

PITTSTON TOWNSHIP
Luzerne County, Pennsylvania
ORDINANCE NO. 12-01 of 2022

AN ORDINANCE OF THE TOWNSHIP OF PITTSTON, LUZERNE COUNTY, PENNSYLVANIA PROVIDING A FORMAL INTERPRETATION OF THE PITTSTON TOWNSHIP MERCANTILE TAX AND CLARIFYING THE PROCEDURE FOR ITS ADMINISTRATION

WHEREAS on July 30, 1984, the Supervisors of the Township of Pittston, Luzerne County, Pennsylvania, enacted Ordinance No. 2 of 1984 establishing a Mercantile Tax; and

WHEREAS, on December 15, 1986, the Supervisors of the Township of Pittston, Luzerne County, Pennsylvania, enacted Ordinance No. 4 of 1986 amending the Mercantile Tax Ordinance; and

WHEREAS, the language of the Mercantile Tax Ordinance as previously adopted should be clarified to reflect the intention of the Supervisors regarding the rules, regulations and administration of the Mercantile Tax; and

WHEREAS, the Township of Pittston wishes to ensure that its tax complies with the Constitutions of the Commonwealth of Pennsylvania and of the United States by taxing economic activity only if it is properly attributable or allocable to the Township of Pittston;

NOW THEREFORE, BE AND IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of the Township of Pittston, Luzerne County, Pennsylvania, as follows:

Section 1. Regulations Adopted

A copy of the “**Regulations of the Township of Pittston Interpreting the Pittston Township Mercantile Tax Ordinance**” is hereby adopted and appended to this Ordinance as **Exhibit “A”**.

Section 2. Severability

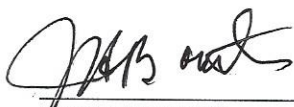
Provisions of this Ordinance shall be severable, and if any of its provisions shall be held to be unconstitutional, invalid, unenforceable or beyond the power of the Township of Pittston, said provision or provisions shall not be construed to affect the validity of any of the remaining portions of this Ordinance. It is hereby declared as the intent of the Supervisors of the Township of Pittston that this Ordinance would have been adopted had such unconstitutional, invalid or unauthorized provision or provisions not been included therein.

Section 3. Effective Date

This Ordinance shall become effective on January 1, 2023.


ENACTED AND ORDAINED THIS 19th DAY OF DECEMBER, 2022, by the Pittston Township Board of Supervisors.

ATTEST:



SECRETARY

BOARD OF SUPERVISORS
PITTSTON TOWNSHIP:

BY: 

DAVID A. SLEZAK, Chairman

BY: 

JOSEPH HAWK, Vice Chairman

BY: 

STEPHEN RINALDI, Supervisor

Pittston Township: Rules & Regulations Meeting 12/12/2022

Persons desiring to do business in Pittston Township are required to pay mercantile taxes, as appropriate. These Regulations provide a formal interpretation of the Township's Mercantile Tax Ordinances (the "Ordinances").

These Regulations provide an administrative interpretation of the Township's Mercantile Tax Ordinances, referred to collectively herein as the "Tax Ordinances." These Regulations do not, and are not intended to, expand the subject or rates of the taxes as stated and intended in the Tax Ordinances. These Regulations shall be interpreted, whenever possible, to be consistent with the Tax Ordinances. In the event that a provision of these Regulations is inconsistent with the Tax Ordinances, the provisions of the Tax Ordinances shall prevail.

**REGULATIONS OF THE TOWNSHIP OF PITTSTON INTERPRETING THE
PITTSTON TOWNSHIP MERCANTILE TAX**

WHEREAS, Ordinance No. 2 of 1984 adopted enacted the Pittston Township Mercantile Tax;

WHEREAS, the Pittston Township Mercantile Tax imposes a tax on a taxpayer's "Gross volume of business" without restrictions on where that business is generated;

WHEREAS, the Pittston Township Mercantile Tax does not provide explicit rules for attribution or allocation of gross receipts to Pittston Township;

WHEREAS, the Pittston Township Mercantile Tax contains a savings clause that it is not to be interpreted to impose an unconstitutional tax;

WHEREAS, Pittston Township wishes to limit its tax to ensure compliance with the Constitutions of the Commonwealth of Pennsylvania and of the United States;

Pittston Township hereby adopts the following regulation construing its Mercantile Tax.

Section 1. Definitions.

The following terms have the following meaning wherever used in this Regulation.

A. "Base of Operation" – A physical location used by a taxpayer to conduct significant business activities. Significant business activities include without limitation:

- i. Providing workers with a place to work.
- ii. Providing a base from which operations are managed, directed or controlled.
- iii. Storage or maintenance of inventory or other business assets.
- iv. Administrative, executive, or marketing activities, including meetings.
- v. Maintaining business records.
- vi. Business communications via telephone, fax, mail, or electronic means.
- vii. Utilization of business equipment or assets.
- viii. The holding out to others, through the use of signage, advertising, legal registry or stationery to indicate a business location.

ix. Rental or sublet of real estate by a landlord or tenant.

x. Use or maintenance of a site trailer or other temporary workspace.

B. "Property Value" means the value of tangible personal property and real property. The value of property that a taxpayer owns shall be determined by averaging the beginning and ending book value (as calculated for purposes of federal income tax) for each tax year. The value of property that a taxpayer leases shall be the rent due for the entirety of the applicable License Year times eight.

