

MUNICIPALITY OF NORRISTOWN
MONTGOMERY COUNTY, PENNSYLVANIA

Resolution No. 21-46 of 2021

A RESOLUTION OF THE COUNCIL OF THE MUNICIPALITY OF NORRISTOWN, MONTGOMERY COUNTY, PENNSYLVANIA, AMENDING AND RESTATING THE REGULATIONS TO IMPLEMENT THE LOCAL TAXPAYERS' BILL OF RIGHTS

WHEREAS, Norristown Municipal Council previously adopted Ordinance No. 16-01 entitled "The Local Taxpayer Bill of Rights" which became effective on March 6, 2016 and is codified at Chapter 291, Article XI of the Municipality Code of Ordinances; and

WHEREAS, Ordinance No. 16-01 and Section 291-97.B of the Municipality Code of Ordinances authorizes Council to establish regulations by Resolution in accordance with Act 50 of 1998 also known as the Local Taxpayers' Bill of Rights Act; and

WHEREAS, the Municipality previously adopted regulations by Resolution 16-109 of 2016 and now desire to amend and change certain provisions relating to the collection, appeal and enforcement of local taxes; and

NOW, THEREFORE, BE IT RESOLVED, that the following regulations are hereby adopted pursuant to Section 291-97.B of the Municipal Code of Ordinances and in accord with the requirements of Act 50 of 1998 also known as the Local Taxpayers' Bill of Rights Act, 53 Pa C.S.A. §§8421 et seq.:

ADMINISTRATION AND ENFORCEMENT REGULATIONS
FOR LOCAL TAXES

I. Definitions:

The following words and phrases, when used in these Regulations shall have the meanings ascribed to them in this section. Other words and phrases may be previously defined within the Municipal Code of Ordinances.

"Audit" shall mean an inspection of the books, accounting and other appropriate records of a taxpayer by the designated Auditor or tax officer for the Municipality of Norristown for the purpose of verifying the correct payment of Local Taxes by the taxpayer. An Audit may be conducted in person at the taxpayer's location, at the Auditor's office, at the Municipal Hall or through the provision of copies of requested records to the Auditor through the mail.

“Auditor” shall mean a tax officer employed by the Municipality or an outside auditor or collector appointed by the Municipality for the auditing or collection of Local Taxes.

“Credit” shall mean an overpayment made to the Municipality for purposes of Local Taxes. A credit may be used to satisfy future Local Taxes upon written request of the taxpayer and the filing of all required tax returns.

“Finance Department” shall mean the Finance Department for the Municipality of Norristown.

“Finance Director” shall mean the Finance Director of the Municipality of Norristown or her designee tasked with responsibilities relating to collection or enforcement of Local Taxes.

“Initial Inquiry” shall mean the first contact with a taxpayer initiated by the Municipality or its Auditor and shall not include any annual notice that may be issued by the Municipality to all taxpayers regarding their general obligations to file tax returns nor shall it include generic informational notices sent to all taxpayers regarding general information about Local Taxes.

“Jeopardy Assessment” shall mean the determination of tax due by the Auditor based upon previously filed tax returns or other information available to the Auditor after the taxpayer has failed to file a required tax return or provide additional information as requested.

“Local Taxes” shall mean those taxes imposed by the Municipality and that are subject to these regulations as set forth in Part II, Chapter 291, §291-98 of the Municipal Code of Ordinances and include, without limitation, amusement taxes and business privilege taxes.

“Local Tax Hearing Officer” shall mean the individual appointed or designated by the Municipality to hear and render written decisions on administrative appeals of Local Taxes.

“Municipality” shall refer to the Municipality of Norristown unless specified otherwise.

“Tax Receiver” or “Tax Collector” shall mean the individual employed by the Municipality for the collection of Local Taxes or an outside collector appointed by the Municipality for the collection of Local Taxes. The Tax Receiver or tax Collector may be the same individual who serves as Auditor.

