

City of Philadelphia | Income Tax Regulations

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City of Philadelphia | Income Tax Regulations

PREFACE

On December 13, 1939, the Philadelphia Income Tax Ordinance (“Ordinance”) was approved by the Philadelphia City Council. The Ordinance imposed a tax of one and one-half percent ($1\frac{1}{2}\%$) on:

- 1) Salaries, wages, commissions, and other compensation earned after January 1, 1940, by residents of Philadelphia, irrespective of the place or places where the services were performed;
- 2) Salaries, wages, commissions, and other compensation, earned after January 1, 1940, by non-residents of Philadelphia, for work done or services performed or rendered in Philadelphia;
- 3) The net profits earned after January 1, 1939, of businesses, professions, or other activities conducted by residents within or outside Philadelphia;
- 4) The net profits earned after January 1, 1939, of businesses, professions, or other activities conducted by non-residents within Philadelphia.

On December 21, 1942, the Philadelphia City Council amended the Ordinance to reduce the tax rate on net profits earned after January 1, 1942 to one percent (1%); and to reduce the tax rate on salaries, wages, commissions, and other compensation earned after January 1, 1943 to one percent (1%).

On March 31, 1948, the Philadelphia City Council amended the Ordinance to make several changes to the dates for filing tax returns and paying tax due. The filing dates for returns of tax withheld by employers were changed from a monthly basis to a fiscal quarterly basis. The filing dates for returns of employees from whose compensation tax was not withheld at the source,

was changed from an annual basis to a calendar quarterly basis. The privilege of paying the tax on net profits in quarterly installments was abolished and provisions were made for payment in full at the time of filing.

On December 9, 1949, the Philadelphia City Council amended the Ordinance to increase the tax rate to one and one-quarter percent ($1\frac{1}{4}\%$) on net profits earned after January 1, 1949; and to one and one-quarter percent ($1\frac{1}{4}\%$) on salaries, wages, commissions, and other compensation earned after January 1, 1950.

On July 3, 1951, the Philadelphia City Council amended the Ordinance to exempt certain payments, i.e., old age, retirement or pensions, wages or compensation—paid by the United States for active service in the Army, Navy, or Air Force, or as a bonus or additional compensation for such service; and sick or disability benefits made to employees.

On September 19, 1951, the Philadelphia City Council amended the Ordinance to change the filing dates for returns of tax withheld by employers from a fiscal to a calendar quarterly basis. The amendment further provided for monthly remittance of tax due by the employers where the total amount deducted during any month is in excess of fifty dollars (\$50.00); and stated that employers of domestic employees are not obligated to withhold the tax.

On October 30, 1952, the Philadelphia City Council amended the Ordinance to provide for a limitation of six (6) years on lawsuits to recover tax due, with certain exceptions.

On March 24, 1953, the Philadelphia City Council amended the Ordinance to change the filing and the payment date of an employer's monthly return of tax withheld to the 25th day of the month.

On December 6, 1954, the Philadelphia City Council amended the Ordinance to change the filing date and payment date of the annual Net Profits Tax return from March 15th to May 15th.

Effective February 29, 1956, as a result of the adoption of the Philadelphia Code by the Philadelphia City Council, the rate of penalty was made one percent (1%) per month.

On November 2, 1956, an ordinance was approved by the Philadelphia City Council, empowering the Revenue Commissioner to enter into agreements with out-of-city employers to withhold the Wage Tax on the salaries of their employees who are residents of Philadelphia and to remit it to the City.

On November 30, 1956, the Philadelphia City Council amended the Ordinance to increase the tax rate to one and one-half percent ($1\frac{1}{2}$ %) on net profits earned after January 1, 1956; and to one and one-half percent ($1\frac{1}{2}$ %) on salaries, wages, commissions, and other compensation earned after January 1, 1957.

On November 30, 1960, the Philadelphia City Council amended the Ordinance to increase the tax rate to one and five-eighths percent ($1\frac{5}{8}$ %) on net profits earned after January 1, 1960; and to one and five-eighths percent ($1\frac{5}{8}$ %) on salaries, wages, commissions, and other compensation earned after January 1, 1961.

On October 24, 1962, the Philadelphia City Council amended the Ordinance to grant employees who had not paid the tax and whose employers were not required to withhold the tax, a reduction in the penalty rate after the first year of delinquency from one percent (1%) per month to one-half percent ($\frac{1}{2}$ %) per month.

