

**TOWNSHIP OF EXETER
BERKS COUNTY, PENNSYLVANIA**

**BUSINESS PRIVILEGE TAX
REGULATIONS**

Exeter Township
4975 DeMoss Road
Reading, PA 19606

INTRODUCTION

Persons conducting or engaging in business activity in Township of Exeter (the “**Township**”) are required to file an annual business privilege tax return and to pay business privilege taxes.

These Regulations provide a formal interpretation of the Township’s Business Privilege Tax Ordinance (the “**Ordinance**”).

The Regulations shall be interpreted, whenever possible, to be consistent with the Ordinance. In the event that a provision of the Regulations is inconsistent with the Ordinance, the provisions of the Ordinance shall prevail.

THESE REGULATIONS WERE ADOPTED BY THE BOARD OF SUPERVISORS ON -----, 2016. THESE REGULATIONS SUPERSEDE ANY AND ALL PREVIOUS VERSIONS OF EXETER TOWNSHIP BUSINESS PRIVILEGE TAX REGULATIONS, INFORMATION BULLETINS, POSITION OR POLICY STATEMENTS, AND INTERPRETATIONS.

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ARTICLE I
BUSINESS LICENSE

Section 100. License Required.

Persons desiring to do business in Exeter Township must first obtain a business license from the Tax Administrator. Applications may be obtained by calling: (610) 779- 5660 or through the Township's website at www.exetertownship.com.

Section 101. Fee, Term and Pro-ration.

Prior to 2017, the annual license fee was \$5.00. Beginning January 1, 2017, the annual license fee is \$20.00 for each calendar year. The fee is not reduced pro rata by the portion of the license year elapsed in the year procured. Any Taxpayer that is in default in payment of Tax may be refused a license until such tax is paid in full.

Section 102. Posting.

Licenses shall be kept and posted in a conspicuous place at the Taxpayer's business location.

Section 103. License for Branch Establishments.

In the event that a licensee conducts business at more than one location in the Township, an additional license is required for each additional place of business (except vending machines). Additional licenses shall be posted in accordance with Section 102 above. There shall be no fee for such additional licenses. *(This section amended 4/23/18 effective 1/1/19).*

Section 104. Assignment and Transfer Prohibited.

Business Licenses may not be assigned or transferred. Any purported assignment or transfer shall be void and ineffective.

Section 105. Change of Licensee's Address.

Licensee's change of address must be reported in writing to the Tax Administrator within 10 days after such change becomes effective.

Section 106. Failure to Procure License.

Persons who engage in a business, profession, or other commercial activity without a valid license are subject to fine and legal action.

ARTICLE II BUSINESS PRIVILEGE TAX

Section 200. Authority.

The Ordinance was enacted under authority of the Local Tax Enabling Act (Act 511 of 1965), as amended, 53 P.S. §§ 6924.101 et seq. and became effective January 1, 1986. The Ordinance is a business privilege tax imposed on the privilege of conducting business within the Township and measured by receipts from transactions attributable to business activity in the Township.

Section 201. Definitions.

Words used in the Ordinance and/or these Regulations, but not defined in the Ordinance, the Regulations, by state statute, or by the Pennsylvania judiciary, will be interpreted using the common and ordinary meaning afforded to such words in a local tax context.

As used in these Regulations:

“**Agent**” is a Person with the legal authority to act on behalf of another, called a Principal.

“**Assessment**” means the determination by Exeter Township, its agents or administrators, of an amount of tax principal, penalty, interest or underpayment determined to be due from a Taxpayer.

“**Allocation**” of Gross Receipts, is the calculation of a share of total Gross Receipts for a particular Base of Operations when more than one Base of Operations exists.

“**Apportionment**” of Gross Receipts, is the calculation of a share of Gross Receipts to be included in the tax base, resulting from the performance of services outside Pennsylvania, by or in conjunction with a Base of Operations with substantial nexus with Exeter Township. See Section 207 of these Regulations regarding *Interstate Commerce* for Apportionment formula and applicability.

“**Attribution**” is the process of specifically identifying Gross Receipts directly or indirectly connected to a particular Base of Operations of the Taxpayer.

“**Base of Operations**” is a physical location used by a Taxpayer to conduct significant Business Activities. Examples of significant Business Activities include:

1. Providing workers with a place to work.
2. Providing a base from which operations are managed, directed or controlled.
3. Storage of inventory or other business assets.
4. Administrative, executive, or marketing activities, including meetings.
5. Maintaining business records (e.g., bank statements, checkbook, tax records).
6. Business communications via telephone, fax, mail, or electronic means.
7. Utilization of business equipment or assets.

8. The holding out to others, through the use of signage, advertising, legal registry or stationery to indicate a business location.
9. Rental or sublet of real estate by a landlord or tenant.
10. Ownership of real estate within the Township for current or future development.

Whether a location constitutes a Base of Operations is a facts and circumstances test. The above list is only a partial list of the most common indicia of a Base of Operations. It is by no means a complete or exhaustive list of activities that may indicate a Base of Operations. There is a broad range of circumstances and attributes that can constitute a Base of Operations. Some businesses have many traditional indicia of an office and others have few. Some will have traditional office space with office furniture, equipment and staff, and others may have only one person, a mobile phone and a briefcase. A business with little Business Activity will have different attributes than a business with broad and extensive activities. Accordingly, whether a Base of Operations exists depends on the facts and circumstances of each business. **Regardless of how few traditional indicia of Business Activity a business may have, there is a basic presumption that a business must exist somewhere and cannot exist without any Base of Operations.**

A Taxpayer with a single location is deemed to have a Base of Operations at that location. A Taxpayer claiming that a location in the Township is not a Base of Operations, must demonstrate that another location functions as a Base of Operations. A Taxpayer claiming multiple business locations has the burden of proving that each location constitutes a Base of Operations under the definition provided above.

Home Office - An area of a personal residence is recognized as a Base of Operations if it is used for business, and no other Base of Operations is reasonably available to conduct business activities. A home office used for the convenience of an employee, owner, or other worker, does not qualify as a Base of Operations. Use of a home office is deemed to be simply for the convenience of an employee or owner, if there is another business office where the same activities are performed.

Use of a customer's or client's facility by a Taxpayer does not qualify as a Base of Operations of the Taxpayer, if the Business Activity by the Taxpayer is incidental with respect to the Taxpayer's overall Business Activity. Business Activity of sufficient size, duration, and complexity will constitute a Base of Operations of the Taxpayer.

Example 1: A consultant with no office in the Township spends fewer than 15 days working at a client's location in the Township. The client provides the consultant with a place to work and access to other facilities during the time in which the consultant is working at the client's location. The consultant also works at other client locations and at his own office.

The consultant does not have a Base of Operations at his client's location because the activity in the Township lacks sufficient size, duration and complexity.

Example 2: A property management firm headquartered outside the Township manages a building located in the Township under a one-year service contract. One or more employees of the management firm provide maintenance and administrative services, on a daily basis, and exclusively at the building in the Township. The building owner provides office space and a maintenance facility for the use of the property management firm's employees.

The property management firm has a Base of Operations in the Township because the Business Activity is of sufficient size, duration, and complexity.

Commercial and/or rental real estate located in the Township constitutes a Base of Operations of the owner, of the lessee, and of the operator.

The ownership of real estate within the Township for current or future development constitutes a Base of Operations in the Township.

Example: A developer with no office in the Township owns land in the Township. The land is eventually developed and homes are erected and sold.

The developer has a Base of Operations in the Township. This is so whether the developer performs the construction or subcontracts the construction to another entity.

A contractor or subcontractor with offices in the Township has a Base of Operations in the Township. A contractor or subcontractor with no office in the Township will be deemed to have a Base of Operations in the Township if its activity has sufficient size, duration and complexity.

Example: A builder whose office is located outside of the Township is contracted by a developer who owns property in the Township to build one single-family custom home. The contractor does not set up any type of construction trailer, comes into the Township, performs his services and then leaves on a daily basis. The construction project lasts three months.

The builder has a Base of Operations in the Township since the activity has sufficient size, duration and complexity.

“Broker” in general, is one who acts as an intermediate negotiator between parties to a transaction, and in a sense is the Agent of both parties. The determination of who is a Broker is fact specific. In industries that require a specific license to act as a broker, Broker is defined by the requirements for the specific license.

“Business Activity” means any significant participation, by a Person, in efforts to offer a service or sale to another, or to engage in commercial transactions.

“Capital Asset” is a type of long-term asset that is not easily sold in the normal course of business for cash and is generally owned for its role in contributing to the ability to generate profit. Generally, it is expected that the benefits gained from the asset will extend beyond a time span of one year.

The term Capital Asset shall not include: (a) stock in trade of the Taxpayer or other property of a kind that would properly be included in the inventory of the Taxpayer if on hand at the close of the taxable year; (b) property held primarily for sale to customers in the ordinary course of the Taxpayer’s trade or business; (c) a note or account receivable acquired in the ordinary course of trade or business for services rendered or from the sale of stock in trade or property held for sale in the ordinary course of business; (d) a copyright, a literary, musical or artistic composition, a letter or memorandum, or similar property (but not a patent or invention) held by the Taxpayer who created it, or by one whose basis in the property is determined by reference to the basis of the one who created it, or in the case of a letter, memorandum or similar property, a Taxpayer for whom such property was prepared or produced; (e) commodities derivative financial instruments held by commodities derivatives dealers; (f) hedging transactions entered into in the normal course of the Taxpayer’s business; and (g) supplies of a type regularly used or consumed by the Taxpayer in the ordinary course of business.

