

BOROUGH OF CONSHOHOCKEN
MONTGOMERY COUNTY, PENNSYLVANIA

RESOLUTION NO. 22 of 2012

WHEREAS, Borough Council of the Borough of Conshohocken has adopted Ordinance No. 5-2012 entitled "Local Taxpayer Bill of Rights" to be effective on December 19, 2012; and

WHEREAS, Ordinance No. 5-2012 requires Borough Council to establish regulations by Resolution to implement the Local Taxpayers Bill of Rights, 53 Pa.C.S. §§ 8421-8438.

NOW THEREFORE, be it **RESOLVED** and it is hereby **RESOLVED** by the Council of the Borough of Conshohocken as follows:

LOCAL TAXPAYERS BILL OF RIGHTS

I. RIGHTS OF A TAXPAYER AND THE OBLIGATION OF THE BOROUGH DURING AN AUDIT OR AN ADMINISTRATIVE REVIEW OF THE TAXPAYER'S BOOKS OR RECORDS.

A. Obligations of Borough During Audit.

1. Borough Requests for Information.

a. The Borough, its Auditor, its Solicitor, or other designated representative, is authorized to examine the books and records of any taxpayer in order to verify the accuracy of any return made, or if no return was made, to ascertain whether the tax should be imposed and, if so, the amount of the tax due.

b. The Borough may request information from a taxpayer concerning the taxpayer's compliance with Borough tax ordinances.

2. Tax Years in Question.

a. Except as otherwise provided herein, an initial inquiry by the Borough for information regarding the taxpayer's compliance with Borough tax ordinances 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 inquiry notice.

b. However, the Borough may make a subsequent request for tax returns or supporting information if, after the initial request, the Borough determines that the taxpayer has failed to file a tax return, has under-reported income or receipts, or has failed to pay a tax for one or more of the tax periods covered by the initial request.

c. In the event the Borough has sufficient information to indicate that the taxpayer has failed to file a required return or to pay a tax which was due more than three (3) years prior to the date of the notice the three-year limitation shall not apply and the Borough may request information for any such tax years.

3. Use of Federal Tax Information.

The Borough may require any taxpayer to provide copies of the taxpayer's Federal and State income tax return(s) and all other documents necessary for verification of the taxpayer's compliance status. The Borough shall require individuals to provide Federal tax returns only where the Federal tax information is reasonably necessary for the enforcement or collection of an eligible tax and the information is not available from other sources or the Pennsylvania Department of Revenue.

4. Confidentiality of Tax Information.

Any information obtained by the Borough as a result of any audit return, report, investigation, hearing or verification shall be confidential tax information, except as provided by law. However, the information on any license application shall be a public record.

B. Taxpayer Response.

1. Thirty Days to Respond. When the Borough makes an initial request for information from the taxpayer, the taxpayer shall have at least thirty (30) calendar days from the mailing date of the request to respond.

2. Extensions. Upon written application by the taxpayer submitted to the Borough (or its Auditor, if the request for information is from the Auditor) within the initial thirty-day period, and where good cause for an extension exists, the Borough shall grant an extension of time to respond for a reasonable amount of time.

3. No Action Within Response Period. The Borough will take no lawful action against the taxpayer for the tax year in question until the end of the response period, including extensions.

C. Notice of Basis of Underpayment.

1. The Borough will notify the taxpayer in writing of the basis for any underpayment that the Borough has determined to exist, including:

a. The tax period or periods for which the underpayment is asserted;

b. The amount of the underpayment detailed by tax period;

c. The legal basis upon which the Borough has relied to determine that an underpayment exists; and

d. An itemization of any revisions made by the Borough to a return or report filed by the taxpayer that results in the determination that an underpayment exists.

D. Abatement of Certain Interest and Penalty.

1. Errors and Delays.

a. In the case of an underpayment, where the Borough has contacted the taxpayer in writing with respect to the underpayment of tax finally determined to be due or payable, the Borough may abate all or any part of interest for any period if the underpayment was caused by any error or delay by the Borough in the performance of a ministerial act, provided no significant aspect of the error or delay can be attributed to the taxpayer.

b. To the extent any error or delay in the payment is attributable to an officer, employee or agent of the Borough being erroneous or dilatory in the performance of a ministerial act, the Borough may abate all or any part of interest; provided, however, that the Borough shall determine what constitutes timely performance of ministerial acts.