On October 9, 1964, an ordinance was approved by the Philadelphia City Council authorizing the Revenue Commissioner to enter into agreements with federal government employees' associations or labor unions to receive tax from their members and remit it to the City. This ordinance has been the subject of two amendments; one of which, approved October 6, 1971, repealed the requirement that the association or labor union shall post a bond with the City, under a certain requirement that prior years' taxes be paid within two years of the date of the first payment specified in the agreement.

On December 6, 1965, the Philadelphia City Council amended the Ordinance to increase the tax rate to two percent (2%) on net profits earned after January 1, 1965; and to two percent (2%) on salaries, wages, commissions, and other compensation earned after January 1, 1966.

On May 29, 1969, the Philadelphia City Council amended the Ordinance to increase the tax rate to three percent (3%) on net profits earned after January 1, 1969; and to three percent (3 %) on salaries, wages, commissions, and other compensation earned after July 1, 1969.

On June 2, 1971, the Philadelphia City Council amended the Ordinance to increase the tax rate to three and five-sixteenths percent ($3\frac{5}{16}$ %) on net profits earned after January 1, 1971; and to three and five-sixteenths percent ($3\frac{5}{16}$ %) on salaries, wages, commissions, and other compensation earned after July 1, 1971.

On May 3, 1974, the Philadelphia City Council amended the Ordinance to require each employer who shall deduct an aggregate amount of Philadelphia Wage Tax of two-hundred and fifty dollars (\$250) or more during a calendar month, to deposit with the Department of Revenue within three (3) banking days subsequent to each pay date for each pay period, the amount of tax required to be withheld on that pay date.

On May 28, 1976, the Philadelphia City Council amended the Ordinance to increase the tax rate to four and five-sixteenths percent ($4\frac{5}{16}$ %) on net profits earned after January 1, 1976; and to four and five-sixteenths percent ($4\frac{5}{16}$ %) on salaries, wages, commissions, and other compensation earned after July 1, 1976.

On June 2, 1983, the Philadelphia City Council amended the Ordinance to increase the tax rate to 4.96% on net profits earned by residents and non-residents after January 1, 1983; and to 4.96% on salaries, wages, commissions, and other compensation earned by residents on or after July 1, 1983.

Effective January 1, 1993, pursuant to an ordinance approved by the Philadelphia City Council, the depository requirements were changed for employers required to withhold Wage Tax to the following:

- Quarterly (W-1): less than \$350 tax due per month;
- Monthly (W-5): from \$350 to \$16,000 tax due per month;
- Weekly (W-7): greater than \$16,000 tax due per month.

On September 16, 1994, Section 301 and Section 303 of the Income Tax Regulations were amended due to 72 Pa. Stat. Ann. § 7359 (West). The state law requires all employers having a place of business within the Commonwealth of Pennsylvania who previously had not been required to withhold City of Philadelphia Wage Tax to begin withholding and remitting tax due from residents of Philadelphia within their employ at the prescribed rates.

On March 30, 1995, the Philadelphia City Council amended the Ordinance to decrease the tax rate to 4.86% on net profits earned by residents after January 1, 1996; and to 4.86% on salaries, wages, commissions, and other compensation earned by residents after January 1, 1996. The Ordinance was also amended to decrease the tax rate to 4.2256% on net profits earned by non-residents after January 1, 1996; and to 4.2256% on salaries, wages, commissions, and other compensation earned by non-residents after January 1, 1996.

On June 24, 1995, the Philadelphia City Council amended the Ordinance to hold the employer responsible for failure to collect tax or truthfully account for or pay over such tax.

On April 29, 1996, the Philadelphia City Council amended the Ordinance to decrease the tax rate for residents to 4.84% on net profits earned after January 1, 1996; and to 4.84% on salaries, wages, commissions, and other compensation earned after July 1, 1996. The Ordinance was also amended to decrease the tax rate for non-residents to 4.2082% on net profits earned after January 1, 1996; and to 4.2082% on salaries, wages, commissions, and other compensation earned after July 1, 1996.

On April 3, 1997, the Philadelphia City Council amended the Ordinance to decrease the rate of tax for residents to 4.79% on net profits earned after January 1, 1997; and to 4.79% on salaries, wages, commissions, and other compensation earned after July 1, 1997. The Ordinance was also amended to decrease the rate of tax for non-residents to 4.1647% on net profits earned after January 1, 1997; and to 4.1647% on salaries, wages, commissions, and other compensation earned after July 1, 1997.

