

# Town of Milton

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Milton, DE 19968



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To: Mayor & Council

From: Robin Davis   
Project Coordinator

Date: 11/25/13

Ref: Ordinance Amendment – Home Occupations (Update)

As requested at the last Town Council meeting, the following information has been submitted for review:

State of Delaware Definitions  
Chapter 220 Sections 6 & 51 of the Zoning Code

The additional review documents are to be used in conjunction with the documents submitted at previous Town Council meetings. As discussed at these meetings, the Code Enforcement Officer and I attempted to contact those businesses listed on the spreadsheet in order to get a better understanding of the classification and activities performed by the companies. The majority of the businesses contacted haven't or don't provide services within the town limits and are operating the business as a sole proprietor without employees. Property site visits were also performed by this department to determine if these businesses had any impact on the character of the residential neighborhood. We could only locate 4 -5 businesses that had vehicles or equipment stored at the property listed as the business location. Signs stating the business name of the companies were not located on any of the properties. It should be noted that some of the businesses are no longer operating at the location listed.

The vast majority of the municipalities located within the county, allow home occupations/home based businesses to operate as a permitted use or permitted accessory use and have defined parameters which the business owners must operate in. Reclassifying home occupations from a special permitted use to a permitted use or permitted accessory use would help streamline the review process and make it more economically feasible for home occupations to operate within the town. It also gives the town an opportunity to better define this area of the zoning code. I know there are concerns about allowing businesses to operate in the residential units but the current code requirements are not seen as being business friendly and are time consuming. Updating or enacting new requirements in our zoning code would still give the town control to regulate the businesses but by shorting the review process could potentially make it more inviting for owners of these types of businesses to move to the town.

Please contact me if there are any questions. Thank you.

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# State of Delaware Definitions

## TITLE 30

### State Taxes

### Occupational and Business Licenses and Taxes

#### CHAPTER 23. COST OF OCCUPATIONAL LICENSES AND FEES

§ 2301. Occupations requiring licenses; definitions; fees; exemptions [Effective until Jan. 1, 2014.]

(a) "Persons" as defined in § 2701 of this title engaged in the occupations listed and defined in this section shall pay annual license taxes at the rates specified below. In addition to the license fee indicated below, each such person shall pay a fee of \$25 for each additional branch or business location, except that a finance or small loan agency as defined in this section shall pay the basic annual fee for each place of business.

(1) Advertising agency, \$75. "Advertising agency" includes every person engaged in the business of displaying advertising matter by billboards, posters or circulars, signs or window display, or of undertaking the writing or composition of advertisements for other persons on a commission, rental or flat fee basis.

(2) Amusement conductor, \$75. "Amusement conductor" includes every person engaged in the business of conducting or maintaining or furnishing on a commission or other basis mechanical or electronic devices for entertainment of the general public, for which a charge is made for the use thereof; provided further than an owner of certain of such mechanical or electrical devices operated automatically by insertion of a coin or token shall pay an additional license fee for the business as defined and at the rates prescribed as follows:

"Amusement machine owner" embracing every person engaged in the business of owning and operating either on the person's own account or by an agent, or by lease to another from such person or the agent, certain of the mechanical or electronic devices referred to in this section for furnishing to the public, music by the playing of records or transcriptions or which constitute a game or other device designed for public amusement, a fee for a license at the rate of \$75 for each machine so owned and operated, provided the coin or token necessary to operate such machine is worth 5 cents or more.

(3) Auctioneer, \$75. "Auctioneer" includes every person engaged in the business of crying sales of real or personal property on behalf of other persons for profit, except as otherwise provided by the provisions of this chapter. Any auctioneer not a citizen of this State shall be required to pay \$225 for each county in which the person acts as auctioneer. No auctioneer shall

be authorized by virtue of the license granted to employ any other person to act as auctioneer in the auctioneer's behalf, except in the auctioneer's own store or warehouse or in the auctioneer's presence, nor shall the term "auctioneer" apply or extend to a judicial or executive officer making sales in pursuance of any execution, judgment, or decree of any court nor to public sales made by executors or administrators.

