

BUSINESS PRIVILEGE TAX REGULATIONS

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ARTICLE I
GENERAL PROVISIONS

Section 101. Regulatory Intent

Pursuant to Article 333.05(B) of the City of Allentown’s Business Regulation and Taxation Code, under the direction of the Mayor, and subject to his approval, the Director of Finance’s duly appointed deputies are empowered to adopt and promulgate rules and regulations relating to the assessment of Business Privilege Tax on the privilege of doing business in the City. The City is granted the authority to levy Business Privilege Tax on the above referenced subject by the Local Tax Enabling Act, 53 P.S. §6924.301.1(a.1).

The City last issued Business Privilege Tax regulations on April 6, 1996. The City adopts these current regulations to incorporate developments arising in authority which includes, but is not limited to:

Act of May 5, 1998, No. 50, 53 Pa. C.S. §§ 8421-8438 (“The Local Taxpayer’s Bill of Rights Act”), *V.L. Rendina Inc. v. City of Harrisburg*, 938 A.2d 988 (Pa. 2007), Act of May 6, 2014, P.L. 642, No. 42, 53 P.S. §6924.301.1(a.1) (“Act 42 of 2014”), *Glatfelter Pulpwood Co. v. Commonwealth*, 61 A.3d 933 (Pa. 2013), *City of Philadelphia v. Lerner*, 151 A.3d 1020, 1024 (Pa. 2016), and *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018).

The revised Business Privilege Tax Regulations shall be effective on January 1, 2021 and apply to all business transactions ensuing in the City on January 1, 2021 and thereafter. The prior rules and regulations shall be effective for all disputes of Business Privilege Tax liability accrued by virtue of doing business in the City between April 10, 1996 and December 31, 2020.

The Business Privilege Tax rules and regulations shall be interpreted according to the principles set forth in the Statutory Construction Act, 1 Pa. C.S. §§ 1921-39.

Section 102. Definitions

The following words and phrases when used in these regulations shall have the meaning ascribed to them in this Section:

“Apportionment.” The application of a multifactor apportionment formula to the gross volume of a business or unitary business, whose actual exercise of the privilege of doing business in the City is not measurable by separate geographical accounting.

“Base of Operations.” An actual, physical and permanent place of business from which a taxpayer manages, directs and controls its business activities at that location.

“Business Entity.” An organization formed to conduct business.

“Certified Allocation.” A percentage formula certified by a City Tax Examiner and agreed upon between the taxpayer and the Department to be an acceptable multi-year basis for allocating Business Privilege Tax gross volume amongst several of the City’s various Business Privilege Tax rate classifications.

“City.” The City of Allentown.

“Department.” The City of Allentown Department of Finance.

“Functional Test.” The subjective determination as to whether the gain on the sale of an asset or any other gross receipt is business income, in consideration of whether the acquisition and disposition of the property arose from integral functions of the taxpayer’s regular trade or course of business other than the taxpayer’s primary or regular course of business or trade.

“Gain.” The disposition of a short-term or long-term capital asset, or any other asset or holding, whereby a gross receipt is realized when the sale price of the asset exceeds the purchase price.

“Gross receipts.” Cash, credits and property of any kind or nature received in or allocable to a business from any services rendered by a business, including the cost of property sold, materials used, labor, service or other costs, interest or discount paid, or any other expenses, unless a deduction for such is provided for in the Local Tax Enabling Act or Article 333 of the City’s Business Regulation and Taxation Code.

“Gross volume.” The measure by which the City attributes the amount of business privilege exercised within or outside of its taxing jurisdiction, which may or may not be coextensive with gross receipts.

“Interstate commerce.” Traffic, intercourse, commercial trading, or the transportation of persons or property between or among the several states of the Union, or as defined or interpreted by the United States Supreme Court.

“Judicial Branch.” Any Local Pennsylvania Common Pleas Court, Pennsylvania Commonwealth, Superior or Supreme Court, or Federal District Court, Appellate Court, Circuit Court, Tax Court, or the United States Supreme Court.

“Legislative Branch.” City Council, the Pennsylvania General Assembly, or the United States Congress.

“Mercantile Business.” A business or transaction involving retail or wholesale sales only.

“Month.” The time period commencing on the first day of a month and ending on the last day of the month unless the beginning date starts after the first of the month then the time period will run to the preceding date of the following month.

“Nexus.” The legal force which connects the activities of a person, business entity or taxpayer with the taxing authority of the City.

“Person.” Any natural person, partnership, limited partnership, joint venture, unincorporated association, limited liability company corporation, S-Corporation or other entity engaged in business in itself or by and through its affiliates or subsidiaries. Whenever used in any provision, the word person as applied to partnerships shall mean the partners thereof, and as applied to corporations and unincorporated associations shall mean the officers thereof.

“Rental.” A leasehold, whether of real or personal property; consideration paid for use or occupation of property.

“Retail sale.” A sale to the consumer of the goods or property.

“Service.” Duty or labor to be rendered by one person to another; sales other than those of retail, wholesale, or rental in nature.

“Taxpayer.” Any natural person, corporation, S-Corporation, limited liability company partnership, non-profit corporation or association, unincorporated association or any other entity which may be or become liable for any eligible tax levied under the grant of local taxing authority pursuant to Section 301.1 of the Local Tax Enabling Act, or any renumbering of said act containing the same grant of local taxing authority.

