

Legislation Text

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Amending Title 19 of The Philadelphia Code, entitled "Finance, Taxes And Collections," by adding three new definitions to Section 19-1501 and adding a new Section 19-1507, entitled "Student Debt Tax Credit," all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

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

TITLE 19. FINANCE, TAXES AND COLLECTIONS.

* * *

CHAPTER 19-1500. WAGE AND NET PROFITS TAX

§ 19-1501. Definitions.

(1) Business. An enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, co-partnership, association, governmental body or unit or agency, or any other entity.

(2) Employee. Any person who renders services to another for a consideration or its equivalent, under an express or implied contract, and who is under the control and direction of the latter, including temporary, provisional, casual or part-time employment.

(3) Employer. An individual, co-partnership, association, corporation, governmental body or unit or agency, or any other entity, who or that employs one or more persons on a salary, wage, commission or other compensation basis.

(4) *Graduated Student. A person who has graduated from a postsecondary education institution.*

[(4)] (5) Low Income Non-Residents. Non-Residents who are entitled to refund and/or forgiveness of taxes pursuant to State Low-Income Tax Provisions, including those who are eligible for the maximum refund and/or forgiveness available and those who are entitled to less than the maximum percentage amount.

[(5)] (6) Low Income Residents. Residents who are entitled to refund and/or forgiveness of taxes pursuant to State Low-Income Tax Provisions, including those who are eligible for the maximum refund and/or forgiveness available and those who are entitled to less than the maximum percentage amount.

[(6)] (7) Net Profits. The net gain from the operation of a business, profession or enterprise, after provision for all allowable costs and expenses incurred in the conduct thereof, either paid or accrued in accordance with the accounting system used, without deduction of taxes based on income.

[(7)] (8) Non-resident. An individual, co-partnership, association, corporation or any other entity domiciled outside the City.

[(8)] (9) Person. Every individual, co-partnership, fiduciary or association.

(10) *Postsecondary Education Institution. Regardless of funding source or method of delivering instruction, a postsecondary education institution shall include:*

(a) universities, colleges, and other educational institutions offering programs leading to bachelor's, master's, first-professional, and/or doctor's degrees.

(b) community/junior colleges and other 2-year educational institutions offering programs leading to associate degrees, diplomas, certificates of completion, and/or their equivalents.

(c) vocational-technical schools, technical institutes, business schools, Flight schools, cosmetology/ barber schools, trade schools, hospital schools, and other schools offering occupational training programs, frequently leading to diplomas or certificates; and

(d) other training sources providing instruction in a program of postsecondary education, including local education agencies, business organizations, labor unions, professional organizations, religious organizations, museums, libraries, and individuals, but only when such education is offered to the general public.

[(9)] (11) Resident. An individual, co-partnership, association, corporation or any other entity domiciled in the City.

[(10)] (12) Salaries, Wages, Commissions and Other Compensation. All salaries, wages, commissions, bonuses, incentive payments, fees and tips that may accrue or be received by an individual, whether indirectly or through an agent and whether in cash or in property, for services rendered, but excluding:

(a) periodical payments for sick or disability benefits and those commonly recognized as old age benefits.

(b) retirement pay, or pensions paid to persons retired from service after reaching a specific age or after a stated period of employment.

(c) any wages or compensation paid to any person for active service in the Army, Navy or Air Force of the United States, or to a member of the National Guard for active federal duty.

(d) any bonus or additional compensation paid by the United States, this Commonwealth, or any other state for such service.

(e) any statutory per diem compensation paid any witness or juror, or member of the District Election Board.

(f) Stock options which do not have a readily ascertainable fair market value, as defined by 26 C.F.R. § 1.83-7(b), on the date the stock option is granted. Stock options which do have a readily ascertainable

fair market value on the date the stock option is granted shall be considered as compensation in the amount of such value and received on such date. If an employee is offered the choice of receiving compensation in cash or compensation in stock options, and chooses stock options, then such stock options shall be deemed to have a readily ascertainable fair market value equal to the amount of cash that was offered. Any amount that would otherwise be considered as compensation arising from the exercise, exchange, sale or disposition of stock options, whether or not they had a readily ascertainable fair market value when granted, shall not be taxable under this Chapter;

(g) Certain tuition benefits, as follows:

(.1) Qualified tuition reduction benefits.