(4) Broker, \$75. "Broker" includes every person operating a business of buying and selling for the account of other persons for a commission or for profit, stocks, bonds, currency, negotiable paper, securities and any other intangible personal property.

(5) Circus exhibitor, \$750. "Circus exhibitor" includes every person engaged in the business of exhibiting in a tent, arena, or other open space equestrian stunts, acrobatic stunts, freaks, trained or wild animals, and other forms of entertainment commonly known as a circus. This paragraph shall not be construed to include any circus or carnival for private profit sponsored by or in which any fire company of the State, or any fraternal, veteran's or religious organization shall share in the profits. The license fee for such circus or carnival shall be \$300.

(6) Commercial lessor, \$75. "Commercial lessor" includes every person who, as lessor or sublessor, receives rental income pursuant to any agreement transferring a title interest or possessory interest in real property located in this State under a lease of a commercial unit for any term. For this purpose, "commercial unit" means a structure or that part of a structure which is used for purposes other than a dwelling unit or farm unit.

(7) Drayperson or mover, \$75. "Drayperson or mover" includes every person operating a business of transporting for profit tangible personal property of other persons.

(8) Finance or small loan agency, \$450. "Finance or small loan agency" includes every person engaged in the business of lending money, with or without security, to other persons, with repayments of the loans to be made by installments or otherwise, but shall not include, either in reference to future or past transactions, banks or trust companies authorized to do banking business in the State under Title 5.

(9) Hotel, \$25 for each room and \$30 for each suite. "Hotel" includes every person engaged in the business of operating a place where the public may, for a consideration, obtain sleeping accommodations and meals and which, in an incorporated town, has at least 10 and in any other place at least 6 permanent bedrooms for the use of guests.

(10) Manufacturer's agent or representative, \$75. "Manufacturer's agent" or "representative" includes every independent contractor in the business of representing 1 or more manufacturers for purposes of promoting the sale of the goods, product, or line of goods or products of such manufacturer or manufacturers within the State.

(11) Mercantile agency or collection agency, \$75. "Mercantile agency" or "collection agency" includes every person operating a business of investigation of financial ratings and credit and/or the collection of commercial accounts for other persons, except attorneys-at-law having a license to practice such profession in this State.

(12) Motel, \$25 for each room. "Motel" includes every person engaged in the business of furnishing for a consideration, transient guests with sleeping accommodations, private bath and toilet facilities, linen service and a place to park an automobile and who is not in the business of operating a hotel or tourist home as defined in this section.

(13) Outdoor musical festival promoter, \$750. "Outdoor musical festival promoter" includes every person engaged in the business of organizing, operating, producing or staging musical entertainment in open spaces and not in a permanent structure for a gathering of 1,000 or more persons who pay a consideration or admission charge to view or hear such musical entertainment.

(14) Parking lot or garage operator, \$75 for the first lot or garage facility and \$35 for each additional facility. "Parking lot" or "garage operator" includes every person engaged in the business of operating any motor vehicle parking facility, whether open or enclosed, with space for 10 or more vehicles.

(15) Photographer, \$75. "Photographer" includes every person operating a business of taking, making and/or developing photographs or pictures by action of light for profit or reward. Transient photographers without a regular and established place of business within the State shall pay an additional license tax of \$25 for each day of operation within the State.

(16) Real estate broker, \$75. "Real estate broker" includes every person certified as such by the Delaware Real Estate Commission and engaged in the real estate business. It includes those among such persons who deal exclusively or partly with rental property.

(17) Sales representative, \$75. "Sales representative" includes every person who works in excess of 80 hours in any calendar month in the year selling goods or merchandise door to door. It includes soliciting orders and home demonstrations.

(18) Security business, \$115. "Security business" includes every security business defined in § 1201 of Title 24.

(19) Showperson, \$375. "Showperson" includes every person engaged in the business of conducting or operating for profit a public theater, house or other enclosed place for the exhibition of stage shows or musical presentations, animal shows, carnivals for private profit and all other amusements of like character.