On March 26, 1998, the Philadelphia City Council amended the Ordinance to decrease the tax rate for residents to 4.6869% on net profits earned after January 1, 1998; and to 4.6869% on salaries, wages, commissions, and other compensation earned after July 1, 1998. The Ordinance was also amended to decrease the rate of tax for non-residents to 4.0750% on net profits earned after January 1, 1998; and to 4.0750% on salaries, wages, commissions, and other compensation earned after July 1, 1998.

On November 27, 1998, a new section was added to Article II, Section 224 of the Income Tax Regulations allowing a real estate entity to make an irrevocable election to use separate accounting rather than the three-factor apportionment to compute its net income attributable to Philadelphia. This section was repealed and replaced on March 15, 1999 (see below).

On December 4, 1998, Article III, Section 303 of the Income Tax Regulations was amended to change the filing date of the annual reconciliation form filed by an employee whose employer does not withhold Wage Tax. The filing date was changed from the last day of February to April 15th.

On December 30, 1998, the Philadelphia City Council amended the Ordinance to provide an exclusion from Net Profits Tax for a business trust that qualifies as a regulated investment company or that confines its activities to the maintenance, administration, and management of intangible investments and activities of regulated investment companies.

On March 15, 1999, Article II, Section 224 of the Income Tax Regulations entitled “Safe Harbor Election for Real Estate Investment Trusts” was repealed. Section 224 of the Income Tax

Regulations was replaced with a new provision entitled “Election for Real Estate Entities,” which extended the safe harbor election to all real estate entities.

On March 23, 1999, the Philadelphia City Council amended the Ordinance to decrease the tax rate for residents to 4.6135% on net profits earned after January 1, 1999; and to 4.6135% on salaries, wages, commissions, and other compensation earned after July 1, 1999. The Ordinance was also amended to decrease the tax rate for non-residents to 4.0112% on net profits earned after January 1, 1999; and to 4.0112% on salaries, wages, commissions, and other compensation earned after July 1, 1999.

On June 11, 1999, the Philadelphia City Council amended the Ordinance to change the filing and payment date of the Fourth Quarter Employee Earnings Tax return from February 15th to January 31st.

On August 23, 1999, Article II, Section 202 of the Income Tax Regulations was amended to eliminate the double taxation of net profits on the distributive share of income to partners. If a partnership has paid the tax, the partners are not liable to pay the tax a second time on their distributive share from the partnership even when the partner is another partnership.

On April 11, 2000, the Philadelphia City Council amended the Ordinance to decrease the tax rate for residents to 4.5635% on net profits earned after January 1, 2000; and to 4.5635% on salaries, wages, commissions, and other compensation earned after July 1, 2000. The Ordinance was also amended to decrease the rate of tax for non-residents to 3.9672% on net profits earned after January 1, 2000; and to 3.9672% on salaries, wages, commissions, and other compensation earned after July 1, 2000.

On September 14, 2000, the Philadelphia City Council amended the Ordinance to exempt certain stock options from the tax.

On April 4, 2001, the Philadelphia City Council amended the Ordinance to decrease the tax rate for residents to 4.5385% on net profits earned after January 1, 2001; and to 4.5385% on salaries,

wages, commissions, and other compensation earned after July 1, 2001. The Ordinance was also amended to decrease the tax rate for non-residents to 3.9462% on net profits earned after January 1, 2001; and to 3.9462% on salaries, wages, commissions, and other compensation earned after July 1, 2001.

On December 28, 2009, Article II, Section 224 of the Income Tax Regulations was amended to narrow the definition of a “Real Estate Investment Trust” as it relates to partnerships.

On June 30, 2010, the Philadelphia City Council amended the Ordinance to add a new section to “Taxes and Rents- General” entitled “Electronic Payments and Filing” which provided for mandatory and voluntary payment by electronic funds transfer and electronic filing, under certain terms and conditions.

On April 10, 2012, the Philadelphia City Council amended the Ordinance to provide certain exclusions and to clarify the definition of “business” as it relates to certain activities governed by the Investment Company Act of 1940.

On June 5, 2013, the Philadelphia City Council amended the Ordinance to provide for a private right of action to enforce certain tax laws including penalties for non-payment, all under certain terms and conditions.

On June 13, 2013, the Philadelphia City Council amended the Ordinance to revise Wage and Net Profits Tax rates under certain terms and conditions.

On June 17, 2014, the Philadelphia City Council amended the Ordinance to decrease tax rate imposed upon certain low income persons, providing for refunds of excess taxes paid, directing the Revenue Department to develop procedures and forms whereby eligible taxpayers can obtain such refunds, and requiring employers to provide refund forms to employees; all under certain terms and conditions.

