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TITLE TWO - BUSINESS REGULATION

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CHAPTER 818: AMUSEMENT DEVICES

Section

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CROSS-REFERENCE

Amusement tax, see Ch. 880

STATUTORY REFERENCE

Nuisances, see Borough Code, 8 Pa.C.S. ' 1202(4) and (5)

' 818.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COIN-OPERATED AMUSEMENT DEVICE. Any amusement machine or device operated by means of the insertion of a coin, token or similar object, for the purpose of amusement or skill and for the playing of which a fee is charged. The term does not include vending machines which do not incorporate gaming or amusement features, nor does it include any coin-operated mechanical musical device.

PROPRIETOR. Any person who or which, as the owner, lessee or proprietor, has under his, her or its control, any establishment, place of business or premises in or at which a coin-operated amusement device is placed or kept for use or play or is on exhibition for the purpose of use or play.
(Ord. 434, passed 12-6-1982)

' 818.02 LICENSE REQUIRED.

No person shall be a proprietor of coin-operated amusement devices without first obtaining a license for each such device.
(Ord. 434, passed 12-6-1982)

' 818.03 LICENSE APPLICATION; FEE.

Application for the license required by ' 818.02 shall be made to the Borough Secretary on forms and containing information as required by Council. The application shall be accompanied by a nonrefundable fee as set forth in ' 208.03(A) of the Administration Code.
(Ord. 434, passed 12-6-1982)

' 818.04 NUMBER OF DEVICES.

No proprietor shall operate, or permit to be used or played, more than two coin-operated amusement devices at his, her or its premises at any time.
(Ord. 434, passed 12-6-1982)

' 818.99 PENALTY.***Editor's note:***

See ' 202.99 for general code penalty if no specific penalty is provided.

CHAPTER 820: BARBER AND BEAUTY SHOPS

Section

820.01	Right of entry	820.03	Quarterly inspections and reports
820.02	Registration of barbers and hairdressers	820.99	Penalty

CROSS-REFERENCE

Board of Health, see Ch. 268

STATUTORY REFERENCE

Abatement of nuisances by Health Officer, see Borough Code, 8 Pa.C.S. ' 3108

Powers and duties of Health Officer, see 8 Pa.C.S. ' 3105

' 820.01 RIGHT OF ENTRY.

All barber and beauty shops in the borough shall be open for and subject to inspection at any and all times during business hours by any member of the Board of Health or by the Health Officer of the borough. No person conducting any barber or beauty shop in the borough shall refuse admittance to any member of the Board of Health or to the Health Officer to any part of such barber or beauty shop for such purpose.

(Ord. 90, passed 10-11-1954)

' 820.02 REGISTRATION OF BARBERS AND HAIRDRESSERS.

Persons conducting barber or beauty shops or engaged in the practice of barbering or hairdressing shall register their names and locations of practice with the Board of Health before opening or engaging in the practice of barbering or hairdressing.

(Ord. 90, passed 10-11-1954)

' 820.03 QUARTERLY INSPECTIONS AND REPORTS.

It shall be the duty of the Board of Health to have each barber shop or beauty shop located in the borough inspected at least once every three months by a member of such Board or by the Health Officer. A written report shall be turned in to the Board containing observations made during each inspection, and any recommendations.

(Ord. 90, passed 10-11-1954)

' 820.99 PENALTY.

Editor's note:

See ' 202.99 for general code penalty if no specific penalty is provided.

CHAPTER 821: COMMUNITY ANTENNA CABLE TELEVISION SYSTEMS

Editor's note:

Ord. 385, passed October 2, 1978, established conditions, requirements and procedures for securing

a franchise to operate a community antenna cable television system in the borough. Copies are available, at cost, from the Borough Secretary. Ord. 248, passed September 13, 1965, had authorized the Delaware County Cable Television Company to construct, own, operate and maintain a C.A.T.V. system in the borough for 25 years, but this ordinance was repealed in its entirety by Ord. 384, passed October 2, 1978.

There are no sections in Chapter 821. This chapter has been established to provide a place for cross references and any future legislation.

CROSS-REFERENCE

Wireless communications facilities, see ' 1274.16

STATUTORY REFERENCE

Theft of cable television services, see 18 P.S. ' 3926

CHAPTER 822: FOOD CODE

Section

822.01	Title	822.03	Food Code regulations
822.02	Food employee certification	822.04	Additions to the Food Code

CROSS-REFERENCE

Board of Health, see Ch. 268

Health and cleanliness regulations, see Ch. 680

STATUTORY REFERENCE

Abatement of nuisances by Board of Health, see 8 Pa.C.S. ' ' 3106 and 3108

Appropriations for handling, distribution and storage of surplus food, see Borough Code, 8 Pa.C.S. ' 1202(4) and (5)

Authority to prohibit accumulation of garbage and refuse, see Borough Code, 8 Pa.C.S. ' 1202(10)

Board of Health Secretary; report to the Department at statutory or regulatory intervals the cases of communicable disease reported to the Board, see 8 Pa.C.S. ' 3104

Health and cleanliness regulations, see Borough Code, 8 Pa.C.S. ' 1202(5)

' 822.01 TITLE.

This chapter shall be known and may be cited as the Food Code.
(Ord. 704, passed 1-6-2006)

' 822.02 FOOD EMPLOYEE CERTIFICATION.

The Food Employee Certification Act, 3 Pa.C.S.A. ' ' 6501 et seq., as amended from time to time, and regulations promulgated pursuant thereto by the Pennsylvania Department of Agriculture are hereby incorporated into the codified ordinances of the borough. The Food Employee Certification Act and its regulations are to be enforced by the borough=s Health Inspector against all food establishments within the borough.

(Ord. 704, passed 1-6-2006)

' 822.03 FOOD CODE REGULATIONS.

The Food Code Regulations promulgated by the Pennsylvania Department of Agriculture, 7 Pa. Code ' ' 46.1 et seq., as amended from time to time, are hereby incorporated into the codified ordinances of the borough. The Food Code regulations are to be enforced by the borough=s Health Inspector.

(Ord. 704, passed 1-6-2006)

' 822.04 ADDITIONS TO THE FOOD CODE.

The following amends the above-referenced laws and regulations, which are incorporated herein by reference in this chapter, allowing for the closure of businesses and right to appeal under the following circumstances.

(A) *Closure of business.* When, in the opinion of the borough=s Health Inspector, any establishment in which there exists any unsanitary conditions, or any condition or conditions that present a threat or hazard to the health and well-being of the patrons of the establishment or the citizens of the borough, shall be given not less than one hour nor more than one week notice to correct the improper condition or conditions. Upon failure of the owner(s) to correct the improper condition or conditions, an immediate closure of the business shall be ordered. The Health Inspector shall immediately place at the entrance a sign reading AClosed by the Health Inspector@. Any establishment that continues operation after the issuance of the closure order or which removes, causes to be removed, or permits the removal of the aforementioned sign by anyone except the Health Inspector shall be subject to a fine of not less than \$150 nor more than \$300 for each day that the offense continues, together with the costs of prosecution. In default of payment of fine and costs, the owner may be imprisoned for 15 days for each day of the violation. The Health Inspector shall remove the above-referenced sign whenever the improper conditions have been removed.

(B) *Right to appeal.* Any person directly affected by a decision of the Health Inspector or a notice or order issued under this section, shall have a right to appeal to the Borough Council and be afforded a hearing in accordance with Local Agency Law, 2 Pa.C.S. ' ' 551 et seq., provided that a written application for appeal is filed within 20 days after the day that the decision, notice or order was served. The Borough Council shall meet within ten days of the filing of the appeal. An application for appeal shall be based on a claim that the true intent of the applicable laws and regulations have been incorrectly interpreted, do not apply, or the requirements have adequately satisfied by other means. The appeal will not stay the enforcement of the notice or order while the appeal is being heard by the Borough Council.

(Ord. 704, passed 1-6-2006)

**CHAPTER 823: TATTOO PARLORS, BODY PIERCING, BEADING AND
BODY JEWELRY ESTABLISHMENTS**

Section

823.01	Definitions	823.05	Suspension and/or revocation of license
823.02	License required		
823.03	Inspections	823.99	Penalty
823.04	Health and sanitary requirements		

CROSS-REFERENCE

Safety, sanitation and health, see Ch. 680

§ 823.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BEADING or ***BODY JEWELRY***. The insertion, by any means, of a foreign substance, including but not limited to, Teflon, into or under the skin of a human being for the purpose of body decoration.

BODY PIERCING. The creation, by mechanical, electrical or manual means, of holes through any portion of the human anatomy, for the purpose or purposes, inter alia, of inserting jewelry, ornaments or other visible materials or decorations, whether or not the holes are or are intended to be covered by clothing or other materials. This definition shall not apply to medical doctors or doctors of veterinary medicine in performance of their professional duties.

BROOKHAVEN BOROUGH BOARD OF HEALTH. The Board of Health of Brookhaven Borough, Delaware County, Pennsylvania.

DEPARTMENT. The Brookhaven Borough Health Department.

HEALTH OFFICER. The Health Officer of the Brookhaven Borough Health Department or his or her designated representative.

OPERATOR. Any individual, firm, company, corporation or association that owns or operates an establishment where tattooing, body piercing, beading or body jewelry is performed, and any individual who performs or practices the art of tattooing, body piercing, beading or body jewelry on another person.

TATTOO, TATTOOED or TATTOOING. Any method of placing designs, letters, scrolls, figures, symbols or any other marks upon or under the skin of a human with ink or any other substance, resulting in the coloration of the skin by the aid of needles or any other instrument designed to touch or puncture the skin. This definition shall not apply to medical doctors or doctors of veterinary medicine in performance of their professional duties.

(Ord. 654, passed 4-2-2001)

' 823.02 LICENSE REQUIRED.

(A) It shall be unlawful for any person to engage in the business of operating a tattoo, body piercing, beading or body jewelry establishment without first obtaining a license to engage in such business, in accordance with the provisions of this chapter and unless abiding by the provisions hereof.

(B) Applicants for a license under this chapter shall submit to the Department a written application containing such data as required by the Borough Board of Health.

(C) Each applicant before being granted a license shall pay a fee as set forth in the borough's General Fee Schedule contained in Chapter 208. Each license shall expire on December 31 of the year in which such license is issued. Renewal licenses shall require payment of additional fees as set forth in Chapter 208.

(D) Display of the license provided for in this chapter shall be posted conspicuously at the location where the applicant conducts the tattooing, body piercing, beading or body jewelry.

(E) If the licensee moves his or her tattooing, body piercing, beading or body jewelry business to another location within the borough, the license may be transferred to such new location upon application to the Department, giving the street and number of the new location. The new location shall first be approved by the Department in the same manner as provided elsewhere in this chapter. However, a license is not transferable to any operator other than the applicant.

(Ord. 654, passed 4-2-2001)

' 823.03 INSPECTIONS.

The application for license shall be referred to the Department. The Department shall inspect the proposed location to determine if it complies with the health and sanitary provisions of this chapter. The Health Officer may conduct periodic inspections of any tattooing, body piercing, beading or body jewelry establishment, without prior notice to the operator of the tattoo, body piercing, beading or body jewelry establishment, for the purpose of determining whether or not said establishment and the person performing the art of tattooing and body piercing therein are in compliance with all applicable health provisions contained within this chapter. It shall be unlawful for any person or operator of a tattooing, body piercing, beading or body jewelry establishment to willfully prevent or restrain the Health Officer from entering any licensed establishment where tattooing, body piercing, beading or body jewelry is being performed for the purpose of inspecting said premises after proper identification is presented to the operator.

(Ord. 654, passed 4-2-2001)

823.04 HEALTH AND SANITARY REQUIREMENTS.

Every person who operates a tattooing and/or body piercing establishment shall comply with the following requirements.

(A) The room in which tattooing, body piercing, beading and/or body jewelry is performed shall have an area of not less than 100 square feet. The walls, floors and ceilings shall have an impervious, smooth, washable surface and shall be painted or finished in a light color. Carpeting is prohibited in tattooing, body piercing, beading and body jewelry area(s) and toilet room(s).

(B) A toilet shall be located in the establishment and shall be accessible at all times when the tattooing, body piercing, beading and/or body jewelry establishment is open for business. The lavatories shall be supplied with hot and cold running water, soap and single-use towels provided in approved dispensers. Sinks supplied with hot and cold running water, soap and single-use towels in approved dispensers shall be located in each room where tattooing, body piercing, beading and/or body jewelry is performed.

(C) All tables and other equipment shall be constructed of easily cleanable material, shall be painted or finished in a light color, with a smooth, washable finish and shall be separated from waiting customers observers by a panel at least four feet high.

(D) The entire premises and equipment shall be maintained in a clean, sanitary condition and in good repair.

(E) The operator shall scrub his or her hands thoroughly with soap and water before starting to tattoo, body pierce, bead or insert body jewelry, and the hands shall be dried with individual, single-use towels. Sterile surgical gloves (or the equivalent) shall be worn by the operator when tattooing, body piercing, beading or inserting body jewelry. Gloves shall be used only once and then disposed of in a manner as prescribed by the Department.

(F) Safety razors with a new, single-service blade shall be used for each customer or patron, or a straight-edge razor may be used and shall be thoroughly cleaned and sterilized, as required by the Health

Officer, before use on each customer or person.

(G) The area to be tattooed, body pierced, beaded or body jeweled shall first be thoroughly scrubbed with an antiseptic soap for a minimum of two minutes, and be deposited in an easily cleanable, covered waste container, provided in the tattooing, body piercing, beading or body jewelry area.

(H) Only petroleum jelly (or its equivalent) in collapsible metal or plastic tubes (or their equivalent), as approved by the Health Officer, shall be used on the area to be tattooed, body pierced, beaded or body jeweled, and it shall be applied with sterile gauze.

(I) The use of styptic pencils, alum blocks or other solid styptics to check the flow of blood is prohibited.

(J) Operators of tattooing, body piercing, beading and/or body jewelry establishments shall complete a course, approved by the Borough Board of Health, on the control of and prevention of blood-borne diseases prior to opening for business. Existing licensed tattooing, body piercing, beading and/or body jewelry establishments shall have three months after the effective date of this chapter to comply.

(K) Single-service or individual containers of dye or ink shall be used for each patron, and the container therefore shall be discarded immediately after completing work on a patron. Any dye in which the needles were dipped shall not be used on another person. Excess dye or ink shall be removed from the skin with an individual, sterile sponge or a disposable paper tissue, which shall be used on one person and then immediately discarded. After completing work on any person, the tattooed, body pierced, beaded or body jeweled area shall be washed with sterile gauze saturated with an antiseptic soap solution approved by the Health Officer, or a 70% alcohol solution. The area shall be allowed to dry.

(L) No tattooing, body piercing, beading and/or body jewelry establishment may attempt to remove a tattoo, body piercing, beading or body jewelry from any person or allow such a procedure to take place on its premises.

(M) No holder of a license hereunder, or the servant or employee of such holder, shall tattoo, body pierce, bead or insert body jewelry upon any person under the age of 18 years without first obtaining a written parental authorization. All parental authorizations shall be maintained on file and be available for inspection for a period of seven years. Proof of age must be required of all patrons.

(N) Animals shall not be permitted in the tattooing, body piercing, beading and/or body jewelry establishment, except where permitted by state law.

(O) All clean and ready-to-use needles and instruments shall be kept in a closed glass or metal case or storage cabinet while not in use. Such cabinet shall be maintained in a sanitary manner at all times.

(P) A steam sterilizer (autoclave) shall be provided for sterilizing reusable needles and similar instruments before use on any customer, person or patron. Sterilization of equipment shall be accomplished by exposure to live steam for at least 30 minutes at the minimum pressure of 15 pounds per square inch, and a minimum temperature of 2,400°F. The autoclave shall be provided with a thermometer reading +20 accuracy, and an accurate steam pressure gauge. Alternate sterilizing procedures may only be used when specifically approved by the Health Officer.

(Q) The needles and instruments required to be sterilized shall be so used, handled and temporarily placed during tattooing, body piercing, beading and/or body jewelry so that they not be contaminated. Animals are not to be tattooed, body pierced, beaded or body jeweled with any of the instruments used in tattooing, body piercing, beading and/or body jewelry customers.

(R) No person, customer or patron having any skin infection or other disease of the skin or any communicable disease shall be tattooed, body pierced, beaded or body jeweled. All infections resulting from the practice of tattooing, body piercing, beading and/or body jewelry which become known to the operator shall promptly be reported to the Health Officer by the person owning or operating the tattooing, body piercing, beading and/or body jewelry establishment.

(S) All pigments, dyes, colors and the like used in tattooing, body piercing, beading or body jewelry shall be sterile and free from bacteria, virus particles and noxious agents and substances.

(T) All bandages and surgical dressings used in connection with the tattooing, body piercing, beading and/or body jewelry of a person shall be sterile.

(U) In order to carry out the intent of this chapter, the Borough Board of Health may promulgate, from time to time, rules and regulations pertaining to the requirements of sanitation, cleanliness, adequacy of facilities, equipment and operation of a tattooing, body piercing, beading and/or body jewelry establishment consistent with this chapter.

(Ord. 654, passed 4-2-2001)

823.05 SUSPENSION AND/OR REVOCATION OF LICENSE.

(A) Tattooing, body piercing, beading and/or body jewelry establishment license may be suspended or revoked by the Health Department upon the occurrence of any of the following events:

(1) The application for such license contained a false statement(s);

(2) The operator has violated the provisions of this chapter; and/or

(3) The operator is convicted and pleads guilty, or nolo contendere to an offense listed under the Pennsylvania Crimes Code relating to the conduct of business in the tattooing; body piercing, beading and/or body jewelry establishment.

(B) The Health Officer shall serve the tattooing, body piercing, beading and/or body jewelry establishment with written notice of said suspension or revocation, specifying the reasons therefor, before said suspension or revocation shall become effective. Said notice shall be placed in a conspicuous location on the premises, in a location where it can be reasonably viewed by all patrons of the establishment. Service of said notice shall be deemed effective if delivered to the person in apparent charge of the tattooing, body piercing, beading and/or body jewelry establishment.

(C) The tattooing, body piercing, beading and/or body jewelry establishment shall have the right to a hearing on said suspension or revocation, which hearing shall be held before the Board of Health within ten days after the service of the notice of such suspension or revocation, whether or not the suspension or revocation was effective immediately. The Board of Health shall uphold, reverse or modify such suspension or revocation.

(Ord. 654, passed 4-2-2001)

823.99 PENALTY.

In addition to the revocation and suspension of any license, as provided in this chapter, any operator or other person who shall violate any provision of this chapter shall, upon conviction be subject to a fine of not less than \$100 nor more than \$1,000 and costs of the action. In default of payment of such fine and costs, such person may be sentenced and committed to the county prison for a period not exceeding 30 days. Each day that a violation exists shall constitute a separate violation.

(Ord. 654, passed 4-2-2001)

CHAPTER 824: LAUNDROMATS

Section

824.01	Laundromat defined	824.06	Storage of cleaning fluids and other combustible materials
824.02	Operation not to constitute nuisance	824.07	Attendant required
824.03	Water on floors prohibited	824.08	Weekly inspections
824.04	Location of electrical outlets and connections	824.99	Penalty
824.05	Removal of lint and the like from machines		

STATUTORY REFERENCE

Abatement of nuisances by Board of Health, see Borough Code, 8 Pa.C.S. ' ' 3106 and 3108 Nuisances, see Borough Code, 8 Pa.C.S. ' 1202(4) and (5)

' 824.01 LAUNDROMAT DEFINED.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

LAUNDROMAT. An establishment wherein the public, for a consideration, may come to wash and/or dry clothes and other similar materials using the washing and drying machines on the premises for such purposes.

