

ORDINANCE NO. 899

AN ORDINANCE OF THE BOROUGH OF MONROEVILLE UNDER THE AUTHORITY OF "THE LOCAL TAX ENABLING ACT" BEING ACT NO. 511 OF 1965, AND ITS AMENDMENTS TO PROVIDE FOR THE GENERAL REVENUE BY IMPOSING A TAX AT THE RATE OF 1 1/2 MILLS UPON THE PRIVILEGE OF OPERATING OR CONDUCTING BUSINESS IN THE BOROUGH OF MONROEVILLE AS MEASURED BY THE GROSS RECEIPTS THEREFROM: REQUIRING REGISTRATION AND PAYMENT OF THE TAX AS A CONDITION TO THE CONDUCTING OF SUCH BUSINESS: PROVIDING FOR THE LEVY AND COLLECTION OF SUCH TAX: PRESCRIBING REQUIREMENTS FOR RETURNS AND RECORDS: CONFERRING POWERS AND DUTIES UPON BOROUGH OFFICIALS: AND IMPOSING PENALTIES.

BE IT ORDAINED AND ENACTED by the Borough of Monroeville, in Council assembled, and it is hereby ordained and enacted under the authority of "THE LOCAL TAX ENABLING ACT" being Act No. 511 of 1965, December 31, 1965, P. L. 1256, and its amendments, hereby enacts as follows:

- SECTION 1.        Title:                This ordinance shall be known and may be cited as the "Business Privilege Tax Ordinance."
- SECTION 2.        Definitions:        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:
- (a) "Municipality" -- Borough of Monroeville.
  - (b) "Person" -- any natural person, partnership, unincorporated association or corporation, non-profit 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.
  - (c) (1) "Business" -- carrying on or exercising whether for gain or profit or otherwise within the Borough of Monroeville any trade, business, including but not limited to financial business as hereinafter defined, profession, vocation, service, construction, communication or commercial activity, making sales to persons or rendering services from or attributable to a Monroeville Office or place of business.
  - (d) "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.
  - (e) "Tax Year" -- The twelve month period from January 1st to December 31st.

- (f) "Gross Receipts" -- Cash, credits, property of any kind or nature, received in or allocable or attributable to the Borough of Monroeville from any business or by reason of any sale made, including resales of goods, wares or merchandise taken by a dealer as a trade-in or as part payment for other goods, wares or merchandise, or services rendered or commercial or business transaction and within the Borough 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.

"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 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 Borough 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(c) of this Ordinance.
- (6) The amount of any contract or receipt or portion thereof which is subject to the payment of this business privilege tax by virtue of any other contract, sub-contract or gross receipt as herein defined.

- (g) "Borough Manager of Business Privilege Tax" or "Borough Manager" shall mean Borough Manager as collector of the Business Privilege Tax of the Borough of Monroeville.
- (h) "Temporary seasonal or intinerant business" -- shall mean any business that is conducted at one location for less than sixty (60) consecutive calendar days.
- (i) "Gross Receipts" -- shall include both cash and credit transactions.

SECTION 3. Imposition and Rate of Tax:

Every person engaging in any business in the Borough of Monroeville beginning with the tax year 1974, and annually thereafter, shall pay an annual tax at the rate of one and one-half (1 1/2) mills on each dollar of volume of the gross annual receipts thereof.

SECTION 4. Computation of Gross Annual Receipts:

- (a) Every person, subject to the payment of the tax hereby imposed 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 upon the actual receipts received by him during the preceding calendar year.
- (b) Every person, subject to the payment of the tax hereby imposed, who has commenced his business less than one (1) full year prior to the tax year 1974, or who has commenced his business subsequent to the beginning of any tax year, for such tax year, shall compute his annual gross receipts upon the actual gross receipts received by him during the part of such tax year remaining and on the actual gross receipts of his first full year for the second full tax year he engages in business, as the case may be. In the case of a business commencing less than one (1) full year prior to any tax year, the average monthly volume of business multiplied by twelve (12) shall be the basis for computing the gross volume of business for the first full tax year.
- (c) 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 provision of law, including exemptions within this ordinance, the Borough Manager 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 Borough of Monroeville shall be taxed hereunder. The Borough Manager 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 Borough

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 for the preceding full calendar year by a fraction whose numerator shall be the number of months such person was in business during the tax year and whose denominator shall be twelve.

- (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 receipts upon the actual gross receipts received by him during such tax year.
- (e) Every person subject to the payment of the tax hereby imposed and who is also subject to the Occupational Privilege Tax levied by Ordinance No. 602 and its amendments, may deduct said Occupational Privilege Tax from the amount of tax due and owing under the provisions of this ordinance.

