

CITY OF JEANNETTE
WESTMORELAND COUNTY, PENNSYLVANIA

BILL NO. 19-08

ORDINANCE NO. 19-10

AN ORDINANCE OF THE CITY OF JEANNETTE, WESTMORELAND COUNTY, PENNSYLVANIA, AMENDING ORDINANCE NO. 76-12 TO AMEND DEFINITIONS, TO ESTABLISH A UNIFORM COMPUTATION METHOD, TO REQUIRE REGISTRATION BY PERSONS AND BUSINESSES, TO CLARIFY THE DUTIES OF THE COLLECTOR, TO PROVIDE FOR THE COLLECTION BY SUIT, TO IDENTIFY VIOLATIONS AND PROVIDE FINES AND PENALTIES, TO RETAIN AND REAFFIRM OTHER ORDINANCE PROVISIONS; REPEALING ALL INCONSISTENT ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Jeannette previously enacted a business privilege tax ordinance, identified as Ordinance No. 76-12; and

WHEREAS, the City of Jeannette had the power and authority pursuant to the Local Tax Enabling Act, 53 P.S. § 6924.301.1(a), to levy a business gross receipts tax with Ordinance No. 76-12; and

WHEREAS, the City of Jeannette continues to retain the power and authority to levy such tax following the passage of the Local Tax Reform Act, 72 P.S. § 4750.533; provided that the subjects of such tax and the rates of such tax are not extended or increased in contravention of such section of the Local Tax Reform Act; and

WHEREAS, the City of Jeannette desires to update its business privilege tax ordinance to enable more efficient and effective administration of such ordinance; and

WHEREAS, the Third Class City Code, 53 P.S. 37403(60), affords the City of Jeannette with the power “to make and adopt all such ordinances, by-laws, rules and regulations, not inconsistent with or restrained by the Constitution and laws of this Commonwealth, as may be expedient or necessary for the proper management, care and control of the city and its finances, and the maintenance of the peace, good government, safety and welfare of the city, and its trade, commerce and manufactures.”

BE IT ENACTED AND ORDAINED by the City Council of the City of Jeannette, Westmoreland County, Commonwealth of Pennsylvania, and it is hereby enacted and ordained as follows:

Section 1. Amendments to Business Privilege Tax Ordinance. The City hereby amends Ordinance No. 76-12 as follows:

A. **Definitions.** Section I of Ordinance No. 76-12 shall be amended to read, in its entirety, as follows:

The following words and phrases when used in this ordinance shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

- a. "City" - The City of Jeannette.
- b. "Person" - Any natural person, partnership, unincorporated association or corporation, non-profit or otherwise. Whenever used in any provision prescribing a fine or a penalty, the word "person", as applied to partnerships, shall mean the partners thereof, and as applied to corporations and unincorporated associations, shall mean the officers thereof.
- c. (1) "Business" - carrying on or exercising, whether for gain or profit or otherwise, within the City of Jeannette any trade, business, including but not limited to financial business as hereinafter defined, profession, vocation, service, construction, communication or commercial activity, making sales to persons or rendering services from or attributable to a Jeannette office or place of business.

(2) "Business" - shall not include the following: the business of any political subdivision, any employment for a wage or salary, any business upon which the power to levy a tax is withheld by law.
- d. "Financial Business" - The services and transactions of banks and bankers, trust, credit and investment companies, where not prohibited by law, holding companies, dealers and brokers in money, credits, commercial paper, bonds, notes, securities and stocks, monetary metals, factors and commission merchants.
- e. "Tax Year" - The twelve-month period from January 1st to December 31st.
- f. "Gross Receipts" - Cash, credits, property of any kind or nature, received in or allocable or attributable to the City of Jeannette from any business or by reason of any sale made, including resales of goods, wares or merchandise taken by a dealer as a trade-in or as part payment for other goods, wares or merchandise, or services rendered or commercial or business transaction had within the City of Jeannette, without deduction therefrom on account of the cost of property sold, materials used, labor, service or other cost, interest, or discount paid, or any other expense. Gross receipts shall be computed in accordance with the taxpayer's method of accounting. Gross receipts shall include both cash and credit transactions.

Gross Receipts Shall Exclude:

- (1) The amount of any allowance made for goods, wares, or merchandise taken by a dealer as a trade-in or as part payment for other goods, wares and merchandise in the usual and ordinary course of his business.

(2) In the case of a financial business, the cost of securities and other property sold, exchanged, paid at maturity, or redeemed, and moneys or credits received in repayment of advances, credits and loans, but not to exceed the principal amount of such advances, credits and loans, and shall also exclude deposits.

(3) In the case of a broker, any commissions paid by him to another broker on account of a purchase or sales contract initiated, executed or cleared in conjunction with such other broker.

(4) Receipts by dealers from sales to other dealers in the same line where the dealer transfers title or possession at the same price for which he acquired the goods, wares or merchandise.