(Ord. 188, passed 12-11-1961)

' 824.02 OPERATION NOT TO CONSTITUTE NUISANCE.

No laundromat located in the borough shall be operated so as to constitute a nuisance to the public. (Ord. 188, passed 12-11-1961)

' 824.03 WATER ON FLOORS PROHIBITED.

No person shall permit water or any other slippery substance to be on the floor of any laundromat. (Ord. 188, passed 12-11-1961)

' 824.04 LOCATION OF ELECTRICAL OUTLETS AND CONNECTIONS.

All electrical outlets and/or connections situated in laundromats shall be at least six inches above the floor.

(Ord. 188, passed 12-11-1961)

' 824.05 REMOVAL OF LINT AND THE LIKE FROM MACHINES.

Lint and other similar materials that remain in machines after washing or drying shall be removed as soon as possible so as not to constitute a hazard to the public.

(Ord. 188, passed 12-11-1961)

' 824.06 STORAGE OF CLEANING FLUIDS AND OTHER COMBUSTIBLE MATERIALS.

Cleaning fluids and other combustible materials shall be stored in an area that is readily accessible and plainly marked to indicate that combustible material is stored therein.

(Ord. 188, passed 12-11-1961)

' 824.07 ATTENDANT REQUIRED.

All laundromats in the borough shall at all times when open to the public have an attendant on duty to ensure compliance with this chapter and to ensure that the place is kept clean and free of water and is operated so as not to constitute a hazard to the health and safety of the public.

(Ord. 188, passed 12-11-1961)

' 824.08 WEEKLY INSPECTIONS.

All laundromats in the borough shall be inspected weekly by the Board of Health and the Fire Marshal to ensure compliance with all laws, ordinances and regulations of the Commonwealth, the borough and other agencies, and to ensure that the laundromats do not constitute a fire hazard or any other hazard to the residents of the borough.

(Ord. 188, passed 12-11-1961)

' 824.99 PENALTY.

Editor's note:

See ' 202.99 for general code penalty if no specific penalty is provided.

CHAPTER 828: PEDDLERS AND SOLICITORS

Section

828.01	Activities described; license required	828.07	Use of whistles, horns and the like
828.02	Effective period of licenses	828.08	Display of license
828.03	License fee	828.09	Reports to Council
828.04	License application	828.10	False statement in license application
828.05	Transferability of licenses	828.99	Penalty
828.06	Business hours		

CROSS-REFERENCE

Transient merchants, see Ch. 836

STATUTORY REFERENCE

License fee exemptions, see Borough Code, 8 Pa.C.S. ' 2901

Power to license and regulate peddling, see Borough Code, 8 Pa.C.S. ' 1202(20)

Power to license transient retail business, see Borough Code, 8 Pa.C.S. ' 2901

' 828.01 ACTIVITIES DESCRIBED; LICENSE REQUIRED.

No person shall, without first having made application to the Borough Secretary for the license herein required and paid the fee herein required, do any of the following acts or engage in any of the following activities within the borough:

(A) Conduct, whether as principal or agent, a transient retail business for the sale of any goods, wares or merchandise of any kind;

(B) Canvass from house to house for the purpose of selling or offering for sale or taking orders for the sale of any goods, wares or merchandise of any kind, or books, periodicals or other publications of any kind;

(C) Hawk, huckster or peddle any goods, wares or merchandise of any kind;

(D) Engage in the business of buying or collecting, itinerantly along the streets of the borough or from house to house, any refuse or discarded material of any kind; or
(Ord. 360, passed 8-31-1976)

(E) Canvas from house to house for the purpose of soliciting donations, contributions or gifts for any purpose whatsoever.
(Ord. 426, passed 4-5-1982)

' 828.02 EFFECTIVE PERIOD OF LICENSES.

The license required by ' 828.01 shall be void and of no effect on December 31 next following the date of issuance thereof.
(Ord. 360, passed 8-31-1976)

' 828.03 LICENSE FEE.

The fee for the license required by ' 828.01 shall be as set forth in ' 208.03(C) of the Administration Code. All fees herein required shall be collected by the Secretary of the borough and paid into the treasury of the borough.

' 828.04 LICENSE APPLICATION.

The application for a license required by ' 828.01 shall be made upon a form which shall be available from the Borough Secretary. The application shall set forth the name, description and address of the applicant and the character of the goods, wares or merchandise proposed to be sold, or the type of solicitation proposed. Upon completion of such application by the applicant, the Secretary shall issue the license within ten business days, provided that the information supplied by the applicant has been properly verified.
(Ord. 426, passed 4-5-1982)

' 828.05 TRANSFERABILITY OF LICENSES.

The license issued under the provisions of this chapter shall not be transferable.
(Ord. 360, passed 8-31-1976)

' 828.06 BUSINESS HOURS.

None of the acts or activities requiring a license under this chapter shall be carried on after one hour before sunset or before 10:00 a.m. on any day.

(Ord. 426, passed 4-5-1982)

' 828.07 USE OF WHISTLES, HORNS AND THE LIKE.

No person procuring a license under this chapter shall be permitted to use any whistle, horn, siren or other noise or signal to attract attention to his or her business.

(Ord. 213, passed 6-10-1963)

' 828.08 DISPLAY OF LICENSE.

Police officers and special police officers of the borough shall arrest any person who fails to show a license issued under authority of this chapter when requested to do so by such officer or special police officer.

(Ord. 213, passed 6-10-1963)

' 828.09 REPORTS TO COUNCIL.

The Secretary of the borough shall at least once in every six months, and oftener if requested by Council, present to Council a list of all persons to whom licenses have been granted since the last report to Council, which list shall contain the names of the persons to whom licenses have been granted, their addresses and the character of goods, wares and merchandise which the licensee is entitled to sell or solicit.

(Ord. 213, passed 6-10-1963)

' 828.10 FALSE STATEMENT IN LICENSE APPLICATION.

No person shall make a false statement in the application for a license required by this chapter. A violation of this section shall operate to revoke the license issued under such application and shall, in addition, render the applicant liable to the penalty provided in ' 828.99.

(Ord. 213, passed 6-10-1963)

' 828.99 PENALTY.

Editor's note:

See ' 202.99 for general code penalty if no specific penalty is provided.

CHAPTER 830: PRECIOUS METALS DEALERS

Section

830.01	Definitions	830.04	Retention of purchased items
830.02	Purchase from minors prohibited	830.05	Enforcement
830.03	Completion of form and copy of photo identification		

§ 830.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DEALER IN PRECIOUS METALS. An individual, partnership, association, corporation or business entity who or which purchases precious metals from the general public for resale or refining or any individual who acts as an agent for such individual, partnership, association, corporation or business entity for such purchase or purchases; provided, however, that the term shall not include any financial institution licensed under federal or state banking laws, the purchaser of precious metals who purchases from a seller seeking a trade-in or allowance, the manufacturers of jewelry or of other items composed, in whole or in part, of gold, silver or platinum, or the purchaser of precious metals for his, her or its own use or ownership and not for resale or refining.

GOLD. Any alloy of the element gold, ten karat or greater fineness. A karat is 1/24 part, by weight, of the alloy of the metallic element gold.

PLATINUM. Any alloy of the element platinum, 750/1,000 or more parts per 1,000, by weight, of pure platinum.

POLICE DEPARTMENT. The Brookhaven Borough Police Department.

PRECIOUS METALS. Items containing or being of gold, silver or platinum, including, but not limited to, jewelry and silver services, but excluding coins, ingots, bullion or photographic film or any article containing less than 5% of gold, silver or platinum by weight.

SILVER. Any alloy of the element silver, 900/1,000 or more parts per 1,000 by weight, of pure silver.

WORKING DAYS. All days excluding Saturdays, Sundays and federal or state holidays.
(Ord. 769, passed 2-4-2013)

‘ 830.02 PURCHASE FROM MINORS PROHIBITED.

No dealer in precious metals may make any purchase of precious metals from any person under the age of 18.

(Ord. 769, passed 2-4-2013)

‘ 830.03 COMPLETION OF FORM AND COPY OF PHOTO IDENTIFICATION.

Concurrent with each transaction in which he or she makes a purchase of precious metals, a dealer of precious metals shall complete a form to be obtained from the Borough Police Department and obtain a copy of the seller=s photo identification. Such form shall be faxed, along with the copy of the photo identification to the Police Department on the date that the dealer in precious metals makes such purchase. Dealers in precious metals shall retain such form and a copy of such identification for a period of one year from the date upon which they make the corresponding purchase of precious metals.

(Ord. 769, passed 2-4-2013)

‘ 830.04 RETENTION OF PURCHASED ITEMS.

Dealers in precious metals shall retain any precious metals they may purchase for a period of ten days prior to offering such items for resale.

(Ord. 769, passed 2-4-2013)

‘ 830.05 ENFORCEMENT.

Violations of this chapter shall be enforceable as set forth in ‘ 202.99 of this code.

(Ord. 769, passed 2-4-2013)

CHAPTER 832: SHOPPING CARTS

Section

832.01	Definitions	832.05	Confiscation of carts
832.02	Identification of carts	832.06	Sale of confiscated carts
832.03	Permitting carts on public and private ways and grounds	832.07	Recovery of carts
832.04	Owner presumed to consent to violation	832.99	Penalty

STATUTORY REFERENCE

Obstruction of public grounds, see Borough Code, 8 Pa.C.S. ' 1202(4) and (12)

' 832.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

MERCHANT. Either the owner of a business, if it is owner operated, or the manager of a business if the same is not operated by the owner, or the person normally in charge of a business where there is no owner or operator normally present within the borough.

SHOPPING CART. Those mobile vehicles used for the transportation and portage by human propulsion, of goods and merchandise in and about the markets, stores, shops, shopping centers and business establishments in the borough, which vehicles are of a size of less than six feet in length and less than five feet high and less than four feet wide.

(Ord. 254, passed 1-10-1966)

' 832.02 IDENTIFICATION OF CARTS.

No merchant of any store, shop, market, supermarket or business establishment shall have on the premises where such store, shop, market, supermarket or business establishment is located, or supply to any patron or customer of such store, shop, market, supermarket or business establishment, any shopping cart, or permit the use of any shopping cart, without having securely attached thereto a permanent tag, label or plate of identification, setting forth the name of the store and the location of its use.

(Ord. 254, passed 1-10-1966)

' 832.03 PERMITTING CARTS ON PUBLIC AND PRIVATE WAYS AND GROUNDS.

No merchant of any store, shop, market, supermarket or business establishment shall permit any shopping cart supplied by such store, shop, market, supermarket or business establishment to remain on any sidewalk, street, highway, parking lot or private or public thoroughfare of the borough.
(Ord. 254, passed 1-10-1966)

' 832.04 OWNER PRESUMED TO CONSENT TO VIOLATION.

The presence of any shopping cart on any sidewalk, street, highway, parking lot or public or private thoroughfare of the borough shall be presumed to be with the acknowledged consent of the merchant of the store, shop, market, supermarket or business establishment to which it belongs.
(Ord. 254, passed 1-10-1966)

' 832.05 CONFISCATION OF CARTS.

Any unattended shopping cart found upon any sidewalk, street, highway, parking lot or private or public thoroughfare of the borough is hereby declared to be a nuisance and the police are hereby authorized and directed to remove the same and store such shopping cart with the Police Department.
(Ord. 254, passed 1-10-1966)

' 832.06 SALE OF CONFISCATED CARTS.

Any confiscated shopping cart may be sold at auction by the Police Department after 30-days= storage by the Department and ten days prior notice to the business named on the identification tag of those shopping carts with identification tags and after 30-days= storage of those shopping carts without identification tags.
(Ord. 254, passed 1-10-1966)

' 832.07 RECOVERY OF CARTS.

Any shopping cart removed to the Police Department under ' 832.05 may be returned to the owner thereof upon payment by the owner to the Borough Secretary, for the use of the borough, of an amount as set forth in ' 208.03(D) of the Administration Code. Such payment shall be in addition to the penalty provided in ' 832.99.
(Ord. 254, passed 1-10-1966)

' 832.99 PENALTY.

Editor's note:

See ' 202.99 for general code penalty if no specific penalty is provided.

CHAPTER 834: TEMPORARY SIDEWALK/STREET SALES

Section

834.01 Forms for permit applications and permits

834.02 Permit fees

CROSS-REFERENCE

Peddlers and solicitors, see Ch. 828

Transient merchants, see Ch. 836

STATUTORY REFERENCE

Power to license transient retail business, see Borough Code, 8 Pa.C.S. ' 2901

' 834.01 FORMS FOR PERMIT APPLICATIONS AND PERMITS.

The permit application form and the permit form which are set forth below shall be the only acceptable forms required for conducting temporary sidewalk/street sales. The information requested on the application form is hereby deemed by Borough Council to be necessary for the proper administration and control of temporary sidewalk/street sales. The permit form shall be completed by the Borough Secretary and issued only after all information requested on the permit application is provided by the applicant.

PERMIT APPLICATION FOR TEMPORARY SIDEWALK/STREET SALES		Date: _____
Property Owner=s Name _____		
Company=s Name _____		
Address _____		
Phone - Day _____		Night _____
Seller=s Name _____		
Location of Selling Area _____		
Phone - Day _____		Night _____
Type of Sales _____		

Brookhaven Mercantile Tax Number _____

PA State Sales Tax Number _____

Liability Insurance Carrier _____

Insurance Home Office Phone Number _____

Insurance Agent=s Phone Number _____

This Application shall be filled out by applicant in person at the Brookhaven Borough Secretary=s Office during normal business hours. Proof of required documents shall be verified on day of Application. Application will be approved or disapproved ten (10) business days prior to start date of sale, providing all requirements are met. The Permit Application form cannot be submitted to the borough at any time sooner than thirty (30) days prior to the day of sale or the initial day of sale if the sale will last more than one (1) day.

I certify the above information is true and correct: _____

Applicant=s Signature _____

Property Owner=s Signature _____

Application Received by Borough Secretary on _____

Borough Secretary=s Signature _____

Approved: _____

**PERMIT
SIDEWALK/STREET SALES**

Permit #93-_____ Issue Date _____

This is to certify that _____ has met the application requirements to obtain this permit to sell _____ within the limits of (location of selling area) for a period of _____ days from _____ to _____, 20____ for the fee of (per ordinance) dollars paid to the borough. This permit is issued subject to borough ordinance relating thereto, and to the police rules and regulations.

This permit expires midnight _____ and is non-transferable.

Witness my hand and seal of Brookhaven Borough this _____ day of _____, 20____.

Seal _____
Borough Secretary

(Ord. 573, passed 3-8-1993)

' 834.02 PERMIT FEES.

Fees for the permit required by ' 834.01 shall be as set forth in ' 208.03(E)(1) of the Administration Code.

CHAPTER 836: TRANSIENT MERCHANTS

Section

836.01	Transient merchant defined	836.03	License required; fee; exceptions
836.02	Registration required	836.99	Penalty

CROSS-REFERENCE

Peddlers and solicitors, see Ch. 828

STATUTORY REFERENCE

Power to license and regulate peddling, see Borough Code, 8 Pa.C.S. ' 1202(20)

Power to license transient retail business, see Borough Code, 8 Pa.C.S. ' 2901

' 836.01 TRANSIENT MERCHANT DEFINED.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

TRANSIENT MERCHANT. Any person setting up or establishing a place of business within the borough for the purpose of selling merchandise of any nature, such business to be conducted for a period of time of less than 90 days.

(Ord. 49, passed 8-10-1953)

' 836.02 REGISTRATION REQUIRED.

No transient merchant shall set up, establish or maintain any business within the borough for the sale or disposition of any kind of merchandise without first registering his or her name, the nature of the business to be conducted, the nature of the merchandise to be sold and the time such business is to be conducted, with the Secretary of the borough.

(Ord. 49, passed 8-10-1953)

' 836.03 LICENSE REQUIRED; FEE; EXCEPTIONS.

No transient merchant shall set up or establish any place of business within the borough without having first obtained a license from the Secretary of the borough and having paid the license fee as set forth in ' 208.03(F)(1) of the Administration Code, which license shall be renewed each month by the payment of an additional license fee as set forth in ' 208.03(F)(2) of the Administration Code. The provisions of this section are only partially applicable to charitable, religious or philanthropic organizations engaged in the same or similar types of business as transient merchants during the same period of time. Such charitable, religious or philanthropic organizations are not required to pay a license fee but are required to obtain a license from the Borough Secretary.
(Ord. 216, passed 8-12-1963)

' 836.99 PENALTY.***Editor's note:***

See ' 202.99 for general code penalty if no specific penalty is provided.

**CHAPTER 840: VIDEO CASSETTE SALES AND RENTAL STORES
(REPEALED)**

Editor's note:

This chapter was repealed by Ord. 496, passed January 12, 1987.

CHAPTER 843: HOUSE AND APARTMENT REGISTRATION

Section

843.01	Short title	843.04	Registration of houses, apartments and rooms
843.02	Purpose	843.05	Inspection and access
843.03	Definitions	843.99	Penalty

‘ 843.01 SHORT TITLE.

This chapter shall be known as the Brookhaven Borough House and Apartment Registration Ordinance.

(Ord. 665, passed 4-1-2002)

‘ 843.02 PURPOSE.

The purpose of this chapter is to establish a registry of the houses, apartments and rooms within the borough to aid in the administration of borough affairs.

(Ord. 665, passed 4-1-2002)

‘ 843.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

OWNER. Any person, who alone, or jointly or severally with others, holds legal or equitable title to premises upon which and in which there are quarters for the housing of one or more persons.

PERSON. An individual, firm, partnership, association or corporation.

ROOM. A space included within the building occupied by one other than the owner or members of his or her immediate family for a fee.

(Ord. 665, passed 4-1-2002)

§ 843.04 REGISTRATION OF HOUSES, APARTMENTS AND ROOMS.

Every owner shall, between September 1 and October 1 of each year, register with the borough, on forms provided by the borough, all houses, apartments and rooms, other than those exclusively occupied by the owner and members of his or her immediate family, situate within the borough as of September 1 of the year of registration.

(A) Provided, however, that with regard to rooms, registration shall be of those individuals who are not transient in nature but who occupy the rooms as permanent residents.

(B) No fee shall be charged by the borough for such registration.

(C) Within 30 days of any change of either the occupant and/or ownership of the house, apartment or room, the present owner or in the case of a transfer of ownership, to a new owner, the new owner shall forthwith file the registration as herein required.

(D) An owner shall, at the same time, supply to the borough his or her name and address, or the name and address of any agent for the purposes of serving the owner with all notices as may be required pursuant to the provisions of the Borough Council or the codified ordinances of the borough.
(Ord. 665, passed 4-1-2002)

§ 843.05 INSPECTION AND ACCESS.

(A) The Code Enforcement Officer or designee, is hereby authorized and directed to conduct inspections from time to time to determine whether there has been compliance with the registration provisions of this chapter, provided, however, that no such inspections shall be made without prior notice to and consent of the owner and occupants thereof. Such inspections shall not, without the consent of the occupants thereof, be made other than during normal business hours. In the event the owner and/or occupants refuse to such inspection, the Code Enforcement Officer shall not proceed with such inspection without obtaining a search warrant. The Code Enforcement Officer is hereby authorized to obtain a search warrant for such purposes.

