

# REGULATIONS



## RESOLUTION No. R-98-41

A RESOLUTION OF THE TOWNSHIP OF UPPER MORELAND ADOPTING REGULATIONS FOR THE COLLECTION OF BUSINESS TAXES IN ACCORDANCE WITH THE TAXPAYER BILL OF RIGHTS.

In compliance with the requirements of Subchapter C of Act 1998-50, the Omnibus Amendment to the General Local Government Code, The Township of Upper Moreland hereby adopts the following regulations governing the conduct of audits and assessments by the Business Tax Office, and describing the rights and obligations of taxpayers during audit, assessment and review of Business Privilege<sup>1</sup>, Mercantile License<sup>2</sup> and Occupational Privilege<sup>3</sup> Taxes as required by the Taxpayer's Bill of Rights.

THEREFORE, BE IT RESOLVED, that the following regulations shall be adopted by the Board of Commissioners to govern the actions of the Business Tax Office of Upper Moreland Township:

### Section 1. - Definitions:

The following words and phrases, when used in these Regulations shall have the meanings ascribed to them in this section:

---

<sup>1</sup>Title 2, Chapter 7, Article 1 of the Upper Moreland Township Code.

<sup>2</sup>Title 2, Chapter 7, Article 2 of the Upper Moreland Township Code.

<sup>3</sup>Title 2, Chapter 7, Article 3 of the Upper Moreland Township Code.

a. "Audit" shall mean an inspection of the books and accounting records of a taxpayer by the designated auditor or Business Tax Officer for the Township of Upper Moreland for the purpose of verifying the correct payment of business taxes and occupational privilege tax by the taxpayer. An audit may be conducted in person at the taxpayer's location, at the Business Tax Office or through the provision of copies of requested records to the Business Tax Office through the mail.

b. "Auditor" shall mean a Business Tax Officer employed by the Township or an outside auditor appointed by the Township for the conduct of business tax audits.

c. "Business Taxes" shall mean Business Privilege Tax, Mercantile License Tax and Occupational Privilege Tax, collectively as imposed by the ordinances of the Township.

d. "Credit" shall mean an overpayment made to the Township for Business Tax purposes. A credit may be used to satisfy future business tax obligations upon the written request of the taxpayer and the filing of all required tax returns.

e. "Initial Inquiry" shall mean the first contact with a taxpayer initiated by the Township and shall not include notices for failure to file tax returns, audits or informational notices sent to all taxpayers.

f. "Jeopardy Assessment" shall mean the determination of tax due by the Business Tax Officer based upon previously filed tax returns or other information available to the Tax Officer after the

taxpayer has failed to file a required tax return or provide additional information as requested by the Business Tax Officer.

g. "Township" shall refer strictly to the Township of Upper Moreland unless specified otherwise.

Other words and phrases may be previously defined within the Upper Moreland Township Code.

Section 2. - Required Notices

The Business Tax Office shall provide written notice to each taxpayer contacted for an assessment, audit, review, jeopardy assessment or initial inquiry. The notice shall contain the following:

"You are entitled to receive a written explanation of your rights with regard to the audit, appeal, enforcement, refund and collection of local taxes by calling the Upper Moreland Township, Business Tax Office at 215-659-3100 during the hours of 8:30 a.m to 4:30 p.m., Monday through Friday."

The Business Tax Office shall provide a copy of the applicable Upper Moreland Township Code Sections and these regulations to any taxpayer that makes a request at no cost.

Section 3. Notice of Basis of Underpayment.

The Business Tax Office will notify the taxpayer in writing of the basis for any underpayment that the Business Tax Office 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 Business Tax Office has relied to determine that an underpayment exists.

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

#### Section 4. Inspection and Examination

The Business Tax Officer, or the designated auditor, 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.