(.2) Tuition benefits that:

(A) Are provided to its employees by a not-for-profit healthcare system and its not-for-profit affiliates that are wholly (100%) owned and controlled, directly or indirectly, by a not-for-profit university; and

(B) Would qualify as qualified tuition reduction benefits if such not-for-profit healthcare system and its not-for-profit affiliates were part of such university.

(.3) Reimbursements by an employer of an employee's educational expenses relating to education required by the employer to maintain the employee's employment status or compensation level, including any education required by the Commonwealth to retain a professional license or certification relating to the employee's position. The employer must certify any such requirement in such manner as the Department shall determine.

(.4) For purposes of this subsection (g), the following definition applies:

(A) Qualified tuition reduction benefits. As defined in § 117(d) of the Internal Revenue Code (26 U.S.C. § 117(d)), as amended from time to time.

[(11)] (13) State Low-Income Tax Provisions. The state law provisions for refund and forgiveness of Commonwealth taxes based on poverty income set forth in Section 304 of the Tax Reform Code of 1971 (Act of March 4, 1971, P.L. 6, No. 2), as added by the Act of March 13, 1974 (P.L. 179, No. 32), 72 P.S. § 7304, and as amended from time to time.

(14) *Student Debt. Indebtedness for tuition paid to a postsecondary education institution incurred by a graduated student incident to graduating from such postsecondary education institution.*

[(12)] (15) Reserved.

[(13)] (16) Reserved.

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§ 19-1507. *Student Debt Tax Credit.*

(1) The Tax Credit. Any graduated students who are or become residents of the City of Philadelphia within five years after graduating from a postsecondary education institution and who have remaining unpaid student debt exceeding thirty-five thousand dollars (\$35,000.00) shall be entitled to a credit against any tax imposed upon them by the City of Philadelphia under Chapter 19-1500 of this Code for each year or part of any year that they are a resident of Philadelphia during the five years immediately after graduating from a postsecondary education institution in an annual amount equal to the unpaid student debt of the graduated student up to and including two thousand dollars (\$2,000) annually. Any unused student debt tax credit for which a graduated student was eligible in any year shall be available for carry-over to a subsequent year, but in no case shall it be used beyond the fifth year after graduating from a postsecondary education institution. The cumulative tax credit shall not exceed ten thousand dollars (\$10,000) or the amount of remaining unpaid student debt for each graduated student.

(2) Claiming The Tax Credit. Graduated students may claim the tax credit by filing a Petition produced by the Philadelphia Department of Revenue for that purpose to receive the tax credit as a refund.

[§ 19-1507.] § 19-1508. Liability of Persons To Collect, Account For and Pay Over Wage Taxes.

(1) Any person required to collect, truthfully account for, and pay over any tax imposed by this Chapter on salaries, wages, commissions and other compensation who fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall be liable for the full amount of such tax.

(2) For purposes of subsection 19-1507(1), an individual or entity that exercises significant control over the financial affairs of an employer, including without limitation the disbursements of funds or determining the priority of payments to creditors, is deemed to be a person required to collect, truthfully account for, and pay over any tax imposed by this Chapter on salaries, wages, commissions and other compensation.

(3) For purposes of this Section, "person" includes a shareholder, director, trustee, officer or employee of a corporation, or a partner or employee of a partnership, or the sole proprietor of a sole proprietorship, or a third party who makes either direct payment of wages to the employees of another or advances funds to pay the wages of the employees of another.

(4) More than one person may be liable under subsection 19-1507(1) with respect to the same employer, with each such person being jointly and severally liable for the full amount of the tax.

(5) This Section is modeled upon Section 6672 of the Internal Revenue Code (26 U.S.C. § 6672), and it is City Council's intent that this Section be construed in the same manner that Section 6672 has been construed.

[§ 19-1508.] § 19-1509. Refunds and Forgiveness for Poverty Income.

