

ARCHBALD BOROUGH

MERCANTILE TAX AND BUSINESS PRIVILEGE TAX

ORDINANCE NO. 7 OF 1986

AN ORDINANCE PROVIDING FOR THE IMPOSITION OF A MERCANTILE TAX AND THE REQUIREMENT OF PROCURING A MERCANTILE LICENSE; ESTABLISHING PROCEDURE FOR RETURNS AND PAYMENT OF TAX; SETTING FORTH THE AMOUNT OF TAX; SETTING FORTH PENALTIES FOR THE VIOLATION OF THE PROVISIONS OF THIS ORDINANCE:

BE IT ENACTED AND ORDAINED by the Council of the Borough of Archbald, Lackawanna County, Pennsylvania, and it is hereby acted and ordained by the authority of the same as follows:

ARTICLE 1 - Title

This Ordinance shall be known as the "Mercantile Tax and License Ordinance" and the "Business Privilege Tax and License Ordinance".

ARTICLE 2 - To Whom the Ordinances Apply.

(a) The license and tax provisions of the ordinances apply to:

1. Wholesale vendors or dealers in goods, wares and merchandise, that is, those persons who sell to vendors of or dealers in goods, wares and merchandise.
2. Retail vendors of or dealers in goods, wares and merchandise that, those vendors or dealers who are not wholesale vendors or dealers.
3. Persons conducting restaurants or other places where food, drink or refreshments are sold.
4. Any hawker or peddler licensed under any law of the Commonwealth.
5. Professionals and contractors such as lawyers, doctors, architects, engineers and service trades, such as barbers, laundries and cleaning and dyeing establishments.

(b) The ordinances apply to concessionaires who carry on any occupation or business which is described in any of the classifications listed in (a) above.

(c) The ordinances apply whether the business is carried on by an individual, partnership, limited partnership, association or corporation.

(d) The ordinances apply not only to any business in existence at the beginning of the license year, but also to any business begun within the license year.

(e) A person whose business is in part furnishing services and in part the dealing in goods, wares and merchandise must comply with the license and tax provisions with respect to his business in goods, wares and merchandise.

ARTICLE 3 - Procurement of Licenses

(a) Procurement of License:

1. All persons to whom the ordinances apply must, on or before _____, and on or before January 1 of each year thereafter, must procure from the Mercantile Tax Collector, for the year beginning January 1, a merchantile license for each of his places of business in Archbald. For businesses begun during any license year after January 1, the license must be procured before business is begun. The application for a license must list all of the applicant's concessionaires and sub-concessionaires.

2. The license must be posted conspicuously at each place of business of the licensee at all times.
3. A person who sells goods, wares or merchandise by means of vending machines and who has not otherwise procured a license as a retail vendor or dealer under the Ordinance, shall procure one license covering all of his vending machines located in Archbald.

(b) Period covered: The license year is from January 1 to December 31, inclusive of each year. A license procured after January 1 for the current year is valid only from the date of issue until the end of the year in which it is issued.

ARTICLE 4 - Returns and Payment of License Tax.

(a) Return requirements:

1. Contents and Execution-Every person to whom the ordinance applies must file a return with the Mercantile Tax Collector, on the form furnished. The return must be filled out completely. The taxpayer must supplement the return with such other information as may be necessary in arriving at the actual gross amount of business transacted by him during the period on which the tax is based. The signature of the taxpayer must be included certifying to the correctness of the return.
2. TIME OF FILING: If the taxpayer has commenced business before January 1 of the license year, the return must be filed, and the tax paid on or before May 15, in the current license year. The first such returns will be due on or before May 15, 1987.

If the taxpayer first begins business in 1987 or in any subsequent license year, the first return and payment of tax are due within forty (40) days from the date of commencing business.

If the business of the taxpayer is temporary, seasonal or itinerant, the return and payment of tax are due within seven (7) days from the day he completes such business.

- (b) Period covered: The tax is payable for every license year, or any part thereof during which the taxpayer does business.
- (c) Payment of tax: The taxpayer must pay the amount of the tax shown due on the return to the Collector at the time of filing the return.
- (d) Rates of tax: The tax is imposed on the annual gross business transacted by the taxpayer at the following rates:

<u>CHARACTER OF BUSINESS</u>	<u>TAX RATE IN MILLS* PER DOLLAR</u>
Wholesale	One (1)
Brokers	One (1)
Retail	One and one-half (1½)
Restaurant	One and one-half (1½)
Hawkers and Peddlers	One and one-half (1½)
Professionals and Contractors	One and one-half (1½)

