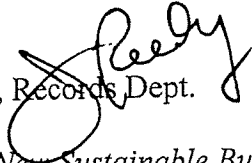


MEMORANDUM

City of Philadelphia

Date: 3/12/18

TO: Sozi Pedro Tulante, Acting City Solicitor

FROM: Jeanne Reedy, Administrative Services Director, Records Dept. 

SUBJECT: Advertisement of Proposed New Regulations – *New Sustainable Businesses* – Bill No. 160132-A

The above Regulations promulgated by the Department of Revenue were received in the Department of Records on 2/7/18 for filing and advertising.
Inasmuch as there were no requests for hearings, these Amendments became effective 3/9/18.

CC: Joseph F. Procopio., Manager, Technical Staff

CITY OF PHILADELPHIA
DEPARTMENT OF REVENUE
NEW SUSTAINABLE BUSINESSES REGULATIONS

CITY OF PHILADELPHIA
DEPARTMENT OF REVENUE
NEW SUSTAINABLE BUSINESSES REGULATIONS

TABLE OF CONTENTS

PREFACE		Page 3
ARTICLE I	GENERAL PROVISIONS	Page 4
Section 101.	Definitions.	Page 4
Section 102.	Tax Relief	Page 6
Section 103.	Status as a New Sustainable Business.	Page 7
ARTICLE II	IMPOSITION AND RATE OF TAX	Page 8
Section 201.	Tax Rates and Fees.	Page 8
ARTICLE III	EMPLOYMENT REQUIREMENTS	Page 9
Section 301.	Conditions for Tax and Fee Relief.	Page 9
ARTICLE IV	RETURNS	Page 10
Section 401.	Returns and Filing Requirements.	Page 10
ARTICLE V	INTEREST, PENALTIES AND COSTS	Page 11
Section 501.	Interest, Penalties, Fees and Charges.	Page 11

NEW SUSTAINABLE BUSINESSES REGULATIONS

PREFACE

The Council of the City of Philadelphia approved an Ordinance (Bill No. 160132-A) on June 16, 2016 amending Title 19 of The Philadelphia Code (“Code”), entitled “Finances, Taxes and Collections” by adding a new Chapter (Chapter 19-4200) entitled “New Sustainable Businesses” to the Code to reduce the Business Income and Receipts Tax burden on New Sustainable Businesses and to eliminate, waive, or reduce certain fees and permit charges, all under certain terms and conditions. The Bill was signed by the Mayor on June 28, 2016. Chapter 19-4200 was further amended by City Council Bill No. 170717 (enacted on November 27, 2017) that provided for Tax Year 2018 and thereafter, the tax relief provided shall also apply to the Net Profits Tax.

The Department of Revenue under the authority set forth in Section 19-4201(9) of the Code, and by virtue of the authority granted to the Revenue Commissioner under Section 1-104 of the Code, has promulgated the following regulations regarding status as a “New Sustainable Business” and those fees charged for licenses and registrations which shall be waived pursuant to Section 19-2604 and provisions of Chapter 19-3800 of the Code.

The Ordinance and these regulations shall take effect beginning with Tax Year 2017.

ARTICLE I
GENERAL PROVISIONS

Section 101. Definitions.

For the purpose of these regulations, the following definitions shall apply:

(a) "Code." The Philadelphia Code.

(b) "Department." The Revenue Department.

(c) "Family member." A parent, spouse, life partner, child, sibling or like relative-in-law of an owner of a New Business or affiliate.

(d) "New Business." A business that is now subject to the tax imposed under Section 19- 2603 of the Code but was not subject to it at any time during the five Tax Years preceding the first Tax Year engaged in business within Philadelphia.

(i) An existing business that is not subject to the tax imposed under Chapter 19-2600 of the Code because it is not currently engaged in business within the City of Philadelphia is eligible to qualify as a New Business upon engaging in such business within Philadelphia if it meets the requirements of the preceding definition.

Examples:

1. A person operated a business in Philadelphia and ceased to be in business in Tax Year 2010. The same person reopened the same or similar business in Tax Year 2017. The business would qualify as a New Business.
2. A person operated a business in Philadelphia that closed in Tax Year 2014. The same person opened an entirely different business in Tax Year 2017. The business opened in Tax Year 2017 would qualify as a New Business unless excluded from the term "New Business" as described under paragraph (ii) of this subsection.
3. A person operating a business in Philadelphia over the years closed the business in Tax Year 2014. The person reopened the same or similar business in Tax Year 2017. The business opened in Tax Year 2017 would not qualify as a New Business.
4. A person operating a business in Philadelphia over the years opened a new location in Tax Year 2017. The business location opened in Tax Year 2017 would not qualify as a New Business.
5. A business is located outside Philadelphia and was never subject to the tax imposed under Chapter 19-2600 of the Code. The person opens a location in Philadelphia in Tax Year 2017. The business opened in Philadelphia in Tax Year 2017 would qualify as a New Business.