SECTION 5. Return and Registration.

- (a) Every person subject to the tax imposed by this ordinance shall forthwith register with the Borough Manager and set forth his name, address, business address and the nature of the business activity in which he is engaged.
- (b) Every return shall be made upon a form furnished by the Borough Manager. Every person making a return shall certify the correctness thereof.
- (c) 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 tax year shall, on or before April 15, 1975, and annually thereafter, file with the Borough Manager a return setting forth his name, his business and business address, and such other information as may be necessary in arriving at the annual gross volume of business transacted by him during the preceding year and the amount of the tax due.
- (d) 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 the tax year 1975, shall, on or before the 15th day of April following, file with the Borough Manager a return setting forth his name, his business, business address and such other information as may be necessary in arriving at the actual gross volume of business transacted by him during the period of operation prior to January 1st of that tax year, and the amount of the tax due.

- (e) Every person subject to the tax imposed by this ordinance who commences business subsequent to the beginning of any tax year for such tax year shall, within forty (40) days from the date of commencing such business, file a return with the Borough Manager setting forth his name, his business, his business address, and such other information as may be necessary in arriving at the actual gross volume of business transacted by him during such tax period and the amount of the tax due.
- (f) Every person subject to the tax imposed by this ordinance who commences business subsequent to the beginning of any tax year shall on or before April 15 of the succeeding tax year file a return with the Borough Manager setting forth his name, his business, his business address and such other information as may be necessary in arriving at the gross volume of business for the first full year and the amount of tax due. The average monthly volume of business transacted in the preceding year multiplied by twelve shall be the basis for computing the gross volume of business for the first full tax year.
- (g) 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 date he completes such business, file a return with the Borough Manager setting forth his name, his business, his business address and such other information as may be necessary in arriving at the actual gross volume of business during the tax period and the amount of the tax due.

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 Borough Manager.

SECTION 7. -- Powers and Duties of Borough Manager.

- (a) It shall be the duty of the Borough Manager 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 such receipts.
- (b) The Borough Manager 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 provision 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, and to make refunds where necessary. Any person aggrieved by any decision of the Borough Manager shall have the right to appeal to court as in other cases provided.

- (c) The Borough Manager 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".

SECTION 8. Suit on Collection; Penalty:

- (a) The Borough, on behalf of the municipality, 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 (6%) percent per annum and an additional penalty of one-half of one (1/2 of 1%) percent 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 cost of collection and the interest and penalties herein imposed.

SECTION 9. 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 Borough Manager is requested, and whoever fails or refuses to file a return required by this ordinance, shall, upon conviction before any alderman or magistrate, be sentenced to pay a fine of not more than Three Hundred (\$300.00) Dollars, for each offense and in default of payment of said fine, be imprisoned in Allegheny County Jail or Allegheny County Workhouse for a period not exceeding thirty (30) days for each offense.

SECTION 10. Saving Claus:

- (a) Nothing contained in this ordinance shall be construed to empower the Borough 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 Borough 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 Council is that the provision of this ordinance would have been adopted if any such illegal or unconstitutional provisions had not been included.

SECTION 11. Payment under Protest - Refunds:

The Borough of Monroeville is hereby authorized to accept payment under protest of the amount of business privilege tax claimed by the municipality in any case where the taxpayer disputes the validity or amount of the municipality claim for 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.

- (a) Claims for refunds of taxes erroneously withheld or paid may be filed with the Borough Manager. A claim for refund must be filed within two (2) years of the due date of the return which allegedly was filed in error. A claim must be prepared on a form to be designated by the Borough Manager and must be accompanied by a true copy of the claimant's Federal Income Tax Return. The burden of proof or earning is on the taxpayer and must be submitted to the satisfaction of the Borough Manager.

SECTION 12. Effective Date:

The provisions of this ordinance shall become effective February 1, 1975, and shall remain in effect thereafter, from year to year, on a calendar year basis.

SECTION 13. That any ordinance or part of ordinance, conflicting with the provisions of this ordinance, be and the same is hereby repealed so far as the same affects this ordinance.

ORDAINED and ENACTED this 30th day of December, 1974.

BOROUGH OF MONROEVILLE

ATTEST:

S/ Marshall W. Bond  
Secretary

By S/ George C. Dale  
President of Council

(SEAL)

EXAMINED and APPROVED this 31st day of December, 1974.

S/ R. E. Droske  
Mayor