

OFFICIAL

BOROUGH OF AVALON

ORDINANCE NO. 1150

AN ORDINANCE OF THE BOROUGH OF AVALON, ALLEGHENY COUNTY, PENNSYLVANIA, IMPOSING A MERCANTILE LICENSE TAX FOR THE YEAR BEGINNING JANUARY 1, 1983 AND ENDING ON DECEMBER 31, 1983, AND THEREAFTER FOR EACH FOLLOWING YEAR, UPON THE PRIVILEGE OF ENGAGING IN BUSINESS AS A RETAIL OR WHOLESALE DEALER IN OR RETAIL OR WHOLESALE VENDOR OF GOODS, WARES OR MERCHANDISE, AND UPON THE PRIVILEGE OF ENGAGING IN THE BUSINESS OF CONDUCTING A RESTAURANT OR OTHER PLACE WHERE FOOD, DRINK OR REFRESHMENTS ARE SOLD, AT THE RATE OF ONE MILL (\$.001) ON EACH DOLLAR (\$1.00) OF THE WHOLE VOLUME OF BUSINESS TRANSACTED BY WHOLESALE DEALERS IN OR WHOLESALE VENDORS OF GOODS, WARES, OR MERCHANDISE, AND AT THE RATE OF ONE AND ONE-HALF MILLS (\$.0015) ON EACH DOLLAR (\$1.00) OF THE WHOLE VOLUME OF BUSINESS TRANSACTED BY RETAIL DEALERS IN OR RETAIL VENDORS OF GOODS, WARES OR MERCHANDISE, AND AT THE RATE OF ONE AND ONE-HALF (\$.0015) ON EACH DOLLAR (\$1.00) OF THE WHOLE VOLUME OF BUSINESS TRANSACTED BY PROPRIETORS OF RESTAURANTS OR OTHER PLACES IN AVALON BOROUGH WHERE FOOD, DRINK AND REFRESHMENTS ARE SERVED, ALL ON AN ANNUAL BASIS; DEFINING CERTAIN WORDS AND PHRASES USED IN THIS ORDINANCE; REQUIRING THE PROCURING OF A MERCANTILE LICENSE FOR EACH PLACE OF BUSINESS OR OCCUPATION IN THE BOROUGH OF AVALON ON AN ANNUAL BASIS; REQUIRING THE FILING OF RETURNS; PROVIDING FOR THE ADMINISTRATION, COLLECTION AND ENFORCEMENT OF SAID TAX, AND IMPOSING PENALTIES FOR THE VIOLATION OF THE PROVISIONS OF THIS RESOLUTION.

BE IT ORDAINED AND ENACTED by the Council of the Borough of Avalon, and it is hereby enacted by and with the authority of the same, and under the authority of the Act No. 511 of the 1965 Session of the General Assembly of the Commonwealth of Pennsylvania, known as the Local Tax Enabling Act of 1965, and its supplements and amendments:

SECTION I: That the following words and phrases, when used in this Ordinance, shall have the meaning ascribed to them in this Section, unless the context indicates a different meaning:

"Person" - Any individual, partnership, limited partnership, association or corporation. Whenever used in any section prescribing and imposing a penalty, the term "person" as applied to associations shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

"Retail Dealer" or "Retail Vendor" - Any person who is a dealer in or a vendor of goods, wares, or merchandise other than a wholesale dealer, wholesale vendor or broker. "Retail Dealer" or "Retail Vendor" shall not include non-profit corporations, or associations, or agencies and political subdivisions of the government of the United States or of the Commonwealth of Pennsylvania, or any person disposing of merchandise of his own growth, production, or manufacture.

"Wholesale Dealer" or "Wholesale Vendor" - A person who sells goods, wares or merchandise for resale to dealers in or vendors of goods, wares or merchandise, whether or not the goods, wares, or merchandise are resold in the same form, or in an altered or changed form, or are consumed directly in the manufacturing, processing or fabricating of tangible personal property, which is then sold.

"Broker" - Merchandise broker, factor or commissioned merchant.