“Commonwealth” means the Commonwealth of Pennsylvania.

“Date of Overpayment” in the context of the requirement for the Township to pay interest on overpayments means the later of the date paid or the date the tax is deemed to have been overpaid as follows: (1) an overpayment made before the last day prescribed for payment shall be deemed to have been paid on the last day; (2) 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; (3) any amount shown not to be due on an amended return shall be deemed to have been overpaid 60 days following the date of the filing of the amended return.

“Date of Resolution” in the context of the requirement for the Township to pay interest on overpayments means the date the overpayment is refunded or credited as follows: (1) for a cash refund, a date preceding the date of the refund check by not more than 30 days; (2) for a credit for an overpayment: (i) the date of the Tax Administrator’s 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 occurs first.

“Exempt from Tax” or “Exempt” refers to the status of Persons not subject to the Township’s Business Privilege Tax under the laws of the Commonwealth of Pennsylvania, for example, Institutions of Purely Public Charity, Government Entities, or manufacturers with respect to specific Manufacturing operations. (See Section 205 of these Regulations.) Any Person claiming exemption from tax has the burden to demonstrate his legal right to such exemption.

“Exclusion” refers to certain receipts excluded from Gross Receipts and not subject to tax as provided by state law, Resolution, or these Regulations. Any Person claiming an Exclusion has the burden to demonstrate his legal right to such Exclusion.

“Gross Receipts” means the gross consideration credited or received, such as cash, credits, or property of any kind or nature, in both cash and credit transactions by reason of any sale made, service rendered (including labor and any materials employed in or becoming part of the service), operation of any restaurant or other place where food, drink and refreshments are served, or commercial or business transactions in connection with any business, trade, occupation or profession. The term Gross Receipts is synonymous with “Gross Volume of Business” and the definition is the same.

“Gross Volume of Business” is synonymous with the definition of Gross Receipts, above. The phrase “Gross Volume of Business transacted within the territorial limits of the Township” means Gross Receipts connected with Business Activity occurring within the Township or attributable to a Base of Operation in the Township.

“Manufacturing” consists of the application of labor and skill to material whereby the original article or raw material is changed into a new, different and useful article. Whether an article is a manufactured product depends upon whether it has gone through a substantial transformation in form, qualities and adaptability in use from the original material, so that a new article or creation has emerged. See Section 205(F) of these Regulations.

“Person” means any individual, partnership, limited partnership, association, corporation, limited liability company, estate, trust, trustee, fiduciary or any other legally recognized entity, except such as are wholly exempt from taxation under the Act of December 31, 1965, P.L. 1257, as amended (Act 511 of 1965) and the Institutions of Purely Public Charity Act (Act 55).

“Principal” is a Person who has permitted or directed another (i.e., an Agent) to act for his benefit and subject to his direction and control.

“Retailer” means any person who is a dealer in or vendor of goods, wares and merchandise, who is not a Wholesale Dealer.

“Sale” means the passing, transferring, conveying or assignment of ownership of tangible or real property from the seller to the buyer for a price.

“Service” means performance of a duty or labor for a consideration, or any act or instance of assisting, helping or benefiting another for a consideration.

“Tax” means the Business Privilege Tax levied by the Township.

“Tax Administrator” means the person or entity appointed or designated by the Board of Supervisors of Exeter Township to administer and collect the Tax.

“Tax-exempt nonprofit corporation or organization” is an institution that qualifies as a Pennsylvania Purely Public Charity. See Section 205(E) of these Regulations.

“Taxpayer” means a person subject to the Tax. In a case where the Township is seeking to determine whether a person is subject to Tax, the term “Taxpayer” also includes such a person.

“Transacted” means any performance of activities by a person in connection with a business purpose. A person engaging in business activities is deemed to be transacting business.

Example: A company has a business office in the Township and therefore exercises the privilege of doing business in the Township and is taxable. Activities at the office mainly involve corporate governance, human resources, information technology and finance. No sales of products, or customer services, are completed at this office. The company has no customers located in the Township.

Although no sales of products are completed at the office in the Township and no customers are located in the Township, the company is still transacting business in the Township by engaging in business activities and therefore has receipts that must be included in the tax base. The receipts from the business activities in the Township may be derived by allocation. See Section 206 of these Regulations.

“Township” means the Township of Exeter, in Berks County, Pennsylvania, a political subdivision of the Commonwealth of Pennsylvania.

“Whole Volume of Business” is synonymous with the definition of Gross Receipts, above.

“Wholesale Dealer” means any person who sells to dealers in or vendors of goods, wares and merchandise and to no other persons. A Wholesale Dealer sells to persons who purchase from Wholesale Dealer for the purpose of reselling the product in the same condition in which it is purchased.

Section 202. Who Must File a Return.

Every Person who has engaged in, conducted, exercised or carried on Business Activity connected to a Base of Operations within the Township must file a Business Privilege Tax Return, depending upon the nature of the business. A tax return must be filed whether or not tax is due. Tax returns are filed at the business entity level. In the case of a partnership, for example, the partnership entity, rather than the individual partners, should file the tax return and pay any tax due.

Section 203. Subject and Imposition of Tax.

The Business Privilege Tax is levied upon the privilege of doing business in the Township. A Person exercises the privilege of doing business by engaging in any commercial transaction or Business Activity in the Township. The Ordinance does not require that a Person have a Base of Operations in the Township in order to be subject to tax; however, for ease of administration, the Township considers any entity with a Base of Operations in the Township to be subject to tax.

Section 204. Base and Rates of Tax.

A. Tax Base. The tax is based on Gross Volume of Business also known as Gross Receipts attributable or allocable to doing business in the Township. Receipts from certain activities are excluded or partially excluded from taxation, see Section 205 (*Exemptions and Exclusions*) and Section 207 (*Interstate Commerce*).

B. Tax Rates. The Business Privilege Tax rate is 1.5 mills (\$1.50 per \$1,000 of Gross Receipts) except that the rate on Gross Receipts from Wholesale transactions is 1.0 mill (\$1.00 per \$1,000 on wholesale Gross Receipts).

Section 205. Exemptions and Exclusions.

Any Person claiming exemption from tax or claiming an exclusion from Gross Receipts has the burden to demonstrate his legal right to such exemption or exclusion. A Taxpayer must disclose with its tax return its total Gross Receipts and then itemize any claimed exclusions and exemptions, attaching documentation to support the claimed Exclusion.

A. State Preemption. Persons with Gross Receipts from activity that has been judicially determined to be preempted by the Commonwealth of Pennsylvania may exclude receipts from such activity from the tax base. To date, local taxation has been preempted by the Commonwealth only as to the banking industry, the sale of insurance contracts subject to the Pennsylvania gross premiums tax, the alcoholic beverage industry and harness racing. Preemption has been judicially determined not to exist as to the legal profession, real estate, nursing homes, and the securities industry.

Important Note: Preemption does not relieve a Taxpayer from all municipal taxation. Gross Receipts that are unrelated to the aspect of Business Activities for which local taxation has been preempted by the Commonwealth remain subject to tax by the Township. Taxable activity does not lose its character as such merely through association with exempt activity.

B. Duplicate State Tax. Where the Commonwealth imposes a tax on the same subject matter as is taxed by the Township, and the Commonwealth tax is measured by the same Gross Receipts sought to be taxed by the Township, the Township is prohibited from taxing the same subject and receipts. Where the subject and measure of the Township tax is not identical to the subject and measure of the Commonwealth Tax, there is no duplication of the state tax and

the Township's Tax is not prohibited. Similarly, where the Township imposes two different taxes that are not identical in subject or measure, a Taxpayer is subject to both taxes.

Example: A developer is in the business of building and selling single-family residential homes in the Township. The developer pays Realty Transfer Tax on the sale of the homes and also pays a Business Privilege Tax based on its Gross Receipts. The developer's Gross Receipts are equal to the gross sales prices of its homes.

The developer must pay both taxes. The Township's Business Privilege Tax is imposed on the privilege of having a business in the Township, and is measured by all of the Taxpayer's Gross Receipts. The Realty Transfer Tax is imposed on the transfer of real estate and/or recordation of the deed and is measured only by the gross sales price. Although gross sales price and Gross Receipts in the case of the developer may be equal amounts, neither the subject, nor the measure, of the two taxes is the same. Accordingly, the developer has not been subject to "double taxation" and must pay both taxes.

C. Governmental Entities. Agencies of the government of the United States, the various states, and the Commonwealth, and any political subdivision thereof, are not subject to the Tax.

D. Utilities. State law prohibits taxation with respect to certain public utility receipts. Gross receipts from utility service of a taxpayer who constitutes a "public utility" as that term is defined by the Public Utility Code, and whose rates of service are fixed and regulated by the Pennsylvania Public Utility Commission are exempt from tax. Gross receipts from the utility service of a taxpayer whose rates of service are not fixed by and regulated by the Pennsylvania Public Utility Commission are not exempt from tax. Where a taxpayer has receipts from utility services some of which service rates are fixed by the Pennsylvania Public Utility Commission and some of which service rates are not fixed by the Pennsylvania Public Utility Commission, only those receipts from the rendering of services with rates fixed by the Pennsylvania Public Utility Commission are exempt from tax, even if the non-fixed rate services are regulated by the Pennsylvania Public Utility Commission.

