

MEMORANDUM

City of Philadelphia

Date: 1/15/19

TO: Marcel S. Pratt, City Solicitor

FROM: Lynda Yerkov, Records Operations Manager 

SUBJECT: Advertisement of Proposed Regulations – Business Income and Receipts Tax –
Section 202 – Due Dates for Filing Returns and for Payments of Actual and
Estimated Taxes – City Council Bill No. 180077-A.

The above Regulations promulgated by the Department of Revenue were received in the
Department of Records on 12/13/18 for filing and advertising.

Inasmuch as there were no requests for hearings, these Regulations became effective 1/14/19.

CC: Frank Breslin, Revenue Commissioner
Joseph F. Procopio Jr., Manager, Technical Staff
Marisa Waxman, First Deputy Revenue Commissioner
Tilahun Afessa, Director of Policy

This is an amendment to Business Income and Receipts Tax Regulations Section 202 to reflect changes made due to the enactment of City Council Bill No. 180077-A. These changes are effective July 1, 2019 and therefore only apply to taxpayers starting business activity within Philadelphia in calendar year 2019 and subsequent years whose filing for their first Business Income and Receipts Tax (BIRT) return is due after the effective date.

Section 202. Due Dates for Filing Returns and for Payments of Actual and Estimated Taxes.

[The Philadelphia City Council by Ordinance amended Chapter 19-2600 of The Philadelphia Code, entitled "Business Income and Receipts Taxes." The Ordinance was approved by the Mayor on November 26, 2002 and applies to tax years 2002 and thereafter. The amendment, among others, eliminates the prepaid structure of the tax, clarifies the time and manner of filing the returns and requires the payment of mandatory estimated tax.] Every person engaged in business is required to file a Business Income and Receipts Tax Return for each tax year in business and pay any tax balance due on that tax year on or before the 15th day of April the year following each tax year.

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A. Taxpayers starting business within Philadelphia in Tax Year 2018 and prior Tax Years

[A. Every person engaged in business is required to file a Business Income and Receipts Tax Return for each tax year in business and pay any tax balance due on that tax year on or before the 15th day of April the year following each tax year. In addition, a) For taxpayer commencing business in 2018 and earlier a mandatory estimated tax payment[(s)] equal to 100% of the actual tax due of the current tax year shall be paid towards the next Tax Year. [The estimated tax for tax years 2003 and 2004 shall be made on or before the 15th day of April of the year following the tax years. For tax years thereafter, estimated tax payments shall be made at such times and on such forms as provided by the Department of Revenue.] Failure to make the required estimated payment on the due date shall subject a taxpayer to interest, penalties and costs as provided in Section 19-509 of the Philadelphia Code. Any overpayment of the current year tax shall be applied first to the payment of an estimated tax for the tax year that follows or to other taxes due. A remaining balance, if any, shall be applied to future BIRT years unless the taxpayer requests a refund of the amount.

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[Example: "A"'s actual 2002 and 2003 BIRT liabilities are \$3,000 and \$5,000, respectively. When filing its actual 2002 BIRT return due April 15, 2003, "A" shall pay an estimated tax of

\$3,000 for 2003 privilege year. When filing its 2003 BIRT Return due April 15th, 2004, "A" shall pay the \$2,000 balance due (\$5,000 tax due minus \$3,000 estimated payment made) on the 2003 tax year and \$5,000 estimated payment for tax year 2004.

Example: "B"'s actual 2002 and 2003 BIRT liabilities are \$6,000 and \$5,000, respectively. When filing its actual 2002 BIRT Return due April 15, 2003, "B" shall pay an estimated tax of \$6,000 for 2003 privilege year. When filing its 2003 BIRT Return due April 15, 2004, "B" shall apply the \$1,000 overpayment of the 2003 estimated tax (\$6,000 - \$5,000) and shall pay an additional \$4,000(\$5,000 - \$1,000) to the payment of an estimated tax for the 2004 privilege year.]

Example: Marpro Inc. commenced business activity in Philadelphia on July 1, 2018. The 2018 Business Income and Receipts Tax (BIRT) return is due on April 15, 2019. Aside from paying the tax due for Tax Year 2018, Marpro will also make a 100% estimated tax payment on the return for Tax Year 2019 based on the 2018 tax due.

B. Taxpayers starting business within Philadelphia in Tax Year 2019 and subsequent Tax Years

- 1. Taxpayers commencing their business activity within Philadelphia during calendar year 2019 and thereafter will pay the tax for that initial tax year by April 15 of the calendar year following the tax year. No estimated payments towards the second-year tax return will be required to be made on this first return.**

- 2. With the filing of the second-year tax return, the taxpayer is required to make estimated tax payments towards the third-year tax return equal to 100% of the actual tax due on the second tax year. The taxpayer may elect to make four (4) quarterly estimated tax payments. The payment schedule for the quarterly estimated payments are as follows:**
 - a. First estimate (25% of first -year tax calculation)- April 15 of the third calendar year in business;**
 - b. Second estimate (25% of first -year tax calculation)- June 15 of the third calendar year in business;**
 - c. Third estimate (25% of first -year tax calculation)- September 15 of the third calendar year in business;**
 - d. Fourth estimate (25% of first -year tax calculation)- January 15 of the fourth calendar year in business**

3. With the filing of the third-year tax return, the taxpayer will be required to make a 100% estimated payment on the third-year return towards the estimated tax for the fourth-year return.