"License Year" - The period beginning January 1, 1983 and ending December 31, 1983, and thereafter for each following year, or any part thereof.

"Gross Volume of Business" - Both cash and credit transactions.

"Tax Collector" - That person, firm or corporation appointed by the Council of the Borough of Avalon, who shall be responsible for the tax herein imposed.

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

SECTION II: Licenses:

Every person desiring to continue to engage in, or hereafter to begin to engage in, the business of wholesale or retail dealer or wholesale or retail vendor of goods, wares, and merchandise, and any person conducting a restaurant or other place where food, drink, or refreshments are sold, shall on or before the first Monday of January of the license year, or prior to commencing business in the license year, procure a mercantile license for Avalon Borough from the Tax Collector, who shall issue the same upon the payment of Four (\$4.00) Dollars

for a wholesale or retail license and Two (\$2.00) Dollars for each of his places of business for the license year. Such licenses shall be conspicuously posted at the place of business, or at each of the places of business, of every person at all times.

SECTION III: Imposition and Rate of Tax:

For the period beginning January 1, 1983 and ending December 31, 1983, and thereafter for each following year, or any part thereof, Avalon Borough does hereby impose a Mercantile License Tax in the manner and at the rates hereinafter set forth:

(a) Wholesale dealers in or wholesale vendors of goods, wares or merchandise, at the rate of one mill (\$0.001) on each dollar (\$1.00) of the volume of the annual gross business transacted by him. In the case of brokers, the term "gross business" shall mean "gross commissions earned."

(b) Retail dealers in or retail vendors of goods, wares or merchandise, and all persons engaged in conducting restaurants, or other places where food, drink or refreshments are sold, at the rate of one and one-half mills (\$0.0015) on each dollar (\$1.00) of the volume of the annual gross business transacted by him.

(c) Wholesale and retail dealers in or wholesale and retail vendors of goods, wares or merchandise, at the rate of one mill (\$0.001) on each dollar (\$1.00) of the volume of annual gross wholesale business transacted by him, and one and one-half mills (\$0.0015) on each dollar (\$1.00) of the volume of the annual gross retail business transacted by him.

(d) The tax imposed herein shall apply whether or not the taxed activity is conducted together with some other business or occupation. The tax imposed by this section shall not apply to the dollar volume of business derived from the resale of goods, wares or merchandise, taken by a dealer as a tradein

or part payment for other goods, wares or merchandise, except to the extent that the resale price exceeds the trade-in allowance.

SECTION IV: Computation of Volume of Business:

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

(b) Every person subject to the payment of the tax hereby imposed, who has commenced or who commences his business less than one (1) full year prior to the beginning of the license year, shall compute his annual gross volume of business for such license year upon the gross volume of business transacted by him during the first month he engages in business, multiplied by twelve (12).

(c) Every person subject to the payment of the tax hereby imposed, who commences his business subsequent to the beginning of the license year, shall compute his annual gross volume of business for such license year upon the gross volume of business transacted by him during the first month of his engaging in business, multiplied by the number of months or fraction thereof he engages in business in such license year.

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

(e) Every person who shall discontinue business during the license year after having paid the Mercantile Tax for the entire year, upon making proper application to the Tax Collector, shall be entitled to receive a refund of a prorata amount of tax paid, based upon the period of time he was not in business during the license year.

such other information as may be necessary in arriving at the actual gross amount of business transacted by him during such period, and the amount of tax due.

SECTION VI. Payment:

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

SECTION VII. Powers and Duties of Tax Collector:

(a) It shall be the duty of the Tax Collector to collect and receive the taxes, fines and penalties imposed by this Ordinance. It shall also be his duty to keep a record showing the amount received by him from each person paying the tax and the date of such receipt.

(b) The Tax Collector is hereby charged with the administration and enforcement of the provisions of this Ordinance, and is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this Ordinance, including provisions for the re-examination and correction of returns, and payments alleged or found to be incorrect, or as to which an overpayment is claimed, or found to have occurred. Any person aggrieved by any decision of the Tax Collector shall have the right to appeal to the Court of Common Pleas of Allegheny County, Pennsylvania, as in other cases provided.

