CITY OF PHILADELPHIA
DEPARTMENT OF REVENUE

REGULATIONS

EXCISE TAX ON OUTDOOR ADVERTISING TRANSACTIONS

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS 1

Section 101. Definitions 1

ARTICLE II IMPOSITION AND RATE OF TAX 2

Section 201. Outdoor Advertising Excise Tax and Rates 2

Section 202. Non-Taxable Activities 2

Section 203. Taxable Transactions 4

Section 204. Purchase Price 5

Section 205. Outdoor Advertising Sign Company 6

Section 206. Multiple Locations 7

ARTICLE III COLLECTION, RETURN, FILING & PAYMENT 7

Section 301. Collection, Returns and Payment of the Tax 7

Section 302. Electronic Filing and Payment. 8

Section 303. Liability for Uncollected or Unpaid Taxes. 9

ARTICLE IV MAINTENANCE OF BOOKS AND RECORDS, REVIEW AND APPEAL 10

Section 401. Examination of Books and Records 10

Section 402. Review and Appeal 10

ARTICLE V INTEREST, PENALTIES, COST AND ENFORCEMENT 10

Section 501. Penalties and Enforcement 10

CITY OF PHILADELPHIA

EXCISE TAX ON OUTDOOR ADVERTISING TRANSACTIONS

ARTICLE I

DEFINITIONS

Section 101. Definitions. For purposes of these regulations, the following words and phrases are defined as follows:

(a) **Accessory Sign**. A sign that directs attention to information, identification, or advertisements strictly incidental to a lawful use of the premises on which it is located. This includes signs or devices indicating the business transacted, services rendered, goods sold, or produced on the premises; and name or emblem of a person, firm, institution, organization or activity occupying the premises.

(b) **Non-Accessory Sign**. A sign, including the material affixed to or displayed thereon, that directs attention to a business, industry, profession, commodity, service organization, activity, institution, business, product or entertainment neither sold, located nor offered upon the property where the sign is situated.

(c) **On-site Public Art**. As defined by Philadelphia Code § 14-203(202), artwork such as a painting or mural that is will last the life of the building, is original, and created by an artist specifically for the site, with public access; and is not primarily intended to advertise or promote a commercial good or service. Artwork does not include a Sign, pursuant to Philadelphia Code § 14-203(276), as defined by a name, identification, description, emblem, device, or structure that is affixed to, printed on, projected, or represented directly or indirectly upon a building, structure, or parcel of land and that directs attention to a person, place, product, institution, business, organization, activity, or service. Signs shall also include any banner, pennant, placard, window sign, or temporary sign, that directs attention to a person, place, product, institution, business, organization, activity or service, with the exception of national flags.

(d) **Outdoor Advertising Sign**. A non-accessory sign viewable in the open air, but excluding: advertising matter displayed on currently registered motor vehicles or on pedestrians; accessory advertising matter displayed on newsstands; information required by law or ordinance to be placed on structures; notice to the public that a property is for sale or rent; a sign owned and sponsored by a community, civic or charitable organization; a sign identifying a company performing on-site construction; and On-site Public Art.

(e) **Outdoor Advertising Sign Company**. The owner or operator of a structure used to display an Outdoor Advertising Sign.

(f) **Purchase Price**. The full consideration paid, delivered or promised to be paid to an Outdoor Advertising Sign Company for the installation, placement or maintenance of, or license to place, an Outdoor Advertising Sign on any building, parcel or Sign Support Structure. The Purchase Price shall not include the price paid to the owner of the real property or the Outdoor Advertising Sign Company in consideration for the erection, maintenance or improvement of a

Sign Support Structure. The actual cost incurred to produce the printed physical sign (e.g. the cost of poster stock, ink, converting from static to digital, labor, or photography, etc.) will not be included in the Purchase Price provided there are cost accounting procedures in place to produce a unit cost per sign and this unit cost is specified/itemized in any invoice billing.