(B) For such purpose, and subject to the qualifications set forth herein, the Code Enforcement Officer or designee is authorized upon justification based upon reasonable belief of the existence of a violation to enter and examine any dwelling, yard or part of either, at any reasonable time, and every owner, operator or occupant shall provide access thereto.
(Ord. 665, passed 4-1-2002)

' 843.99 PENALTY.

Any person who shall violate the provisions of this chapter, by failing to register as herein provided, shall upon conviction thereof, before a District Justice, be sentenced to pay a fine of not less than \$50 nor more than \$600 and the cost of prosecution, and default of payment of such fine and costs, to imprisonment for not more than 30 days. Each day that a violation continues shall constitute a separate offense.

(Ord. 665, passed 4-1-2002)

TITLE FOUR - TAXATION

- Chap. 880. Amusement Tax**
- Chap. 884. Mercantile Tax**
- Chap. 888. Real Estate Tax**
- Chap. 892. Realty Transfer Tax**
- Chap. 896. Business Privilege Tax**
- Chap. 898. Earned Income Tax**
- Chap. 899. Taxpayers Bill of Rights**

CHAPTER 880: AMUSEMENT TAX

Section

- | | | | |
|--------|----------------------------|--------|---|
| 880.01 | Short title | 880.08 | Estimation of taxes, penalties and interest |
| 880.02 | Definitions | 880.09 | Confidentiality of information |
| 880.03 | Imposition of tax | 880.10 | Disposition of funds |
| 880.04 | Permits required; contents | 880.11 | Administrative expenses |
| 880.05 | Collection of tax | 880.12 | Separability |
| 880.06 | Interest and surcharge | 880.13 | Effective date |
| 880.07 | Authority of Secretary | 880.99 | Penalty |

CROSS-REFERENCE

Auditors, see Ch. 234
Tax Collector, see Ch. 236
Treasurer, see Ch. 238

STATUTORY REFERENCE

Power to tax, see 53 P.S. ' ' 6924.101 et seq.

§ 880.01 SHORT TITLE.

This chapter shall be known and may be cited as the Borough of Brookhaven Amusement Tax Ordinance or just the Amusement Tax.

(Ord. 258, passed 5-9-1966; Ord. 264, passed 12-28-1966)

§ 880.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADMISSION. Monetary charges of any kind, including donations, contributions, dues or membership fees (periodical or otherwise) and charges fixed or paid, or in any other manner received, by a producer, from the general public, or a limited or selected number thereof, directly or indirectly, for the privilege of attending or engaging in any amusement. **ADMISSION** does not include any tax added to the charge. However, in the case of persons (except bona fide employees of the producer or borough officers on official business) admitted free or at reduced rates at a time and during circumstances under which an established price is charged to other persons, the word **ADMISSION** means the established price charged to other persons.

AMUSEMENT. All kinds of entertainment, diversion, sport, recreation and pastime, including, but not limited to, the following: theatrical performances, operatic performances, motion picture exhibitions, sound motion picture exhibitions, carnivals, circuses, shows, concerts, sport events, swimming, swimming pools or bathing pools, vaudeville shows, side shows, amusement parks and all forms of entertainment therein, dancing, golf, bowling alleys and all forms of bowling conducted therein, billiard games or pool, athletic contests and any other form of diversion, sport, pastime or recreation for which admission is charged or paid. However, **AMUSEMENT** does not include any form of entertainment accompanying or incidental to the serving of food or drink or the sale of merchandise, where the charge for admission is wholly included in the price paid for refreshment or merchandise. Further, **AMUSEMENT** does not include any form of entertainment, recreation, pastime or diversion, the proceeds of which, after payment of reasonable expenses, inure directly and exclusively to the benefit of any religious, educational, nonprofit or charitable institution, society or organization.

PERSON. Any natural person, co-partnership, association, firm or corporation. Whenever used in any clause prescribing and imposing a fine or penalty, or both, the word **PERSON**, as applied to a co-partnership or association, means the partners or members thereof, and as applied to a corporation, the officers thereof.

PLACE OF AMUSEMENT. Any place, indoors or outdoors, within the borough, where the general public, or a limited or selected number thereof, may, upon the payment of an admission, attend or engage in any amusement and other like places.

PRODUCER. Any person who conducts any amusement in the borough.
(Ord. 258, passed 5-9-1966; Ord. 264, passed 12-28-1966)

' 880.03 IMPOSITION OF TAX.

(A) A tax is hereby imposed for general borough purposes, under authority of the ALocal Tax Enabling Act@, 53 P.S. ' ' 6924.101 et seq., as amended, at the rate of 4% on the price of admission to each and every amusement within the borough.

(B) The producer shall be primarily responsible for collecting such tax.

(C) Where no fixed admission is charged, the tax shall be based upon the gross admissions collected and shall be paid by the producer.
(Ord. 258, passed 5-9-1966; Ord. 264, passed 12-28-1966)

' 880.04 PERMITS REQUIRED; CONTENTS.

(A) (1) Any person desiring to conduct any amusement within the borough shall file with the Borough Secretary an application for a permanent amusement permit or a temporary amusement permit, as the case may be, and shall pay the fee required by this section.

(2) In the case of any amusement permit that is to continue for longer than ten days, a permanent amusement permit shall be required and the fee therefor shall be as set forth in ' 208.03(G) of the Administration Code. In the case of any amusement that is to continue for ten days or less, a temporary amusement permit shall be required and the fee therefor shall be as set forth in ' 208.03(G) of the Administration Code.

(B) The Borough Secretary shall procure and make available to the general public, at the expense of the borough, a sufficient number of permit forms on each of which the following information shall be printed or inserted in ink or by typewriter:

- (1) The name of the borough;
- (2) Whether it is a temporary or a permanent amusement permit;
- (3) The name of the person receiving the permit;
- (4) The location of the amusement covered by the permit;
- (5) The type of amusement;

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(6) The type of admission;

(7) The amount of the tax (4% of admissions);

(8) The period for which the permit is issued (permanent amusement permits shall be valid until the last day of the year for which they are issued; temporary permits shall be valid until the last day the amusement is conducted);

(9) The number of the permit;

(10) The date the permit is issued;

(11) The signature of the Borough Secretary; and

(12) The borough seal.

(C) Every permit shall be issued in duplicate. The original, to which the borough seal shall be affixed, shall be given to the person applying for the permit and the duplicate shall be kept on file by the Borough Secretary.

(D) In case of the loss, defacement or destruction of any permit, the person to whom such permit was issued shall apply to the Borough Secretary, who shall issue a new permit, for which a fee as set forth in ' 208.03(G) of the Administration Code will be charged.

(E) The amusement permit, for so long as it remains effective, shall be prominently displayed, visible to the general public at the place of amusement for which it was issued.
(Ord. 258, passed 5-9-1966; Ord. 264, passed 12-28-1966)

' 880.05 COLLECTION OF TAX.

(A) Every producer shall collect the tax imposed by this chapter and shall be liable to the borough as agents thereof for the payment of the same to the Borough Secretary as hereinafter provided.

(B) Every producer of a permanent amusement shall, on or before the tenth day of each month following the last day of the month in which the amusement was conducted, transmit to the Borough Secretary a report, under oath or affirmation, showing the amount of tax collected or which should have been collected by him or her during the preceding month under the provisions of this chapter together with such tax.

(C) (1) Every producer of a temporary amusement shall, at the close of each day on which such amusement is conducted, transmit to the Borough Secretary a report, under oath or affirmation, showing the amount of tax collected or which should have been collected under the provisions of this chapter upon admissions for such day together with such tax. On the day of expiration of such temporary permit, the producer shall, in addition, submit a report under oath or affirmation of all admissions charged or collected or which should have been charged or collected during the period in which such temporary amusement was conducted and of all taxes due and paid thereupon.

(2) The Mayor may in any case direct the Chief of Police to receive any tax levied under this chapter and payable as a result of this division (C)(2) and to pay over such moneys to the Borough Secretary at the earliest opportunity.

(D) In every case, the Borough Secretary shall furnish to the producer paying over to him or her any tax levied under this chapter a receipt for the payment of such tax.

(E) Where temporary or itinerant forms of amusement are conducted by persons who are now owners, lessees or custodians of the places where the amusements are to be conducted, or where the temporary or itinerant form of amusement is, after the effective date of this chapter (Ord. 258, passed May 9, 1956), permitted by the owner, lessee or custodian of any place to be conducted without it being registered with the borough as required by this chapter, the collection of the tax imposed by this chapter shall be the responsibility of the owner, lessee or custodian of such place where any such temporary or itinerant form of amusement is held or conducted and shall be collected and paid by him or her unless collected and paid by the producer conducting the amusement.

(F) Where producers may begin to conduct permanent amusements after the effective date of this chapter (Ord. 258, passed May 9, 1956) and they are not the owners of the place where the permanent amusements are to be conducted, or where the owner of any place permits a producer to begin or to conduct a permanent amusement at that place after the effective date of this chapter (Ord. 258, passed May 9, 1956) without it being registered with the borough as required by this chapter, the collection of the tax imposed by this chapter shall be the responsibility of the owner of such place where any such permanent amusement is to be conducted and shall be collected and paid by him or her unless collected and paid by the producer conducting the permanent amusement.
(Ord. 258, passed 5-9-1966; Ord. 264, passed 12-28-1966)

' 880.06 INTEREST AND SURCHARGE.

(A) If any tax levied pursuant to this chapter is not paid when due, such unpaid tax shall bear interest at the rate of 0.5% per month, or fractional part of a month, from the date due until paid in full.

(B) If any producer neglects or refuses to make any report and payment as herein required, an additional 10% of the amount of the tax shall be added and collected as a penalty.

(C) The interest and surcharge provided for herein shall be in addition to the penalty provided in ' 880.99.
(Ord. 258, passed 5-9-1966; Ord. 264, passed 12-28-1966)

▮ **880.07 AUTHORITY OF SECRETARY.**

The Secretary of the borough is hereby authorized to receive all taxes as herein provided, to give receipts therefor, to transmit such taxes to the Borough Treasurer for deposit in the borough depository and to compute and recompute the taxes provided for herein. Further, if the Secretary of the borough is not satisfied with the report and payment of tax made by a producer under the provisions of this chapter, he or she is hereby authorized to make a determination of the tax due by such producer, based upon the facts contained in the report, or upon any information within his or her possession, or that comes into his or her possession, and for this purpose the Secretary of the borough is hereby authorized to examine the books, papers, tickets, ticket stubs and records of any producer taxable under this chapter to verify the accuracy of any report or payment made under the provisions hereof and to ascertain whether the taxes imposed by this chapter have been paid.

(Ord. 258, passed 5-9-1966; Ord. 264, passed 12-28-1966)

▮ **880.08 ESTIMATION OF TAXES, PENALTIES AND INTEREST.**

If any producer neglects or refuses to make any report and payment of tax required by this chapter, or if, as a result of an investigation by the Secretary of the borough, a report is found to be incorrect, the Secretary of the borough shall estimate the tax due by such producer and determine the amount due by him or her for taxes and for penalties and interest thereon.

(Ord. 258, passed 5-9-1966; Ord. 264, passed 12-28-1966)

▮ **880.09 CONFIDENTIALITY OF INFORMATION.**

Any information gained by the Borough Secretary or any other official or agent of the borough as a result of any returns, investigations or verifications required or authorized by this chapter shall be confidential, except for official purposes, and except in accordance with proper judicial order, or as otherwise provided by law. No person shall disclose such information contrary to the provisions of this section.

(Ord. 258, passed 5-9-1966; Ord. 264, passed 12-28-1966)

▮ **880.10 DISPOSITION OF FUNDS.**

All taxes, interest and penalties received, collected or recovered under the provisions of this chapter shall be paid into the treasury of the borough to the use and benefit of the borough in the same manner as other taxes collected for the borough.

(Ord. 258, passed 5-9-1966; Ord. 264, passed 12-28-1966)

' 880.11 ADMINISTRATIVE EXPENSES.

All expenses incurred in the administration of this chapter shall be paid by the borough.
(Ord. 258, passed 5-9-1966; Ord. 264, passed 12-28-1966)

' 880.12 SEPARABILITY.

If any sentence, clause, section or part of this chapter is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this chapter. It is hereby declared to be the intent of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.
(Ord. 258, passed 5-9-1966; Ord. 264, passed 12-28-1966)

' 880.13 EFFECTIVE DATE.

This chapter shall become effective on July 1, 1966, and shall continue effective without annual re-enactment.

' 880.99 PENALTY.

Editor's note:

See ' 202.99 for general code penalty if no specific penalty is provided.

CHAPTER 884: MERCANTILE TAX

Section

884.01	Short title	884.16	Returns; persons in business less than a year before license year
884.02	Definitions	884.17	Returns; persons beginning business during license year
884.03	Collector; expenses and bond	884.18	Returns; persons in temporary and the like business
884.04	License required	884.19	Final returns
884.05	Signing of application	884.20	Payment of estimated amount in first return
884.06	Issuance of license; fee	884.21	Payment of balance
884.07	Transferability and display of licenses	884.22	General powers of collector
884.08	Replacement of licenses	884.23	Receipt of fees, taxes and the like; records; receipts
884.09	Imposition of tax	884.24	Investigatory and determinative powers of collector
884.10	Computation of gross volume of business; persons in business a year before license year	884.25	Requiring deposits by persons in temporary, and the like, business
884.11	Computation of gross volume of business; persons in business less than a year before license year	884.26	Burden of proof of exemptions
884.12	Computation of gross volume of business; persons beginning business during license year	884.27	Recovery of unpaid taxes
884.13	Computation of gross volume of business; persons in temporary, and the like, business	884.28	Interest and surcharge
884.14	Returns; forms; verification	884.29	Disposition of funds
884.15	Returns; persons in business a year before license year	884.30	Refund of excess payment
		884.31	Separability
		884.32	Effective date
		884.99	Penalty

CROSS-REFERENCE

Auditors, see Ch. 234

Tax Collector, see Ch. 236

Treasurer, see Ch. 238

STATUTORY REFERENCE

Power to tax, see 53 P.S. ' ' 6924.101 et seq.

' 884.01 SHORT TITLE.

This chapter shall be known and may be cited as the ABorough of Brookhaven Mercantile Tax Ordinance@ or just the AMercantile Tax@.

' 884.02 DEFINITIONS.

(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FINAL RETURN. The return of the annual mercantile license tax required by this chapter.

FIRST RETURN. The return of the annual mercantile license tax required by this chapter.

GROSS VOLUME OF BUSINESS. Includes both cash and credit transactions, and trade-in transactions as provided by law.

LICENSE YEAR. The 12-month period beginning January 1 in each and every year.

RETAIL DEALER and ***RETAIL VENDOR.*** Any person who is a dealer in or vendor of goods, wares and merchandise who is not a wholesale dealer or vendor or a wholesale and retail dealer or vendor as hereinafter defined.

TAX. The annual mercantile license tax imposed by this chapter.

TAXPAYER. Any person, partnership or corporation required to make a return or pay a tax, or both, pursuant to this chapter.

TEMPORARY, SEASONAL OR ITINERANT BUSINESS. Any business that is conducted at one location for less than 60 consecutive calendar days.

WHOLESALE AND RETAIL DEALER and ***WHOLESALE AND RETAIL VENDOR.*** Any person who sells to dealers in, or vendors of, goods, wares and merchandise.

(B) The terms Awholesale dealer@, Awholesale vendor@, Aretail dealer@, Aretail vendor@, Awholesale and retail dealer@ and Awholesale and retail vendor@, as defined in this section, shall not include nonprofit corporations or associations organized for religious, charitable or educational purposes, agencies of the government of the United States or of the Commonwealth, or any person vending or disposing of articles of his or her own manufacture for shipment or delivery from the place of the manufacture thereof, or any farmer vending or disposing of his or her own produce.
(Ord. 269, passed 4-10-1967; Ord. 433, passed 12-6-1982)

' 884.03 COLLECTOR; EXPENSES AND BOND.

(A) All taxes due to the borough pursuant to this chapter shall be collected by the duly elected Tax Collector of the borough or a duly authorized agent appointed by Council.

(B) No expenses incurred in the collection of such taxes shall be paid by the borough, unless they are approved by Council prior to being incurred.

(C) Any such agent appointed by Council shall serve at the pleasure of Council, and the appointment may be modified or terminated by Council as it deems appropriate, consistent with any contract entered into between the borough and such agent.

(D) For the purpose of collecting such taxes, the Tax Collector or such agent shall furnish a bond as required by law. Council shall decide who is required to bear the cost of such bond. The decision of Council as to who shall bear the cost of the bond shall be communicated to the Tax Collector or the agent prior to purchase of the bond.
(Ord. 482, passed 4-28-1986)

' 884.04 LICENSE REQUIRED.

For each license year or any part thereof, every person wishing to continue to engage in, or hereafter to begin to engage in, the business of wholesale or retail sales, or wholesale and retail sales, and any vendor or dealer in goods, wares or merchandise, and any person conducting a restaurant or other place where food, drink or refreshments are sold in the borough, shall, on or before February 15 for each license year, or prior to commencing business in any such license year, apply for and obtain a mercantile license for his or her place of business or, if more than one, for each of his or her places of business in the borough from the collector.
(Ord. 404, passed 1-7-1980)

' 884.05 SIGNING OF APPLICATION.

Each application for a license under this chapter shall be signed by the applicant, if a natural person. In the case of an association or partnership, it shall be signed by a member or partner thereof, and in the case of a corporation, by an officer thereof.
(Ord. 269, passed 4-10-1967)

§ 884.06 ISSUANCE OF LICENSE; FEE.

The Tax Collector shall issue a mercantile license upon payment of a fee as set forth in § 208.03(H) of the Administration Code for an applicant's place of business or, if more than one, for each of his or her places of business in the borough, for such license year.

(Ord. 436, passed 1-3-1983)

§ 884.07 TRANSFERABILITY AND DISPLAY OF LICENSES.

Mercantile licenses shall not be assignable and shall be conspicuously posted at the place of business or each of the places of business of every licensee at all times.

(Ord. 269, passed 4-10-1967)

§ 884.08 REPLACEMENT OF LICENSES.

In the case of loss, defacement or destruction of any mercantile license, the person to whom the license was issued shall apply to the collector for a new license for which a fee of \$1 shall be charged.

(Ord. 269, passed 4-10-1967)

§ 884.09 IMPOSITION OF TAX.

Under authority of the Local Tax Enabling Act, 53 P.S. §§ 6924.101 et seq., as amended, an annual mercantile license tax to provide revenue for general borough purposes is hereby levied, assessed and imposed upon every person engaging in any of the following occupations or businesses in the borough at the rates hereinafter set forth. Such persons shall pay a mercantile license tax for each license year at such rate, subject to any exemptions set forth in this chapter. In no event shall the annual mercantile license tax herein imposed be less than \$10 for each of the places of business of every such person.

(A) On each retail vendor or dealer in goods, wares and merchandise of every kind, and each person engaged in conducting restaurants or other places where food, drink or refreshments are sold, the tax shall be at the rate of one and one-half mills on each dollar of the gross volume of business transacted during the license year.