(20) Taxicab or bus operator, \$45, for the first motor vehicle; \$30, for each additional motor vehicle. "Taxicab" or "bus operator" includes every person engaged in the business of the operation of motor vehicles in transporting persons for hire in the accommodation of the general public. A public carrier holding a certificate of public convenience and necessity issued by the Delaware Transportation Authority of the Department of Transportation authorizing it to operate a taxicab business, which actually operates such taxicab business through the leasing of its taxicab vehicles to independent contractor lessee drivers, shall be construed to be a "person" under this paragraph "engaged in the business of the operation of motor vehicles in transporting persons for hire in the accommodation of the general public" and shall pay the above-specified

annual fees for its taxicab motor vehicles which are subject to such leasing for the year involved, and none of the independent contractor lessee drivers of such vehicles shall be construed to be a "person engaged in the business of the operation of motor vehicles in transporting persons for hire in the accommodation of the general public" within the meaning of this paragraph. This tax shall not apply however, to the operation of school buses used solely in the transportation of children to and from kindergarten, grade school, vocational school and high school.

(21) Tourist home, \$15 for each room. "Tourist home" includes every person who operates a place where tourists or transient guests, for a consideration, may obtain sleeping accommodations and which has at least 5 permanent bedrooms for the use of tourists or transient guests and who is not in the hotel or motel business as defined in this section.

(22) Trailer park, \$10 for each space as specified on a plot plan or as designated by the owner. "Trailer park", which may also be identified as a recreational vehicle park, or a tenting recreation park, includes any person engaged in the business of operating any place where space is furnished for units to park and hook up to or use sanitary and/or electrical facilities. This paragraph shall not apply to mobile home parks.

(23) Transportation agent, \$75. "Transportation agent" includes every person operating a business of selling tickets on behalf of other persons, for transportation by common carriers on a commission basis or for profit.

(24) Travel agency, \$225. "Travel agency" includes every person in the business of operating a full service travel bureau or department which assists in the planning and acquisition of tickets for contemplated trips of its customers by land, sea or air and for related accommodations.

(25) Headquarters Management Corporation, \$5,000; provided, however, that in the case of any affiliated group, as defined in § 6401(1) of this title, only 1 member of such affiliated group that is a Headquarters Management Corporation shall be liable for a \$5,000 annual license tax under this paragraph, and each other member of such affiliated group that is a Headquarters Management Corporation shall pay a license tax of \$500. For purposes of this paragraph, "Headquarters Management Corporation" has the meaning set forth in § 6401(5) of this title.

(26) Direct care worker, \$75. "Direct care worker" means, for purposes of this title, an individual (aide, assistant, caregiver, technician or other designation used) under contract to, but not employed by, a personal assistance services agency to provide personal care services, companion services, homemaker services, transportation services and those services as permitted in § 1921(a)(19) of Title 24 to consumers. The direct care worker provides these services to an individual primarily in the individual's place of residence.

## **CHAPTER 25. CONTRACTORS' LICENSE REQUIREMENTS AND TAXES**

### **§ 2501. Definitions.**

For purposes of this chapter the following definitions shall apply:

(1) "Contractor" includes every person engaged in the business of:

a. Furnishing labor or both labor and materials in connection with all or any part of construction, alteration, repairing, dismantling or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains and every other type of structure as an improvement, alteration or development of real property; a person is a contractor regardless of whether the person is a general contractor or a subcontractor, or whether the person is a resident or a nonresident; in addition "contractor" shall include "construction transportation contractors" which shall include persons engaged in the business of contracting for transporting tangible property of other persons in connection with all or any part of the construction, alteration, repairing, dismantling or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains and every other type of structure as an improvement, alteration or development of real property but shall not include draypersons as defined in § 2301(a) of this title; or

b. Real estate development.