“Transaction.” An exchange or transfer of goods, assets, real property, tangible and intangible personal property, inventory, freight and an exchange or transfer of services, labor, accommodations or duties, and delivery. For the purposes of these rules and regulations, the term “transaction” shall apply to each day an investor in real property held title to, contracted for the improvement of, personally engaged in the improvement of, or entered into contract for sale of such real property, and each day of the provision of remote services.

“Transactional Test.” The subjective determination as to whether the gain on the sale of an asset or any other gross receipt is business income, in consideration of whether the acquisition and disposition of the property arose from the taxpayer’s primary or regular trade or course of business.

“Unitary Business.” An enterprise which carries out distinct multijurisdictional activities resulting in ultimate profit or value derived from the entire operation, which in relation to its parent corporation, subsidiaries, acquisitions and affiliates operates with functional integration, centralized management and economies of scale.

“Wholesale sale.” The sale of goods, personal property or articles of manufacture to a reseller of the same goods, which retain essentially the same physical properties or use at the time of resale.

Section 103. Nexus for Business License.

Any person determined to have nexus in the City shall obtain an accompanying annual business license.

ARTICLE II
IMPOSITION OF TAX

Section 201. Application of tax.

In accordance with Act 42 of 2014, 53 P.S. §6924.301.1(a.1)(1)(i), the privilege of doing business is exercised by conducting transactions in the City.

Section 202. Nexus to Business Privilege Tax.

- a. Physical Presence Nexus. Regardless of whether it maintains or maintained a base of operations, branch or sales department within the City, a business, person or taxpayer has exercised the privilege of doing business in the City if it transacted business or facilitated the transaction of business physically within the City's territorial borders for all or part of thirty (30) or more calendar days within the calendar year, whether the privilege is exercised by taxpayer in itself, or by and through its employees, agents, affiliates, subsidiaries, contractors, subcontractors or by the deployment or use of their equipment. Also, regardless of the location of its headquarters, branch office or base of operations, a business, person or taxpayer has exercised the privilege of doing business in the City if it deployed or licensed tangible capital assets for gain or profit in the City, or maintained a leasehold or leaseholds or rental of real or personal property located within the City, or held title to or interest in real property located within the City, which property was acquired, held or disposed of for gain or profit for all or a part of thirty (30) or more days within the calendar year.
- b. Economic Presence Nexus. Effective January 1, 2021 and thereafter, a business, person or taxpayer with no physical presence in the City is considered to have an economic nexus in the City and, as such, is subject to Business Privilege Tax if it has generated at least fifteen (15) or more transactions to points within the City totaling at least \$500,000 in gross volume or greater within the calendar year, and has sufficient connection to the City to establish nexus under the United States Constitution.
- c. Taxpayers may have both physical presence nexus and economic nexus in the City, for which they would be required to report both the gross volume they received as a result of physical and economic local business, provided that, such a taxpayer would be eligible to adopt a fair apportionment model that is internally and externally consistent when reporting its gross volume of business in the City. See Sections 204 & 205.

Economic Nexus Test:

To determine whether a person's or business entity's activities or connections with the City create an economic nexus in the City, such person or business entity (hereinafter in this subsection, "business") shall employ a two-prong test, the first of which is a determination of whether the activities meet or exceed the safe harbor threshold in Section 202(b). If the

business consummated 15 or more transactions to points within the City totaling at least \$500,000, the business shall turn to the second prong.

The second prong of the economic nexus test shall be a determination, as applied to actual or hypothetical activities, whether the transactions, activities or connections to the City would result in a duty for an out of state business to collect, withhold, file, report, remit or pay any tax levied under the Tax Reform Code of 1971, as amended 72 P.S. §§ 7101-10004 (i.e. Pennsylvania Commonwealth Taxes, or, hereinafter, "State Taxes").

For businesses located outside of Pennsylvania, under the second prong, they shall evaluate whether or not the activities creating nexus under the first prong of this test would create a duty to file or report any State Taxes, including, but not limited to, Personal Income Tax (PIT), Sales and Use Tax (SUT) and/or Corporate Net Income Tax (CNIT). If the answer is in the affirmative, the business has economic nexus in the City.

If the out of state business answered in the negative to the question of the second prong, it must then evaluate whether it so answered in the negative because it concluded that the activities were excluded or exempted it from State Taxes. If such an out of state business answered in the negative because its activities were excluded from State Taxes in its self-evaluation under the test, the business does not have economic nexus in the City. If such a business answered in the negative because it's activities were exempted from the State Taxes in its self-evaluation under the test, the business has economic nexus in the City, and such business must look elsewhere in these rules and regulations to determine whether or not it is exempt from Business Privilege Tax.

Businesses located within Pennsylvania, having no physical presence nexus under these regulations, whose activities in the City meet the first prong of this economic nexus test, shall evaluate whether such activities meet the second prong by testing whether the same activities, as applied to a hypothetical out of state location, would result in a duty for the business to file or report any State Taxes. If the answer is in the affirmative, the business has economic nexus in the City, and it is required to report and pay the tax. If such a business answers in the negative because it is exempt from the State Taxes in its self-evaluation under the test, rather than excluded, the business has economic nexus in the City, and such business must look elsewhere in these rules and regulations to determine whether or not it is exempt from Business Privilege Tax.¹

It is the intention of this test that:

1. Persons, taxpayers, businesses, and tax professionals are supplied with a clear and objective test for determining whether or not the economic nexus applies to their level of connections to the City.

¹ For the purposes of these regulations, an exclusion is a subject that an enactment never intended to tax, while an exemption is a subject that would otherwise be taxable, except that it is specifically carved out for exemption.