(B) On each wholesale and retail vendor or dealer in goods, wares and merchandise of every kind the tax shall be at the rate of one mill on dollar of the gross volume of wholesale business transacted, and one and one-half mills on each dollar of the gross volume of retail business transacted during the license year.

(C) On each wholesale vendor or dealer in goods, wares and merchandise of every kind, the tax shall be at the rate of one mill on each dollar of the volume of business transacted during the license year. (Ord. 269, passed 4-10-1967)

‘ 884.10 COMPUTATION OF GROSS VOLUME OF BUSINESS; PERSONS IN BUSINESS A YEAR BEFORE LICENSE YEAR.

Every person subject to the payment of the tax imposed by this chapter who has commenced his or her business at least a full year prior to the beginning of any license year shall compute the gross volume of business upon the actual gross amount of business transacted by him or her during the 12 months preceding the license year. (Ord. 269, passed 4-10-1967)

‘ 884.11 COMPUTATION OF GROSS VOLUME OF BUSINESS; PERSONS IN BUSINESS LESS THAN A YEAR BEFORE LICENSE YEAR.

Every person subject to the payment of the tax imposed by this chapter who has commenced his or her business less than one full year prior to the beginning of any license year shall compute the gross volume of business by multiplying by 12 the monthly average of the actual gross amount of business transacted by him or her during the months he or she was engaged in business prior to the beginning of any license year. (Ord. 269, passed 4-10-1967)

‘ 884.12 COMPUTATION OF GROSS VOLUME OF BUSINESS; PERSONS BEGINNING BUSINESS DURING LICENSE YEAR.

Every person subject to the payment of the tax imposed by this chapter who commences his or her business subsequent to the beginning of any license year shall compute the gross volume of business for the license year upon the gross volume of business transacted by him or her during the first month of his or her engaging in business, multiplied by the number of months remaining in the license year. (Ord. 269, passed 4-10-1967)

‘ 884.13 COMPUTATION OF GROSS VOLUME OF BUSINESS; PERSONS IN TEMPORARY, AND THE LIKE, BUSINESS.

Every person subject to the payment of tax imposed by this chapter who engages in business temporary, seasonal or itinerant by its nature shall compute the gross volume of business upon the actual gross amount of business transacted by him or her during the license year. (Ord. 269, passed 4-10-1967)

‘ 884.14 RETURNS; FORMS; VERIFICATION.

Every return required by this chapter shall be made upon a form furnished by the collector. Every person making such return shall certify the correctness thereof under the penalties of perjury.
(Ord. 269, passed 4-10-1967)

‘ 884.15 RETURNS; PERSONS IN BUSINESS A YEAR BEFORE LICENSE YEAR.

Every person subject to the tax under this chapter who has commenced his or her business at least one full year prior to the beginning of each and every license year subsequent to the license year of 1967 shall, on or before April 15 following, file with the collector a return setting forth his or her name, his or her business, his or her business address and such other information as may be necessary to compute the actual gross volume of business transacted by him or her during the license year and the amount of tax estimated to be due.
(Ord. 588, passed 8-8-1994)

‘ 884.16 RETURNS; PERSONS IN BUSINESS LESS THAN A YEAR BEFORE LICENSE YEAR.

Every person subject to the tax under this chapter who has commenced his or her business less than one full year prior to the beginning of each and every license year subsequent to the license year of 1967 shall, on or before April 15 following file with the collector a return setting forth his or her name, his or her business, his or her business address and such other information as may be necessary to compute the actual gross volume of business transacted by him or her during the license year and the amount of tax estimated to be due.
(Ord. 588, passed 8-8-1994)

‘ 884.17 RETURNS; PERSONS BEGINNING BUSINESS DURING LICENSE YEAR.

Every person subject to the tax under this chapter who commences business subsequent to the beginning of any license year shall, within 40 days from the date of commencing such business, file a return with the collector setting forth his or her name, his or her business, his or her business address and such other information as may be necessary to compute the actual gross volume of business transacted by him or her during the license year and the amount of tax estimated to be due.
(Ord. 269, passed 4-10-1967)

‘ 884.18 RETURNS; PERSONS IN TEMPORARY AND THE LIKE BUSINESS.

Every person subject to the payment of the tax under this chapter who engages in a business temporary, seasonal or itinerant by its nature shall, within seven days from the day he or she completes such business, file a return with the collector setting forth his or her name, his or her business, his or her business address and such other information as may be necessary in arriving at the actual gross amount of business transacted by him or her during such period and the amount of tax due.

(Ord. 269, passed 4-10-1967)

‘ 884.19 FINAL RETURNS.

On or before April 15 of each year, every person subject to the tax under this chapter shall make a final return to the collector of the actual volume of business transacted by such taxpayer during the period for which the taxpayer is subject to the tax. Such final return shall state the amount of the gross volume of business as set forth in the first return, the amount of tax paid at the time of the filing of the first return required by this chapter and the amount of tax due upon the final computation. In addition to the return, every person subject to the tax shall submit a Schedule C, Form 1065 or Form 1120, of the Internal Revenue Service, whichever form is applicable for a verification of the gross amount of business transacted.

(Ord. 588, passed 8-8-1994)

‘ 884.20 PAYMENT OF ESTIMATED AMOUNT IN FIRST RETURN.

At the time of filing the first return, the person making the same shall pay the amount of tax estimated to be due.

(Ord. 269, passed 4-10-1967)

‘ 884.21 PAYMENT OF BALANCE.

At the time of filing the final return, if the full amount of tax due by the taxpayer for the license year has not been paid, the taxpayer shall pay the remaining balance of the tax which will be the difference between the amount of tax paid at the time of making the first return on the estimated computation and the amount of the tax finally shown to be due.

(Ord. 269, passed 4-10-1967)

‘ 884.22 GENERAL POWERS OF COLLECTOR.

The collector is hereby authorized and directed to make and keep such records, prepare such forms and take such other measures as may be necessary or convenient to carry this chapter into effect.

(Ord. 269, passed 4-10-1967)

‘ 884.23 RECEIPT OF FEES, TAXES AND THE LIKE; RECORDS; RECEIPTS.

The collector shall collect and receive the fees, taxes, fines and penalties imposed by this chapter. He or she shall also keep a record showing the amount of tax received by him or her and the date of payment. A receipt shall be given to the person paying the tax.

(Ord. 269, passed 4-10-1967)

‘ **884.24 INVESTIGATORY AND DETERMINATIVE POWERS OF COLLECTOR.**

If the collector is not satisfied with the return and payment of the tax made by any taxpayer or supposed taxpayer under the provisions of this chapter, he or she is hereby authorized to make a determination of the tax due by such person, based upon the facts contained in the return, or upon any information within his or her possession, or that comes into his or her possession. For this purpose, the collector, his or her deputy or his or her authorized agent, is authorized to examine the books, papers and records of any such person to verify the accuracy of any return or payment made under the provisions thereof, to ascertain whether the taxes imposed by this chapter have been paid. If any taxpayer or supposed taxpayer neglects or refuses to make any return and payment of tax required by this chapter, or if, as a result of an investigation by the collector, a return is found to be incorrect, the collector shall estimate the tax due by such person and determine the amount due by him or her for taxes and for penalties and interest thereon.

(Ord. 269, passed 4-10-1967)

‘ **884.25 REQUIRING DEPOSITS BY PERSONS IN TEMPORARY, AND THE LIKE, BUSINESS.**

The collector may, at his or her discretion, require reasonable deposits to be made by taxpayers who engage in a business that is temporary, seasonal or itinerant by its nature.

(Ord. 269, passed 4-10-1967)

‘ **884.26 BURDEN OF PROOF OF EXEMPTIONS.**

Any person claiming an exemption from the payment of the tax hereby imposed is hereby charged with the burden of convincing the collector of his or her legal right to such exemption.

(Ord. 269, passed 4-10-1967)

‘ **884.27 RECOVERY OF UNPAID TAXES.**

All taxes due and unpaid under this chapter shall be recoverable by the borough as other debts due the borough are now by law recoverable.

(Ord. 269, passed 4-10-1967)

‘ **884.28 INTEREST AND SURCHARGE.**

(A) All taxes due under this chapter shall bear interest at the rate of 6% per year or fractional part of a month from the day they are due and payable until paid. If any taxpayer neglects or refuses to make any return or payment required by this chapter, an additional 10% of the amount of the tax shall be added by the collector and collected.

(Ord. 269, passed 4-10-1967)

(B) The interest and surcharge provided for herein shall be in addition to the penalty provided in ' 884.99.

' 884.29 DISPOSITION OF FUNDS.

All taxes, interest and penalties received, collected or recovered under the provisions of this chapter shall be paid into the treasury of the borough for the use and benefit of the borough.

(Ord. 269, passed 4-10-1967)

' 884.30 REFUND OF EXCESS PAYMENT.

If a taxpayer for the license year has paid at the time of filing his or her estimate an amount in excess of the actual tax due at the end of the license year, the collector shall refund to the taxpayer the amount of excess tax paid for such year. If the final return of a taxpayer shows an overpayment of the tax by reason of the fact that the gross volume of business as stated in the estimated computation was less than the actual volume of business for the year or by reason of the fact that the taxpayer did not continue to engage in business throughout the year, the collector shall refund to the taxpayer the amount of such overpayment which shall be the difference between the amount of tax paid upon the filing of the first return and the amount of the tax finally shown to be due.

(Ord. 269, passed 4-10-1967)

' 884.31 SEPARABILITY.

If any sentence, clause, section or part of this chapter is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this chapter. It is hereby declared to be the intent of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

(Ord. 269, passed 4-10-1967)

' 884.32 EFFECTIVE DATE.

This chapter shall be effective immediately after its passage and advertisement and shall continue effective without annual re-enactment.

' 884.99 PENALTY.***Editor's note:***

See ' 202.99 for general code penalty if no specific penalty is provided.

CHAPTER 888: REAL ESTATE TAX

Section

888.01 Discount for timely payment

888.02 Penalty for late payment

CROSS-REFERENCE

Auditors, see Ch. 234

Realty transfer tax, see Ch. 892

Tax Collector, see Ch. 236

Treasurer, see Ch. 238

888.01 DISCOUNT FOR TIMELY PAYMENT.

All taxpayers subject to the payment of taxes to the borough on the assessed value of real estate shall be entitled to a discount of 2% from the amount of such tax upon making payment of the whole amount thereof within two months after the date of the tax notice.

(Ord. 361, passed 11-1-1976)

888.02 PENALTY FOR LATE PAYMENT.

All taxpayers subject to the payment of taxes to the borough on the assessed value of real estate who fail to make payment of any such taxes charged against them for four months after the date of the tax notice shall be charged a penalty of 10%, which penalty shall be added to the taxes by the Tax Collector and be collected by him or her.

(Ord. 361, passed 11-1-1976)

CHAPTER 892: REALTY TRANSFER TAX

Editor's note:

This chapter, previously titled AReal Estate Transfer Tax@ and being a codification of Ord. 255, passed February 14, 1966, was re-enacted in its entirety by Ord. 490, passed December 8, 1986.

Section

892.01	Short title	892.11	Disposition of proceeds of judicial sales
892.02	Authority to tax	892.12	Collection of tax; duties of recorder of deeds
892.03	Definitions	892.13	Statements of value
892.04	Imposition of tax	892.14	Underpayments; failure to record declarations
892.05	Exception for governmental bodies	892.15	Administration
892.06	Excluded transactions	892.16	Interest
892.07	Documents relating to associations or corporations	892.17	Regulations
892.08	Acquired companies	892.99	Penalty
892.09	Tax credits		
892.10	Extensions of leases		

CROSS-REFERENCE

Tax Collector, see Ch. 236
Real estate tax, see Ch. 888

STATUTORY REFERENCE

Authority, see 53 P.S. ' ' 6924.101 et seq.

' 892.01 SHORT TITLE.

This chapter shall be known and may be cited as the ARealty Transfer Tax Ordinance of the Borough of Brookhaven@ or just the Arealty transfer tax@.
(Ord. 490, passed 12-8-1986)

' 892.02 AUTHORITY TO TAX.

A realty transfer tax for general revenue purposes is, hereby imposed upon the transfer of real estate or interest in real estate situated within the borough, regardless of where the documents making the transfer are made, executed or delivered, or where the actual settlements on such transfer took place, as authorized by Article XI-D, Local Real Estate Transfer Tax, 72 P.S. ' ' 8101-D et seq. (Ord. 490, passed 12-8-1986)

' 892.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ASSOCIATION. A partnership, limited partnership or any other form of unincorporated enterprise, owned or conducted by two or more persons other than a private trust or decedent=s estate.

CORPORATION. A corporation, joint-stock association, business trust or banking institution which is organized under the laws of this Commonwealth, the United States, or any other state, territory or foreign country, or dependency.

DEPARTMENT. The Department of Revenue of this Commonwealth.

DOCUMENT. Any deed, instrument or writing which conveys, transfers, devises, vests, confirms or evidences any transfer or devise of title to real estate, but does not include wills, mortgages, deeds of trust or other instruments of like character given as security for a debt and deeds of release thereof to the debtor, land contracts whereby the legal title does not pass to the grantee until the total consideration specified in the contract has been paid or any cancellation thereof unless the consideration is payable over a period of time exceeding 30 years or instruments which solely grant, vest or confirm a public utility easement. **DOCUMENT** shall also include a declaration of acquisition required to be presented for recording under ' 892.08.

FAMILY FARM CORPORATION. A corporation of which at least 75% of its assets are devoted to the business of agriculture and at least 75% of each class of stock of the corporation is continuously owned by members of the same family. The business of agriculture shall not be deemed to include:

(1) Recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;

(2) The raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;

- (3) Fur farming;
- (4) Stockyard and slaughterhouse operations; or
- (5) Manufacturing or processing operations of any kind.

FAMILY FARM PARTNERSHIP. A partnership of which at least 75% of its assets are devoted to the business of agriculture and at least 75% of the interests in the partnership are continuously owned by members of the same family. The business of agriculture shall not be deemed to include:

- (1) Recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;
- (2) The raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;
- (3) Fur farming;
- (4) Stockyard and slaughterhouse operations; or
- (5) Manufacturing or processing operations of any kind.

LIVING TRUST. Any trust, other than a business trust, intended as a will substitute by the settlor which becomes effective during the lifetime of the settlor, but from which trust distributions cannot be made to any beneficiaries other than the settlor prior to the death of the settlor.

MEMBERS OF THE SAME FAMILY. Any individual, such individual=s brothers and sisters, the brothers and sisters of such individual=s parents and grandparents, the ancestors and lineal descendants of any of the foregoing, a spouse of any of the foregoing and the estate of any of the foregoing. Individuals related by the half blood or legal adoption shall be treated as if they were related by the whole blood.

ORDINARY TRUST. Any trust, other than a business trust or a living trust, which takes effect during the lifetime of the settlor and for which the trustees of the trust take title to property primarily for the purpose of protecting, managing or conserving it until distribution to the named beneficiaries of the trust. An **ORDINARY TRUST** does not include a trust that has an objective to carry on business and divide gains, nor does it either expressly or impliedly have any of the following features: the treatment of beneficiaries as associates, the treatment of the interests in the trust as personal property, the free transferability of beneficial interests in the trust, centralized management by the trustee or the beneficiaries, or continuity of life.

PERSON. Every natural person, association, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term **PERSON** as applied to associations, shall include the responsible members or general partners thereof and as applied to corporations, the officers thereof.

REAL ESTATE. Any lands, tenements or hereditaments within this Commonwealth, including without limitation, buildings, structures, fixtures, mines, minerals, oil, gas, quarries, spaces with or without upper or lower boundaries, trees and other improvements, immovables or interests which by custom, usage or law pass with a conveyance of land, but excluding permanently attached machinery and equipment in an industrial plant; or a condominium unit; or a tenant-stockholder=s interest in a cooperative housing corporation, trust or association under a proprietary lease or occupancy agreement.

REAL ESTATE COMPANY. A corporation or association which is primarily engaged in the business of holding, selling or leasing real estate 90% or more of the ownership interest in which is held by 35 or fewer persons and which:

(1) Derive 60% or more of its annual gross receipts from the ownership or disposition of real estate; or

(2) Holds real estate, the value of which comprises 90% or more of the value of its entire tangible asset holdings exclusive of tangible assets which are freely transferable and actively traded on an established market.

TITLE TO REAL ESTATE.

(1) Any interest in real estate which endures for a period of time, the termination of which is not fixed or ascertained by a specific number of years, including, without limitation an estate in fee simple, life estate or perpetual leasehold; or

(2) Any interest in real estate enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consists of a group of rights approximating those of an estate in fee simple, life estate or perpetual leasehold including without limitation, a leasehold interest or possessory interest under a lease or occupancy agreement for a term of 30 years or more or a leasehold interest or possessory interest in real estate in which the lessee has equity.

TRANSACTION. The making, executing, delivering, accepting or presenting for recording of a document.

VALUE.

(1) In the case of any bona fide sale of real estate at arms length for actual monetary worth, the amount of the actual consideration therefor, paid or to be paid, including liens or other encumbrances thereon existing before the transfer and not removed thereby, whether or not the underlying indebtedness is assumed, and ground rents, or a commensurate part thereof where such liens or other encumbrances and ground rents also encumber or are charged against other real estate; provided, that where such documents shall set forth a nominal consideration, the *VALUE* thereof shall be determined from the price set forth in or actual consideration for the contract of sale;

(2) In the case of a gift, sale by execution upon a judgment or upon the foreclosure of a mortgage by a judicial officer, transactions without consideration or for consideration less than the actual monetary worth of the real estate, a taxable lease, an occupancy agreement, a leasehold or possessory interest, any exchange of properties, or the real estate of an acquired company, the actual monetary worth of the real estate determined by adjusting the assessed value of the real estate for local real estate purposes for the common level ratio of assessed values to market values of the taxing district as established by the State Tax Equalization Board, or a commensurate part of the assessment where the assessment includes other real estate;

(3) In the case of an easement or other interest in real estate the value of which is not determinable under division (1) or (2) above, the actual monetary worth of such interest; or

(4) The actual consideration for or actual monetary worth of any executory agreement for the construction of buildings, structures or other permanent improvements to real estate between the grantor and other persons existing before the transfer and not removed thereby or between the grantor, the agent or principal of the grantor or a related corporation, association or partnership and the grantee existing before or effective with the transfer.

(Ord. 490, passed 12-8-1986; Ord. 710, passed 10-2-2006)

892.04 IMPOSITION OF TAX.

(A) Every person who makes, executes, delivers, accepts or presents for recording any document, or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay, for and in respect to the transaction or any part thereof, a tax at the rate of 1% of the value of the real estate represented by such document, which tax shall be payable at the time the document is presented for recording, or within 30 days of acceptance of such document, or within 30 days of becoming an acquired company, whichever first occurs.

(B) The payment of the tax imposed in this chapter shall be evidenced by the affixing of an official stamp or writing by the Recorder of Deeds whereon the date of the payment of the tax, the amount of the tax and the signature of the collecting agent shall be set forth.

(C) It is the intent of this chapter that the entire burden of such tax on a person or transfer shall not exceed the limitations prescribed in the Local Tax Enabling Act, 53 P.S. ' ' 6924.101 et seq., as amended, so that if any other political subdivision has imposed or hereafter imposes such tax on the same person or transfer, then the tax levied by the borough under the authority of such Act shall, during the time such duplication of the tax exists, except as hereinafter otherwise provided, be one-half of the rate, and such one-half rate shall become effective without any action on the part of the borough. However, the borough and any other political subdivision which imposes such tax on the same person or transfer may agree that, instead of limiting their respective rates to one-half of the rate herein provided, they will impose, respectively, different rates, the total of which rates shall not exceed the maximum rate permitted under the Local Tax Enabling Act.

