

USE AND OCCUPANCY TAXES

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PREFACE

By virtue of the authority of the Act of August 9, 1963 (P.L.640), the Council of the City of Philadelphia by ordinance approved June 4, 1970, authorized the Board of Education to impose a use and occupancy tax, payable monthly, for the tax year beginning July 1, 1970, and the Board passed a resolution on June 8, 1970, imposing the tax for the said year.

By ordinance approved June 4, 1971 the Council authorized the Board to impose the tax for the tax year beginning July 1, 1971, and the Board passed a resolution imposing the tax for the said year.

The amending ordinance of December 14, 1971 provides for quarterly and semi-annual taxable periods in certain instances.

The tax is levied upon the use or occupancy of real estate within the School District of Philadelphia, for the purpose of carrying on any business, trade, occupation, profession, vocation or any other commercial or industrial activity.

These regulations were promulgated by the School Revenue Commissioner pursuant to the provisions of Section 6 of the Ordinance approved June 4, 1970.

An ordinance approved April 1, 1980 (Bill No. 1) deleted the following subsections from Section 19-1806 of the Philadelphia Code relating to Authorization of Realty Use and Occupancy Tax:

- (6) General Provisions
- (7) Review and Appeal
- (8) Penalties and Enforcement
- (9) Limitation on Actions
- (10) Severability Clause

The ordinance made other comparable provisions of Title 19 applicable to the Realty Use and Occupancy Tax.

By ordinance approved June 12, 1980, the Council increased the annual rate of tax to \$2.50 per \$100 of assessed value, for tax years commencing after June 30, 1980.

By ordinance approved April 21, 1982 the Council exempted port related activities, as defined, from this tax retroactive to January 1, 1977.

By ordinance approved June 10, 1982, the Council increased the annual rate of tax to \$3.25 per \$100 of assessed value, for tax years commencing after June 30, 1982.

By ordinance approved June 30, 1982, the Council provides for the liability of this tax to be held against the landlord under certain instances and to provide for a discount for early remittance of this tax under certain instances.

By ordinance approved March 16, 1983, the Council provides relief of the liability for this tax to the landlords when required actions are taken.

By ordinance approved June 5, 1985, the Council authorized the Revenue Commissioner to establish by regulation the intervals for which returns must be filed and tax paid and discounts taken.

By ordinance approved July 9, 1986, the Council authorized the Revenue Commissioner to revise the due dates by which the tax returns and payments must be submitted in order for the discount to apply.

By ordinance approved January 6, 1987, the Council authorized the Revenue Commissioner to provide for accelerated penalties for late payment of taxes due.

By ordinance approved June 16, 1988, the Council increased the annual rate of tax to \$3.85 per \$100 of assessed value, for tax years commencing after June 30, 1988.

USE OR OCCUPANCY TAX REGULATIONS

ARTICLE I

GENERAL PROVISIONS

Section 101. Definitions.

The following words and phrases when used in these Regulations shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *"Commissioner."* The School Revenue Commissioner.
- (b) *"Landlord."* Any owner of real estate or any person who grants the right to use or occupy real estate or any part thereof to any lessee, sublessee, licensee or concessionaire. In general, the word "landlord" as used herein includes the owner of real estate which is leased in whole or in part to one or more tenants under a written or oral lease, regardless of the length of the term of such lease. "Landlord" also includes a lessee who grants the right to use or occupy all or a portion of the premises to a sublessee. "Landlord" does not include an agent or an owner of real estate where the agent does not have the ultimate authority to grant the right to use or occupy real estate without the written approval of the owner of such real estate.
- (c) *"Tax Year."* The period commencing July 1 of any calendar year and extending through June 30 of the following calendar year.
- (d) *"Square Feet Available for Use or Occupancy."* The square feet available for use or occupancy within the whole portion of any real estate, together with any building or other structure erected on such land and the total floor space contained in such structures, exclusive of service, utility, and common areas under the control of the owner or other landlord thereof. The square feet available for use or occupancy may thus be defined as the total leasable or useable area of a building or tract of real estate.

If an owner or tenant makes use of an entire property for business purposes so that there is no vacant useable space therein, such use is taxable at 100% of the assessed value of the property, and it is therefore unnecessary to determine the square feet available for use or occupancy.

If, however, one or more of the conditions described immediately below apply to a single property, it is necessary to determine the "square feet available for use or occupancy" in order to compute the amount of tax to be paid by each user for business purposes:

- (1) if there is more than one user of space for business purposes;
- (2) if space is available for business use, but is not in use;
- (3) if a portion of space is used for other than business purposes.

Such determination is made by totaling:

- (1) the number of square feet of any land containing no structures; and
- (2) the number of square feet of floor space contained in any building or other structure exclusive of the number of square feet in service, utility and common areas. All such space other than service, utility and common areas is included in "square feet available for use or occupancy", even though some or all of such space may be excludable from the numerator of the tax apportionment fraction (see Section 505 of these regulations) because it is vacant or because its use may be specifically excluded from taxation.

Where the use or occupancy of a portion (but less than all) of the property is not subject to this tax, that portion of the property so used or occupied shall be treated as vacant space in the determination of "square feet available for use or occupancy".

Illustration:

On a property measuring 100' x 200' there is an office building measuring 100' x 100'. The office building contains a full basement and five floors of office space. Each floor, as well as the basement contains 10,000 square feet. The portion of the property containing no structure is a 10,000 square foot parking lot for the common use of the tenants of the building. The basement area contains all of the utilities servicing the building, and is also available to the tenants as a common storage area.

