

Adding a new Section to the Department of Revenue's Business Privilege Tax Regulations entitled "Credits"

AMENDMENT TO THE DEPARTMENT OF REVENUE'S
BUSINESS PRIVILEGE TAX REGULATIONS

CREDITS

Section 504. Philadelphia Re-Entry Employment Program ("PREP") For Ex-offenders Tax Credit

A. Definitions. For the purposes of this section, the following definitions apply:

1. "Applicant." A business as defined in Section 101 (D) of these regulations.
2. "Code." The Philadelphia Code.
3. "Department." Department of Revenue.
4. "Ex-offender." A person previously convicted of a felony, or who was incarcerated for any conviction, or who is currently on probation or parole for any conviction.
5. "Qualifying Employee." For any given tax year, an Ex-offender is a "Qualifying Employee" of a business or a Qualifying Exempt Organization if he or she is either a Part-time or a Full-time Qualifying Employee, and meets all of the following criteria:
 - a. Is employed by the business or by the Qualifying Exempt Organization during the tax year in a position where either (A) compensation is equivalent to those wages and benefits, including sick leave, holiday and vacation absences, and tuition benefits, afforded regular employees in comparable positions as part of the Employer's regular payroll process; or, if a comparable position does not exist, (B) the average hourly rate, excluding benefits, is at least 150% of the federal minimum wage, and the employment package includes the same benefits as are provided to other full-time employees and tuition support for GED, Community College or other post-secondary education, or vocational/technical education or training, of at least \$2,000 during each of the first two years of employment and \$1,000 during the third year of employment.
 - b. Earns wages that are subject to the tax on wages imposed by Chapter 19-1500 of the Code;
 - c. Was first hired by the business or by the Qualifying Exempt Organization after the business entered into a PREP Tax Credit Agreement as required by subsection 504(C);
 - d. Was released from incarceration in the City no more than seven years before being hired by the business or by the Qualifying Exempt Organization; or from incarceration elsewhere in the Commonwealth no more than three years before being hired by the business or by the Qualifying Exempt Organization;

- e. Was a Philadelphia resident for at least one year before being incarcerated, and has been a Philadelphia resident either continuously since being released from incarceration or for at least three years before being hired;
 - f. Before being hired by the business or by the Qualifying Exempt Organization, executed a PREP Employee's Agreement as required by subsection 504(E); and
 - g. Has been certified by R.I.S.E. as a Qualifying Employee in accordance with subsection 504(D).
6. "Qualifying Full-Time Employee." For any given tax year, an Ex-offender is a "Qualifying Full-Time Employee" of a business or a Qualifying Exempt Organization if he or she is employed by the business or by the Qualifying Exempt Organization during the tax year for at least thirty-seven and one-half hours per week.
7. "Qualifying Part-Time Employee." For any given tax year, an Ex-offender is a "Qualifying Part-time Employee" of a business or a Qualifying Exempt Organization if he or she is employed by the business or by the Qualifying Exempt Organization during the tax year for at least twenty hours per week, but fewer than thirty-seven and one-half hours per week.
8. "Qualifying Exempt Organization." For any given tax year, a "Qualifying Exempt Organization" is an Organization that:
- a. Has been certified as an organization exempt from taxation under the Internal Revenue Code of 1986, as amended, and is exempt from taxation under Chapter 19-2600 of the Code (Business Privilege Taxes);
 - b. Employs a Qualifying Employee; and
 - c. Has been certified by R.I.S.E. as a Qualifying Exempt Organization in accordance with subsection (504)(F).
9. "R.I.S.E." The Mayor's office of Re-Integration Services for Ex-Offenders ("R.I.S.E."), or any other agency or office as the Mayor shall designate to perform the function assigned to R.I.S.E. by Section 19-2604 (9) of the Code.
10. "Tax Year." As defined in Section 101 of these regulations.

B. Calculation of Tax Credits.

1. a. Beginning in tax year 2008 and for all tax years thereafter, a business shall receive a tax credit for each certified Qualifying Employee who has been employed by the business for more than six (6) months.
- b. Beginning in tax year 2010 and for all tax years thereafter, a business shall receive a tax credit for a contribution of at least \$10,000 made in a given tax year to a Qualifying Exempt Organization for each Qualifying Full-time Employee employed by the Qualifying Exempt Organization for at least six (6) months, or for a contribution of at least \$5,000 made in a given tax year to a Qualifying Exempt Organization for each Qualifying Part-time Employee employed by the Qualifying Exempt Organization for at least six (6) months. A Qualifying Exempt Organization cannot receive a contribution from more than one business for each

qualifying employee employed by the organization. The tax credit provided for in this subparagraph shall also apply to a business that executed a PREP Tax Credit Agreement with the Department during the tax years 2008 and 2009.