(c) The Tax Collector, or his duly authorized agents, is hereby authorized to examine the books, papers and records of any taxpayer or supposed taxpayer in order to verify the accuracy of any return made, or if no return has been made, to ascertain the tax due. Every such taxpayer, or supposed taxpayer, is hereby directed and required to give to the Tax Collector or his authorized agent, the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

SECTION VIII. Suit On Collection; Penalties:

(a) All taxes imposed by this Ordinance, together with the penalties imposed under this Ordinance, shall be recoverable by suit at the ~~instance~~^{insistence} of the Tax Collector as other debts of like amount are recoverable.

(b) If for any reason the tax is not paid when due, interest at the rate of six percentum (6%) per annum on the amount of said tax, and an additional penalty of one-half of one (1/2 of 1%) percentum of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid shall be added and collected. Where suit is brought for the recovery of any such tax, the person liable therefor shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

SECTION IX. Fines and Penalties:

Whoever makes a false or untrue statement on his return or who refuses to permit inspection of the books, records or accounts in his custody or control of any business, when the right to make such inspection by the Tax Collector, or his duly authorized agent, is requested, and whoever fails or refuses to file a return required to be filed by this Ordinance, and whoever fails or refuses to procure a Mercantile License when so required under this Ordinance, or fails to keep his License conspicuously posted at his place of business as required herein, shall, upon conviction before any District Magistrate, be sentenced to pay a fine of not more than Three Hundred (\$300.00) Dollars for each offense, and in default of payment of said fine, to be imprisoned in the Allegheny County Jail for a period not exceeding thirty (30) days for each offense.

SECTION X. Saving Clause:

(a) Nothing contained in this Ordinance shall be construed to empower the Borough of Avalon to levy and collect the taxes hereby imposed on any person, business, or any portion of any business not within the taxing power of Avalon

Borough under the Constitution of the United States and the laws and the Constitution of the Commonwealth of Pennsylvania.

(b) If the tax, or any portion thereof, imposed upon any person under the provisions of this Ordinance shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United States or of the Commonwealth of Pennsylvania, the decision of the Court shall not affect or impair the right to impose the tax or the validity of the tax so imposed upon other persons as herein provided.

(c) The provisions of this Ordinance are severable and if any of its provisions or exceptions shall be held illegal, invalid or unconstitutional, the decision of the Court shall not affect or impair any of the remaining provisions of this Ordinance. It is hereby declared to be the intent of the Borough of Avalon that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional provisions or exemptions had not been included herein.

SECTION XI. Payment Under Protest; Refunds:

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

SECTION XII. Effective Date:

This Ordinance shall become effective January 1, 1983 and shall remain in effect through December 31, 1983, and shall remain in effect thereafter for each following year.

SECTION V. Returns:

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

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

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

(d) Every person subject to the tax imposed by this Ordinance, who commences business subsequent to the beginning of the license year, shall within forty (40) days from the date of commencing such business, file a return with the Tax Collector, setting forth his name, business, business address and such other information as may be necessary in arriving at the actual gross amount of business transacted by him during his first month of business and the amount of tax due.

(e) Every person subject to the tax imposed by this Ordinance, who engages in a business temporary, seasonal or itinerant by its nature, shall, within seven (7) days from the date he completes such business, file a return with the Tax Collector, setting forth his name, business, business address, and

SECTION XIII. That any Ordinance or part of Ordinance conflicting with the provisions of this Ordinance be and the same are hereby repealed to the extent of such conflict.

ORDAINED and ADOPTED by the Council of the Borough of Avalon the 18th day of AUGUST, 1982.

ATTEST:

COUNCIL OF THE BOROUGH OF AVALON

Roy A. Castelli
Secretary

By John A. Murphy
President of Council

EXAMINED and APPROVED this 25th
day of August, 1982.

Joseph S. Elm
MAYOR