



Legislation Text

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Amending Chapter 19-2600 of The Philadelphia Code, entitled "Business Privilege Taxes," by excluding from the definition of receipts certain receipts of eating and drinking establishments that provide a smoke-free environment, by giving a credit against business privilege taxes to certain eating and drinking establishments that incur losses directly attributable to providing a smoke-free environment, by providing a credit against business privilege taxes to eating, drinking and lodging establishments that incur construction costs in connection with creating separate smoking facilities, and by providing certain other exclusions from receipts and certain other tax credits for eating, drinking and lodging establishments based upon their smoke-free policies; 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:

\* \* \*

*(12) For tax years 2002 through 2008, inclusive, 25% of the receipts of a Restaurant or Bar 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 Restaurant or Bar receives after the date the Restaurant or Bar files with the Department of Revenue a written certification that it is providing a completely smoke-free environment. For purposes of this subsection, "Restaurant" and "Bar" shall be defined as in subsection 10-602(1), and a Restaurant or Bar provides a "completely smoke-free environment" if it prohibits smoking in all areas, including in those areas in which smoking would otherwise be permitted under subsection 10-602(2)(b), except that a Restaurant or Bar need not prohibit smoking in a sidewalk cafe, outdoor deck, patio or similar outdoor service area as authorized under subsection 10-602(2)(b)(.7). This exclusion from receipts is subject to the following conditions and procedures:*

*(a) A Bar must abide by the provisions of §10-602 as if there were no exception for Bars set forth in §10-602(2)(b)(.1).*

*(b) The first time a Restaurant or Bar is finally found to violate §10-602 on three or more occasions during a single tax year, the Restaurant or Bar will not be eligible for this exclusion with respect to receipts received after the date of the third violation. The second time a Restaurant or Bar is finally found to violate §10-602 on three or more occasions during a single tax year, the Restaurant or Bar will not be eligible to take*

*advantage of this exclusion with respect to receipts received after the date of the third violation and with respect to all subsequent tax years.*

*(c) The Restaurant or Bar must execute an agreement with the City, in form approved by the Law Department, providing that:*

*(.1) The Restaurant or Bar will provide a smoke-free environment in compliance with §10-602, except as smoking may be permitted under that Section, or, for Bars, that a smoke-free environment will be provided as if the Bar were subject to §10-602. Bars must further agree that the City may enforce §10-602 against the Bar as if there were no exception for Bars set forth in §10-602(2)(b)(.1), and that the Bar will not raise the exception for Bars as a defense in any enforcement action brought by the City; and*

*(.2) The Restaurant or Bar will abide by the provisions of subsection 12(b), relating to circumstances under which a Restaurant or Bar may become ineligible for this exclusion during certain tax years for violations of §10-602.*

*(d) If a taxpayer owns more than one Restaurant or Bar, then, for purposes of this subsection, each such Restaurant or Bar shall be treated as if it were owned by a separate taxpayer, so that (i) this exclusion from receipts applies only with respect to receipts attributable to the operations of those Restaurants or Bars 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 (c); and (ii) if any one such Restaurant or Bar is rendered ineligible for the exclusion under the provisions of subsection (b), such ineligibility shall apply only to receipts attributable to the operations of that Restaurant or Bar, and not to receipts attributable to the operations of other Restaurants or Bars owned by the same taxpayer which have not been rendered ineligible for the exclusion.*

*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 (12), 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.*

\* \* \*

§19-2604. Tax Rates, Credits, and Alternative Tax Computation.

\* \* \*

*(6) Construction Tax Credit for Smoking Areas or Lounges.*

*(a) Definitions. For purposes of this subsection, the following definitions shall apply:*

*(.1) "Restaurant," "Bar," and "Lodging Establishment" shall be defined as in §10-602(1).*

*(.2) "Establishment." A Restaurant, Bar or Lodging Establishment.*

*(b) An Establishment shall receive a credit against business privilege tax liability for any costs*

*incurred to construct a separate smoking area or lounge as authorized under §10-602(2)(b)(.6), including the costs of any new or upgraded ventilation system installed to meet the requirements of §10-602(2)(b)(.6), provided that the credit shall only be available for such costs that are incurred within five (5) years after the date Bill No. 000314-AAA became law or within one year after an Establishment first opens for business, whichever is later. The amount of the credit shall be fifty percent (50%) of such costs, up to a maximum credit amount of \$50,000 (such maximum credit amount is not the maximum amount of credit that may be taken in any one tax year, but is the maximum amount that may be taken by a taxpayer over all tax years). If the amount of the credit exceeds an Establishment's business privilege tax liability in any tax year, any excess credit shall be carried forward and used as a credit against business privilege taxes due in the next or succeeding tax years. An Establishment that receives a credit against business privilege taxes under this subsection may also receive a ten year exemption from any increase in real estate taxes attributable to the actual cost of construction, subject to the terms and conditions of §19-1303(3).*

*(c) An Establishment may claim the credit for costs incurred to construct more than one separate smoking area or lounge, provided that the total tax credit granted per Establishment shall not exceed \$50,000. If a taxpayer owns more than one Establishment, the taxpayer may claim up to the maximum \$50,000 credit with respect to each separate Establishment owned by the taxpayer.*