2. The tax credit provided for in subsection (504)(B)(1.)(i.) shall be in the amount of \$10,000 multiplied by the percentage of the tax year that the Qualifying Full-time Employee was employed by the business or shall be in the amount of \$5,000 multiplied by the percentage of the tax year that the Qualifying Part-time Employee was employed by the business, subject to the limits in subsection (504)(B)(3). The tax credit provided for in subsection (504)(B)(1.)(ii) shall be in the amount of \$7,000 multiplied by the percentage of the tax year that the Qualifying Full-time Employee was employed by the Qualifying Exempt Organization, or shall be in the amount of \$3,500 multiplied by the percentage of the tax year that the Qualifying Part-time Employee was employed by the Qualifying Exempt Organization, subject to the limits in subsection (504)(B)(3). The percentage of a tax year shall be calculated by dividing the total number of full calendar weeks during the tax year that the Qualifying Employee was employed by the business or Qualifying Exempt Organization by fifty-two (52).
3.
 - a. The tax credit provided for in subsections (504)(B)(1.)(i) and (504)(B)(1.)(ii) is available for a total of thirty-six (36) months of employment of a Qualifying Full-time Employee or Qualifying Part-time Employee. The thirty-six (36) month employment period begins on the initial date of hire. In no instance may the thirty-six months of employment occur over a period exceeding six years from the initial date of hire.
 - b. The maximum amount of tax credits a business may receive for any one Qualifying Full-time Employee under subsection (504)(B)(1.)(i) over all tax years is \$30,000. The maximum amount of tax credits a business may receive for any one Qualifying Part-time Employee under subsection (504)(B)(1.)(i) over all tax years is \$15,000.
 - c. The maximum amount of tax credits any business may receive for making a contribution to a Qualified Exempt Organization under subsection (504)(B)(1.)(ii) shall not exceed \$21,000 for any one Qualifying Full-time Employee. The maximum amount of tax credits any business may receive for making a contribution to a Qualified Exempt Organization under subsection (504)(B)(1.)(ii) shall not exceed \$10,500 for any one Qualifying Part-time Employee.
4. Tax credits shall be taken against total business privilege tax liability, and a business may claim the PREP Credit for each Qualifying Full-time or Part-time Employee or contribution to a Qualifying Exempt Organization, as approved by the City of Philadelphia, for a period not to exceed five (5) years from the date the business executes a PREP Tax Credit Agreement. Any unused credit may be carried forward for three years from the date of hire of the qualifying employee by the business, or the date of the contribution to the exempt organization. In no instance may the period to claim the tax credit be longer than eight (8) years from the date the business executes a PREP Tax Credit Agreement. Credits not claimed by the business within this period will be forfeited. Cash refunds will not be issued for any unused credits.

5. A business receiving tax credits under Section 502 (Job Creation Tax Credit) for a given tax year shall not be eligible to receive tax credits under this Section 504 for that same tax year for the same employee.
6. The tax credits awarded to the business may neither be assigned nor transferred to any other business, including a subsidiary or other affiliate of the business.
7. The following are examples of calculation of tax credits:
 - a. A Qualifying Employee is employed April 1, 20X1 – June 30, 20X1 inclusive, is rehired to work September 15, 20X1 – December 20, 20X1. The employee is employed for more than six (6) months in the same tax year. The tax credit, assuming the following facts, would be calculated as follows:
 - i. The employee is employed full-time by a business. The tax credit would be: $\$10,000 \times 26/52 = 10,000 \times 50\% = \$5,000$;
 - ii. The employee is employed part-time by a business. The tax credit would be $\$5,000 \times 26/52 = 5,000 \times 50\% = \$2,500$;
 - iii. The employee is employed full-time by a Qualifying Exempt Organization; a business contributes \$10,000 to the Organization. The tax credit would be: $\$7,000 \times 26/52 = 7,000 \times 50\% = \$3,500$;
 - iv. The employee is employed full-time by a Qualifying Exempt Organization; a business contributes \$15,000 to the Organization. The tax credit would be: $\$7,000 \times 26/52 = 7,000 \times 50\% = \$3,500$;
 - v. The employee is employed part-time by a Qualifying Exempt Organization; a business contributes \$5,000 to the Organization. The tax credit would be $\$3,500 \times 26/52 = 3,500 \times 50\% = \$1,750$;
 - vi. The employee is employed part-time by a Qualifying Exempt Organization; a business contributes \$15,000 to the Organization. The tax credit would be $\$3,500 \times 26/52 = 3,500 \times 50\% = \$1,750$.
 - b. A Qualifying Employee works November 1, 20X1 to March 31, 20X2, inclusive, is rehired November 1, 20X2 and then terminated as of March 31, 20X3. The Qualifying Employee worked a total of ten (10) months. The tax credit, assuming the following facts:
 - i. The employee is employed full-time by a business. The tax credit would be calculated as follows:

$$\frac{20X1 (11/1 - 12/31/X1) = \$10,000 \times 8/52 = 10,000 \times 15\% = \$1,500}{20X2 (1/1 - 3/31/X2; 11/1 - 12/31/X2) = \$10,000 \times 20/52 = 10,000 \times 38\% = \$3,800;}$$

$$20X3 (1/1 - 3/31/X3) = \$10,000 \times 12/52 = 10,000 \times 23\% = \$2,300;$$

The business is eligible for the tax credit after 11/30/X2 – after the employee has been employed for more than six (6) months. The tax credit may be claimed against BPT liability for tax returns due after 11/30/X2. The total tax credit over all three tax years for each Qualifying Employee would be \$7,600.
 - ii. The employee is employed part-time by a business. The tax credit would be calculated as follows:

$$\underline{20X1 (11/1 - 12/31/X1) = \$5,000 \times 8/52 = 5,000 \times 15\% = \$750;}$$

$$\underline{20X2 (1/1 - 3/31/X2; 11/1 - 12/31/X2) = \$5,000 \times 20/52 = 5,000 \times 38\% = \$1,900;}$$

$$\underline{20X3 (1/1 - 3/31/X2) = \$5,000 \times 12/52 = 5,000 \times 23\% = \$1,150}$$

The business is eligible for the tax credit after 11/30/X2 – after the employee has been employed for more than six (6) months. The tax credit may be claimed against BPT liability for tax returns due after 11/30/X2. The total tax credit over all three tax years for each Qualifying Employee would be \$3,800.

- iii. The employee is employed full-time by a Qualifying Exempt Organization; a business contributes at least \$10,000 to the Organization in 20X1, 20X2 and 20X3 for each Qualifying Employee. The tax credit for the business would be calculated as follows:

$$\underline{20X1 (11/1 - 12/31/X1) = \$7,000 \times 8/52 = 7,000 \times 15\% = \$1,050;}$$

$$\underline{20X2 (1/1 - 3/31/X2; 11/1 - 12/31/X2) = \$7,000 \times 20/52 = 7,000 \times 38\% = \$2,660;}$$

$$\underline{20X3 (1/1 - 3/31/X3) = \$7,000 \times 12/52 = \$7,000 \times 23\% = \$1,610;}$$

The business is eligible for a tax credit after 11/30/X2 – after the employee has been employed for at least six (6) months. The business may claim the tax credit against BPT liability for tax returns due after 11/30/X2. The tax credit calculated at 12/31/X2 would be \$3,710 (1,050 + 2,660). The business would be eligible for an additional tax credit for 20X3 equal to \$1,610. The total tax credit over all three tax years for each Qualifying Employee would be \$5,320. If the business contributes more than \$10,000 in a given tax year to the Organization for each Qualifying Full-time employee, the tax credit percentage for each year for each employee would also be multiplied by \$7,000.

- iv. The employee is employed part-time by a Qualifying Exempt Organization; a business contributes at least \$5,000 to the Organization in 20X1, 20X2 and 20X3 for each Qualifying Employee. The tax credit for the business would be:

$$\underline{20X1 (11/1 - 12/31/X1) = \$3,500 \times 8/52 = 3,500 \times 15\% = \$525;}$$

$$\underline{20X2 (1/1 - 3/31/X2; 11/1 - 12/31/X2) = \$3,500 \times 20/52 = 3,500 \times 38\% = \$1,330;}$$

$$\underline{20X3 (1/1 - 3/31/X3) = \$3,500 \times 12/52 = 3,500 \times 23\% = \$805;}$$

The business is eligible for a tax credit after 11/30/X2 – after the employee has been employed for at least six (6) months. The tax credit at 12/31/X2 would be \$1,855 (525 + 1,330). The business would be eligible for an additional tax credit for 20X3 equal to \$805. The total tax credit over all three tax years for each Qualifying Employee would be \$2,660. If a business contributes more than \$5,000 in a given tax year to the Organization for each Qualifying Part-Time Employee, the tax credit percentage for each year for each employee would also be multiplied by \$3,500.

