

# RENTAL/SALES TAX ON OUTDOOR ADVERTISING TRANSACTIONS

## CHAPTER. OUTDOOR ADVERTISING SIGN TAX

### 1. Definitions.

For the purposes of this article, the following definitions shall apply, unless the context clearly indicates otherwise:

(a) **Municipality.** The [Borough][Township][Municipality] of \_\_\_\_\_.

(b) **Person.** Any individual, limited partnership, partnership, limited-liability company, corporation or other association.

(c) **Outdoor Advertising Sign.** A non-accessory sign that directs attention to a business, commodity, service, or entertainment, conducted, sold, or offered: (a) only elsewhere than upon the premises where the sign is displayed; or (b) as a minor and incidental activity upon the premises where the sign is displayed, but excluding: advertising matter displayed on operative currently registered motor vehicles or on pedestrians; accessory advertising matter displayed on newsstands; information required by law or ordinance to be placed on structures; notice to the public that a property is for sale or rent; a sign owned and sponsored by a community, civic or charitable organization; a sign identifying a company performing on-site construction; and On-Site Public Art.

(d) **Department.** The department of the [Borough][Township][Municipality] of \_\_\_\_\_ responsible for collections.

(e) **Tax Year.** The year commencing January 1 of the calendar year and ending December 31 of the calendar year.

(f) **Outdoor Advertising Sign Company.** The owner or operator or purveyor of a structure used to display an outdoor advertising sign.

### 2. Imposition of Outdoor Advertising Sign Tax

(a) There is hereby imposed an excise tax on the sale or rental of any Outdoor Advertising Sign in the [Borough][Township][Municipality] of \_\_\_\_\_ for Tax Year 2012, or any part thereof, and for each tax year thereafter. For purposes of this section, the sale or rental of Outdoor Advertising Sign space occurs beginning in the month when a person enters into a contract for and/or takes possession of and/or, in lieu of a contract, at the date when advertising is first posted on the Outdoor Advertising Sign, through the duration during which the advertisement appears, and includes any renewal of time thereof (the "Advertising Time").

(b) The tax imposed by this article (the "Outdoor Advertising Sign Tax") shall be collected by the Outdoor Advertising Sign Company at the Advertising Time, and shall be remitted by the Outdoor Advertising Sign Company to the [Borough][Township][Municipality] of \_\_\_\_\_ in accordance with the requirements of this article and any rules and regulations to be promulgated in furtherance of this article.

(c) The rate of tax shall be levied at the rate of ten percent (10%) of the gross rental charge per month (including a part of a month) of the Advertising Time, or ten percent (10%) of the retail purchase price paid for the Outdoor Advertising Sign.

(d) Any individual or entity that is exempt from taxation by the Commonwealth of Pennsylvania for the purposes of Outdoor Advertising Sign rental transactions shall receive the same exemption(s) from the Outdoor Advertising Sign Tax.

### **3. Collection of Outdoor Advertising Sign Tax**

Every Outdoor Advertising Sign Company, as an agent of the [Borough] [Township] [Municipality] of \_\_\_\_\_, shall collect the Outdoor Advertising Sign Tax from the renter or purchaser at the Advertising Time or at the time of sale of the Outdoor Advertising Sign, and shall immediately remit the tax to the Department each month that it is due and payable.

Any Outdoor Advertising Sign Company required under this section to collect tax from any person who shall fail to collect the proper amount of tax shall be liable for the full amount of the tax which such Outdoor Advertising Sign Company should have collected, and in addition shall be subject to a penalty of 10% per annum and interest of 6% per annum on such unpaid amounts as well as all costs of collection, including, without limitation, reasonable attorneys' fees.

### **4. Returns and Payments of Outdoor Advertising Sign Tax.**

Each Outdoor Advertising Sign Company shall file returns with and remit payments to the Department on a monthly basis and in accordance with such rules and regulations promulgated in furtherance of this article. Forms for the return shall be provided by the Department. The failure of any Outdoor Advertising Sign Company to procure or receive any report form shall not excuse him from making a return and paying the taxes collected.

### **5. Powers and Duties of Department.**

(a) It shall be the duty of the Department to collect and receive the taxes, fines and penalties imposed by this article. It shall also be the duty of the Department to keep a record showing the amount received from each person or business paying the Outdoor Advertising Sign Tax and the date of such receipt.