* One mill equal \$1.00 per \$1,000.00
 One and one-half mills equals \$1.50 per \$1,000.00

ARTICLE 5 - "Gross Volume of Business"

- (a) The rate of tax applied to the actual gross amount of business transacted by the taxpayer during the entire preceding calendar year, except for those taxpayers:
 - (1) Who were not in business during the whole of the preceding calendar year, or
 - (2) Who began business during the current license year, or

- (3) Whose business is temporary, seasonal or itinerant.
- (2) If the taxpayer was not in business during the whole of 1986, his "annual gross volume of business" is determined by multiplying by twelve (12) the actual amount of business transacted by him during the first month he engaged in business.
- (3) For example, if the retailer begins business during a license year, and in the first month of his business grosses \$10,000 his tax for the year would be at the rate of one and one-half (1½) mills times the gross volume of business for that month times the number of months, or fraction of months, of the current license year he begins his business and the next succeeding year his tax will be one and one-half (1½) mills times the gross volume of business of the first month times twelve (12), as follows:

Taxpayer begins business June 15th of the license year and in his first month, ending July 15th, grosses \$10,000 his tax for the current tax year would be $.0015 \times \$10,000 \times 6\frac{1}{2}$ (remaining months and fraction of month in year from time of beginning business) and for the next succeeding year his taxes will be $.0015 \times \$10,000 \times 12$.

- (4) If the business of the taxpayer is temporary, seasonal or itinerant, the rate shall be applied to the actual gross amount of business transacted by him during each period in the license year in which the temporary, seasonal, or itinerant business was conducted.
- (b) "Gross volume of business" corresponds generally to "gross receipts" or "gross sales" depending on the nature of the business. The gross volume of business shall include not only receipts in money but also, in the case of barter and exchange transactions, in which other than money is received as payment or part payment, an amount equal to that which would have been received if full payment had been required in cash. The gross receipts from sales shall include all receipts from any transfer of title or possession or both, whether conditional, by bailment lease or otherwise, for a consideration.
- (c) The tax is imposed upon any person who exercises the privilege of carrying on certain businesses within the borough of Archbald, and is measured by the entire annual gross volume of business transacted by him. Receipts from any business transaction are to be included if any event forming a part of the transaction occurs within Archbald. Examples of such events are:
- Cash transaction in Archbald
Receipt of order by seller or his agent in Archbald
Solicitation within Archbald by seller or his agent
Shipment from Archbald
- (d) Brokers, commission merchants and factors are taxable at the rate of one (1) mill on each dollar of gross commission received by them. However, if a person in addition to acting as a broker, commission merchants, or factor, also acts as a vendor or dealer and takes title to and sells goods, wares and merchandise on his own account, he is required to pay a tax on the entire gross receipts from such sales made on his own account.
- (e) Wholesale or retail vendors and dealers (except to the extent they act as brokers) shall include in their gross volume of business only gross receipts from the vending of "goods, wares and merchandise", which do not include stocks, bonds and other evidences of indebtedness.
- (f) The entire gross receipts of vending machines and other mechanical devices which dispenses goods, wares and merchandise are to be included in the "gross volume of business" of the owner or lessor thereof. No deductions may be made therefrom for "splits", rentals, commissions or other remuneration paid to persons in charge of the machines and/or to the lessees of premises upon which the machines are located.

- (g) Refunds, credits, or allowances given by a vendor or dealer to a purchaser on account of defects in goods, wares and merchandise sold or returned, may be deducted from the amount of the "gross volume of business" of the vendor or dealer.
- (h) Trade discounts allowed to customers may be deducted from "gross volume of business" if they are in the nature of
- (1) discounts deducted on the face of the bill as a medium of adjusting the list price, and
 - (2) discounts unconditionally deducted by customers upon settlement of their bills and allowed as a matter of the established custom of a trade or line of business without regard to the due date of such bills or the form or term in which such discounts are described or stated on bills of invoice.

Discounts allowed to customers as cash discounts for prompt payment of their bills may not be deducted from "gross volume of business" unless such discounts are taken at the time of sale.

- (i) Persons in the service trades shall include in their taxable gross volume of business that portion of their gross receipts resulting from the sale of goods, wares and merchandise.
- (j) The following Federal and State excise taxes may be excluded from the gross volume of business, provided such taxes are separately stated on the evidence of charge or sale:
1. Federal Tax on Admission and Dues.
 2. Federal Retailers Excise Tax on jewelry, furs and fur articles, toilet preparations and luggage.
 3. Pennsylvania Liquid Fuels Tax.

ARTICLE 6 - Treatment of Particular Transactions.