A Person claiming exemption as a Pennsylvania Public Utility must provide documentation sufficient to establish its entitlement to such exclusion including, but not limited to, certificates of public convenience, registration certificates, and copies of Assessment Reports showing gross intrastate operating revenues.

E. Tax-Exempt Nonprofit Corporations or Organizations. A tax-exempt nonprofit corporation or organization is an institution that qualifies as a Pennsylvania Purely Public Charity. To qualify, an organization must pass all parts of the following five-part test.

The institution must:

1. Advance a charitable purpose (requires I.R.C. Sec. 501(c)(3) status);

2. Operate entirely free from private profit motive;
3. Donate or render gratuitously a substantial portion of its services;
4. Benefit legitimate subjects of charity; and
5. Relieve the government of some of its burden.

The exemption for such Purely Public Charities is limited to activities connected to the organization's charitable purpose. The exemption does not apply to activities competing commercially with any Person subject to the tax.

Example 1: ABC Church meets the five-part test of a Purely Public Charity and is exempt from the Business Privilege Tax. However, ABC Church has a large hall that is rented to parishioners and/or to non-parishioners for receptions or parties.

The Gross Receipts from the rental activities are subject to Tax because the rental activities are considered unrelated to the church's charitable purpose. The Gross Receipts are also subject to tax on the grounds that the rental activities compete with other businesses that are subject to the tax.

Example 2: A hospital operates a thrift store for the sale of used clothing. The operation of the thrift store is considered to be unrelated to the hospital's charitable purpose of healthcare. The hospital is required to report the receipts from the thrift store operation on its IRS Form 990T (unrelated business income).

The hospital's Gross Receipts from the thrift store operation are subject to tax.

Receipts generated by a Taxpayer from sales to religious, charitable, educational, governmental, or other entities that are exempt, are not excluded from taxable Gross Receipts.

F. Manufacturers, Producers, and Processors of By-Products of Manufacture. Receipts generated by engaging in the following activities (described more fully below) are not subject to the tax: (i) manufacturing, (ii) producing, and (iii) processing of by-products of manufacturing.

1. Manufacturing. Manufacturing consists of the application of labor and skill to material whereby the original article is changed into a new, different and useful article. Whether or not an article is a manufactured product depends upon whether or not it has gone through a substantial transformation in form, qualities and adaptability in use from the original material, so that a new article or creation has emerged.

Whether an activity constitutes Manufacturing for purposes of the Tax depends upon the facts involved and each question is reviewed on a case-by-case basis. Pennsylvania Courts have held that for purposes of local taxes, Manufacturing includes commercial bookbinding, production of apparel, lithography, commercial printing, oil refining, and steel milling. The

Courts have determined that Manufacturing does not include: radio and television broadcasting; steel annealing and galvanizing; commercial illustration; work product that is primarily intellectual or clerical in nature (e.g., work of an attorney, architect, computer software developer/engineer, etc.); scrap metal bundling; dyeing and finishing of cloth; purification through pasteurization, filtration and testing for bacteria and impurities; the preparation of potato salad, cole slaw, bread filling, and similar examples of “cooking;” adding water to concentrated juice slurry or powdered drink mix to make a finished product; and printing designs and wording on ready-made clothing.

Whether a particular activity qualifies as “manufacturing” or “processing” under the provisions of the Pennsylvania Capital Stock and Franchise Tax is not dispositive in determining whether receipts are excludable for purposes of the Township Tax.

2. Producing. The production, preparation or processing of natural resources or farm products (by manufacturers, producers, and farmers with respect to the goods, articles and products of their own manufacture, production or growth) is not subject to the Tax.

Example: Taxpayer owns an organically grown vegetable farm and sells to a specialty grocery store.

Taxpayer’s Gross Receipts are excluded from the Tax.

3. Processing by-products of manufacturing. By-products of manufacturing consist of secondary or additional products produced in addition to a principal product. Processing of by-products is not taxable activity, whether performed by the original manufacturer or by others.

Example 1: Taxpayer takes molten slag, a waste product discarded by a steel manufacturer, and subjects it to a process that enables the iron component to be separated and sold back to the steel manufacturer.

Taxpayer’s activity of processing by-products of manufacturing is not subject to the tax.

Example 2: Taxpayer is in the business of annealing and galvanizing rolls of steel thereby making the steel more malleable.

Taxpayer’s activity is not manufacturing since no “new” product is created; nor is it “processing of a by-product of manufacturing” because rolls of steel are not secondary or additional products, but are themselves the principal product of the original manufacturer.

Receipts excludable under this section are excluded whether the product is manufactured, produced or processed within or outside of the Township.

Example: Taxpayer manufactures computer equipment in New York. It then leases or sells the equipment to customers within the Township.

Receipts from sale or lease of equipment by the manufacturer thereof are not subject to the tax.

A manufacturer's receipts from activities other than Manufacturing are not excluded.

Example: Twenty (20) percent of the Gross Receipts realized by Taxpayer, a manufacturer of small engine parts, are generated by providing product maintenance services.

Receipts from such services are not excluded.

G. Receipts Excluded From Gross Receipts (Exclusions). State law and/or the Township's Ordinance provide that the following specified receipts are excluded in the computation of the Tax.

1. Discounts allowed to purchasers as cash discounts for prompt payment of bills.
2. Charges advanced by a Taxpayer for freight-out, delivery or other transportation for the purchaser in accordance with the terms of a contract of sale of goods, wares or merchandise..
3. Amounts received upon the sale of an article of personal property that was acquired by the Taxpayer as a trade-in to the extent that the Gross Receipts in the sale of the article taken in trade does not exceed the amount of trade-in allowance made in acquiring such article.
4. Refunds, credits or allowances given to a purchaser on account of defects in goods sold or merchandise returned.
5. Exchanges between sellers of identical goods, but not to the extent of any additional cash payment accompanying the exchange.
6. Sales of merchandise to other sellers in the same line where the seller transfers the title or possession at the same price for which the seller acquired the merchandise.
7. Transfers between one department, branch or division of a corporation or other business entity of goods, wares and merchandise to another department, branch or division of the same corporation or business entity and which are recorded on the books to reflect such interdepartmental transactions.
8. Taxes imposed by the United States of America or by the Commonwealth of Pennsylvania upon third persons (as opposed to taxes imposed on Taxpayer) and collected

from such third persons by Taxpayer as Agent for the United States of America or the Commonwealth of Pennsylvania, such as sales tax. Excise, franchise, and other taxes imposed by the United States of America or Commonwealth of Pennsylvania upon Taxpayer may not be excluded.

Example: A Taxpayer operates a full-service gasoline station and convenience store in the Township. Taxpayer charges and remits to the Commonwealth sales tax on its automobile repair services, as well as on the sale of food and beverages. Taxpayer pays Pennsylvania Capital Stock Tax on its revenue.

Sales tax that the Taxpayer collects on behalf of the Commonwealth may be excluded from Gross Receipts. Franchise and excise taxes on gasoline that are imposed on the gasoline manufacturer and are shown at the gasoline pumps are not excluded, since such excise and franchise taxes on gasoline are not imposed upon Taxpayer's customers, Taxpayer does not collect and remitted such taxes to the Commonwealth, and Taxpayer is not charged with the duty of collecting and remitting such taxes. Further, Taxpayer may not exclude the amount of Pennsylvania Capital Stock Tax paid from its Gross Receipts.

Important Note: The Business Privilege Tax Resolution excludes from Gross Receipts certain commissions between Brokers. The Pennsylvania Courts have determined that this type of broker exclusion violates the Uniformity requirement, and is therefore unconstitutional in Pennsylvania. Consequently, the invalid provision is severed in accordance with the savings provision of the Resolution, and the broker exclusion is no longer permitted.

Section 206. Determination of Gross Receipts; Attribution, Allocation and Apportionment of Gross Receipts.

Generally, in determining the tax base, the attribution or allocation of receipts among multiple Bases of Operations, and the apportionment of receipts with interstate characteristics, must fairly reflect the Business Activity connected to a Base of Operations in the Township and avoid the possibility of double taxation.

A. Attribution. Attribution is the process of specifically identifying Gross Receipts directly or indirectly connected to a particular Base of Operations of the Taxpayer.

1. For Taxpayers with a sole business Base of Operations, 100% of Gross Receipts will be attributed to that single business location. (Interstate Gross Receipts are to be apportioned in accordance with Section 207 of these Regulations). Receipts cannot be attributed to job sites, or customer or subcontractor locations that do not qualify as a Base of Operations of the Taxpayer.

2. For Taxpayers with multiple Bases of Operations, Gross Receipts resulting

from Business Activity managed, controlled or directed from a Base of Operations are attributed to that Base of Operations. Receipts will be considered attributable to a Base of Operations in the Township if any significant aspect of the transaction occurs or arises out of that Base of Operations in the Township. Generally, receipts paid by customers to a particular Base of Operations will be attributed to that Base of Operations. A Taxpayer with more than one Base of Operations must maintain accounting records to support attribution of receipts to the various business locations.