2. Abatement Due to Erroneous Written Advice By The Borough.

a. The Borough is not required by law to provide written advice to taxpayers. However, the Borough shall abate any portion of penalty or interest which is attributable to erroneous advice furnished to the taxpayer in writing by an officer, employee or agent of the Borough acting in his or her official capacity, in the following circumstances:

- (1) The written advice was in response to a specific written request of the taxpayer;
- (2) The taxpayer reasonably relied upon the written advice; and
- (3) 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.

b. A taxpayer should not rely on advice given which is not in writing and in response to a specific written request.

E. Application of Payments. Unless specified by the taxpayer, all voluntary payments of taxes shall be prioritized and applied, respectively, to the tax, the interest, the penalty and any other fees and charges.

F. Books and Records.

1. Books, journals, invoices, documents and other accounting records utilized by the taxpayer in the ordinary course of business must be kept in a manner which will reflect actual business operations. There must be objective criteria in these books and records, as

well as in underlying documents, such as invoices, to support the returns filed by the taxpayer. A taxpayer claiming exemptions or exclusions for any portion of gross receipts must maintain complete records which will support the validity of the claim. Such claims will be disallowed if not sufficiently proven by the taxpayer.

2. If records are not available for the entire period requested for review, the Borough may utilize whatever information or records are available to reconstruct, as accurately as possible, figures that reflect the business activity of the taxpayer for the period involved.

3. If records are not available to support the returns which were filed or which should have been filed, the taxpayer will be required to make them available to the Borough at the cost of the taxpayer.

G. Inspection and Examination. The Borough Manager, or his designated representative, is authorized to examine the books and records of any taxpayer in order to verify the accuracy of any return made, or if no return was made, to ascertain whether the tax should be imposed and, if so, the amount of the tax due.

I. Audits. The Borough Manager has the right to have a designated representative of the Borough audit any tax return and to verify its accuracy or assess its efficiency, together with penalty and interest, upon the completion of that review.

J. Installment Agreements. In order to facilitate collection, the Borough, at its discretion, may enter into a written agreement with any taxpayer under which the taxpayer is allowed to satisfy a tax liability in installment payments. The Borough, at its election, may modify or terminate any installment agreement where:

1. The taxpayer has provided inaccurate or incomplete information;
2. The Borough believes that collection of the tax under the agreement is in jeopardy;
3. The Borough finds that the financial condition of the taxpayer has significantly changed and has given thirty (30) days' written notice of the finding and reasons for the finding to the taxpayer;
4. The taxpayer fails to pay any installment at the time due under the agreement;

or

5. The taxpayer fails to pay any other tax liability at the time the liability is due or the taxpayer fails to provide a financial condition update as requested by the Borough.

K. Taxes on Real Property. Except for the provisions pertaining to interest on overpayments, the contents of this Part shall not apply to any tax on real property.

II. ADMINISTRATIVE AND JUDICIAL PROCEDURES BY WHICH A TAXPAYER MAY APPEAL OR SEEK REVIEW OF ANY ADVERSE DECISION OF THE BOROUGH.

A. Administrative Appeals. A taxpayer may file a petition for review of an assessment determination, or for a refund, with the Borough, in accordance with the provisions of this section. The administrative process shall consist of the following:

1. Petition. 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. Petitions not timely filed shall be denied by the Borough.

a. Refund petitions shall be filed within three (3) years after the due date for filing the tax return, as extended, or one (1) year after actual payment of the tax, whichever is later.

b. Petitions for reassessment of a Borough tax shall be filed within ninety (90) days of the date of the assessment notice or notice of underpayment.

2. Contents of Petition. The petition shall be in a form prescribed by the Secretary of the Borough Council of the Borough of Conshohocken and shall include the name, address and federal taxpayer employer identification number or social security number of the petitioner and shall provide in detail the nature of the taxpayer's claim and the taxpayer's accounting and legal basis for the claim. Requests for review of assessment determination, or refund, which are not submitted on the designated form are null and void, and the Borough is not required to respond to them.