(Ord. 490, passed 12-8-1986; Ord. 710, passed 10-2-2006)

' 892.05 EXCEPTION FOR GOVERNMENTAL BODIES.

The United States, the Commonwealth and all of their instrumentalities, agencies or political subdivisions shall be exempt from payment of the tax imposed by this chapter. However, the exemption of such governmental bodies shall not relieve any other party to a transaction from liability for the tax.

(Ord. 490, passed 12-8-1986)

' 892.06 EXCLUDED TRANSACTIONS.

(A) The tax imposed in ' 892.04 shall not be imposed upon:

(1) A transfer to the Commonwealth or to any of its instrumentalities, agencies or political subdivisions by gift, dedication or deed in lieu of condemnation or deed of confirmation in connection with condemnation proceedings, or a reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation, which reconveyance may include property line adjustments provided said reconveyance is made within one year from the date of condemnation;

(2) A document which the Commonwealth is prohibited from taxing under the Constitution or statutes of the United States;

(3) A conveyance to a municipality, township, school district or county pursuant to acquisition by the municipality, township, school district or county of a tax delinquent property at sheriff sale or tax claim bureau sale;

(4) A transfer for no or nominal actual consideration which corrects or confirms a transfer previously recorded, but which does not extend or limit existing record legal title or interest;

(5) A transfer of division in kind for no or nominal actual consideration of property passed by testate or intestate succession and held by cotenants; however, if any of the parties take shares greater in value than their undivided interest, tax is due on the excess;

(6) A transfer between husband and wife, between persons who were previously husband and wife who have since been divorced, provided the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, between parent and child or the spouse of such child, between brother or sister or spouse of a brother or sister and brother or sister or the spouse of a brother or sister and between a grandparent and grandchild or the spouse of such grandchild, except that a subsequent transfer by the grantee within one year shall be subject to tax as if the grantor were making such transfer;

(7) A transfer for no or nominal actual consideration of property passing by testate or intestate succession from a personal representative of a decedent to the decedent=s devisee or heir;

(8) A transfer for no or nominal actual consideration to a trustee of an ordinary trust where the transfer of the same property would be exempt if the transfer was made directly from the grantor to all of the possible beneficiaries that are entitled to receive the property or proceeds from the sale of the property under the trust, whether or not such beneficiaries are contingent or specifically named. A trust clause which identifies the contingent beneficiaries by reference to the heirs of the trust settlor as determined by the laws of the intestate succession shall not disqualify a transfer from the exclusion provided by this clause. No such exemption shall be granted unless the recorder of deeds is presented with a copy of the trust instrument that clearly identifies the grantor and all possible beneficiaries;

(9) A transfer for no or nominal actual consideration from a trustee of a living trust from the settlor of the living trust. No such exemption shall be granted unless the recorder of deeds is presented with a copy of the living trust instrument;

(10) A transfer for no or nominal actual consideration from a trustee of an ordinary trust to a specifically named beneficiary that is entitled to receive the property under the recorded trust instrument or to a contingent beneficiary where the transfer of the same property would be exempt if the transfer was made by the grantor of the property into the trust to that beneficiary. However, any transfer of real estate from a living trust during the settlor=s lifetime shall be considered for the purposes of this article as if such transfer were made directly from the settlor to the grantee;

(11) A transfer for no or nominal actual consideration from a trustee of a living trust after the death of the settlor of the trust or from a trustee of a trust created pursuant to the will of a decedent to a beneficiary to whom the property is devised or bequeathed;

(12) A transfer for no or nominal actual consideration from the trustee of a living trust to the settlor of the living trust if such property was originally conveyed to the trustee by the settlor;

(13) A transfer for no or nominal actual consideration from trustee to successor trustee;

(14) A transfer:

(a) For no or nominal actual consideration between principal and agent or straw party; or

(b) From or to an agent or straw party where, if the agent or straw party were his or her principal, no tax would be imposed under this division (A)(14)(b) where the document by which title is acquired by a grantee or statement of value fails to set forth that the property was acquired by the grantee from, or for the benefit of his or her principal, there is a rebuttable presumption that the property is the property of the grantee in his or her individual capacity if the grantee claims an exemption from taxation under this clause;

(15) A transfer made pursuant to the statutory merger or consolidation of a corporation or statutory division of a nonprofit corporation, except where the department reasonably determines that the primary intent for such merger, consolidation or division is avoidance of the tax imposed by this division (A)(15);

(16) A transfer from a corporation or association of real estate held of record in the name of the corporation or association where the grantee owns stock of the corporation or an interest in the association in the same proportion as his or her interest in or ownership of the real estate being conveyed and where the stock of the corporation or the interest in the association has been held by the grantee for more than two years;

(17) A transfer from a nonprofit industrial development agency or authority to a grantee of property conveyed by the grantee to that agency or authority as security for a debt of the grantee or a transfer to a nonprofit industrial development agency or authority;

(18) A transfer from a nonprofit industrial development agency or authority to a grantee purchasing directly from it, but only if:

(a) The grantee shall directly use such real estate for the primary purpose of manufacturing, fabricating, compounding, processing, publishing, research and development, transportation, energy conversion, energy production, pollution control, warehousing or agriculture; and

(b) The agency or authority has the full ownership interest in the real estate transferred.

(19) A transfer by a mortgagor to the holder of a bona fide mortgage in default in lieu of a foreclosure or a transfer pursuant to a judicial sale in which the successful bidder is the bona fide holder of a mortgage, unless the holder assigns the bid another person;

(20) Any transfer between religious organizations or other bodies or persons holding title for a religious organization if such real estate is not being or had not been used by such transferor for commercial purposes;

(21) A transfer to a conservancy which possesses a tax-exempt status pursuant to ' 501(c)(3) of the Internal Revenue Code of 1954 (68A Stat. 3, 26 U.S.C. ' 501(c)(3)) and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open-space opportunities; or a transfer from such a conservancy to the United States, the Commonwealth or to any of their instrumentalities, agencies or political subdivisions; or any transfer from such a conservancy where the real estate is encumbered by a perpetual agricultural conservation easement as defined by the Act of June 30, 1981 (Pub. L. 128, No. 43), known as the Agricultural Area Security Law, being 3 P.S. ' ' 901 to 915, and such conservancy has owned the real estate for at least two years immediately prior to the transfer;

(22) A transfer of real estate devoted to the business of agriculture to a family farm corporation by a member of the same family which directly owns at least 75% of each class of the stock thereof;

(23) A transfer of real estate devoted to the business of agriculture to a family farm partnership by a member of the same family, which family directly owns at least 75% of the interests in the partnership;

(24) A transfer between members of the same family of an ownership interest in a real estate company, family farm corporation or family farm partnership which owns real estate;

(25) A transaction wherein the tax due is \$1 or less; and

(26) Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof.

(B) In order to exercise any exclusion provided in this section, the true, full and complete value of the transfer shall be shown on the statement of value. For leases of coal, oil, natural gas or minerals, the statement of value may be limited to an explanation of the reason such document is not subject to tax under this chapter.

(Ord. 490, passed 12-8-1986; Ord. 710, passed 10-2-2006)

' 892.07 DOCUMENTS RELATING TO ASSOCIATIONS OR CORPORATIONS.

Except as otherwise provided in ' 892.06, documents which make, confirm or evidence any transfer or demise of title to real estate between associations or corporations and the members, partners, shareholders or stockholders thereof are fully taxable. For the purposes of this section, corporations and associations are entities separate from their members, partners, stockholders or shareholders.

(Ord. 490, passed 12-8-1986)

' 892.08 ACQUIRED COMPANIES.

(A) A real estate company is an acquired company upon a change in the ownership interest in the company, however effected, if the change does not affect the continuity of the company, and if the change, by itself or together with prior changes, has the effect of transferring, directly or indirectly, 90%

or more of the total ownership interest in the company within three years.

(B) With respect to real estate acquired after February 16, 1986, a family farm corporation is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm corporation, or when, because of issuance or transfer of stock or because of acquisition or transfer of assets that are devoted to the business of agriculture, it fails to meet the minimum requirements of a family farm corporation under this chapter.

(C) A family farm partnership is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm partnership or when, because of transfer of partnership interests or because of acquisition or transfer of assets that are devoted to the business of agriculture, it fails to meet the minimum requirements of a family farm partnership under this chapter.

(D) Within 30 days after becoming an acquired company, such company shall present a declaration of acquisition to the recorder of each county in which it holds real estate for the affixation of documentary stamps and recording. Such declaration shall set forth the value of real estate holdings of the acquired company in such county. A copy of the Pennsylvania Realty Transfer Tax Declaration of Acquisition may be submitted for this purpose.

(Ord. 490, passed 12-8-1986; Ord. 710, passed 10-2-2006)

§ 892.09 TAX CREDITS.

(A) Where there is a transfer of residential property by a licensed real estate broker, which property was transferred to him or her within the preceding year as consideration for the purchase of other residential property, a credit for the amount of the tax paid at the time of the transfer to him or her shall be given to him or her toward the amount of the tax due upon the transfer.

(B) Where there is a transfer by a builder of residential property which was transferred to the builder within the preceding year as consideration for the purchase of new, previously unoccupied residential property, a credit for the amount of the tax paid at the time of the transfer to the builder shall be given to the builder toward the amount of the tax due upon the transfer.

(C) Where there is a transfer of real estate which is leased by the grantor, a credit for the amount of tax paid at the time of the lease shall be given to the grantor toward the tax due upon the transfer.

(D) Where there is a conveyance by deed of real estate which was previously sold under a land contract by the grantor, a credit for the amount of tax paid at the time of the sale shall be given to the grantor toward the tax due upon the deed.

(E) If the tax due upon the transfer is greater than the credit given under this section, the difference shall be paid. If the credit allowed is greater than the amount of tax due, no refund or carry-over credit shall be allowed.

(Ord. 490, passed 12-8-1986)

' 892.10 EXTENSIONS OF LEASES.

In determining the term of a lease, it shall be presumed that a right or option to renew or extend a lease will be exercised if the rental charge to the lessee is fixed or if a method for calculating the rental charge is established.

(Ord. 490, passed 12-8-1986)

' 892.11 DISPOSITION OF PROCEEDS OF JUDICIAL SALES.

The tax imposed in this chapter shall be fully paid and shall have priority out of the proceeds of any judicial sale of real estate before payment of any other obligation, claim, lien, judgment, estate or cost of the sale, and of the writ upon which the sale is made, except the state realty transfer tax. The Sheriff or other officer conducting such sale shall pay the tax out of the first moneys paid to him or her in connection therewith. If the proceeds of the sale are insufficient to pay the entire tax, the purchaser shall be liable for the remaining tax.

(Ord. 490, passed 12-8-1986)

' 892.12 COLLECTION OF TAX ; DUTIES OF RECORDER OF DEEDS.

(A) As provided in 16 P.S. ' 11011-6, as amended by the Act of July 7, 1983 (Pub. L. 40, No. 21), the Recorder of Deeds shall be the collection agent for the local realty transfer tax, including any amount payable to the borough based on a redetermination of the amount of tax due by the Commonwealth of the state realty transfer tax, without compensation from the borough.

(B) In order to ascertain the amount of taxes due when the property is located in more than one political subdivision, the Recorder shall not accept a deed for recording, unless it is accompanied by a statement of value showing what taxes are due each municipality.

(C) On or before the tenth day of each month, the Recorder shall pay over to the borough all local realty transfer taxes collected, less 2% for use of the county, together with a report containing the information as is required by the Commonwealth in reporting collections of the state realty transfer tax. The 2% commission shall be paid to the county.

(D) Upon a redetermination of the amount of realty transfer tax due by the Commonwealth, the Recorder shall re-record the deed or record the additional realty transfer tax form only when both the state and local amounts and a re-recording or recording fee has been tendered.

(Ord. 490, passed 12-8-1986)

' 892.13 STATEMENTS OF VALUE.

Every document lodged with or presented to the Recorder of Deeds for recording shall set forth therein and as a part of such document the true, full and complete value thereof, or shall be accompanied by a statement of value executed by a responsible person connected with the transaction, showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this chapter. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. This section shall not apply to any excludable real estate transfers which are exempt from taxation based on family relationship. Other documents presented for the affixation of stamps shall be accompanied by a certified copy of each document and a statement of value executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this chapter.

(Ord. 490, passed 12-8-1986)

' 892.14 UNDERPAYMENTS; FAILURE TO RECORD DECLARATIONS.

(A) If any part of any underpayment of tax imposed by this chapter is due to fraud, there shall be added to the tax an amount equal to 50% of the underpayment.

(B) In the case of failure to record a declaration required under this chapter on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause, there shall be added to the tax 5% of the amount of such tax if the failure is for not more than one month, with an additional 5% for each additional month or fraction thereof during which such failure continues, not exceeding 50% in the aggregate.

(Ord. 490, passed 12-8-1986)

' 892.15 ADMINISTRATION.

The tax imposed under ' 892.01 and all applicable interest and penalties shall be administered, collected and enforced under the~~A~~The Local Tax Enabling Act~~@~~; provided, that if the correct amount of tax is not paid by the last date prescribed for timely payment, the borough, pursuant to ' 1102-D of the Tax Reform Code of 1971 (72 P.S. ' 8102-D), as amended, authorizes and directs the Department of Revenue of the Commonwealth to determine, collect and enforce the tax, interest and penalties.

(Ord. 490, passed 12-8-1986; Ord. 710, passed 10-2-2006)

' 892.16 INTEREST.

Any tax imposed under ' 892.02 that is not paid by the date the tax is due shall bear interest as prescribed for interest on delinquent municipal claims under the Act of May 16, 1923 (Pub. L. 207, No. 153) (53 P.S. ' ' 7101 et seq.), as amended, known as AThe Municipal Claims and Tax Liens Act@. The interest rate shall be the lesser of the interest rate imposed upon delinquent Commonwealth taxes as provided in ' 806 of the Act of April 9, 1929 (Pub. L. 343, No. 176) (72 P.S. ' 806), as amended, known as AThe Fiscal Code@, or the maximum interest rate permitted under the Municipal Claims and Tax Liens Act for tax claims.

(Ord. 490, passed 12-8-1986; Ord. 710, passed 10-2-2006)

' 892.17 REGULATIONS.

All regulations promulgated by the Department of Revenue pursuant to ' 1103-D of the Tax Reform Code of 1971 (72 P.S. ' 8103-D) are incorporated into and made a part of this chapter as if fully set forth herein.

(Ord. 490, passed 12-8-1986; Ord. 710, passed 10-2-2006)

' 892.99 PENALTY.

Editor= note:

See ' 202.99 for general code penalty if no specific penalty is provided.

CHAPTER 896: BUSINESS PRIVILEGE TAX

Section

896.01	Short title	896.08	Returns
896.02	Definitions	896.09	License required; fee
896.03	Levy of tax	896.10	Issuance and posting of license
896.04	Determination of gross or whole volume of business	896.11	Duties of Tax Collector
896.05	Partial exemptions	896.12	Confidentiality of information
896.06	Rate when same tax is imposed by two taxing bodies	896.13	Savings and separability clauses
896.07	Records	896.14	Violations
		896.99	Penalty

CROSS-REFERENCE

Auditors, see Ch. 234

Tax Collector, see Ch. 236

Treasurer, see Ch. 238

STATUTORY REFERENCE

Power to tax, see 53 P.S. ' ' 6924.101 et seq.

' 896.01 SHORT TITLE.

This chapter shall be known as the *Business Privilege Tax Ordinance*, or just the *Business Privilege Tax*.

(Ord. 382, passed 5-1-1978)

' 896.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BOROUGH. The Borough of Brookhaven.

BUSINESS. The carrying on or exercising, whether for gain or profit, of any trade, business, profession, vocation, service, construction, communication or commercial activity, in which there is performed any service or services within the borough or attributable to a place of business in the borough.

LICENSE YEAR. The period from January 1 to December 31, inclusive.

PERSON. Any individual, partnership, limited partnership, association, firm or corporation. Whenever the term **PERSON** is used in any clause in this chapter prescribing or imposing a penalty, such term, as applied to an association, means the partners or members thereof, and as applied to corporations, the officers thereof.

PLACE OF BUSINESS. That physical location from which a person, as herein defined, carries on any significant activity involved in the operation of the business.

TAX COLLECTOR. The person duly elected by the citizens of the borough for the collection of taxes provided for under this chapter, or a duly authorized agent appointed by Council.

TAX YEAR. The period from January 1 to December 31, inclusive.

TAXPAYER. The person subject to the payment of the tax imposed by this chapter. (Ord. 382, passed 5-1-1978; Ord. 403, passed 1-7-1980; Ord. 433, passed 12-6-1982; Ord. 588, passed 8-8-1994)

896.03 LEVY OF TAX.

There is hereby levied for the tax year beginning June 16, 1978, and annually thereafter, a tax for general borough purposes on the privilege of doing business, as herein defined, in the borough, as follows.

(A) *Rate of tax.* The rate of the tax on each and every dollar of the whole or gross volume of business transacted within the territorial limits of the borough shall be one and one-half mills, or \$1.50 per \$1,000 of gross volume of business.

(B) *Computation of gross volume of business.*

(1) Every person subject to the payment of the tax hereby imposed who has commenced his or her business prior to the beginning of the tax year shall compute his or her gross volume of business upon the actual gross amount of business transacted by him or her during such immediately preceding tax year.

(2) Every person subject to the payment of the tax hereby imposed who has commenced or commences his or her business subsequent to the beginning of the tax year shall compute his or her gross volume of business upon the actual gross amount of business transacted by him or her during that tax year.

(C) *Disputes.* The Tax Collector is hereby authorized to accept payment under protest of the amount of business privilege tax claimed by the borough in any case where the taxpayer disputes the validity or amount of the borough's claim. 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.

(D) *Exemptions.* Persons employed for a wage or salary, nonprofit corporations or associations organized for religious, charitable or educational purposes, agencies of the government of the United States or the Commonwealth and the business of any political subdivision, or of any authority created or organized under and pursuant to any Act of Assembly, are exempt from the provisions of this chapter.

(E) *Pre-emption.* No such tax shall be assessed and collected on a privilege, transaction, subject or occupation that is subject to a state tax or license fee, which tax or license fee has been held by the courts of the state to be the basis for exemption from the imposition of a business privilege or mercantile tax by a municipality.

(F) *Utilities.* No such tax shall be assessed and collected on the gross receipts from utility service of any person or company whose rates of service are fixed and regulated by the Pennsylvania Public Utilities Commission, or on any public utility service rendered by any such person or company or on any privilege or transaction involving the rendering of any such public utility service.

(G) *State tax on tangible property.* No such tax shall be assessed and collected on the privilege of employing such tangible property as is subject to a state tax except on sales of admission to places of amusement or on sales of other transfers of title or possession of property.

