

**MUNICIPALITY OF MONROEVILLE
ALLEGHENY COUNTY, PENNSYLVANIA**

ORDINANCE 2329

AN ORDINANCE OF THE MUNICIPALITY OF MONROEVILLE PROVIDING FOR THE GENERAL REVENUE BY IMPOSING A MERCANTILE TAX AND A BUSINESS PRIVILEGE TAX ON PERSONS ENGAGED IN CERTAIN OCCUPATIONS AND BUSINESSES THEREIN; PROVIDING FOR ITS LEVY AND COLLECTION AND FOR THE ISSUANCE OF BUSINESS LICENSES; AND CONFERRING AND IMPOSING POWERS AND DUTIES ON THE TAX COLLECTOR OF THE MUNICIPALITY OF MONROEVILLE; AND IMPOSING INTEREST AND PENALTIES FOR VIOLATION THEREOF AMENDING ORDINANCE NO. 899 AND ORDINANCE NO 418 AND THE SUBSEQUENT AMENDMENTS.

Section 1. Title. This shall be known and may be cited as the "Business Tax Ordinance."

Section 2. Definitions and Word Usage. As used in this Ordinance, unless the context indicates clearly a different meaning, the following words and phrases shall have the meanings set forth below:

BUSINESS – Carrying on or exercising, whether for gain or profit or otherwise, within the Municipality of Monroeville any trade or business, including but not limited to financial business as hereinafter defined, profession, vocation, service, the rental of personalty and/or realty, construction, communication or commercial activity, making sales to persons or rendering services from or attributable to a Monroeville office or place of business.

BUSINESS PRIVILEGE TAX YEAR – The calendar year of 1979 and each calendar year thereafter.

FINANCIAL BUSINESS – The services and transactions of banks and bankers, trust, credit and investment companies, where not prohibited by law, holding companies, dealers and brokers in money, credits, commercial paper, bonds, notes, securities and stocks, monetary metals, factors and commission merchants.

GROSS RECEIPTS:

A. Cash, credits or property of any kind or nature received in or allocable or attributable to the Municipality of Monroeville from any business or by reason of any sale made, including the resale of goods, wares or merchandise taken by a dealer as a trade-in or as part of payment for other goods, wares or merchandise or services rendered or commercial or business transactions, and within the Municipality of Monroeville, 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" shall exclude:

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

(2) In the case of a financial business, the cost of securities and other property sold, exchanged, paid at maturity or redeemed and moneys or credits received in repayment of advances, credits and loans, but not to exceed the principal amount of such advances, credits and loans, and shall also exclude deposits.

(3) In the case of a broker, any commissions paid by him to another broker on account of a purchase or sales contract initiated, executed or cleared in conjunction with such other broker.

(4) Receipts by dealers from sales to other dealers in the same line where the dealer transfers title or possession at the same price for which he acquired the goods, wares or merchandise, as long as said dealers are not the parent or subsidiary organization of the vendor or have no other affiliation or cooperative arrangement with the vendor.

(5) 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 Municipality of Monroeville and not for the purpose of evading payment of this tax and those receipts which the municipality is prohibited from taxing by law. Such receipts shall be segregated as set forth in Section 4 (F) of this Ordinance.

C. GROSS VOLUME OF BUSINESS – “GROSS RECEIPTS”

Includes both cash and credit transactions.

MERCANTILE TAX YEAR – The calendar year of 1977 and each calendar year thereafter.

MUNICIPALITY – The Municipality of Monroeville.

PERSON – Any natural person, individual, partnership, association or corporation, nonprofit or otherwise. Whenever used in any provision prescribing a fine or a penalty, 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.

PLACE OF AMUSEMENT – Any place indoors or outdoors where the general public or a limited or selected number thereof may, upon payment of an established price, attend or engage in any amusement, contest or recreation, including, among other places, theaters, opera houses, motion-picture houses, amusement parks, stadiums, arenas, baseball or football parks or fields, skating rinks, circus or carnival tents or grounds, fairgrounds, bowling alleys, billiard or pool rooms, nine- or tenpin alleys, riding academies, golf courses, bathing and swimming places, dance halls, tennis courts, archery, rifle or shotgun ranges and other like places. The term does not include any exhibition, amusement performance or contest conducted by a nonprofit corporation or association organized for religious, charitable or educational purposes.