- (a) Property traded in: in the case of trade-in transactions in which goods, wares and merchandise are sold and allowance is made for other property which is traded in and is accepted by the vendor or dealer in part payment of the property sold, the allowance made for the property traded in shall not be deducted from the selling price of the property sold in computing gross receipts upon which the tax is based. The vendor or dealer must include in his gross volume of business the full selling price of the property sold, without any deduction therefrom for any allowance made on property traded in, but where the property traded in is subsequently sold by the vendor or dealer, the latter must include in his gross receipts only the amount by which the sale price of such article exceeds the trade-in allowance and the remainder of the sale price of such traded-in article upon its subsequent sale by the vendor or dealer shall be excluded from said vendor's or dealer's gross receipts.

When dealers who are engaged in similar lines of business exchange articles of property and one of them makes payment to the other in addition to the property exchanged by him, the transaction shall constitute sales to each other. The receipt of each dealer is measured by the gross volume of the consideration received by him. Where a dealer transfers property, such as an automobile, to another dealer with the understanding that property of identical description will be returned at a subsequent date, such transaction does not constitute a sale and the value of the property exchanged need not be included in the tax base of either dealer.

- (b) Property repossessed: Where goods, wares or merchandise sold under a conditioned or other installment sale contract are repossessed by the seller, and the repossessed property is subsequently sold, the gross receipts from such sales are to be included in the gross volume of business only to the extent by which the amount of the sale exceeds the balance due on the original sale at the time of repossession. No deduction from gross receipts may be taken at the time of repossession for any unpaid balance due.

- (c) Inter-company transactions: Receipt from transactions between affiliated companies, other than those of a purely accommodation nature, are subject to inclusion in "gross volume of business."
- (d) Inter-department changes: When one department, branch, or division of a corporation or other business entity, furnishes goods, wares and merchandise to another department, branch or division of the same corporation or business entity, the amounts recorded on the books to reflect such inter-departmental transactions need not be included in the "gross volume of business" of the taxpayer.

ARTICLE 7 - Exemption and Exclusions.

The Ordinances do not apply to:

- (a) Non-profit corporation or associations organized for religious, charitable, or educational purposes and social clubs.
- (b) Agencies of the Government of the United States or of the Commonwealth of Pennsylvania.
- (c) Any person vending or disposing of articles of his own growth, production, or manufacture for shipment or delivery from the place of growth, production or manufacture thereof. The term "manufacture" means the production of a new article which is separate and distinct from the materials or ingredients of which it is composed.
- (d) That portion of the annual business which the Commonwealth of Pennsylvania is prohibited from taxing by reason of the Constitution of the United States and of the Commonwealth of Pennsylvania. Receipts will be excluded as having been derived from interstate commerce transaction only if those transactions directly involve the sale, exchange or transportation of commodities between the state. The citizenship or residence of the parties to the transaction is of no significance, and it is of no significance in which state title to the goods passes or whether the goods are shipped F.O.B. one state to another. For example:
 - 1. Sale and delivery in Archbald. Receipts are included in the case of sales made by an Archbald vendor or dealer to customers located outside Pennsylvania where the property is delivered directly to the purchaser or his agent within Pennsylvania, notwithstanding the fact that the purchaser or his agent intends to, and later does transport the property to a point outside the state.
 - 2. Shipment from Archbald by vendor or dealer: Receipts are excluded in the Archbald vendor or dealer, as a necessary incident to the contract of sale, agrees to, and does, deliver the property to a purchaser at a point outside Pennsylvania, or delivers the property to a common consigned to the purchaser at a point outside Pennsylvania.
 - 3. Shipment into Pennsylvania from out-of-state warehouse of vendor or dealer; Receipts are excluded if, by the contract of sale or the established practice of doing business, the vendor or dealer is required to make delivery by transporting or shipping the property from his warehouse situated outside Pennsylvania directly to the purchaser at a point within Pennsylvania.
 - 4. Shipment into Pennsylvania from other out-of-state factory of third party; Receipts are included if the Archbald vendor or dealer causes delivery to be made at a point within Pennsylvania from an out-of-state source of supply owned or operated by a third party (one from whom the vendor buys). For example, if a dealer in Archbald causes an automobile to be delivered directly to the buyer from the factory of the manufacturer in Detroit, the receipts are included in the dealer's gross volume of business on which the tax is based.

5. Delivery from out-of-state factory of vendor or dealer via his Archbald office: Receipts are included if the property is shipped from the out-of-state factory or warehouse of an Archbald vendor or dealer to his (the vendor's or dealer's) place of business in Pennsylvania from which point the goods are delivered to the purchaser.