For the purpose of determining the square feet available for use or occupancy, the parking lot and basement area as well as space on the other five floors of the building used for common lobby area, elevators, stairways, hallways, rest rooms, and other usage in common, are not to be included in the measure of "square feet

available for use or occupancy" because they are service, utility and common areas. Thus, only the actual floor space of the various offices is measured in order to determine the total square feet available for use or occupancy of this property.

- (e) *"Person."* An individual, partnership, corporation or association, including those acting in a fiduciary or representative capacity whether appointed by a court or otherwise. Whenever used in any clause prescribing or imposing a penalty, the term "person" as applied to partnerships or associations shall include the partners or members thereof, and if applied to corporations, the officers thereof.
- (f) *"Taxpayer."* A taxable user or occupier of real estate within the School District of Philadelphia.
- (g) *"Business Purpose."* The intent to carry on or exercise for gain or profit any trade, business, profession, vocation or commercial activity.
- (h) *"District."* The School District of Philadelphia.
- (i) *"Port Related Activities."* Loading or discharging cargo to or from vessels when conducted on piers, wharves or marine terminal facilities in the Port of Philadelphia, including related activities conducted on such premises such as furnishing dockage or wharfage, truck and/or railroad car loading and unloading, and storage of cargo which is to be loaded or has been discharged from vessels.
- (j) *"Port of Philadelphia."* Piers, wharves and marine terminal facilities entering into or abutting either the Delaware or Schuylkill Rivers, which are within the confines of the City of Philadelphia.

Section 102. What Constitutes Taxable Use or Occupancy of Real Estate.

"Use" or "Occupancy" are interchangeable words and mean actual and physical possession and use of real estate as opposed to constructive or legal possession. One who is "occupying" real estate is physically present in or on the property, either personally or by his agent, or has placed therein personal property belonging to him. Parking lots or other businesses which use real estate for a business purpose but can function without placing personal property on the real estate or occupying the real estate personally or by an agent, are deemed to be using or occupying the real estate. However, the location on real estate of untended personal property which is used in the rendition of a service to the occupants of the real estate shall not be deemed, in the absence of other factors, to constitute "use or occupancy" for purposes of this tax.

Business use or occupancy conducted on publicly owned property is subject to the Use or Occupancy Tax. The test is whether the business would be subject to this tax if conducted on non-publicly owned property.

Illustration No. 1:

A telephone company has placed in the lobby of an office building under an appropriate agreement with the landlord a telephone booth containing a coin telephone. A vending machine company has placed in the same lobby under a similar agreement a cigarette vending machine. Except for periodic maintenance and collection, the presence on the premises of an employee of the two companies is not required. Such use of space by the two companies does not constitute taxable use or occupancy.

Illustration No. 2:

A landlord leases a 3-story building to a tenant who uses only two floors for business purposes. The third floor is vacant or is used as living quarters for the tenant and his family. Only the use of the two floors which the tenant occupies for business purposes constitutes taxable use or occupancy.

Illustration No. 3:

A landlord leases a store property to a tenant under a five-year lease. He gives the tenant possession as of January 1, but rental payments are to begin April 1.

- (a) The tenant takes possession and begins to move personal property into the store or office on January 1. Taxable use or occupancy commences January 1.
- (b) As of January 1 the tenant employs workmen to reconstruct the interior of the building. They remove old fixtures and install new ones and make other improvements. Their work is concluded in February, and on March 1 the tenant begins to move merchandise into the store.

Taxable use or occupancy commences March 1.

- (c) During the month of April the tenant conducts a retail business, but the business is not operated on Saturdays and Sundays, as well as on holidays and during periods of vacation occurring during the month.

Taxable use or occupancy continues for the entire month despite the fact that the store was not open for business during all days of the month.

- (d) On May 31 the tenant relinquishes possession and removes personal property from the premises. He continues to pay the rent due under the terms of his lease. There is no taxable use or occupancy by the tenant after the tenant has vacated the premises.

- (e) The tenant continues to pay rent under the terms of his lease and sublets the store to a neighborhood youth organization which uses the property for meetings and draft counseling services.

There is no taxable use or occupancy because the property is not used by the sublessee for a business purpose.

Illustration No. 4:

A landlord leases unimproved property to a tenant for the operation of a commercial parking lot. The parking lot is located near the stadium complex and is kept open from 12pm to 2am, Wednesday through Sunday. The lot is not always filled to capacity.

Taxable use or occupancy for a commercial parking facility continues for the entire year despite the fact that the facility was not open for business 24 hours a day and during all days of the year. The use of the entire parking area constitutes taxable use or occupancy by the operator although the parking lot is not filled to capacity at all times.

Illustration No. 5:

The parking-lot operator enters into monthly parking arrangements with the owner of a nearby business whereby the owner granted the daily use of twenty parking spaces, either assigned or unassigned, to be used by the owner and his employees or for the parking of delivery trucks used in the owner's business.

The parking-lot operator is responsible for the tax on the entire parking lot. The business owner and his employees are not responsible for the tax attributable to their use of twenty parking spaces.

Illustration 5(a):

In front of its store, Ace Market has a parking lot as part of its real property. The lot is used by employees and customers of the store. Occasionally persons park there to use the Post Office which is located across the street. Ace is subject to Use or Occupancy Tax on the entire parking area.

Illustration No. 6:

The landlord of unimproved property begins erecting an office building on one corner of the property.

During the construction period, and until occupancy, there is no taxable use or occupancy.