C. Eligibility; PREP Tax Credit Agreement; Program Requirements.

1. To be eligible to receive tax credits, a business must first execute a PREP Tax Credit Agreement with the Revenue Department that:
 - a. Details all the terms and conditions of the PREP Tax Credit as set forth in this subsection;
 - b. Sets forth the business' agreement to notify the Revenue Department within one week after any Qualifying Employee is no longer employed by the business or by the Qualifying Exempt Organization, which notification shall include an explanation as to why the Qualifying Employee's employment terminated;
 - c. Sets forth the business' commitment, as required under subsection 504(H), (A) to maintain its operations in the City of Philadelphia for five (5) years from the date of the agreement, and the business' agreement to repay any tax credits it receives if it violates such commitment, and (B) to repay those tax credits earned for a contribution to a Qualifying Exempt Organization if that Qualifying Exempt Organization fails to maintain its operations in the City of Philadelphia for five (5) years from the date of the agreement.
2. The Ex-offender employed by the business or by the Qualifying Exempt Organization must be certified by R.I.S.E. as a Qualifying Employee as defined in subsection 504(A)(7).
3. The business or Qualifying Exempt Organization shall employ each certified Qualifying Employee for at least six (6) months. The Qualifying Employee shall be employed for more than six (6) months before a tax credit shall be calculated.
4. The Qualifying Employees shall be employed in a position where either a) compensation is equivalent to those wages and fringe benefits, including sick leave, holiday and vacation absences, and tuition benefits afforded regular employees in comparable positions; or, if a comparable position does not exist, b) the average hourly rate, excluding benefits, is at least 150% of the federal minimum wage, and the employment package includes the same benefits as are provided to other full-time employees and tuition support for GED, Community College or other post-secondary education, or vocational/technical training, of at least \$2,000 during each of the first two years of employment and \$1,000 during the third year of employment.
5. The business and the Qualifying Exempt Organization shall substantially maintain existing operations (i.e., place of business) and the operations related to the tax credits within the City of Philadelphia for a period of five years from the date the business executes a PREP Tax Credit Agreement.
6. No business may claim or receive PREP Tax Credit(s) if the business is not in full compliance with all applicable Philadelphia tax laws, ordinances and regulations.

D. Certification of Qualifying Employees; Maximum Number Permitted.

1. After a business has executed a PREP Tax Credit Agreement, it shall make application to R.I.S.E. on a form required by R.I.S.E. for each employee it wishes to have certified as a Qualifying Employee.
2. R.I.S.E. shall certify all persons who meet the definition of Qualifying Employee, except:

- a. The number of certified Qualifying Employees at any one time shall not exceed 1,000, provided that if the City administers a program that provides employers based upon their employment of ex-offenders under terms and conditions which the Revenue Commissioner finds are substantially equivalent to the terms and conditions of the PREP Tax Credit provided under this Section, then the total number of certified Qualifying Employees plus the total number of employees under such grant program shall not exceed 1,000 at any one time; and
- b. R.I.S.E. shall not certify an Ex-offender as a Qualifying Employee if it finds any of the following:
 - .1 the hiring of the Ex-offender is displacing another employee of the business, and that the primary reason for such displacement is to obtain PREP tax credits;
 - .2 the Qualified Exempt Organization to which a contribution has been made under subsection 504(B)(1.)(ii) would hire the Ex-offender notwithstanding receipt of the contribution.
3. The certification of a Qualifying Employee shall expire after such employee has been employed as a Qualifying Employee by any employer for a total of thirty-six months, or when the Qualifying Employee is no longer employed by the business, and a Qualifying Employee whose certification has expired shall no longer count against the maximum number of certified Qualifying Employees.
4. After an organization is certified by R.I.S.E. as a Qualifying Exempt Organization, it shall make an application to R.I.S.E. on a form required by R.I.S.E. for each employee it wishes to have certified as a Qualifying Employee.
5. The hiring of the Ex-offender may not displace another employee and the primary reason for such displacement may not be to obtain PREP Tax Credits. In determining whether an employee has been displaced, the City will consider the facts and circumstances i.e., whether the ex-offender was hired to replace an employee who: voluntarily terminated employment, was terminated due to misconduct, was terminated due to poor performance, or was terminated in a reduction in work force due to lack of work.

