



School District
and the
City of Scranton

**Business
Privilege
and
Mercantile Tax
Regulations**

INDEX

Introduction	1
Article I - General Provisions	
Sec. 101 - Definitions	1
Sec. 102 - Who Must File a Return	4
Sec. 103 - What Constitutes Doing Business in Scranton	4
Sec. 104 - Receipts from Services to Governmental Agencies and Non-Profit Organizations	5
Sec. 105 - Pennsylvania Sales and Use Tax	5
Sec. 106 - Mercantile License Tax	5
Sec. 107 - Occupational Privilege Tax	5
Sec. 108 - Institution and Service Privilege Tax	5
Sec. 109 - Savings Clause and Severability	6
Article II - Returns	
Sec. 201 - Annual Return	6
Sec. 202 - Payments	7
Sec. 203 - Tax Rate	8
Sec. 204 - Acceptance of Tax Return	9
Article III - Determination of Tax Base	
Sec. 301 - Inclusion	9
Sec. 302 - Scranton Receipts	9
Sec. 303 - Allocation for Intra-state Branch Offices	11
Sec. 304 - Interstate Commerce	12
Sec. 305 - Apportionment of Receipts from Interstate Commerce	12
Sec. 306 - Apportionment for Professional Services	12
Sec. 307 - Other Apportionment Formulas	13
Sec. 308 - Factors to Determine Whether Activities Performed Out-of-State are Entitled to Exclusion	13
Article IV - Computation of Tax	
Sec. 401 - Tax Year	15
Sec. 402 - Cash or Accrual Basis	16
Sec. 403 - Period Used in Computing Tax	16
Sec. 404 - Deductions From Gross Receipts	17
Sec. 405 - Exclusions from Receipts	17

Article V - Collector of Taxes' Powers	
Sec. 501 - Books and Records	19
Sec. 502 - Inspection and Examination	20
Sec. 503 - Audits	21
Article VI - Suits for Tax Collections, Violations, Fines, Interest and Penalties	
Sec. 601	22
Sec. 602 - Suits for Recovery of Unpaid Taxes	23
Sec. 603 - Limitations	23
Sec. 604 - Penalty and Interest	24
Sec. 605 - Fines and Penalties for Violation of Applicable Provisions of Title Two, Scranton Code	25
Article VII - Taxpayer's Remedies	
Sec. 701 - Administrator's Ruling	26
Sec. 702 - Appeal to Hearing Officer	26
Sec. 703 - Court Appeals	27
Sec. 704 - Refunds	27
Sec. 705 - Interest on Overpayment	28
Article VIII - Applicability to Particular Activities	
Sec. 801 - Conditional and Installment Contracts	29
Sec. 802 - Consignment Transactions	30
Sec. 803 - Leased Departments	30
Sec. 804 - Persons Engaged in Professions, Trades and Other Vocations	30
General	
Fiduciaries	
Attorneys	
Physicians, Surgeons, Dentists and Other Health Professionals	
Accountants, Engineers, Designers, Consultants, etc.	
Sec. 805 - Principal and Agent	31
Sec. 806 - Insurance Agents, Brokers and Underwriters	33
General Agents	
Brokers and Subagents	
Out-of-Scranton Offices	
Employee of a Single Company	
Sec. 807 - Theaters and Motion Picture Houses	34
Sec. 808 - Undertakers, Morticians and Funeral Directors	34

Sec. 809 - Persons Erecting Buildings or Otherwise Altering, Repairing or Improving Real Property	34
General	
Cost - Plus Contracts	
Supervisory Contracts	
Suppliers' Contracts for Installation	
Government Contracts	
Examples	
Scranton Contractors or Subcontractors	
Sec. 810 - Persons who Repair, Alter and Improve Tangible Personal Property	37
Sec. 811 - Real Estate Brokers, Agents and Developers	37
Sec. 812 - Rental Activities	38
Sec. 813 - Financial Business	39
Trusts	
Factors and Commission Merchants	
Holding Companies	
Sec. 814 - Financial Transactions of Non-Financial Businesses	43
Sec. 815 - Radio and Television Broadcasters	43

REGULATIONS

BUSINESS PRIVILEGE AND MERCANTILE TAX

INTRODUCTION

The Pennsylvania Local Tax Enabling Act, Act 511, and the Local Tax Reform Act, 53 PA C.S.A. Sections 8421 et. seq., Act 50 of 1998 Section 9 allows the imposition of a tax on each dollar of volume of the gross annual receipts for the privilege of carrying on or exercising within the City of Scranton or attributable thereto, whether for gain or profit or otherwise, any trade, business, including but not limited to financial business (as herein defined), profession, vocation, service, construction, communication or commercial activity. This tax is levied pursuant to authority granted by the Local Tax Enabling Act, Act 511 of 1965, 53 P.S. 6901, et seq. and the Local Tax Reform Act, 53 PA C.S.A. Sections 8421 et. seq., Act 50 of 1998 Section 9 and certain limitations and exclusions are included in these regulations under the provisions of the Enabling Act, by ordinances of the City of Scranton and the School District of the City of Scranton, and these regulations.

The Tax is based on gross receipts, without deduction therefrom for the cost of property sold, materials used, labor, service or other cost, interest or discount paid, or any other expense.

Questions relating to specific business operations not answered in these regulations should be submitted in writing to:

Collector of Taxes
100 The Mall at Steamtown, Unit 216
Scranton, PA 18503

ARTICLE I

GENERAL PROVISIONS

Sec. 101 - Definitions.

The following words and phrases when used in these regulations shall have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning:

a. "City" - The City of Scranton.

b. "Person" - Any natural person, partnership, limited partnership, joint venture, unincorporated association, corporation, or other entity engaged in business. Whenever used in any provision prescribing a fine or penalty the word "Person" as applied to the partnerships, shall mean the partners thereof, and as applied to corporations and unincorporated associations, shall mean the officers thereof.

c. "Business" -

(1) Carrying on or exercising within the City of Scranton or attributable thereto any trade, business, financial business or commercial activity, whether for profit or otherwise.

(2) "Business" shall not include the following: the business or service of any political subdivision; any employment for a wage or salary; and any business or portion thereof upon which the power to levy a tax is withheld by law.

d. "Services" - Diversified activities other than retail or wholesale vending of goods, wares or merchandise, including but not limited to, consultation, repairs, preparation of forms, commission sales, rentals, professional treatment, services and/or counseling, training, supplying personnel or material, building, engineering, planning, designing and installation, or any other activity not subject to Mercantile License or Institution and Service Privilege tax.

e. "Gross Receipts" - Cash, credits and property of any kind or nature received in or allocable to or attributable to the City of Scranton from any services rendered. The taxpayer shall not deduct the cost to property sold, materials used, labor, service or other costs, interest or discount paid, or any other expense, unless such a deduction is provided for in these regulations.

⁴ *When a legal obligation of one person is assumed under contract by another person, the amount of the benefit received by the first person is a "gross receipt". For example, real estate taxes paid by a lessee under a net lease are gross receipts to the lessor.*

f. "Month" - A month consists of the period from the beginning date to the preceding date of the following month.

Examples:

(1) Month beginning January 1 ends on January 31

(2) A month beginning February 1 ends on February 28 except in leap years when it ends on February 29.

(3) A month beginning September 16 ends on October 15.

g. "Tax Year" - the twelve-month period from January 1 to December 31, inclusive.

h. "Temporary, Seasonal or Itinerant Business" - Any business that is conducted at one location for less than sixty (60) consecutive calendar days.

i. "Wholesale Vendors" of or dealers in goods, wares and merchandise, that is, those persons who sell to vendors of or dealers in the same goods, wares and merchandise.

j. "Retail Vendors" of or deals in goods, wares and merchandise, that is, those vendors or dealers who sell to the ultimate consumer or user of the merchandise sold.

k. "Assessment" - The determination by a local taxing authority of the amount of underpayment by a taxpayer.

l. "Governing Body" - A city council, borough council, incorporated town council, board of township commissioners, board of township supervisors, a governing council of a home rule municipality or optional plan municipality, a governing council of any similar general purpose unit of government which may hereafter be created by statute or a board of school directors of a school district.

m. "Overpayment" - Any payment of tax which is determined in the manner provided by law not to be legally due.

n. "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 or pursuant to the authority of an act providing for an eligible tax.

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

p. "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 local taxing authority is seeking to collect its delinquent taxes or file a claim therefor.

Sec. 102 - Who Must File a Return.

a. Every person, as defined herein, and every receiver, trustee, assignee or other person acting in a fiduciary of representative capacity, and any other combination of persons carrying on or exercising, within the City of Scranton or attributable thereto, any business or financial business must file a Business Privilege and/or Mercantile Tax return.

b. A partnership is considered to be a taxable unit for purposes of the Business Privilege and/or Mercantile Tax. The respective partners are not required to file separate returns as individuals, but they are jointly and severably liable for the payments of the partnership's Business Privilege and/or Mercantile Tax. Where an individual partner conducts a business activity separate from that of the partnership, he must file a separate return indicating gross receipts attributable to his non-partnership business activity.

c. Every person subject to the tax imposed by the Resolution shall forthwith register with the City, upon a form furnished by the Collector of Taxes, and set forth his name, address, business address, the nature of the business activity in which he is engaged, and such other information as may be required by the Collector of Taxes.