Illustration No. 7:

A building consists of a basement and three floors above the basement. The first two floors above the basement are leased and used for business purposes. One-quarter of the basement houses heating, air-conditioning and elevator facilities which service the entire building; three-quarters of the basement is leased and used for business purposes. The third floor is leasable but vacant.

The use or occupancy of the first two floors and three-quarters of the basement constitutes taxable use or occupancy.

Illustration No. 8:

The landlord of an office building leases space on the roof of the building to a sign company which erects a billboard, the base of which rests upon the roof.

The sign extends above the roof and is supported by guy wires or cables anchored in the roof 30 feet in all directions from the base of the sign.

The use of the square feet on the roof encompassed by the sign supports constitutes taxable use or occupancy. The remaining area of the roof, is unused for business purposes, is considered "common" space and will not be treated as a part of the premises available for use or occupancy.

Illustration No. 9:

A landlord leases space on the roof of a building to a radio station for the erection of an antenna. The antenna is supported by guy wires or cables.

The use of the square feet on the roof encompassed by the antenna cables constitutes taxable use or occupancy.

Illustration No. 10:

A landlord of a building under a lease permits the use of a vertical wall thereof by a sign company. A sign is placed against or painted on the wall of the building.

This use of vertical space does not constitute taxable use or occupancy; taxable use or occupancy is limited to use or occupancy of horizontal space.

Illustration No. 11:

A stadium used for presenting sporting events on a commercial basis is leased to a tenant. There is an office in the stadium which is used by the tenant throughout the year. However, sporting events are presented to the public during only five months of the year.

The use of the office space constitutes taxable use or occupancy for the full year. The use of the portion of the stadium for presenting sporting events constitutes taxable use or occupancy only during the period of such use.

Illustration 11(a):

Ace Pizza Parlor is located near the stadium complex. It is open from 5pm to 12am only on days that events are occurring at the complex.

Businesses which make decisions to operate at specified times during the day and only during special events shall be subject to the Use or Occupancy Tax for the entire year.

Illustration No. 12:

An owner of a theater leases it for a period of one month. During that month the property is used two weeks for rehearsals and two weeks for public performances. The use for the entire month constitutes taxable use or occupancy.

Section 103. What Constitutes Service, Utility, and Common Areas.

Service, utility and common areas, provided they are under the control of the landlord, are to be excluded in determining square feet available for use or occupancy. The word "excluded" as contained in Section 103 refers to the numerator and denominator of the computation formula in Section 505(c) pertaining to square footage in commercial use and total square footage available for use. It does not exempt service, utility, and common areas from the Use and Occupancy Tax.

- (a) "Service Areas." These are portions of land and buildings used for ingress and egress as well as for the movement of persons and equipment throughout the property. Examples of service areas include loading docks and other freight or material handling space, and private roadways or passageways used for building maintenance.
- (b) "Utility Areas." These are portions of land and buildings housing utility facilities, such as heating systems, air conditioning equipment, elevator motor housing, etc.
- (c) "Common Areas." Common areas are those areas which are available for use by more than one person occupying a property:

Example No. 1:

A parking lot adjacent to a multi-tenanted building, which lot is available for use by more than one tenant of the building.

Example No. 2:

The parking areas and roadways available to all tenants and customers of a shopping center or multiple-store complex.

Example No. 3:

The lobby area, elevators, stairways, hallways, rest rooms, and other such spaces in a multi-tenanted building, so long as such spaces are available for use by the tenants generally or members of the public calling upon tenants in the building.

If any such areas are limited to the use of one tenant only, such areas are not "common". A tenant, for example, who leases an entire floor of an office building is subject to this tax on the lobby area of the elevators servicing his floor, and the hallways and rest rooms included in his leased space.

However, a rest room which may be entered by a person using a common stairway in the building, even though the rest room is primarily used by employees of a particular tenant, is a common area.

Example No. 4:

The lobby area, elevators, stairways, the hallway and the rest room servicing all of the offices on an entire floor of an office building leased to one tenant, with the exception of one office at the end of the hallway.

These are "common" areas because they are available to more than one tenant, and under the control of the owner or other landlord of the property.

Example No. 5:

A sun deck or swimming pool provided for the use of tenants by an apartment house without additional charge. The sun deck or swimming pool is a common area and is not to be included in the square feet available for use or occupancy.

However, if there is a charge for the use of these facilities, such area is to be included in the square feet available for use or occupancy.

Example No. 6:

The basement or roof area of a multi-tenanted building, if not used for purposes defined under "service" or "utility" areas, will generally be presumed as a "common" area unless particular facts would lead to a contrary conclusion. Thus, the usable portion of basement space might, in an appropriate case, be considered as being available for use or occupancy.

ARTICLE II IMPOSITION OF TAX

Section 201. Nature and Measure of Tax.

The subject tax is imposed on the use or occupancy of real estate for business purposes as defined herein.

The measure or determination of this tax is the most recently assessed value of the property by the Board of Revision of Taxes.

The assessed value of real estate on which tax is to be computed will be furnished to the person who receives the tax bill and, in the absence of obvious error, he is authorized to rely upon such information for all purposes in connection with this tax.

Property that is the subject of an exemption granted by the Board of Revision of taxes pursuant to Section 19-1303 of the Philadelphia Code (Authorization to offer Exemptions From Real Estate Taxes on Improvements to Deteriorated Industrial, Commercial or Other Business Properties) does not entitle the user of the property to an exemption from the Use and Occupancy Tax. The Use and Occupancy Tax should be determined by use of the most recent total assessment of the real estate (land, building and improvements) without consideration of any Real Estate tax exemption. (Conston Associates vs. TRB of City of Philadelphia., Commonwealth Court No. 733 C.D. 1986).