## **CHAPTER 27. MANUFACTURERS' LICENSE REQUIREMENTS AND TAXES**

### **§ 2701. Definitions.**

As used in this chapter the following definitions shall apply:

(1) "Gross receipts " includes all proceeds received by any person engaged in manufacturing within this State for products manufactured in whole or in part within this State where such products are sold to another person, or the fair market value of any such products consumed by the manufacturer or any person affiliated with it, where the fair market value of such products is not received; provided, however, if a product is partially manufactured within this State and partially manufactured elsewhere by the same manufacturer, the gross receipts realized on the ultimate sale, transfer or consumption of said product to be included for purposes of this chapter shall be apportioned to this State in the proportion that the cost of manufacturing thereof in Delaware bears to the full cost of manufacturing the product expended by the same manufacturer, such apportionment to be computed in accordance with regulations of the Secretary of Finance. Notwithstanding the foregoing, however, gross receipts shall not include:

a. Proceeds received by a petroleum product refiner (as defined in § 2901(13) of this title) from sales of intermediate petroleum products (as defined in § 2901(9) of this title) to an intermediate petroleum products wholesaler (as defined in § 2901(10) of this title); or

b. Proceeds received by any person for products sold to a buyer licensed under this chapter; provided, that such products are purchased for the purpose of their inclusion as a part of a product manufactured by the buyer within this State.

The product shall be considered to be included in the subsequent product manufactured by the buyer irrespective of whether it is included in an altered or unaltered form. The Secretary of

Finance shall prescribe such rules, regulations and forms as the Secretary may deem necessary to carry out the purposes of this chapter.

(2) "Manufacturing," except as provided in the definition of "wholesaler" in § 2901 of this title, includes any processing, working, development, change, conditioning or reconditioning of raw materials or products into products of a different character, finished or unfinished, or effecting any combination or composition of materials the inherent nature of which is changed, including clean energy technology device manufacturing (as defined in § 2010(24) of this title) and automobile manufacturing, but does not include the making, crafting, or painting of art or craft objects by individual artists or craftpersons.

(3) "Person" includes an individual, partnership, firm, cooperative, corporation or any association of persons acting individually or as a unit.

(4) "Product" includes any goods, materials, wares, merchandise, machinery, vehicles, solids, liquids or gases or any other item, object or thing which is produced as part of a manufacturing process.

(5) Whenever a person:

a. Is engaged in the activity of manufacturing within this State as described in paragraph (2) of this section;

b. Performs such activity exclusively on raw materials or products provided under bailment by another person engaged in manufacturing; and

c. The product produced by such person is intended for inclusion as a part of a product manufactured by the other manufacturer, then such person shall himself or herself be licensable as a manufacturer and such person's gross receipts shall include all proceeds paid to such person for services rendered in this State as described in this subdivision, including the fair market value of any products produced as the result of such services and consumed by such person, where the fair market value of such products is not received.

In all other cases where a person is engaged in, and receives consideration for, manufacturing as a service apart from or in addition to the sale of a product, then such person shall be licensed under Chapter 23 of this title, and shall not to that extent be considered subject to license under this chapter.

## **CHAPTER 29. RETAIL AND WHOLESALE MERCHANTS' LICENSE REQUIREMENTS AND TAXES**

§ 2901. Definitions.

As used in this chapter:

(1) "Certified takeoff weight" means the maximum weight contained in the type certificate or airworthiness certificate.

(2) "Exemption certificates," for purposes of this chapter, are documents created by regulations adopted or to be adopted by the Director of Revenue which are provided to a wholesaler by a purchaser to document a wholesale sale where the property is immediately taken outside of Delaware and the sale thus does not result in taxable gross receipts.

(3) "Feedstock petroleum products" means 1 or more petroleum products that have been partially refined that are used as raw materials at the beginning of a refining process operated by a petroleum product refiner.

(4) "Feedstock wholesaler" means every person engaged, as owner or agent, in the business of selling or exchanging for cash or barter or any consideration (i) crude oil to or with a petroleum product refiner or another feedstock wholesaler, or (ii) feedstock petroleum products to or with a petroleum product refiner or another feedstock wholesaler for the purpose of refining and resale by a petroleum product refiner, and includes without limitation crude oil and feedstock petroleum products sold or exchanged through pipelines, warehouses or other storage facilities and distribution depots of persons whose principal place of business is located inside or outside of the State.