(g) **Sign**. Pursuant to Philadelphia Code § 14-203(276), a name, identification, description, emblem, display, or device which is affixed to, or printed on, or represented directly or indirectly upon a building, structure, or parcel of land; visible or intended to be visible from any public place; and which directs attention to a person, place, product, institution, business, organization, activity or service. Signs also include any permanently installed or situate merchandise, including any banner, pennant, placard, window sign, or temporary sign, with the exception of national flags.

(h) **Sign Support Structure**. Any column, upright, brace or construction situate upon the ground, a building or another structure the purpose of which is to support a sign or sign message.

(i) **Commercial Sign**. A sign containing copy that relates primarily to the economic interests of the publisher or its audience or directs attention to a business, industry, profession, commodity, service, activity, institution, product or entertainment offered for sale.

(j) **Non-Commercial Sign**. A sign containing copy that does not relate primarily to the economic interests of the publisher or its audience nor directs attention to a business, industry, profession, commodity, service, activity, institution, product or entertainment offered for sale.

ARTICLE II

IMPOSITION AND RATE OF TAX

Section 201. Outdoor Advertising Tax and Rates.

(a) There is hereby imposed an excise tax of seven percent (7%) of the purchase, rental or licensing of space on any building, parcel, Sign Support Structure or newsstand located in the City for the purpose of installing, placing or maintaining an Outdoor Advertising Sign (the "Outdoor Advertising Excise Tax").

(b) The Outdoor Advertising Excise Tax shall be collected by an Outdoor Advertising Sign Company at the time the Purchase Price is paid, and shall be remitted by the Outdoor Advertising Sign Company to the City in accordance with these regulations.

Section 202. Non-Taxable Activities.

(a) The following activities are not subject to the Outdoor Advertising Excise Tax:

(1) The purchase, rental or licensing of space for signs displayed on currently registered motor vehicles such as passenger cars, motorcycles, taxicabs, commercial trucks, truck tractors, trailers, vans, buses and trackless trolleys. This exclusion will also apply to signs on any vehicle operated upon rails such as trolleys, subway trains, elevated trains, regional commuter rail

lines or railroads and to electric personal assistive mobility devices (EPAMD) or any other personal or public conveyance.

(2) The purchase, rental or licensing of space for signs held by or powered by pedestrians such as "sandwich boards."

(3) The display of Accessory Signs on newsstands.

(4) The display of informational signs required by law or ordinance to be placed on structures, such as required government warnings or disclosures.

(5) The posting of signs on a property advertising that property for sale or rent.

Illustration No. 1: ABC Realty Inc. places a "For Sale" sign on a specific property it has listed for sale. This activity is not subject to the Outdoor Advertising Excise Tax.

Illustration No. 2: ABC Realty Inc. leases with an Outdoor Advertising Sign Company to place an Outdoor Advertising Sign on a Sign Support Structure (i.e. billboard) located along Interstate 95. The Sign advertises ABC services along with several property addresses it has listed for sale. This activity is subject to the Outdoor Advertising Excise Tax.

(6) The posting of signs on a construction site noting the contractors on the project.

(7) The display of On-Site Public Art. The display of artwork that acknowledges the monetary contribution of the sponsor for the art project is not subject to the Outdoor Advertising Excise Tax where any such acknowledgement is of a nominal size, type or presentation so as not to compromise or detract from the artistic or aesthetic integrity of the artwork.

(8) The posting of Accessory Signs.

Illustration No. 3: A profit-making or a nonprofit hospital places a sign advertising the hospital's services on a Sign Support Structure on the side of the hospital building. The placement of this Accessory Sign is not subject to the Outdoor Advertising Excise Tax.

(9) The posting of signs in outdoor stadiums, sports venues or entertainment facilities (e.g. Citizens Bank Park, Lincoln Financial Field) where the public is charged an admission fee to enter.

(10) The purchase, rental or licensing of a sign by a community, civic, religious or charitable organization, advertising the services of the organization.

Illustration No. 4: A nonprofit hospital contracts with an Outdoor Advertising Sign Company for the placement and maintenance of an

Outdoor Advertising Sign. The placement of this Non-Accessory Sign is not subject to the Outdoor Advertising Excise Tax.

Section 203. Taxable Transactions.

