

**DOVER TOWNSHIP  
BOARD OF SUPERVISORS MEETING  
WORK SESSION  
JUNE 22, 2015**

The Dover Township Board of Supervisors work session meeting for June 22, 2015, was called to order at 6:00 PM by Chair Matthew Menges in the Meeting Room of the Dover Township Municipal Building. Supervisors present were Matthew Menges, Monica Love, Charles Richards, Stephen Stefanowicz, and Stephen Parthree. Other Township Representatives in attendance were Laurel Oswalt, Township Manager; Attorney Charles Rausch, Township Solicitor; and Trena Hall, Recording Secretary. Also present was Al Timko from the York/Adams Tax Bureau. There were no citizens in attendance. This meeting has been recorded for minute purposes only.

This work session was scheduled to help explain and answer questions on the Mercantile & Business Privilege Tax. Al Timko was the presenter.

In 1965, the state legislature created the Local Tax Enabling Act (LTEA). Dover Township enacted this Mercantile and Business Privilege (MBP) Tax in 1984. This tax is known as a gross receipt tax and is assessed by the gross receipts of a business without any deductions for expenses. In 1988, a local tax reform bill was voted down and stated that no new business privilege taxes were allowed to be enacted. There was a small clause noting if you already had an active MBP tax, you could not raise rates or if you did not already have a local tax established, you could not enact one in the future. There are limited changes that can be made to this enacted tax.

Business is defined as any exercise carried on for gain or profit and includes the sale of merchandise or the performance of services. There are two exclusions from this MBP tax which are manufacturing and preempting state tax or license fee.

Rules and regulations are essential to successful collection of MBP Taxes. The rules give business owner guidance on what is required and what is exempt/not-exempt. Rules and regulations need to stay updated based on case law. Not-for-profit businesses can be taxed on receipts. They have to be a purely public charity meeting a "Five-Part Test" to be exempt of the tax. If they would be competing against a for-profit business, then they can be taxed.

MBP Tax is self-reported and the business owner should report their gross receipts and pay the tax which is due. Owners should be providing copies of their Federal Tax Returns to verify the gross receipts reported. MBP Tax returns allow the business to reduce their gross receipts by items that are exempted from the MBP Tax. Such exemptions are specifically listed in the legislation and the burden to prove that an exception is valid is the responsibility of the tax payer. There are (8) exemptions and (2) are excluded from the MBP taxes. One is manufacturing which consists in the application of labor and skill to a material whereby the original article is changed into a new, different and useful article. A second exclusion prohibits the local taxation of a privilege, transaction, subject, occupation or personal property subject to a state tax or license

fee. A state tax or license fee is levied for the purpose of covering the cost to regulate an industry preempts the local taxation of that activity, whereas a state tax or license fee that is levied for the purpose of registering the business and covering the costs of issuing the license did not preempt the MBP Tax. Examples of exclusions are banking and malt and brewed beverage distributors that are regulated by the State. Examples that are subject to the tax are insurance companies, nursing homes, legal professions, etc.

Currently, the issue of levied lease transactions is at the PA Supreme Court. The MBP Tax cannot be levied on receipts from leased transactions. Currently, there are 25 businesses in Dover Township reporting on lease transactions per year at approximately \$9,300 per year that has been collected. Refunds have been requested and up to (3) years of past receipts may have to be refunded to any business that has paid the tax in the past. If the court rules that it is not taxable, businesses may be refunded over \$27,000 in past receipts. S. Stefanowicz questioned the Dover Antique Mall which has 50 vendors inside a business which are there year round. If owners are signing a lease, they can say the receipts are exempt. The income from the sale of the items is taxable because each stand is making a profit on what they are selling.

Chair Menges inquired that since this tax cannot be made a new tax, should the Board leave the tax as it is, repeal the tax completely or have the Township provide an incentive for a new business to locate into the Township exempting this tax for the first two years of business. If the Township would repeal the tax it can never be re-enacted. Attorney Rausch and Mr. Timko did not advise the exemption of a tax to a new business locating into the Township. Many issues could develop with this. If the rate is lowered, the Township would then be stuck with that rate, and it could never be increased.

The Tax Bureau relies on the Township to help find all businesses working in that Township by providing information from zoning, code enforcement, sewer/water bills, trash collections, etc. Mr. Timko's staff is always looking for area business by: dinner placemats, signs in yards of work being done, cross referencing records from other taxes collected, etc. Many businesses are found when they apply for their earned income tax registration and the Tax Bureau can then go back (3) years to collect. The Tax Bureau also notifies new business that the Township has a MBP Tax. Chair Menges asked what leverage the Tax Bureau has to collect the tax after a business closes. When a business has not filed and has ignored all notices, the Tax Bureau can file a private criminal complaint with the District Justice. In this complaint, restitution is requested. A guilty verdict becomes the courts responsibility to collect the tax. If the tax is not paid, the Tax Bureau will estimate the tax due by using similar area businesses to provide a calculation.

S. Parthree inquired what system the Township has in notifying the Tax Bureau when a business is opened. The Township provides an occupancy use certificate to the Tax Bureau.

C. Richards inquired if there is a packet provided to businesses wanting to come into the Township. Currently, a packet is not offered but is being discussed at the I/CDC meeting. This packet could include information on applying for water/sewer connections, signage, use certificates, zoning, codes being enforced, business, school and real estate taxes, etc. The York Adams Tax Bureau has a packet available.

S. Stefanowicz noted that he refers to this tax as an “Improper Tax.” He questioned if there is an alternative to this unfair tax or if there is a tax that could be created to be shared more equally. Mr. Timko noted that some municipalities use real estate and per capita income tax. There is also a flat tax which Mr. Timko personally had never seen in effect. A flat tax would cause all businesses in the Township to pay the same dollar amount.

Mr. Timko noted that businesses, except for the school district, put a burden on services for municipalities. He also noted that some Cash Businesses are profiting but do not report all sales.

Attorney Rausch asked if Mr. Timko was comfortable with the wording of Dover Township’s Rules and Regulations. Mr. Timko was agreeable with the wording.

Chair Menges questioned if the Township could receive a listing of Dover Township businesses. Manager Oswald noted that the Township has a list and will provide a copy to the Supervisors.

With no further business, the work session was adjourned at 6:51 PM.

Respectfully submitted by: \_\_\_\_\_  
Trena M. Hall, Township Secretary