Sec. 103 - What Constitutes Doing Business in Scranton.

a. Whether a person carries on a taxable activity within the meaning of the Business Privilege and/or Mercantile Tax is essentially a question of fact. Any services directed, controlled, or managed by a Scranton office or location, or which occurs within or has a substantial nexus with the City, is subject to the tax. The tax is not limited to transactions occurring entirely within the City.

b. Persons who perform services in interstate commerce or who maintain bona fide places of business in other jurisdictions may be entitled to some apportionment or allocation of gross receipts. (See Secs. 302, 304).

c. A person who engages in a taxable activity in Scranton is subject to this tax whether or not he has a permanent place of business in Scranton. A foreign corporation is subject to this tax if it carries on a taxable activity in Scranton regardless of whether it is licensed to do business in Pennsylvania.

Sec. 104 - Receipts from Services to Governmental Agencies and Non-Profit Organizations.

Receipts made from services rendered to any governmental body or authority or to religious, charitable, beneficial, educational and other non-profit entities shall not be excluded from the tax base whether such services are performed for profit or otherwise. (See Sec. 301).

Sec. 105 - Pennsylvania Sales and Use Tax.

Collection and/or payment of Pennsylvania Sales and Use Tax from the taxpayer's customer or client does not exempt receipts from the Business Privilege and/or Mercantile Tax base. (See Sec. 405).

Sec. 106 - Mercantile License Tax.

a. It is possible for a single business to be subject to Business Privilege Tax on some receipts and Mercantile License Tax on other receipts.

b. Businesses also subject to the Scranton Mercantile License Tax are not subject to the Business Privilege Tax on that portion of their gross receipts subject to Mercantile License Tax.

c. The taxpayer will be assessed for Business Privilege Tax on all receipts unless he segregates his mercantile operation receipts from his service activity receipts.

Sec. 107 - Occupational Privilege Tax.

Every person whose business is subject to the payment of the tax hereby imposed and who is subject to and has paid the Scranton Occupational Privilege Tax for the same tax year may credit such payment against the amount of tax due and owing under the provisions of the Business Privilege Tax. Corporations, which are not subject to the Occupational Privilege Tax, may not deduct from their Business Privilege Tax liability the Occupational Privilege Taxes they have withheld from their employees.

Sec. 108 - Institution and Service Privilege Tax.

Any service which is subject to the Scranton Institution and Service Privilege Tax is not subject to the Business Privilege Tax on that part of the service so taxable.

Sec. 109 - Savings Clause and Severability.

If a final decision of a court of competent jurisdiction holds any provision of these regulations, or the application of any provision to any circumstances, to be illegal or unconstitutional, the other provisions in these regulations, or the application of such provision to other circumstances, shall remain in full force and effect. The intent of the Collector of Taxes is that the provisions of these regulations shall be severable and that they would have been adopted if any such illegal or unconstitutional provisions had not been included herein.

ARTICLE II

RETURNS

Sec. 201 - Annual Return.

a. Except as to new businesses, and temporary, seasonal or itinerant businesses, every person subject to the Business Privilege and/or Mercantile Tax, who has commenced his business at least one full year prior to the beginning of the tax year shall, on or before April 15th and annually thereafter, file with the Collector of Taxes, on a form provided by the Collector of Taxes a return setting forth his name, business, business address and such other information as is required by the Collector of Taxes to determine the annual gross volume of business transacted by him during the preceding tax year and the amount of tax due. Both the tax return and payment of the tax are due on April 15th of every year. (See Article IV for period used in computing tax).

b. Forms for said returns may be obtained from, and must be filed with the Collector of Taxes, 200 Adams Avenue, Scranton, Pennsylvania 18503. Failure to obtain or receive the necessary forms will not excuse the taxpayer for failure to file his return and pay his tax in a timely manner.

c. Where the taxpayer is an individual, he shall personally sign the return. If the taxpayer is a partnership, the return shall be signed by at least one of the general partners. Should the taxpayer be a corporation, the return shall be signed by the officer of the corporation authorized to file tax returns.

d. If a taxpayer maintains more than one place of business in Scranton, he is required to file only one return. The return should reflect all receipts from transactions occurring in all his places of business in the City. Where one return covers more than one place of business, a schedule must be attached to the return showing the various locations at which the taxpayer conducts business in Scranton and detailing receipts attributable to each location.

e. A return will not be considered filed unless the taxpayer complies with all the above provisions pertaining to filing of returns and includes all information requested on the return.

f. A taxpayer who believes that his business activities are exempt or excluded from the Business Privilege and/or Mercantile Tax must nevertheless file a return which includes all information requested, including gross receipts, and which shows clearly the basis for filing a "no tax due" return.

Sec. 202 - Payments.

a. Payment of the tax may be made in cash or by check or money order drawn to the order of the Collector of Taxes of the City of Scranton. Cash payments must be made to the cashier in the Single Tax Office, 200 Adams Avenue, Scranton, Pennsylvania, or to any other collector designated by the Collector of Taxes.

b. Application of Payments. Unless otherwise specified by the taxpayer, all voluntary payments of an eligible tax shall be prioritized by the Collector of Taxes as follows:

- (1) Tax
- (2) Interest
- (3) Penalty
- (4) Any other fees or charges

c. Installment Agreements.

(1) Authorization. The Collector of Taxes may enter into written agreements with any taxpayer under which the taxpayer is allowed to satisfy liability for any eligible tax in installment payments if the Collector of Taxes determines that the agreement will facilitate collection.

(2) Extent to which agreements remain in effect.

(i) Except as otherwise provided in this subsection, any agreement entered into by the Collector of Taxes under subsection (a) shall remain in effect for the term of the agreement.

(ii) The Collector of Taxes may terminate any prior agreement entered into under subsection (c) if:

(a) information which the taxpayer provided to the Collector of Taxes prior to the date of the agreement was inaccurate or incomplete; or

(b) the Collector of Taxes believes that collection of any eligible tax under the agreement is in jeopardy.

(3) If the Collector of Taxes finds that the financial condition of the taxpayer has significantly changed, the Collector of Taxes may alter, modify or terminate the agreement, but only if:

(i) notice of the Collector of Taxes' finding is provided to the taxpayer no later than 30 days prior to the date of such action; and

(ii) the notice contains the reasons why the Collector of Taxes believes a significant change has occurred.

(4) The Collector of Taxes may alter, modify or terminate an agreement entered into by the Collector of Taxes under subsection (c) if the taxpayer fails to do any of the following:

(i) Pay any installment at the time the installment is due under such agreement.

(ii) Pay any other tax liability at the time the liability is due.

(iii) Provide a financial condition update as requested by the Collector of Taxes.

d. Prepayment permitted. Nothing in this section shall prevent a taxpayer from prepaying in whole or part any eligible tax under any agreement with the Collector of Taxes

Sec. 203 - Tax Rate.

The rate of the Business Privilege and/or Mercantile Tax for those businesses found liable for the tax for the period of February 1, 1969 through December 31, 1974, is six mills. For the period from January 1, 1975, to December 31, 1981, the tax rate is five mills. Subsequent to January 1, 1982, the tax rate is six mills. (Six mills equals \$6.00 per \$1,000, or 6/10 of one percent - .006). The rate of tax may be changed for any tax year by action of the Mayor and City Council. Therefore, it is advisable to check Chapter 243.02 of the Scranton Code to determine the effective rate for the current tax year.

Sec. 204 - Acceptance of Tax Return.

a. Retention of the return filed by the taxpayer and/or negotiation by the Collector of Taxes of the payment tendered therewith does not constitute a final acceptance by the Collector of Taxes of the accuracy or completeness of the self-addressed return and tax payment. The Collector of Taxes may elect to treat any such filing and/or payment as a partial disposition of the taxpayer's liability.

b. The Collector of Taxes reserves the right to make spot checks of returns filed, to make such corrections as appear necessary upon the face of the return, to submit additional billings or request additional information, and to make refunds based on the self-assessed returns without accepting as final any document or payment arising from such cursory examination.

c. All returns filed, payments negotiated, or refunds remitted are conditional. Acceptance is final only after a duly approved audit or by operation of law. (See Sec. 503).

d. Any assistance furnished by the agents or employees of the Collector of Taxes prior to a completed and duly approved audit does not constitute estoppel against the City for taxes due.

ARTICLE III

DETERMINATION OF TAX BASE

Sec. 301 - Inclusion.

Any person who exercises the privilege of carrying on business activities attributable to the City is liable for the Business Privilege and/or Mercantile Tax. It is measured by the gross receipts generated or received in, attributable or allocable to the City. Where a receipt in its entirety cannot be subjected to the Business Privilege and/or Mercantile Tax by reason of state or federal constitution or any other provision of law, the part of such receipt which may be taxed, and which is attributable to the doing of business in the City, shall be included in the tax base.

Sec. 302 - Scranton Receipts.

a. General. Receipts from any service shall be attributable to Scranton if the transaction or any activity in connection therewith occurs within the City; or is generated, directed, managed, or controlled by a City place of business and contributes to the taxpayer's ultimate business purpose; or where there is no other place of business. (See Sec. 103).

b. Out-of-City Branch Office. Where a taxpayer maintains a bona fide branch office or place of business outside the City, he will nevertheless be subject to Business Privilege and/or Mercantile Tax liability on those receipts which are the result of services rendered or business activities generated within or attributable to the City. Said taxpayer will be permitted to exclude his branch office receipts from his taxable gross receipts only where he sustains the burden of proving that the City does not have the requisite minimal contact or nexus with those receipts to sustain the imposition of the Business Privilege and/or Mercantile Tax.