C. "Property Factor" – A fraction that is calculated as follows:

i. The Property Value for any property that Taxpayer owns located within the Township of Pittston; divided by

ii. The Property Value for any property that Taxpayer owns located anywhere in the United States.

D. "Payroll Factor" – A fraction that is calculated as follows:

i. All wages, salaries, commissions, and other compensation that Taxpayer paid to employees for work done within Pittston Township; divided by

ii. all wages, salaries, commissions, and other compensation that Taxpayer paid to employees based in the United States.

E. "Sales Factor" — A fraction that is calculated as follows:

i. Gross receipts realized from any sale of goods or services within Pittston Township or provided to anyone within Pittston Township; divided by

ii. Gross receipts realized from the sale of goods or services anywhere within the United States.

F. "Allocation Factor" — A fraction that is calculated as follows:

i. The Property Factor plus the Payroll Factor plus the Sales Factor; divided by

ii. Three.

However, if the denominator of the Property Factor, the Payroll Factor, or the Sales Factor is 0, any such Factor shall be disregarded in computing the Allocation Factor by removing it from the numerator and reducing the denominator by 1. For instance, if the

taxpayer neither owned nor leased property anywhere, the Property Factor would be 0/0. In such a case, the Allocation Factor would be computed by adding the Payroll Factor and the Sales Factor and dividing the sum by 2.

G. The “facts and circumstances” applicable during a period of time are the Allocation Factor as calculated during that period of time and the Base(s) of Operations that the taxpayer had during that period of time.

For example, the “facts and circumstances” for License Year 2023 are the Allocation Factor as calculated for 2023 and the Base(s) of Operations that a taxpayer had during 2023.

H. “License Year” means the period of each year that begins on January 1 and ends on December 31. For instance, License Year 2023 means January 1, 2023 to December 31, 2023.

I. “Receipts” means the whole or gross value of any revenue that: (i) a taxpayer receives of any kind or nature without regard to where it was earned; and (ii) is not exempt or excluded from tax under the Mercantile and Business Privilege Tax Ordinance, the Local Tax Enabling Act, this regulation, or any other provision of law.

J. “Whole or Gross Volume of Business” means the gross volume of business upon which a taxpayer is to pay Mercantile Tax.

Section 2. Determination of Whole or Gross Volume of Business.

To ensure compliance with the Constitution of the United States and of the Commonwealth of Pennsylvania, Pittston Township imposes its Mercantile Tax only on Receipts earned in, attributable to, or allocable to Pittston Township. This section provides a system for taxing only such Receipts.

The taxable Gross Volume of Business shall be determined in accordance with the provisions of this Section. This Regulation does not alter any exclusion that the Pittston Township Mercantile Tax already provides.

A taxpayer’s Gross Volume of Business shall be determined based on the applicable methodology outlined below.

A. Taxpayers who conduct the entirety of their business within the Township of Pittston.
Any taxpayer who:

i. Has its only Base or Bases of Operation within the Township of Pittston; and
ii. Makes all of its sales of goods or services within the Township of Pittston
shall pay tax on 100% of the taxpayer's Receipts.

B. Taxpayers with a Base of Operations within the Township of Pittston who conduct business outside of Pittston Township. Any taxpayer that:

i. Has a Base of Operation within the Township of Pittston; and
ii. Makes sales of at least some goods or services outside of Pittston Township
shall pay tax on the taxpayer's Receipts multiplied by the Allocation Factor.

Section 3. Expedited Computation.

A taxpayer may elect to pay tax on its Receipts without application of any of the formulas outlined in this Regulation. The purpose of this section is to permit taxpayers who conduct little business or who believe that they have limited Receipts not attributable or allocable to Pittston Township to file returns with limited burden in applying the rules of this Regulation.

Section 4. Time periods for calculation.

Section V of the Pittston Township Mercantile Tax provides formulas for the time period to use to calculate the Gross Volume of Business depending on the nature of the taxpayer's business and when it commenced. This regulation does not affect those rules. To that end, Taxpayers shall compute the amount due under Section 2 of this Regulation for a particular License Year based on: (i) their Receipts during the time period described in Section V of the Ordinance; and (ii) the facts and circumstances that applied during the time period described in Section V of the Ordinance.

Section 5. Out-of-Jurisdiction Exclusion.

Any revenue on which the taxpayer actually paid business-privilege tax to another jurisdiction is exempt from business-privilege tax. Any such revenue is not deemed taxable "Receipts." To get the benefit of this exception, a taxpayer must show that it actually paid tax on such revenue.

Section 6. Constitutional Exclusion.

Any taxpayer may assert that the Mercantile Tax is unconstitutional or illegal for any reason. If the tax exceeds the maximum tax permissible under law, then a taxpayer's liability shall be reduced to the maximum amount that is consistent with law and the Constitution of the Commonwealth of Pennsylvania and of the United States.

Taxpayer's may assert the Constitutional Exclusion of this Section 4 in any administrative proceeding to challenge an assessment of tax liability. They may also do so in any court action concerning Mercantile Tax if they have not failed to exhaust their right to administratively challenge an assessment of tax liability. A taxpayer's failure to assert the Constitutional Exclusion in an administrative proceeding waives the Constitutional Exclusion in any subsequent proceeding regarding the same tax liability.

Section 7. Fifteen-day requirement.

A taxpayer owes no tax for a License Year unless the taxpayer conducted business within Pittston Township for fifteen or more calendar days during the License Year.