On September 10, 2014, the Philadelphia City Council amended the Ordinance to add a new chapter entitled “Income Inequality Initiative—Earned Income Tax Credit” providing for the implementation of a policy and procedures to enable all Philadelphia residents who are eligible for the Federal Earned Income Tax Credit (EITC) to apply for and receive the maximum credit to which they are entitled.

On June 18, 2015, the Philadelphia City Council amended the Ordinance to revise Wage and Net Profits Tax rates under certain terms and conditions.

On June 20, 2016, the Philadelphia City Council amended the Ordinance to revise Wage and Net Profits Tax rates under certain terms and conditions.

On June 14, 2017, the Philadelphia City Council amended the Ordinance to revise Wage and Net Profits Tax rates under certain terms and conditions.

The Revenue Commissioner has promulgated Income Tax Regulation by virtue of the authority granted them by Chapter 1-104 of the Code.

The Regulations printed in this booklet are all the Regulations which have been promulgated by the Revenue Commissioner and which have not been deleted up to the date shown. Regulations which have been amended are included in their amended form.

City of Philadelphia | Income Tax Regulations

Compiled as of October 31, 2019

Article I General Provisions

Section 101. Definitions.

For the purpose of these Regulations, the following terms shall have the definitions hereinafter given:

- a) "Association" means a partnership, limited partnership, or any other form of unincorporated business or enterprise, owned by two or more persons.
- b) "Business" means an enterprise, activity, profession, trade, or undertaking of any nature conducted for profit or ordinarily conducted for profit whether by an individual, co-partnership, joint venture, association, not-for-profit organization or governmental body, unit, or agency.

To determine whether an entity will be considered to be "doing business" in the City of Philadelphia is a factual determination to be made on a case-by-case basis.

Carrying on or engaging in business contemplates activities such as but not limited to:

- 1) Making sales or performing activities which affect sales; and/or
- 2) Providing services or performing activities which affect providing services; and/or
- 3) Performing acts regularly and continuously in the City of Philadelphia which affect a business objective; and/or
- 4) Maintaining an active presence in Philadelphia for the purpose of continued efforts in the pursuit of profit or gain.

For taxable years beginning on or after January 1, 2012, the tax levied under § 19-1502(2)(a), § 19-1502(2)(b), and § 19-2803(1)(b) of the Philadelphia Code shall not apply to any net profits from any activity described in BIRT Regulations Section 101D.9 (relating to certain investment companies and investment company managers).¹

¹ Amended by regulation submitted to the Department of Records on June 11, 2013 (effective July 11, 2013), as a result of City Council Bill No. 120007 (approved April 10, 2012).

Entities going out of business or ceasing to conduct business in the City of Philadelphia must provide the Department with a tax return reporting that the operation terminated and a copy of the order to dissolve filed with the Commonwealth, if prepared. Entities failing to give such notice to the Department shall be considered active.

- c) "Corporation" means a corporation, joint stock association, or joint stock company organized under the laws of the United States, the Commonwealth of Pennsylvania, or any other state, territory, or foreign country or dependency.

(There is no recognition by the City of Philadelphia Department of Revenue of specialty elections which occur under Federal Regulations, e.g., Subchapter "S" status).

- d) "Employee" is any person who renders services to another for a financial consideration or its equivalent, under an express or implied contract, and who is under the control and direction of the latter; and shall include persons engaged in temporary, provisional, casual, or part-time employment.
- e) "Employer" means an individual, co-partnership, association, corporation (including a corporation of the first or non-profit class), governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, section or unit, or any other entity, who or that employs one or more persons on a salary, wage, commission, or other compensation basis, whether or not such employer is engaged in business as previously defined.
- f) "Employs" refers to the existence of an employer/employee relationship, as determined by but not limited to: the instruction, training, hiring, firing, and scheduling of the worker(s); and express or implied control of the workplace; as contrasted with the substantive existence of entrepreneurial activities such as investment, formal billings, contracts, insurance coverage, profit/loss risk, etc.
- g) "Independent Contractor" is a person who, while performing services for another, is not under the direction and control of such other person, as to the result to be accomplished by the work and as to the details and means by which that result is accomplished.
- h) "Net Gain" shall be cash, credit, property, remuneration, or consideration that is realized after allowance for all expired costs and expenses which are ordinary, necessary, and reasonable as measured in accordance with a cash or strict accrual accounting system. Net gain shall include the disposition of assets occurring as part of the normal operations or termination of the business.
- i) "Net Profits" means the net gain from the conduct, operation, or prosecution of a trade, business, profession, enterprise, or other activity, after provision for all costs and expenses incurred in the conduct thereof (either accrued or paid in accordance with the method of accounting employed) but without any deduction for taxes which are themselves based upon income.
- j) "Non-resident" means an individual, co-partnership, association, or other entity domiciled outside the City of Philadelphia.

