

ORDINANCE NO.: 275

AN ORDINANCE OF THE TOWNSHIP OF KENNEDY, ALLEGHENY COUNTY, PENNSYLVANIA AMENDING ORDINANCE NO. 205 ESTABLISHED TO IMPOSE A BUSINESS PRIVILEGE TAX ON EVERY PERSON ENGAGING IN ANY BUSINESS IN THE TOWNSHIP OF KENNEDY.

The Township of Kennedy by and through the Township Commissioners, hereby ordains and enacts as follows:

Ordinance No. 205 shall be amended as follows:

1. Section 5(g) of Ordinance No. 205 shall now read as follows:

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 Treasurer 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 pay to the Treasurer the amount, if any, of additional tax due or request from the Treasurer a refund if the taxpayer has made an overpayment for the tax period. Such additional tax liability if any, or overpayment if any, will be the result of variance between the taxpayers estimate of gross volume as required in section 6(b) and the actual gross volume for the tax period multiplied by the applicable tax rate.

2. Section 6 of Ordinance No. 205 shall now read as follows:

SECTION 6(a). Payment at Time of Filing Return: The person making the return shall at the time of filing the return pay to the Treasurer the amount, if any, of additional tax liability due or request from the Treasurer a refund, if any, due to the taxpayer.

SECTION 6(b). Payment prior to commencement of business: 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 before the commencement of such business estimate and pay to the Treasurer one-hundred percent (100%) of the tax due. Such estimate shall be made on a reasonable basis and shall be made in good faith.

- (1) The calculations of such estimate shall be set-forth on forms prescribed by the Treasurer.
- (2) In regard to any and all construction projects the tax base used in estimating the tax liability shall be the contract price.
- (3) In regard to any and all construction projects, the person who makes application to the proper Township authority to acquire a permit is the person liable for such tax. The tax calculated to be due under section 6(b) must be paid to the Treasurer in full before such person will be permitted to obtain a permit in regard to any and all construction projects.

SECTION 6(c). Taxpayers engaged in any and all other types of businesses which require a permit or license to conduct such a business within the Township, shall before the commencement of any such business for the tax period estimate and pay to the Treasurer one-hundred percent (100%) of the tax due. Such estimated payment is a mandatory prerequisite to obtaining a permit or license for the carrying on of any and all other types of such businesses within the Township.

- (1) The calculations of such estimate and payment shall be set-forth on forms prescribed by the Treasurer.

3. Any ordinance or part of any ordinance which conflicts ~~with the provisions of this ordinance~~ shall be and the same is hereby repealed insofar as the same affects this ordinance.

4. Should any section or provisions of this ordinance be declared by a Court of competent jurisdiction to be invalid, such decisions shall not affect the validity of this ordinance as a whole or any part thereof, and parts or sections unaffected by the court decision shall remain in effect as though the part of section declared unconstitutional had not be a part thereof.

5. This ordinance shall take effect immediately after final passage by the Township Commissioners and advertisement as required by law.

ORDAINED and ENACTED into law this 14th day of March, 1990.

ATTEST:

KENNEDY TOWNSHIP BOARD
OF COMMISSIONERS

Ann Gargala
Township Secretary

By *William Keenan*
President of the Board
of Commissioners

Approved as to Form:

Joe Boeger
Township Solicitor

**KENNEDY TOWNSHIP
ORDINANCE NO. 205**

An Ordinance of the Township of Kennedy, Allegheny County, Pennsylvania, enacting a Business Privilege Tax

The Board of Commissioners of the Township of Kennedy under the authority of the Local Tax Enabling Act 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) "Township" -- Township of Kennedy

(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 Township of Kennedy any trade, business, including but not limited to financial business as hereinafter defined, profession, vocation, service, construction, communication or commercial activity, or making sales to persons or rendering services from or attributable to a Kennedy Township office or place of business.

(2) "Business" -- shall not include the following: any business which is subject to the Township of Kennedy mercantile tax; the business of any political subdivision; any employment for a wage or salary; any business upon which the power to levy a tax is withheld by law.