2. Business activities that do not or would not have nexus in the Commonwealth of Pennsylvania do not have nexus in one of its political subdivisions, except in the case where the activities are merely exempted, and not excluded from State Taxes.
3. Businesses located outside Pennsylvania would not avoid taxation by relocating into Pennsylvania, nor that businesses located within Pennsylvania would avoid the tax by relocating to another State.

Section 203. Economic Nexus Reporting Provisions.

- a. Any business, person or taxpayer having economic nexus in the City in 2021 and thereafter, or in any subsequent year, shall submit a completed application for a business license by December 31 of any year in which their activities first create economic nexus in the City.
- b. Such taxpayer may elect on its application to have its allocation between retail sales and wholesale sales certified by a City Tax Examiner (hereinafter, "Tax Examiner"), which percentage ratio, for Business Privilege Tax reporting purposes, may be fixed for up to the first, second, third, fourth and fifth tax reporting years, or for a lesser time period, as agreed upon between the taxpayer and the Department.
 1. If the taxpayer requests on its application to have its retail to wholesale allocation certified, the taxpayer will receive notification and the contact information of their assigned Tax Examiner.
 2. The Tax Examiner will request sufficient evidence to ascertain the most current allocation between the taxpayer's retail versus wholesale sales within the Commonwealth of Pennsylvania, or within the City of Allentown, whichever is preferable.
 3. When the allocation has been certified by the Tax Examiner, the taxpayer may, in good faith, elect to file Business Privilege Tax returns for the next five reporting periods using the certified allocation as a basis for reporting tax liability, without providing further evidence, other than evidence of their total gross receipts or gross volume attributable to their transactions within the City.
 4. Any such taxpayer filing an annual Business Privilege Tax return and paying the reported tax liability using a certified allocation between the City's retail and wholesale rates shall not be subject to an audit by the City, if the City would not have otherwise instituted such an audit, but for the taxpayer reporting using the certified allocation.
 5. Any such taxpayer who files an annual Business Privilege Tax return and pays the reported tax liability at the certified allocation, by filing such return using the

certified allocation, has waived their statutory right to request refund of any portion of the tax reported, if they would not have otherwise requested a refund, but for reporting using the certified allocation.

6. The taxpayer may elect to cancel their certified rate allocation at any time between the period of their last filing date and the deadline for the next Business Privilege Tax return filing and make a petition to the Department for reallocation. Any certified reallocations will be effective only for the subsequent reporting year and will not apply retroactively to any previous allocation reported.
 7. The Tax Examiner in charge of the petition for reallocation may request the most current documents available at their discretion to certify a reallocation.
 8. Certified reallocations may be denied if the taxpayer fails to supply sufficient documentation by the next deadline to report Business Privilege Tax.
 9. If reallocation is denied, the taxpayer will be required to file the next Business Privilege Tax return using the actual annual allocation between the retail and wholesale sales and will not have access to the relief from audit risk provided in this section.
 10. If the Department and the taxpayer do not currently maintain a certified allocation for any reason, the parties may agree to a certified allocation at any time before the next deadline for the taxpayer to file Business Privilege Tax, granted that the certified allocation will not be retroactive.
 11. A taxpayer who continues to file Business Privilege Tax returns after the fifth year at the same certified allocation may be asked by the Department to provide current evidence of its allocation and may have its allocation recertified for up to an additional five tax years.
- c. Any taxpayer having only economic nexus in the City may choose to report its actual allocation between retail and wholesale annually, without recourse to subsection (b) above, granted that the City has the authority perform periodic audits and to request evidence of their reported allocation through the provisions of the Local Taxpayer Bill of Rights Act, 53 Pa. C.S. §8424, and to issue deficiency assessments.
 - d. Any taxpayer having only economic nexus in the City, who believes its receipts to be allocable amongst the retail, wholesale, service and rental rates, or any combination thereof, may choose the same election for certified allocation discussed in subsection (b), along with its remedies and requirements.
 - e. Any taxpayer having economic nexus in the City who uses, and, upon request, provides proof that it used geocoding or global positioning to determine the geographical points within the City where it transacted business for the purposes of

Business Privilege Tax reporting shall have a rebuttable presumption that the reports it provided sourcing their transactions are accurate as to the situs of the transactions. Any taxpayer using postal codes or any less sophisticated method, rather than geocoding and global positioning, to locate the situs of their transactions in the City shall be denied such presumption.

- f. Taxpayers having physical presence nexus may also request that a Tax Examiner prepare a certified allocation and become subject to the requirements and relief under this section.
- g. Tax Examiners may decline to engage in a certified allocation for any taxpayer in arrears of taxes, or which defaulted on previous payment plans or agreements, or which misused or falsely filed prior certified allocations, or have a documented history of negotiating agreements in bad faith.

Section 204. Interstate Commerce and Apportionment.

- a. When reporting Business Privilege Tax, a unitary business engaged in interstate commerce shall apportion its receipts based on an apportionment formula approved by the Department.
- b. The apportionment formula shall be based on three factors: property, sales, and wages (or “payroll”).
 - 1. The taxpayer will arrive at the property factor by dividing the original cost value of all real and tangible personal property within the City by the original cost value of real and tangible personal property owned by the taxpayer. Except, if the taxpayer does not own any real property within the City, the taxpayer will arrive at its property factor by dividing the original cost value of its tangible personal property within the City by the original cost value of the taxpayer’s total tangible personal property.
 - 2. The taxpayer will arrive at its sales factor by dividing its total sales and services generated by activities within the City by the taxpayer’s total sales and services.
 - 3. The taxpayer will arrive at its wage or payroll factor by dividing the total Medicare wages of its employees employed in the City, whether full or part time, by the taxpayer’s total Medicare wages. Except, if the taxpayer’s only labor costs are for contract labor or other non-employees of the taxpayer, the taxpayer will arrive at its wage factor by dividing the amounts paid on its 1099-Miscellaneous Forms issued to its non-employee subcontractors or laborers engaged in the City by the amounts paid on the taxpayer’s total 1099 Miscellaneous Forms for similar contract labor.

