

City of Philadelphia



(Bill No. 040021)

AN ORDINANCE

Amending Chapter 19-500 of The Philadelphia Code, entitled “Taxes and Rents—General,” by providing for uniform time limitations on collections, examinations and assessments, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 19-500 of The Philadelphia Code is hereby amended to read as follows:

CHAPTER 19-500. TAXES AND RENTS – GENERAL.

* * *

§19-510. Limitations of Actions[.] *to Recover Tax.*

- (1) *Subject to the limitations on assessment in Section 19-510A, [Any] any suit to recover any tax authorized or imposed by this title, other than real estate taxes, and personal property taxes not imposed under § 19-1102, [and General Business Taxes], shall be begun within 6 years after such tax is due or within 6 years after a return or a report has been filed, whichever date is later, but this limitation shall not apply in the following cases:*

* * *

- (b) where an examination of a return or report filed by the taxpayer and of other evidence relating to such return or report in the possession of the Revenue Commissioner reveals a fraudulent evasion of taxes, including, but not limited to, substantial understatement of gross income, net profits, gross receipts, or any other receipt of income, moneys or funds in any such return or report, *except with respect to any understatement the position for which was adequately disclosed, as provided by subsection (2)(b) of Section 19-510A;*

* * *

§19-510A. *Limitations of Actions to Assess Tax*

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- (1) *The amount of any tax authorized or imposed by this title, other than real estate taxes, and personal property taxes not imposed under § 19-1102, shall be assessed within three (3) years after a return or a report was due or has been filed, whichever date is later, but this limitation shall not apply in the following cases:*
- (a) *where the taxpayer has failed to file the return or report required under the provisions of this Title;*
 - (b) *where an examination of a return or report filed by the taxpayer and of other evidence relating to such return or report in the possession of the Revenue Commissioner reveals a fraudulent evasion of taxes, including, but not limited to, substantial understatement of gross income, net profits, gross receipts, or any other receipt of income, moneys or funds in any such return or report,—unless the adequate disclosure requirements of subsection (2)(b) are satisfied;*
 - (c) *where the taxpayer has collected or withheld tax funds or moneys of any nature or description under this Title as agent of or trustee for the City or the School District of Philadelphia, and has failed, neglected or refused to pay the amount so collected or so withheld to the City or the School District of Philadelphia;*
 - (d) *where the taxpayer and the Revenue Commissioner, prior to the expiration of time prescribed for the assessment of any tax, agree in writing to extend the limitation period for assessment for the period of time agreed upon by the taxpayer and the Revenue Commissioner. The extension shall become effective when the agreement has been executed by both parties. The period of extension agreed upon may be extended by subsequent agreements in writing executed by both parties prior to the expiration of the previously agreed upon extension period.*
- (2) *Substantial understatement. For purposes of this section, a substantial understatement exists where the understatement in tax for the year exceeds 20% of the tax required to be shown on the return; provided however, that the prescribed limitations period shall apply if the taxpayer made adequate disclosure of its position with respect to the source of the underpayment.*
- (a) *Exception for Adequate Disclosure. The period allotted for assessment of tax on returns that reflect a substantial understatement shall be 3 years if:*
 - i. *the understatement is attributable to a position contrary to an ordinance or a ruling or regulation published by the Revenue*

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Commissioner and the position is disclosed in accordance with the rules of this section; and,

ii. where the understatement is attributable to a position contrary to a regulation, the position represents a good faith challenge to the validity of the regulation.

(b) Disclosure is adequate for purposes of this section if the ordinance, regulation, or ruling in question is adequately identified and described on the applicable tax form to which tax the position is being undertaken. The Department may promulgate regulations setting forth requirements for adequate disclosure, consistent with this ordinance.

(c) This disclosure exception does not apply, however, in the case of a position that does not have a reasonable basis or where the taxpayer fails to keep adequate books and records or to substantiate items properly.

* * *

SECTION 2. This ordinance shall take effect commencing with all audits begun by the Department of Revenue on or after January 1, 2005.

Explanation:

[Brackets] indicate matter deleted.
Italics indicate new matter added.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on May 31, 2004. The Bill was Signed by the Mayor on June 10, 2004.



Patricia Rafferty
Chief Clerk of the City Council