(1) Beginning with the calendar year January 1, 2015 through December 31, 2015, and for each calendar year thereafter, the rate of tax imposed on Low Income Residents under § 19-1502(1)(a) and (2)(a) shall be one half of one percent (0.5%) less than the rate of tax imposed upon Residents during such periods.

(2) Beginning with the calendar year January 1, 2015 through December 31, 2015, and for each calendar year thereafter, the rate of tax imposed on Low Income Non-Residents under § 19-1502(1)(b) and (2)(b) shall be one half of one percent (0.5%) less than the rate of tax imposed upon Non-Residents during such periods.

(3) A person subject to the rates described in subsections (1) and (2) shall be entitled to a refund of any taxes paid in excess of the amounts due under such subsections upon application to the Department on forms prepared by the Department. The Department shall post a downloadable version of the form on its website, with a link to that form on the main page of the website.

(a) Any person who has filed a PA Schedule SP ("Special Tax Forgiveness") with the Commonwealth for the relevant calendar year may attach a signed copy of that schedule to the Department's form, in which case the Department shall use the information on that form to determine the eligibility of the person for a refund under this Section.

(b) The Department's form shall: advise applicants of the existence of the State Low-Income Tax Provisions; explain that a person who is eligible for any tax forgiveness under those provisions is also entitled to relief under this Section if they have had tax withheld pursuant to this Chapter; and explain that if they have filed a PA Schedule SP, they must attach a copy of that form to the Department's application form.

(4) For calendar year 2015 and for each year thereafter, each employer that withholds taxes imposed by this Chapter shall provide each employee from whom it withholds such taxes a copy of the application prepared by the Department at the same time that it provides the employee with his or her federal Form W-2 or comparable form. The Department shall notify each employer of this responsibility and shall direct employers to the downloadable version of the form on its website.

(5) The withholding and filing requirements of this Chapter shall continue to apply to, and in connection with, persons entitled to refunds and forgiveness under this Section.

(6) The Department shall, within one hundred eighty (180) days of the date that this Section 19-1508 first becomes law, develop procedures and forms whereby the persons entitled to refunds and forgiveness under this Section can obtain the relief specified herein. The first such refunds shall be made no sooner than July 1, 2016, nor later than September 30, 2016, based upon returns filed for calendar year 2015.

(7) No later than one year after the date that this Section 19-1508 first becomes law, the Department shall submit to the Mayor, the Finance Director, the President of City Council, and the Chief Clerk of City Council a report assessing the feasibility of automatically generating refunds to eligible taxpayers who have filed a PA Schedule SP, without requiring such taxpayers to submit applications for refunds authorized by this Section.

[§ 19-1509.] § 19-1510. Civil Actions for Tax Violations.

(1) *Definitions.*

Damages. The amount of principal, interest, and penalty due and unpaid on a Philadelphia Wage Tax Violation or a Philadelphia Net Profits Tax Violation.

Philadelphia Wage Tax Violation. The failure of any business, employer, or person liable therefor to timely and fully remit Philadelphia Wage Taxes in violation of this Chapter or Chapter 19-2800.

Philadelphia Net Profits Tax Violation. The failure of any business, employer, or person liable therefor to timely and fully pay the Philadelphia Net Profits Tax in violation of this Chapter or Chapter

19-2800.

Knowing and Knowingly. Acting with actual knowledge of the information, in deliberate ignorance of the truth or falsity of the information, or in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

Proceeds. The Damages (including any multiplier) and fines as provided in this Section, but not attorneys' fees and costs.

(2) Prohibited Conduct.

(a) Any business, employer, or person who commits any of the following acts shall be liable to the City for three (3) times the amount of Damages which the City sustains because of the act of that business, employer, or person; shall have committed a Class III offense; and shall be liable for attorneys' fees and costs for any civil action brought to recover such Damages and fines:

1. (.1) Knowingly commits a Philadelphia Wage Tax Violation.
2. (.2) Knowingly commits a Philadelphia Net Profit Tax Violation.
3. (.3) Conspires with another to violate Section 19-1509(2)(a)(.1) or

(a)(.2).

(.4) Knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or remit Philadelphia Wage Tax or Philadelphia Net Profit Tax.