Section 205: Businesses Having Bases of Operations in the City.

- a. Businesses having their sole base of operations within the City shall pay Business Privilege Tax on the entirety of their gross volume if the business's customers must visit the base of operations to consummate the transaction or consume the service.
- b. Businesses based in the City that perform the entirety of a transaction at a location outside of the City may be eligible to allocate the receipts arising from such transactions to the location outside of the City.
- c. Businesses who are legitimately subject to another local taxing jurisdiction's Business Privilege Tax may remove the portion of their gross volume subject to the other taxing jurisdiction's Business Privilege Tax from the amount reported to the City on their Business Privilege Tax return.
- d. Businesses having a base of operations in the City who allocate a portion of their receipts to locations or transactions outside of the City shall be subject to review to determine whether their receipts should have been apportioned in a manner consistent with Section 204, rather than allocated. Such a business will receive a request for taxpayer information from the Department requesting the relevant documents to determine whether apportionment or allocation is appropriate.
- e. The City's Business Privilege Tax is an excise tax on the privilege of doing business, measured by the gross volume of business transacted within the City. Businesses that maintain a base of operations within the City limits, but maintain their sole or a majority customer base outside the City shall be permitted to account for transactions taking place outside of the City by adjusting the sales, property and wage factor in three factor apportionment.
- f. Persons or business entities maintaining one or several branches of their business within the City and one or more outside of the City, may report the actual gross volume attributable to the branch or branches within the City, or may apportion their total sales using the three-factor apportionment formula.
- g. Such persons or business entities maintaining such branch or branches in the City and others in another State, whereby, significant interchange of business or commerce takes place between the branches and across State lines, shall apportion their total sales using the three-factor apportionment. This subsection, mandating apportionment amongst several branches also applies to the separate value units of a unitary business.

Grandfather Clause²

- h. Any taxpayer maintaining its sole base of operations in the City who has reported Business Privilege Tax under the prior rules and regulations by reporting the entire gross receipts for such base of operations as taxable may continue to use that method at their discretion and without regard to the provisions of this section.
- i. Any taxpayer maintaining a base of operations within the City, other than a unitary business, with one or more stores or locations outside of the City offering essentially the same sales and services who has previously filed Business Privilege Tax under the prior rules and regulations which prefers to allocate their actual receipts between locations may continue to do so.

Section 206: Tax on Gross Volume of Business.

- a. Business Privilege Tax is levied on and measured by the gross volume of sales made, services rendered, business transacted and all activities that actualize the gross receipts of business during the 12-month calendar year.
- b. A business's taxable gross volume may be arrived at by apportionment, in accordance with the provisions of these regulations, or may be the actual audited gross receipts of the business, as reported on the business's Federal Income Tax returns or other generally accepted income statement, return or abstract.
- c. The gains resulting from the sale of capital assets, personal property and real property are considered gross volume, subject to the Business Privilege Tax, as long as:
 - 1. The activity or chain of activities including the acquisition, management and disposition of the property resulting in the gain meets either the transactional or functional test.
 - 2. The property was located in the City at the time of the sale.
- d. Gains subject to Business Privilege Tax shall be calculated by removing the cost of the asset, less depreciation, from the total sales price, or Sales Price, less Purchase Price, less Cost Basis, plus Depreciation.
- e. Losses on sales of assets and property in the same transaction may be offset against gains in the same transaction when determining whether the activity results in Business Privilege Tax liability.

² It is the intent of this section to allow taxpayers to continue to report Business Privilege Tax as they had always reported it before the effective date of this section, except that they incur the same risk of audit findings as they risked under the prior rules and regulations.

- f. Losses on the sales of assets and property may never offset gains on other separate or unrelated gains realized within the tax year or in other tax years and may never offset nor be deducted from gross receipts realized in the business's primary trade.
- g. Taxpayers relinquishing real property situate in the City solely in exchange for real property of like kind to be held for productive use in a trade or business, who defer the recognition of their gain in accordance with 26 U.S.C. §1031 will nevertheless be required to report Business Privilege Tax on the gain, whether the taxpayer converts the property into cash or into property, at the time of the relinquishment of the property in the City, in keeping with the guidance provided by the Pennsylvania Department of Revenue in PIT Bulletin 2006-7 and RTT Bulletin 2006-1 regarding 1031 exchanges and the Commonwealth's Tax Code.
- h. Gross receipts of businesses, persons and taxpayers that come into said taxpayer's possession only to be paid on account of another, or "pass through income," is subject to Business Privilege Tax without deduction, as are management fees paid to or received by related entities, as are rents and maintenance costs collected by a property manager on behalf of a property owner, as are taxes, maintenance and insurance reimbursements paid by a lessee to a lessor under a triple net lease or any other reimbursements under any business arrangement between two or more parties, as are receipts paid by any general contractor to a sub-contractor or any principal to any agent.
- i. Payment to another taxing jurisdiction of another income tax, property tax, excise tax or transactional tax from the gross receipts subject to the City's Business Privilege Tax shall not invalidate, preempt nor be a deduction from the City's Business Privilege Tax, unless elsewhere expressly provided for by the legislative or judicial branches as a basis for deduction or preemption or a claim of double taxation.
- j. Gross receipts paid by the taxpayer to another department of the same corporate taxpayer for accounting and inventory purposes may be deducted from the gross receipts of the same reporting taxpayer and no other. For example, a full-service new car and truck dealership may deduct from its gross receipts the amounts paid by the autobody department for parts supplied by the parts department.

