

MONROEVILLE BOROUGH

ORDINANCE NUMBER 150

AN ORDINANCE TO PROVIDE REVENUE FOR THE BOROUGH OF MONROEVILLE BY IMPOSING A MERCANTILE LICENSE TAX ON PERSONS ENGAGING IN CERTAIN OCCUPATIONS AND BUSINESSES THEREIN; PROVIDING FOR ITS LEVY AND COLLECTION AND FOR THE ISSUANCE OF MERCANTILE LICENSES; AND CONFERRING AND IMPOSING POWERS AND DUTIES ON THE TAX COLLECTOR OF THE BOROUGH OF MONROEVILLE; AND IMPOSING PENALTIES FOR VIOLATION THEREOF.

BE IT ORDAINED AND ENACTED by the Burgess and Borough Council of the Borough of Monroeville in regular meeting assembled, and it is hereby ordained and enacted by authority of the same:

SECTION 1. DEFINITIONS. The following words and phrases when used in this ordinance shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

- (a) "Person" shall mean any individual, partnership, limited partnership, association or corporation.
- (b) "Wholesale dealer" or "Wholesale vendor" shall mean any person who sells to dealers in, or vendors of, goods, wares and merchandise and to no other persons.
- (c) "Retail dealer" or "Retail vendor" shall mean any person who is a dealer in or vendor of goods, wares and merchandise who is not a wholesale dealer or vendor.
- (d) The terms "Person", "Wholesale dealer", "Wholesale vendor", "Retail dealer", and "Retail vendor" shall not include nonprofit corporations organized for religious, charitable or educational purposes, any association organized for such purposes, agencies of the Government of the United States or of the Commonwealth of Pennsylvania, or 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.
- (e) "Place of amusement" shall mean 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, recreation, including among other places, theatres, opera houses, motion picture houses, amusement parks, stadia, arenas,

Ordinance Number 150

baseball or football parks or fields, skating rinks, circus or carnival tents or grounds, fair grounds, bowling alleys, billiard or pool rooms, nine or ten pin 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 non-profit corporation or association organized for religious, charitable or educational purposes.

(f) "License year" shall mean the calendar year of 1959.

(g) "Gross volume of Business" shall include both cash and credit transactions.

(h) "Tax Collector" shall mean the Tax Collector of the Borough of Monroeville.

(i) "Temporary, seasonal or itinerant business" shall mean any business that is conducted at one location for less than sixty (60) consecutive days.

SECTION 2. LEVY AND COLLECTION OF TAX. For the license year 1959 the Borough hereby imposes an annual mercantile license tax in the manner and at the rates hereinafter set forth.

SECTION 3. LICENSES. Beginning in the license year one thousand nine hundred fifty-nine, every person desiring to continue to engage in, or hereafter to begin to engage in the business of wholesale or retail vendor, or dealer in goods, wares and merchandise and any person conducting a restaurant or other place where food, drink or refreshments are sold, or place of amusement, whether or not the same be incidental to some other business or occupation, shall on or before the 15th day of January, 1959, procure a mercantile license for his place of business, or if more than one, for each of his places of business in the Borough, from the Tax Collector, as required by law. Such license shall be conspicuously posted at the place of business or each of the places of business of every person at all times.

SECTION 4. IMPOSITION AND RATE OF TAX. Every person engaged in any of the following occupations or businesses in the Borough shall pay an annual mercantile license tax for the license year 1959 at the rate set forth:

(a) Wholesale vendors or dealers in goods, wares and merchandise, at the rate of 1/2 mill on each dollar of the volume of the annual gross business transacted by him.

Ordinance Number 150

(b) 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 be incidental to some other business or occupation, and all persons conducting places of amusement, whether or not the same be incidental to some other business or occupation, at the rate of one (1) mill on each dollar of the volume of the annual gross business transacted by him.

(c) Wholesale and retail vendors or dealers in goods, wares and merchandise, at the rate of one-half (1/2) mill on each dollar of the annual gross wholesale business transacted by him, and one (1) mill on each dollar of the volume of the annual gross retail business transacted by him.