(1) The following is a list of factors which are relevant, but not conclusive, for determining whether a person maintains a bona fide non-City branch office within the meaning of this Section:

- (a) Name of taxpayer in telephone directory, or building directory if there is one, on door leading to entrance of office or otherwise displayed on the office exterior.
- (b) Stationery and calling cards showing address.
- (c) Storage of inventories or display samples at location in question.
- (d) A written or oral lease for the space involved and the direct or indirect payment of rent.
- (e) A written or oral agreement for the maintenance of an office by an agent or agency on behalf of the taxpayer.
- (f) Employees based in or operating out of an out-of-City location.
- (g) The expenses attributable to an out-of-City office are allowed as deductions on the federal income tax form.

No single factor will raise a presumption that a bona fide out-of-City office exists.

(2) Use by the taxpayer or his agents or employees of facilities provided by the taxpayer's client, employer, customer, or any other person, even for a protracted period of time and even where such use constitutes part of the contractual or business arrangement entered into by the taxpayer with the said client, employer, customer, or any other person does not establish an out-of-City branch office for purposes of allocation of gross receipts.

(3) A field trailer used by contractors can be considered a bona fide out-of-City branch office under the following circumstances:

(a) It bears the name of the taxpayer.

(b) It is staffed by taxpayer's employees who report directly to the field site, and who control the operation from that site.

(c) At least one telephone is present and listed in the taxpayer's name.

(d) It is maintained at the same site for no less than sixty days.

(e) It is owned and maintained by the taxpayer or has all the indicia of ownership by the taxpayer.

(4) An office maintained in the taxpayer's home which is located out-of-City is a bona fide office or place of business only if it is recognized as such for federal income tax purposes under the Federal Tax Reform Act of 1976, as amended, as being his sole office or place of business.

(5) A motel or hotel residence, used on a long-term basis, is not a bona fide out-of-City branch unless it fulfills the criteria set forth in subsection b. (1) of this Section.

Sec. 303 - Allocation for Intra-state Branch Offices.

a. There will be no allocation for receipts generated in intrastate commerce unless the receipts sought to be excluded from Business Privilege and/or Mercantile Tax returns are clearly allocable to a bona fide out-of-City branch office or place of business. The burden of proving that any receipt is allocable to an out-of-City office is on the taxpayer and he must be able to support any such exclusion from City receipts on the basis of clear and objective evidence shown on his books, records and accounts.

b. If a taxpayer does not keep his books, records and accounts in a manner which will clearly and objectively show the allocation of receipts to his various branch offices or places of business, the Collector of Taxes will make an assessment based on the entire amount of gross receipts from all intrastate sources. The Collector of Taxes will not break out allegedly allocable receipts on the basis of subjective and unrecorded data.

Sec. 304 - Interstate Commerce.

a. **General.** Receipts from transactions involving more than one state are not exempt from the Business Privilege and/or Mercantile Tax, but are to be included in the tax base on an apportioned basis, as provided in these regulations. Any receipts from a business which operates interstate are taxable where the tax is applied to an activity with a sufficient nexus with the City, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the City.

b. What Constitutes "Interstate Commerce".

Transactions will be deemed to involve interstate commerce only when there are significant transactions or activities conducted in states other than Pennsylvania that contribute to the generation of gross receipts. The citizenship or residence of the parties to any transaction has no relevance in determining the interstate character of a business.

Sec. 305 - Apportionment of Receipts from Interstate Commerce.

A taxpayer who has receipts from interstate commerce may make an apportionment of such receipts. The formula is based on three factors: receipts, property and wages. In most cases, this formula will effect a fair and proper apportionment of receipts from interstate commerce so that only that part of such receipts which is properly attributable to the City will be included in the measure of the tax.

Sec. 306 - Apportionment for Professional Services.

(1) Professional fees derived from services billed on an hourly basis shall be apportioned by excluding receipts attributable to charges to the client for services performed out-of-state.

(2) Professional services rendered on a flat or fixed fee basis or a contingent-fee basis shall be apportioned according to a ratio whose numerator consists of hours spent on the engagement while out-of-state and whose denominator consists of total hours spent on the same engagement for the same client.

(3) Professional services performed under a contract which sets forth the percentage or amount of the total contract price attributable to a specific activity to be performed out-of-state shall be apportioned according to the contract terms, as long as such amount is a reasonable allocation.

Sec. 307 - Other Apportionment Formulas.

Whenever the Collector of Taxes shall determine, either upon his own initiative or upon application by the taxpayer, that an apportionment is appropriate for a particular taxpayer, class of taxpayer or for the City, he may provide for a method of apportionment with due regard to the nature of the business concerned, mileage, wages, property, the number of jurisdictions in which the receipts are taxed, or any other pertinent factors; or he may adopt any method or methods of apportionment which are calculated to effect a fair, proper and reasonable apportionment for all the parties involved. The taxpayer may participate in proposing and developing a fair and equitable formula, but the final decision will rest with the Collector of Taxes.

Sec. 308 - Factors to Determine Whether Activities Performed Out-of-State are Entitled to Exclusion.

The following is a list of factors which are relevant, but not conclusive, for determining whether a person's activities in another state constitute interstate commerce:

- (1) A nexus in the foreign jurisdiction sufficient to support the imposition of a similar tax by the state.
- (2) A provision in the contract or agreement between the taxpayer and his client or customer which specifically assigns a reasonable portion of the overall fee to activities required to be performed in the foreign jurisdiction.
- (3) The length of time spent by the taxpayer in the out-of-state location.
- (4) The necessity for the services that are performed out-of-state in generating the overall gross receipts.
- (5) The inability of the taxpayer to perform the service which generates gross receipts in its entirety in Pennsylvania.
- (6) The number of employees who are required to perform the activities in the foreign jurisdiction. (However, utilizing a subcontractor located in the foreign jurisdiction to carry out the taxpayer's out-of-state activities does not constitute the taxpayer's presence in a foreign jurisdiction for purposes of excluding receipts from Business Privilege and/or Mercantile Tax).

EXAMPLE

1. Attorney A maintains an office in the City. He is hired to negotiate a labor contract for a client who has a branch operation in Youngstown, Ohio. He travels to Ohio and is involved in negotiations with the local union for a period of one week. He is entitled to exclude from his gross receipts a sum that is arrived at by multiplying his total fee by a fraction composed of the number of hours spent in Youngstown over the total hours spent in performing the service.

EXAMPLE:

2. Attorney B has an office in the City. He has an important client in Milwaukee who deals through him with customers in Scranton and elsewhere. Attorney B travels to Milwaukee to consult with his client on strategy concerning future negotiations with these customers. He spends two days reviewing documents, interviewing his client and discussing strategy. He is not entitled to any apportionment of the retainer paid by the Milwaukee client under the interstate commerce exclusion because his time in Milwaukee is a matter of convenience rather than of necessity in generating the receipts.

EXAMPLE:

3. An architectural firm in the City enters into a contract to design a project to be constructed in Toledo, Ohio. The firm uses subcontractors in Ohio to gather data concerning soil substructure, lot preparation, and other predrawing tests. The contract between the firm and the client calls for 20% of the fee to be paid for predrawing, on-site tests. The architectural firm is not permitted to exclude any amount of the gross receipts for predrawing testing.

EXAMPLE:

4. The same contract calls for 20% of the fee to be paid for on-site supervision. When the project is partially completed, a partner of the firm and two staff employees travel to Toledo to inspect work in progress. The partner leaves the next day, but the two staff employees remain four more days to make sure the firm's suggestions are carried out. 20% of the fee from the project may be excluded from the gross receipts for on-site supervision.

EXAMPLE:

5. An accounting firm sends two staff members to an Ohio client to conduct an audit. The staff members examine books and records for a period of two weeks. At

the end of the week an audit partner arrives for a one-day supervision of the staff employees. The firm is entitled to exclude the amount attributable to the work performed in Ohio.

EXAMPLE:

6. An accountant travels to Wheeling, West Virginia, one day each month to review books and records and prepare a monthly financial statement for a client. He also spends two days in Wheeling at the end of the client's fiscal year reviewing and preparing the annual financial statements and the necessary tax returns. Nothing is excludable from gross receipts as being attributable to interstate commerce.

EXAMPLE:

7. A set designer visits a prospective client in Miami to solicit a contract to plan and execute a convention exhibit. He spends two days in Miami, entertaining the prospective client and gathering samples and information. He returns to the city and designs the exhibit for a showing at a convention held in Scranton. There is no apportionment for interstate commerce.

EXAMPLE:

8. At the conclusion of the show, referred to in Example 7, the entire exhibit is knocked down, crated and shipped to the client in Miami. Four weeks later, the set designer travels to Miami at the client's request and puts the same exhibit together for a Miami show. The fee for this service may be excluded from gross receipts in its entirety.

ARTICLE IV

COMPUTATION OF TAX

Sec. 401- Tax Year.

The Business Privilege and/or Mercantile Tax which is due on or before April 15 of each tax year is measured by the actual gross receipts generated in the year preceding the tax year except in cases of a new business, seasonal, temporary or itinerant business, and certain other business and businesses (See Sec. 402, below). A tax year is the same as a calendar year, i.e., January 1 to December 31.

Sec. 402 - Cash or Accrual Basis.