(H) *Production and manufacture.* No such tax shall be assessed and collected on goods, articles and products or by-products of manufacture, or on minerals, timber, natural resources and farm products, manufactured, produced or grown in the borough, or on the preparation or processing thereof for use or market, or on any privilege, act or transaction relating to the business of manufacturing, the production, preparation or processing of minerals, timber and natural resources or farm products, by manufacturers, by producers and by farmers with respect to the goods, articles and products of their own manufacture, production or growth, or any privilege, act or transaction relating to the business of processing by-products of manufacture, or on the transportation, loading, unloading or dumping or storage of such goods, articles, products or by-products.

(Ord. 382, passed 5-1-1978)

§ 896.04 DETERMINATION OF GROSS OR WHOLE VOLUME OF BUSINESS.

Gross or whole volume of business upon which the tax hereunder is computed shall include the gross consideration credited or received for or on account of services rendered, subject only to the following allowable deductions and exemptions:

(A) Any commissions or fees paid by a real estate broker to another broker on account of a purchaser's sales contract initiated, executed or cleared with such other broker, except where either is an employee of the other;

(B) Bad debts, where the deduction is also taken in the same year for federal income tax purposes;

(C) Any cash advances made by any real estate broker, undertaker or mortician, attorney or physician made on behalf of a customer or client. However, cash advances shall not include the cost of any goods purchased on behalf of such customer or client; and

(D) Taxes collected as agent for the United States, the Commonwealth or the borough.
(Ord. 382, passed 5-1-1978)

§ 896.05 PARTIAL EXEMPTIONS.

Where gross or whole volume of business in its entirety cannot be subject to the tax imposed by this chapter by reason of the provisions of the Constitution of the United States or any other provision of law, the Tax Collector, with the approval of Council, shall establish rules and regulations and methods of allocation and evaluation so that only that part of the gross or whole volume of business that is properly attributable to a place of business in the borough shall be taxed hereunder.

(Ord. 382, passed 5-1-1978)

§ 896.06 RATE WHEN SAME TAX IS IMPOSED BY TWO TAXING BODIES.

If any person is liable for the same tax on the same subject imposed under the Local Tax Enabling Act and its amendments, to the borough and one or more political subdivisions of the state, then and in that event the tax shall be apportioned by such percentage as may be agreed upon by such political subdivisions, but, in no event, shall the combined taxes of both subdivisions exceed a maximum rate of taxes fixed by such Enabling Act permitting the imposition of such taxes.

(Ord. 382, passed 5-1-1978)

' 896.07 RECORDS.

The taxpayer, to obtain the foregoing enumerated exclusions and deductions, shall keep books and records of his or her business so as to show clearly, accurately and separately the amount of such services as are excluded from the tax and the amounts of services that he or she is entitled to deduct from the gross volume of business as hereinbefore provided.

(Ord. 382, passed 5-1-1978)

' 896.08 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 chapter who commenced his or her business on or before June 1 of the calendar year previous to the beginning of any tax year shall, on or before June 15 of the tax year, file with the Tax Collector a return setting forth his or her name, his or her business name, his or her business address and such other information as may be necessary in arriving at the actual gross amount of business transacted by him or her during the preceding tax year and the amount of the tax due. He or she shall submit a Schedule C, Form 1065 or Form 1120, whichever is applicable for verification. At that time, he or she shall pay any balance due for the preceding tax year, together with the estimated tax for the forthcoming year based upon the profit and loss sheet submitted for the previous year.

(C) Every person subject to the tax imposed by this chapter who has commenced his or her business before the beginning of the tax year but after June 1 of the full calendar year previous to the beginning of the tax year shall, on or before June 15 of the tax year, file with the Tax Collector a return setting forth his or her name, his or her business name, his or her business address and such other information as may be necessary in arriving at the estimated gross amount of business transacted by him or her as calculated under ' 896.04 and the amount of tax due, provided 100 days have elapsed from the commencement of the business to June 15 of the tax year. If a taxpayer has not been in business for 100 days as of June 15 of the tax year, whether or not he or she commenced business within the tax year, his or her return shall be filed within 100 days of the commencement of his or her business.

(D) Every person subject to the payment of the tax imposed by this chapter who engages in a business, either temporary, seasonal or itinerant by its nature, shall, at the time application is made for the business privilege license, file a return with the Tax Collector setting forth his or her name, his or her business name, his or her business address and such information as maybe necessary in arriving at the estimated gross amount of business to be transacted by him or her as calculated in accordance with ' 896.04.

(E) Any person going out of business or ceasing to do business shall, within seven days from the date of ceasing to do business, file a return showing the actual gross volume of business conducted and done by such person during that tax year in which that person ceased doing business, and pay the tax due as computed thereon at the rate herein provided for at the time of filing such return. If such tax has been previously paid based upon estimated gross receipts, the taxpayer shall be entitled to a refund, without interest, of any excess tax paid for the tax year in which business was terminated.

(F) The business privilege tax levied pursuant to this chapter shall be due and payable on the date on which the taxpayer is required to file a return as set forth above. If the same is not paid on such date, a 10% penalty shall be added thereto, plus an additional 1% interest per month or fractional part of a month until paid.

(G) The Tax Collector shall, upon payment to him or her of the business privilege tax, give the person paying the same a receipt therefor.

(Ord. 382, passed 5-1-1978)

' 896.09 LICENSE REQUIRED; FEE.

Any person who wishes to conduct or to continue to conduct any business, as defined in ' 896.02, within the borough, shall file with the Tax Collector an application for a business privilege license and shall pay a fee as set forth in ' 208.03(I) of the Administration Code.

(Ord. 436, passed 1-3-1983)

' 896.10 ISSUANCE AND POSTING OF LICENSE.

The license issued shall be conspicuously posted in the place of business for which such license is issued and shall remain in effect for the license year or fraction of year for which such license was issued. In cases where more than one place of business is conducted, a separate license shall be issued for each place of business. Any taxpayer who is in default in payment of the tax due hereunder shall be refused a license until such tax is paid in full.

(Ord. 382, passed 5-1-1978)

' 896.11 DUTIES OF TAX COLLECTOR.

(A) The Tax Collector is hereby charged with the duty of receiving the taxes, fines and penalties imposed by this chapter. It shall be his or her duty to keep a record showing the amount received by him or her from each person paying the tax and the date of such receipt.

(B) In the event that any person subject to the tax hereunder neglects or refuses to make a return, then the Tax Collector shall assess such person on such amount of the whole or gross volume of business as the Tax Collector deems reasonable and appropriate. In all cases of assessment, the Tax Collector shall give the person assessed a notice in which shall be stated the trade, business, occupation or class of the person so assessed and the amount of the business privilege tax imposed.

(C) The taxpayer shall maintain such records and books of account as will enable him or her to make a true and accurate return in accordance with the provisions of this chapter. Such accounts and records must disclose in detail the gross receipts and other data pertaining to the taxpayer=s gross volume of business and must be sufficiently complete to enable the Tax Collector to verify all transactions. The Tax Collector is hereby authorized to examine the books, papers and records of any person or persons subject to or alleged to be subject to the tax imposed by this chapter, in order to verify the accuracy of the return made, or if no return was made, to ascertain the tax due.

(D) Any person aggrieved by any decision of the Tax Collector shall have the right to appeal to the Court of Common Pleas of the county.
(Ord. 382, passed 5-1-1978)

‘ 896.12 CONFIDENTIALITY OF INFORMATION.

Any information gained by the Tax Collector or any other official, agent or employee of the borough, as a result of any return, investigation, hearing or verification required or authorized by this chapter, shall be confidential, except in accordance with proper judicial order or as otherwise provided by law.
(Ord. 382, passed 5-1-1978)

‘ 896.13 SAVINGS AND SEPARABILITY CLAUSES.

(A) Nothing contained in this chapter 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 the Constitution of the Commonwealth.

(B) If the tax, or any portion thereof, imposed upon any person under the provisions of this chapter is held by any court of competent power or jurisdiction to be in violation of the Constitution of the United States or the Commonwealth or any other provision of law, the decisions 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) The provisions of this chapter are separable, and if any of such provisions are held to be illegal, invalid or unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted if such illegal, invalid or unconstitutional provision had not been included herein.
(Ord. 382, passed 5-1-1978)

‘ 896.14 VIOLATIONS.

(A) No person shall conduct, transactor engage in any of the businesses subject to the tax imposed by this chapter without first securing a business privilege license for the year.

(B) No person shall fail to file a tax return as required by the provisions of this chapter.

(C) No person shall willfully file a false return under this chapter.
(Ord. 382, passed 5-1-1978)

‘ 896.99 PENALTY.

Whoever violates or fails to comply with any of the provisions of this chapter shall be fined not more than \$300. In the event of default in the payment of any such fine, such person shall be imprisoned not more than 90 days. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

(Ord. 382, passed 5-1-1978)

CHAPTER 898: EARNED INCOME TAX

Section

898.01	Short title	898.07	Selection, compensation, powers and duties of income tax officer
898.02	Definitions	898.08	Application of tax
898.03	Incorporation of statute	898.09	Credits
898.04	Imposition of tax	898.10	Enforcement; interest and penalties on delinquent taxes
898.05	Declaration, return and payment of tax	898.99	Penalty
898.06	Collection at source		

CROSS-REFERENCE

Tax Collector, see Ch. 236

STATUTORY REFERENCE

Authority, see 53 P.S. ' ' 6924.101 et seq.

' 898.01 SHORT TITLE.

This chapter shall be known as AThe Brookhaven Borough Earned Income Tax Chapter@. (Ord. 543, passed 11-12-1990)

' 898.02 DEFINITIONS.

Except as otherwise indicated by the context, the following definitions shall apply in addition to those set forth in the Local Tax Enabling Act, 53 P.S. ' ' 6924.101 et seq.. Use of the masculine gender shall include the feminine and neuter, and reference to the masculine singular shall include the plural.

BOROUGH. The Borough of Brookhaven, Delaware County, Pennsylvania.

BOROUGH COUNCIL. The Borough Council of Brookhaven Borough.

OFFICER and INCOME TAX OFFICER. The person or corporation designated from time to time by resolution of the Borough Council as being responsible for the collection and reporting of the tax levied by this chapter.

TAXABLE YEAR. January 1 to December 31 of any year, provided that any taxpayer whose books are maintained on a different fiscal year basis may, with the consent of the officer, report and pay taxes on the basis of such fiscal year, with suitable adjustment of dates for quarterly returns as hereinafter set forth.

(Ord. 543, passed 11-12-1990)

' 898.03 INCORPORATION OF STATUTE.

The provisions of the Local Tax Enabling Act (53 P.S. ' ' 6924.101 et seq.), and its supplements and amendments, are incorporated herein by-reference, except that where options are provided in said Act, this chapter shall designate the option selected, and except that if this chapter shall provide to the contrary, the provisions of this chapter shall control.

(Ord. 543, passed 11-12-1990)

' 898.04 IMPOSITION OF TAX.

A tax for general revenue purposes in the amount of 1% is hereby imposed on earned income, including, inter alia, salaries, wages, commissions, bonuses, incentive payments, fees, tips and other compensation received by residents of the borough, and on earned income, including, inter alia, salaries, wages, commissions, bonuses, incentive payments, fees, tips and other compensation received by nonresidents of the borough, for work done or services performed or rendered in the borough, and on the net profits received from businesses, professions or other activities conducted by residents of the borough, and on the net profits received from businesses, professions or other activities conducted in the borough by nonresidents of the borough, during the period beginning on January 1, 1991, or the effective date of this chapter, whichever is later, and continuing for each taxable year thereafter.

(Ord. 543, passed 11-12-1990)

' 898.05 DECLARATION, RETURN AND PAYMENT OF TAX.

(A) *Net profits.* Every taxpayer making net profits in 1991 and in any year succeeding 1991 shall file a declaration of his or her estimated net profits for the current year, shall pay the tax due thereon in quarterly installments, and shall file a final return and pay to the officer the balance of the tax due, all as provided in ' 13, III, A(1)(ii) and (2) through (5), inclusive, of the Local Tax Enabling Act, its supplements and amendments.

(B) *Earned income.* For 1991 and each year succeeding the year 1991, every taxpayer shall make and file final returns and pay the taxes due all as provided in ' 13, III, B, first paragraph, of the Local Tax Enabling Act, its supplements and amendments.

(Ord. 543, passed 11-12-1990)

(C) *Quarterly returns.* Every taxpayer who is employed for a salary, wage or other compensation, and who received any annual earned income in excess of \$2,500, not subject to the provisions relating to collection at source, shall make and file with the officer quarterly returns, and shall pay quarter-annually the amount of tax shown as due on such returns, all as provided in 53 P.S. ' 6924.101 et seq., of the Local Tax Enabling Act, its supplements and amendments.

(D) *Annual returns.* Every taxpayer who is employed for a salary, wage or other compensation, and who received any annual earned income of \$2,500 or less, not subject to the provisions relating to collection at source, shall make and file with the officer annual returns, and shall pay annually the amount of tax shown to be due on such returns, all as provided in 53 P.S. ' 6924.101 et seq., of the Local Tax Enabling Act, its supplements and amendments.

(Ord. 599, passed 6-12-1995)

' 898.06 COLLECTION AT SOURCE.

(A) Every employer having an office, factory, workshop, branch, warehouse or other place of business within the corporate limits of the borough shall deduct the tax imposed by this chapter on the earned income due to his or her employee or employees and shall file quarterly returns and final returns and pay quarterly to the officer the amount of taxes deducted, all as set forth in ' 13, IV, of the Local Tax Enabling Act, its supplements and amendments, commencing January 1, 1991.

(B) Every employer who discontinues business prior to December 31 of any year shall, within 30 days after discontinuance of business, file returns and withholding statements hereinabove required and pay the tax due.

(C) No employer shall be required to register, deduct taxes, file returns or pay taxes in the case of domestic servants.

(Ord. 543, passed 11-12-1990)

' 898.07 SELECTION, COMPENSATION, POWERS AND DUTIES OF INCOME TAX OFFICER.

The income tax officer shall be selected from time to time by resolution of Council and shall receive such compensation for his or her services and expenses as determined from time to time by the Borough Council. Such officer shall have the powers and duties, and be subject to the penalties, provided in the Local Tax Enabling Act, its supplements and amendments.

(Ord. 543, passed 11-12-1990)

' 898.08 APPLICATION OF TAX.

The tax imposed in ' 898.04 shall not be levied on the net profits of any person, institution or organization as to whom or which it is beyond the power of the Borough Council to impose said tax under the Constitution of the United States of America or the Constitution and laws of the Commonwealth.

(Ord. 543, passed 11-12-1990)

' 898.09 CREDITS.

(A) Payment of any tax on income to a state other than Pennsylvania, or to any political subdivision thereof by residents thereof, pursuant to any state or local law, to the extent that such income includes salaries, wages, commissions, bonuses, incentive payments, fees, tips and other compensation or net profits of businesses, professions or other activities, but in such proportions as hereinafter set forth, shall be credited to and allowed as a deduction from the liability of such persons for the tax imposed by this chapter on salaries, wages, commissions, bonuses, incentive payments, fees, tips and other compensation or net profits of businesses, professions or other activities, if residents of the borough received credits and deductions of a similar kind to a like degree from the tax on income imposed by the other state or political subdivision thereof.

(B) Where a credit or a deduction is allowable, it shall be allowed in proportion to the concurrent periods for which taxes are imposed by the other state or respective political subdivisions, but not in excess of the amount previously paid for a concurrent period.

(Ord. 543, passed 11-12-1990)

' 898.10 ENFORCEMENT; INTEREST AND PENALTIES ON DELINQUENT TAXES.

In enforcing the collection of the tax hereby levied, the officer shall have all the remedies prescribed by the Enabling Act, and shall be entitled to add, to the amount of any delinquent tax or debt created by the failure to pay or to collect at one source, such taxes plus interest at the rate of 6% per annum plus an additional penalty of 0.5% of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid.

(Ord. 543, passed 11-12-1990)

' 898.99 PENALTY.

In addition to the enforcement provisions provided in ' 898.10, any taxpayer violating, or conspiring to violate, any provision of this chapter or the Enabling Act shall, upon conviction in a summary proceeding, be subject to a maximum fine as provided by law, or in default of payment thereof, a sentence of imprisonment not exceeding 30 days.

(Ord. 543, passed 11-12-1990)

CHAPTER 899: TAXPAYERS BILL OF RIGHTS

Section

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' 899.01 INTRODUCTION.

The Local Taxpayers Bill of Rights, enacted as part of Act 50 of 1998, being 53 Pa.C.S. §§ 8421 to 8565, (hereinafter the ALTBR), requires that every political subdivision levying an eligible tax adopt regulations governing the administration and collection of the tax, and setting forth a process for handling appeals from decisions on assessments and refunds. This chapter provides the regulations required by the LTBR.

(Ord. 689, passed 8-2-2004)

' 899.02 DEFINITIONS.

The following definitions shall apply to this chapter as well as all exhibits attached hereto.

APPEALS BOARD. The Board of Local Tax Appeals.

ASSESSMENT. The determination by the taxing authority of the amount of underpayment by a taxpayer.

ELIGIBLE TAXES. Includes all taxes, interest and penalties levied under the Local Tax Enabling Act (53 P.S. ' ' 6924.101 et seq.); as well as any per capita, occupation, occupation assessment, occupational privilege tax; income; gross receipts; privilege; amusement or admissions; earned income or net profit tax. This chapter does not apply to real property taxes.

LOCAL GOVERNMENT. Borough of Brookhaven.

LOCAL TAXPAYER BILL OF RIGHTS. Subchapter C of Act 50 of 1998 of the Pennsylvania General Assembly, 53 Pa.C.S.A. ' 8421C8428.

OVERPAYMENT. Any payment of eligible tax which is determined in the manner provided by law not to be legally due.

PETITION. The petition for appeal and refund described in ' 899.05.

TAXING AUTHORITY. The borough, as well as any officer, agent, agency, clerk, income tax officer, collector, employee or other person whom the borough has assigned responsibility for the audit, assessment, determination or administration of an eligible tax.

TAXPAYER. An individual, partnership, association, corporation, limited liability company, estate, trust, trustee, fiduciary, or any other entity subject to or claiming exemption from any eligible tax or under a duty to perform an act for itself or for another under of pursuant to the authority of an eligible tax levied by the borough.

UNDERPAYMENT. The amount or portion of any eligible tax determined to be legally due in the manner provided by law for which payment or remittance has not been made.

VOLUNTARY PAYMENT. A payment of an eligible tax made pursuant to the free will of the taxpayer. The term does not include a payment made as a result of distraint or levy or pursuant to a legal proceeding in which the taxing authority is seeking to collect its delinquent eligible taxes or file a claim therefor.

(Ord. 689, passed 8-2-2004)

' 899.03 REQUIREMENTS FOR REQUEST FOR TAXPAYER INFORMATION.

(A) *Minimum time periods for taxpayer response.*

(1) The taxpayer shall have at least 30 calendar days from the mailing date to respond to requests for information by the taxing authority. The taxing authority shall grant a reasonable extension upon written application explaining the reason(s) necessitating the extension, which must amount to good cause. If the taxing authority denies a request for extension, the taxing authority must inform the taxpayer in writing of the basis for the denial and that the taxpayer must immediately provide the requested information. If the taxing authority grants an extension request, he or she must notify the taxpayer in writing of the amount of extension granted. Generally, an extension will not exceed 30 calendar days in length, and may be less, depending on the circumstances.

(2) The taxing authority shall notify the taxpayer of the procedures to obtain an extension in its initial request for information. Please refer to the information request and time extension procedure notice, set forth in ' 899.21.