RETAIL DEALER or RETAIL VENDOR – Any person who is a dealer or vendor of goods, wares and merchandise who is not a wholesale dealer or vendor.

TAX COLLECTOR – The Monroeville Municipal Manager or such other person appointed by the Manager for the collection of the taxes imposed under this Ordinance.

TAX YEAR – The twelve-month period from January 1 to December 31.

TEMPORARY, SEASONAL OR ITINERANT BUSINESS – Any business that is conducted at one (1) location for less than sixty (60) consecutive days.

WHOLESALE DEALER or WHOLESALE VENDOR – Any person who sells to dealers in, or vendors of, goods, wares and merchandise and to no other persons.

Section 3. Tax Imposed; Applicability; Rate of Business Privilege Tax; Rate of Mercantile Tax.

A. Every person engaging in any business in the Municipality beginning with the tax year 1985 and annually thereafter, shall pay an annual tax at the rate of four (4) mills on each dollar of volume of the gross annual receipts thereof not subject to the Mercantile tax rate.

B. For the tax year 1977 and annually thereafter, the Municipality hereby imposes an annual mercantile tax in the manner and at the rates hereinafter set forth. Every person engaged in any of the following occupations or businesses in the municipality shall pay an annual mercantile tax for each tax year at the rate set forth:

(1) Wholesale vendors or dealers in goods, wares and merchandise: one and one-half (1 1/2) mills on each dollar of the volume of the annual gross business transacted by him.

(2) Retail vendors or dealers in goods, wares and merchandise, all persons engaged in conducting restaurants or other places where food, drink or refreshment are sold, whether or not the same is incidental to some other business or occupation, and all persons conducting places of amusement, whether or not the same are incidental to some other business or occupation: one and three-fourths (1 3/4) mills on each dollar of the volume of the annual gross business transacted by him.

(3) Wholesale and retail vendors or dealers in goods, wares and merchandise: one and one-half (1 1/2) mills on each dollar of the annual gross wholesale business transacted by him; and one and three-fourths (1 3/4) mills on each dollar of the volume of the annual gross retail business transacted by him.

C. The rates herein set forth are in addition to any mercantile tax or license which may be imposed by Gateway School District, and no credit will be given against the tax herein levied for taxes levied by or paid to Gateway School District.

Section 4. Computation of gross annual receipts or gross volume of business; Filing Returns.

A. Every return shall include the same contents as prescribed on the form available from the Tax Collector. Every person making a return shall certify the correctness thereof by affidavit.

B. Every person who has commenced his business at least one (1) full year prior to the beginning of any tax year shall compute his annual gross receipts OR gross volume of business upon the actual receipts or gross amount of business received by him during the preceding calendar year. On or before the 15th day of April, every person shall file with the Tax Collector a return setting forth his name, his business and business address and such other information as may be necessary in arriving at the actual gross amount of business transacted by him during the preceding calendar year and the amount of the tax due.

C. For a business that started operations in the year preceding the current "tax year" the business shall pay its tax in the current year based on the gross receipts OR gross volume of business upon the actual calendar year receipts or gross amount of business received by him during the preceding calendar year pro-rated to twelve months. The tax shall be paid in full on or before April 15 of the current "tax year"

D. For businesses that started in the current "tax year", the tax shall be based on the "gross volume of business" transacted on the first full month of operation multiplied by the number of full

months that the business shall be in operation for the tax year. The business must file and pay the tax by the last day of the month following the first full month of operation. At the end of the year every business that started that year shall submit an amended return to reconcile the estimated tax payment to the tax based upon the calendar year figure of the gross receipts or volume. If the amount of the tax paid is less than the amended amount due, the business shall remit payment to the Municipality of Monroeville with the adjusted return on or before April 15 of the year following the first "tax year" started by the business. If the estimated amount paid is more than the calendar year figure, the business owner shall file an amended return with the Municipality of Monroeville for an adjustment to credit another tax year or request a refund.

E. Every person when engaged in a business temporary, seasonal or itinerant by its nature shall compute his annual gross receipts OR gross volume of business upon the actual gross receipts or gross volume of business received by him during such tax year. Every person shall, within seven (7) days from the day he completes such business, file a return with the Tax Collector setting forth his name, his business and business address and such information as may be necessary in arriving at the actual gross amount of business transacted by him during such period and the amount of tax due.