II. Disclosure Statement of Taxpayers’ Rights and Obligations.

Taxpayers are entitled to receive a written explanation of their rights and obligations with regard to any audit, appeal, enforcement, refund or collection of Local Taxes by the Municipality or its Auditor or its Tax Receiver, as applicable. The Municipality or its Auditor or its Tax Receiver shall notify any taxpayer contacted regarding the assessment, audit, determination, review or collection of an eligible tax (as defined in The Local Taxpayer Bill of Rights, 53

Pa.C.S.A. §§8421 et seq.) of the availability of this Resolution and shall make copies of this Resolution available to taxpayers upon request at no charge to the taxpayer, including mailing costs. The Municipality may also prepare a separate disclosure statement regarding a taxpayers rights and obligations with regard to the audit, appeal, enforcement, refund and collection of local taxes that shall also be made available to taxpayers at no charge from the Municipality or its Auditor or Tax Receiver.

III. Verification of Records, Audits, Response Periods, Prior Year Returns.

The Auditor and Finance Director are authorized to examine any books, records, papers, and relevant documents of any person or business entity who the Auditor or the Finance Director believes has engaged in taxable activity within the Municipality, in order to verify the accuracy of any return made or, if no return has been made, to issue a jeopardy assessment for the amount of taxes due including interest and penalties.

A. *Issuance of Subpoenas to Compel Attendance and Production.* The Auditor and Finance Director may issue subpoenas to compel the attendance of persons deemed by the Auditor or Finance Director to be necessary to examine as a witness, and to compel the production of books, records, and papers relating to any person or business entity under examination.

B. *Minimum Time Periods for Taxpayer Response.* Taxpayers shall have at least (thirty) 30 calendar days from the mailing date to respond to an Initial Inquiry for information from the Municipality. The Municipality may grant reasonable extensions to respond upon application in writing for good cause. A written request for an extension must be received by the Finance Director or Auditor within the first thirty (30) calendar day period. The Municipality will not take action against a taxpayer for a tax year in question until the end of the response period, including extensions if granted.

C. *Inquiry as to Prior Year Returns.* Except as provided below, an Initial Inquiry regarding a taxpayer's compliance may include taxes required to be paid or tax returns required to be filed no more than three (3) years prior to the mailing date of the notice of such inquiry. If, after the Initial Inquiry, the Auditor or Finance Director determines that the taxpayer failed to file a tax return, underreported income, or failed to pay a tax for one or more of the tax periods covered by the Initial Inquiry, subsequent requests for tax returns or supporting information may be made. Subsequent requests will be limited to two (2) additional years (for a total of five (5) years prior to the first date of Initial Inquiry), unless the taxpayer filed no return or filed a fraudulent return, in which case the Municipality may request information for additional prior years and may assess a tax for tax periods more than five (5) years prior to the date of the Initial Inquiry in accordance with the Local Tax Enabling Act (53 P.S. §§ 6924.101 et seq.), the Local Taxpayers Bill of Rights Act (53 Pa. C.S.A. §§ 8421 et seq.) and Pennsylvania law.

IV. Procedures for the Conduct of Taxpayer Audits

The following procedures shall be followed during the conduct of an Audit of a taxpayer's books and records:

A. *Notice of Audit.* The taxpayer shall be notified in writing of an Audit at least thirty (30) days in advance. The notice of audit shall contain the following information:

1. The tax years subject to audit;
2. The date, place, and time for the audit to be conducted;
3. A description of the information, books and records to be produced; and
4. The notice as to the availability of the disclosure statement of the taxpayer's rights and obligations.

B. *Audit Rescheduling.* The taxpayer may request, in writing, that the Audit be rescheduled provided that it is rescheduled within a reasonable time period from the date of the notice of audit not exceeding thirty (30) days, unless agreed to by the Auditor or Finance Director.

C. *Representation at Audit.* The taxpayer may have a representative present during the Audit if requested by the taxpayer and conducted at the taxpayer's place of business.

D. *Books and Records to be Examined.* The Auditor or Finance Director may as part of an Audit request for examination and the taxpayer shall provide copies such books and records customarily kept in the ordinary course of business that reflect actual business operations and that may include books, journals, invoices, profit and loss sheets, income and expense reports, financial documents, payroll documents, state and local return filings and payments, and other accounting records. A taxpayer claiming any exemption or exclusion for any portion of Local Taxes due must maintain complete records that will support the validity of the claim. Such exemption or exclusion claims will be disallowed if not sufficiently proven by the taxpayer. If records are not available to support the returns which were filed or which should have been filed, the taxpayer will be required to make them available to the Municipality at the cost of taxpayer.