Section 202. Appeals and Revisions of Assessments from the Board of Revision of Taxes.

During the pendency before the Board of Revision of Taxes of any assessment appeal procedure or assessment review, the current assessment shall be used as the basis for this tax.

If the assessment is changed at any time, such change will be reflected as quickly as possible on the tax bills mailed by the commissioner.

However, where a notification of change of assessment has been sent by the Board of Revision of Taxes and no appeal therefrom is pending, the subject tax shall be computed on the basis of the revised assessment as of the effective date of such change.

ARTICLE III EXEMPTIONS AND EXCLUSIONS FROM TAX

Section 301. In General.

- (a) *The following types of use or occupancy are exempt from the tax:*
- (1) Use or occupancy as a dwelling or principal place of residence or for any other non-business purpose.
 - (2) Use or occupancy which is subject to tax by the Commonwealth of Pennsylvania under the Tax Act of 1963 for Education or Article II of the Tax Reform Code of 1971.
 - (3) Use or occupancy of property by a person and for a purpose which would render the property exempt from real estate taxes, if owned by such person, whether or not such person is the owner of the property.
 - (4) The use or occupancy of real estate in the conduct of Port Related Activities.
- (b) *Statement Supporting Exemption Claim.*

Each landlord required to collect this tax from any user or occupier of real estate shall be relieved of all responsibility with regard to the collection of tax if he obtains from the user or occupier a statement in duplicate, dated and executed by the user or occupier and setting forth a valid reason for claiming exemption. The user or occupier claiming exemption shall provide documentation such as copies of Federal Exemption Notice, Articles of Incorporation, and bylaws to the landlord supporting the claim. The landlord must retain one copy and submit one copy with the first tax return filed after receipt of such statement covering the property concerned.

Section 302. Use or Occupancy as Residence.

This tax does not apply to use or occupancy as a dwelling or principal place of residence.

If an apartment is leased to a person who uses it for the dual purpose of a residence and a place for the conduct of a business, and an identifiable area of the premises is devoted to such business usage, only the use of the area occupied for residential purposes is exempt.

An apartment occupied by a resident building superintendent is exempt. Likewise, if an office is maintained in an apartment house, solely for the purposes of leasing space in that apartment house, and adjacent apartment house, if any, and managing the premises, such use is exempt. However, if an apartment, office or store in an apartment building is leased to a person solely for professional or commercial purposes, the use of such space is not exempt.

Section 303. Use or Occupancy of Hotel, Motel or Similar Establishment.

(a) *Use or Occupancy EXEMPT From This Tax:*

The use or occupancy of a room or rooms, the rent from which is subject to tax by the Commonwealth of Pennsylvania under the Tax Act of 1963 for Education (Sales and Use Tax) or Article II of the Tax Reform Code of 1971, is exempt from this tax. Specific examples of use or occupancy of property which is exempt from the tax under this section are:

- (1) The use or occupancy of a hotel suite by a salesman to exhibit his line of merchandise.
- (2) The use or occupancy of meeting room space, together with pantry and kitchen facilities used in serving such meeting room space, provided free of charge to conventions, associations and other groups occupying and renting room space.
- (3) The use or occupancy of automobile garage space provided free of charge in conjunction with the occupancy of a hotel room.
- (4) The use or occupancy of space for guest service facilities, such as cardrooms, luggage storerooms, etc.
- (5) The use or occupancy of hotel management offices, the front desk, and the lobby area.

(b) *Use or occupancy NOT EXEMPT from this Tax:*

Use or occupancy of hotel space for a business purpose which is exempt from the Sales and Use Tax of the Commonwealth of Pennsylvania.

Illustration:

The owner of a 20-story hotel building leases ground floor space to a restaurant, a cocktail lounge, a barber shop, a newsstand, and various specialty shops. The ground floor level also contains the hotel lobby, front desk, utility and service rooms, and hotel management offices. The use or occupancy of the space used as a restaurant, a cocktail lounge, a barber shop, a newsstand and specialty shops, is not exempt from this tax.

Section 304. Use or Occupancy of Apartment House and Hotel Parking Facilities.

- (a) The tenants of an apartment house and the guests in a hotel who park their automobiles in parking garages or lots provided by the apartment or hotel, either free of charge or on the basis of a daily or monthly charge, fee or rental, are not subject to tax under this ordinance.
- (b) However, parking facilities are used or occupied for a business purpose by the apartment house or hotel owner or operator or any third party lessee, licensee or concessionaire who operates the parking facilities if any charge (whether outright or by means of an increase in rentals) is imposed on tenants, guests or members of the public for the use or right to use the parking facilities.

Illustration No. 1:

An apartment house tenant pays \$100 per month rent if he parks his automobile on the street, but \$130 per month rent if he wishes to park on or in the premises; thus the parking facilities are used by the apartment house operator for a business purpose, and the use thereof is taxable to the apartment house operator, but not to the tenant.

Illustration No. 2:

All tenants of an apartment house have the free use of the apartment parking garage. Non-tenants are not permitted to use the parking facilities.

The parking garage is considered to be a "common" area, and therefore the square footage of the garage is not to be included in "square feet available for use or occupancy".

Illustration No. 3:

All tenants of an apartment house have the free usage of the apartment parking garage and rentals do not vary from tenant to tenant depending on the use of the parking facility. If members of the public are excluded from such facility or they may use it free of charge, such facility is considered to be "common" area, but if members of the public are charged for the use of the facility, the apartment house operator is subject to tax thereon.