Example 1: A plumbing contractor has a single business location in Exeter Township. He offers services to customers in numerous surrounding municipalities.

100% of his Gross Receipts are attributed to his Base of Operations within the Township because all work is managed, directed and controlled from his sole business location.

Example 2: An engineering firm has two offices; one in Exeter Township and another in the City of Reading. The firm separately accounts for revenues and expenses for each location.

Gross Receipts separately identified for the location within Exeter Township are attributed to the Township. Gross Receipts attributed to the Reading Base of Operations are excluded from the Township tax base, provided no part of the Reading activity is managed, directed or controlled from the Township office.

3. Gross Receipts must be determined through Attribution if possible. If determination of Gross Receipts through Attribution is not possible, Gross Receipts are determined through Allocation. If Attribution of receipts under this section does not accurately or fairly reflect a Taxpayer's activity connected to a Base of Operations in the Township, the Administrator may determine Gross Receipts using the Allocation or Apportionment formulas.

When it is impossible or impractical to identify a specific stream of revenue for the purpose of attributing gross receipts to a particular Base of Operations, gross receipts will be determined under the Allocation formula provided in paragraph B., below.

B. Allocation. Allocation is the calculation of a share of total Gross Receipts for a particular Base of Operations when Taxpayer has more than one Base of Operations in Pennsylvania and is unable to determine Gross Receipts through Attribution. The Allocation formula is based on two factors: property and payroll.

1. Property Factor: The numerator of the property factor is the value of the tangible personal property and real property owned or leased and situated within Exeter Township and the denominator of the property factor is the value of tangible personal property and real property owned or leased and situated at all of Taxpayer's Bases of Operations in

Pennsylvania. For purposes of this calculation, the value of leased property is eight (8) times the annual rental.

2. Payroll Factor: The numerator of the payroll factor is payroll for workers connected with the office located in Exeter Township and the denominator of the payroll factor is payroll for workers connected with all of Taxpayer's Bases of Operation in Pennsylvania. For the purpose of computing the payroll factor, other forms of compensation must be included when relevant. Other forms of compensation may include: self-employment income of a proprietor or a single member of a limited liability company, an active partner's share of partnership income, an active member's share of the income of a limited liability company, or an active shareholder's ordinary income from an "S" corporation.

The Property Factor and Payroll Factor are averaged to determine the **Allocation Factor**. Gross Receipts to be allocated to the Base of Operations in Exeter Township are determined by multiplying Taxpayer's total Gross Receipts by the Allocation Factor.

Example 1: A law firm is based in Exeter Township and has a second office located in West Chester (Chester County, PA). The accounting system does not segregate receipts by location. Gross Receipts total \$1,225,000 for the year. Total payroll and partners' compensation is \$860,000 and total property owned (and annual rent * 8) is \$1,150,000. Payroll and partners' compensation for workers based in the Township is \$570,000 and property and annual rent (* 8) in the Township is \$862,500.

The Allocation of Gross Receipts to the Exeter Township office is as follows:

Property Factor = \$862,500/\$1,150,000 = 75%

Payroll Factor = \$570,000/\$860,000 = 66.3%

Allocation Factor = average of 75% and 66.3% = 70.65%

Total Gross Receipts	\$1,225,000
Allocation Factor	* 70.65%
TOWNSHIP Receipts	\$865,462.50

Example 2: A Taxpayer operates nine auto centers throughout Pennsylvania. Each location sells parts and accessories and provides auto repair services. None of the auto centers is located in the Township. None of the auto centers is located in a municipality that imposes a business privilege and/or mercantile gross receipts tax. Business activities at Taxpayer's location in the Township include executive and administrative services, corporate governance, finance, information technology, human resources, and marketing to support the operations at the nine auto centers. Taxpayer's office in the Township constitutes a Base of Operations for Business Privilege Tax purposes. No customer sales or services occur in the Township. Total sales and service revenue for all stores is \$12,400,000. The Taxpayer's total payroll is \$3,800,000. Payroll for workers based at the office in

Exeter Township is \$1,900,000. Total property, (inventory and fixed assets) is \$2,700,000. Annual rent expense for all stores and the main office totals \$840,000. Property at the office in Exeter Township consists of fixed assets of \$140,000, and the annual rent is \$180,000.

The Allocation of Gross Receipts to Taxpayer's Base of Operations in Exeter Township is as follows:

Property Factor = \$1,580,000*/\$9,420,000 = 16.7%**

Payroll Factor = \$1,900,000/\$3,800,000 = 50.0%

Allocation Factor = 33.4% (Avg. of 16.7% and 50%)

Total Gross Receipts	\$12,400,000
Allocation Factor	<u>33.4%</u>
Gross Receipts Allocated to TOWNSHIP	\$ 4,141,600

* Township property (\$140,000) + Township Rent X 8 (\$1,440,000)

**Total Property (\$2,700,000) + Total Rent X 8 (\$6,720,000)

Example 3: Same facts as Example 2, except two of the Auto Centers are located in municipalities that impose a gross receipts tax. The Taxpayer correctly files annual returns and pays the tax based on \$2,300,000 of gross receipts directly attributed to those stores. In order to avoid the potential for double-taxation those receipts are excluded from the allocation calculation as follows:

Total Gross Receipts	\$12,400,000
Less: Gross Receipts Taxed Elsewhere in Pa.	<u>-2,300,000</u>
Gross Receipts to be Allocated	10,100,000
Allocation Factor	<u>33.4%</u>
Gross Receipts Allocated to Exeter Township	\$3,373,400

3. The Administrator may authorize the use of another objective and measurable basis of Allocation, such as a single factor based on payroll, when unusual circumstances may result in an Allocation that does not fairly reflect the activity connected to a Base of Operations in the Township. In such circumstances, the Taxpayer must request authorization in writing to use a method of Allocation other than as provided for herein and such authorization is prospective in nature.

C. **Apportionment.** Apportionment of Gross Receipts is the calculation of a share of Gross Receipts to be included in the tax base, resulting from interstate activity, by or in conjunction with a Base of Operations in Exeter Township. See Section 207 of these Regulations regarding *Interstate Commerce* for Apportionment formula and applicability.

D. Taxpayers Subject to the Business Privilege Taxes of Other Municipalities. In order to avoid the possibility of a Taxpayer being subject to a double privilege tax, the Township will allow a Taxpayer to exclude receipts generated in another jurisdiction **if** (1) the Taxpayer is properly subject to the gross receipts privilege tax in that jurisdiction **and** (2) the Taxpayer actually pays a business privilege (gross receipts) tax to that other jurisdiction on 100% of those receipts, and provides documentation evidencing such payment.

Section 207. Interstate Commerce.

A. Gross Receipts resulting from sales or services with interstate characteristics are includable in the tax base on an apportioned basis. Transactions with interstate characteristics include the performance of services by a Taxpayer outside Pennsylvania and the sale and delivery of goods to a non-Pennsylvania buyer. The sale of interstate passenger tickets is considered to have interstate characteristics.

B. Apportionment of Gross Receipts will be made under the following formula:

Total Gross Receipts	*	Apportionment Factor	=	Gross Receipts Apportioned to Pennsylvania
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The Apportionment Factor shall be the product of averaging the total of the following percentages:

1. Wages, salaries, commissions, and other compensation in Pennsylvania, as a percentage of total wages, salaries, commissions and other compensation.

Note: For the purpose of computing the payroll factor, other forms of compensation must be included when relevant. Other forms of compensation may include: self-employment income of a proprietor or a single member of a limited liability company, an active partner’s share of partnership income, an active member’s share of the income of a limited liability company, or an active shareholder’s ordinary income from an “S” corporation.

2. Value of the tangible personal property and real property owned or leased and situated within Pennsylvania as a percentage of total tangible personal and real property owned or leased. For purposes of this calculation, the value of leased property is eight (8) times the annual rental.

3. Gross Receipts from Pennsylvania sales and/or services, as a percentage of total Gross Receipts from sales and/or services. Pennsylvania gross receipts include sales to customers located in Pennsylvania and sales delivered to a Pennsylvania address, and/or gross receipts from services rendered within Pennsylvania, plus other income directly or indirectly related to Pennsylvania business activities.

C. For Taxpayers whose only Pennsylvania Base of Operations is located in the Township, Gross Receipts apportioned to Pennsylvania are entirely included in the tax base for Township Business Privilege Tax purposes. For Taxpayers with more than one Base of Operations in Pennsylvania, Gross Receipts apportioned to Pennsylvania may be further allocated. Refer to Section 206 of these Regulations for provisions governing Attribution or Allocation of receipts between or among multiple Pennsylvania locations.

Example:

Example 1. AutoGo is a business headquartered in Tupelo, Mississippi. It operates 27 auto rental centers and 19 used car centers throughout the country. Three rental centers and two used car centers are in Pennsylvania. Regional operations are managed through five District Offices. AutoGo's only Pennsylvania District Office is its Mid-Atlantic District Office located in the Township. One of its rental centers is also in the Township. The land and buildings for all offices, rental centers and used car centers are leased from landlords.