*(7) Hardship Smoke-free Tax Credits.*

*(a) Definitions.*

*(.1) "Completely smoke-free environment." For purposes of this subsection, a Restaurant or Bar provides a "completely smoke-free environment" if it prohibits smoking in all areas, including in those areas in which smoking would otherwise be permitted under subsection 10-602(2)(b), except that a Restaurant or Bar need not prohibit smoking in a sidewalk cafe, outdoor deck, patio or similar outdoor service area as authorized under subsection 10-602(2)(b)(.7).*

*(.2) "Current Tax Year." The tax year for which a taxpayer applies for the tax credit described in this subsection.*

*(.3) "Base Tax Year." The tax year that began two years before the Current Tax Year began.*

*(.4) "Restaurant" and "Bar" shall be defined as in §10-602(1).*

*(b) Subject to subsection (7)(d), a Restaurant or Bar that provides a completely smoke-free environment and that sustains a decrease in net income and a decrease in gross receipts over a two year period beginning after tax year 2001 shall be entitled to a tax credit equal to the amount of the decrease in net income, provided such decreases in net income and in gross receipts are directly attributable to the establishment providing a completely smoke-free environment. Whether a taxpayer has sustained a decrease in net income and in gross receipts shall be determined by comparing net income and gross receipts for the Current Tax Year to net income and gross receipts for the Base Tax Year. A decrease in net income and gross receipts for one tax year compared to the previous tax year, regardless of the amount of such decreases, shall not entitle a Restaurant or Bar to this tax credit. This tax credit shall be available only for tax years 2003 through 2008, inclusive, provided that tax credits earned in any tax year may be carried forward to succeeding tax years until completely used.*

*(c) To be eligible for this tax credit, a taxpayer must first file with the Department of Revenue, no*

later than the last day of the Base Tax Year, a written certification that it is providing a completely smoke-free environment.

(d) The first time a Restaurant or Bar is finally found to violate §10-602 on more than three occasions during a single tax year, the Restaurant or Bar will not be eligible for the tax credit during that tax year, and if a tax credit was taken for that tax year, the Restaurant or Bar must reimburse the City for the full amount of the tax credit claimed. The second time a Restaurant or Bar is finally found to violate §10-602 on more than three occasions during a single tax year, the Restaurant or Bar will not be eligible for the tax credit during that tax year and all subsequent tax years, and if a tax credit was taken for that tax year or any subsequent tax year, then the Restaurant or Bar must reimburse the City for the full amount of the tax credit(s) claimed.

(e) If a taxpayer owns more than one Restaurant or Bar, then, for purposes of this subsection, each Restaurant or Bar shall be treated as if it were owned by a separate taxpayer, so that (i) changes in net income and gross receipts shall be determined with respect to each separate Restaurant or Bar owned by a taxpayer and (ii) if any one such Restaurant or Bar is rendered ineligible for the tax credit under the provisions of subsection (7)(d), such ineligibility shall apply only to tax credits attributable to the operations of that Restaurant or Bar, and not to the operations of other Restaurants or Bars owned by the same taxpayer which have not been rendered ineligible for tax credits. A taxpayer who owns more than one Restaurant or Bar may choose to apply for the tax credit (and execute the agreement required by subsection (7)(f)) with respect to the operations of any one or more of the Restaurants or Bars owned by the taxpayer, and is not required to apply for the tax credit with respect to all Bars. The Revenue Department shall by regulation specify the information a taxpayer must submit to establish net income and gross receipts for each separate Restaurant or Bar owned by the taxpayer.

(f) To be eligible for this tax credit, a Restaurant or Bar must execute an agreement with the City, in form approved by the Law Department, providing that:

(.1) The Restaurant or Bar will provide a smoke-free environment in compliance with all provisions of §10-602, except as smoking may be permitted under that Section, or, for Bars, that a smoke-free environment will be provided as if the Bar were subject to all provisions of §10-602. Bars must further agree that the City may enforce §10-602 against the Bar as if there were no exception for Bars set forth in §10-602(2)(b)(.1), and that the Bar will not raise the exception for Bars as a defense in any enforcement action brought by the City; and

(.2) The Restaurant or Bar will abide by the provisions of subsection (7)(d), relating to circumstances under which Restaurant or Bar may (i) become ineligible for the tax credit during certain tax years for violations of §10-602 and (ii) be required to reimburse the City for tax credits claimed during such tax years.

(8) Appeals.

(a) 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 Construction Tax Credit for Smoking Areas or Lounges provided under subsection (6) or the Hardship Smoke-free Tax Credit provided under subsection (7), or the amount of any such credit granted.

(b) Appeals to the Tax Review Board shall follow the procedures set forth in Chapter 19-1700

*relating to petitions for review.*

\* \* \*

SECTION 2. Severability. The provisions of this Ordinance are severable, and if any provision, sentence, clause, subsection or part thereof shall be held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, subsections or parts of this Ordinance or their application to such person or to other persons and circumstances. It is hereby declared to be the legislative intent of Council that this Ordinance would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, subsection or part had not been included therein, and if the person or circumstances to which the Ordinance or any part thereof is inapplicable had specifically been exempted therefrom.

SECTION 3. This Ordinance shall take effect when Bill No. 000314-AAA becomes law.

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**Explanation:**

*Italics* indicate new matter added.