F. Where a receipt in its entirety cannot be subjected to the tax imposed by this Ordinance by reason of the provisions of the Constitution of the United States or any other provisions of law, including exemptions within this Ordinance, the tax collector shall establish rules and regulations and methods of allocation and evaluation so that only that part of such receipts which is properly attributable and allocable to the doing of business in the Municipality of Monroeville shall be taxed hereunder. The tax collector 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 Municipality of Monroeville to the total property or assets of the taxpayer wherever owned and situated and any other method or methods of calculation other than the foregoing calculated to effect a fair and proper allocation. Every person who ceases to carry on a business during any tax year shall be permitted to apportion his tax for such tax year and shall pay for such tax year an amount to be computed by multiplying his gross receipts from 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 twelve (12).

Section 5. Business Registration. Within 30 days of commencing business in Monroeville, every person shall forthwith register with the tax collector and set forth his name, address, business address, tax identification number, and the nature of the business activity in which he is engaged. Every person making a business registration shall certify the correctness thereof by affidavit. Such registration shall be made by the completion of an application furnished by the Tax Collector and the payment of a registration fee to be established by the Municipality. If an individual or business entity conducts business under a fictitious name, such individual or entity shall apply for registration in both the true and fictitious names of the individual and entity and shall list the fictitious name first on the application. Each separate individual or business entity shall apply for a separate registration.

Each person in the Municipality who leases property, products or services used by a business, as defined in this article, shall file a form with the Municipality on or before January 15 of each tax year that sets forth the names and present addresses of each of the lessees in the Municipality during both the preceding tax year and the current tax year. Any person who owns or leases any facility or property used for the purpose of conducting an itinerant business shall supply the Tax Collector with the name and address of every itinerant merchant or promoter leasing or using such property or facility, together with such other information as the Tax Collector may request to establish the nature of the goods or services to be displayed or sold, and the duration of the show. Such information must be provided to the Tax Collector, in writing, 30 days prior to the opening of a show.

Section 6. Payment at time of filing return. The person making the return shall at the time of filing the return pay the amount of tax shown as due thereon to the Tax Collector.

Section 7. Powers and duties of Tax Collector.

A. It shall be the duty of the Tax Collector to collect and receive the taxes, fines, interest, and penalties imposed by this Ordinance. It shall also be his duty to keep a record showing the amount received by him from each person paying the tax and the date of each receipt.

B. The Tax Collector is hereby charged with the administration and enforcement of the provisions of this Ordinance 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 Ordinance, including provisions for the reexamination and correction of returns and payments alleged or found to be incorrect or as to which an overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the Tax Collector shall have the right to appeal to a court or courts of competent jurisdiction as in other cases provided.

C. The tax collector is hereby authorized to compel the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, whom he believes to have knowledge of such receipts and to otherwise administrate and enforce this Ordinance as provided in the document entitled "Business Privilege Tax Ordinance Rules and Regulations Pertaining to Enforcement and Administration," which document is attached hereto, made a part hereof as it may be amended and is marked Exhibit A.

D. The tax collector is hereby authorized to examine the books, papers and records of any taxpayer or supposed taxpayer in order to verify the accuracy of any return made or, if no return was made, to ascertain the tax due. Every such taxpayer, or supposed taxpayer, is hereby directed and required to give to the Tax Collector the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

E. The tax collector is further authorized to delegate any of his authority herein established or contained to other employees of the Municipality of Monroeville or to accountants, auditors or collectors retained by the Municipality of Monroeville for the purpose of assisting in the administration of this Ordinance and the enforcement and collection of the taxes imposed hereunder and of the auditing of the accounts of the taxpayers and persons hereunder.

F. The tax collector shall not receive any additional compensation for acting as such under the provisions of this Ordinance, but all expenses for the administration of this Ordinance, the enforcement and collection of the taxes imposed hereunder and the auditing of accounts shall be borne by the Municipality of Monroeville.

Section 8. Confidential nature of returns.

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

Section 9. Suit for collection; interest and penalties.