Section 305. Use or Occupancy by a Person Exempt From Real Estate Taxes.

Use or occupancy by any person exempt from real estate taxes in the City of Philadelphia is exempt from this tax provided such use or occupancy is not for business purposes.

The use or occupancy of property for charitable, educational or religious purposes is exempt from tax because such use is not for business purposes. However, if property owned by a non-profit charitable, educational or religious organization is used for unrelated business purposes, its use is not exempt.

ARTICLE IV COLLECTION OF TAX

Section 401. In General.

- (a) For purposes of determining the tax, the total assessment of the parcel of real estate is to be used; the separate amounts assessed for land and for buildings are to be disregarded.

In the event that this provision as applied does not provide for a fair apportionment of taxes to users of a single parcel, the landlord may petition for, or the Department may require, the employment of another method to effect an equitable apportionment to accurately and fairly reflect commercial usage of the parcel.

In the event that a real estate parcel contains a multilevel garage in a multilevel office building, the property owner shall request the Board of Revision of Taxes to provide an allocation of assessed value for the different and distinct elements of the property.

- (b) The apportionment of tax to users of a single parcel is to be determined without consideration of the rents paid by the users for the space they are occupying.
- (c) If two or more taxpayers share a taxable unit of space for business purposes, only one calculation of tax is to be made for each tax period, and the liability for payment of the tax shall be joint and several.

Section 402. Sole owner-occupied Real Estate.

The owner of real estate which is used or occupied solely by himself and which use or occupancy is subject to this tax, shall be liable personally for payment thereof.

Section 403. Tenant-Occupied Real Estate.

The owner or the agent of an owner, of real estate used or occupied by one or more tenants, which use or occupancy is subject to this tax, shall be required to attempt to collect the tax as agent for the District. While the ordinance authorizing this tax designates the user or occupier as the taxpayer, the landlord or his agent shall be liable for the amount of any tax not collected from a user or occupier, unless the landlord or his agent complies with the information reporting requirements of Section 405 (i).

Section 404. Joint Occupancy by owner and Tenant.

If an owner of real property uses or occupies, for business purposes, a portion of such property himself, and permits the use or occupancy of other portions of the real estate by one or more tenants, the owner or his agent shall attempt to collect the tax as required, as

agent for the District. The owner or his agent shall add the tax due for the owner's use or occupancy to the tax due for the tenants' use or occupancy and remit it to the commissioner, subject to the provision of Section 405(i).

Section 405. Duties of Landlord.

(a) *Determine Units of Space Available.*

The landlord shall determine, with regard to any real estate or building thereon, the units of space available for use or occupancy. Such units of space may consist of an entire floor of a building, one office, or one storage location.

(b) *Notify Tenant.*

The landlord shall notify each taxable user or occupier of real estate from whom he (or his agent) collects rentals of the amount of tax due from such taxpayer and the date on which it is required to be paid. A single notification by the landlord of the amount of tax due from the user, except when the amount of tax due or some other requirement changes, is sufficient.

(c) *Make Written Demand for Payment of Tax.*

At or before the due date for filing the tax return for a particular period, the landlord shall make written demand for payment of the tax upon each tenant whose tax is reported therein as unpaid for said month, except that the landlord need not make such demand in any case in which the tax has been received as a late payment. The landlord shall keep a copy of such written demand and make it available to the Commissioner upon request.

(d) *Prepare Tax Return.*

The owner-landlord shall, upon receipt of a tax return form, complete and file the return and remit the total tax collected, together with any tax due for the landlord's own use, to the Commissioner on or before the due date. In the event there are other landlords of the premises covered by such tax return, they shall be required to cooperate fully with the owner and shall furnish him with all information necessary to enable him to apportion the tax liability among the taxpayers in the premises and to complete and file the tax return.

Illustration:

A multi-tenanted property is partly owner-occupied and the balance is available to be leased to a number of tenants. The owner engages a real estate agent to procure tenants for the building and the agent succeeds in obtaining a number of tenants. An agreement between the owner and this rental agent requires the latter to collect this tax and to prepare and transmit to the Bureau of School Revenue the tax return and the amount of tax collected. Other real estate agents procure additional

tenants in the premises. All tenant leases require the approval of the owner to be effective. By agreement with the owner, each agent is authorized to collect rentals from the tenants procured by him. One such tenant has sublet a portion of his leased space and collects rent from his sublessee. The owner receives the required Use or Occupancy Tax Return forms from the Commissioner.

Each agent who collects rent from one or more tenants in the premises and the tenant who has sublet space is required to cooperate with the prime agent of the owner and provide him with all information necessary to apportion the tax liability with respect to usage or occupancy for which each agent and the sublessor collect rentals.

The prime agent, after compiling all such information, shall compute the tax liability of each taxpayer in the premises, together with the tax due from the owner, for his usage of the property, and shall send one notification thereof to each user.

Alternatively, the prime agent may notify one or more of the other agents who are collecting rent on a portion of the premises of the amount of tax due from the user or occupier of such portion. In such case the agent collecting the rent will notify his tenants of the amount of tax due from each of them, and shall promptly deliver all taxes collected by him to the prime agent for payment to the Commissioner. The prime agent shall prepare the required tax returns covering the entire premises and file the same with the Commissioner, together with all taxes paid to the prime agent.