(3) The taxing authority shall take no lawful action against a taxpayer for the tax year in question until the expiration of the applicable response period for submission of the information requested, including extensions. For example, the taxing authority may not engage in any collection efforts until after expiration of the response period. After expiration of the response period, the taxing authority may engage in collection efforts permitted by the LTBR and discussed in ' 899.15.

(B) Requests for prior year tax returns.

(1) Except as provided in division (B)(2) hereof, an initial inquiry by the taxing authority regarding a taxpayer=s compliance with any eligible tax may include taxes required to be paid or tax returns required to be filed no more than three years prior to the mailing date of the notice.

(2) The taxing authority may make an additional subsequent request for a tax return or supporting information if, after the initial request, the taxing authority determines that the taxpayer failed to file a tax return, under reported income or failed to pay a tax for one or more of the tax periods covered by the initial request. Generally, however, the taxing authority should not make routine requests for additional prior year returns.

(3) Notwithstanding the foregoing, the limitations in division (B)(2) hereof on subsequent requests for prior year returns shall not apply if the taxing authority has sufficient information to indicate that the taxpayer failed to file a required return or to pay an eligible tax which was due more than three years prior to the date of the notice. Thus, in situations involving failure to file a required return or to pay a required eligible tax, the taxing authority shall, in its discretion, have the ability to request prior year returns due more than three years prior and supporting information.

(C) Use of federal or state tax information. The taxing authority may require a taxpayer to provided copies of the taxpayer=s federal individual income tax return if the taxing authority can demonstrate that the federal tax information is reasonably necessary for the enforcement or collection of tax and the information is not available from other available sources or the Pennsylvania Department of Revenue. The taxing authority may also require a taxpayer to provide copies of the taxpayer=s state individual income tax return.

(Ord. 689, passed 8-2-2004)

899.04 NOTICE OF BASIS OF UNDERPAYMENT.

The taxing authority must notify the taxpayer in writing of the basis for any underpayment that the taxing authority has determined to exist with respect to any eligible tax. The purpose of this notification is for the taxpayer to understand the exact reason why the taxing authority believes an underpayment exists. This notification from the taxing authority shall be written in a manner calculated to be understood by an average person. The notification must include:

(A) The tax period or periods (usually measured in calendar years) for which the underpayment is asserted;

(B) The amount of the alleged underpayment of the eligible tax detailed by tax period;

(C) The legal basis (including any statutory or case law citations) upon which the taxing authority has relied to determine that an underpayment of an eligible tax exists; and

(D) An itemization of the changes made by the taxing authority to a return or report filed by the taxpayer that results in the determination that an underpayment exists. A copy of any revised return or report in the taxing authority's file must be provided to the taxpayer.

(Ord. 689, passed 8-2-2004)

899.05 PETITIONS FOR APPEALS OF ASSESSMENTS OR REFUND OF TAXES PAID.

(A) *Filing of petitions.*

(1) A taxpayer has the legal right to challenge an assessment or denial of a refund claim under the LTBR. However, a taxpayer has a right to one appeal only. If a taxpayer loses an assessment appeal, the taxpayer is not entitled to a second refund appeal after paying the tax. In addition, no administrative appeals are provided for other decisions, including, but not limited to, the denial of an extension of time to provide information or the modification or termination of an installment agreement.

(2) The LTBR requires political subdivisions to establish appeals procedures. In order to begin the appeals process, the taxpayer must file a complete and timely petition (the *Apetition*®). A petition is timely filed if the letter transmitting the petition is postmarked by the United States Postal Service or actually received on or before the final day on which the petition is due. Receipts from carriers other than the United States Postal Service are not accepted as proof of timely filing. Deadlines for filing a petition are as follows.

(a) Petitions challenging the denial of the refund shall be filed within three years after the due date for filing the report or return as extended or one year after actual payment of the tax, whichever is later. If no report or return is required, the petition shall be filed within three years after the due date for payment of the eligible tax or within one year after actual payment, whichever is later.

(b) Petitions for reassessment of tax shall be filed within 90 days of the date of the assessment notice which has been sent to the taxpayer by the taxing authority.

(B) *Petition for Appeal and Refund.* The taxing authority shall make available a form of petition for appeal and refund, as set forth in ' 899.17.

(C) *Contents.* Any petition filed under division (A)(2)(a) above shall:

(1) State the legal basis for claiming the refund or disagreeing with the taxing authority=s assessment;

(2) State the tax period or periods (i.e., years) to which it pertains;

(3) State the amount of the claim and the type of eligible tax detailed by the tax period;

(4) Include all supporting documentation and calculations;

(5) Provide the name, address and telephone number of the taxpayer=s representative, if any;

(6) Include a statement certifying that the facts in the petition are true and correct, under penalty of perjury, and that the petition is not filed for purposes of delay; and

(7) Include such other information (essentially identification) as is reasonably requested by the taxing authority on the petition for appeal and refund provided to taxpayer.

(D) *Hearing/appeal on record.* The taxpayer shall have the right to request a hearing in person or based on the petition and record (including information on file and information submitted by taxpayer). A hearing based only on the petition and record will not include any in person hearing or oral arguments. The Appeals Board shall have the right to deny an oral hearing and/or oral argument where the taxpayer has submitted an incomplete petition, or where the Appeals Board has determined that the appeal is frivolous, undertaken only for purpose of delay, or otherwise without merit. If an oral hearing is denied, the Appeals Board shall notify the taxpayer in writing of the denial and the basis for the denial. (Ord. 689, passed 8-2-2004)

' 899.06 APPEALS BOARD.

An Appeals Board appointed by a governing body shall consist of at least three, but not more than seven, members. The Appeals Board is appointed by the Borough Council.

(A) Any taxpayer filing a petition under ' 899.05 shall be entitled to a hearing and decision by the Appeals Board, subject to a request for hearing and the failure to deny the request for hearing. Decisions on petitions shall be issued within 60 days of the date a complete and accurate petition is received. If the Appeals Board does not act within 60 days the petition shall be deemed approved.

(B) Any person aggrieved by a decision under this section who has a direct interest in the decision shall have the right to appeal to the Court of Common Pleas of the County of Delaware vested with the jurisdiction of local tax appeals by or pursuant to 42 Pa.C.S. ' 5571(b).

(C) Decisions by the Appeals Board shall be made according to principles of law and equity. (Ord. 689, passed 8-2-2004)

' 899.07 CONDUCT OF HEARINGS.

(A) A taxpayer may or may not choose to be represented by a taxpayer representative. The taxpayer representative may be a lawyer, certified public accountant, accountant or other tax advisor possessing appropriate tax training to represent taxpayers in tax appeals. The taxpayer must submit a written authorization to use a taxpayer representative. However, a simple letter signed by a taxpayer authorizing representation will be accepted as authorization. Such authorization shall include the representative's name, address and telephone number.

(B) Copies of notices or communications may be sent by the taxing authority or other representative of the political subdivision to the taxpayer's representative. However, the original notice or communications will always be sent directly to the taxpayer. Action taken by the taxpayer's authorized representative (for example, requesting an extension of time or submitting factual information) shall have the same force or effect as if taken directly by the taxpayer.

(C) Reasonable notice of the hearing date will be provided to the taxpayer by the Appeals Board. The notice shall provide the date, time and place of a hearing.

(D) The Appeals Board may grant a taxpayer's written request for a continuance of a hearing. A request for continuance shall be granted only if supported by written reasons, and for good cause. A request for continuance must be received at least five days before the scheduled hearing date.

(E) The Appeals Board shall preside and keep order over any scheduled hearing. Hearings need not adhere to any technical rules of evidence, but oral testimony shall be taken under oath or affirmation. At the discretion of the Appeals Board, depositions or affidavits may be used in lieu of oral testimony.

(F) The Appeals Board shall have the authority to take the following actions:

- (1) Delegate the hearing schedule to an employee, agent or other designee;
- (2) Regulate the conduct of hearings, including but not limited to scheduling, timing, recesses, reconvening, adjournment and any other acts necessary for the efficient conduct of a hearing;
- (3) Administer oaths and affirmations;
- (4) Receive evidence;
- (5) Permit reasonable examination and cross-examination of witness; and

(6) Require the production of written evidence such as books, records, documents and any other pertinent information.

(G) The Appeals Board's final decision shall be in writing and signed by the Appeals Board. The final decision shall be mailed to the taxpayer, with a copy also mailed to the taxpayer's authorized representative (if any).

(Ord. 689, passed 8-2-2004)

' 899.08 REFUNDS.

(A) A taxpayer who has paid an eligible tax may file a written request for refund or credit. A request for refund shall be made within three years of the due date, as extended, for filing the report or tax return, or one year after actual payment of the tax, whichever is later. If no report is required the request shall be made within three years after the due date for payment of the tax or within one year after actual payment of the tax, whichever is later. See ' 899.20 for initial refund claim form.

(B) A tax return filed by the taxpayer showing an overpayment shall be deemed to be a written request for a cash refund unless otherwise indicated on the tax return.

(C) A request for refund under this section shall not be considered a petition under ' 899.05 and shall not preclude a taxpayer from submitting a petition under ' 899.05.

(D) For amounts paid as a result of a notice asserting or informing a taxpayer of an underpayment, a written request for refund shall be filed within one year of the date of payment.

(Ord. 689, passed 8-2-2004)

' 899.09 DISCLOSURE STATEMENT AND TAXPAYER NOTICE.

(A) Any taxpayer contacted by the taxing authority regarding the assessment, audit, determination, review or collection of an eligible tax will receive a taxpayer notice. The notice shall be incorporated into any other correspondence sent to a taxpayer by the taxing authority regarding the assessment, audit, determination, review or collection of tax. The notice shall be substantially in the form set forth in ' 899.20.

(B) The disclosure statement will be made available to taxpayers upon request at no charge to the taxpayer, including mailing costs. In general, the taxing authority will make reasonable efforts to supply all taxpayers with a copy of the disclosure statement.

(Ord. 689, passed 8-2-2004)

' 899.10 INTEREST ON OVERPAYMENT.

(A) *General rule.* All overpayments of an eligible tax made to the local government shall bear

simple interest from the date of overpayment of such eligible tax until the date of resolution.

(B) *Interest rate.* Interest on overpayments shall be paid at the same rate as the Commonwealth is required to pay pursuant to ' 806.1 of the Act of April 9, 1929 (Pub. L. 343, No. 176) known as the Fiscal Code (72 P.S. ' 1 et seq.) As of December 1998, this interest rate is currently 9% annually (0.00247% daily).

(C) *Exceptions to payments of interest.*

(1) No interest shall be paid if an overpayment is refunded or applied against any other eligible tax, interest or penalty due to the local government with 75 days after the last date prescribed for filing the report or tax return of the tax liability or within 75 days after the date the return or report of the liability due is filed, whichever is later.

(2) Interest is not required to be paid on taxpayer overpayments of interest or a penalty(ies).

(D) *Acceptance of refund check.* The taxpayer=s acceptance of a refund check from the taxing authority or political subdivision shall not prejudice any right of the taxpayer to claim any additional overpayment and interest thereon. Tender of a refund check by the local government shall be deemed to be acceptance of the check by the taxpayer for purposes of this division (D).

(E) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DATE OF OVERPAYMENT. The later of the date paid or the date the tax is deemed to have been overpaid as follows:

(a) Any tax actually deducted and withheld at the source shall be deemed to have been overpaid on the last day for filing the report for the tax period, determined without regard to any extension of time for filing;

(b) Any amount overpaid as estimated tax for the tax period shall be deemed to have been overpaid on the last day for filing the report for the tax period, determined without regard to any extension of time for filing;

(c) An overpayment made before the last day prescribed for payment shall be deemed to have been paid on the last day;

(d) Any amount claimed to be overpaid with respect to which a lawful administrative review or appellate procedure is initiated shall be deemed to have been overpaid 60 days following the date of initiation of the review or procedure; and

(e) Any amount shown not to be due on an amended income or earned income and net profits tax return shall be deemed to have been overpaid 60 days following the date of filing of the amended income tax return.

DATE OF RESOLUTION. The date the overpayment is refunded or credited as follows:

(a) For a cash refund, a date preceding the date of the refund check by not more than 30 days;

(b) For a credit for an overpayment:

1. The date of the taxing authority's notice to the taxpayer of the determination of the credit; or

2. The due date for payment of the eligible tax against which the credit is applied, whichever first occurs. For a cash refund of a previously determined credit, interest shall be paid on the amount of the credit from a date 90 days after the filing of a request to convert the credit to a cash refund to a date preceding the date of the refund check by not more than 30 days whether or not the refund check is accepted by the taxpayer after tender.

(Ord. 689, passed 8-2-2004)

' 899.11 ABATEMENT OF CERTAIN INTEREST AND PENALTY.

(A) *Errors and delays.* The purpose of this provision is to provide, in the discretion of the taxing authority, a mechanism to abate (i.e., reduce) interest and/or penalties where an underpayment is the result of an error or delay in performance by a representative of the taxing authority. Accordingly, in the case of any underpayment, the taxing authority, in its discretion, may offer to abate all or any part of the interest relating to an eligible tax for any period for any one or all of the following reasons.

(1) Any underpayment of an eligible tax finally determined to be due, which is attributable in whole or in part to any error or delay by the taxing authority in the performance of a ministerial act. For purposes of this division (A)(1), an error or delay shall be taken into account only if no significant aspect of the error or delay can be attributed to the taxpayer and after the taxing authority has contacted the taxpayer in writing with respect to the underpayment of tax finally determined to be due or payable.

(2) Any payment of an eligible tax to the extent that any error or delay in the payment is attributable to an officer, employee or agent of the taxing authority being erroneous or dilatory in performance of a ministerial act. The taxing authority shall determine what constitutes timely performance of ministerial acts performed under division (A) hereof.

(B) *Abatement of any penalty or excess interest due to erroneous written advice by the taxing authority.*

(1) The taxing authority shall abate any portion of any penalty or excess interest attributable to erroneous advice furnished to the taxpayer in writing by an officer, employee or agent of the taxing authority acting in the officer's, employees or agent's official capacity if:

(a) The written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer; and

(b) The portion of the penalty or addition to tax or excess interest did not result from a failure by the taxpayer to provide adequate or accurate information to the taxing authority.

(2) Notwithstanding the foregoing, it shall be in the sole discretion of the taxing authority whether or not to provide written tax advice to a taxpayer. Taxpayers shall not have any right to compel the taxing authority to provide written tax advice.

(Ord. 689, passed 8-2-2004)

‘ 899.12 APPLICATION OF PAYMENTS.

Unless otherwise specified by the taxpayer, all voluntary payments of an eligible tax shall be prioritized by the taxing authority in the following order:

(A) Tax;

(B) Interest;

(C) Penalty; and

(D) Any other fees or charges.

(Ord. 689, passed 8-2-2004)

‘ 899.13 INSTALLMENT AGREEMENTS.

The taxing authority has the discretion to enter into written agreements with any taxpayer under which the taxpayer is allowed to satisfy liability for tax in installment payments if the taxing authority determines that the installment agreement will facilitate collection.

(A) *Extent to which installment agreements remain in effect.*

(1) Except as otherwise provided in this division (A), any installment agreement entered into by the taxing authority under this section shall remain in effect for the term of the agreement.

(2) The taxing authority may terminate any prior installment agreement entered into under this section if:

(a) Information which the taxpayer provided to the taxing authority prior to the date of the installment agreement was inaccurate, false, erroneous or incomplete in any manner, determined in the reasonable discretion of the taxing authority; or

(b) The taxing authority reasonably believes and has determined that collection of the eligible tax under the installment agreement is in jeopardy.

(3) If the taxing authority finds that the financial condition of the taxpayer has significantly changed, the taxing authority may unilaterally alter, modify or terminate the installment agreement, but only if the following conditions are satisfied:

(a) The taxing authority provides a notice of its findings to the taxpayer no later than 30 days prior to the date of change of the installment agreement; and

(b) The notice given by the taxing authority to the taxpayer provides the reasons why the taxing authority believes that a significant change, justifying a change to the installment agreement, has occurred.

(4) The taxing authority may unilaterally and without notification alter, modify or terminate an installment agreement entered into by the taxing authority under this section if the taxpayer fails to do any of the following:

(a) Pay any installation at the time it is due under the installment agreement;

(b) Pay any other liability relating to an eligible tax at the time the liability is due; and

(c) Provide a financial condition update as requested by the taxing authority.

(5) No administrative appeal is permitted in the event of an alteration, modification or termination of an installment agreement. However, an appeal may be made to the Court of Common Pleas of this county.

(B) *Prepayment permitted.* Nothing in this section shall prevent a taxpayer from prepaying in whole or in part any eligible tax under any installment agreement with the taxing authority.

(Ord. 689, passed 8-2-2004)

§ 899.14 CONFIDENTIALITY OF TAX INFORMATION.

(A) Any information obtained by the taxing authority or Appeals Board, or any of their respective officers, agents, legal counsel, financial accountants or employees as a result of any audit, assessment, return, report, investigation, hearing, appeal or verification of a taxpayer shall be confidential tax information. It shall be unlawful, except for official purposes or as provided by law, for such persons to:

(1) Divulge or make known in any manner any confidential information obtained through any audit, return, assessment, investigation, report, appeal, hearing or verification of a taxpayer to any person other than the taxpayer or the taxpayer's authorized representative;

(2) Permit confidential tax information or any book containing any abstract or particulars thereof to be seen or examined by any person other than the taxpayer or the taxpayer's authorized representative; and

(3) Print, publish or make known in any manner any confidential tax information of a taxpayer.

(B) An offense under this section is a misdemeanor of the third degree and, upon conviction thereof, a fine of not more the \$2,500 and costs, or a term of imprisonment for not more than one year, or both, may be imposed on the offender. If the offender is an officer or employee of the taxing authority or the Appeals Board, the officer or employee shall be dismissed from office or discharged from employment. (Ord. 689, passed 8-2-2004)

' 899.15 COLLECTIONS.

If after the decision of an appeal, or if no appeal is requested by a taxpayer, the taxing authority may engage in efforts to collect any eligible tax determined to be legally due. Such efforts may include, but shall not be limited to, obtaining additional information, auditing taxpayer records, compromising the amount of tax, interest or penalty owed, obtaining liens on the taxpayer=s property, or obtaining wage attachments, levies and seizures of the taxpayer=s property. As provided in ' 899.13, the taxing authority may enter into a written installment agreement with the taxpayer if the taxing authority determines that an installment agreement will facilitate collection. The taxing authority also reserves the right to seek criminal prosecution of a taxpayer in appropriate circumstances. (Ord. 689, passed 8-2-2004)

' 899.16 DISCLOSURE STATEMENT.

Every taxpayer is obligated to pay all taxes levied by the borough to which the taxpayer is subject. When taxes are not paid or the borough, or its designated tax collector, have questions about whether a taxpayer has fulfilled all tax obligations, relating to the filing of tax returns, the payment of taxes due and/or any other matter relating to taxpayer compliance with any applicable tax ordinance, the borough has legal rights to enforce taxpayer obligations. In conjunction with taxpayer obligations and the borough=s rights, the Commonwealth has enacted a Local Taxpayer Bill of Rights which grants legal rights to taxpayers and creates obligations for the borough so that equity and fairness control how certain eligible taxes are collected. This disclosure statement sets forth your rights as a taxpayer in connection with any audit, examination, appeal or refund claim of taxes for the borough and any enforcement or collection actions taken by the taxing authority on behalf of the borough.