A. The Tax Collector may sue for the recovery of taxes due and unpaid under this Ordinance and may enter such suit in the name of the Municipality of Monroeville.

B. If for any reason the tax is not paid when due in each year, interest at the rate of six percent (6%) per annum on the amount of said tax, and an additional penalty of one-half of one percent (1/2 of 1%) of the amount of the unpaid tax for each month, or fraction thereof, during which the tax remains unpaid, shall be added and collected. Where suit is brought for the recovery of any such tax, the person liable therefore shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed. [Amended 2-13-1979 by Ordinance No. 1175; 4-14-1981 by Ordinance No. 1269] [Amended 3-7-1978 by Ordinance No. 1109; 2-13-1979 by Ordinance No. 1176; 4-14-1981 by Ordinance No 1270]

Section 10. Violations and penalties.

Whoever fails to comply with the provisions of this ordinance including but not limited to the registration requirement or makes any false or untrue statement on his registration or tax return or who refuses to permit inspection of the books, records or accounts of any business in his custody when the right to make such inspection by the Tax Collector is requested and whoever fails or refuses to file a return required by this ordinance shall, upon conviction in any court of competent jurisdiction, be sentenced to pay a fine of not more than six hundred dollars (\$600), plus costs of prosecution for each offense and, in default of payment of said fine and costs, be imprisoned in Allegheny County Jail for a period not exceeding thirty (30) days for each offense. Where the taxpayer is a firm or association, the fine or penalty may be imposed upon any of the partners or members thereof and, in the case of corporations, upon any of the officers thereof. Each day on which any person violates this Article shall be considered as a separate offense and shall be punishable as such as hereinbefore provided.

Section 11. Construal of provisions; severability.

A. Nothing contained in this Ordinance shall be construed to empower the Municipality of Monroeville to levy and collect the taxes hereby imposed on any person or any business or any portion of any business not within the taxing power of the Municipality of Monroeville under the Constitution of the United States and the laws and Constitution of the Commonwealth of Pennsylvania.

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

C. If a final decision of a court of competent jurisdiction holds any provision of this Ordinance, or the application of any provision to any circumstances, to be illegal or unconstitutional, the other provisions of this Ordinance, or the application of such provision to other circumstances, shall remain in full force and effect. The intention of the Council is that the provision of this Ordinance shall be severable and that this Ordinance would have been adopted if any such illegal or unconstitutional provisions had not been included.

Section 12. Payment under protest; refunds.

A. The Tax Collector is hereby authorized to accept payment under protest of the amount of mercantile tax or business privilege tax claimed by the municipality in any case where the taxpayer disputes the validity or amount of the municipality's claim for the tax. If it is thereafter judicially determined by a court of competent jurisdiction that the municipality has been overpaid, the amount of the overpayment shall be refunded to the taxpayer. The provisions of this section shall be applicable to cases in which the facts are similar to those in a case litigated in a court of competent jurisdiction.

B. Claims for refunds of taxes erroneously withheld or paid may be filed with the Tax Collector. A claim for refund must be filed within three (3) years of the due date of the return or one (1) year of payment of the tax, whichever is later, which allegedly was filed in error. A claim must be prepared in a manner to be designated by the Tax Collector and must be accompanied by a true copy of the claimant's federal income tax return. The burden of proof of earning is on the taxpayer and must be submitted to the satisfaction of the Tax Collector.

Section 13. Effective Date.

This Ordinance shall become effective April 15, 2005, and shall remain in effect thereafter from year to year on a calendar basis.

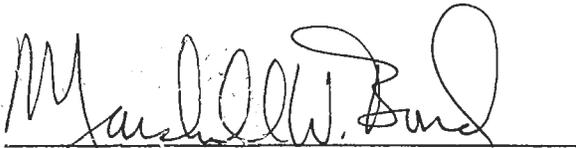
Section 14. Repealer.

Any Ordinance or part of ordinance conflicting with any of the provisions of this Ordinance shall be and the same is hereby repealed insofar as the same affects this Ordinance.

ORDAINED AND ENACTED this 8th day of March 2005.

ATTEST:

MUNICIPALITY OF MONROEVILLE



Marshall W. Bond
Municipal Manager



James Lomeo
Mayor

ENTERED INTO LEGAL BOOK: March 18, 2005