(e) *If Tenant Pays Landlord Less Than Tax Due.*

Subject to the provisions of 405(i) if a taxpayer pays to a landlord or his agent any amount of tax less than the amount which the landlord or his agent notified the taxpayer to be due, the landlord or his agent shall remit to the Commissioner the total amount of tax due from such taxpayer."

(f) *If Tenant Fails to Pay Rent.*

Effective July 1, 1983, the failure of a taxpayer to pay the rent due for a taxable period, to the landlord or his agent, prior to the date of filing a tax return for that period, does not excuse the landlord or his agent from remitting the entire tax due from such taxpayer with that tax return. However, the landlord or his agent shall be excused from liability for any unpaid tax due from such taxpayer, if the landlord or his agent complies with the provisions of Section 405(i).

(g) *If Tenant Designates Money as a Payment of Tax.*

If a tenant designates money paid to his landlord as payment of this tax, the landlord shall be required to remit it to the Commissioner.

(h) *If Tenant Disputes Allocation.*

If a tenant disputes an allocation or claims an incorrect measurement, the owner need not resolve such dispute but need only remit the amount of tax collected from the tenant and indicate on the proper tax form the amount of tax not paid by the tenant.

(i) *Limitation of Landlord's or Agent's Liability.*

Notwithstanding the provisions of Sections 403 and 405(e), liability for tax not paid by a user or occupier to the landlord or his agent will not be imposed upon the landlord or his agent, if the landlord or his agent notifies the Department, in writing of the name and address, telephone number and Philadelphia Business Tax Account Number of each such user or occupier and the amount of tax not paid for the taxable period by each such user or occupier. Such notification must be filed with the Department, on Form UO-3, to be filed concurrently with the tax return for the taxable period, but not later than the 25th day of the taxable month in the case of a monthly taxable period and not later than the 25th day of the last month of the taxable period in the case of a quarterly, semi-annual or annual taxable period.

ARTICLE V RETURNS AND PAYMENT OF TAX

Section 501. Who must File.

The owner of each separately assessed property located in the District who uses or permits the use of all or any portion thereof for business purposes as defined herein, shall be required to file a tax return covering such property.

(a) *Owner's Sole Use of Real Property.*

If an owner himself is the sole user or occupier of a parcel of real property for business purposes, he shall be required to file a return covering such property.

(b) *Use of Real Property by Tenant(s).*

The owner of property used or occupied by tenants for business purposes shall be required to file a return covering each such property.

(c) *Use of Property by Both Owner and His Tenant(s).*

If one portion of a property is used by the owner and another portion is used by (a) tenant(s), a single return is required to be filed by the owner covering both usages.

(d) *Vacant Commercial Property.*

Commercial property, including unimproved property which is zoned as commercial, that is unused or unoccupied is not subject to tax, however a return must be filed to indicate a vacancy.

Section 502. Filing of Returns.

- (a) The required tax return shall be filed on a form provided by the Commissioner. It shall be filed with the Department of Revenue at the address shown on the return.
- (b) The failure of any person to receive or obtain the required return form shall not relieve him from making a return and paying any tax due together with penalty and interest as provided by the ordinance.

Section 503. Due Date of Returns.

- (a) Each person required to file a return hereunder for a taxable period (after June 30, 1985), must do so by the twenty-fifth (25) day of the last month in the taxable period.

Examples:

The tax return for the taxable month of July must be filed by July 25th.

The tax return for the taxable calendar quarter ending September 30th must be filed by September 25th.

The tax return for the taxable calendar half-year ending June must be filed by June 25th.

Taxable periods are as follows:

- (1) Commencing July 1, 1983 the applicable taxable period is to be determined by the assessed value of the real estate as follows:

- (a) Monthly Taxable Period.

If the assessed value of the real estate is twenty-four thousand (\$24,000.00) dollars or more, the taxable period is one calendar month.

(b) Quarterly Taxable Period.

If the assessed value of the real estate is at least eight thousand (\$8,000.00) dollars but less than twenty- four thousand (\$24,000.00) dollars, the taxable period is the calendar quarter, i.e., January-March, April- June, July-September, or October-December.

(c) Semi-Annual Taxable Period.

If the assessed value of the real estate is less than eight thousand (\$8,000.00) dollars the taxable period is the calendar half-year, i.e., January-June, July- December.

(2) Commencing January 1, 1990 the applicable taxable period is to be determined by the assessed value of the real estate as follows:

(a) Monthly Taxable Period.

If the assessed value of the real estate is thirty-six thousand (\$36,000.00) dollars or more, the taxable period is one calendar month.

(b) Quarterly Taxable Period.

If the assessed value of the real estate is at least twelve thousand (\$12,000.00) dollars but less than thirty-six thousand (\$36,000.00) dollars, the taxable period is the calendar quarter, i.e., January-March, April-June, July-September, or October-December.

(c) Semi-Annual Taxable Period. If the assessed value of the real estate is at least six thousand (\$6,000.00) dollars but less than twelve- thousand (12,000.00) dollars, the taxable period is the calendar half year, i.e., January-June or July-December.

(d) Annual Taxable Period.

If the assessed value of the real estate is less than six thousand (\$6,000.00) dollars, the taxable period is the calendar year, i.e., January-December.

(b) If at the time he prepares a timely return for a taxable period, the tenant has failed to pay the entire tax due for that period, the landlord or his agent shall report on a supplementary information return (Form UO-3) the name, address, Philadelphia Business Tax Account Number and the amount of tax unpaid by each such tenant.