(5) "Finished petroleum products" means 1 or more petroleum products that have been refined by a petroleum product refiner and that are of a type offered for sale by a petroleum product refiner to its customers in the ordinary course of business, including, but not limited to asphalt, distillate fuel oil (including all grades of diesel fuel and fuel oils), finished aviation gasoline, finished motor gasoline, kerosene, jet fuel (both kerosene-type and naphtha-type jet fuel), naphthas of all boiling ranges, other oils with boiling range equal to or greater than 401 degrees Fahrenheit, petrochemical feed stocks, petroleum coke, residual fuel oils, road oils, still gas, wax and other miscellaneous petroleum products, including, but not limited to petrolatum, lube refining by products, absorption oils, ram-jet fuel, petroleum rocket fuels, synthetic natural gas feed stocks and specialty oils.

(6) "Finished petroleum products wholesaler" means every person engaged, as owner or agent, in the business of buying from a petroleum product refiner finished petroleum products for cash or barter or any consideration for the purpose of further resale by the finished petroleum products wholesaler to a wholesaler or to a petroleum product refiner, and includes without limitation finished petroleum products sold or exchanged through pipelines, warehouses or other storage facilities and distribution depots of persons whose principal place of business is located inside or outside this State.

(7) "Goods" includes produce, merchandise, goods, wares, items, products, crops, livestock, animals, metals, gems or any tangible personal property of whatever description, whether new or used, and includes alcoholic beverages of every nature.

## **CHAPTER 30. MOTOR VEHICLE DOCUMENT FEE AND AUTOMOBILE DEALER HANDLING FEE AND LICENSE FEE**

§ 3001. Definitions.

As used in this chapter:

(1) "Motorcycle" -- the definition of motorcycle shall be the same as that found in § 101 of Title 21.

(2) "Motor vehicle" -- the definition of motor vehicle shall be the same as that found in § 101 of Title 21.

(3) "Motor vehicle dealer" includes every person in the business of buying, selling or trading new or used motor vehicles, trailers, truck trailers or motorcycles.

(4) "Owner" -- the definition of owner shall be the same as that found in § 101 of Title 21.

(5) "Purchase price" means the value or any other consideration given by the owner to the seller for a motor vehicle; where trade-ins or allowances are given in conjunction with the purchase of any motor vehicle, the purchase price shall be the gross purchase price less any trade-in or allowance given by the seller of the motor vehicle to the owner of the motor vehicle; except that where a motor vehicle having been bought and registered outside the State and not subject to the limitation of § 3002(a)(4) of this title is first registered and titled in this State, "purchase price" shall mean the fair market value as of the date of such titling and registration. If the owner made no trade-in in conjunction with the purchase of any motor vehicle or trailer but 60 days prior to or subsequent to the date on which a certificate of title was issued in Delaware on such vehicle such owner sold privately the previously owned vehicle, credit shall be given in the same amount on the document fee as if the owner had made a trade-in of such previously owned vehicle in connection with the purchase of another vehicle. Credit shall be given for only 1 motor vehicle or trailer per application. Application for such credit in event of a prior sale shall be made at the time application is made for title of the purchased vehicle. In the event of a subsequent sale, application for such credit shall be made not later than 15 calendar days after such sale in person or by registered mail to the Division of Motor Vehicles. Proof of prior ownership and the amount of sale shall be furnished at the time the owner claims credit pursuant to rules and regulations promulgated by the Division of Motor Vehicles.

(6) "Trailers" -- the definition of trailers shall be the same as that found in § 101 of Title 21.

(7) "Truck tractor" -- the definition of truck tractor shall be the same as that found in § 101 of Title 21.

(8) "Used vehicle" -- the definition of used vehicle shall be the same as that found in § 101 of Title 21.

**CHAPTER 43. USE TAX ON LEASES OF TANGIBLE PERSONAL PROPERTY**

§ 4301. Definitions.

As used in this chapter:

(1) "Lease" means an agreement (either written or oral) under which a lessor grants to a lessee the right to use property for a specified period or at the will of either the lessor or lessee. An agreement which purports to be a sale but which is in substance a lease shall be considered a lease.