(d) "Financial Business" -- The services and transactions of banks and bankers, savings and loans, 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 1 to December 31.

(f) "Gross Receipts" -- Cash, credits, property of any kind or nature, received in or allocable or attributable to the Township of Kennedy 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 had within the Township of Kennedy, 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 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

(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 Township of Kennedy and not for the purpose of evading payment of this tax and those receipts which the City is prohibited from taxing by law. Such receipts shall be segregated as set forth in Section 4 (c) of this Ordinance.

(g) "Treasurer" -- The treasurer, Special Tax Collector or Secretary of the Township of Kennedy.

(h) "Temporary seasonal or itinerant 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.

(j) "Wholesale Dealer or Wholesale Vendor" -- any person who sells to dealers in or vendors of goods, wares, and merchandise.

SECTION 3. Imposition and Rate of Tax: Every person engaging in any business in the Township of Kennedy beginning with the tax year 1982 and annually thereafter, shall pay an annual tax rate of one and one half mills (1-1/2 mills) on each dollar of volume of the gross annual receipts thereof, except that the gross volume of wholesale business transacted by wholesale dealers in goods, wares and merchandise is taxable at the rate of one (1) mill as set forth in Section 8 of the Local Tax Enabling Act.

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 1982, 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 the exemptions within this ordinance, the Treasurer shall establish rules and regulations and methods of allocation and evaluation so that only that part of such receipt which is properly attributable and allocable to the doing of business in the Township of Kennedy shall be taxed hereunder. The Treasurer may make such allocation with due regard to the nature of the business concerned on the basis of mileage 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 Township of Kennedy 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 such 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 of the

Township of Kennedy may deduct said Occupational Privilege Tax from the amount of tax due and owing under the provisions of this ordinance.

SECTION 5. Returns and Registration.

(a) Every person subject to the tax imposed by this ordinance shall forthwith register with the Treasurer 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 Treasurer. 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 May 15, 1982, and annually thereafter, file with the Treasurer 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 this business less than one (1) full year prior to the beginning of the tax year 1982, shall, on or before May 15, 1982, file with the Treasurer 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 1, 1982, 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 on or before January 31 of the succeeding tax year file a return with the Treasurer 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 May 15 of the succeeding tax year file a return with the Treasurer 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 tax 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 day he completes such business, file a return with the Treasurer 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 Treasurer.

SECTION 7. Powers and Duties of Treasurer:

(a) It shall be the duty of the Treasurer 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 Treasurer 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 re-examination 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 Treasurer shall have the right to appeal to court as in other cases provided.

(c) The Treasurer is hereby authorized to compel the production of books, papers and records, and the attendance of all persons

whom he believes to have knowledge of such receipts.

(d) The Treasurer 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 Treasurer the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

SECTION 8. Suit on Collection; Penalty:

(a) The Treasurer 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 percent per annum, and an additional penalty of one-half of one 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 therefore shall, in addition, be liable for the costs 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 Treasurer 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 dollars (\$300.00) for each offense, and, in default of payment of said fine, be imprisoned in Allegheny County Jail for a period not exceeding thirty (30) days for each offense.

SECTION 10. Saving Clause:

(a) Nothing contained in this ordinance shall be construed to empower the Township of Kennedy 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 Township of Kennedy 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 Board of Commissioners is that the provisions 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 11. Payment Under Protest - Refunds:

The Township Treasurer is hereby authorized to accept payment under protest of the amount of business privilege tax claimed by the Township in any case where the taxpayer disputes the validity or amount of the Township's claim for tax. If it is thereafter judicially determined by a court of competent jurisdiction that the Township has been overpaid, the amount of the overpayment shall be refunded to the taxpayer.

SECTION 12. Effective Date:

The provisions of this ordinance shall become effective January 1, 1982, 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 into a law by the Board of Commissioners of the Township of Kennedy, this 11th day of May, 1982.
(6-16-1)

ATTEST:

/s/ Victoria Wilczynski

TOWNSHIP OF KENNEDY