(5) Receipts or that portion thereof attributable to interstate or foreign commerce or to an office or place of business regularly maintained by the taxpayer, outside the limits of the City of Jeannette, and not for the purpose of evading payment of this tax and those receipts which the City is prohibited from taxing by law.

(6) "Collector of Business Privilege Tax" or "Collector" shall mean the City Treasurer or such other person or entity appointed or designated by the City Council of the City of Jeannette by ordinance or resolution to collect to administer this tax.

(7) "Temporary seasonal or itinerant business" - shall mean any business that is conducted at one location for less than (60) sixty consecutive calendar days.

B. **Imposition and Rate of Tax and Computation of Annual Gross Receipts.** Section II of Ordinance No. 76-12 shall be amended to read, in its entirety, as follows:

a. Every person engaging in any business in the City of Jeannette beginning on February 1, 1977, and annually thereafter, shall pay an annual tax at the following rates:

1. Wholesale vendors or dealers in goods, wares, and merchandise at the rate of one half ($\frac{1}{2}$) of a mill on each dollar of volume of gross annual receipts.

2. All other persons at the rate of two third ($\frac{2}{3}$) of a mill on each dollar of volume of gross annual receipts.

b. Every person subject to the payment of the tax herein shall compute his, her, or its annual gross receipts upon the actual receipts received by him, her, or it during the calendar year.

c. Where a receipt in its entirety cannot be subjected to the tax imposed by this ordinance by reason of the provision of the Constitution of the United States or any other provision of law, the Collector shall establish rules and regulations and methods of allocation and evaluation so that only that part of such receipt which is properly attributable and allocable to the doing of business in the City of Jeannette shall be taxed hereunder. The

Collector may make such allocation with due regard to the nature of the business concerned on the basis of millage division of the receipt according to the number of jurisdictions which it may be taxed, the ratio of the value of the property or assets of the taxpayer owned and situated in the City of Jeannette to the total property or assets of the taxpayer where owned and situated and any other method or methods of calculation other than the foregoing, calculated to effect a fair and proper allocation.

d. Every person subject to the payment of the tax hereby imposed who engages in a business, temporary, seasonal or itinerant by its nature, shall compute his, her, or its annual gross receipts upon the actual gross receipts received by him, her, or it during such tax year.

C. **Returns.** Section III of Ordinance No. 76-12 shall be retained, in its entirety, and unchanged to read as follows:

Every person subject to this tax shall, on or before the 30th day of April, the 31st day of July, the 31st day of October, and the 31st day of January of each year, commencing April 30, 1977, file a return under oath or affirmation with the Collector. Such return shall be on a form prepared by the Collector, approved by the City Solicitor and shall indicate the gross receipts of such vendor taxable under this ordinance during the previous three (3) month period ending respectively on March 31, June 30, September 30 and December 31; provided that:

a. It shall be presumed that all receipts are a proper measure of this tax until established otherwise and the burden of proving that any payment or consideration received by any person subject to the tax hereby imposed is excludable from gross receipts shall be upon the person who received such payment or consideration.

b. That any person who shall file a declaration under oath or affirmation prior to the 28th day of February, 1977, and prior to the 31st day of January, of each year thereafter, stating that the amount of tax due to the City of Jeannette for the forthcoming year in his estimation will not exceed the sum of Fifty Dollars (\$50.00), then, upon approval of said declaration by the Collector, such person shall omit quarterly returns and file one (1) return for the ensuing year prior to the 31st day of January of the following year. No penalty or interest shall be assessed against such person for failure to file a quarterly return once such declaration has been filed and approved. The Collector may grant or withhold such approval in its sole discretion.

c. Every person subject to the payment of the tax imposed by this ordinance who engages in a business temporary, seasonal or itinerant by its nature, shall, within twenty (20) days from the day he completes such business, file a return with the Collector setting forth his name, his business, his business address, and such other information as may be necessary in arriving at the actual gross volume of business during the tax period in the amount of the tax due.

D. **Registration.** Section IV of Ordinance No. 76-12 shall be amended to read, in its entirety, as follows:

Every person engaging in, conducting, or operating a business within the City of Jeannette and every person subject to the tax imposed by this ordinance shall forthwith register with the Collector and City Clerk on such forms or applications as may be provided by the City and set forth his name, address, business address and nature of the business activity in which he is engaged; said registrations to be made on or before February 28, 1977. Any person hereafter who engages in, conducts, or operates a business within the City of Jeannette and any person subject to the tax imposed by this ordinance shall register with the Collector and City Clerk on such forms or applications as may be provided by the City within thirty (30) days after commencement of such business. Any person who shall engage in a temporary, seasonal or itinerant business shall register with the Collector and City Clerk on such forms or applications as may be provided by the City prior to the commencement of such business. All such persons shall pay any registration fee in the amount established and set by the City Council by ordinance or resolution.

E. **Due Date of Tax.** Section V of Ordinance No. 76-12 shall be retained, in its entirety, and unchanged to read as follows:

The tax levy hereunder shall be due and payable on or before the dates specified herein for the filing of returns, whether or not a return is filed and whether or not the return filed correctly states the amount of gross receipts or the amount of tax due.