(b) The court may assess less than three (3) times the amount of Damages sustained because of the act of such business, employer, or person, but no less than two (2) times the amount of Damages sustained because of the act of such business, employer, or person, if the court determines that the business, employer, or person fully cooperated with any investigation of such violation.

(3) Civil Actions.

(a) Actions by the City Solicitor. If the City Solicitor determines that a business, employer, or person violated or is violating the provisions of this Section, he or she may institute a civil action against that business, employer, or person in a court of competent jurisdiction.

(b) Actions by Private Persons. Any person may submit a proposed civil complaint, alleging violations of this Section, to the City Solicitor or to such other officer of the City whom the Mayor designates to investigate such complaints.

(c) Investigations of Proposed Private Actions. The City Solicitor or an officer designated by the Mayor under this Section to investigate complaints is authorized to investigate the allegations in the proposed civil complaint and may request any additional information from the person who submitted the proposed civil complaint in order to investigate the allegations set forth therein. After the investigation has been completed, the City Solicitor may:

- (.1) Bring a civil action, based upon the facts alleged in the complaint, against one or

more of the defendants named therein; or

(.2) Enter into an agreement with the person who submitted the proposed complaint, or the person's attorney, to file a civil action for the person and the City, in the name of the City, based upon the facts alleged in the complaint, against one or more of the defendants named therein. An agreement pursuant to this subsection (.2) shall not be subject to the provisions of Chapter 17-1400 (relating to Non-Competitively Bid Contracts).

(.3) Decline to commence a civil action under this Section and decline to designate the person who submitted the proposed complaint to commence a civil action under this Section; or

(.4) Proceed in any other manner the City Solicitor deems appropriate.

(d) Certain Actions Barred. Subsections (3)(c)(.1) (relating to claims brought in the name of the City) and (3)(i) (relating to awards from proceeds) shall not apply to claims, records, or statements made pursuant to any proposed civil complaint:

(.1) Based upon allegations or transactions which are, or have been, the subject of any criminal, civil, or administrative action or proceeding.

(.2) Derived from public disclosure of allegations or transactions in a criminal, civil or administrative hearing, in a legislative or administrative report, hearing, audit or investigation or from allegations or transactions disclosed by the news media and likely to be seen by the City officials responsible for addressing such claims, unless the private party who submitted the civil complaint is the primary source of the information.

(.3) Based upon information discovered by an employee of the City, state, or federal government in the course of his or her employment; or

(.4) Based upon information discovered by a contractor engaged by the City to collect taxes, except as such Contractor may be expressly authorized by the City to proceed under this Section; or

(.5) Against the Federal government, the Commonwealth of Pennsylvania, the City or any officer or employee of those governmental entities acting within the scope of his or her employment; or

(.6) Solely concerning any filing or payment that is not yet at least one year overdue.

(e) Nothing in this Section shall be construed as authorizing anyone, other than the City Solicitor or a person or attorney designated by the City Solicitor pursuant to this Section, to commence a civil action to represent the City under this Section.

(f) Related Actions. Regardless of whether the City Solicitor has commenced a civil action, or another party has been designated to do so, the City Solicitor may elect to pursue any alternative action with respect to the presentation of the claims alleged in the civil complaint.

(g) Rights of the Parties.

(.1) If the City Solicitor elects to commence a civil action, then the City Solicitor shall have sole authority for prosecuting and settling the action and may move to dismiss or may settle the action, notwithstanding the objections of any person who submitted the proposed civil complaint upon which such civil action is based.

(.2) If the City Solicitor authorizes a private person or his attorney pursuant to subsection (3)(c)(.2) of this Section, then the private person or his attorney may conduct the action in the name of the City, upon such terms as the City Solicitor may impose, including, but not limited to, any requirement that the Department of Revenue first issue an assessment for the tax liability sought to be collected under this Section, and that the private person cooperate in supplying any information material to such assessment. Such person may seek to collect the applicable City Taxes imposed under Section 19-1502 of The Philadelphia Code, as well as treble Damages and attorneys' fees and costs. However, the City Solicitor may move to dismiss the action, notwithstanding the objection of such person, provided such person has an opportunity to be heard. The City Solicitor may settle the action with the defendant notwithstanding the objections of the person initiating the action, if after providing such person with an opportunity to be heard, the court approves the settlement.