E. *Use of Estimates.* In the event that the information, books, and records provided by the taxpayer are insufficient, unavailable or not produced or provided, then the Auditor or Finance Director is authorized to ascertain the amount of tax due through the use of estimates or the issuance of a Jeopardy Assessment. If records are not available for the entire period subject to Audit, the Auditor or Finance Director may utilize whatever information or records as available to reconstruct figures that reflect the taxable activity of the taxpayer for the relevant period.

F. *Use of Federal Tax Information.* The Municipality may require the taxpayer to provide copies of the taxpayer's federal income tax return if the federal tax return is reasonably necessary for the enforcement or collection of Local Taxes and the information has not been

made available by taxpayer from other sources including the Pennsylvania Department of Revenue.

G. *Requests for additional information.* The Auditor or Finance Director may as part of an Audit request additional information from the taxpayer in order to complete the Audit, which information shall be provided within thirty (30) days of the request or extension as granted by the Municipality. Such request may be based on missing, conflicting or incomplete information as shown in the records reviewed or provided to date. Such request may also be based on an expansion of the tax years under review.

H. *Audit Results.* In the event a Notice of Assessment is issued as a result of an Audit, the Auditor or Finance Director shall send written notice of its findings and conclusions, including the calculation of any tax, interest and/or penalty found to be due.

V. Examination of Return, Notice of Assessment.

A. *Examination of Return.* The Tax Receiver shall examine every return as soon after filing as practical to determine the correct amount of tax according to the filing. If the Tax Receiver finds that the amount of tax shown on the return is less than the correct amount, the Tax Receiver shall notify the taxpayer in writing of the amount of the underpayment or deficiency assessed.

B. *Notice of Assessment.* The Municipality shall issue a Notice of Assessment as a result of an examination of a return in which the amount of tax shown on the return is less than the correct amount or as a result of an Audit in which it is determined that additional amounts are due for the payment of Local Taxes. Such Notice of Assessment may be contained within the same writing or notice containing the Auditor's notice of findings and conclusions or in the Tax Receiver's notice of underpayment or deficiency. A Notice of Assessment, whether as a result of an examination of a return, or of an Audit, or otherwise, shall be in writing and include:

1. The tax period or periods for which the underpayment is asserted.
2. The amount of the underpayment detailed by tax period.
3. The legal basis upon which Norristown has relied to determine that an underpayment exists.
4. An itemization of the revisions made by the Municipality to a return or report filed by the taxpayer that result in the determination of an underpayment.

C. *No Return Filed.* If a taxpayer fails to file any required return, the Tax Receiver or the Finance Director may estimate from any available information the taxpayer's tax liability for the Local Taxes due and notify the taxpayer in writing the amount assessed against the taxpayer as a deficiency.

VI. Petition for Reassessment.

Within ninety (90) days of the date of a Notice of Assessment, a taxpayer may make a request for reassessment by completing and submitting a Petition for Review that will be forwarded for decision to the Local Tax Hearing Officer appointed by the Municipality. A failure to file timely an administrative appeal through a Petition for Review will result in a denial of the appeal and reassessment.

VII. Refund of Overpayments, Interest on Overpayments.

A. *Taxpayer Request for Refund of Overpayments.* Any taxpayer who has made an overpayment of tax to the Municipality may file a written request with the Tax Receiver or Finance Director for a refund or credit. A request for refund shall be made within three (3) years of the due date for filing the tax return, or one (1) year after actual payment of the tax, whichever is later. If no return (or report) is required, the request shall be made within three (3) years after the due date for payment of the tax or within one (1) year after actual payment of the tax, whichever is later. A request for refund shall not be considered complete and filed unless and until all information necessary for the Municipality to determine the merits of the request have been received by the Municipality.

1. Overpayment on tax return. For purposes of this section, a tax return filed by the taxpayer with the Municipality showing an overpayment of tax shall be deemed to be a written request for a refund unless otherwise indicated on the tax return.