When, subsequent to the filing of a timely return for a taxable period, the landlord or his agent receives from a tenant payment in full or in part of an amount of tax previously reported by the landlord or his agent as due but unpaid, the landlord or his agent shall record on a late payment remittance form (Form UO-4), the name of the tenant, the tenant's Philadelphia Business Tax Account Number, the taxable period covered, the date of payment, the amount of tax due, and the amount of interest and penalty collected. Form UO-4, together with the remittance of tax due plus interest and penalty shall be transmitted by the landlord or his agent to the Commissioner on or before the 25th day of the month following the month in which the late payment of tax was received by the landlord or his agent.

Section 504. Payment of Tax; Discount.

- (a) Each tenant required to pay this tax to a landlord or his agent is required to do so in compliance with the following schedule:
 - (1) Commencing November 1, 1982:
 - (a) a tenant using or occupying real estate for which the taxable period is one calendar month, is required to pay the tax for each calendar month to the landlord or his agent no later than the tenth day of the month for which the tax is due.
 - (b) a tenant using or occupying real estate for which the taxable period is the calendar quarter, is required to pay the tax for each calendar quarter to the landlord or his agent no later than the tenth day of the last month of the calendar quarter for which the tax is due.
 - (c) a tenant using or occupying real estate for which the taxable period is the calendar half-year, is required to pay the tax for calendar half-year to the landlord or his agent no later than the tenth day of the last month of the calendar half-year for which the tax is due.
 - (2) Commencing January 1, 1990:
 - (a) a tenant using or occupying real estate for which the taxable period is annual, is required to pay the tax to the landlord or his agent no later than December 10th.
 - (b) Each person required to file a return of this tax, shall at the time of filing his return, pay to the commissioner the amount of tax due.
 - (c) Any person who is required to collect the tax from a tenant is entitled to a discount of 1% of the total tax due for use and occupancy by any person other than the owner of the building, provided that the total tax due for that building is remitted to the

Commissioner on or before the 25th day of the taxable month, in the case of a monthly taxable period, and on or before the 25th day of the last month of the taxable period in the case of a quarterly, semi-annual or annual taxable period.

Notwithstanding the requirement that the discount may be taken only if the total tax due for that building is paid, the discount may be deducted from the total amount collected and remitted from tenants if the person required to collect the tax has filed Form UO-3 as required by Section 503(b).

The discount may not be deducted by an owner on that portion of the tax due for use or occupancy by the owner.

Section 505. Computation of Tax.

- (a) If it is necessary to allocate the tax, the following factors must be available to the person preparing the return in order to compute the tax due:

Total square feet available for use or occupancy;

Square feet used or occupied;

Most recent assessed value of property;

Days of actual use or occupancy.

- (b) Use or occupancy for a portion of a day shall be deemed to be use or occupancy for a full day.

- (c) Illustration of Tax Computation.

The tax to be paid periodically by the user or occupier of real estate, whether owner or tenant, shall be computed in accordance with the following formula:

$$\frac{\text{Sq. Ft. Used or Occupied}}{\text{Total Sq. Ft. Available for Use or Occupancy}} \times \text{Assessed Value} \times \text{Rate of Taxation} \times \frac{\text{Days of Actual Use or Occupancy}}{360}$$

For purposes of the computation, occupancy during an entire month is occupancy for 30 days, regardless of the number of calendar days in the month or the number of business days in the month.

Illustration No. 1:

John Smith is the owner and sole user of the entire space in a factory building. There are 10,000 square feet available for use or occupancy. The most recent assessed value of the property is \$20,000.

The tax for the year is $\$20,000 \times \3.85 per \$100 of assessed value, or \$770. The tax due each quarter would be \$192.50.

Illustration No. 2:

John Smith is the owner of a factory building assessed at \$20,000.00 and which has a total of 10,000 square feet. Service, utility and common areas total 400 square feet. Half of the square feet available for use or occupancy is leased to a tenant.

Square feet available for use or occupancy is 9,600 (10,000 total less 400 service, utility, and common). The tenant's share of the tax would be based on the relationship of the square feet used or occupied by him to the total square feet available for use or occupancy, or $4,800/9,600$ ths, which amounts to 50%.

The tax due for the year on the total property is \$770. The tenant's tax for the year would be \$385.

Section 506. Information to be Reported by Tenants to Landlords or Agents.

Each user or occupier of real estate, who is subject to this tax, is required to provide the following information to the landlord or other person authorized to collect rentals on such real estate:

- (1) The name of such user or occupier
- (2) Mailing Address
- (3) Telephone Number
- (4) Philadelphia Business Tax Account Number

ARTICLE VI POWERS AND DUTIES OF THE COMMISSIONER

Section 601. Collect and Receive Tax.

It shall be the duty of the Commissioner to collect and receive the tax.

Section 602. Enforce Collection and Promulgate Regulations.

The Commissioner is charged with enforcing the collection of this tax.

He is also empowered to prescribe, adopt, promulgate and enforce rules and regulations pertaining to the administration and enforcement of the ordinance authorizing the imposition of this tax.

Questions not specifically answered in these regulations should be submitted in writing to him.

Section 603. Examine Books and Records.

The Commissioner, or his duly authorized agent or employee, is empowered to examine the books, records and copies of tax returns filed with other taxing authorities of every person required to pay or collect the tax in order to verify the accuracy of the return filed and of the payment made.

Every such person is required to provide the Commissioner or his duly authorized representative with the means, facilities and opportunity for such examination.

Section 604. Assess and Collect Underpayments of Tax.