A tax return may be filed on a cash basis or on an accrual basis, but the return

must be prepared in accordance with the method of accounting and bookkeeping used for filing federal income tax returns. Even though such method of accounting and bookkeeping may be based on a fiscal year, the Business Privilege and/or Mercantile Tax must be computed on the basis of the calendar year. A taxpayer who keeps his books on a cash basis will report his gross receipts on the basis of amounts received during the period used as the measure of the tax, except where the taxpayer's business falls within the provisions of Sec. 403 b & c. A taxpayer who keeps his books on an accrual basis will report the same receipts from all services rendered during the period used as the measure of the tax, irrespective of the date when such monies are due or collected from the client or customer.

Sec. 403 - Period Used in Computing Tax.

a. The tax is measured by the total amount of gross receipts generated by the taxpayer's business during the entire preceding calendar year, except for those:

- (1) Who begin business during the current tax year; or
- (2) Who were not in business during the whole of the preceding calendar year; or
- (3) Whose business is temporary, seasonal or itinerant.

b. Every person subject to the Business Privilege and/or Mercantile Tax who commences business subsequent to the beginning of the tax year, shall, within forty (40) days from the date of commencing such business, file a return with the Collector of Taxes setting forth his name, business, business address, and such other information as the Collector of Taxes determines to be necessary in arriving at the actual volume of business generated by him during the first month of operation and the amount of tax liability for the current year. To determine the tax liability multiply the first month's volume of business by the number of months, including the fraction, if any, of the current tax year remaining, and multiplying the product thereof by the tax rate.

Example: If the taxpayer begins business on June 16, 1982, and the gross receipts generated are \$10,000 in the first month (ending July 15, 1982), his tax liability will be computed as follows:

$$\$10,000 \times 6 \frac{15}{30} = \$65,000$$

\$65,000 x .006 = \$390. \$390 is the amount of Business Privilege and/or Mercantile Tax due on July 26, 1982, for tax year 1982.

c. Every person subject to the Business Privilege and/or Mercantile Tax who has commenced his business less than one full year prior to the beginning of the current tax year shall, on or before the following April 15th, file a return with the Collector of Taxes and compute his tax liability for the current tax year by taking the gross receipts generated in his first month from the prior year, multiplying the same by 12, and multiplying the product thereof by six (.006) mills.

Example:

The taxpayer in the previous example would compute his 1983 tax liability as follows:

$$\$10,000 \times 12 = \$120,000$$

$$\$120,000 \times 006 = \$720$$

\$720 is the amount of Business Privilege and/or Mercantile Tax due on April 15, 1983, for the tax year 1983.

d. If the business is temporary, seasonal or itinerant, that is, the business is conducted at one location less than sixty consecutive calendar days, the rate of six mills shall be applied to the actual amount of business transacted during each period in the tax year in which the temporary, seasonal or itinerant business was conducted. Such a taxpayer shall file a return with the Collector of Taxes and make payment of the tax due within seven (7) days of completion of the temporary, seasonal or itinerant business.

Sec. 404 - Deductions From Gross Receipts.

The only deduction permitted from gross receipts (See Sec. 101 e.) is a return of capital. Capital does not include inventory, stock-in-trade or other assets held for sale in the ordinary course of business.

Sec. 405 - Exclusions From Receipts.

The following receipts shall be excluded from gross receipts and omitted from the tax base.

a. The receipts of any public utility, operating under the rules and regulations of the Pennsylvania Public Utility Commission, derived from supplying services at rates specified in the tariffs, shall be excluded from the tax base. Public utilities shall not exclude from their tax base receipts derived from non-regulated

advertising and rentals or charges levied for the use of servicing of equipment, or any other non-regulated receipts.

b. Taxes collected as agent for the United States of America, Commonwealth of Pennsylvania, or the City or Scranton. Such taxes include, but are not limited to:

- (1) Federal Tax on Transportation of Property
- (2) Pennsylvania Liquid Fuels Tax
- (3) Federal Liquid Fuels Tax
- (4) City of Scranton Amusement Tax
- (5) Pennsylvania Sales and Use Tax
- (6) Pennsylvania Cigarette Tax
- (7) City of Scranton Parking Tax

c. A broker of financial paper may exclude any commission paid by him to another broker on account of a purchase or sales contract initiated, executed or cleared in conjunction with the other broker, except where either is an employee of the other.

d. In the case of a financial business, the cost of securities and other similar property sold, exchanged, paid at maturity, or redeemed, and any money or credits received in repayment of advances, credits and loans, shall be excluded from the tax base but not to exceed the principal amount of such advances, credits and loans. Deposits received by a financial business shall also be excluded from its tax base.

e. Refunds, credits or allowances given by the taxpayer to a purchaser or customer on account of defects in goods sold or inadequate service or merchandise returned, shown on the return may be excluded from gross receipts in ascertaining the amount to be reported as taxable.

f. Trade discounts allowed to customers which are adjustments to a price list may be deducted in ascertaining the amount to be reported as gross receipts from sales of services. Trade discounts include:

- (1) Discounts deducted from the face amount of the bill as a method of adjusting the list price. This does not include cash discounts for prompt payment.

(2) Discounts unconditionally deducted by customers upon settlement of their bills and allowed as a matter of established custom of a trade, without regard to the due date of such bills or to the form or terms in which such discounts are described or stated on bills or invoices.

g. Gross receipts may not be reduced by losses from bad debts.

h. Receipts, or that portion thereof, attributable to interstate or foreign commerce, or to a bona fide office or place of business regularly maintained by the taxpayer outside the city limits, and not merely for the purpose of evading liability for the Business Privilege and/or Mercantile Tax. Such receipts shall be segregated so that only that part which is properly attributable and allowable to the doing of business in the City shall be taxed hereunder. (See Article III).

i. In addition to the other exclusions set forth in these regulations, a person shall be excluded from the Business Privilege and/or Mercantile Tax where he is specifically exempted or excluded from all local taxation by the express terms of a particular Act of Congress of the United States or of the Legislature of the Commonwealth of Pennsylvania. Where a taxpayer claims any exemption or exclusion from the Business Privilege and/or Mercantile Tax, he must file a tax return, and citing the Act under which exclusion or exemption is authorized. The taxpayer must be able to substantiate his exemption or exclusion by the facts of his operation supported by valid business records. Any aspect of a taxpayer's business which is not specifically exempted or excluded by law will be subject to the tax.

ARTICLE V

COLLECTOR OF TAXES POWERS

Sec. 501 - Books and Records.

a. Books, journals, invoices, documents and other accounting records utilized by the taxpayer in the ordinary course of business must be kept in a manner which will reflect actual business operations. There must be objective criteria in these books and records, as well as in underlying documents, such as invoices, to support the returns filed by the taxpayer. The taxpayer claiming exemptions or exclusions for any portion of his gross receipts must maintain complete records which will support the validity of the claim. Such claims will be disallowed if not sufficiently proven by the taxpayer. (See Secs. 303 b, 305, 405 i.)

b. If records are not available for the entire period requested for review, the Collector of Taxes may utilize whatever records or information are available to

reconstruct, as accurately as possible, figures that reflect the business activity of the taxpayer for the period involved.

c. If records are not available in the City to support the returns which were filed or which should have been filed, the taxpayer will be required to make them available to the Collector of Taxes either by producing them in a City location or by paying for the expenses incurred by the Collector of Taxes in traveling to the place where the records are regularly kept.

Sec. 502 - Inspection and Examination.

a. The Collector of Taxes is authorized to examine the books, papers and records of any taxpayer or putative taxpayer in order to verify the accuracy of any return made, or if no return was made, to ascertain whether the tax should be imposed and, if so, the amount of the tax due. He is further authorized to examine any person connected with any business concerning gross receipts of the business which were or should have been included in the return for taxation and may compel the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, whom he believes to have knowledge of such business or gross receipts.

The Collector of Taxes may require a taxpayer to provide copies of the taxpayer's Federal individual income tax return if the Collector of Taxes can demonstrate that the Federal tax information is reasonably necessary for the enforcement or collection of an eligible tax and the information is not available from other available sources or the Department of Revenue.

Failure to appear or produce the requested documents will result in the fines and penalties set forth in Section 605 of these regulations and/or a suit in equity to compel production.

b. **Confidentiality of Tax Information.** Any information gained by the Collector of Taxes as a result of any audit, return, report, investigation, hearing, or verification shall be confidential tax information. It shall be unlawful, except for official purposes or as provided by law, for the Collector of Taxes to:

(1) Divulge or make known in any manner any confidential information gained in any return, investigation, hearing, or verification to any person.

(2) Permit confidential tax information or any book containing any abstracts or particulars thereof to be seen or examined by any person.

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

An offense under this section is a misdemeanor of the third degree, and, upon conviction thereof, a fine of not more than \$2500 and costs, or a term of imprisonment for not more than one year, or both, may be imposed. If the offender is an officer or employee of the local taxing authority, the officer or employee shall be dismissed from office or discharged from employment.

Failure to appear or produce the requested documents will result in the fines and penalties set forth in Section 605 of these regulations and/or a suit in equity to compel production.

Sec. 503 - Audits.

A. Requests for prior year returns:

(1) Except as provided in paragraph (2), an initial inquiry by the Collector of Taxes regarding a taxpayer's compliance with the Business Privilege/Mercantile 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 Collector of Taxes may make a subsequent request for a tax return or supporting information if, after the initial request, the Collector of Taxes 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.