If any return required under this ordinance shall not be filed when due, the person responsible for such return shall, in addition to the tax and interest due, pay a penalty of ten (10%) percent of the amount of tax due.

If any tax imposed under this ordinance shall not be paid when due, interest shall be added thereto at the rate of six (6%) percent per annum, in addition to any penalties herein provided.

F. **Duties of Collector.** Section VI of Ordinance No. 76-12 shall be amended to read, in its entirety, as follows:

a. It shall be the duty of the Collector to collect and receive the taxes, fines and penalties imposed by this ordinance and to keep a record showing the amount received, the person paying the same and the date of such receipt.

b. The Collector is hereby charged with the administration and enforcement of the provisions of this ordinance, and is hereby ordered to prescribe, adopt, promulgate and enforce forms, applications, returns, rules and regulations relating to any matter pertaining to the administration and enforcement of this ordinance, including provisions for the re-examination and correction of returns, and payments alleged or found to be incorrect, or as to which an overpayment is claimed, or found to have occurred; provided, however, that all such rules and regulations be approved by the City Solicitor. Any person aggrieved by any

decision of the Collector shall have the right to appeal to the Court of Common Pleas, as in other cases provided.

c. The Collector, or its authorized agents, 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 Collector or its authorized agent the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

d. The Collector, City Clerk, and City officials hereby are instructed and authorized to impound all returns, verifications and records that come into their custody through the operation, administration, and enforcement of this ordinance, with the exception of reporting to City officials information necessary to enforce this ordinance and to assure the efficient and orderly administration of the tax collection process.

e. Nothing contained herein shall be interpreted to mean that the enforcement of this ordinance cannot be had by the City Council of the City of Jeannette.

G. **Recovery of Taxes and Penalties and Suits for Collection.** Section VII of Ordinance No. 76-12 shall be amended to read, in its entirety, as follows:

All taxes, together with all penalties and interest imposed thereon, shall be recoverable by the Collector as other debts of like amounts are recoverable or in accordance with applicable law. In addition to other remedies available by law, suit may be brought by the Collector or the City for recovery of any unpaid tax, interest and costs of collection that are allowable by law from the person or persons who are liable for the payment of the same.

H. **Confidential Nature of Information.** Section VIII of Ordinance No. 76-12 shall be retained, in its entirety, and unchanged to read as follows:

Any information gained by the Collector or by any other official or agent of the City as a result of any returns, investigations, hearings or verifications required or authorized by this ordinance, shall be confidential, except for official purposes and except in accordance with proper judicial order or as otherwise provided by law. Any disclosure of any such information contrary to the provisions of this section shall constitute a violation of this ordinance.

I. **Violations, Fines, and Penalties.** Section IX of Ordinance No. 76-12 shall be amended to read, in its entirety, as follows:

Any person who (i) fails or refuses to register a business as required by this ordinance; (ii) makes any false or untrue statement on the tax return required to be filed by this ordinance; (iii) refuses to permit examination and inspection of books, records and/or accounts of any business activity subject to the within tax; (iv) fails or refuses to file a tax return as required by this ordinance; or (v) fails or refuses to pay the tax levied by this ordinance when due

shall, upon conviction thereof, be sentenced to pay a fine of not more than \$1,000.00 or, in default thereof, be imprisoned for a period not exceeding 90 days, or both such fine and imprisonment. Each day that a person refuses to permit examination and/or inspection of the books, records or accounts of any business activity subject to the within tax shall constitute a separate offense. Furthermore, each day that any person fails or refuses to register a business or file a return or fails or refuses to pay the tax levied in this ordinance when due shall constitute a separate offense.

J. **Construction and Savings Clause.** Section X of Ordinance No. 76-12 shall be retained, in its entirety, and unchanged to read as follows:

a. Nothing contained in this ordinance shall be construed to empower the City to levy and collect the taxes hereby imposed on any person, or any business, or any portion of any business not within the taxing power of the City 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 provisions 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 nor impair the right to impose the taxes, or the validity of the taxes so imposed upon other persons as herein provided.

Section 2. Severability. It is herein declared that the provisions of this Ordinance are severable, and if any provisions, portions, or sections of this Ordinance are declared to be illegal, invalid, or unconstitutional, the decisions of any Court, which makes declarations, shall not impair or affect any of the remaining portions of this Ordinance.

Section 3. Repealer. Any ordinance or part of any ordinance that conflicts with the provisions of this ordinance is hereby repealed to the extent of any such conflict on the effective date of this ordinance.

Section 4. Effective Date. This Ordinance shall become effective ten (10) days after its enactment.

This Ordinance is duly ORDAINED AND ENACTED by a majority of the members of the City Council of the City of Jeannette at a duly advertised public meeting held on the 14th day of November, 2019.

CITY OF JEANNETTE

By: Curtis J. Antoniak
Curtis J. Antoniak
Mayor and President of Council

ATTEST: (SEAL)

Michelle A. Langdon
Michelle A. Langdon
City Clerk