#### Section 5. - Procedures for the Conduct of an Audit or Administrative Review

The Business Tax Office shall follow the following procedures during the conduct of an audit or administrative review of a taxpayer's books and records:

a. The taxpayer shall be notified in writing of a scheduled audit at least thirty (30) days in advance of the scheduled audit and the written notice shall contain the following information:

- i. The reason for the audit;
- ii. the tax years subject to audit;

- iii. the date and time for the audit to be conducted;
- iv. the place of the audit; and
- v. the notice set forth in Section 2 above.

b. The taxpayer may request that the audit be rescheduled, providing that it shall be rescheduled within a reasonable time;

c. If the audit is scheduled to be conducted by mail, the taxpayer may request that the audit be conducted in person at the taxpayer's place of business;

d. The taxpayer may have a representative present during the audit if it is conducted at the taxpayer's place of business;

e. The Business Tax Office shall send written notice of its findings and conclusions, including the calculation of any tax, interest and/or penalty found to be due or any credit due, to the taxpayer within 30 days after the completion of the audit;

f. The Business Tax Office may request additional information from the taxpayer in order to complete the audit, which information shall be provided to the tax office within 30 days of the request.

g. The taxpayer must advise the Business Tax Office in writing of any dispute or disagreement it has with the audit results within 30 days of the date of the notice from the Business Tax Office setting forth the audit results;

h. The Taxpayer will have 30 days from the date of the written notice of tax, interest and/or penalty due to make payment or payment arrangements with the Business Tax Office;

i. The Business Tax Office will not take any action against the taxpayer for a tax year in question until the end of the audit period, including extensions.

#### Section 6. Tax Years In Question

a. The Business Tax Office's Initial request is limited to 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.

b. If the Business Tax Office determines that a taxpayer has failed to file a tax return, under-reported income, or failed to pay for one (1) or more of the tax periods covered by the initial request, the Business Tax Office may make a subsequent request for a tax return or other supporting information for years beyond the initial three year inquiry period.

c. If a taxpayer has failed to file a required return or pay a tax which was due more than three (3) years prior to the date of a notice, then the three (3) year period will not apply.

#### Section 7. Use of Federal Tax Information

The Business Tax Office may require the taxpayer's federal income tax return if the federal tax information is reasonably necessary for the enforcement or collection of Township taxes and the information is not available from other available sources or the Pennsylvania Department of Revenue.

Section 8. Books and Records to be Examined.

a. 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.

b. If records are not available for the entire period requested for review, the Business Tax Office 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.

Section 9. Installment Agreements

The Business Tax Office may enter into written agreements with any taxpayer under which the taxpayer is allowed to satisfy a tax liability in installment payments, if the Business Tax Office on behalf of the Township determines that the agreement will facilitate collection. An installment agreement may be modified or terminated if the taxpayer provided inaccurate or incomplete information, if the collection of the tax is in jeopardy, if there

is a significant change in the taxpayer's financial condition, if the taxpayer fails to provide a financial condition update or fails to pay an installment when due.

Section 10. Procedure for Filing and Processing of Refund Claims

a. Refund of Overpayment. A taxpayer may file a written request with the Business Tax Office for a refund or credit of any Township 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 asserting or informing a taxpayer of an underpayment, a written request for a refund shall be filed with the Township Business Tax Office within (1) year of the date of the payment.

b. Interest on Overpayment. All overpayments of tax paid to the Township shall bear simple interest from 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:

i. No interest shall be paid if an overpayment is refunded or applied against any other Township 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. Acceptance of a refund check by a taxpayer 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. Use of Credit. A credit balance will be automatically applied against any outstanding tax, including estimates. No refund will be issued if there are any outstanding taxes.

#### Section 11. Time for Filing Request for Refund or Appeal

a. A request for refund or credit must be filed within three (3) years of the date the return was filed or due or one (1) year after actual payment, whichever is later.

b. A petition for review of a denial of a refund or credit must be filed thirty (30) days after the date of the written denial by the tax office.

c. A petition for reassessment of any business tax assessment must be filed within ninety (90) days of the date of the assessment notice from the Business Tax Office.

d. Failure to timely file an appeal of an assessment or denial of refund or credit will result in denial of the appeal.