This subsection shall not apply if the Collector of Taxes has sufficient information to indicate that the taxpayer failed to file a required return or pay an eligible tax which was due more than three years prior to the date of the notice.

(3) If no return was filed where an inspection and examination by the Collector of Taxes indicates such a return should have been filed and tax paid, or if the return filed was fraudulent, there is no limit to the number of years for which a deficiency assessment, plus penalty and interest, will be made.

B. Requirements for Requests

Minimum time periods for taxpayer response:

(1) The taxpayer shall have at least 30 calendar days from the mailing date to respond for requests for information by the Collector of Taxes. The Collector of Taxes shall grant additional reasonable extensions upon application for good cause.

(2) The Collector of Taxes shall notify the taxpayer of the procedures to obtain an extension in its initial request.

(3) The Collector of Taxes shall take no unlawful action against a taxpayer for the tax year in question until the expiration of the applicable response period, including extensions.

C. Notice of Basis of Underpayment.

The Collector of Taxes shall notify the taxpayer in writing of the basis for any underpayment that the Collector of Taxes has determined to exist. The notification shall 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 the Collector of Taxes has relied to determine that an underpayment exists.
- (4) An itemization of the revisions made by the Collector of Taxes to a return or report filed by the taxpayer that results in the determination that an underpayment exists.

ARTICLE VI

SUITS FOR TAX COLLECTION, VIOLATIONS, FINES, INTEREST AND PENALTIES

Sec. 601

The remedies provided in Section 602 or Section 605 are not mutually exclusive. The utilization by the Collector of Taxes of one remedy does not preclude utilization of the other. Moreover, use of either or both of the remedies provided in these Sections does not preclude the use by the City of any other legal or administrative procedure which can bring about compliance by the taxpayer with the provisions of the Business Privilege and/or Mercantile Tax.

Sec. 602 - Suits for Recovery of Unpaid Taxes.

The Collector of Taxes may sue in the name of the City, in law or in equity, for the recovery of those taxes due and unpaid under the provisions of the Business

Privilege and/or Mercantile Tax, to compel the production of records or to enforce any other provision of the tax.

Sec. 603 - Limitations.

a. The following periods of limitations shall apply to suits for collection of taxes.

(1) Any suit brought to recover the tax due and unpaid shall be begun within three (3) years after the return was due or filed, whichever is later.

(2) In the case of a deficiency assessment, within three (3) years after the assessment has been made.

b. Deficiency assessments (i.e., where a taxpayer has filed a return in good faith but is found to be owing additional tax) may include taxes for five (5) years prior to the date when the deficiency is assessed.

(1) Where no return was filed, there shall be no limit to the period of assessment.

c. The limitations set forth in "a" should not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:

(1) Where no return was filed, there shall be no limitation.

(2) Where the return is fraudulent, there shall be no limitation.

(3) Where there is an understatement of tax liability of twenty-five percent (25%) or more, and not due to fraud, suit shall be begun within six years.

d. A return filed before the due date is deemed to be filed on the due date. The provision is for initiation of suits only.

Sec. 604 - Penalty and Interest.

a. Penalty and Interest for Non-Payment.

If for any reason the tax is not paid when due, interest at the rate of six percent (6%) per annum on the amount of such tax, and an additional penalty of one-half percent (1/2%) per month for each month or fraction of month during the period in which the tax remains unpaid shall be added to the tax for periods beginning January 1, 1981. For periods prior to January 1, 1981, interest shall be calculated at the rate of

six percent (6%) per annum. Where suit is brought for the recovery of such tax, the person liable therefor shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed. Once due and owing, penalty and interest become part of the tax and shall be collected as such. A person's belief that no tax is due and owing, or the failure of any person to receive or obtain the forms required for making the returns required under the Code is not a valid defense to the imposition of penalties herein for violation. Good faith shall not be a defense to the imposition of penalty.

b. Penalty and Interest on Deficiency Assessment.

On any additional tax determined to be due as a result of a deficiency assessment, penalty and interest will be assessed from the day the tax should have been paid to the date of payment. Penalty is calculated at the rate of one half percent (1/2%) per month for each month or fraction of month during which the tax remains unpaid. Interest is calculated at the rate of twelve percent (12%) per annum for periods beginning January 1, 1981; for periods prior to January 1, 1981, the interest rate is six percent (6%) per annum.

c. Refer to Chapter 209 of the City Code for further detail of penalty and interest charges.

d. Abatement due to erroneous written advice by the Collector of Taxes:

(1) The Collector of Taxes 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 Collector of Taxes acting in the officer's, employee's, or agent's official capacity if:

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

(ii) 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.

(2) This subsection shall not be construed to require the collector of taxes to provide written advice to taxpayers.

Sec. 605 - Fines and Penalties for Violation of Applicable Provisions of Title Two, Scranton Code.

a. Violations. No persons shall:

- (1) Fail, neglect or refuse to make any declaration or file a return required under the Code.
- (2) Refuse to permit the Collector of Taxes or his designee to examine the books, records or accounts of any business, taxable or otherwise, to determine liability.
- (3) Make any incomplete, false or fraudulent return or attempt to do anything to avoid full disclosure of the amount of his gross receipts to avoid payment in whole or in part, of the Business Privilege and/or Mercantile Tax.
- (4) Divulge information which is confidential under Chapter 201.06 of the Code.
- (5) Fail to make any payment when it is due.

b. Fines.

- (1) When any person has been adjudged in violation of the applicable provisions of this Code by a member of the minor judiciary, he shall be fined not more than five hundred (\$500.00) dollars and costs for each offense, and in default of payment thereof may be imprisoned for not more than fifty days.
- (2) The fines imposed under this Section shall be in addition to any other relief granted to the City of a monetary nature under the provisions of this Article.
- (3) Each and every day that the violation continues shall constitute a separate offense for which a fine can be imposed.

ARTICLE VII

TAXPAYER'S REMEDIES

Sec. 701 - Administrator's Ruling

Any taxpayer who believes that the deficiency assessment is improper, incorrect or illegal, must request a review of his tax liability within thirty (30) days of

receipt of the assessment. He must request an Administrator's ruling, by submitting all pertinent facts including any court cases that may support their position. This request must be typed or legibly handwritten and addressed to:

Tax Administrator
Scranton Single Tax Office
135 JEFFERSON Avenue
Scranton, PA 18503

Sec. 702 - Appeal to the Hearing Officer.

If a taxpayer's aggrieved by an assessment or by a determination of the Tax Administrator, they may appeal to the Hearing Officer within 90 days from the date of the assessment of determination notice. To appeal they must file a petition for reassessment or redetermination with the Hearing Officer. This petition must:

- A. Be typed or legibly hand written
- B. Contain a brief summary of the action that precipitated the filing for reassessment or redetermination, along with any pertinent information (tax returns, tax schedules, supporting information (court case) etc.).
- C. Be mailed via first class mail, or delivered in person to the "Hearing Officer" c/o the Scranton Single Tax Office, 200 Adams Avenue, Scranton, PA 18503. Petitions received by mail will be considered filed as of the US Postal Service postmark stamped on the envelope. All petitions will be photocopied by the tax office and immediately forwarded to the Hearing Officer. Within 10 days of filing date, the Tax Administrator will submit their position on the action that precipitated the petition. Within 60 days of the petition filing date, a final decision must be issued by the Hearing Officer. Failure to issue this final decision within 60 days will result in the petition being denied approval.

Sec. 703 - Court Appeals

Any person aggrieved by the Hearing Officer decision shall have the right to appeal to the court vested with the jurisdiction of local tax appeals by or pursuant to 42 Pa. C.S.

Sec. 704 - Refunds

a. General rule. A taxpayer who has paid this tax to the Collector of Taxes may file a written request with the Collector of Taxes for refund or credit of the eligible

tax. A request for refund shall be made within three years of the due date for filing the report as extended or one year after actual payment of the eligible 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 eligible tax or within one year after actual payment of the eligible tax, whichever is later.

(1) For purposes of this section, a tax return filed by the taxpayer with the Collector of Taxes showing an overpayment of tax shall be deemed to be a written request for a cash refund unless otherwise indicated on the tax return.

(2) A request for refund under this section shall not be considered a petition under Article VII (relating the administrative appeals) and shall not preclude a taxpayer from submitting a petition under Article VII (relating to petitions).

b. **Notice of Underpayment.** 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 with the Collector of Taxes within one year of the date of the payment.

c. **Discounting Business.** Every person who ceases to carry on a business during any tax year after having paid the Business Privilege and/or Mercantile Tax for the entire year shall, upon making proper application on a form obtained from the Collector of Taxes, be entitled to receive a prorated refund of the tax paid based upon the period of time he was not in business during the tax year. In the event that a person who discontinues business during any tax year does so before payment of his tax becomes due for such tax year, he may apportion the tax and pay an amount to be computed by multiplying the gross receipts for the preceding full calendar year by a fraction whose numerator shall be the number of months such person was in business during the current tax year and whose denominator shall be twelve (12).

d. **Other Refunds.** The Collector of Taxes is authorized to refund taxes which were paid by mistake of law or fact and to which the City is not legally entitled on the basis of a verified written claim for refund, in which the exact amount claimed is set forth together with the reasons underlying the claim for the refund. No refund will be made where the taxpayer has not complied with Chapter 203 of the Scranton Code and where the taxpayer has not made the claim on a form supplied by the Collector of Taxes.

Sec. 705 - Interest on Overpayment.

(a) **General rule.** All overpayments of tax to the Collector of Taxes shall bear simple interest from the date of overpayment until the date of resolution.