Section 207. Exemption from Business Privilege Tax.

- a. It is expressly intended that these regulations shall not create any exemptions from Business Privilege Tax not provided for in the Local Tax Enabling Act or Article 333 of the Business Regulation and Taxation Code, nor that any discussions of such exemptions contained herein should be construed as to broaden the legislative intent of the exemptions contained in the above mentioned enactments.
- b. Taxpayers seeking exemption from Business Privilege Tax under Article 333.03(D)(1) of the Business Regulation and Taxation Code, as it pertains to institutions of purely

public charity have the affirmative burden of proving they meet all five prongs of the test outlined in ***Hospital Utilization Project v. Commonwealth, 507 Pa. 1, 487 A.2d 1306 (1985)***.³ Provided that, all corporate entities operating in the City of Allentown, which file a Form 990T in any given tax year shall file a Business Privilege Tax return and pay Business Privilege Tax on all unrelated business income allocable to the City of Allentown being reported on such Form 990T. Any such entity's Business Privilege Tax return will be considered timely if filed within sixty (60) days of the publication of the Form 990, 990T, or April 15, whichever is sooner.

- c. Taxpayers may seek exemption from Business Privilege Tax by reason of State Preemption under 53 P.S. §6924.301.1(f)(1) or Article 333.03(D)(2) of the Business Regulation and Taxation Code; however, under existing case law the following is not considered to be a basis for exemption:
 1. Payment of State Mercantile License Tax, State Corporate Net Income Tax, Capital Stock Tax, Franchise Tax or Mercantile License Fee.
 2. Payment of a State Registration or Application Fee.
 3. Payment of a license fee, the cost of which is designed to cover the expense of the regulatory regime.
 4. Regulation of Residential Construction, Attorneys, Nursing Homes, Title Insurance, Life Insurance or Home Improvement.
- d. Taxpayers seeking exemption from Business Privilege Tax under 53 P.S. §6924.301.1(f)(2) or Article 333.03(D)(3) of the Business Regulation and Taxation Code, claiming that they are a public utility, must demonstrate that their rates are fixed and regulated by the Public Utility Commission.
- e. Taxpayers seeking exemption from Business Privilege Tax under Article 333.03(D)(4) must meet the same standard for exemption or preemption outlined under Section 207(c) above.
- f. Taxpayers seeking exemption under 53 P.S. §6924.301.1(f)(4) or Article 333.03(D)(5) must demonstrate that they meet the plain language of the exemption in the above enactments and the several tests established by the judicial branch pursuant to the taxpayer's primary trade or dealings.
- g. This section hereby incorporates all other exemptions enumerated in the Local Tax Enabling Act, 53 P.S. §6924.301.1(f) where such exemption pertains to Business Privilege Tax, and an allowance for Bad Debts and Returns and Allowances reported on the taxpayer's Federal Tax Return.

³ (1) Advances a charitable purpose, (2) Donates or renders gratuitously a substantial portion of its services, (3) Benefits a substantial and indefinite class of persons who are the legitimate objects of charity, (4) Relieves the government of some of its burden, (5) Operates entirely free from a private profit motive.

Section 208. Transportation, Delivery, Pick-Up and Drop-Off

- a. Persons, taxpayers and businesses using motor vehicles, such as passenger vehicles, vans and trucks, to receive or deliver, or to pick up or drop-off perishable or non-perishable goods, supplies, wares or assets or passengers for gain or profit for all or a part of thirty (30) days within the tax year have exercised the sufficient privilege of doing business to create physical nexus according to these regulations, except that this subsection shall not apply to commercial motor vehicles merely passing through the City's streets, creating neither a point of origin nor termination for a transaction.
- b. Such commercial transporters of goods or passengers having a base of operations in the City have the right to apportion their receipts using the three-factor apportionment formula.
- c. Such commercial transporters of goods or passengers not having a base of operations in the City have the right to apportion their receipts, and shall not be compelled to include in the apportionment any allotment for property or wages in the City if their only activity was receipt or delivery of goods or passengers.

ARTICLE III
COMPUTATION AND RATE OF TAX

Section 301. Tax year.

The tax year for business privilege tax runs from January 1 to December 31 of each year.

Section 302. Cash or accrual basis.

An annual return may be filed either on a cash basis or on an accrual basis. Where it is reasonable to do so, taxpayers shall make every attempt to file on a cash basis.

Section 303. Tax rate.

The City's Business Privilege Tax Rates are as follows:

- (1) On **Wholesale** transactions, the rate shall be one mill, or one dollar (\$1.00) per thousand dollars (\$1,000.00) of gross volume of business.
- (2) On **Retail** transactions, the rate shall be one and one-half (1½) mills, or one dollar and fifty cents (\$1.50) per thousand dollars (\$1,000.00) of gross volume of business.
- (3) On **Service** transactions, the rate shall be three mills, or three dollars (\$3.00) per thousand dollars (\$1,000.00) of gross volume of business.
- (4) On **Rental** transactions. On receipts attributable to rental transactions, the rate shall be three mills, or three dollars (\$3.00) per thousand dollars (\$1,000.00) of gross volume of business.