APPLICABILITY/ELIGIBLE TAXES

This Disclosure Statement applies to eligible taxes levied by the borough. For this purpose, eligible taxes include any tax levied by the borough other than real estate tax. This Disclosure Statement does not apply to real estate taxes. The specific eligible taxes which may, from time to time, be levied by the borough include the following:

1. Per Capita
2. Occupational Privilege Tax
3. Earned Income
4. Business Privilege

5. Real Estate Transfer Tax

Unless expressly provided in the Local Taxpayers Bill of Rights, the failure of any borough representative to comply with any of the provisions of this Disclosure Statement, related regulations or the Local Taxpayers Bill of Rights will not excuse the taxpayer from paying the taxes owed.

AUDIT/OR EXAMINATIONS

If we contact you about your tax return or payment of any eligible taxes, we will send you a letter with either a request for more information or a reason why we believe a change to your return or taxes may be needed. If we request information, you will have thirty (30) calendar days from the date of mailing to respond. Reasonable extensions of such time will be granted upon application for good cause. We will notify you of the procedures to obtain an extension with our initial request for tax information. Our initial inquiry may include taxes required to be paid or tax returns required to be filed no more than three years prior to the mailing date of our notice. If you give us the requested information or provide an explanation, we may or may not agree with you. If we do not agree with you, we will explain in writing our reasons for asserting that you owe us tax (which we call an underpayment). Our explanation will include: (1) the tax period or periods for which the underpayment is asserted; (2) the amount of the underpayment detailed by tax period; (3) the legal basis upon which we have relied to determine that an underpayment exists; and (4) an itemization of the revisions made by us to your return or report that results in our decision that an underpayment exists. If you agree with our changes, you should pay the additional tax.

Request for Prior Year Returns

- § An initial request may cover only taxes required to be paid or tax returns required to be filed no more than three years prior to the mailing date of the request.
- § The borough, or its designated collection agent, will notify the taxpayer of the procedures to obtain an extension in its initial request for tax information.
- § The borough, or its designated collection agent, may make a subsequent request relating to other taxes or returns if, after the initial request, it is determined that the taxpayer failed to file a tax return, under reported income, or failed to pay a tax for one or more of the tax periods covered by the initial request.

Use of Federal or State Tax Information

- § The borough, or its designated collection agent, may require a taxpayer to provide copies of federal tax returns if the information is reasonably necessary for enforcement or collection of a tax and the information is not readily available from the Pennsylvania Department of Revenue or other sources.

APPEALS OF DECISIONS

If we notify you that you owe more tax (what we call an assessment) and you do not agree with our decision, you may appeal or seek review by filing a Petition for Reassessment within 90 days of the date of the mailing of the assessment notice. The Petition must be in our hands or postmarked by the U.S. Postal Service within this 90 day period. Receipts from other carriers (such as Federal Express) are not accepted as proof of delivery.

Your Petition must explain the legal basis for your position and include all supporting documents. For your convenience, a form for submission of a Petition is available at the Borough of Brookhaven at 2 Cambridge Road, Brookhaven, PA. Your Petition must be sent to the attention of the Board of Appeals at the following address: 2 Cambridge Road, Brookhaven, PA. After your Petition is received, we will notify you of your hearing date, if you requested a hearing. A decision by the Board of Appeals will be made within 60 days of the date your complete and accurate Petition is received. If you do not agree with the decision of the Board of Appeals, you may appeal to the Court of Common Pleas of Delaware County. You must file your appeal within 30 days after notice of the decision of the Board of Appeals.

REFUNDS

A taxpayer may file a written request with the borough, or its designated collection agent, for refund or credit. The filing of a written request will not preclude a taxpayer from later filing a tax appeal petition as discussed below. The request must be made within three years of the due date for filing the return or one year after payment of the tax, whichever is later. If no return is required, the request must be made within three years after the payment due date, or within one year after payment, whichever is later. A tax return filed by the taxpayer showing a tax overpayment will be considered a written request for a cash refund unless the return indicates otherwise. If the taxpayer pays a tax as a result of receiving a notice of underpayment, the taxpayer must file a written request for a refund within one year of the payment date. Subject to certain exceptions, the borough, or its designated collection agent, will pay interest, at a rate determined pursuant to state law, from the date of overpayment until the date of the resolution. If your Refund Claim is denied, you may file a Petition contesting the denial of the refund. Any Petition must be filed within the same time limits that apply for a Refund Claim. Alternatively, you may file a Petition for a refund without first filing a Refund Claim. A hearing date will be set after your Petition is received and a decision by the Board of Appeals will be made within 60 days of the date your complete and accurate application is received. The Appeals Petition form must be used to request a review of a Refund Claim denial. Your Petition must be mailed or delivered to the attention of the Board of Appeals at the following address; 2 Cambridge Road, Brookhaven, PA 19015.

ENFORCEMENT PROCEDURES

Once it has been determined that you owe a tax, we will take all actions we are legally permitted to take to enforce our claim. Such action may include obtaining additional information from you, auditing your records, entering into a settlement with you of the disputed amount of the tax, or obtaining liens on your property, wage attachments, levies, and seizures and sales of your property in appropriate circumstances. We may enter into a written agreement with you for payment of the tax in installments if we believe that such an agreement will facilitate collection. We may also impose interest and applicable penalties on the tax you owe, and may seek criminal prosecution of you in appropriate circumstances.

TAX INFORMATION CONFIDENTIALITY

Information gained by the borough or its designated collection agent as the result of any audit, return, report, investigation, hearing, appeal or verification shall be confidential. However, confidentiality will not preclude disclosure for official purposes, whether in connection with legal proceedings or otherwise, and will not preclude disclosure to the extent required by any applicable law.

TAXPAYER COMPLAINTS

If a taxpayer has a complaint about any action relating to taxes in question, complaints should be directed to the Chairperson of the Borough Council at 2 Cambridge Road, Brookhaven, PA or any other person as may be designated by the Borough Council to facilitate resolution of the complaint by working with the appropriate borough personnel and/or Board of Appeals. (Ord. 689, passed 8-2-2004)

† 899.17 PETITION FOR APPEAL AND REFUND.

INSTRUCTIONS: This form is to be used by taxpayers appealing an assessment of tax by the Taxing Authority or an appeal of a denial of a claim for refund by the Taxing Authority. Please complete Petition using blue or black ink, or type Petition. Attach a copy of the Assessment Notice being appealed, or if seeking a refund, proof that such tax was paid. Mail the Petition to the Borough of Brookhaven, 2 Cambridge Road, Brookhaven, Pa 19105. Petitions appealing an Assessment Notice must be received by the Board of Appeals or borough within 90 days of the date of the Assessment Notice. Petitions for refunds must be received by the Board of Appeals or borough within the later of: (a) three years of the due date for filing the return or (b) one year after actual payment of the tax. Petitions filed via U.S. Postal Service are considered filed as of the postmark date. Petitions filed via any other method are considered filed on the date received. Answer all questions below as completely as possible. If an item is not applicable, enter AN/A@.

SECTION A: TAXPAYER INFORMATION

Taxpayers Bill of Rights

Last Name First Name Middle Initial

Street Address

City State County Zip Code

Phone Number: _____

Fax Number: _____

Previous Street Address (if applicable)

City State County Zip Code

Social Security No: _____

Account No: _____

Taxpayer Identification No: _____

SECTION B: TAX INFORMATION

Type of Tax: _____

Amount of Refund Claim: _____

Tax Year: _____

Quarter: _____

School District: _____

Borough: _____

Township: _____

City: _____

Town: _____

County: _____

SECTION C: REPRESENTATIVE INFORMATION

COMPLETE INFORMATION FOR REPRESENTATIVE (if applicable)

Send all copies of Correspondence to: _____ Representative

Last Name First Name Middle Initial

Is Representative an: _____ Attorney _____ Other Tax Advisor
 _____ Certified Public Accountant _____ Other Accountant

Business Name

Brookhaven - Business Regulation and Taxation Code

Street Address

City	State	County	Zip Code
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Phone Number: _____

Fax Number: _____

SECTION D: HEARING REQUEST

_____ Hearing Requested (Check if Taxpayer desires a hearing in person)

_____ Hearing Requested Based on Petition and Record (No hearing will be conducted in person)

(if choice is not indicated, hearing will be conducted based on Petition and Record and without a hearing in person)

SECTION E: RELIEF REQUESTED & ARGUMENTS

Explain the relief requested:

Explain in detail why the relief requested above should be granted. Attach additional pages if necessary. Enclose copies of any documents you feel will support your arguments. Petitions for refund must be accompanied by proof of payment of the tax.

SECTION F: SIGNATURE

All Petitions must be signed by Petitioner or an authorized representative. If signed by an authorized representative, written authorization for the representative to sign on Petitioner's behalf must accompany the Petition.

Under penalties prescribed by law, I hereby certify that this Petition has been examined by me and that to the best of my knowledge, information and belief, the facts contained in the Petition are true and correct.

Signature: _____

Print Name: _____

Title: _____

Date: _____

(Ord. 689, passed 8-2-2004)

' 899.18 TAX APPEAL INFORMATION AND REGULATIONS.

The Local Taxpayer Bill of Rights requires the adoption of regulations concerning the form and

content of petitions, as well as practice and procedure for tax appeal petitions. This document contains those regulations required by the Bill of Rights. In addition, the borough has published a Disclosure Statement as required by the Bill of Rights.

APPLICABILITY/ELIGIBLE TAXES

These regulations apply to eligible taxes as may be levied from time to time by the borough. For this purpose, eligible taxes include any tax other than the real estate tax. Specific eligible taxes levied by the borough are:

1. Per Capita
2. Occupational Privilege Tax
3. Earned Income
4. Business Privilege
5. Real Estate Transfer Tax

TAX APPEAL PETITIONS

Filing

- § As explained more fully in the Disclosure Statement, petitions should be filed with the borough.
- § Petitions must be filed within the time limits explained in the Disclosure Statement. Petitions received by the borough are considered timely if received by the required date or if mailed and postmarked by the United States Postal Service on or before the required date.
- § The burden is on the taxpayer to present evidence sufficient to prove that the petition was timely filed.

Contents

- § Petitions must be in writing, signed by the taxpayer(s) (if the taxpayer is an entity, a partner or officer must sign) and must contain:
- § Taxpayer=s name, address, social security number, and work and home telephone numbers.
- § A statement of when the taxpayer first established domicile within the borough.
- § If taxpayer is represented by an attorney, accountant or other qualified individual, as explained below, the name, address and telephone number of the representative.
- § Designation of the eligible tax and/or penalty and interest to which the petition relates, including the year or other period and tax amount. A copy of any tax bill, refund request denial, or other essential documents relating to the petition shall be attached.
- § Taxpayer=s license number, account number, employer identification number, or other additional identifying designation.
- § A detailed statement in separate numbered paragraphs of the reasons requiring a refund, or the objections to the assessment or notice of underpayment being appealed, and the facts supporting such reasons or objections.
- § Copies of local and federal tax returns for the three years prior to the year of tax being challenged.

- § A statement specifying the relief requested by the taxpayer.
- § A statement whether or not a hearing is requested.
- § A statement certifying that the facts contained in the petition are true and correct to the taxpayer=s knowledge and belief, and that the petition is not filed for purposes of delay.

Incomplete Petitions

If the petition fails to satisfy the above requirements, the Board of Appeals may request the taxpayer to submit the missing information or may make a decision based on the information in the petition. If additional information is requested, the taxpayer=s failure to submit the requested additional information within 30 days of the date of the request shall result in dismissal of the petition.

TAX APPEAL PETITION PRACTICE AND PROCEDURE

General

Practice and procedure before the borough relating to tax appeal petitions is not governed by the Local Agency Law.

Representation

- § A taxpayer or an officer or partner of an entity taxpayer may file a petition and appear at any hearing, or may be represented by a person possessing appropriate education, training or experience to represent taxpayers in tax appeals. There is no requirement that a taxpayer be represented by an attorney or certified public accountant. A taxpayer=s representative must be authorized as a representative in the petition signed by the taxpayer will be accepted as authorization for representation.
- § A notice or other written communication from the borough to the taxpayer may be given to the taxpayer=s authorized representative, and any such notice or other communication shall have the same effect as if given to the taxpayer directly. Action taken by taxpayer=s authorized representative shall have the same force and effect as if taken by the taxpayer.

Burden of Proof

The taxpayer has the burden of proof on all issues.

Hearings

- § **Waiver.** If a taxpayer does not request a hearing on the petition, the taxpayer will be deemed to have waived any right to a hearing and to have requested that the Board of Appeals decide the taxpayer=s case solely based on the petition. If the taxpayer does not request a hearing, or the Board of Appeals decides the taxpayer has no right to a hearing, the Board of Appeals will decide in its discretion whether a hearing is required.
- § **Notice of Hearing.** If the Board of Appeals schedules a hearing, reasonable notice will be given to the taxpayer in writing specifying the date, time and place.
- § **Continuances.** The Board of Appeals may grant a reasonable request for a continuance of a scheduled hearing. The request shall be made in writing, shall state the reasons for the requested continuance, and shall be received by the Board of Appeals at least 5 days prior to the scheduled hearing.
- § **Board of Appeals.** The borough shall, from time to time, designate the persons who shall preside at hearings required hereunder.

- § **Transcripts or Recordings.** Transcripts or recordings of a hearing are not required, but may be made at the discretion of the Board of Appeals.

- § **Authority of Board of Appeals.** The Board of Appeals has authority to:
 - 1. Regulate the conduct of hearings, including the scheduling, recessing, reconvening and adjournment hearings, and all acts proper for the efficient conduct of hearings.
 - 2. Delegate scheduling hearings to any borough employee.
 - 3. Administer oaths and affirmations.
 - 4. Receive evidence.
 - 5. Require production of books, records, documents and other data pertinent to the issues.

- § **Evidence.** Hearings need not adhere to the technical rules of evidence. In cases involving issues of fact, oral testimony shall be under oath or affirmation. At the discretion of the Board of Appeals, depositions or affidavits may be received in lieu of oral testimony if the actual presence of a witness is not feasible.

Decision.

The Board of Appeals's final decision will be in writing and signed by the Board of Appeals.
(Ord. 689, passed 8-2-2004)

' 899.19 INITIAL REFUND CLAIM PROCEDURES FOR DISTRIBUTION WITH INITIAL REFUND CLAIM FORM.

I. FORM AND CONTENT OF THE REFUND CLAIM.

- A. The Initial Refund Claim must include the following information:
 - 1. Taxpayer=s name, address, phone number and contact person (if any);
 - 2. Taxpayer=s social security number, account number or taxpayer identification number;
 - 3. Type of tax;
 - 4. Tax year and/or quarter;
 - 5. School district and/or borough, township or city;
 - 6. Name, address and phone number of authorized representative (if any);
 - 7. Taxpayer=s explanation and argument(s) in support of the Refund Claim; and
 - 8. Signature of taxpayer.

II. DEADLINES FOR FILING.

- A. Refund Claims.

Brookhaven - Business Regulation and Taxation Code

If taxpayer determines that he or she has paid a tax to which he or she is not subject, or has overpaid a tax, a Refund Claim for such tax must be filed with the Taxing Authority within the following time limits:

- 1. Refund Claims shall be filed within three (3) years after the due date for filing the report or return, as extended or one (1) year after the actual payment of the tax, whichever is later; and
- 2. If no report or return is required, the Refund Claim shall be filed within three (3) years after the due date for payment of the tax to be refunded or within one (1) year after actual payment, whichever is later.

B. Timely Filing.

A Refund Claim is timely filed if the letter transmitting the Refund Claim is postmarked by the United States Postal Service on or before the final day on which the Refund Claim is required to be filed.

C. Mailing Address.

Refund Claims should be mailed to the following address:

Borough of Brookhaven
Attention:
2 Cambridge Road
Brookhaven, PA 19015

(Ord. 689, passed 8-2-2004)

§ 899.20 INITIAL REFUND CLAIM FORM.

INSTRUCTIONS: This form is to be used by taxpayers seeking an initial claim for refund from the borough. Taxpayers whose initial refund claim has been denied and are appealing such denial must file a Petition for refund with the Appeals Board. Please complete this form using blue or black ink, or type this form. Attach proof that the tax for which you are seeking a refund was paid. Mail this form to the Borough of Brookhaven, 2 Cambridge Road, Brookhaven, PA 19015 (hereinafter the Taxing Authority). Refund Claims must be received by the Taxing Authority within the later of: (a) three years of the due date for filing the tax return; or (b) one year after actual payment of the tax. Refund Claims filed via U.S. Postal Service are considered filed as of the postmark date. Refund Claims filed via any other method are considered filed on the date received. Answer all questions below as fully as possible. If an item is not applicable, enter AN/A@.

SECTION A: TAXPAYER INFORMATION

Last Name	First Name	Middle Initial
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Street Address

City	State	County	Zip Code
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Phone Number: _____

Fax Number: _____

Previous Street Address (if applicable)

City State County Zip Code

Social Security No:
Account No:
Taxpayer Identification No:

SECTION B: TAX INFORMATION

Type of Tax:
Amount of Refund Claim:
Tax Year:
Quarter:
School District:
Borough:
Township:
City:
Town:
County:

SECTION C: REPRESENTATIVE INFORMATION

COMPLETE INFORMATION FOR REPRESENTATIVE (if applicable)

Send all copies of Correspondence to: Representative

Last Name First Name Middle Initial

Is Representative an: Attorney Other Tax Advisor
Certified Public Account Other Accountant

Business Name

Street Address

City State County Zip Code

Phone Number:
Fax Number:

SECTION D: EXPLANATION OF REFUND CLAIM & ARGUMENTS

Explain in detail why the Refund Claim requested above should be granted. Attach additional pages if necessary. Enclose copies of any documents you feel will support your arguments. Refund Claims must be accompanied by proof of payment of the tax.

SECTION E: SIGNATURE

All Refund Claims must be signed by the taxpayer and be accompanied by the following penalty of perjury statement.

Under penalties prescribed by law, I hereby certify that this Refund Claim has been examined by me and that to the best of my knowledge, information and belief, the facts contained in the Refund Claim are true and correct.

Signature: _____
 Print Name: _____
 Title: _____
 Date: _____

(Ord. 689, passed 8-2-2004)

' 899.21 INFORMATION REQUEST AND TIME EXTENSION PROCEDURE NOTICE.

This Notice explains certain rights you have with respect for information. You should read this Notice carefully, as your rights may expire if you do not follow the instructions within prescribed time periods.

Under Pennsylvania Law (53 P.S. ' 8424, Act 50 of 1998) you have 30 calendar days from the mailing date of this information request to respond by:

1. Providing the borough or its designated collection agent with the requested information; or
2. Requesting an extension of time in which to provide the requested information. If you need an extension, send a written request specifying the reasons for the extension and facts supporting those reasons to the following address:

Borough of Brookhaven
 2 Cambridge Road
 P.O. Box 148
 Brookhaven, PA 19405

Reasonable time extensions will be granted for good cause. Absent extraordinary circumstances, we will grant no longer than a 30-day extension of time. The borough will notify you in writing of whether a time extension has been granted and, if granted, the amount of time granted. If your request is denied, the borough will inform you of the basis for its denial and that you must immediately provide the requested information.

(Ord. 689, passed 8-2-2004)