6. A person located outside Philadelphia, but doing business in Philadelphia over the years, opens a business location in Philadelphia in Tax Year 2017. The business opened in Tax Year 2017 would not qualify as a New Business.

(ii) Exclusions. The term “New Business” does not include:

(.1) A business affiliated with or sharing substantial common ownership or control with a business that has filed a tax return as required under Chapter 19-2600 of the Code;

(.2) A business created through an ownership change of a business that has filed a tax return as required under Chapter 19-2600 of the Code, including, but not limited to:

(A) A merger, acquisition or reorganization;

(B) The transfer of an existing business to a person who maintains the same or substantially similar business; and

(C) The closing of an existing business and its subsequent reopening as the same or similar business; Factors to consider in determining whether a business is “the same or similar business”, include, but is not limited to, common ownership or affiliation with the same unitary business group, common management, employees, assets (including goodwill), line of business, and location.

(.3) A business formed for the purpose of evading or avoiding payment of taxes or fees that would otherwise be due but for the provisions of Chapter 19-4200 of the Code and these regulations; or

(.4) A business, the primary business activity of which is holding, selling, leasing, transferring, managing or developing real estate. A real estate broker, title-company, management-company or other similar business whose activity is managing, leasing or selling real estate owned by unrelated persons is not excluded from the term “New Business”, provided that the business is a New Business as defined in Section 101 of these regulations.

Examples:

1. A person operated a business in Philadelphia beginning in Tax Year 2017 and closed the business in Tax Year 2018. The same person opened the same or similar business in Tax Year 2019. The business opened in Tax Year 2017 would qualify as a New Business. The business opened in Tax Year 2019 would not qualify as a New Business.
2. A person operated a law firm in Philadelphia beginning in Tax Year 2017 and closed the business in Tax Year 2018. The same person opened a grocery store in Tax Year 2019. The business opened in Tax Year 2017 would qualify as a New Business. The business opened in Tax Year 2019 would also qualify as a New Business.

3. An individual operating a business in Philadelphia over the years as a sole-proprietor closed the business in Tax Year 2014. The same individual incorporates the business and opens the same or similar business in Tax Year 2016. The business opened in Tax Year 2016 would not qualify as a New Business.
4. A person started a business that is subject to the business tax in Tax Year 2016. The same person is also affiliated by ownership with another business that opened in Philadelphia during Tax Year 2017. The business with the start date in Tax Year 2016 would qualify as a New Business. The business that started its activity in Philadelphia in Tax Year 2017 would not qualify if it is engaged in the same or similar business to that of the business opened in 2016.

(e) "New Sustainable Business." A New Business as defined under Section 101(d) of these Regulations which is certified as a Sustainable Business by the Office of Sustainability pursuant to Chapter 19-2600 of the Code.

(f) "Person." Any individual, partnership, limited partnership, association, corporation, estate or trust. When used in any provision prescribing or imposing a penalty, the term "person", as applied to associations, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

(g) "Tax Year." A twelve-month period from January 1 to December 31, inclusive.

Section 102. Tax Relief.

(a) Notwithstanding any provision to the contrary, but subject to the conditions set forth in Section 301 of these regulations:

(1.) For Tax Year 2017 and thereafter, the Business Income and Receipts Tax under Section 19-2603 shall be imposed upon any New Sustainable Business at the rate of zero (0) percent during the first three (3) years that such business qualifies as a New Sustainable Business.

(2.) For Tax Year 2018 and thereafter, The Net Profits Tax imposed by Section 19-1502 shall be imposed with respect to the income of the New Sustainable Business at the rate of zero (0) percent during the first three (3) years that such business qualifies as a New Sustainable Business.

Section 103. Status as a New Sustainable Business.

(a) A business shall cease to be a New Sustainable Business, on the due date (without extension) of the third year of the Business Income and Receipts Tax return, as imposed under Chapter 19-2600 of the Code.

(b) A business that otherwise qualifies as a New Sustainable Business does not lose its status as such if, prior to the end of its third anniversary of becoming subject to the tax imposed under Chapter 19-2600 of the Code, the business altogether ceases to exist as a business.

(c) For Tax Year 2017 , up to 50 businesses shall be certified as New Sustainable Businesses. For Tax Year 2018 another 50 businesses (for a total number of 100 businesses) shall be certified as New Sustainable Businesses. For Tax Years 2019 through 2022, up to 75 additional businesses shall be certified as New Sustainable Businesses for each Tax Year.

Tax Year	Additional New Sustainable Businesses	Total New Sustainable Businesses
2017	50	50
2018	50	100
2019	75	175
2020	75	200 (175 +75-50)
2021	75	225 (200+75-50)
2022	75	225 (225+75-75)

ARTICLE II

IMPOSITION AND RATE OF TAX

Section 201. Tax Rates and Fees.