AutoGo's gross receipts with interstate characteristics are subject to apportionment as follows:

Salaries and wages for workers based at the three Pennsylvania rental centers, the two Pennsylvania used car centers, and the Pennsylvania District Office totals \$6 million. Total salaries and wages for AutoGo is \$30 million.

The Pennsylvania Payroll Factor = 20% (\$6M / \$30M).

AutoGo's Pennsylvania inventory and fixed assets total \$3.2 million. Annual rents on the Pennsylvania rental centers and used car centers, and the District Office in Pennsylvania total \$600,000. AutoGo's total inventory and fixed assets is \$16 million, and its total rent paid on leased property is \$3 million.

The Pennsylvania Property Factor = 20% (\$8M* / \$40M)**

* Penna. Property = \$3.2M + (\$600K X 8) = \$3.2M + \$4.8M = \$8M

** Total Property = \$16M + (\$3M X 8) = \$16M + \$24M = \$40M

AutoGo's Revenue from Pennsylvania locations and from sales or rentals to Pennsylvania customers totaled \$11.2 million. AutoGo's total revenue was \$80 million.

The Pennsylvania Sales Factor = 14% (\$11.2M / \$80M)

The Pennsylvania Apportionment Factor = 18% (20%+20%+14%= 54%/3)

Total Gross Receipts	\$80,000,000
Pennsylvania Apportionment Factor	<u>18%</u>
Gross Receipts Apportioned to Pennsylvania	<u>\$14,400,000</u>

Because AutoGo has multiple Bases of Operations in Pennsylvania, Gross Receipts Apportioned to Pennsylvania may be further allocated in accordance with Section 206 of the Regulations, as follows:

Property within the Township consists of inventory and fixed assets totaling \$960,000. Annual rent on the District Office and rental center in Exeter Township totaled \$280,000.

Total Pennsylvania Property as calculated above is \$8 million.

The Property Allocation Factor = 40% (\$3.2M* / \$8M)

* Township property = \$960K + (\$280K X 8) = \$3.2M

Salaries and Wages for the workers at the rental center and District Office in the Township totaled \$3.6 million. Total Pennsylvania payroll is \$6 million.

The Payroll Allocation Factor = 60% (\$3.6M / \$6M)

The Exeter Township Allocation factor = 50% (40%+60%=100% / 2)

Gross Receipts Apportioned to Pennsylvania	\$14,400,000
Allocation Factor	<u>50%</u>
Gross Receipts Allocated to Exeter Township	<u>\$ 7,200,000</u>

Note: The Administrator may authorize unequal weighting of the three factors when unusual circumstances exist such that a straight average results in an apportionment that does not fairly reflect the activity connected to a Base of Operations in the Township. In such circumstances, the Taxpayer must request authorization in writing to use an unequal weighting of the factors and the Township or Administrator, in its sole discretion, may grant or deny such authorization in writing. In no event shall any one of the factors be weighted less than 20 percent.

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**ARTICLE III
PARTICULAR BUSINESSES OR TRANSACTIONS**

Section 300. General Applicability.

Gross Volume of Business or Gross Receipts transacted within the territorial limits of the Township means Gross Receipts connected with Business Activity occurring within the Township or attributable to a Base of Operation in the Township. For business to be considered transacted within the territorial limits of the Township, it must have a logical nexus to the Business Activity in the Township.

Gross Receipts or Gross Volume of Business means the gross consideration credited or received, such as cash, credits, or property of any kind or nature, in both cash and credit transactions by reason of any sale made, service rendered (including labor and any materials employed in or becoming part of the service), operation of any restaurant or other place where food, drink and refreshments are served, or commercial or business transactions in connection with any business, trade, occupation or profession.

Gross Receipts upon which the Tax is imposed are undiminished by any costs of doing business, other than as specifically provided in these Regulations.

Gross Receipts may be measured using the cash or accrual method of accounting, provided the tax return is filed in accordance with the method of accounting used to prepare the Taxpayer's state and federal tax returns. Use of the completed-contracts or percentage-of-completion methods of accounting is prohibited for the purpose of determining Gross Receipts.

Section 301. Administrative or Executive Offices.

Maintaining a Base of Operations in the Township used for administrative or executive activities is an exercise of a business privilege and is subject to the Tax. Administrative and executive functions contribute to the management and control of business operations. Gross Receipts attributed to administrative or executive offices are determined in accordance with Section 206 of these Regulations (*Determination of Gross Receipts*).

Section 302. Affiliated Companies.

Receipts from transactions between separate entities, affiliated through direct or indirect common ownership, are included in taxable Gross Receipts.

Section 303. Receipts from Lease, Use, or Rental of Personal or Real Property.

Receipts from the lease, use, or rental of personal or real property are deemed to be receipts from the performance of services and subject to the Business Privilege Tax.

Section 304. Unearned Receipts.

A Taxpayer's Gross Receipts from investments and other non-operating sources must be included in the tax base. Unearned receipts include, but are not limited to, gain on sale of Capital Assets, interest, dividends, royalties and/or distributive share of income from any flow-through entity (e.g., partnership, "S" corporation or limited liability company).

Unearned receipts may be excluded from Gross Receipts if the Taxpayer's business activity is exempt from the Business Privilege Tax. However, if a Taxpayer has both exempt and non-exempt business activities, Gross Receipts from unearned receipts or revenue may be pro-rated.

Section 305. Accountants, Architects, Engineers, Attorneys, Consultants, and Other Persons Providing Professional Services.

Any professional who maintains a Base of Operations within the Township, except as an employee of another, is subject to tax on his/her entire Gross Receipts regardless of the location of his/her client, except for receipts allocated or apportioned in accordance with Section 206 of these Regulations.

Example 1: Physicians – A physician with a Base of Operations within Exeter Township also renders services at a hospital and other locations outside of Township.

The physician may only attribute receipts to the locations outside of the Township if he/she can clearly demonstrate that such other locations constitute Bases of Operations. If the only Base of Operations is in the Township, all Gross Receipts will be attributed to the Township.

Example 2: Attorneys (Base of Operations) – An attorney whose office is located outside of Exeter Township regularly files complaints and attends hearings in the Magisterial District Court located within Exeter Township.

The activities at the Magisterial District Court do not constitute a Base of Operations and the attorney is not subject to Tax based on his/her court activities.

Example 3: Attorneys (Gross Receipts) – An attorney-client relationship may be equivalent to an Agent-Principal relationship. Accordingly, an attorney may exclude that portion of the receipts from legal services that are distributed directly to or on behalf of a client, such as the distribution of funds recovered in a lawsuit, the sale of real estate, or the proceeds in a collection matter, but only in accordance with the provisions of Section 306 (*Principals and Agents*).

Section 306. Principals and Agents.

A. Revenue Collections by Agent. Gross Receipts from revenue received by an Agent for the account of his Principal are to be reported by the Principal. It is immaterial

whether the client or customer remits directly to the Principal or the Agent for transmittal to the Principal. The Agent is required to report 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. An Agent is also required to include in Gross Receipts other receipts not for the account of his Principal. No deduction from Gross Receipts may be taken by the Principal for commission paid to or withheld by the Agent.

B. Dollar-for-Dollar Payments and Reimbursements. Money or property received by an Agent for transmittal to a third party on behalf of his Principal or as a reimbursement of such a transmittal, is not to be reported by the Agent as Gross Receipts, *provided* the receipt and/or subsequent payment contains no commission, mark-up, or rebate. The dollar-for-dollar nature of such pass-through payments or reimbursements must be evidenced in a writing establishing the requisite agency relationship and also must be shown as a separate item on governing invoices.

Example: Taxpayer Allen (Agent) is retainer by Paul (Principal) to locate, purchase and arrange delivery of a specific work of art. The agreement provides for a 10% finder's fee and the reimbursement of certain expenses. Allen finds, inspects, and purchases the artwork in Paul's name and has it delivered. Allen is paid by Paul as follows:

Cost of Artwork	\$50,000 (remitted to seller)
Finder's Fee	\$5,000
Delivery Cost	\$1,200 (paid to delivery company)
Allen's Travel Expenses	+ <u>\$1,147</u> (actual airfare, lodging, etc.)
 TOTAL	 <u>\$57,347</u>

Allen must include the finder's fee (\$5,000) and the reimbursed travel expenses (\$1,147) in Gross Receipts for Business Privilege Tax purposes. The cost of the artwork and the delivery charge are excluded, since these costs were paid to third parties by Allen on behalf of Paul. Allen's travel expenses were incurred and paid in connection with services rendered by Allen, but these expenses were not paid to third parties on behalf of Paul and, therefore, are not excludable.

C. Factors to be Considered in Establishing an Agency Relationship. A Person will be regarded as acting as an Agent for the purpose of collecting revenue or receiving reimbursement of an expense on behalf of a Principal when all of the following conditions are met:

1. The contract or agreement between such persons clearly and legally establishes the relationship of Principal and Agent and is evidenced in writing.
2. The books and records of the Agent show the name of the Principal on whose behalf the sale is made or the expense is incurred.

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 show the amount of Gross Receipts and an itemization of commission due and/or other revenue or expenses.

D. Manufacturer's Representative. A manufacturer's representative will be taxable on his gross commissions, provided he does not take title to the property being sold. Persons who take title to the property being sold will be treated as vendors-dealers under the Ordinance. No deduction is allowed for commissions paid to independent sales representatives or subagents.

