or supposed taxpayer neglects or refuses to file any return required by this article, or to pay the tax imposed by this article, or if any person pays less than the correct amount of the tax due from him or her, the License Tax Officer may estimate or determine the tax due by such person and the amount of interest and penalties thereon.

(d) Any taxpayer aggrieved by any determination, estimate or redetermination by the License Tax Officer may appeal such decision within 90 days by filing a Petition for Review by the Local Tax Hearing Officer.

(Ord. 4725, passed 12-18-1975; Ord. 4873, approved 12-23-1977; Ord. 6337, approved 11-21-2017)

### **§ 333.10 LOCAL TAX HEARING OFFICER.**

Council shall from time to time appoint by ordinance a Local Tax Hearing Officer to hear appeals of mercantile license tax assessments and determinations and make decisions on said appeals, in accordance with the Local Taxpayer Bill of Rights Act, 53 Pa.C.S. § 8430. Council shall also appoint an Alternate Local Tax Hearing Officer to serve in the event the Local Tax Hearing Officer has a conflict of interest or is otherwise unable to serve as hearing officer in any given matter. The Hearing Officer and the Alternate Hearing Officer shall be individuals with substantial experience in the subject matter of local business privilege and mercantile license taxes.

(Ord. 6337, approved 11-21-2017)

### **§ 333.11 SUITS FOR TAX; INTEREST AND PENALTIES.**

(a) All taxes, interest and penalties due and unpaid under this article, shall be recoverable by the City Solicitor as other debts due the city are now by law recoverable.

(b) All taxes due under this article shall bear interest at the rate of 0.5% per month, or fractional part thereof, from the day they are due and payable until paid.

(c) If any taxpayer neglects or refuses to make any return or payment as herein required, a penalty of 10% of the amount of tax due shall be added by the License Tax Officer and collected by him or her.

(d) Where enforcement action is taken in connection with the recovery of any tax, the taxpayer shall, in addition, be responsible and liable for collection costs, including but not limited to attorney fees.

(Ord. 4725, passed 12-18-1975; Ord. 4873, approved 12-23-1977; Ord. 6337, approved 11-21-2017)

### **§ 333.12 DISPOSITION OF TAX.**

All taxes, interest and penalties collected or received under the provisions of this article shall be paid into the City Treasury for the use and benefit of the city.

(Ord. 4725, passed 12-18-1975; Ord. 4873, approved 12-23-1977)

### **§ 333.13 PROHIBITED LEVIES.**

Nothing contained in this article shall be construed to empower the city to levy and collect the taxes hereby imposed on any person or any business, or any portion of any business, trade, occupation or profession not within the taxing power of the city under the Constitution of the United States and the Constitution and the laws of the Commonwealth of Pennsylvania.

(Ord. 4725, passed 12-18-1975; Ord. 4873, approved 12-23-1977)

### **§ 333.14 SEVERABILITY.**

If any provision of this article, or the application thereof to any person or circumstances is held invalid, the remainder of this article and the application of such provision to other persons or circumstances shall not be affected thereby and, to this end, the provisions of this article are hereby declared to be severable.

(Ord. 4725, passed 12-18-1975; Ord. 4873, approved 12-23-1977)

### **§ 333.15 EFFECTIVE DATE.**

The provisions of the tax levied herein shall apply to the levy, assessment and collection of mercantile license taxes in the year 1978 and thereafter. Nothing herein contained shall be taken or deemed to preclude, impair or affect the levy, assessment and collection of taxes for or during the years prior to 1978 under, and in accordance with, the provisions of the article in effect during such years.

(Ord. 4725, passed 12-18-1975; Ord. 4873, approved 12-23-1977)

### **§ 333.16 RETURNS TO BE CONFIDENTIAL.**

Any information gained by the License Tax Officer or any other official or agent of the city as a result of any returns, investigations or verifications required or authorized by this article shall be confidential, except for official purposes, and except in accordance with proper judicial order, or as otherwise provided by law. Any disclosure of any such information, contrary to the provisions of this section, shall constitute a violation of this article.

(Ord. 4725, passed 12-18-1975; Ord. 4873, approved 12-23-1977)

### **§ 333.17 PAYMENT UNDER PROTEST.**

The License Tax Officer is hereby authorized to accept payment under protest of the amount of mercantile tax claimed by the city in any case where the taxpayer disputes the validity or amount of the city's claim for tax. If it is thereafter determined that the city has been overpaid, the amount of the overpayment shall be refunded to the taxpayer.

(Ord. 4873, approved 12-23-1977; Ord. 6337, approved 11-21-2017)

**§ 333.99 PENALTY.**

Any person who fails, neglects, or refuses to comply with any provision of this article, or of any regulation or requirement made pursuant thereto and authorized thereby, or who refuses to permit the License Tax Officer or any agent designated by him or her to examine books, records, and papers, or who knowingly makes any incomplete, false or fraudulent return, or attempts to do anything whatsoever to avoid the full disclosure of the amount of his or her gross receipts in order to avoid the payment of the whole or any part of the tax imposed by this article shall be fined not more than \$300 for each offense or imprisoned not more than 90 days, or both. The fine imposed by this section shall be in addition to any other penalty imposed by any other section of this article. For purposes of this section, the term **PERSON** means the taxpayer, and/or any partner in the event taxpayer is a partnership, any member in the event the taxpayer is an association, any officer if the taxpayer is an incorporated or unincorporated association, or any other person responsible for filing returns or providing or maintaining financial information necessary for compliance with this article. Further, the License Tax Officer may proceed by civil means, in which case the fine shall be a civil fine payable to the city, or by non-traffic citation.

(Ord. 4725, passed 12-18-1975; Ord. 6337, approved 11-21-2017)