(a) Notwithstanding any provision to the contrary, but subject to the conditions set forth in Section 301 of these regulations, with respect to the first three Tax Years that a business qualifies as a New Sustainable Business, the Business Income and Receipts Tax imposed by Section 19-2603 (and if applicable, the Net Profits Tax imposed by Section 19-1502(2)) of the Code shall be imposed on the New Sustainable Business at the rate of zero (0) percent. The first Business Income and Receipts Tax (“BIRT”) return available for this tax relief is Tax Year 2017. The first Net Profits Tax (“NPT”) return available for this tax relief is Tax Year 2018.

(b) In addition to any waivers or benefits for which a New Sustainable Business qualifies pursuant to this Section, such business shall be additionally entitled to any waivers, benefits, and credits set forth in Section 19-2604 and Chapter 19-3800, subject to the terms and conditions of each respective Sections.

(c) The fees waived under subsection (b) of this section that would be waived for a qualifying New Sustainable Business shall not be refunded if the business paid such fees prior to filing a New Sustainable Business Waiver Application as required by Section 301 of this regulation and later determines that it qualifies for status as a “New Sustainable Business” and subsequently files a New Sustainable Business Waiver Application.

ARTICLE III

EMPLOYMENT REQUIREMENTS

Section 301. Conditions for Tax and Fee Relief.

(a) Employment Requirement.

As a condition of imposing the Business Income and Receipts Tax (and if applicable, the Net Profits Tax) at the rate of zero (0) percent upon any New Sustainable Business, such business must, as of the 12-month anniversary of becoming subject to the BIRT imposed under Chapter 19-2600 of the Code and continuously thereafter through the 18-month anniversary of becoming subject to such tax, have at least two (2) full-time employees who are not family members and who work in the City at least sixty percent of the time.

(b) Opportunity to cure.

If it is determined that, after a New Sustainable Business hires the required number of qualifying employees, the number of qualifying employees subsequently drops below the required minimum, the business shall cease to be a New Sustainable Business and shall be liable retroactively for all taxes, fees and charges as if it had never been a New Sustainable Business. The Department may waive this provision or prorate the amount of tax that may otherwise be due if the Department determines that the number of qualifying employees dropped below the required minimum because of circumstances beyond the business' control; such circumstances include natural disasters, acts of terrorism, unforeseen industry trends or loss of a major supplier or market.

(c) New Sustainable Business Waiver Application.

To claim any of the waivers or benefits set forth in Section 201 of these regulations, a New Business must file with the Department a New Sustainable Business Waiver Application, in such form as prescribed by the Department, setting forth the New Sustainable Business's commitment to meet the employment and other requirements of Chapter 19-4200 of the Code and this Regulations and such other information as the Department shall require. The Application for status as a "New Sustainable Business" shall be filed at the time the business submits an Application for Philadelphia Business Tax Account Number and the Commercial Activity License. In no instance shall the application for status as a "New Sustainable Business" be submitted later than April 15th of the year following the first Tax Year.

ARTICLE IV

RETURNS

Section 401. Returns and Filing Requirements.

(a) Every New Sustainable Business must file a tax return on the prescribed form available from the Department in accordance with provisions under Chapter 19-2600 (and if applicable 19-1503(1)) of the Code and the regulations promulgated thereunder.

(b) Every New Sustainable Business must file Wage Tax Returns on the prescribed forms available from the Department in accordance with provisions of the Income Tax Regulations and under Chapter 19-1500 of the Code entitled "Wage and Net Profits Tax."

(i) Upon filing an Application for Philadelphia Business Tax Account Number, the Commercial Activity License and a New Sustainable Business Waiver Application, a qualifying New Sustainable Business shall automatically be registered for withholding and remittance of Philadelphia City Wage Tax. The taxable monthly payroll will be used to determine if the New Sustainable Business shall remit City Wage Tax quarterly, monthly, semi-monthly or weekly. If the business has not hired an employee as of the date business began in Philadelphia or upon filing for the business tax account number, the business shall be registered as a quarterly filer for Wage Tax.

(c) A New Sustainable Business shall be required to file Wage Tax Returns with the City even if the business has not hired employees by the fourth quarter of the New Sustainable Business's start date in Philadelphia and no wage tax is due. In such an instance, the business shall file the tax returns and report wages and tax due as 'zero' for the applicable filing periods.

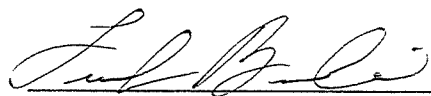
(d) Nothing in Chapter 19-4200 of the Code and these regulations shall affect requirements in the Code that certain tax returns or other financial information be filed.

ARTICLE V

INTEREST, PENALTIES and COSTS

Section 501. Interest, Penalties, Fees and Charges.

- (a) If the Department finds that a taxpayer claiming the status of a New Sustainable Business was not entitled to that status, the taxpayer shall be liable for any unpaid taxes, fees and charges that would otherwise have been due, and shall be subject to the provisions of Section 19- 509 (“Interest, Penalties and Costs”), Section 9-102 (“Licenses and Permits”), and all other provisions applicable to the nonpayment of taxes, fees and charges.



Frank Breslin CPA, Revenue Commissioner

Date: 2/7/18