Section 304. Wholesale transactions.

A wholesale transaction is any transaction involving the sale of goods to a retail dealer or jobber rather than to a customer directly. Generally, wholesale transactions are sales of goods made to one who intends to resell the goods to the ultimate consumer.

Section 305. Retail transactions.

A retail transaction is any sale of goods made for final consumption to an ultimate consumer.

In making a determination as to whether gross volume is properly classified as either wholesale or retail, the Department shall employ a test to determine whether the purchaser of the goods is a reseller of the goods in the same form in which they were purchased, or a final consumer of the goods.

Section 306. Service transactions.

A service transaction is any duty or labor to be rendered by one person to another and includes sales other than those of a wholesale, retail or rental nature. Service transactions include the provision of both labor and materials.

- a. Mixed transactions. In all service transactions where tangible personal property supplied retains its identity after application of labor or installation and can be easily removed, a rule of apportionment is adopted. A taxpayer requesting such apportionment is required to submit any documentation deemed necessary by the Director of Finance or his designee to substantiate the allocation of sale proceeds between the tangible personal property supplied and the labor provided, including, but not limited to, a copy of the receipt that is given to the customer showing a breakout for the labor and tangible personal property components. The allocation for tangible personal property is subject to tax at the retail rate (1½ mills) and the allocation for labor is subject to tax at the service rate (3 mills). In the absence of the necessary documentation, a transaction does not qualify for allocation and is taxable as a true service transaction.
- b. True service transaction. In all service transactions where the tangible personal property supplied does not retain its identity and cannot be easily removed, is incidental to the service or is of *de minimis* value, no allocation is permitted and the transaction is treated as a true service transaction. The receipts are entirely taxable at the service rate (3 mills).
- c. Taxpayers may not apply a retail classification to separately itemized services within an overall retail transaction. All such service transactions must be separately itemized and classified as service transactions.

ARTICLE IV

RETURNS, PAYMENT AND EXTENSION OF BUSINESS PRIVILEGE TAX

Section 401. Duty to File a Return.

- a. Every person or business entity, receiver, trustee, or assignee acting in a fiduciary or representative capacity doing business in the City of Allentown, who has met the minimal connections to establish nexus in the City under Section 202 of these rules and regulations, must annually file a business privilege tax return.
- b. Individual partners in a partnership are not required to file individual business privilege tax returns for the partnership, but are jointly and severally liable for the filing of the partnership return. Where an individual partner conducts business activities in the City separate and apart from that of the partnership, such person must file a separate return.
- c. Individual officers in a corporation are not required to file individual business privilege tax returns for the corporation, but are jointly and severally liable for the filing of the corporate return. Where an individual officer conducts business activities in the City separate and apart from that of the corporation, such person must file a separate return.

Section 402. Annual return.

- a. Every person subject to the business privilege tax who has commenced its business prior to the beginning of the tax year shall file with the Department a business privilege tax return.
- b. Annual return forms may be obtained from and shall be filed with the Department. Failure to obtain the annual return form does not excuse a taxpayer from filing the return or payment of the tax in a timely fashion.
- c. The annual return shall be signed by an individual responsible for the business. In the case of a partnership, the return shall be signed by a general partner, and in the case of a corporation, the return shall be signed by the corporate officer authorized to file tax returns.
- d. Persons who would otherwise have physical nexus under these rules and regulations, believing themselves to be exempt or excluded from Business Privilege Tax shall nevertheless be required to file an annual return reporting their volume of business and/or revenues within the City. Such return shall include a statement or legal rationale for their claim of exemption, which refers to the section of the Local Tax Enabling Act, the Business Regulation and Taxation Code, or any other enactment of the legislative branch that grants such exemption, and to include any supporting documentation that would verify their claim. This subsection shall apply to institutions

claiming exemption under the Constitution of the Commonwealth of Pennsylvania, Article XIII, Section 2(a)(v), and any legislation enacted under the authority of that subsection, but not to such institutions organized specifically and primarily for the purpose of religious worship or religious instruction. This subsection, requiring Business Privilege Tax reporting, shall not apply to public institutions, such as State and Local governmental units, public schools and charter schools entirely funded by state or local taxes or grants from State and Local treasuries or by gifts, who neither receive nor require tuition nor membership dues, fees or assessments for enrollment and purely publicly funded libraries, museums, parks, bands, orchestras and municipal authorities incorporated under the Municipal Authorities Act 53 Pa. C.S. §§5601-5623.

- e. A complete return shall be accompanied by the applicable Federal or State tax return, schedule or statement, including but not limited to Form 1040, Schedule 1, Schedule C, Schedule E, Schedule D, Form 4797, Form 1065, Form 1120S, Form 8825, any applicable Forms 1099 and Form 1120, with accompanying statements for other income, interest and dividends, gains, and rent. The veracity of such forms may be verified at any time by the Department with the appropriate Federal or State taxing authority.
- f. In instances where the taxpayer's State or Federal Tax returns are useless for the purpose of verifying the correct amount of Business Privilege Tax due to the City, the City will not require the taxpayer to submit its Federal or State Tax Returns when reporting Business Privilege Tax. For the return to be considered complete, however, any such taxpayer must include financial statements, disclosures, general ledger reports, profit and loss statements, profit center revenue and expense reports, bank statements and/or any other relevant documentation that are material and sufficient evidence for verifying the gross volume allocable to the City.
- g. Taxpayers which receive a Business Privilege Tax return, and which claim to have performed no business in the City in the tax year in question shall file a return indicating its gross volume was zero. Any such taxpayer may petition the City in writing, or on its Business Privilege Tax return, to deactivate its account by giving the effective date of its closure. If a taxpayer reports zero volume, but does not request its account be deactivated, the Department will continue the account's active status, unless the Department finds cause otherwise to deactivate the account.
- h. In the case of an estimated payment, as discussed under Section 406 below, the taxpayer's return will be considered complete when the taxpayer furnishes its extended tax return or other sufficient evidence.