#### Section 12. Administrative Review Process

As described in Title 2, "Administration", Chapter 7, Taxation, Article 7, "Local Tax Review Board" any taxpayer may request a review of a determination by the Business Tax Office, including the denial of a refund or credit or tax due using the following procedure:

a. Any taxpayer seeking review of a determination by the Business Tax Office shall file a completed Petition for Review with the Business Tax Office for a hearing by the Local Tax Review Board.

b. The Petition for Review shall be on the form provided by the Business Tax Office and contain the following information:

i. Name and business address of the taxpayer;

ii. A complete description of the business activity of the taxpayer which gives rise to the tax or to the claimed refund or adjustment;

iii. A copy of the assessment or tax return for which review is sought;

iv. The taxpayer's written explanation of the reason that the assessment should be changed or a refund should be given; and

v. Copies of all supporting documentation for the taxpayer's position.

c. There shall be no fee charged to the taxpayer for the filing of the Petition for Review or the hearing on the Petition.

d. A hearing shall be scheduled by the Chairman of the Tax Review Board. The first hearing on a Petition for Review shall be held no less than 7 days and no more than 30 days after the completed Petition has been filed. Subsequent hearings, if required, will be scheduled upon agreement of the Board and the taxpayer.

e. Written notice of the hearing shall be given to the taxpayer, Township Manager and Business Tax Office. The notice shall state the time, date and place of the hearing.

f. A hearing will be conducted by the Tax Review Board in the following manner:

i. The Taxpayer that filed the Petition for Review of a determination shall present evidence in support of its petition, including documentation and through witnesses;

ii. The petitioning taxpayer must prove by clear and convincing evidence their entitlement to a refund or change in assessment;

iii. A taxpayer may be represented by an attorney before the Review Board. A corporate taxpayer must be represented by an authorized officer and may have an attorney present;

iv. All testimony shall be given under oath;

v. A representative of the Business Tax Office may question any witnesses presented by the taxpayer.

vi. A representative of the taxpayer may question any witness presented by the Business Tax Office;

vii. At the conclusion of the evidence presented by the taxpayer, a representative of the Business Tax Office may present its evidence in support of the determination appealed from; and,

viii. The taxpayer at its sole expense may provide for stenographic recordation of the hearing before the Review Board.

g. The Review Board's decision will be sent to the taxpayer in writing within sixty (60) days of the receipt of the completed Petition for Review. The taxpayer may execute a waiver of time to allow the presentation of additional evidence by the taxpayer or at the Review Board's request to allow it additional time to render a decision.

h. The taxpayer may appeal the determination of the Tax Review Board to the Court of Common Pleas of Montgomery County within thirty days of the date of the determination of the Tax Review Board.

i. No administrative review or judicial appeal will operate to suspend the accrual of penalty and interest from the date the tax was due to the date that the tax is actually paid.

#### Section 13. Taxpayer Complaints

All taxpayer complaints shall be directed to the Township Manager or Assistant Township Manager in writing.

#### Section 14. Enforcement Procedures

The Business Tax Office shall follow the enforcement procedures set forth in the Township Code and may bring legal action for the collection of taxes, penalty and interest as follows:

a. Criminal Citation: The Business Tax Office may file a criminal citation in District Court for violation of the tax ordinance. Violations of the ordinance provide for fines of up to \$600.00 per violation.

b. Civil Complaint: The Business Tax Office may file a civil complaint in District Court or the Court of Common Pleas for all past and current taxes due plus penalty and interest.

c. Fees and Costs: In all legal actions, the Township will seek to recover court costs and attorney fees.

DULY adopted by the members of the Board of Commissioners of the Township of Upper Moreland this 9<sup>th</sup> of NOVEMBER, 1998.

TOWNSHIP OF UPPER MORELAND  
BOARD OF COMMISSIONERS

By: Jack Tamm  
President

Attest: Brian Z. Mook