- k) "Operation" shall encompass the full range of business decisions made by an entity in the conduct of its activity including the sale or exchange of business assets.
- l) "Person" means every natural person, co-partnership, fiduciary, or association. Whenever the term "Person" is used in any clause prescribing and imposing a penalty, the term as applied to associations shall mean the partners or members thereof; and as applied to corporations, the officers thereof.
- m) "Resident" means an individual, co-partnership, association, or other entity domiciled in the City of Philadelphia. "Domicile" is a place where a person has their true, fixed, permanent home and principal establishment, to which, whenever absent therefrom, they intend to return which continues until another permanent home and principal establishment is acquired.
- n) "Salaries, wages, commissions, and other compensation" shall include salaries, wages, commissions, bonuses, incentive payments, fees, and tips that may accrue or be received by an individual for services rendered; either directly or through an agent, and either in cash or in property.
- o) "Taxpayer" means a person, whether an individual, co-partnership, association, or any other entity, required by this Ordinance to: (1) file a return of earnings, or of net profits, or both; or (2) to pay a tax thereon.
- p) A "Working Day" is any day for which an employee actually performs services on behalf of their employer. The term "Working Day" shall not include any holiday, vacation day, sick day, leave day, Saturday, Sunday, etc., unless services are actually performed on such day.

Section 102. Tax Base.

The tax levied by this Ordinance relates to and is imposed upon two (2) subject matters:

- a) Salaries, wages, commissions, and other compensation paid by an employer to any person who is employed by or renders services to him; and
- b) Net profits of any business, profession, or enterprise carried on by any person as owner, either individually or in association with some other person or persons.

Section 103. Who is Subject to the Tax?

The following persons are subject to the provisions of this Ordinance and must file the applicable tax returns:

- a) An individual, co-partnership, association, corporation (including a corporation of the first or non-profit class), trust, estate, or governmental body or unit, or any other entity

who or that employs one or more persons on salary, wage, commission, or other compensation basis, must file a return of tax withheld;

- b) An individual, co-partnership, association, trust, estate, or joint venture must file a return on net profits earned from the conduct of a business, profession, or other activity. A co-partnership, association, or joint venture is a taxable unit. The return is filed and the tax paid by the partnership as an entity, the co-partners being jointly and severally liable for the payment of the tax. For proper filing by resident partners of a non-resident partnership whose net profits are not taxable as an entity in Philadelphia, see Section 220(a)(2) entitled "Partnerships, Associations."
- c) An individual employed on a salary, wage, commission, or other basis by the Federal Government or the Commonwealth of Pennsylvania, or other employer not required to withhold the tax because the employer is not within the jurisdiction of the City of Philadelphia.

Section 104. Exclusions From Gross Income and Exemptions.

- a) The following payments or benefits received by an individual shall not be subject to this tax:

- 1) Retirement or Pension Payments

Periodical payments, commonly recognized as old age, retirement, or pension payments, made to persons retired from service after reaching a specific age or after a stated period of employment.

- 2) Sick or Disability Benefits

Periodical payments received by an individual under a sickness or disability plan are not taxable. Where, however, an employee shall receive the full amount of his regular salary from his employer, during a period of sickness or disability, by virtue of his contract of employment, such compensation shall be fully taxed.

- 3) Benefits Arising Under the Workmen's Compensation Act

Compensation received by employees under the provisions of the Workmen's Compensation Act for injury sustained during the course of employment, together with any amount received as damages by suit or agreement on account of such injury, shall not be taxed under this Ordinance.

- 4) Active Military Service Pay

Wages or compensation paid by the United States to any person for active service in the Army, Navy, or Air Force of the United States, shall be excluded from this tax.

5) Bonuses Paid by United States, Pennsylvania, or any Other State for Active Military Service

Any bonus or additional compensation paid to a person by the United States or Commonwealth of Pennsylvania, or any other State for active service in the Army, Navy, or Air Force of the United States, shall likewise be exempt from the tax.