Section 403. Payment of tax.

Payment of the tax is to be made in accordance with the filing of the annual return and is due no later than April 15 of each year.

Section 404. Initial return.

Every person, business or taxpayer who commences business in the City after January 1st of any tax year shall file a Business Privilege Tax return with the Department by April 15 of the subsequent year and report the gross volume subject to Business Privilege Tax such taxpayer accrued in the initial year of doing business. If such a taxpayer failed to receive a Business Privilege Tax return for their initial tax year, it shall nevertheless be the duty of the taxpayer to file a complete return by April 15.

Section 405. Acceptance of return.

- a. Retention of the annual return by the Department does not constitute a final acceptance of the accuracy or completeness of the annual return and payment. The Director of Finance and their duly appointed deputies may elect to treat any filing and/or payment as a partial disposition of a taxpayer's liability.
- b. In accordance with 53 Pa. C.S. §8428(a)&(b), taxpayers may be eligible for relief of interest and penalties resulting from underpayments of Business Privilege Tax, which were the result of clearly erroneous advice provided to the taxpayer by the City.

Section 406. Extension of time for filing return.

- a. Taxpayers who have duly filed an extension with the Internal Revenue Service, or with the Pennsylvania Department of Revenue, or both, are relieved from the provision in these rules and regulations requiring the taxpayer to attach a copy of its Federal or State Tax return with their Business Privilege Tax return until such time as the deadline for filing the extended Federal or State tax return has elapsed.
- b. Taxpayers whose filing deadline with the Internal Revenue Services or with the Pennsylvania Department of Revenue is extended shall nevertheless make an estimated payment of their Business Privilege Tax liability by April 15.
- c. If the taxpayer fails to make an estimated payment by April 15, such taxpayer will be liable for interest and penalty regardless of whether their Federal and State tax filing deadlines are extended.
- d. If a taxpayer makes an estimated payment by April 15, such taxpayer will owe interest and penalty on any underpaid balance of Business Privilege Tax discovered when the taxpayer files their completed Business Privilege Tax return or receives a notice of assessment.

Section 407. Final Returns.

- a. Article 333.04(5) of the Business Regulation and Taxation Code requires any person who ceases business during any tax year to file a final return and to pay into the City's treasury its final Business Privilege Tax liability within thirty (30) days of cessation of doing business.
- b. The same provision applies to real estate investors who have sold and/or divested all of their real estate holdings in the City.
- c. Any taxpayer ceasing to do business or one who divests their entire portfolio of real estate holdings in the City shall notify the Department accordingly on the effective date of the closure of business or property divestiture and file its final return and pay its final tax liability within thirty (30) days.
- d. If a taxpayer fails to accordingly notify the City of its closure or divestiture of business, and fails to file its final return and pay its final tax liability within thirty (30) days, the Department may close the taxpayer's account and issue a final bill to the taxpayer, which bill shall be generated by the Department's database.
- e. In the case of subsection (d) above, the City shall estimate the taxpayer's final Business Privilege Tax liability, based on all information within the Department's means. Interest and penalty will not be assessed until April 16 of the subsequent year.
- f. In the same case of subsection (d) above, the Department will include on the taxpayer's final tax notice a suggested final settlement amount (hereinafter in this section, "final amount," or "suggested final amount"), based either on public records or previous tax filing records.
- g. Taxpayers, who have ceased doing business by divesting their entire real estate holdings, are obligated to file a final return and pay their final tax liability within thirty (30) days of the effective date of divestiture. Such taxpayers shall file a final return reporting the final amount of rent received and for the gain on the sale of the asset, if such a gain was achieved by virtue of the transaction and the gain meets either the transactional or functional test.
- h. Taxpayers reporting the gain on the sale of assets on their final return are permitted to apply the retail rate to such gain when calculating the tax due but must apply the rental rate to its final gross volume of rent.
- i. The City will not audit nor attempt to reassess a taxpayer's final return if the taxpayer settled their final Business Privilege Tax liability by paying the suggested final amount on the form generated by the Department's database stating such settlement amount.

- j. Any taxpayer receiving a final notice from the Department with a final amount is permitted to disregard such suggested settlement amount, supply to the Department the actual final tax liability, include material and sufficient supporting evidence of their actual final tax liability and remit payment of their actual final tax liability, provided that subsection (i) above shall not apply to such taxpayers proceeding under this subsection.

Section 408. Confidential nature of return.

In accordance with 53 Pa. C.S. §8437, any confidential tax information gained by the Department as the result of any returns filed or abstracts or summaries of returns filed or information gained as the results of any investigations, hearings or verifications shall not be divulged by the employees of the Finance Department authorized to request or review such tax information to any external party outside the Department of Finance, except appropriate personnel and/or in accordance with proper judicial order or as otherwise provided by law.

ARTICLE V
GENERAL PROVISIONS

Section 501. Book and records.