If upon examination by the Commissioner a return is found to be incorrect, he is authorized to assess and collect any additional tax determined to be due and unpaid by any taxpayer. If a return required to be filed under the ordinance authorizing this tax has not been filed, or if although a return has been filed, the tax shown on the return to be due has not been paid in part or in full, the correct amount of tax found by the Commissioner to be owing shall be assessed against, and collected directly from, the person liable for the tax with or without the formality of obtaining a return or amended return.

Section 605. Require Preservation of Books and Records.

The Commissioner shall require every person required to file a return of the tax to maintain his books and records for a period of six (6) years after any return is due or actually filed, whichever date is later.

Section 606. Maintain Confidentiality of Returns.

Any information gained by the Commissioner as a result of any returns, investigations, or verifications required to be made, shall be confidential, except for official District purposes.

ARTICLE VII INTEREST AND PENALTY

Section 701. Assessment of Interest and Penalty.

If the tax is not paid by a taxpayer within the time provided herein, interest plus penalty shall be paid by the taxpayer as set forth in sections 702 and 703 herein.

Interest and penalty as provided shall be paid by the owner or landlord responsible for filing the tax return and remitting the taxes as required if such filing or tax payment is not in conformance with the time limitations set forth herein.

Section 702 Interest.

Any person subject to this tax who fails to pay the tax due or to remit the tax collected by the due date, shall be required to pay interest at the rate of one-half (1/2) of one (1%) per cent of the amount of unpaid tax for each month or fraction thereof during which the tax remains unpaid, calculated from the due date.

The collection of penalties and interest assessed against any tenant for late payment shall be the sole responsibility of the Commissioner who shall compute and bill for the same.

Section 703. Penalty.

Any person who fails to pay the tax imposed by this Ordinance by the due date, shall be liable to a penalty of one (1%) percent per month or fraction thereof on such tax until paid for debts outstanding prior to June 30, 1987. Subsequent to June 30, 1987 the penalty will be calculated in accordance with the following chart:

| ELAPSED TIME AFTER DUE DATE | RATE OF PENALTY |
|-----------------------------|--------------------------------------|
| 1st thru 3rd month | 1% per month or fraction thereof |
| 4th thru 6th month | 2% per month or fraction thereof |
| 7th thru 9th month | 3% per month or fraction thereof |
| 10th thru 12th month | 4% per month or fraction thereof |
| 13th month & thereafter | 1-1/4% per month or fraction thereof |

Section 704. Responsibility of Landlord as to Interest and Penalty.

The landlord shall not be responsible for billing or collecting interest and penalty on delinquent payments by tenants, but shall receive and remit any such interest and penalty tendered to him.

ARTICLE VIII SUIT ON COLLECTION

Section 801. In General.

This tax, together with interest and penalty, if any, due from any person subject to this tax shall be recoverable by the District as other debts of like amount are recoverable.

The District is not limited, in an action to recover the fines or penalties for violations of the Ordinance authorizing this tax, to actions of assumpsit. It may resort to the use of a *capias ad respondendum* (civil arrest) against a person required to collect and remit the tax who has failed or refused to remit the tax which he has collected.

Section 802. Limitation of Actions.

- (a) Any suit to recover any tax, and/or interest and penalty, due from any person required to pay or to remit this tax shall be begun within six years after such tax became due or within six years after a tax return was filed, whichever date is later; but this limitation shall not apply:
 - (i) If the person being sued for tax, interest and penalty was required but failed to file a return under the ordinance authorizing the imposition of this tax; or
 - (ii) If an examination of a return required to be filed by the person being sued reveals an intent to evade taxes or to inhibit or delay the proper administration and enforcement of the ordinance.
- (b) For the purposes of this section, the period of limitation on any suit to recover any tax, interest or penalty from a person subject to this tax shall commence on the last date on which tax could have been timely paid.

ARTICLE IX VIOLATIONS, FINES AND PENALTIES

Section 901. In General.

In addition to the penalty and interest prescribed in Article VII of these regulations, a person subject to this tax who violates any of the provisions of the ordinance authorizing the imposition of this tax, maybe subject to additional fines and penalties.

Section 902. Violations.

The following are violations which may subject a person to fines and/or penalties:

- (a) Failing to keep or make any record, return or report required;
- (b) Keeping or making any false or fraudulent record, return or report;
- (c) Refusing to permit examination of books and records by Commissioner;
- (d) Fraudulently omitting or neglecting to file any return required;
- (e) Fraudulently failing to pay or collect and pay any tax due;
- (f) Fraudulently attempting to evade or defeat payment of this tax.

Section 903. Fines and/or Penalties for Violations.

Any person who shall be convicted of committing any of the violations set forth in Section 902 herein, shall be sentenced to pay a fine not exceeding \$300.00, or to undergo imprisonment up to 90 days or both, in the discretion of the Court.

USE OR OCCUPANCY TAX REGULATIONS

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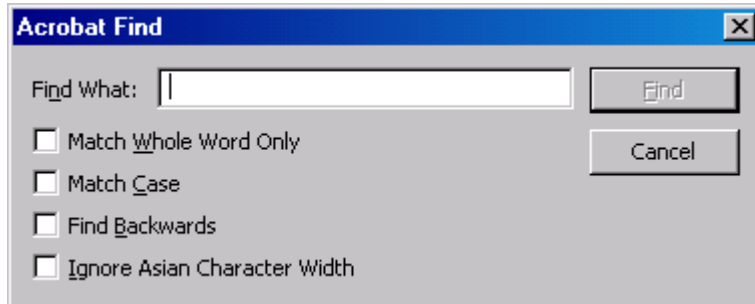
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