(2) "Lessee" means any person to whom a lease is made.

(3) "Lessor" means any person who grants a lease.

(4) "Person" means and includes an individual, partnership, firm, cooperative, corporation or any association of persons acting individually or as a unit.

(5) "Person required to collect the tax" shall include every lessor of property the use of which is subject to tax under § 4302 of this title, and shall also include any officer or employee of a corporate lessor of such property and any member of a partnership lessor of such property.

(6) "Place of business." Each person leasing tangible personal property in this State shall be considered to have at least 1 "place of business" in this State.

(7) "Motor vehicle lessee" shall mean a lessee, as defined in this chapter, of a motor vehicle as defined in § 101 of Title 21.

(8) "Motor vehicle lessor" shall mean a lessor, as defined in this chapter, of a motor vehicle as defined in § 101 of Title 21.

## **CHAPTER 53. TOBACCO PRODUCT TAX**

### **Subchapter I. Definitions**

§ 5301. Definitions.

As used in this chapter:

(1) "Affixing agent" means any tobacco products dealer or any other person within or without this State appointed by the Department of Finance as an agent to affix the stamps to be used in paying the excise tax imposed by this chapter. The first vendor who has possession of unstamped tobacco products in this State for sale in this State shall be deemed an affixing agent.

(2) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape, and irrespective of the tobacco being flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(3) "Consumer" means any person who has possession of tobacco products for any purpose other than transportation or sale.

(4) "Department of Finance" or "Department" means the Department of Finance.

(5) "Distributor" means:

a. Any person engaged in the business of selling tobacco products in this State who brings or causes to be brought into this State from without the State any tobacco products for sale;

b. Any person who makes, manufactures or fabricates tobacco products in this State for sale in this State;

c. Any person engaged in the business of selling tobacco products without this State who ships or transports tobacco products to retail dealers in this State to be sold by those retail dealers.

(6) "Moist snuff" means any finely cut, ground or powdered tobacco that is not intended to be smoked but shall not include any finely cut, ground or powdered tobacco that is intended to be placed in the nasal cavity.

(7) "Package" or "pack" means, as to cigars, the smallest individual container which contains more than 1 cigar in or from which retail sales are normally made or intended to be made, and means, as to other tobacco products, the smallest individual container in or from which retail sales of such products are normally made or intended to be made.

(8) "Place of business" means any place where tobacco products are sold, or where tobacco products are bought or kept for the purpose of sale or consumption, including, so far as applicable, any vessel, airplane, train or vending machine dispensing tobacco products.

(9) "Retail dealer" means any person who purchases or receives stamped tobacco products from any source whatsoever for the purpose of sale to the ultimate consumer.

(10) "Sale" means in addition to its usual meaning, any sale, transfer, exchange, theft, barter, gift or offer for sale and distribution, in any manner or by any means whatsoever.

(11) "Secretary of Finance" or "Secretary" means the Secretary of Finance or the Secretary's duly authorized designee; provided, that any such delegation of authority is consistent with Chapter 83 of Title 29.

(12) "Smokeless tobacco products" mean all products, other than moist snuff, made primarily of tobacco for individual consumption, not intended to be smoked.

(13) "Tobacco products" means all products, including but not limited to, cigarettes, cigars and pipe tobacco, made primarily from tobacco for individual consumption.

(14) "Tobacco product tax stamps" means any adhesive stamps, tax meter impression or other stamps, labels or prints authorized by the Department of Finance to evidence the payment of the tax imposed by this chapter.

(15) "Tobacco product vending machine" means any mechanical device from which tobacco products are dispensed for a consideration.

(16) "Unstamped tobacco products" means any pack or package of tobacco products to which the proper amount of genuine Delaware tobacco product tax stamps has not been affixed.

(17) "Use" means the exercise of any right or power over tobacco products including the retention for any length of time for any purpose other than sale or transportation as allowed under the provisions of this chapter.