E. Agent as Employee. Income earned as an employee is not subject to the tax. Any Agent asserting status as an employee must provide a copy of federal Form W-2 and/or such other documentation as the Administrator may reasonably require to establish employment. Receipts earned by independent agents are subject to the Tax even though such persons qualify as "statutory employees" for purposes of federal income taxation.

F. Advertising and Marketing Agencies. Advertising and marketing agencies must include all Gross Receipts from consulting services and/or the development and production of marketing programs and materials. No exclusion is allowed for production costs, such as printing. Gross Receipts representing the reimbursement of advertising costs incurred by the agency on behalf of its client (Principal) may be excluded, *provided* that the reimbursement is dollar-for-dollar, and the reimbursement is separately stated at cost on the agency's invoice.

Example 1: A vendor retains a marketing agency to develop an advertising concept, design a printed flyer, and arrange for the flyer to be distributed as an insert through a newspaper publisher. The marketing agency also subcontracts the printing of the flyer as part of the engagement. The contract between the vendor and the marketing firm clearly establishes a Principal-Agent relationship and provides for a fixed fee of \$30,000 for the design, printing and placement of 450,000 flyers, plus the advertising fee paid to the newspaper at cost. The agency incurs costs for subcontracted photography (\$1,250), printing (\$4,675), and placement fees paid to the newspaper (\$18,000). The marketing agency invoices the vendor \$48,000, showing the exact cost of the placement fee on the face of the invoice.

The marketing agency may exclude the \$18,000 dollar-for-dollar reimbursement of the placement fee cost from Gross Receipts but may not exclude the photography or printing expenses.

Example 2: Same facts as Example 1, except the marketing agency takes a 15% agency discount on the placement fee, paying the newspaper \$15,300, but charges the vendor \$48,000, showing the advertising cost as \$18,000 on the invoice.

No Exclusions from Gross Receipts by the agency are allowed. No amount of the placement fee may be excluded because the reimbursement was not dollar-for-

dollar.

G. Insurance Agents, Brokers and Underwriters. 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 and subagents. Brokers and subagents are required to report as Gross Receipts the commissions received as compensation for their services. No deduction is allowed for commissions paid to solicitors, subagents, brokers, or others.

H. Real Estate Brokers and Agents. Real estate brokers and agents are required to report as Gross Receipts the commissions and fees received for services rendered in promoting the purchase, sale, rental and/or management of property for others. Gross Receipts include commissions on properties not located within Exeter Township if the transaction is handled through personnel connected to a Base of Operations in the Township. Similarly, Gross Receipts include commissions on transactions managed, controlled, or directed through a Base of Operations within Exeter Township, even though settlement is conducted at a location outside Township, because the business is considered to be transacted within the Township.

1. No deduction from Gross Receipts is allowed for commissions paid by real estate brokers to real estate agents or to other brokers except where a Principal-Agent relationship is established in accordance with this Section 306.

2. If a real estate broker takes title to real property in his own name or in a straw name and sells the property, he is required to include the gross selling price of the property as taxable Gross Receipts, undiminished by the cost of the property or other expenses.

Section 307. Other Brokers.

Brokers must include receipts passed on to other brokers except where a Principal-Agent relationship is established in accordance with Section 306.

Section 308. Persons Who Repair, Alter or Improve Tangible Personal Property.

Persons with a Base of Operations in the Township, who repair, alter, or improve tangible personal property are required to include total customer charges in Gross Receipts without deduction of materials or costs of any kind. This provision applies regardless of whether or not there is a mark-up of the costs to the customer. Gross Receipts from work performed outside the Township are included in the tax base unless they may be excluded through Attribution, Allocation or Apportionment as provided in Section 206 of these Regulations.

Section 309. Persons Erecting Buildings or Altering, Repairing, or Improving Real Property.

A contractor or subcontractor with a Base of Operations within the Township, in the business of erecting buildings, or altering, repairing or improving real property, or any other construction,

installation, or demolition work, shall include in Gross Receipts all receipts derived from the performance of such work. In the case of a general contractor, prime contractor or subcontractor, no deduction or Exclusion from Gross Receipts is allowed for amounts paid for land, materials, suppliers and/or subcontractors.

Contractors must include in Gross Receipts 100 percent of receipts from work in Pennsylvania that is connected to a Base of Operations in the Township. Gross Receipts from work performed outside of the Township may be apportioned in accordance with Section 206 of these Regulations.

No Exclusion or deduction from Gross Receipts is allowed for receipts attributed from contracts that involve the use of a job-site trailer, unless such trailer qualifies as a Base of Operations as specifically provided under Section 201 (*Definitions: Base of Operations*).

Section 310. Persons Paying Taxes to Other Municipalities.

Where a Taxpayer files a tax return and pays a business privilege or mercantile tax to another municipality, receipts reported to that municipality and upon which tax is paid may be excluded *only if* the Taxpayer has properly paid tax to said municipality. Taxpayer must provide proof of payment of taxes.

Section 311. Building Operators.

Persons operating hotels, apartment houses, boarding/rooming houses, nursing homes, eldercare facilities, offices, or commercial real property in the Township are considered to have a Base of Operations in the Township and are subject to the Business Privilege Tax. Gross Receipts include rents, management fees, expense reimbursements (including utilities, insurance and taxes), commissions, common area maintenance charges, furnishing of meals, and charges for any other services rendered, and receipts connected to any Business Activity attributable to the Base of Operations in the Township.

Persons holding real property who employ rental agents or a real estate management company to assist with the rental and/or management of the property are subject to the Tax.

Persons with a Base of Operations in the Township and operating buildings or other real property outside the Township must allocate receipts in accordance with Section 206 of these Regulations.

Section 312. Intellectual Property.

The development of intellectual property, whether for sale, use or lease, is deemed to be a service and is subject to the Business Privilege Tax. Intellectual property includes, but is not limited to, works of art, inventions, software, information systems, manuscripts and other works of authors, and other property that can be protected by patent or copyright.

Section 313. Wholesalers and Retailers.

Receipts from wholesale sales transactions are included in the Tax base but taxed at a lower rate than receipts from retail sales transactions. The Ordinance defines a Wholesale Dealer as “any person who sells to dealers in or vendors of goods, wares and merchandise and to no other persons.”

The test of whether a Person is a Wholesale Dealer/Vendor or Retail Dealer/Vendor is whether his customers buy for the purpose of reselling the product in the exact form in which it is purchased. If the Taxpayer’s customer purchases products from the Taxpayer for the purpose of reselling them in the same condition, then Taxpayer is a Wholesale Dealer/Vendor. If, however, the customer purchases products from Taxpayer for the purpose of using the product or for the purpose of incorporating the product into a different product to be sold, then the Taxpayer is a Retail Dealer/Vendor.

A Taxpayer seeking to have receipts taxed at the wholesale rate has the burden to prove that the transactions that resulted in the receipts qualify as a wholesale transaction, i.e., that the Taxpayer’s customers purchased the products for the purpose of reselling them in the same condition in which they were purchased from the Taxpayer.

Example 1: Company D is a distributor of home improvement supplies, such as light fixtures and fans. Company D sells the supplies to Home Stuff, Inc., a large home improvement store. Home Stuff, Inc. sells the supplies to homeowners.

In this scenario, Company D is considered a Wholesale Dealer and its receipts from the sale of light fixtures and fans to the home improvement store are subject to tax at the wholesale rate.

For purposes of the same transactions, Home Stuff, Inc. is considered a Retail Dealer and its receipts from the sale of the light fixtures and fans to home owners are subject to tax at the retail rate.

Example 2: Same scenario as Example 1 except that Home Stuff, Inc. sells light fixtures to a smaller boutique store that resells the light fixtures.

For purposes of this transaction, Home Stuff, Inc. is considered a Wholesale Dealer because it sells the light fixtures in the same condition as when it purchased the light fixtures from Company D and sells them to a customer who will resell them in the same condition. The receipts from this transaction will be taxed at the wholesale rate.

Example 3: Home Stuff, Inc., a home improvement store, sells lumber to a contractor who is building a home. The lumber is incorporated by the contractor into the home that is then sold to a buyer.

The lumber is not sold by the contractor to the home buyer in the same condition as it was when the contractor purchased the lumber from Home Stuff, Inc.; it has been incorporated into a home. In this scenario, Home Stuff, Inc. is considered a Retail Dealer and receipts from the sale of the lumber to the contractor are taxed at the retail rate.

**ARTICLE IV
DECLARATION AND PAYMENT OF TAX**

Section 400. Tax Returns and Computation of Tax.

- A.** Business Privilege Tax Returns are due annually on or before May 15.
- B.** Tax for the current year is based on Taxpayer's Gross Volume of Business for the previous calendar year.
- C.** Computation of Gross Volume of Business for the prior calendar year is made in the following manner:

Persons that have been in business in the Township during the entire prior calendar year must file a current year tax return on or before May 15. Gross Volume of Business to be reported on the return is the actual gross receipts for the preceding full calendar year.

Persons that began business operations in the Township during the prior calendar year must file a current year tax return on or before May 15. Gross Volume of Business to be reported on the return is computed by taking the monthly average volume of business during the prior partial calendar year and multiplying said average by 12.

