

ORDINANCE NO. 1065

AN ORDINANCE IMPOSING A TAX FOR GENERAL REVENUE PURPOSES WITHIN THE BOROUGH OF DONORA ON EACH DOLLAR OF THE WHOLE VOLUME OF BUSINESS TRANSACTED BY WHOLESale DEALERS IN GOODS, WARES, AND MERCHANDISE, AND BY RETAIL DEALERS IN GOODS, WARES AND MERCHANDISE AND BY PROPRIETORS OF RESTAURANTS OR OTHER PLACES WHERE FOOD, DRINK AND REFRESHMENTS ARE SERVED; PROVIDING FOR THE FILING OF RETURNS; ADMINISTRATION, COLLECTION AND ENFORCEMENT OF SAID TAXES; AND IMPOSING PENALTIES.

WHEREAS, It is necessary for the Council of the Borough of Donora, Washington County, Pennsylvania, to raise additional funds for the proper operation of the Borough during the year 1967 due to the fact that taxes heretofore levied will not produce sufficient funds to cover expenditures and requirements of the Borough for the said year, and

WHEREAS, Under the terms and provisions of Act 511 of the Session of 1965 of the General Assembly of the Commonwealth of Pennsylvania, effective January 1, 1966, and known as "The Local Tax Enabling Act," the Borough Council has the power and authority to provide for the levying, assessment and collection of taxes on each dollar of the whole volume of business transacted by wholesale dealers in goods, wares and merchandise, and by retail dealers in goods, wares and merchandise, and by proprietors of restaurants or other places where food, drink and refreshments are served.

NOW THEREFORE, IT IS HEREBY ENACTED AND ORDAINED by the Council of the Borough of Donora, Washington County, Pennsylvania, in pursuance of the authority granted by Act 511 of 1965, "The Local Tax Enabling Act," as follows:

SECTION I. The Council of the Borough of Donora enacts and ordains that the following words, when used in this Ordinance, shall have the meaning ascribed to them in this Section, except when the context clearly indicates or requires a different meaning.

DEFINITIONS

(a) The term "Dealers" and "Proprietors" shall include all natural persons, firms, associations, co-partnership or corporation, except those exempt under and by virtue of Section 2 of the said Act 511.

(b) The term "Wholesale Dealers" shall mean a vendor or dealer who sells to other vendors or dealers, wherever such vendors or dealers shall be located.

(c) The term "Retail Dealers" shall mean a vendor or dealer who is not classed as a wholesale vendor or dealer.

(d) The term "Each Dollar of the whole volume of business transacted" shall mean "Gross Receipts" and shall include all receipts of the business transacted, including cash, credits and property of any kind, without deduction therefrom on account of the cost of wares, goods and merchandise sold; the cost of materials, labor or service used; of interest, discount or other taxes paid; or any other expenses incurred in connection with the business transacted.

(e) The term "Tax Collector" shall mean the mercantile tax collectors appointed by the Borough of Donora.

SECTION II. ASSESSMENT, LEVY AND IMPOSITION OF TAXES.

The following taxes for general revenue purposes are hereby imposed, levied and assessed for the year 1967 on:

(a) A tax of one mill (1) on each dollar of the whole volume of business transacted by wholesale dealers in goods, wares and merchandise.

(b) A tax of one and one-half mills (1 1/2) on each dollar of the whole volume of business transacted by retail dealers in goods, wares and merchandise and by proprietors of restaurants or other places where food, drink and refreshments are served.

(c) No such tax shall be levied on the dollar volume of business transacted by wholesale and retail dealers derived from the resale of goods, wares and merchandise taken by any dealer as a trade-in or part payment for other goods, wares and merchandise, except to the extent that the resale price exceeds the trade-in allowance.

SECTION III. COMPUTATION OF VOLUME OF BUSINESS.

(a) Every person subject to the payment of the tax, who is

in business on the effective date of this ordinance shall compute his gross value of business for said year on gross volume of business transacted by him during the first month succeeding said effective date of this ordinance multiplied by ten.

(b) Every person subject to the payment of the tax, who commences his business subsequent to the effective date of this ordinance, shall compute his annual gross volume of business for the remaining part of said year upon the gross volume of business transacted by him during the first month of his engaging in business multiplied by the number of months remaining in such year.

(c) Every person who shall discontinue business during the year after having paid the mercantile tax for the said year or that portion of said year after he begins business, upon making proper application to the collector of such taxes, shall be entitled to receive a refund of a pro-rata amount of the tax paid, based on the period of time he was not in business during the year.

(d) Every person who has erroneously paid tax on a trade-in or as part payment for other goods, wares and merchandise, except to the extent that the resale prices exceed the trade-in allowance, upon making proper application to the collector of such taxes, shall be entitled to receive a refund of the amount of tax paid erroneously on said trade-in.