(b) Interest rate. Interest on overpayment shall be allowed and paid at the same rate as the Commonwealth is required to pay pursuant to Section 806.1 of the Act of April 9, 1929 (P.L.343, No. 176), known as The Fiscal Code.

(c) Exceptions.

1. No interest shall be allowed if an overpayment is refunded or applied against any other tax, interest or penalty due to the Collector of Taxes within 75 days after the last date prescribed for filing the report 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. Overpayments of interest or penalty shall not bear any interest.

(d) Acceptance of Refund Check. The taxpayer's acceptance of the Collector of Taxes' check shall not prejudice any right of the taxpayer to claim any additional overpayment and interest thereon. Tender of a refund check by the Collector of Taxes shall be deemed to be acceptance of the check by the taxpayer for purposes of this section.

(e) Definitions. As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Date of overpayment." The later of the date paid or the date tax is deemed to have been overpaid as follows:

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

2. An overpayment made before the last day prescribed for payment shall be deemed to have been paid on the last day.

3. 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.

"Date of Resolution." The date the overpayment is refunded or credited as follows:

1. For a cash refund, a date preceding the date of the Collector of Taxes' refund check by not more than 30 days.

2. For a credit for an overpayment:

(i) the date of the Collector of Taxes' notice to the taxpayer of the determination of the credit; or

(ii) the due date for payment of the 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 of 90 days after the filling 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 check is accepted by the taxpayer after tender.

ARTICLE VIII

Applicability to Particular Activities

Sec. 801 - Conditional and Installment Contracts.

a. Installment Contracts. The total receipts of any contract shall be reported as gross receipts for the year in which the contract is performed notwithstanding the fact that the contract requires the payment for such service to be made over a period of years, except for certain conditional contracts as described in subsection b. below.

(1) The fact that such contract may be discounted, pledged or sold to a finance company, bank or other purchaser of such commercial paper shall not affect the total gross receipts reported.

(2) Credit and/or finance charges may not be excluded from the tax base.

b. Conditional Contracts. When a service intended to be completed in a period exceeding twelve months is entered into on the basis of a contract which calls for payment to be made according to the percentage of work completed during each year, such payments shall be reported as receipts for the year in which they were received notwithstanding the total contract price.

c. Commission Fees. When a conditional or installment contract is made by a person as a commission agent, said person will be required to report the total gross commission earned in accordance with subsections a. and b. of this Section except when computing gross receipts for the first month of business.

Sec. 802 - Consignment Transactions.

A person accounting for the receipts from consignment transactions occurring within the City must report as gross receipts the amount he withholds from his principal as compensation for himself.

Sec. 803 - Leased Departments.

a. **Return by Lessor.** Where a person leases a department of his business to another, such person shall include in his return all compensation received from his lessee, including, but not limited to, rent, services rendered, property furnished or supplied and commissions. The gross receipts from the business of such leased department shall not be included on the return filed by the lessor. However, a schedule must be attached to the return of the lessor containing the names of each lessee of a leased department together with a description of the department operated. Should a change occur in the ownership or status of any leased department, the lessor shall notify the Collector of Taxes of such change. (See b.).

b. **Return by Lessee.** Every lessee shall file his own return setting forth his entire gross receipts, without deducting any expense or commissions charged to him by the lessor. To expedite the examination and audit of returns filed by such lessee, the Collector of Taxes may require the lessor to furnish a statement of the entire receipts collected on behalf of the lessee.

Sec. 804 - Persons Engaged in Professions, Trades and Other Vocations.

a. **General.** A person who is engaged in a profession, trade or other vocation, other than as an employee of another, who is associated with an office or place of business in the City, is subject to Business Privilege and/or Mercantile Tax. All compensation, however characterized, received from the practice of a trade or other vocation, in the City, or attributable to a City office or place of business, must be included in the tax base.

(1) **Exception.** When such a person performs services at a location outside Pennsylvania, he may be entitled to apportionment for interstate commerce. The burden of proving entitlement to such apportionment rests on the person claiming it. (See Secs. 304, 305 and 306).

b. **Fiduciaries.** Commissions and fees received for acting in a fiduciary or other representative capacity, whether appointed by a Court or otherwise, are to be reported as taxable receipts without regard to the location of property or persons for which or for whom the fiduciary relationship exists.

c. Attorneys. An attorney may exclude that portion of the receipts from legal services which are distributed directly to or on behalf of a client, such as a distribution of a sum of money recovered in a lawsuit, in the sale of real estate, or from a collection matter. He may also exclude all court and row office costs incurred as agent for the client where such charges are fully reimbursed.

d. Physicians, Surgeons, Dentists and Other Health Professionals. Any health professional with an office in the City of Scranton is subject to the provisions of Secs. 103, 301, and 302, in the same manner as commercial business establishments.

e. Accountants, Engineers, Designers, Consultants, etc. Any such professional who maintains his sole office in the City is subject to tax on his entire gross receipts regardless of the location of his client except for exclusions for receipts derived from interstate commerce (See Sec. 304 c.). The professional must be capable of substantiating the amount of his receipts which are so attributable to interstate services. (See Secs. 303 b. and 305).

Sec. 805 - Principal and Agent.

a. General. Gross receipts from sales made or services rendered by an agent for the account of his principal are to be reported by the principal. It is immaterial in such cases whether the customer or client remits directly to the principal or the agent for transmittal to the principal. The agent is required to report as gross receipts only the commission withheld by him as compensation for his services before remitting to his principal and/or any commission paid to him after the receipts are remitted to his principal. No deduction from gross receipts may be taken by the principal for commission paid to or withheld by the agent nor shall the agent deduct from his gross receipts any expenses that have not been reimbursed by his principal.

b. Collections by Agent. Money or property received by an agent for transmittal to a third party is not to be reported by the agent as gross receipts, but any commission received by him for his services as agent must be included in gross receipts. (See a.)

c. Factors to be Considered in Establishing an Agency Relationship. A person will be regarded as acting as an agent or representative in promoting or soliciting sales or rendering services for the account of a principal under the following conditions:

(1) The contract or agreement between such persons clearly and legally establishes the relationship of principal and agent.

(2) The books and records of the agent or representative show the name of the actual owner of the property on whose behalf the sale is made or the service is rendered.

(3) The credit risk is assumed by the actual owner of the property or the person for whom the service is rendered.

(4) The books and records of the agent or representative show the amount of gross receipts and the amount of commission due thereon.

d. Undisclosed Principal. A person selling property, including real property, or rendering services for an unknown or undisclosed principal is subject to the tax as a principal, unless there is disclosed in the agent's return and substantiated by his records, the identity of the principal and the amount of sale made on his behalf.

e. This section shall apply to advertising agencies, public relations firms, and any other service business which meets the Agency criteria set forth herein.

f. Manufacturer's Representative.

(1) Where a manufacturer's representative maintains a bona fide office or place of business within the City, he must include commissions earned on sales to customers located in Pennsylvania in his gross receipts. Expenses attributable to an office in his home which are deducted as business expenses on his federal income tax return constitute a place of business in the City.

(2) If the manufacturer's representative does not maintain a bona fide office or place of business in the City, only those commissions earned from sales to customers located in the City are to be included in gross receipts.

(3) A manufacturer's representative will be taxable on his gross commissions unless his relationship to his principal is that of employer-employee relationship. Factors which establish an employer/employee relationship include:

(i) The payment by the company of social security and unemployment compensation taxes on behalf of the person claiming to be a manufacturer's representative;

(ii) The entitlement, in the event of an accident in the course of his business activities, of workmen's compensation to the representative.

(iii) The participation by such representative in a pension plan offered to other employees of the employer.

(iv) Collection of withheld federal and/or state and local taxes.

(4) Where an agent is issued a Form 1099 for federal tax purposes, all receipts shown thereon are subject to Business Privilege and/or Mercantile Tax.

Sec. 806 - Insurance Agents, Brokers and Underwriters.

a. **General Agents.** General agents for insurance companies are required to report as gross receipts the entire commissions received as compensation on policies sold by them directly as well as the overriding commissions received by them upon business produced by brokers or sub-agents.

b. **Brokers and Sub-Agents.** Brokers or sub-agents are required to report as gross receipts the commissions received as compensation for their services.

c. **Out-of-Scranton Offices.** General agents and insurance brokers are subject to the provisions of Sec. 302 with respect to branch offices. Commissions will be deemed attributable to the City office for inclusion in the tax base if they result from the efforts of brokers, sub-agents, or employees who work in, are directed or managed from, or are attached to the City office.. The mere issuance of policies to out-of-city customers will not exclude the commissions earned therefrom.

d. **Employee of a Single Company.** A person who is an employee under the criteria set forth in Section 805 f. (3) is not subject to the Business Privilege and/or Mercantile Tax on his earnings from that company, but must file a return showing any additional gross commissions he receives as an independent contractor for services rendered on behalf of other companies.

Sec. 807 - Theaters and Motion Picture Houses.

Persons operating theaters or motion picture houses and other places of amusement in Scranton, whether as owner or lessee, are subject to the Business Privilege and/or Mercantile Tax on gross receipts from house or film rentals and from commissions received on vending machine sales, public telephone booths, and sources of revenue other than sale of tickets of admission or the sale of goods, wares, or merchandise subject to the Mercantile License Tax.

Sec. 808 - Undertakers, Morticians and Funeral Directors.