(18) "Vending machine operator" means any person who places 1 or more vending machines, owned, leased or operated by the person, at locations where tobacco products are sold therefrom. The owner or lessee of the premises upon which a vending machine is placed shall not be considered the operator of the machine, if the owner or lessee does not own or lease the machine and if the sole remuneration therefrom is a flat rental fee or a commission, based upon the number or value of tobacco products sold from the machine, or a combination of both.

(19) "Wholesale dealer" means any person who regularly sells tobacco products within this State to others who buy for the purpose of resale.

## **CHAPTER 55. PUBLIC UTILITIES TAXES**

### **§ 5501. Definitions.**

For purposes of this chapter only:

(1) "Direct-to-home satellite services" has the meaning ascribed in the Communications Act of 1934, 47 U.S.C. § 303(v).

(2) "Distribute" includes any and all activity to produce, distribute or supply any commodities and services as defined in this section within this State.

(3) "Distributor" includes any company, corporation, municipality, partnership, firm, association, cooperative or any person or group of persons which supplies any public utility for sale to ultimate consumers or users within this State, whether, in the case of gas or electricity, the gas or electricity is supplied through a distributor's own or a transmission company's facilities.

(4) "Gas" for purposes of this chapter means natural gas which is further defined as a naturally occurring gaseous mixture of hydrocarbons and non-hydrocarbons, the principal constituent of the gaseous mixture being methane.

(5) "Gross receipts" includes total consideration received by a distributor for commodities or services sold, distributed, produced or supplied within the State to ultimate consumers or users.

(6) "Internet access" means the provision of a computer and communication service through which a customer using a computer and a modem or other communications device may access content, information, electronic mail or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to users; the term "Internet access" does not include any services defined in paragraphs (8)a.3. and 4. of this section, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.

(7)a. "Intrastate mobile telecommunications services" shall include the following:

1. Mobile telecommunications that originate and terminate in this State or that originate and terminate in the same state and, in either case, that are billed to a customer with a place of primary use in this State, other than charges which are specifically exempt from tax under § 5506 of this title, provided, however, that the taxation of such services shall be subject to the provisions of § 5508 of this title; and

2. All mobile telecommunications services that are sold to a customer whose place of primary use is within this State for a fixed periodic charge, whether or not calls provided within that fixed periodic charge originate or terminate in the same state; provided, however, that the taxation of such services shall be subject to the provisions of § 5508 of this title.

b. "Intrastate mobile telecommunications services" shall not include separately stated electronic paging services, internet access, and interstate wireless data services.

(8)a. "Public utility" includes the following commodities and services:

1. Electricity distributed for any heat, light or power use;

2. Gas (except liquefied gas) piped from a distribution center to the consumer or user for any heat, light or power use;

3. Intrastate telephone services that are not intrastate mobile telecommunications services, intrastate mobile telecommunication services and telegraph communication services;

4. Cable television communication services; and

5. Direct-to-home satellite services.

All such commodities and services are included whether distributed directly by the distributor to the consumer within this State or distributed through an intermediary to the consumer or user within this State.

b. Gas and electricity are public utilities whether distributed to a consumer or user within this State by a distributor, either directly or through an intermediary, or delivered by a transmission company.

(9) "Transmission company" includes any company, corporation, municipality, partnership, firm, association, cooperative or any person or group of persons owning, leasing or controlling property or fixtures to property within this State used for the transmission, transportation or distribution of gas or electricity.

## **CHAPTER 61. LODGING TAX**

### **Subchapter I. Lodging Tax Collection**

#### **§ 6101. Definitions.**

As used in this chapter:

(1) "Hotel" means any person engaged in the business of operating a place where the public may, for a consideration, obtain sleeping accommodations and meals and which has at least 6 permanent bedrooms for the use of guests, excluding, however, any charitable, educational or religious institution, summer camp for children, hospital or nursing home.

(2) "Motel" means any person engaged in the business of furnishing, for a consideration, transient guests with sleeping accommodations, bath and toilet facilities, linen service and a place to park an automobile.

(3) "Occupancy" means the use or possession or the right to the use or possession by any person other than a permanent resident of any room or rooms in a hotel, motel or tourist home for any purpose or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms.