(a) The tax is imposed on the purchase, rental or licensing of space on any building, parcel, Sign Support Structure or newsstand located in the City for the purpose of installing, placing, or maintaining an Outdoor Advertising Sign.

(b) Examples of taxable transactions include (but are not limited to) the following:

(1) The purchase, rental or licensing of space for an Outdoor Advertising Sign placed on a Sign Support Structure such as an overhead highway billboard.

Illustration No. 1: A car manufacturer leases space for the placement of a Non-Accessory Sign advertising its new model automobile along Interstate 95. The Non-Accessory Sign is an Outdoor Advertising Sign, the leasing of which is subject to the Outdoor Advertising Excise Tax.

(2) The purchase, rental or licensing of space for an Outdoor Advertising Sign that is attached to or affixed upon a building or other structure such as a wall, roof, pole or bench.

Illustration No. 2: The same car manufacturer leases space advertising the new model automobile along the outside of an industrial building visible from Interstate 95. This Non-Accessory Sign is an Outdoor Advertising Sign, the leasing of which is subject to the Outdoor Advertising Excise Tax.

Illustration No. 3: A restaurant leases advertising space on an outdoor bench located within 3 blocks of the restaurant. This Non-Accessory Sign is an Outdoor Advertising Sign, the leasing of which is subject to the Outdoor Advertising Excise Tax.

(3) The purchase, rental or licensing of space for an Outdoor Advertising Sign printed, displayed or posted in or on outdoor SEPTA facilities such as elevated train platforms, regional rail stations, bus shelters or terminal facilities. However, advertising posted within a station/terminal building (e.g., Frankford Transportation Center, Suburban Station, and 30th Street Station) will not be subject to the Outdoor Advertising Excise Tax. The Purchase Price associated advertising at any SEPTA facility not located within the City of Philadelphia will not be subject to the Outdoor Advertising Excise Tax.

Illustration No. 4: A bank leases space for the placement of Signs within the Suburban Station Concourse and its train platforms. These Non-Accessory Signs are not Outdoor Advertising Signs for the purposes of the Outdoor Advertising Excise Tax because they are not viewable in the open air.

Illustration No. 5: The same bank leases space for the placement of Signs along the elevated train stations from the Frankford Transportation Center

Station to the Spring Garden Street Station. Since these stations are viewable in the open air, these Non-Accessory Signs are Outdoor Advertising Signs and the lease of the space is subject to the Outdoor Advertising Excise Tax.

Illustration No. 6: The same bank also leases space for Signs to be posted along the elevated train stations from 2nd Street Station to 40th Street Station as well as the entire Broad Street Subway line. These stations are underground and not in the open air and therefore these Non-Accessory Signs are not Outdoor Advertising Signs and the lease of the space is not subject to the Outdoor Advertising Excise Tax.

Section 204. Purchase Price.

(a) The tax shall be based on the full consideration paid, delivered or promised to an Outdoor Advertising Sign Company for the purchase, rental, licensing, installation or maintenance of an Outdoor Advertising Sign on any building, parcel, Sign Support Structure or newsstand.

(b) The Purchase Price shall not include the price paid to the owner or lessee of the real property or the Outdoor Advertising Sign Company in consideration for the erection, maintenance or improvement of a Sign Support Structure. The contract for such construction or services of a Sign Support Structure and the subsequent placement of a Sign thereon should specify the charges/costs for each.

Illustration No. 1: XYZ Advertising Inc. (on behalf of their client) contracts with JFP Outdoor Advertising Inc. for the construction and subsequent use of a Sign Support Structure. As specified in the contract, the construction costs to erect the Structure is $10,000 and the charge for the use of the space is $5,000 per month. JFP Outdoor Advertising Inc. must collect the Outdoor Advertising Excise Tax from XYZ Advertising Inc. based on the advertising charge of $5,000 per month.

(c) Commissions:

(1) Where an Outdoor Advertising Sign Company invoices and receives payment directly from the purchaser/end user of advertising space and the Outdoor Advertising Sign Company pays commissions to a third party (i.e. advertising agency) as compensation or courtesy for the referral of business to the Outdoor Advertising Sign Company, such commissions shall not be deducted from the Purchase Price.