Persons engaged in business as undertakers, morticians or funeral directors are required to report as gross receipts all revenue derived from rentals or services which are not subject to the Mercantile License Tax. Such persons may exclude from the tax base reimbursable payments made on behalf of their clients. Fees charged for such services may not be so excluded.

Sec. 809 - Persons Erecting Buildings or Otherwise Altering, Repairing or Improving Real Property.

a. General. A contractor or subcontractor, resident or non-resident, engaged in the City in the business of erecting buildings, repairing or improving real property, or any other construction or installation work, is required to report as gross receipts all receipts derived from the performance of such contract. The amount of receipts to be included in the tax base shall be the full contract price, that is, the total amount received or receivable by way of a fixed or determinable amount under the terms of the contract. The contract price will be the one stated to be the consideration for the entire service provided by the contractor or subcontractor for property, materials, labor, supervision, overhead costs and profits without deduction therefrom for any arrangement or credit to the customer for changes in contractual obligations which are not set forth in writing in the modified contract. In the case of a general contractor, prime contractor or subcontractor, no deduction may be made with respect to amounts paid to subcontractors or suppliers.

b. Cost - Plus Contracts. A contractor performing contracts on the basis of a "cost-plus-a-fixed-fee" or "cost-plus-a-percentage" contract is required to report as gross receipts the full contract price as explained above.

c. Supervisory Contracts.

(1) Where the owner of the property or contracting customer buys or furnishes the material, hires all labor in his own name, and pays the contractor a fixed fee or percentage of the total cost to supervise and direct the construction or installation project, the supervising contractor will be required to report only the gross amount of the fee or percentage received.

(2) Where such owner or customer authorizes the contractor to make for him such purchases of tangible personal property, or hire such labor or engage such subcontractors as are necessary for the performance of the contract, and

(i) Pledges his (owner or customer) own credit or is liable in the first

instance to the materialmen, suppliers, laborers, or subcontractors, as distinguished from (1) merely guaranteeing payment to them or (2) undertaking to reimburse the contractor for the cost of such materials, services or subcontracts; and

(ii) Agrees to make payment directly to the materialmen, suppliers, laborers or subcontractors, such sales or services will be regarded as made directly to the owner of customer and the contractor will not be required to include such items in his gross receipts.

d. Suppliers' Contracts for Installation.

(1) A vendor who supplies materials for installation in construction, repair, alteration or improvement of real property and furnishes the actual installation, whether personally or through a sub-contractor, to the owner or customer under a unitary contract where such installation is an integral part of the sale is a contractor within the meaning of this section and is subject to the Business Privilege and/or Mercantile Tax in the same manner as a general contractor.

(2) A supplier who makes no extra charge for installation is subject to the Mercantile Tax on the entire price of the sales contract regardless of the location of the real property at which the materials are installed.

e. Government Contracts. Receipts from the performance of contracts entered into with the City of Scranton, the Commonwealth of Pennsylvania, or the United States of America or any subdivision or agency of such governments are to be included in the tax base.

f. EXAMPLES. The following cases illustrate an application of the principles set forth in this section.

EXAMPLE:

(1) Lump-sum Contracts. A general contractor agrees to construct a building by an owner of land for the sum of \$25,000. The general contractor is to hire all labor and pays for all materials and other construction costs, including amounts due to subcontractors. The general contractor is required to report as gross receipts in his Business Privilege/Mercantile Tax return the contract price of \$25,000. All subcontractors participating in the construction project are required to report as gross receipts the total amounts received on their respective subcontracts.

EXAMPLE:

(2) Cost-Plus Contracts. A general contractor agrees to construct a building for a fee of \$5,000 plus cost of construction, including material, labor and subcontracts. The general contractor hires all labor and furnishes all materials, disbursing \$25,000 in payment of such costs. Upon completion of the building he receives \$30,000 from the owner. The general contractor is required to report as gross receipts the sum of \$30,000 in his Business Privilege/Mercantile Tax return.

EXAMPLE:

(3) Guaranteed Maximum Contract. A general contractor agrees to construct a building on a "cost-plus-10%" basis and guarantees that such costs, including the profit factor will not exceed \$30,000. The owner of the property agrees to pay the general contractor 50% of any savings. The general contractor disburses \$20,000 for materials, labor and subcontracts. Upon completion of the building the owner pays him \$20,000 in reimbursement of the costs incurred, \$2,000 for the 10% fee due him under the contract, and \$4,000 under the savings clause. The general contractor is required to report as gross receipts the sum of \$26,000 in his Business Privilege/Mercantile Tax return.

EXAMPLE:

(4) Supervisory Contracts. A general contractor agrees to supervise construction of a building for a fee of \$5,000, the owner to pay all costs of construction including materials, labor and subcontractors. The owner sends out a plumbing subcontractor and electrical subcontractor who work under the general's supervision but bill the owner directly. The general contractor buys supplies which are also billed directly to the owner. At the conclusion of the contract, the general contractor is paid \$5,000 and the owner pays \$25,000 directly to the subcontractors and suppliers. The general contractor is required to report as gross receipts \$5,000 in his Business Privilege/Mercantile Tax return.

g. Scranton Contractors or Subcontractors engaged in the performance of building, construction, improvement, repair, alteration, or installation contracts at a point outside the territorial limits of Scranton may exclude from the measure of the tax base the gross receipts derived therefrom, provided that a bona fide field office Sec. 302 b. (3) was maintained on the premises of the project during the performance of the contract, wherein all activities associated with such project were

directed, controlled and managed from the job site to the extent that it constituted a branch office or place of business.

Sec. 810 - Persons who Repair, Alter and Improve Tangible Personal Property.

Persons who repair, alter and improve the tangible personal property of others, including but not limited to artisans, home improvement contractors, auto repair shops and others are required to report the total charge made for the entire service including labor and materials where there is a unitary charge for the entire service. Where a person is primarily a vendor of goods, wares and merchandise and is subject to the Mercantile License Tax on such sales, he must also report receipts from installation, repair and other labor for Business Privilege/Mercantile Tax purposes. The materials used to repair, alter or improve the personal property owned by the customer is subject to the Mercantile License Tax.

Sec. 811 - Real Estate Brokers, Agents and Developers.

a. Real estate brokers and agents are required to report as taxable gross receipts the commissions and fees received for services rendered in promoting the purchase, sale, rental and/or management of property for others.

b. A real estate broker who owns and operates his own agency and who is a member of a multilist organization may exclude from his tax base the amount he is required to remit to a similar broker who originally listed the particular property which generated the commission. No other exclusions from gross receipts are permitted.

c. If a real estate broker takes title to real property in his own or in a straw name and sells the property, he is required to include the gross selling price of the property as taxable receipts, reduced by the purchase price of the real property. Closing, transfer and any other expenses may not be deducted.

d. Multi-list dealers, whether they be resident or non-resident, are subject to the tax on commissions on sales of real property located in the City of Scranton. In addition, where a taxpayer maintains its only real estate office in Scranton, all bookkeeping, administrative and executive functions are performed in that office, and other activities are directed from it, the mere fact that closings are occasionally conducted in places other than the Scranton Office or that the commissions are earned on the sale of real estate located outside the City (but within Pennsylvania), does not preclude the brokering activities from being attributable to the Scranton Office.

e. Developers are liable for Business Privilege/Mercantile Tax on the entire amount received from any customer either as the result of the sale of real estate to that customer or from the rental of any unit, commercial, industrial or residential, that has been erected, improved, or remodeled as part of the development plan.

Sec. 812 - Rental Activities.

a. Persons operating hotels, apartment houses, boarding houses, nursing homes, rooming houses and all other such establishments are taxable on receipts from renting of space, furnishing of meals and any other services which are not subject to the Mercantile License Tax.

b. Any person who rents out any property, including, but not limited to, buildings, offices, stores, dwelling houses, or any portion thereof, shall include gross rentals received in his Business Privilege tax base with no deductions therefrom for depreciation, cost of maintenance, repairs, taxes, utilities, or any other cost or expense.

(1) Any person - individual, partnership, limited partnership, corporation, or association - who acquires property for the purpose of obtaining rentals or other fees or for any other business purpose is subject to the Business Privilege/Mercantile Tax on the entire gross receipts, even though the tenant or user of the property has assumed responsibilities normally discharged by the owner or lessor. Thus, the gross receipts from any lease, including a net, net-net or net-net-net lease, are fully subject to the tax.

(2) The provisions of subsection (1) apply without regard to whether such rental is a primary source of income or only a secondary source.

(3) Any person who acquires property through inheritance, gift, reverter, trust, or other legal process, and who provides absolutely no services, other than the maintenance required by law, is not subject to the Business Privilege/Mercantile Tax on rentals from that particular property. If, however, disposition is not made by the recipient within a reasonable time, taking into consideration the property size, location and market, it will be presumed that the retention of the property so acquired is for a business purpose and the receipts shall be subject to the tax.

(4) When a corporation which is not in the business of renting property ceases its regular business operations, sells its assets and retains ownership of its real property, it is not liable for rentals received from leasing this property only during the period in which the real property is retained as an asset pending

disposition to a purchaser. If disposition is not made within a reasonable time, taking into consideration the property size, location and market, it will be presumed that the retention of the real property is not for the purpose of merely maintaining a corporate asset pending disposition, but is for the business of obtaining rentals and/or other business income which will be subject to the Business Privilege/Mercantile Tax.