2. Refund request not a Petition for Review or Administrative Appeal. A request for refund under this section shall not be considered a Petition for Review and shall not preclude a taxpayer from submitting such a Petition in accordance with the administrative appeal procedures as set forth in these Regulations.

3. Time Period to file an Administrative Appeal of a denial of a refund or credit request. A taxpayer whose refund request is denied by the Finance Director or Tax Receiver may file a Petition for Review in accordance with the administrative appeal procedures within thirty (30) days of the date of the written denial. A failure file timely an administrative appeal through a Petition for Review will result in a denial of the appeal and refund or credit.

B. *Interest on Overpayments.* All overpayments of Local Taxes due to the Municipality shall bear simple interest from the date of the overpayment until the date of resolution in accordance with Pennsylvania law, including 53 Pa. C.S.A. § 8426 (relating to interest on overpayment).

1. Rate of interest. Interest on overpayments shall be allowed and paid at the same rate as the Commonwealth is required to pay pursuant to Section 806.1 of the Act of April 9, 1929 (P.L. 343, No.176), known as The Fiscal Code.

2. 75 day tolling before interest accrues. No interest shall be allowed or paid if an overpayment is refunded (or applied against any other tax, interest or penalty due the Municipality) within 75 days after the last date prescribed for filing the report of the tax liability or within 75 days after the date the return or report of the liability due is filed, whichever is later.

3. No interest on Overpayments of Interest and Penalty. Overpayments of interest or penalty shall not bear any interest.

C. *Tender and Acceptance of Refund Check.* The Taxpayer's acceptance of the Municipality's refund check shall not prejudice any right of the Taxpayer to claim any additional overpayment and interest thereon. Tender of a refund check by the Township shall be deemed to be acceptance of the check by the taxpayer for the purposes of this section. The definitions of "date of overpayment" and "date of resolution" shall be in accordance with Local Taxpayers' Bill of Rights Act, 53 Pa.C.S.A. §§ 8421 et seq..

VIII. Abatement of Certain Interest and Penalty.

A. *Abatement Due to Erroneous Written Advice.* The Municipality shall abate any portion of any penalty or excess interest attributable to erroneous written advice furnished to the taxpayer by the Municipality or its Auditor or its Tax Receiver if the written advice was reasonably relied upon by the taxpayer, was in response to a specific written request by the taxpayer, and the portion of penalty or additional tax or excess interest did not result from a failure by the taxpayer to provide adequate or accurate information. A taxpayer should not rely on advice given which is not in writing and in response to specific written request. The Municipality is not required to provide written advice to taxpayers.

IX. Installment Agreements.

In order to facilitate collection, the Municipality may, in its sole discretion, enter into a written agreement with a taxpayer to allow the taxpayer to pay delinquent taxes, penalties and interest in installments.

A. *Termination of Installment Agreement.* The Finance Director may terminate any installment agreement if: (1) information provided to the Municipality prior to the date of the agreement was inaccurate or incomplete, or (2) the Finance Director believes that collection of the tax under the agreement is in jeopardy.

B. *Alteration, Modification or Termination of Installment Agreement.* If the Finance Director finds that the financial condition of the taxpayer has significantly changed, the Finance Director may alter, modify or terminate the agreement, but only if: (1) notice of the Finance

Director's finding is provided to the taxpayer no later than thirty (30) days prior to the date of such action; and (2) the notice contains the reasons why the Finance Director believes a significant change has occurred.

C. *Breach of Installment Agreement.* The Finance Director may alter, modify or terminate an installment agreement if the taxpayer fails to do any of the following: (1) Pay any installment at the time the installment is due under the agreement; or (2) Pay any other tax liability at the time the liability is due; or (3) Provide a financial condition update as requested by the Township.

X. Payment Under Protest and Voluntary Payments

The Finance Director or Tax Receiver is authorized to accept "payment under protest" of the amount of tax in order for the Taxpayer to avoid liability for additional interest, penalties, and fines. Further, the Finance Director or Tax Receiver may accept a "voluntary payment" as that term is defined in the Local Taxpayers' Bill of Rights Act, 53 Pa. C.S.A §8422 of any amount due without waiver of the Municipality's right to collect the balance due. Unless specified by the taxpayer, all voluntary payments of taxes shall be prioritized and applied in accordance with the Local Taxpayers' Bill of Rights Act, 53 Pa. C.S.A. §8429.