SECTION 5. COMPUTATION OF VOLUME OF BUSINESS.

(a) Every person subject to the payment of the tax hereby imposed who has commenced his business at least one (1) year prior to the beginning of the license year shall compute his annual gross volume business upon the actual gross amount of business transacted by him during the preceeding calendar year.

(b) Every person subject to the payment of the tax hereby imposed who has commenced or who commences his business less than one (1) full year prior to the beginning of the license year, shall compute his annual gross volume of business for such license year upon the gross volume of business transacted by him during the first month he engages in business multiplied by twelve.

(c) Every person subject to the payment of the tax hereby imposed who commences his business subsequent to the beginning of the license year, shall compute his annual gross volume of business transacted by him during the first month of his engaging in business multiplied by the year.

(d) Every person subject to the payment of the tax hereby imposed who engages in a business temporary, seasonal or itinerant by its nature, shall compute his annual gross volume of business upon the actual gross amount of business transacted by him during the license year.

Ordinance Number 150

(e) The Tax Collector is hereby authorized to accept payment under protest of the amount of mercantile tax claimed by the Borough in any case where the taxpayer disputes the validity or amount of the Borough's claim for tax. If it is thereafter judicially determined by a court of competent jurisdiction that the Borough 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.

SECTION 6. RETURNS.

(a) Every return shall be made upon a form furnished by the Tax Collector. Every person making a return shall certify the correctness thereof by affidavit.

(b) Every person subject to the tax imposed by this ordinance who has commenced his business at least one (1) full year prior to the beginning of any license year shall on or before the 15th day of March 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) Every person subject to the tax imposed by this ordinance who has commenced his business less than one (1) full year prior to the beginning of any license year shall on or before the 15th day of March, 1959, file with the Tax Collector a return setting forth his name, his business, business address, and such other information as may be necessary in arriving at the actual gross amount of business transacted by him during the first month of business and the amount of the tax due.

(d) Every person subject to the tax imposed by this ordinance who commences business subsequent to the beginning of any license year shall within forty (40) days from date of commencing 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 his first month of business and the amount of the tax due.

Ordinance Number 150

(e) Every person subject to the payment of the tax imposed by this ordinance who engages in a business temporary, seasonal or itinerant by its nature, 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 address, and such information as may be necessary in arriving at the actual gross amount of business transacted by him during the period and the amount due.

SECTION 7. PAYMENT. At the time of filing the return the person making the same shall pay the amount of tax shown as due thereon to the Tax Collector.

SECTION 8. POWERS AND DUTIES OF TAX COLLECTOR.

(a) It shall be the duty of the Tax Collector to collect and receive the taxes, fines 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 re-examination and correction of returns, and payments alleged or found to be incorrect or as to which an over-payment 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) 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.

SECTION 9. CONFIDENTIAL NATIONAL NATURE OF RETURNS, ETC.

Ordinance Number 150

Any information gained by the Tax Collector, or any other officer, official, agent or employee of the Borough 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 10. SUIT ON COLLECTION; PENALTY.

(a) The Tax Collector may sue for the recovery of taxes due and unpaid under this ordinance.

(b) If for any reason the tax is not paid when due in each year interest at the rate of six per centum (6%) per annum on the amount of said tax, and on 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. Where suit is brought for the recovery of any such tax, the person liable therefor, shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

SECTION 11. FINE AND 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 Tax 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 Justice of the Peace or the Burgess, be sentenced to pay a fine of not more than One Hundred (\$100.00) Dollars for each offense, and in default of payment of said fine to be imprisoned in Allegheny County Jail for a period not exceeding thirty (30) days for each offense.

SECTION 12. SAVINGS AND SEVERABILITY CLAUSES.

(a) Nothing contained in this ordinance shall be construed to empower the Borough 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 Borough 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.

(d) The provisions of this Ordinance 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 this Ordinance. It is hereby declared to be the intention of Council of the Borough of Monroeville that this Ordinance would have been adopted if such illegal, invalid or unconstitutional provisions had not been included herein.

