



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 060401

Introduced May 11, 2006

Councilmember Kelly

**Referred to the
Committee on Finance**

AN ORDINANCE

Amending Chapter 19-2600 of The Philadelphia Code, entitled "Business Privilege Taxes," by excluding from the definition of receipts certain of the receipts of certain establishments licensed to sell alcoholic beverages for consumption on the premises if such an establishment agrees to provide a completely smoke-free environment, and providing certain consequences if an establishment fails to provide a completely smoke-free environment after agreeing to do so, including penalties and loss of the exclusion of receipts, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 19-2600 of The Philadelphia Code is hereby amended to read as follows:

CHAPTER 19-2600. BUSINESS PRIVILEGE TAXES.

§19-2601. Definitions.

* * *

Receipts. * * * Receipts of any business shall exclude:

* * *

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(12) *Beginning in tax year 2007, the receipts of an establishment licensed to sell alcoholic beverages for consumption on the premises (“Licensed Establishment”) that provides a completely smoke-free environment and meets the conditions set forth in this subsection, provided such exclusion shall apply only to receipts that a Licensed Establishment receives after it executes the agreement required by subsection 12(a). For purposes of this subsection, a Licensed Establishment provides a “completely smoke-free environment” if it: (i) prohibits smoking in all areas of the Establishment, including any sidewalk cafe, outdoor deck, patio or similar outdoor service area; (ii) posts and maintains all signs required by subsection 12(a)(.2); (iii) does not supply or maintain any ashtrays on the premises; and (iv) takes reasonable steps to enforce such prohibition, as detailed in subsection 12(a)(.3). This exclusion from receipts is subject to the following conditions and procedures:*

(a) *The Licensed Establishment must execute an agreement with the City, in form approved by the Law Department, providing that:*

(.1) *The Licensed Establishment certifies that on and after the date of the agreement, it will prohibit smoking in all areas of the Establishment.*

(.2) *The Licensed Establishment shall post at the entrance of the Establishment a sign stating that the Establishment is a completely smoke-free facility, and that smoking is prohibited in all areas of the Establishment. The Licensed Establishment shall abide by any regulations of the City detailing the size, content and location of required signs stating that smoking is prohibited.*

(.3) *The Licensed Establishment shall take reasonable steps to enforce its smoking prohibition without exceptions. The following measures shall be deemed sufficient to comply with this requirement:*

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(i) *An employee shall inform any person who smokes in the Licensed Establishment that smoking is prohibited, and shall request such person to immediately refrain from smoking or to leave the Licensed Premises; and*

(ii) *If a person refuses such a request and continues to smoke, the employee shall notify the highest level manager on the premises of the situation, and such manager again shall advise the person to immediately refrain from smoking or leave the Licensed Premises; and*

(iii) *If a person refuses the manager's repeated request, the manager shall eject the person from the premises.*

(.4) *The Licensed Establishment shall acknowledge that it is bound by the provisions of subsection 12(b), setting forth the circumstances under which a Licensed Establishment may become ineligible for the exclusion for failure to provide a completely smoke-free environment.*

(b) *It shall be a violation of this Code for a Licensed Establishment that has entered into an agreement pursuant to subsection 12(a) to fail to provide a completely smoke-free environment. The penalty for such a violation shall be a fine of \$1,000, and each day the Licensed Establishment is found not to provide a completely smoke-free environment shall constitute a separate violation for which a separate fine may be imposed. The first time a Licensed Establishment is finally found to violate this subsection on two or more occasions during a single tax year, the Licensed Establishment will not be eligible for the exclusion with respect to receipts received during that tax year after the date of the third violation. The second time a Licensed Establishment is finally found to violate this subsection on two or more occasions during a single tax year, the Licensed Establishment will not be eligible for the exclusion with*

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respect to receipts received after the date of the third violation during that tax year, and with respect to all subsequent tax years.

(c) If a taxpayer owns more than one Licensed Establishment, then, for purposes of this subsection, each such Licensed Establishment shall be treated as if it were owned by a separate taxpayer, so that (i) the exclusion from receipts applies only with respect to receipts attributable to the operations of those Licensed Establishments at which the taxpayer chooses to provide a completely smoke-free environment and with respect to which the taxpayer executes the agreement required under subsection 12(a); and (ii) if any one such Licensed Establishment is rendered ineligible for the exclusion under the provisions of subsection 12(b), such ineligibility shall apply only to receipts attributable to the operations of that Licensed Establishment, and not to receipts attributable to the operations of other Licensed Establishments owned by the same taxpayer which have not been rendered ineligible for the exclusion.

(d) A taxpayer may appeal to the Tax Review Board any final decision or determination of the Revenue Department concerning the taxpayer's eligibility for the exclusion provided under this subsection, or the amount of any such exclusion granted. Such appeals shall follow the procedures set forth in Chapter 19-1700 relating to petitions for review.

* * *

SECTION 2. Effective Date. This Ordinance shall be effective for tax year 2007 and thereafter.

Explanation:

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