SECTION IV. RETURN

(a) Every person subject to the tax imposed by this Ordinance shall within sixty (60) days after the ordinance goes into effect in the event he is in business at that time, or within sixty (60) days after he commences business during said year, shall file a return with the collector of said taxes setting forth his name, nature of his business, business address, and such other information as may be necessary in arriving at the actual gross volume of the business for said year or portion thereof for which the tax is imposed and assessed, and the amount of said tax due and payable.

(b) Every return shall be made upon a form furnished by the tax collector appointed by said Borough. Every person making a return

shall sign the same and certify as to the correctness thereof.

SECTION V. PAYMENT

At the time of filing the return, the person making the same shall pay the amount of tax shown as due thereon to the Tax Collector appointed by the Borough.

SECTION VI. POWERS AND DUTIES OF TAX COLLECTOR

(a) It shall be the duty of the Tax Collector to collect and receive the taxes, fines and penalties imposed by this Ordinance. It shall be his duty to keep a record showing the money received by him from each person paying the tax and the date of such receipt.

(b) The Tax Collector is hereby charged with the administration and enforcement of the provisions of this Ordinance and is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this Ordinance, including provision for re-examination and correction of returns, and payments alleged or found incorrect, or as to which an over-payment is claimed or found to have occurred. Any person aggrieved by any decision of the Tax Collector shall have the right to appeal to the County Court of Washington County, as in other cases provided.

(c) The Tax Collector is hereby authorized to examine the books, papers and records of any taxpayer or supposed taxpayer in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax due. Every such taxpayer, or supposed taxpayer, is hereby directed and required to give to the Tax Collector the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

SECTION VII. SUIT ON COLLECTION; PENALTY

(a) The Tax Collector may sue for the recovery of taxes due and unpaid under this Ordinance.

(b) If, for any reason the tax is not paid within ninety (90) days after this ordinance becomes effective by those persons engaged in business

on the effective date of this ordinance, or within ninety (90) days after the beginning of business by the persons whose business commences after the effective date of this ordinance, interest at the rate of five per centum (5%) per annum on the unpaid amount of said tax and an additional penalty of one per centum (1%) on the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid shall be added and collected. Where suit is brought for the recovery of such tax, the person liable therefor, shall, in addition be liable for the costs of collection and interest and penalties herein imposed.

SECTION VIII. FINES AND PENALTIES

Whoever makes any false or untrue statement on his return, or who refused to permit inspection of the books, records or accounts of any business in his custody or control when the right to make such inspection by the Tax Collector is requested, and whoever fails or refuses to file a return required by this Ordinance, and whoever fails or refuses to procure a mercantile license when so required under this Ordinance, or fails to keep his license conspicuously posted at his place of business as required herein, shall, upon conviction before any justice of the peace be sentenced to pay a fine of not more than One Hundred Dollars (\$100.00) for each offense, and in default of payment of said fine to be imprisoned in the Washington County Jail for a period not exceeding thirty (30) days for each offense.

SECTION IX. SAVING CLAUSE

(a) Nothing contained in this Ordinance shall be construed to empower the Borough to levy and collect the taxes hereby imposed by any person, business or any portion of any business not within the taxing power of the Borough of Donora under the Constitution of the United States and the Laws and Constitution of the Commonwealth of Pennsylvania.

(b) If the tax, or any portion thereof, imposed upon any person under the provision of this Ordinance, shall be held by any Court of competent jurisdiction to be in violation of the Constitution of the United States, or of the Commonwealth of Pennsylvania, the decision of the Court shall not

affect or impair the right to impose the taxes or the validity of the taxes so imposed upon other persons herein provided.

SECTION X. PAYMENT UNDER PROTEST - REFUNDS

The Tax Collector appointed by the Borough is hereby authorized to accept payment under protest of the amount of mercantile tax claimed by the Borough in any case where the taxpayer disputes the validity or amount of the Borough's claim for tax. If it is thereafter judicially determined by a Court of competent jurisdiction that the Borough has been overpaid, the amount of the overpayment shall be refunded to the taxpayers. The provisions of this section shall be applicable to cases in which the facts are similar to those in a case litigated in a Court of competent jurisdiction.

SECTION XI. EFFECTIVE DATE

This Ordinance shall become effective on March 6, 1967, and shall remain in full force and effect for the remainder of the year 1967.

ORDAINED AND ENACTED INTO AN ORDINANCE THIS 2ND day of February, A. D. 1967.

Anthony A. Massarra
President of Council

ATTEST:

Thomas E. Petrus
Borough Secretary

EXAMINED AND APPROVED by me this 2ND day of February, A. D. 1967.

Albert P. Albarino
Mayor

ATTEST:

Thomas E. Petrus
Borough Secretary