E. PREP Employee's Agreement

1. To be a Qualifying Employee, an ex-offender must have executed an agreement with the City that sets forth:
 - a. A package of basic education and job training and retention and support services that the City has designed for the ex-offender;
 - b. The ex-offender's agreement to participate in life skills and basic financial management training, as well as meet all of his or her outstanding child support and other legal obligations.

F. Certification of Qualifying Exempt Organization.

1. An organization shall make an application to R.I.S.E. on a form required by R.I.S.E., stating that it wishes to be certified as a Qualifying Exempt Organization.

2. An organization shall commit to notifying the Department of Revenue and the business within one week after any Qualifying Employee is no longer employed by the Qualifying Exempt Organization, which notification shall include an explanation as to why the Qualifying Employee's employment terminated.

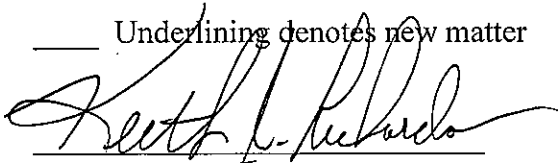
G. Issuance of PREP Tax Certificate and PREP Tax Credits

1. A business shall make a request to the Department for the issuance of and to claim the PREP Tax Credit, after the business either has received certification from R.I.S.E. for each Qualifying Employee employed by the business for more than six months or has contributed at least \$10,000 or \$5,000 in a given tax year to a certified Qualifying Exempt Organization that has employed certified Qualifying Employees for at least six months in the given tax year.
2. A business shall calculate, in accordance with subsection 504(B), the PREP Tax Credit for each certified Qualifying Employee hired by the business or the Qualifying Exempt Organization.
3. A business must submit a signed and completed Certification Form for Issuance of PREP Tax Credit Certificate to the Department that includes the following:
 - a. Certification that the business is maintaining its obligations in accordance with the terms and conditions of the PREP Tax Credit Agreement and is in compliance with the Department's requirements;
 - b. Copy of the certification issued by R.I.S.E. for each Qualifying Employee and Qualifying Exempt Organization;
 - c. List of each certified Qualifying Full-Time and Part-Time Employee for which the tax credit is calculated -- including employee's name, social security number, employment period dates, and tax credit amount;
 - d. List of each certified Qualifying Exempt Organization to which a contribution is made -- including the name, social security number, employment period dates for each Qualifying Full-Time and Part-Time Employee hired by the Organization, the Organization's Employer Identification Number, the contribution amount, the date of the contribution, a copy of both sides of the cancelled contribution check and the tax credit calculated for each contribution and for each Qualifying Employee.
4. Upon review of the documentation submitted and verification of the business's tax credit calculations, the business shall be notified and a PREP Tax Credit Certificate shall be issued by the Department.
5. To claim the tax credit the business must submit the original copy of the Business Privilege Tax Return to the appointed division in the Department and attach a copy of the PREP Tax Credit Certificate and Attachment A -- indicating the amount of credit being claimed and the amount of any unused tax credits.
6. The tax credit shall be taken against the business privilege tax liability for Business Privilege Tax Returns due after the issuance of the PREP Tax Credit Certificate.

H. Penalties.

1. Business failure to maintain operations. A business which receives tax credits and fails to substantially maintain existing operations and the operations related to the tax credits in the City of Philadelphia for a period of five (5) years from the date the business executes a PREP Tax Credit Agreement shall be required to refund to the City of Philadelphia the total amount of tax credits granted, unless the Department of Revenue determines that a business' operations were not substantially maintained because of circumstances beyond the business' control, including natural disasters, acts of terrorism, unforeseen industry trends or a loss of a major supplier or market.
2. Qualifying Exempt Organization failure to maintain operations. A business which receives tax credits for a contribution to a Qualifying Exempt Organization under subsection (504)(B)(1)(ii) shall be required to refund to the City of Philadelphia the total amount of tax credits granted based on that contribution if the Qualifying Exempt Organization fails to substantially maintain existing operations and the operations related to the tax credits in the City of Philadelphia for a period of five (5) years from the date the business executes a PREP Tax Credit Agreement, unless the Department of Revenue determines that the Qualifying Exempt Organization's operations were not substantially maintained because of circumstances beyond the Qualifying Exempt Organization's control, including natural disasters, acts of terrorism, or unforeseen social or economic trends.

Underlining denotes new matter



Keith J. Richardson
Revenue Commissioner

2/26/11
Date