- (e) Receipts from sales to or dealings with governmental agencies, charitable and religious corporations are not to be excluded from the gross volume of business on which the tax is based. The ordinance grants exemption only to the agencies, institutions and persons specified, and not to taxpayers transacting business with such agencies, institutions and persons.

ARTICLE 8 - Collection, Books, and Records, and Examination thereof.

- (a) Collection: If the amount of the tax, penalty or interest imposed by this ordinance is not paid when due, payment of the total amount owing will be enforced by suit by the Collector. For this purpose, the due date of the amount of tax computed and reported on a return is the date of filing such return; and the due date of any amount of deficiency of tax, not computed or reported in a return properly filed is the date in which the Collector makes an assessment of the deficiency by notice thereof sent to the taxpayer.
- (b) Books and Records: The taxpayer must maintain such accounting records as will enable him to make a true and accurate return in accordance with the provisions of the ordinance and these Regulations. Such accounting records must disclose in detail all data pertaining to the taxpayer's gross volume of business and must be sufficiently complete to enable the Collector to verify all transactions. A taxpayer claiming exemptions for receipts from transactions in foreign or inter-state commerce, and exclusions of non-taxable receipts, must maintain complete records of such items.
- (c) Inspection and Examination: The Collector is 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 to be imposed. He is authorized to examine any person connected with any business, concerning any gross volume of business or gross receipts, which was or should have been returned for taxation, and for this purpose may compel the production of books, papers and records. The Ordinance directs that every taxpayer, or supposed taxpayer, give to the Collector the means, facilities and opportunity for such examinations and investigations.

ARTICLE 9 - Interest, Cost of Collection and Penalties

- (a) Interest: If the tax is not paid when due, interest at the rate of six per centum (6%) per annum on the amount of said tax, and additional penalty of one per centum (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.
- (b) Cost of Collection: Where suit is brought for the recovery of any such tax the person shall be liable for, in addition to the tax assessed against such person, the costs of such collection.

(c) Penalties: The ordinance imposes the following penalties:

Whoever makes any false or untrue statement on his return, or who refuses to permit inspection of the books, records or accounts of any business in his custody or control, when the right to make such inspection by the Collector is requested, and whoever fails or refuses to file a return required by this ordinance, and whoever fails or refuses to procure a mercantile license when so required under this ordinance, or fails to keep his license conspicuously posted at his place of business as required herein, shall upon conviction before any Alderman or Magistrate of the city, be sentenced to pay a fine of not more than One Hundred Dollars (\$100.00) for each offense, and in default of payment of said fine to be imprisoned in Lackawanna County Prison for a period not exceeding thirty (30) days for each offense.

ARTICLE 10 - Title

This Ordinance shall become effective immediately upon its being enacted and ordained.

ARTICLE 11 - Separability and Amendment

If any section, clause, provision or portion of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect any other section, clause, provision or portion of this Ordinance so long as it remains workable minus the invalid portion.

The Borough Council reserves the right to amend this Ordinance or any portion thereof from time to time as it shall deem advisable in the best interests of the promotion of the purposes and intent of this Ordinance and the effective administration thereof.

ARTICLE 12 - Repeal

All Ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed.

ENACTED AND ORDAINED this 19th day of August, 1986.

BOROUGH COUNCIL OF THE BOROUGH OF ARCHBALD

by:

Gerald A. Egan

President

James Richard

Mayor

ATTEST:

Samuel E. Hone

Borough Secretary

BOROUGH OF ARCHBALD
ORDINANCE NO. 2 OF 1988.

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF THE ARCHBALD BOROUGH MERCANTILE AND BUSINESS PRIVILEGE TAX SETTING FORTH THE RATE OF TAX TO BE APPLIED TO THE ACTUAL GROSS AMOUNT OF BUSINESS TRANSACTED BY A TAXPAYER IN THE BOROUGH OF ARCHBALD.

