

## Legislation Text

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**File #:** 190808, **Version:** 0

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Amending Chapter 19-1500 of The Philadelphia Code, entitled “Wage and Net Profits Tax,” by adding a new definition to Section 19-1501 and adding a new Section 19-1507, entitled “Working Grandparent Tax Credit”; all under certain terms and conditions.

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Chapter 19-1500 of The Philadelphia Code is amended to read as follows:

### CHAPTER 19-1500. WAGE AND NET PROFITS TAX

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#### § 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) 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) 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) 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) Non-resident. An individual, co-partnership, association, corporation or any other entity domiciled outside the City.

- (8) Person. Every individual, co-partnership, fiduciary or association.
- (9) Resident. An individual, co-partnership, association, corporation or any other entity domiciled in the City.
- (10) 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) 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.

*(12) Working Grandparent. An individual who can reasonably prove they are the biological or legal grandparent of a dependent grandchild, and are working to provide for the grandchild's wellbeing.*

[(12)] (13) *Reserved.*

[(13)] (14) *Reserved.*

\* \* \*

*§ 19-1507. Working Grandparent Tax Credit.*

(1) *Any working grandparent that can reasonable prove that they are the primary caretaker of their grandchild, are working in order to provide for their grandchild's wellbeing, and reside in the City of Philadelphia, may be eligible for this tax credit.*

(2) *The tax credit provided for working grandparents in this section shall be a credit against the tax imposed by § 19-1502 as follows:*

(a) *For a given tax year the credit shall equal up to eighty percent (80%) of the grandparent's wage taxes, with a maximum credit of thirty-eight hundred-dollars (\$3,800) per tax year.*

(b) *Any unused credit that the grandparent is eligible for in a given year, may carry-over to the next subsequent tax year.*

(c) *In order to receive the tax credit provided for in Section 19-1507, the grandparent must apply via a form provided by the Department of Revenue. Only one grandparent may claim a grandchild*

*and receive the credit at a time.*

*(d) The Department of Revenue is authorized to promulgate such regulations as are necessary and appropriate to implement the provisions of this Section.*

*(3) If a grandparent applies for and receives tax credits from the Working Grandparent Tax Credit provided for in this section, and the Grandparent-Childcare Tax Credit provided for in section § 19-1310; they may only receive up to a maximum credit of (\$3,800) per tax year.*

§[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] 19-1508(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] 19-1508 (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

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f=jumplink\$jumplink\_x=Advanced\$jumplink\_vpc=first\$jumplink\_xsl=querylink.xsl\$jumplink\_sel=title;path;content-type;home-title;item-bookmark\$jumplink\_d=pennsylvania(philadelphia\_pa)\$jumplink\_q=%5bfield%20folio-destination-name:'19-1502'%5d\$jumplink\_md=target-id=JD\_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] 19-1509 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] 19-1509 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) Knowingly commits a Philadelphia Wage Tax Violation.

- (.2) Knowingly commits a Philadelphia Net Profit Tax Violation.
- (.3) Conspires with another to violate Section [19-1509]*19-1510*(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.

SECTION 2. This Ordinance shall take effect July 1st, 2020.

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**Explanation:**

[Brackets] indicate matter deleted.

*Italics* indicate new matter added.