Persons that commence operations in the Township subsequent to the beginning of the tax year are required to file a current year tax return within 100 days of the commencement of business. Gross Volume of Business for the tax year is computed by taking the monthly average volume of business during the first three months after commencing business in the Township and multiplying that monthly average by the number of months from the commencement of business to the end of the tax year.

Persons that go out of business or cease to do business in the Township after the commencement of the tax year, but prior to May 15 of the tax year, must file a final current year tax return on or before May 15 of the tax year. Gross Volume of Business for the tax year is calculated by taking the monthly average volume of business during the previous full calendar year and multiplying that monthly average by the number of months from January 1 of the tax year to the date within the tax year that the person went out of or ceased to do business. Persons that go out of business or cease to do business in the Township within the tax year after May 15, must file a regular tax return by May 15 and pay all tax owed, but may file a final tax return within 7 days of ceasing to do business and seek a partial refund of tax principal that was paid for the full tax year. The amount of tax to be refunded is based on the portion of the year remaining after which the person ceased to do business.

Section 401. Extension of Time for Filing Returns.

Exeter Township will recognize a valid federal extension of time to file a tax return for Business Privilege Tax purposes, and therefore will not impose a penalty for late filing, only so long as all tax is paid to the Township by the original due date for the tax return, and a copy of the federal extension is submitted on or before the original due date for the return. An extension of time to file a tax return is not an extension of time to pay tax associated with the return. No extension of time to pay tax is allowed.

Section 402. Filing to Be Complete.

Tax returns shall be completed in full and certified as true and correct by the Taxpayer. Taxpayers must attach copies of state or federal tax returns, schedules and worksheets, to support the Gross Receipts that are reported and to support any claimed exclusions or exemptions. Tax returns that omit proper supporting documentation are considered incomplete and not properly filed.

Section 403. Accounting Methods (Cash or Accrual).

The tax return may be filed on a cash or accrual basis, but the tax return must be prepared in accordance with the method of accounting used for preparation of federal and state tax returns.

Section 404. Records to be Kept.

Every Taxpayer is required to keep such books, accounts and records as will enable the filing of true and accurate declarations and returns. Such books, accounts and records shall be sufficiently complete as to enable the Administrator or his/her designee to verify the accuracy of the declarations or tax returns filed. Taxpayers shall preserve all books, accounts and records for a period of not less than six (6) years.

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**ARTICLE V
ADMINISTRATION AND ENFORCEMENT**

Section 500. Disclosure Statement of Taxpayers' Rights and Obligations.

Taxpayers are entitled to receive a written explanation of their rights and obligations with regard to any audit, appeal, enforcement, refund or collection of local taxes by Exeter Township. A copy of the Disclosure Statement may be obtained by contacting the Township Finance Director at the Township Administration Office, 610-779-5660.

Section 501. Verification of Records, Audits, Response Periods, Prior Year Returns.

The Administrator, or his designee, is authorized to examine any of the books, accounts, papers, and records of any Person or business entity who the Administrator reasonably believes has engaged in taxable activity within the Township, in order to verify the accuracy of any tax return made or, if no tax return has been made, to arrive at a reasonable assessment of the amount of tax, interest, and penalty due.

A. Minimum Time Periods for Taxpayer Response. Taxpayers shall have at least thirty (30) calendar days from the mailing date to respond to an initial request for information from the Township. The Administrator shall notify any Taxpayer from whom information is initially requested of the procedures to obtain an extension of time in which to respond, and shall grant reasonable extensions of time in which to respond for good cause shown. No action shall be taken against a Taxpayer for the tax year in question until the expiration of the response period, including extensions.

B. Inquiry as to Prior Year Returns. Except as provided below, an initial inquiry regarding a Taxpayer's compliance with the Township's Resolutions and Regulations may include taxes required to be paid or tax returns required to be filed no more than three (3) years prior to the mailing date of the notice of such inquiry. If, after the initial request, the Administrator or his/her designee determines that the Taxpayer failed to file a tax return, underreported income, or failed to pay a tax for one (1) or more of the tax periods covered by the initial request, subsequent requests for tax returns or supporting information may be made. Subsequent requests will be limited to two (2) additional years (for a total of five (5) years prior to the first date of initial inquiry), unless the Taxpayer filed no tax return or filed a fraudulent return, in which case the Township may request information for another additional year (for a total of six (6) years prior to the first date of initial inquiry). Note, however, that in the event the Administrator has sufficient information to indicate that a Taxpayer has failed to file a required tax return or pay tax that was due more than three (3) years prior to the date of the notice, an initial request is not limited to three (3) years and may include as many as six (6) years prior to the date of the initial inquiry.

Section 502. Procedures for the Conduct of Taxpayer Audits.

The following procedures shall be followed during the conduct of an audit of a Taxpayer's books and records:

A. Notice of Audit. The Taxpayer shall be notified in writing of a scheduled audit at least thirty (30) days in advance. The notice of audit shall contain the following information:

1. The tax years subject to audit;
2. The date, place, and time for the audit to be conducted;
3. A description of the information, books and records to be produced; and
4. A notice as to the availability of the disclosure statement of the Taxpayer's rights and obligations.

B. Rescheduling Audit. The Taxpayer may request that the audit be rescheduled, provided that it is rescheduled within a reasonable time generally not to exceed thirty (30) days.

C. Representation at Audit. The Taxpayer may have a representative present during the audit.

D. Use of Estimates. In the event that the information, books and records provided by the Taxpayer are not sufficient for the purpose of verifying the correct amount of tax, the Administrator is authorized by the Ordinance to ascertain the amount of tax due through the use of estimates.

E. Audit Results. In the event a Notice of Assessment is issued as a result of an audit, the Taxpayer shall be provided with a copy of the auditor's report of findings and conclusions, including the calculation of any tax, interest and/or penalty found to be due.

Section 503. Examination of Tax Return; Notice of Assessment.

A. Examination of Tax Return. The Administrator shall examine every tax return as soon after filing as practical to determine the correct amount of tax according to the filing. If the Administrator finds that the amount of tax shown on the tax return is less than the correct amount, the Administrator shall notify the Taxpayer in writing of the amount of the underpayment (deficiency) assessed. A Notice of Assessment, whether as a result of an examination of a return, as a result of an audit, or otherwise, shall be in writing and 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 Township has relied to determine that an

underpayment exists.

4. An itemization of the revisions made by the Administrator to a tax return filed by the Taxpayer that result in the determination that an underpayment exists.

If the Administrator finds that the tax that has been paid by the Taxpayer is more than the correct amount, the Administrator shall credit the overpayment against any taxes owed by the Taxpayer to the Township and shall refund the difference to the Taxpayer, unless the Taxpayer has requested that the funds be held for application to future taxes. Written notice of the application of a credit to a prior year tax delinquency shall be provided by the Administrator to the Taxpayer.

B. No Tax Return Filed. If a Taxpayer fails to file any required tax return, the Administrator may estimate from any available information, the Taxpayer's Gross Receipts and the tax due thereon, and notify the Taxpayer in writing of the amount assessed against the Taxpayer as a deficiency.

Section 504. Petition for Reassessment.

Within ninety (90) days of the date of a Notice of Assessment, the Taxpayer may make a request for reassessment by completing and submitting a Petition for Review by the Local Tax Hearing Officer that will be forwarded for decision to the appointed Local Tax Hearing Officer. See Section 512 (Taxpayer Appeals).

Section 505. Refund of Overpayment; Interest on Overpayment.

A. Taxpayer Request for Refund of Overpayment. Any Taxpayer who has made an overpayment of tax to the Township may file a written request with the Administrator for a refund or credit. A request for refund shall be made within three (3) years of the due date for filing the tax return, or one (1) year after actual payment of the tax, whichever is later. If no return (or report) is required, the request shall be made within three (3) years after the due date for payment of the tax or within one (1) year after actual payment of the tax, whichever is later. A request for refund shall not be considered complete and filed unless and until all information necessary for the Township to determine the merits of the request have been received by the Township.

1. Overpayment on tax return. For purposes of this section, a tax return filed by the Taxpayer with the Township showing an overpayment of tax shall be deemed to be a written request for a refund unless otherwise indicated on the tax return.

2. Refund request not a Petition for Review by the Hearing Officer. A request for refund under this section shall not be considered a Petition for Review by the Local Tax Hearing Officer and shall not preclude a Taxpayer from submitting a Petition for Review by Local Tax Hearing Officer. See Section 512 (Taxpayer Appeals).

3. Refund after Notice of Assessment. 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 Township within one (1) year of the date of the payment.

B. Interest on Overpayment. All overpayments of tax due to the Township shall bear simple interest from the Date of the Overpayment until the Date of Resolution as more fully described in the Local Taxpayers' Bill of Rights Act. See 53 Pa. C.S. § 8426.

1. Rate of Interest. Interest on overpayments 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."

2. Accrual of Interest. No interest shall be allowed if an overpayment is refunded (or applied against any other tax, interest or penalty due the Township) within seventy-five (75) days after the last date prescribed for filing the report of the tax liability or within seventy-five (75) days after the date the return or report of the liability due is filed, whichever is later.