(2) Where the Outdoor Advertising Sign Company invoices and receives payment for the sale of advertising space directly from a third-party (i.e. advertising agency), and the third-party retains commissions as compensation for their services, such commissions shall not be included in the Purchase Price.

Illustration No. 2: Joe's Soft Drinks Inc. contracts directly with XYZ Outdoor Advertising Inc. for the sale of advertising space to be paid on an annual basis. The contract price is $100,000 for the sale of the advertising space. XYZ Outdoor Advertising Inc. invoices Joe's Soft Drinks Inc. and receives the $100,000 payment.

Subsequently, and outside of the contract between XYZ Outdoor Advertising Inc. and Joe's Soft Drinks Inc., XYZ pays a 5% commission to JFP Advertising Inc. for referring Joe's to them. The $5,000 commission paid by XYZ to JFP Advertising Inc. cannot be deducted from the $100,000 Purchase Price.

Illustration 3: Joe's Soft Drinks Inc. contracts with JFP Advertising Inc. for the design and placement of Outdoor Advertising Signs. The contract specifies that JFP's fee for services will be $25,000. The contract also specifies that the cost of advertising space will be $75,000 to be paid to unrelated third-party, XYZ Outdoor Advertising Inc. The Purchase Price subject to tax is $75,000.

(d) Cost to Produce an Outdoor Advertising Sign: The actual cost incurred to produce the Outdoor Advertising Sign (e.g. the cost of poster stock, ink, photography, etc.) will not be included in the Purchase Price provided there are proper cost accounting procedures in place to produce a unit cost per sign and this unit cost is specified/itemized in any invoice billing. The producer of the Outdoor Advertising Sign can designate a retail markup percentage that will not be part of the Purchase Price, provided that this markup percentage is specified in the advertising contract. Where the production cost per unit cannot be reasonably derived or where it is not specified/itemized in invoice billings, it will be presumed that all charges are for the purchase, rental or licensing of the Outdoor Advertising Sign.

Illustration No. 4: JFP Advertising Inc. contracts with XYZ Outdoor Advertising Inc. for the production and placement of 25 Outdoor Advertising Signs on behalf of Joe's Soft Drinks Inc. The total amount of the contract is $100,000 and included in the contract is a term stating that XYZ can bill for the cost to produce the physical Outdoor Advertising Signs plus a 10% retail markup. The actual production cost for the 25 Outdoor Advertising Signs was $50,000 (or $2,000 per unit) with a retail markup of $200 per unit. XYZ invoices JFP itemizing a $2,000 per unit production cost and a $200 per unit retail markup for the 25 units. The $55,000 retail price of the units (i.e. 25 units @ $2,200) is not included in the taxable Purchase Price. The taxable Purchase Price is the remaining $45,000 on the contract.

Illustration No. 5: Assume the same facts as No. 4. However, XYZ Outdoor Advertising Inc. invoices JFP Advertising Inc. for the full contract price and does not separately state the production cost. The taxable Purchase Price is the entire contract amount of $100,000.

Section 205. Outdoor Advertising Sign Company.

(a) An Outdoor Advertising Sign Company is the owner or operator of the Sign Support Structure used for the placement of the Outdoor Advertising Sign.

(b) Owner versus Operator. The owner of the real property upon which a Sign Support Structure is placed may be different from the operator of the structure or the site. If the owner of the real property merely leases the property for a fixed rent to a lessee, the owner will not be considered an Outdoor Advertising Sign Company for purposes of these regulations. The lessee/operator of the real property who engages in the business of selling, placing and maintaining

an Outdoor Advertising Sign and/or Sign Support Structure will be considered an Outdoor Advertising Sign Company under these regulations.

> Illustration No. 1: ABC Partnership leases a parcel of land to XYZ Outdoor Advertising Inc. for the construction of a Sign Support Structure to be used by XYZ Outdoor Advertising Inc. for the placement of Outdoor Advertising Signs. ABC is paid a monthly fixed rental fee. ABC is not an Outdoor Advertising Sign Company. XYZ is an Outdoor Advertising Sign Company.