(b) The Department is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this article. All rules and regulations adopted or amended pursuant to this section shall be approved by the \_\_\_\_\_ of the [Borough] [Township] [Municipality] of \_\_\_\_\_. A copy of such rules and regulations currently in force shall be available for public inspection.

(c) The Department and the Solicitor of the [Borough] [Township] [Municipality] of \_\_\_\_\_, and their designee(s), are hereby authorized to examine the books, papers, and records of any Outdoor Advertising Sign Company or any individual or entity whom the Department or the Solicitor, or their designee(s), reasonably believes to be an Outdoor Advertising Sign Company, in order to verify the accuracy of any declaration or return, or if no declaration or return was filed, to ascertain the tax due. Every Outdoor Advertising Sign Company and every person or entity whom the Department or the Solicitor, or their designee(s), reasonably believes to be an Outdoor Advertising Sign Company shall be required to give to the Department or the Solicitor, or their designee(s), the means, facilities and opportunity for such examination and investigations as are hereby authorized.

(d) Any information gained by the Department, Solicitor, or their designee(s), as a result of any declarations, returns, investigations, hearings or verifications required or authorized

by this article shall be confidential, except for official purposes and except in accordance with a proper judicial order, or as otherwise provided by law.

(e) Revenue derived from the imposition of the tax authorized by this article shall be deposited into a \_\_\_\_\_ account.

## **6. Review and Appeal.**

The Department shall provide a method of appeal from any assessments by the Department. The methods and procedure for review and appeals shall be the same as those governing reviews and appeals with respect to other local taxes.

## **7. Penalties and Enforcement.**

In addition to any other remedy provided by law or in equity:

(a) Any person who willfully fails or refuses to appear before the Department or Solicitor in person with his or her books, records or accounts for examination when required by the Department or Solicitor to do so; or to permit inspection of the books, records or accounts in his custody or control when required by the Department or Solicitor; or who willfully makes any false or untrue statement on his or her return; or who willfully fails or refuses to file a return required by this article or to collect and pay over to the Department any tax imposed herein shall be liable to pay a fine of \$300.

(b) Any person who, on more than one occasion, fails to keep or make any record, return or report required by this section, or keeps or makes any false or fraudulent record, return or report, or who shall refuse the Department, County Solicitor or other duly authorized representative of the Department or Solicitor to examine his or her books and records in order to verify the accuracy of his payment of the tax authorized by this article, shall be guilty of a separate offense of repeat violation, and for each such repeat violation shall be subject to a fine of not more than \$300, or imprisonment for not more than 90 days, or both. A person shall be guilty of a repeat violation regardless whether the second or subsequent violation occurs before or after a judicial finding of a first or previous violation. Each violation, after the first, shall constitute a separate repeat violation offense.

(c) Any person who fails to pay the taxes collected on or before the last date prescribed for payment shall be liable to pay a penalty of 1% per month or fraction thereof on such tax from the time the tax became due and interest at the rate of 1/2 of 1% per month or fraction thereof. The penalties and interest provided for in this article shall be added to the tax assessed and collected at the same time, in the same manner, and as a part of the tax.

(d) The penalty and interest on unpaid taxes imposed by this section shall be paid to the [Borough] [Township] [Municipality] of \_\_\_\_\_.

## **8. Suit for Collection.**

(a) It shall be the duty of the Department to sue for the recovery of all taxes due hereunder not paid when due.

(b) Any suit to recover any tax, together with interest and penalties, authorized hereunder, from any person, shall be commenced within six years after such tax is due or within six years after a return has been filed, whichever date is later; but this limitation shall not apply:

(i) Where no declaration or return was filed by any person although a declaration or return was required to be filed by him under provisions of this article; there shall be no limitation.

(ii) Where an examination of the declaration or return filed by any person, or of other evidence relating to such declaration or return in the possession of the Department, reveals a fraudulent evasion of taxes; there shall be no limitation.

(iii) In the case of substantial understatement of tax liability of 25% or more and no fraud; suit shall be begun within six years.

(iv) Where any person has deducted taxes under the provisions of this article, and has failed to pay the amounts so deducted to the Department, or where any person has willfully failed or omitted to make the deductions required by this section; there shall be no limitation.

(v) This section shall not be construed to limit the governing body from recovering delinquent taxes by any other means provided by applicable statute.

(c) The Department may sue for recovery of an erroneous refund, provided such suit is begun two years after making such refund, except that the suit may be brought within five years if it appears that any part of the refund was induced by fraud or misrepresentation of material fact.