3. No Interest on Overpayments of Interest and Penalty. Overpayments of interest or penalty shall not bear any interest.

C. Acceptance of Refund Check. The Taxpayer's acceptance of the Township's refund check shall not prejudice any right of the Taxpayer to claim any additional overpayment and interest thereon. Tender of a refund check by the Township shall be deemed to be acceptance of the check by the Taxpayer.

Section 506. Abatement of Certain Interest and Penalty.

A. Errors and Delays. In the case of any underpayment, the Township may abate all or any part of interest for any period for the following:

1. Any underpayment of tax finally determined to be due which is attributable in whole or in part to any error or delay by the Township in the performance of a ministerial act, provided, however, that no significant aspect of the error or delay is caused by the Taxpayer and after the Township has contacted the Taxpayer in writing with respect to the underpayment of tax finally determined to be due or payable.

2. Any payment of Tax to the extent that any error or delay in the payment is attributable to an officer, employee or agent of the Township being erroneous or dilatory in performance of a ministerial act. The Administrator shall determine what constitutes timely performance of ministerial acts.

B. Erroneous Written Advice by Township. The Township 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 Township, acting in his or her official capacity if:

1. The written advice was reasonably relied upon by the Taxpayer and was in response to specific written request of the Taxpayer; and

2. 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.

Section 507. Installment Agreements.

To facilitate collection, the Township may, in its sole discretion, enter into a written agreement with a Taxpayer to allow the Taxpayer to pay delinquent taxes, penalties and interest in installments.

A. Termination of Installment Agreement. The Township may terminate any installment agreement if: (a) information provided to the Township prior to the date of the agreement was inaccurate or incomplete, or (b) the Township believes that collection of the tax under the agreement is in jeopardy.

B. Alteration, Modification or Termination of Installment Agreement. If the Township finds that the financial condition of the Taxpayer has significantly changed, the Township may alter, modify or terminate the agreement, but only if: (a) notice of the Township's finding is provided to the Taxpayer no later than thirty (30) days prior to the date of such action; and (b) the notice contains the reasons why the Township believes a significant change has occurred.

C. Breach of Installment Agreement. The Township may alter, modify or terminate an installment agreement if the Taxpayer fails to do any of the following:

1. Pay any installment at the time the installment is due under the agreement;
2. Pay any other tax liability at the time the liability is due;
3. Provide a financial condition update as requested by the Township.

D. Prepayment Permitted. Taxpayer may prepay, in whole or in part, any tax under any agreement with the Township.

Section 508. Payment Under Protest.

The Administrator is authorized to accept "payment under protest" of the amount of tax in order for the Taxpayer to avoid liability for additional interest, penalties, and fines. Further, the Administrator may accept partial payment of any amount due without waiver of the Township's right to collect the balance due.

Section 509. Violations; Interest on Underpayment and Penalties.

A. Interest on Underpayment. If any amount of Tax imposed by the Ordinance is not paid on or before the last date prescribed for payment, interest on such amount at the rate of one and one-half percent (1½%) per month, or fraction of a month, shall be payable for the period from such last date to the date such amount is paid. Except as provided by state law, as reflected in Sections 506.A. and 506.B. (*relating to errors and delays by the Township and erroneous written advice from the Township*), interest is mandatory and cannot and will not be abated.

B. Penalty. If any amount of Tax imposed by the Ordinance is not paid on or before the last date prescribed for payment, there shall be added to the Tax for the taxable year an amount equal to 10 percent (10%) of the amount of the tax due. Except as provided by state law, as reflected in Section 506.B. (*relating to erroneous written advice from the Township*), penalty is mandatory and cannot and will not be abated.

C. Fine. Any Taxpayer (including any officer, agent, or employee thereof) who knowingly fails to remit any tax due, fails to file complete and correct reports or tax returns when due, fails to provide access to books, paper and records, or makes a false or fraudulent tax return, may be subjected to a civil fine of \$300.00 and costs of enforcement (such as attorneys' fees) for each offense.

Section 510. Confidential Nature of Tax Information.

Any information obtained by the Administrator or any official, agent or employee of the Township as a result of any audit, tax return, report, investigation, hearing or verification shall be confidential tax information and must be kept confidential by the Township, except for official purposes or as required otherwise by law.

Section 511. Dishonored Checks or Electronic Payments.

If any check or electronic payment (such as an electronic funds transfer, e-check, Automated Clearing House ("ACH") transfer, direct debit and debit cards) received in payment of taxes is returned unpaid by a financial institution, there shall be added to the tax due the sum charged for such dishonored payments established from time to time by the Township.

Section 512. Taxpayer Appeals.

A Taxpayer may appeal any assessment, determination or denial of refund of tax by filing a Petition for Review by Local Tax Hearing Officer. All Petitions shall be mailed or delivered to: Exeter Township, Attn: Township Manager, 4975 DeMoss Road, Reading, PA 19606.

Under the Local Taxpayer Bill of Rights Act, business tax appeals are not governed by the rules pertaining to practice and procedure of local agencies or judicial review of agency decisions. 53 P.S. § 8432. Therefore, a Taxpayer is not required to file an appeal to the Local Tax Hearing Officer in order to preserve its ability to defend against an action by the Township to collect an

assessment of delinquent taxes. Where a Taxpayer does file a Petition and a decision is made by the Local Tax Hearing Officer, such decision may be appealed by either party to the Court of Common Pleas for Berks County for *de novo* review.

A. Petitions for Review by Local Tax Hearing Officer. Petitions shall be in writing on a form provided by the Township of Exeter, which is available on the Township's website www.exetertownship.com, or by calling the Township Manager's office at 610-779-5660. A Petition is timely filed if the letter transmitting the Petition is postmarked by the United States Postal Service on or before the final day on which the Petition is required to be filed. If hand delivered, a Petition will be deemed to be filed on the date received in the Township Manager's office at the address shown above.

B. Contents of Petition for Review by Local Tax Hearing Officer. Petitions shall: (1) state the name, address and telephone number of the Taxpayer and Taxpayer's authorized representative (if applicable), (2) identify the tax and tax period(s) to which the Petition pertains, (3) state the amount of tax appealed and the legal basis for the appeal (*i.e.*, state how or why the assessment is incorrect; or why a refund request should have been granted), (4) provide copies of all supporting documentation and calculations, (5) state whether an oral hearing before the Hearing Officer is requested, and (6) certify under penalty of perjury that the facts in the Petition are true and correct and that the Petition is not filed for purposes of delay.

C. Deadlines for Filing Petition for Review by Local Tax Hearing Officer.

1. A Petition seeking a refund must be filed within three (3) years after the due date for filing the report, or one (1) year after actual payment of tax, whichever is later. If no report is required, the Petition shall be filed within three (3) years after the due date for payment of the tax or within one (1) year after actual payment, whichever is later.

2. A Petition seeking a reassessment of tax shall be filed within ninety (90) days of the date of the Notice of Assessment.

D. Appeals Process and Procedure. Upon receipt of a timely filed Petition for Review by Local Tax Hearing Officer, the Township shall: (a) promptly schedule a hearing if a hearing has been requested by the Taxpayer (if a hearing is not requested, the Petition will be determined on the record before the Local Tax Hearing Officer), (b) provide the Taxpayer with a Notice of Hearing (setting forth the time, date, and location of the hearing), and (c) forward the Taxpayer's Petition to the Local Tax Hearing Officer appointed by the Township. Unless the date of the hearing is agreed upon by all parties, the Township shall give at least seven (7) days written notice of the hearing to Taxpayer.

1. **Hearings.** Hearings shall be held at the Township's administration building, 4975 DeMoss Road, Reading, PA 19606. Hearings will be informal in nature and technical rules of evidence will not be applicable, except that no person may testify as to matters about which he/she does not have personal knowledge. All persons who testify shall do so under oath.

(a) **Representation.** Taxpayers may appear before the Hearing Officer with or without benefit of representation. Any person seeking to represent a Taxpayer at the hearing must first be so authorized by the Taxpayer in writing. A Taxpayer's representative need not be professionally trained, but should be familiar with the Tax Ordinance, these Regulations and the facts of the case. A Taxpayer's representative may only testify as to matters about which he/she has personal knowledge.

(b) **Presentation of Evidence.** Evidence may be submitted and considered that possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Testimony shall be under oath or affirmation, administered by the Hearing Officer. Copies or photographs of all records and other exhibits shall be provided to all parties and to the Hearing Officer. Any party may have a recording or a transcript made of the hearing at the party's expense.

(c) **Failure to Appear.** The hearing may proceed in the absence of any party who fails to appear despite notice, but the Hearing Officer's Decision shall not be based solely upon the failure of a party to appear.

2. **Local Tax Hearing Officer's Decision.** After the conclusion of the hearing, the Hearing Officer shall issue a written Decision to the parties. The Decision is considered timely issued so long as it is mailed, faxed, emailed or otherwise transmitted to the parties on or before the deadline. The deadline to issue a decision is sixty (60) days from the date of the filing of the Petition. The taxpayer may waive its right to a decision within sixty (60) days.

Section 513. Judicial Appeal.

Any person aggrieved by a Decision on a Petition for Review, who has a direct interest in the Decision, has the right to appeal to the Court of Common Pleas of Berks County, Pennsylvania for a *de novo* review.

Section 514. Construction.

If any sentence, clause, or section or part of these Regulations is, for any reason, found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, or sections or parts of these Regulations. These Regulations would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

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