(.3) The court may issue an order restricting the participation of a person designated to commence a civil action under this Section, notwithstanding the objections of such person, if the court determines, after providing such person an opportunity to be heard, that such person's unrestricted participation during the course of the litigation would interfere with or unduly delay the prosecution of the case or would be repetitious or irrelevant, or upon a showing by the defendant or the City that such person's unrestricted participation, during the course of the litigation, would be for purposes of harassment or would cause the defendant undue burden.

(.4) The court may issue a stay of any civil action brought under this Section if the action will interfere with any investigation or prosecution of a criminal matter arising out of the same facts, or for any other reason the court deems appropriate.

(.5) The City Solicitor may, in his or her discretion, file a complaint under seal and maintain its confidentiality, and may require any private person filing a complaint to file such complaint under seal and maintain its confidentiality, for such period of time deemed necessary by the Solicitor and permitted by the court.

(h) Under no circumstances shall the City be bound by an act of a person designated to commence a civil action under this Section.

(i) Award from Proceeds.

(.1) If the City Solicitor either elects to commence a civil action based on a private person's proposed civil complaint, or settles the case substantially based on a private person's proposed civil complaint, then the person or persons who submitted the complaint collectively shall be entitled to receive fifteen (15) percent of the proceeds

recovered by the City in the civil action or in settlement.

(.2) If the City Solicitor elects not to proceed with a civil action and enters into an agreement with a private person or his attorney pursuant to subsection (3)(c)(.2) of this Section, then the private person or persons collectively shall be entitled to receive twenty - five (25) percent of the proceeds recovered by the City in the civil action or in settlement of such action.

(.3) In determining the share of the proceeds to which a person submitting a proposed civil complaint is entitled, the court may consider the following factors:

(A) The extent to which such person contributed to the prosecution of the action, either in time, effort or finances.

(B) Any unreasonable delay by such person in submitting the

(C) Whether the person has been charged with criminal conduct arising from his or her role in the alleged violation of this Chapter, in which case such person shall not receive any share of the proceeds of the action if convicted on the charges; and

(D) Fundamental fairness and any other factors the court deems appropriate.

(.4) In no case shall any private person be entitled to any share of the proceeds recovered by the City pursuant to a judgment or settlement if (A) the evidence and allegations presented by such person in connection with the civil action prove unfounded, substantially duplicate information already possessed by the City (unless the City authorizes such private person to proceed to litigate an action based on such information), or do not materially contribute to obtaining the judgment or settlement; or (B) such private person does not fully cooperate with the City in pursuing a claim under this Section or in providing any information material to imposition of an assessment for the tax liability sought to be collected under this Section.

(j) Attorney's Fees and Costs.

(.1) In the event the City or a private person bringing an action in the name of the City prevails in a civil action commenced pursuant to this Section, the court shall award reasonable attorneys' fees and court costs.

(.2) The City shall not be liable for any expenses, attorneys' fees or costs that a person or a person's attorney incurs in connection with a civil action pursuant to this Section.

(3) Retaliatory Action Prohibited.

(a) No employer shall discharge, demote, suspend, threaten, harass or in any other manner discriminate against an employee in the terms and condition of employment because of lawful acts done by the employee in furtherance of an action under this Section, including investigation for, initiation of, testimony for, or other assistance in an action filed or to be filed under this Section.

(b) Any employee who is found to have suffered retaliatory action as defined in this subsection (4) shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, up to two (2) times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

(5) Regulations. The Law Department and the Department of Revenue are each authorized to promulgate such regulations as are necessary and appropriate to implement the provisions of this Section.

(6) Court Rules. Any rules adopted by the court that differ from the procedures set forth in this Section shall supersede the procedures set forth herein.

(7) Applicability of this Section. Nothing in this Section limits the rights of an injured person to recover damages under any other applicable law or legal theory.

SECTION 2. This Ordinance shall take effect immediately.

Explanation:

[Brackets] indicate matter deleted.

Italics indicate new matter added.