- a. Books, journals, invoices, general ledgers, bank statements, purchase orders, leases and other records used by a taxpayer in the ordinary course of business shall be kept in such a manner so as to reflect actual business operations. Objective criteria, such as invoices, contracts and receipts, shall be kept as evidence of the veracity of any return filed by a taxpayer for a period of no less than five (5) years from the date the taxpayer files the return.
- b. A taxpayer claiming exemption or exclusion for any portion of its gross receipts shall maintain complete records supporting the validity of the claim. Any claimed exemption or exclusion shall be disallowed if sufficient records are not maintained.
- c. In the absence or unavailability of complete records or in the case where a taxpayer neglects or refuses to file a return after being served notice of request for taxpayer information, the Director of Finance or their designee shall use any available records or information to reconstruct figures to reflect the business activity of the taxpayer for the period in question. Reasonable estimates, as computed by the Department, shall be used in such circumstances.

Section 502. Assessment final if no protest.

If a taxpayer fails to file a petition for reassessment in response to a notice of assessment within the ninety (90) days of the date of the assessment notice, the assessment is considered final and the taxpayer may not seek further administrative relief.

Section 503. Payment Plans.

- a. Taxpayers lacking the means to pay their Business Privilege Tax liability by April 15, may, on or before the due date for the tax claim, contact the City and establish a payment plan of three (3) monthly installments that will satisfy the tax claim by June 15, and not incur interest and penalty, provided documentation is supplied to verify actual tax liability. If the taxpayer has filed a Federal or State extension, the balance of the payment plan shall be calculated using any documentation available to determine a good faith estimate of tax liability. If the completed Federal or State return becomes available before the conclusion of this payment plan, Taxpayer shall file an amended BPT return and pay the actual amount owed, without interest and penalty, by June 15, as long as the taxpayer has followed the requirements of this subsection. The tax balance owed on returns amended after June 15 is subject to interest and penalty.

- b. If the taxpayer fails to follow any of the procedures or make any of the payments as set forth in subsection (a) above, the taxpayer shall be denied interest and penalty relief on any balance remaining after April 15.
- c. If the taxpayer has failed to pay, in whole or in part, two or more years of Business Privilege Tax consecutively or nonconsecutively, the maximum term of any payment plan shall be six (6) monthly installments, as long as the balance of the unpaid tax and interest and penalty totals less than \$10,000.
- d. If the taxpayer's balance for two or more years of unpaid or underpaid tax and interest and penalty totals more than \$10,000, the maximum term of any payment plan shall be eight (8) monthly installments, except that the taxpayer must establish such payment plan of (8) installments so that the total claims for all tax, interest and penalty is paid in full by December 31 of the year in which the plan was established. If such a taxpayer, seeking payment plan, cannot satisfy the total claims due by December 31 of the year in which they are seeking the payment plan, the maximum term of its payment plan shall be six (6) monthly installments.
- e. Taxpayers shall not be offered relief exceeding that which is contained in this Section by making a claim it did not receive a Business Privilege Tax return or delinquency notice.
- f. Taxpayers shall be denied recourse to the provisions of this Section if they have received a notice of assessment. Such a taxpayer, having received a notice of assessment, shall, instead, seek the remedies and relief afforded to it under the Local Taxpayer Bill of Rights Act.

Section 504. Savings and Severability.

- a. If the tax, or any portion thereof, imposed upon any person under the provisions of these rules and regulations is held by the judicial branch to be unconstitutional, or in violation of any other provision of law, the decision of the court shall not affect or impair the right to impose the taxes or the validity of the taxes so imposed on other persons as herein provided.
- b. The provisions of these rules and regulations are severable, and if any of its provisions shall be held illegal, invalid or unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of these rules and regulations. It is hereby declared to be the intention of the Director of Finance that these rules and regulations would have been adopted if such illegal, invalid or unconstitutional provision had not been included therein.

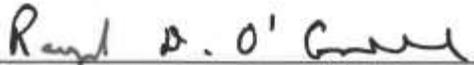
Section 505. Clarification of Rules and Regulations.

- a. If, by virtue of a judgment, ruling, order or opinion of the judicial branch, or by opinion of the tax appeal board or enactment of the legislative branch, any provisions of these rules and regulations are invalidated, the Department will issue a bulletin revising the rules and regulations in a manner not inconsistent with the ruling or enactment within ninety (90) days of the effective date. However, this shall not be required if the City files a timely appeal of such ruling, decision, or order, until such time as the City has exhausted its appeal or judicial recourse or remedies. If any such ruling, opinion or order is reversed upon appeal, the Department shall include a footnote describing such reversal in these regulations within one (1) year.
- b. The Director of Finance or their duly appointed deputies may also issue revisions of these regulations for any reason by issuing a bulletin. All bulletins shall be incorporated into the regulations, either into the body or by footnote referencing such bulletin, by the end of either of the next two subsequent calendar years.
- c. All bulletins shall be numbered, by the year in which they are issued and in series, such as "City of Allentown Business Privilege Tax Bulletin 2021-01" and, subsequently 2021-02.
- d. All Business Privilege Tax Bulletins, as well as a complete and current copy of these rules and regulations shall be available to the public on the City's website, and searchable by the most widely used internet search engine.

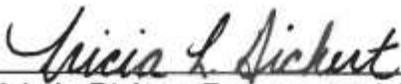
CITY OF ALLENTOWN BUSINESS PRIVILEGE TAX REGULATIONS

Date of Adoption: December 30, 2020

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