(5) Persons or agencies which manage and/or operate cooperatives and/or condominiums must pay the tax based on all receipts received for maintenance, cleaning, security, insurance and all other services provided. A cooperative or condominium organization is considered to be a "person" within the meaning of this Section.

Sec. 813 - Financial Business.

a. A financial business subject to the Business Privilege/Mercantile Tax consists of the services and transactions of any trust (except as provided in subsection D), credit or investment company, holding company, dealers and brokers in money, credits, commercial paper, bonds, notes, securities, stocks, and monetary metals, pawnbrokers, factors and commission merchants; or any other business that deals in financial obligations where the business does not pay a revenue-producing tax to the Commonwealth and is not subject to regulation by the State Department of Banking. However, those receipts which are generated by transactions in moneyed capital shall be excluded from the gross receipts of the business to the extent that the City is prohibited from taxing the receipts of a state or national bank which originate from the same types of transactions. Notwithstanding the fact of state taxation and regulation by the Department of Banking, any such business shall pay the Business Privilege/Mercantile Tax on any receipts from non-regulated activities.

b. The word "receipts" as applied to a financial business shall not include a return of capital or the redemption of collateral at the value for which it was pledged, nor are deposits retained to the account of another considered to be "receipts" within the meaning of this Section.

c. Receipts of a financial business to be included in the tax base consists of:

(1) Fees, commissions, or other compensation received for services rendered as a financial business;

(2) Gross profit realized from trading in stocks, bonds, and/or other securities, commodities, commercial paper, notes or other evidences of indebtedness,

monetary metals, royalties, interest in oil, gas and mineral deposits, et cetera;

(3) Dividends and interest received;

(4) Any other gains, profits or emoluments by whatsoever term designated resulting from the operation of a financial business without deduction for overhead or other costs of production.

d. Trusts.

(1) Estates and trusts, whether intervivos or testamentary, in which a trustee merely invests funds under usual fiduciary practices for the purpose of conserving trust assets prior to disposition within a reasonable time are, generally speaking, not subject to the Business Privilege and/or Mercantile Tax. A trust which operates a business, however, is subject to the tax. See Sec. 812 B. (3).

(2) Trustees managing investment trusts, mutual funds or any similar type of trust, or other fiduciaries actively engaged in operating an estate for business purposes are subject to Business Privilege and/or Mercantile Tax on the gross receipts they receive for their services.

e. Factors and Commission Merchants

(1) A factor, or commission merchant, is an agent employed to sell goods or merchandise consigned or delivered to him, by or for his principal, for a consideration, commonly called a factorage or commission.

(2) A factor, or commission merchant, differs from a selling agent, or merchandise broker, in the following respects:

(i) A factor or commission merchant, may sell for his own name as well as in the name of his principal while a selling agent or merchandise broker, acting as such, may sell only in the name of his principal.

(ii) A factor, or commission merchant, is entrusted with possession, management and control of the goods, and has a special property in, and lien on, the goods. The selling agent, or merchandise broker, usually has no such possession, management or control of the goods, nor any special property or lien.

(iii) Factors, or commission merchants, as distinguished from selling

agents, or merchandise brokers are deemed to be engaged in a financial business, and shall include in the tax base the gross income derived from operations carried on in such capacity.

f. Holding Companies.

A Holding Company is any corporation which has an equity interest in another corporation. Holding companies located in the City are taxable on dividends and royalties from subsidiary companies located within Pennsylvania regardless of the place of Incorporation. Dividends and royalties from subsidiary companies located wholly outside Pennsylvania are not subject to the tax.

Dividends and royalties from subsidiary companies located partially outside Pennsylvania are taxable based upon the apportionment formula set forth below.

A holding company performing services such as management services for any subsidiary located in Pennsylvania shall include those fees in their tax base. Where the subsidiary is wholly or partially located outside of Pennsylvania, the fees for those services shall be apportioned on the basis of a three factor formula consisting of real and tangible personal property, wages and salaries, and sales of the subsidiary.

Apportionment Formula:

(1) Property factor - the numerator is the average value of the real and tangible personal property owned or rented and used in Pennsylvania during the tax year of the taxpayer and all subsidiaries subject to the Pennsylvania Corporate Net Income Tax; the denominator is the average value of all real and tangible personal property owned or rented and used during the tax year of the taxpayer and all subsidiaries.

(2) Wages and salaries factor - the numerator is the compensation paid in Pennsylvania during the tax year by the taxpayer and all subsidiaries subject to the Pennsylvania Corporate Net Income Tax; the denominator is the total compensation paid during the tax year by the taxpayer and all subsidiaries.

(3) Sales factor - the numerator is the sales in Pennsylvania during the tax year by the taxpayer and all subsidiaries subject to the Pennsylvania Corporate Net Income Tax; the denominator is the total sales during the year by the taxpayer and its subsidiaries.

The total of the above three percentages should be divided by three to arrive at the average percentage. This average percentage will then be applied in the appropriate circumstances described above.

Although the average percentage may be determined by using the fiscal year of the taxpayer and/or its subsidiaries falling within the calendar year in question, the tax must be calculated and paid on a calendar year basis.

EXAMPLES

(1) Holding company "Z", located wholly in the City, received dividends from two subsidiaries: "A", located wholly in Erie, PA; and "B", located wholly in Buffalo, NY. The dividends received from subsidiary "A" are included in the tax base of holding company "Z" for purposes of the Business Privilege and/or Mercantile Tax; the dividends received from subsidiary "B" are not subject to the tax.

(2) Holding company "Z", located wholly in the City, provides management and legal services to subsidiary "C", located in both Washington, PA and in Wheeling, W VA. "Z" receives \$10,000 annually from "C". The amounts of property, wages and sales to be included in the apportionment formula and the application of the formula is as follows:

Pennsylvania Property	<u>\$75,000</u>	
Total property	\$1,000,000=	75%
	+	
Pennsylvania wages	<u>\$60,000</u>	
Total wages	\$65,000=	92%
Pennsylvania sales	<u>\$850,000</u>	
Total sales	\$1,000,000=	<u>85%</u>
	 Total	 <u>252%</u>
Divided by 3 = Average Percentage		<u>84%</u>

Therefore, 84% or \$8,400 or \$10,000 received by "Z", would be considered as taxable for Business Privilege and/or Mercantile Tax purpose.

Sec. 814 - Financial Transactions of Non-Financial Businesses.

a. A non-financial business subject to Business Privilege and/or Mercantile Tax must include in its tax base receipts from dividends, interest, income from stocks, bonds, credit obligations, and other security transactions, which are obtained by investing the funds of such business.

b. Proceeds derived by a corporation from the original sale of its own shares do not constitute receipts subject to Business Privilege and/or Mercantile Tax.

However, Receipts realized from sales of a corporation's own stock, after issuance and repurchase by the corporation (treasury stock), must be included in the tax base.

c. Receipts do not include return of capital or redemption of collateral at the value for which it was pledged.

d. If sales of any investments result in a loss, the loss may be offset against gains from similar financial transactions in the same tax year, but the loss may not be used to diminish receipts realized in the ordinary course of business.

e. Retirement of Bonds. Where a taxpayer purchases its own bonds for retirement at a price either less than the issuance price as adjusted for the amortization of bond premium, if any, or less than face value, whichever is less, the difference between the purchase and the carrying value must be included in the tax base.

Conversely, if a taxpayer purchases its own bonds for retirement at a price greater than the carrying value, the difference between the purchase price and the carrying value may be deducted from the tax base, but only to the extent of the gains realized on similar classes of transactions.

f. Hedging Transactions. Gains or losses realized on hedging transactions are gains or losses from securities transactions within the meaning of this Section.

Sec. 815 - Radio and Television Broadcasters.

(1) Normal Transmission

a. Radio and television broadcasters located in the City may apportion their receipts for Business Privilege and/or Mercantile Tax purposes on the basis of a three factor formula consisting of real and tangible personal property, wages and salaries, and listening families. The formula is subject, however, to a fifty percent (50%) maximum where the average percentage arrived at through the calculation exceeds fifty percent (50%). Where the average percentage is less than fifty percent (50%), the actual percentage will be used.

Apportionment Formula:

<u>Property attributable to a Scranton Office</u>	=	
Total Property		_____%
+		
<u>Wages and salaries attributable to a Scranton Office</u>	=	
Total wages and salaries		_____%
+		
<u>Listening area in Pennsylvania</u>	=	
Total Listening area		_____%
Total		_____%
Divided by 3 = Average Percentage		_____%

Apply either the average percentage or fifty percent (50%) (as explained above) to the total receipts to arrive at taxable receipts. Total receipts for radio and television broadcasters are the receipts from the sale of network, national and local time less the agency commissions, together with the receipts from all other activities and services.

b. The allocation formula for radio and television broadcasting stations located outside of the City whose FCC range includes the City as a prime target for their normal signals is:

<u>Property-in-City</u>	=	
Total Property		_____%
+		
<u>Listening area-in-City</u>	=	
Total Listening area		_____%
+		
<u>Wages and Salaries-in-City</u>	=	
Total Wages and Salaries		_____%
Total	=	_____%
Divided by 3 = Average Percentage		_____%

Total receipts x apportionment percentage = taxable receipts for Business Privilege purposes.

(2) Cable Transmission. Any person operating a cable television station in the City shall include the gross receipts from all rates, fees or charges of any kind collected from subscribers without deduction therefrom for the franchise fees paid to the City or for any other costs of operation including those prescribed by law.