3. Borough Council Review. The Borough Council shall review the petition, at its discretion, in executive session or at a public meeting.

4. Written Decision by Borough Council. Borough Council, or its designee, shall issue a written decision within sixty (60) days of the date a complete and accurate petition is received. The decision of Borough Council shall be timely made if written notice of the decision is mailed to the taxpayer, postmarked no later than sixty (60) days after the date of actual receipt of the complete and accurate petition by the Borough. Failure by the Borough to issue a notice of its decision within the aforesaid sixty (60) days shall result in the petition being deemed approved.

5. Applicable Law. Decisions by Borough Council may be made in accordance with this Chapter, applicable rules and regulations, and principles of Pennsylvania law and equity.

B. Judicial Appeal. Any person aggrieved by a final decision of Borough Council may, within thirty (30) days after receipt of the notice of such decision, appeal the decision to the Court of Common Pleas of Montgomery County, Pennsylvania. No administrative process or judicial appeal will operate to suspend the accrual of penalty and interest from the date the tax was due to the date it is actually paid.

III. PROCEDURE FOR FILING AND PROCESSING REFUND CLAIMS AND TAXPAYER COMPLAINTS.

A. Refund for Overpayment.

1. A taxpayer may file a written request with the Borough Manager for a refund or credit of any Borough income, net profits or business tax within three (3) years of the due date for the tax return, as extended, or one (1) year after actual payment of the tax, whichever is later. For amounts paid as a result of a notice of asserting or informing a taxpayer of an underpayment, a written request for refund shall be filed with the Borough Manager within one (1) year of the date of the payment. If no report or return is required, the refund request must 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.

2. For purposes of this Section, a tax return filed by the taxpayer with the Borough which shows an overpayment of tax shall be deemed to be a written request for a cash refund if the taxpayer provides all necessary documentation to support taxpayer's right to a refund. If the taxpayer indicates on the return that taxpayer desires the overpayment to be applied as a credit toward other taxes, the return showing the overpayment shall be deemed a written request for cash refund.

3. A request for refund under this section is not considered a petition for administrative appeal, as described in Section II. hereof, and shall not preclude a taxpayer from submitting a petition under Section II. hereof.

B. Interest on Overpayment. All overpayments of tax paid to the Borough, including taxes on real property, shall bear simple interest from the date of overpayment until the date of resolution at the same interest rate as the Commonwealth of Pennsylvania is required to pay pursuant to the Pennsylvania Fiscal Code, except:

1. No interest shall be paid if an overpayment is refunded or applied against any other Borough tax, interest or penalty due within seventy-five (75) days after the due date of a tax return or within seventy-five (75) days after the actual filing of the tax return, whichever is later, and no interest shall be paid on overpayments of interest or penalty. Tender of a refund check by the Borough shall be deemed to be acceptance of the check by the taxpayer for purposes of this Section. The taxpayer's acceptance of a refund check shall not prejudice the taxpayer from claiming any additional overpayment and interest thereon. The definition of "date of overpayment" and "date of resolution" shall be in accordance with Pennsylvania Act 50-1998.

C. Taxpayer Complaint. All taxpayer complaints shall be directed to the Borough Manager at the Borough Manager's office.

IV. ENFORCEMENT PROCEDURES.

A. Legal Action for Recovery of Unpaid Taxes, Penalty and Interest. The Borough, or its designee, may bring legal action to seek compliance with Borough ordinances, including but not limited to audit compliance and to recover taxes, penalty and interest due as follows:

1. Criminal Citation. The filing of a criminal citation in the District Court having jurisdiction for violation of the Borough's tax ordinances. Violations of the ordinances provide for fines of up to \$1,000.00 per day.
2. Municipal Lien. The filing of a municipal lien for the amount of tax due together with any interest and penalties.
3. Civil Complaint. The filing of a civil complaint in the Court of Common Pleas of Montgomery County for all past and current taxes due plus penalties and interest.
4. Fees and Costs. In all legal actions, the Borough will request court costs and attorney and accountant fees.

RESOLVED and ENACTED in Council chambers this 19th day of December, 2012.

ATTEST:

BOROUGH OF CONSHOHOCKEN

Francis J. Marabella, Borough Secretary

Paul McConnell, Council President

Robert Frost, Mayor