XI. Violations, Interest on Underpayments and Penalties.

A. *Interest on Underpayment.* If any amount of tax imposed for Local Taxes is not paid on or before the last date prescribed for payment, interest shall be payable for the period from such last date to the date such amount is paid as set forth in the relevant ordinance. In the event no interest is expressly set forth in the relevant ordinance, the Municipality or Tax Receiver may impose interest on any underpayment in an amount and at a rate as permitted by Pennsylvania law. Except as required by Section VIII of these Regulations relating to abatement due to erroneous written advice, interest is mandatory and will not be abated.

B. *Penalty.* If any amount of tax imposed for Local Taxes is not paid on or before the last date prescribed for payment, there shall be added to the tax for the taxable year a penalty in an amount as set forth in the relevant ordinance. Except as required by Section VIII of these Regulations relating to abatement due to erroneous written advice, penalty amounts are mandatory and will not be abated.

XII. Confidential Nature of Tax Information.

Any information learned or obtained by the Finance Director, Auditor, Tax Receiver or any official, agent or employee of the Municipality as a result of any audit, return, report, investigation, hearing or verification required or authorized by the Municipality shall be confidential tax information and must be kept confidential by the Municipality except for official purposes or as required otherwise by law.

XIII. Dishonored Checks.

If any check received in payment of taxes is returned unpaid by the bank, there shall be added to the tax due the sum charged for dishonored checks established by the Municipality or Finance Department.

XIV. Administrative Appeal Procedures for all Local Taxes except Earned Income Taxes (“EIT”).

For purposed of all Local Taxes except for Earned Income Taxes (“EIT”), in order to appeal any assessment or determination including a denial of refund of tax, the taxpayer must file a Petition for Review with the Finance Director. Unless directed otherwise by the Auditor or Tax Receiver, a Petitions for Review shall be mailed or hand delivered to: Municipality of Norristown, Finance Director, 235 East Airy Street, Norristown, PA 19401.

A. *Deadline for Filing/ Statute of Limitations.* A Petition for Review is filed timely if the Petition is either mailed in an envelope postmarked by the United States Postal Service with a date that is on or before the final date that the Petition is required to be filed, or the Petition is hand delivered to the Municipality’s Finance Department on or before the final date that the Petition is required to be filed. Petitions not timely filed shall be denied. As set forth in these Regulations above, the time deadline for filing a Petition for Review for a reassessment of tax shall be filed within 90 days of the date of the notice of assessment. Additionally, and as set forth in these Regulations above, a taxpayer seeking a refund or credit for prior taxes paid must first file a written request to the Finance Director or Tax Receiver requesting said refund or credit. A taxpayer shall then have thirty (30) days from the date of the denial of said refund or credit to file a Petition for Review challenging the denial.

B. *Contents of Petition for Review.* The Petition for Review shall be on the form provided by the Finance Department or Tax Receiver and shall contain:

1. Name, address and telephone number of the taxpayer and taxpayer’s authorized representative (if any);
2. Federal taxpayer employer identification number or social security number of the taxpayer;
3. Identify the tax and tax period(s) to which the Petition pertains;
4. State the amount of tax appealed and the legal basis for the appeal (i.e., state how or why the assessment is incorrect; or why a refund request should have been granted);
5. Provide copies of all supporting documentation and calculations; and
6. Certify under penalty of perjury that the facts in the Petition are true and correct and that the Petition is not filed for purposes of delay.

C. *Administrative Appeals Process and Procedure.* Upon receipt of a timely filed Petition for Review, the Finance Director or her designee will: (1) promptly schedule a hearing if a hearing has been requested by the taxpayer (if a hearing is not requested, the Petition will be determined on the record before the Local Tax Hearing Officer), (2) provide the taxpayer with a Notice of Hearing (setting forth the time, date, and location of the hearing), and (3) forward the taxpayer's petition to the Local Tax Hearing Officer appointed by the Township. Unless the date of the hearing is agreed upon by all parties, the Finance Director shall give at least seven (7) days written notice of the hearing to all parties.