SECTION 13. REPEALER. ANY ORDINANCE or part of an ordinance conflicting with the provisions of this Ordinance be and the same is hereby repealed, insofar as the same affects this Ordinance.

SECTION 14. EFFECTIVE DATE. The provisions of this ordinance shall become effective immediately upon final enactment.

ORDAINED AND ENACTED into a law in Council this second day of December 1958.

ATTEST:

BOROUGH OF MONROEVILLE

S/ Audrey D. McCarthy
Borough Secretary

S/ William Vastadore
President of Council

EXAMINED AND APPROVED by me this second day of December, 1958.

S/ Anthony Martin
Burgess

December 5, 1958

To the Honorable
Council of the Borough of Monroeville

Gentlemen:

The Ordinance adopted at a meeting of the Borough Council on December 2, 1958, levying a mercantile tax at the rate of one mill upon retail dealers, restaurants and places of amusement, etc., and one-half mill upon wholesalers has been presented to me for approval and signature.

I know that all of you will recall your own statements, as well as mine, concerning the adoption of a mercantile tax last year. Those of you who voted to enact a mercantile tax had my support, even though our business community made urgent and eloquent appeals to us not to enact this type of tax. The critical factor which moved us to adopt the tax was a deficit in excess of \$50,000.00 in the general fund, as well as one in excess of \$75,000.00 in the sewer fund, for which no source of revenue was available to make up this deficit. You will recall the numerous meetings we held at which we discussed various taxing procedures, finally arriving at the conclusion that a mercantile tax was the most equitable of all. I also recall quite vividly our assurance to the business community that we would not re-enact the mercantile tax.

A review and analysis of our present expenditures and fixed expenses for the next budgetary year was made with my participation several weeks ago. It was obvious at this meeting and from the discussions which occurred that next year's Borough finances are in critical condition. I certainly do not have to acquaint you with the rising costs of providing basic services, as well as the increased demands made for those services by reason of our phenomenal expansion and growth. Many of our basic services, such as police and road construction, can only proceed at minimum levels because of our limited source of revenue. For example, I commend the Borough Council for entering into a contract for the installation of roads which was decidedly advantageous to the people of Monroeville; however, taking advantage of a contract with low costs to the Borough necessarily inflicted a burden on our next year's budget. I understand that although we have committed ourselves to a debt of \$50,000.00 for roads in next year's budget, that we saved the Borough in excess of \$10,000.00 by taking advantage of the time and cost factors. Also, it is a matter of common knowledge that our police force is undermanned. Emergencies as well as school patrols have placed a severe burden upon our police budget and the general fund. Nevertheless, we must continue to provide adequate police protection for our people.

I also understand that the Borough is obligated to make a payment of \$90,000.00 for debt service and other expenses to the Allegheny County Sanitary Authority in this coming year. These factors plus a multitude of other necessary expenditures certainly make a bleak financial picture. Although we have yet to meet with the School Board concerning our mutual budgetary problems, it is obvious that the Borough Council must minimize its contemplated demands upon the School Board, and take advantage of all revenue which is available from other sources.

This, of course, is all stated in the presence of the ghost promise or assurance which we made at the time that we enacted the mercantile tax last year. However, I would like to quote Ralph Waldo Emerson on his "Essay on Self-Reliance":

"A foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines".

December 5, 1958

You as Councilmen and I as Burgess are sworn to serve the people of Monroeville to the best of our ability and solely in their interest. Changing times and changing problems require flexibility in arriving at difficult solutions. Integrity and dedication to a trust will, at times, require an alteration in previous attitudes and thinking.

Reluctantly, I must confess and state to the business community that the Council's action in re-enacting the mercantile tax and my consent thereto is based upon an agonizing appraisal of a difficult situation which must in all events be resolved in the general public interest. I hasten to add that the reduction in the mercantile tax from last year's Ordinance indicates a willingness on the part of the Council to act consistently with the public welfare and the business community. I, therefore, shall affix my signature and thereby consent to the adoption of the mercantile tax.

Very truly yours,

Anthony J. Martin
Burgess