(4) "Occupant" means any person other than a permanent resident who for a consideration, uses, possesses or has a right to use or possess any room or rooms in a hotel, motel or tourist home under any lease, concession, permit, right of access, license or agreement.

(5) "Operator" means any person operating a hotel, motel or tourist home.

(6) "Permanent resident" means any occupant who has occupied or has the right to occupancy of any room or rooms in a hotel, motel or tourist home for at least 5 consecutive months.

(7) "Rent" means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash credits and property or services of any kind or nature and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever.

(8) "Tourist home" means any person who operates a place where tourists or transient guests, for a consideration, may obtain sleeping accommodations and which has at least 5 permanent bedrooms for the use of tourists or transient guests, but which does not have cooking facilities for the use of tourists or transient guests.

Town of Milton, DE  
Sunday, September 29, 2013

## Chapter 220. ZONING

### Article II. Interpretation; Definitions

#### § 220-6. Definitions.

*Editor's Note: See other definitions in §§ 220-21E(3) and 220-62 of this chapter. The following words or phrases, as used in this chapter, are defined as follows:*

##### **HEIGHT**

The vertical distance measured from grade, the average of the finished ground level adjoining the building at the side facing the nearest street to the highest point of the coping of the highest flat roof if the building has more than one flat roof level, or to the highest point of a mansard, gable, hip or gambrel roof building. Chimneys, spires, towers, elevators, penthouses, tanks and other similar projections shall not be included in calculating the height.

##### **HOME OCCUPATION**

A. Any occupation, profession, enterprise or activity conducted solely by one or more members of a family on the premises, which is incidental and secondary to the use of the premises for dwelling, provided that no commodity is stored or sold, except such as it is made on the premises, and there shall be no group instruction, assembly or activity and no outside storage or display material on the premises. Within the above requirement, a home occupation includes but is not limited to the following:

- (1) Art or crafts studio.
- (2) The practice of cosmetology or barbering, limited to one chair.
- (3) Dressmaking, custom baking, day care or baby-sitting.
- (4) Professional office of a physician, dentist, lawyer, engineer, architect, accountant or salesman.
- (5) Private instruction limited to one or two pupils at a time.

B. A home occupation, however, shall not be interpreted to include nursing homes, convalescent homes, rest homes, restaurants, tearooms, tourist homes, or similar establishments.

##### **HOSPITAL**

An institution for the care and treatment of the sick and injured, equipped with technical facilities, medical, nursing and other professional and technical personnel necessary for

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## Chapter 220. ZONING

### Article VII. Development Guidelines

#### § 220-51. Home occupations.

Home occupation uses shall conform to the following standards which shall be minimum requirements:

- A. No more than 25% of the total floor area of a dwelling unit or 500 square feet, whichever is less, shall be used for such use.
- B. The use shall be carried on wholly within the enclosed walls of the dwelling unit or an accessory building.
- C. No stock, merchandise, equipment or displays of any kind shall be visible from outside the dwelling unit or accessory building.
- D. No external structural alternations which are not customary to a residential building shall be allowed.
- E. The use shall not result in or cause vehicular traffic that will create a nuisance to abutting properties or be detrimental to the character of the neighborhood.
- F. No article is sold or offered for sale except such as may be produced by members of the family residing on the premises. Any form of business, the primary function of which is the wholesale or retail sale of goods or articles at the premises, shall be deemed a commercial use and shall not be permitted as a home occupation.
- G. Professional offices of a physician, dentist, lawyer, engineer, architect, surveyor or other like profession shall be subject to the following special conditions:
  - (1) The professional use is clearly incidental to the residential use of the dwelling and does not change its basic residential character.
  - (2) The occupation is practiced at home.
  - (3) There shall be no display of products visible from outside of the dwelling.

(4) There shall be no external alterations inconsistent with the residential character of the dwelling.

(5) There shall be no storage of materials or products outside of the dwelling unless completely housed.

H. No manufacturing, repairing or other mechanical work shall be performed outside of the dwelling. Such activity conducted inside the dwelling shall be conducted so that no noise, odor, glare, vibration, electromechanical interference or dust and smoke are perceptible beyond the property line.