D. *Hearings.* Hearings shall be held at the Municipality's Municipal Hall, unless otherwise directed by the Local Tax Hearing Officer. Hearings will be informal in nature and technical rules of evidence will not be applicable.

E. *Representation.* Taxpayers may appear before the Local Tax Hearing Officer with or without legal representation. Any person seeking to represent a taxpayer at the hearing must first be so authorized by the taxpayer in writing. A corporate taxpayer must be represented by an authorized officer or by an attorney admitted to practice in Pennsylvania.

F. *Presentation of Evidence.* Evidence may be submitted and considered that possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. All testimony shall be under oath or affirmation, administered by the Local Tax Hearing Officer. Copies or photographs of all records and other exhibits shall be provided to all parties and to the Local Tax Hearing Officer. Any party may have a transcript made of the hearing at that party's expense. A representative of the Municipality may question any witnesses presented by the taxpayer. A representative of the taxpayer may question any witnesses presented by the Municipality.

G. *Burden of Proof.* The taxpayer has initial burden of proof after the assessment is placed into the record, which assessment shall be considered prima facie evidence. The taxpayer shall present evidence in support of its petition including documentation or witness testimony. The taxpayer must prove by clear and convincing evidence its entitlement to a refund, credit or a change in the assessment. At the conclusion of the evidence presented by the taxpayer, the Municipality may present its evidence in support of the determination or assessment appealed.

H. *Failure to Appear.* The hearing may proceed in the absence of any party who fails to appear, after notice.

I. *Local Tax Hearing Officer's Decision.* After the conclusion of the hearing, the Local Tax Hearing Officer shall issue a written decision to the parties. The Decision is considered timely issued so long as it is mailed, faxed, emailed, postmarked or otherwise transmitted to

the parties on or before the deadline. The deadline to issue a decision is 60 days from the date of filing of the petition; however, the parties may jointly waive their rights to a decision within 60 days.

J. *Judicial Appeal.* Any person aggrieved by a written decision of Local Tax Hearing Officer may, within thirty (30) days from the date of such decision, appeal the decision to the Court of Common Pleas of Montgomery County, Pennsylvania. No administrative processes or judicial appeal will operate to suspend the accrual of penalty and interest from the date the tax was due to the date it is actually paid.

XV. Administrative Appeal Procedures for Earned Income Taxes (EIT)

Unless otherwise provided or required by law, all administrative appeals of Earned Income Taxes ("EIT") shall be in accordance with the administrative appeal procedures and regulations as set forth and adopted by the Montgomery County Tax Collection Committee for the Montgomery Tax Collection District pursuant to Pennsylvania law including Act 32, § 505(j)(1), 53 P.S. § 6924.505(j)(1).

XVI. Taxpayer Complaints.

All taxpayer complaints shall be directed to the Finance Director or Municipal Administrator for the Municipality.

XVII. Enforcement Procedures.

The Municipality may bring legal action to seek compliance with Municipality's ordinances for Local Taxes, including but not limited to audit compliance and to recover taxes, penalty and interest due as follows:

- A. *Criminal Citation.* The filing of a criminal citation in the District Court having jurisdiction for violation of the Municipality's tax ordinances and restitution for the unpaid taxes due. Tax ordinance violations may result in the imposition of fines up to \$600.00 per day.
- B. *Municipal Lien.* The filing of a municipal lien for the of the tax together with any interest and penalties.
- C. *Civil Complaint.* The filing of a civil complaint in the Court of Common Pleas of Montgomery County for all past and current taxes due plus penalties and interest.
- D. *Fees and Costs.* In all legal actions, the Municipality will request court costs and attorney and accounting fees.

XVIII. Repealer.

All regulations of the Municipality or parts thereof inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby

specially repealed. The regulations as contained herein shall take immediate effect and be in force from and after its approval as required by the law.

XIX. Construction and Severability.

If any sentence, clause, or section or part of these regulations is, for any reason, found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, or sections or parts of these regulations. These regulations would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

RESOLVED this 4th day of May, 2021.

**Municipality of Norristown
Municipal Council**

By: Derrick Perry
Derrick Perry
Council President

Attest Crandall O. Jones
Crandall O. Jones
Municipal Administrator
Municipal Secretary