Example: ABC Inc. commenced business activity in Philadelphia on July 1, 2019. The 2019 Business Income and Receipts Tax (BIRT) return is due on April 15, 2020. With this return, ABC will pay the tax due for Tax Year 2019 and not be required to make any estimated payments toward Tax Year 2020.

With the filing of the second-year BIRT return (i.e. Tax Year 2020), ABC will pay the tax due for Tax Year 2020. ABC may at their option make a single 100% estimated tax payment or make quarterly estimated tax payments (each equal to 25% of the tax calculated for 2020) for Tax Year 2021 that are due on 4/15/21, 6/15/21, 9/15/21 and 1/15/22.

With the filing of the third-year tax return (i.e. Tax Year 2021), ABC will pay any remaining unpaid tax for Tax Year 2021 and make a 100% estimated tax payment for Tax Year 2022 based on the tax calculated for Tax Year 2021.

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C. Electronic Filing and Payment of Quarterly Estimated Payments

Pursuant to the authority of Philadelphia Code § 19-511 and General Regulations Section 203, the quarterly estimated payments required under subsection B.2 shall be filed and paid electronically. The Department will post to its website the terms and conditions required for the electronic filing and payment of the quarterly estimates.

[B.] D. An extension to file the current year tax return will not relieve the taxpayer from the obligation to pay [an amount equal to 100% of the current year tax due as an] the estimated tax for the following tax year on the prescribed due date(s).

[C. A person may petition the Department of Revenue for permission to pay less than 100% of the current year tax liability as a mandatory estimated tax for the tax year following the current tax year. The petition must provide an explanation as to why the estimate should be less than a 100%. Acceptable reasons may be unusual, unique or nonrecurring transaction(s) that caused an unusually high current year tax liability or may result in unusually low tax liability in the year following the current tax year. The petition must be filed, using a form provided by the Department, on or before the 20th day of March of the year following the current tax year. A petitioner may presume approval of the petition if the Department does not communicate its disapproval by April 10 of the year following the current tax year.

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Interest and penalty shall be imposed, and shall not be waived, if the payment is found to be lower than the following year actual tax liability.]

E. Option to Pay Less Estimated Taxes Than 100% of the Current Year Tax Due

A mandatory estimated tax payment[(s)] equal to a 100% of the actual tax due of the current tax year shall be paid towards the following tax year. If a taxpayer has a reason to believe that the current year tax liability is unusually high or the following tax year liability will be unusually low, the taxpayer has the option to pay less than the mandatory 100% of the current year tax liability as an estimated tax for the following tax year. However, if the estimated payment is found to be lower than the actual tax liability of the following year, interests and penalty shall be imposed on the discrepancy accruing from April 15 of the current tax year to the date the discrepancy is paid.

Example: "E"'s 20[03] 17 BIRT liability was \$50,000. "E" anticipated terminating its Philadelphia operations sometimes in August of 20[04]18 with lower than usual activities in the months prior to termination. "E" [filed a petition stating] estimates that as a result of this anticipated termination, its 20[04]18 BIRT liability is expected to be no more than \$20,000. ["E" requested a permission to pay \$20,000 estimated tax for 2004 tax year, the Department granted the petition and] "E" paid the \$20,000 on the due date, April 15, 20[04]18 . When filing its 20[04]18 final BIRT return, "E" reported its liability for the year to be \$15,000. Assuming that "E" does not owe any tax money to the City, the City shall issue a \$5,000 refund check to "E".

Example: Same facts as the example above except that, before filing its 20[04]18 final BIRT return due April 15, 20[05]19, "C" determines its 20[04]18 BIRT liability to be \$25,000 (instead of \$20,000) and decides to pay the balance on January 1, 20[05]19. "C" shall pay the \$5,000 balance due with interest and penalties accruing from April 15, 20[04]18 to January 1, 20[05]19.

[D.] F. Terminating Businesses. Every person that has terminated its business during the tax year is required to file a final BIRT return on or before the 15th day of April of the year following the termination year.

[E.] G. Persons Engaged in a Temporary, Seasonal, or Itinerant Business. Each person engaged in a temporary, seasonal or itinerant business is required to file a tax return for each tax year within thirty (30) days of the day completing each business during any tax year.

Bold and _____underline denotes new matter.

Bold and Brackets [] denotes matter deleted.

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Date: 12/12/18

Frank Breslin CPA, Revenue Commissioner