BE IT ORDAINED AND IT IS HEREBY ORDAINED by the Council of the Borough of Archbald as follows:

WHEREAS, the Borough of Archbald enacted a Mercantile and Business Privilege-Tax on August 19, 1986, said Ordinance providing for the imposition for a Mercantile tax, requireing the procurmant of a Mercantile License, establishing a procedure for returns and payment of tax, setting forth the amount of tax, and setting forth the penalties for the violation of the provisions of the Ordinance;

WHEREAS, the Council of the Borough of Archbald reserved the right to amend the Mercantile and Business Privilege Tax Ordinance from time to time as it shall deem advisable in the best interest of the promotion of the purposes and intent of teh Ordinance and the effective administration thereof;

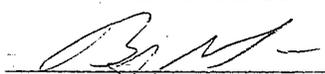
WHEREAS, it is the intent of teh Council of teh Borough of Archbald that except as herein provided, every section, clause, provision or portion of the said Ordinance, as enacted August 19, 1986 shall be and remain in full force and effect;

WHEREAS, it is the intent of the Council of teh Borough of Archbald to provide and set forth the rate of zero (0) mills to apply and pertain to the initial One Hundred Thousand (\$100,000) Dollars of gross receipts for every business in the Borough of Archbald to which the Mercantile Tax and Business Privilege Tax applies;

NOW, THEREFORE, be it resolved and it is hereby resolved by the Archbald Borough Council as follows:

The Mercantile Tax and Business Privilege Tax Ordinance anacted August 19, 1986 is hereby amended to provide for the tax rate of zero (0) mills for the first One Hundred Thousand (\$100,00) Dollars of gross business receipts of iach taxpayer in the Borough of Archbald to which the said Ordinance applies. Every other section, clause, provision or portion of the said Mercantile Tax and Business Privilege Tax Ordinance shall be and remain in full force and effect and shall not be affected hereby.

ARCHBALD BOROUGH COUNCIL


BRIAN MARTON
President - Archbald Borough Council

ATTEST:


LEONARD HOSIE
Secretary

BOROUGH OF ARCHBALD

ORDINANCE NO. 4 OF 1989

AN ORDINANCE AMENDING THE MERCANTILE TAX AND BUSINESS PRIVILEGE TAX AND LICENSE ORDINANCE OF THE BOROUGH OF ARCHBALD, ENACTED AUGUST 19, 1986, SETTING FORTH A NEW DATE FOR FILING TAX RETURNS AND FOR PAYMENT OF THE TAX:

BE IT ENACTED AND ORDAINED by the Council of the Borough of Archbald, Lackawanna County, Pennsylvania, and it is hereby enacted and ordained by the Authority of the same as follows:

WHEREAS, the Borough of Archbald has enacted a Mercantile Tax and Business Privilege Tax and License Ordinance on August 19, 1986;

WHEREAS, the Council of the Borough of Archbald deems it necessary and appropriate to regulate and authorize the date and manner of payment of the Mercantile Tax and Business Privilege Tax in the Borough of Archbald;

WHEREAS, the Council of the Borough of Archbald deems it necessary and appropriate to provide June 30, of each calendar year, as the date upon which a taxpayer must file the appropriate tax return and make payment of the appropriate tax, pursuant to the provisions of the Mercantile Tax and Business Privilege Tax in the Borough of Archbald;

WHEREAS, the Council of the Borough of Archbald deems it necessary and appropriate to provide June 30, of each calendar year, as the date upon which a taxpayer must file the appropriate tax return and make payment of the appropriate tax, pursuant to the provisions of the Mercantile Tax and Business Privilege Tax and License Ordinance of the Borough of Archbald;

WHEREAS, Article 11 of the said Mercantile Tax and Business Privilege Tax and License Ordinance of the Borough of Archbald grants the Borough Council the right to amend the said Ordinance, or any portion thereof, from time to time, as it shall deem advisable and in the best interests of the promotion of the purposes and intent of the said Ordinance and the effective administration thereof;

WHEREAS, any Borough Ordinance with any of the provisions as contained herein is hereby repealed and declared void to the extent of such inconsistencies;

WHEREAS, it is the intent of the Council of the Borough of Archbald, that this Ordinance shall be effective immediately upon adoption;

NOW THEREFORE, be it resolved and it is hereby resolved that the Archbald Borough Mercantile Tax and Business Privilege Tax and License Ordinance is amended as follows:

Article 4 (a) 2 and 4 (c) is amended to provide that the appropriate tax return and the appropriate tax must be filed and paid on or before June 30, of each calendar year. This Ordinance shall become effective immediately upon its being enacted and ordained.

ENACTED AND ORDAINED this 21st day of June, 1989.

ARCHBALD BOROUGH COUNCIL



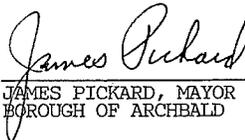
BRYAN MARION, PRESIDENT
ARCHBALD BOROUGH COUNCIL

ATTEST:



LEONARD E. HOSIE, SECRETARY
ARCHBALD BOROUGH

APPROVED THIS 21ST DAY OF JUNE, 1989



JAMES PICKARD, MAYOR
BOROUGH OF ARCHBALD