(c) Community, civic, or charitable organizations shall only fall into the definition of an Outdoor Advertising Sign Company if they directly sell the use of their own Sign Support Structure for the placement of an Outdoor Advertising Sign.

Section 206. Multiple Locations.

(a) Where a contract is entered into for the placement of Outdoor Advertising Signs both within and outside the City, only the Purchase Price charged for the purchase, rental, or licensing of the Outdoor Advertising Signs located within the City is subject to the Outdoor Advertising Excise Tax.

(b) An Outdoor Advertising Sign Company shall specify in its records the allocation of a Purchase Price that covers Outdoor Advertising Signs located outside and within the City. The itemization of the different charges for all locations will be accepted by the Department if reasonable. When no allocation of Purchase Price is specified in the records of the Outdoor Advertising Sign Company, the presumption shall be that all locations are uniform in price.

ARTICLE III

COLLECTION, RETURN, FILING & PAYMENT

Section 301. Collection, Returns and Payment of the Tax.

(a) Every Outdoor Advertising Sign Company shall determine the proper tax due to be collected from the purchaser, renter, lessee or licensee based on the Purchase Price and shall report the tax to the City on the return furnished by the Department and in the manner prescribed by the Department. The renter, purchaser, lessee or licensee of the advertising space may be a third party (i.e. advertising agency).

(b) Every Outdoor Advertising Sign Company shall transmit to the Department, on or before the fifteenth (15th) day of each month, a return for the month preceding the month in which the return is made along with the tax due. For example, on or before August 15th, the Outdoor Advertising Sign Company must submit a return and remit the Outdoor Advertising Excise Tax on July's taxable transactions. The return shall report the amount of consideration received for the transactions during the month for which the return is made, the amount of tax due from the Outdoor Advertising Sign Company for that month, and such other information as the Department may require.

(c) Every Outdoor Advertising Sign Company must prepare an Annual Summary Report detailing taxable transactions for the preceding calendar year on or before February 28th.

(d) Every Outdoor Advertising Sign Company shall maintain records, which shall be made available to the Department upon its request once per calendar year, which shall include, but not be limited to the number of advertising transactions on a daily, weekly, or monthly basis, the rate(s) charged for each transaction, the consideration received from all transactions during the month for which each return is made, as well as such other information as the Department may require.

Section 302. Electronic Filing and Payment.

(a) Any Outdoor Advertising Sign Company that remits an average of $20,000 or more per month will be required to file tax returns and remit attending tax payments electronically through electronic funds transfer ("EFT"). EFT includes automated clearinghouse ("ACH") debits and/or credits and any other means or technologies that may be available to obtain the funds due the City in an efficient manner. The Department may by policy or announcement provide for additional electronic means/technologies as they become available.

(b) The $20,000 average monthly threshold will be calculated using the monthly average from the immediate prior calendar year's filings.

(c) The Department may periodically determine or change the parameters for Outdoor Advertising Sign Companies to electronically file tax returns and remit the attending tax payments electronically. These parameters will be posted to the Department's website and Outdoor Advertising Sign Companies will be notified of the changes.

(d) The application of the Department's electronic filing and payment parameters for a particular Outdoor Advertising Sign Company will be determined by using the filings and payments for the Outdoor Advertising Sign Company in the immediate prior calendar year. If there is no filing for the prior year, the Department may set the parameters and notify the Outdoor Advertising Sign Company.

(e) Any Outdoor Advertising Sign Company who is required by this regulation to electronically file a return and fails to do so will be subject to a penalty of $500 for each occurrence. Every month that the taxpayer fails to electronically file will constitute a separate occurrence in accordance with Philadelphia Code § 19-511.

(f) Any Outdoor Advertising Sign Company who is required by this regulation to make an electronic payment and fails to comply shall, in addition to any interest, penalties and fees owed under Philadelphia Code § 19-509, be subject to a penalty for each occurrence as follows:

(1) If the amount to be paid electronically is less than or equal to $10,000: five percent (5%) of the amount to be paid electronically.

(2) If the amount to be paid electronically is more than $10,000 but less than $50,000: five hundred dollars ($500).

(3) If the amount to be paid electronically is $50,000 or more: one percent (1%) of the amount to be paid electronically.

(g) Every month that the Outdoor Advertising Sign Company fails to make electronic payments will constitute a separate occurrence.

Section 303. Liability for Uncollected or Unpaid Taxes.

(a) All taxes collected by an Outdoor Advertising Sign Company in accordance with Philadelphia Code § 19-3400 and these regulations shall constitute a trust fund for the City, and such trust shall be enforceable against the Outdoor Advertising Sign Company, any employee or agent of the same who exercises sufficient control over its financial affairs as to be a responsible person, and any person receiving any part of such fund without consideration, or with knowledge that the Outdoor Advertising Sign Company is committing a breach of trust. However, any person receiving payment of a lawful obligation of the Outdoor Advertising Sign Company from such fund shall be presumed to have received the same in good faith and without any knowledge of the breach of trust.

(b) If an Outdoor Advertising Sign Company fails to collect the Outdoor Advertising Excise Tax or collects but fails to remit the Outdoor Advertising Excise Tax, it shall be liable for the entire tax due along with the prescribed interest and penalties. The Outdoor Advertising Sign Company shall also be subject to any other fines or actions as prescribed by law.

(1) Where an Outdoor Advertising Sign Company receives partial payment of a Purchase Price, the Outdoor Advertising Excise Tax shall be calculated and remitted on a pro-rata basis by computing seven percent (7%) of the partial Purchase Price that was received.

(2) Where an Outdoor Advertising Sign Company receives no payment from the renter or purchaser of advertising space, it shall not be liable for the Outdoor Advertising Excise Tax.

(c) Where the Outdoor Advertising Sign Company has attempted collection of the tax from the purchaser, renter, lessee, or licensee of the Outdoor Advertising Sign and has not received the tax due, then any payment received by the Outdoor Advertising Sign Company from the purchaser, renter, lessee or licensee of the Outdoor Advertising will be considered by the Department of Revenue to include the tax and the tax shall be imputed. The imputed tax should be remitted to the Department of Revenue accordingly.

(d) Method of Calculation for the Imputed Tax. The imputed tax will be determined by dividing the payment by 1.07.

> Illustration: XYZ Outdoor Advertising attempts to collect the 7% tax from Joe's Soft Drinks Inc. The Purchase Price is $1,000 for the month and the tax to be collected is $70. Joe's pays XYZ the $1000 Purchase Price and did not pay the $70 tax.
>
> Payment received / 1.07 = Purchase Price

$ 1000/1.07 = $935

The imputed tax that should be remitted to the Department is ($935 x .07) = $65.

ARTICLE IV

MAINTENANCE OF BOOKS AND RECORDS, REVIEW AND APPEAL

Section 401. Examination of Books and Records.

(a) Every Outdoor Advertising Sign Company must maintain books and records that detail the total number and dollar volume of taxable transactions for each return period. The Outdoor Advertising Sign Company's books and records must show the daily or weekly or monthly number of taxable transactions, and the consideration or rates charged and received for the transactions.

(b) Upon the Department of Revenue's request (not more than once per calendar year), and with reasonable notice provided by the Department, an Outdoor Advertising Sign Company must make its books and records available for inspection and/or audit examination. Failure to do so will subject the Outdoor Advertising Sign Company to additional estimated assessments for taxes, interest, penalties and any other sanctions prescribed by law.

Section 402. Review and Appeal.

(a) An Outdoor Advertising Sign Company or the appropriate client or customer thereof may appeal the Outdoor Advertising Excise Tax, interest and penalties assessed or any official action taken by the Department of Revenue (e.g. audit examination) in accordance with the provisions and procedures prescribed in Philadelphia Code § 19-1700.

ARTICLE V

INTEREST, PENALTIES, COST AND ENFORCEMENT

Section 501. Penalties and Enforcement.

(a) All interest, penalties and costs as prescribed by Philadelphia Code § 19-500 will be used by the Department of Revenue to enforce the provisions of these regulations.

Frank Breslin CPA, Revenue Commissioner

Date: 1/10/20