6) Death Benefits

Where an employer makes death benefit payments to the beneficiary of an employee or to his estate, whether payable in a lump sum or otherwise, such payments shall not be subject to the tax.

7) Proceeds of Life Insurance Policies

Such proceeds, payable by reason of the death of an insured to his estate or to a beneficiary, are not taxable.

8) Gifts and Bequests

Cash or property, received as a gift, or under a will or under statutes of descent and distribution, is exempt from this tax.

9) Interest Received

All forms of interest, i.e., on obligations of the United States, or its possessions, or of the Commonwealth of Pennsylvania, or any political subdivision thereof, or on bank or postal savings accounts, or on mortgages, or on loans, etc., received by a person shall not be subject to this tax. However, if the person shall be engaged in the business of lending money at interest, i.e., loan or finance companies, private bankers, etc., such interest received shall be subject to the tax.

10) Dividends Received

All forms of dividends received by a person shall not be subject to this tax unless such person is a dealer in securities.

11) Honorariums or Perquisites

These items, which are good will offerings made by individuals for the performance of baptisms, wedding ceremonies, etc., received by clergymen, evangelists, or religious workers, are considered unearned

income, and as such, not subject to this tax.

12) Scholarships

Tuition fees paid by the Board of Education from a scholarship fund are not taxable to the recipient.

13) Board or Lodging to Employees for Convenience of Employer

The value of meals or lodging furnished to employees by the employer for the latter's convenience shall not be considered as wages earned. Where, however, board or lodging is provided by the employer and the employee is not required to reside on the premises by his employer, the fair market value of the board or lodging shall be included in his (employee's) earnings.

14) Witness and Juror Fees

Any statutory per diem compensation paid any witness or juror is not subject to this tax. Compensation received by persons to testify as "experts" is not excluded from the tax.

b) Exemptions:

- 1) No person shall be exempt from the application of the City Income Tax Ordinance except if:
 - (1) specifically excluded or exempted by State Law; or
 - (2) specifically excluded or exempted by Law Department ruling.
- 2) In all other instances, there shall be no exemption or exclusion from the application of this Ordinance unless a ruling to such effect shall be made by the Law Department of the City.

Article II
Imposition and Rate of Tax

Section 201. Salaries, Wages, etc. of Employees.

An annual tax for general revenue purposes is imposed on residents of Philadelphia, regardless of the place where their services are performed, and on non-residents of this City, for work done or services rendered in Philadelphia, on salaries, wages, commissions, and other compensation earned.

Section 202. Net Profits of Business, Profession, etc.

An annual tax for general revenue purposes is imposed on the net profits of businesses, professions, etc., conducted by residents of Philadelphia, and of non-residents of this City, to the extent conducted in Philadelphia.

A partnership subject to taxation is required to pay the tax on net profits with respect to all its partners, except for partners that are corporations. If a partnership is required to pay the tax, the partners are not liable to pay the tax a second time on their distributive share from the partnership, even where the partner is another partnership.

Illustration: Bob and AB Associates are partners in BAB Partnership. BAB Partnership is required to pay the tax on net profits with respect to Bob's and AB Associates distributive shares. Neither Bob nor AB Associates is required to pay the tax on net profits with respect to their distributive share of the profits from BAB Partnership. If, however, either partner has any other earned income from non-BAB Partnership activities that is subject to this tax, then the partner must file and pay the tax on such other net profits. If AB Associates has no other earned income from non-BAB Partnership activities, but is located in Philadelphia, it is still required to file a return under this Section.

Section 203. Taxable Compensation of Employees.

The following items of remuneration received by an employee, whether directly or through an agent, and whether in cash or in property, and whether based on an hourly, daily, weekly, semi-monthly, monthly, or annual unit of production or piece work basis, for services rendered as an employee, agent, or officer of an individual, partnership, corporation (business or non-profit), or governmental agency, are subject to this tax:

- a) Salaries
- b) Wages
- c) Commissions

If they are included in the net profits of a trade, business or profession regularly carried on by such individual and, therefore, subject to tax on net profits, they shall not again be separately taxed. If amounts received as a drawing account exceed the commissions earned, the tax is payable on the amounts received.

- d) Bonuses
- e) Incentive Payments

- f) Tips Received by Waiters and Others
- g) Fees - unless such fees are properly included as part of the net profits of a business, profession, etc., regularly carried on by said individual. Examples of fees taxable as employee compensation are those received by a director or officer of a corporation.
- h) Benefits Accruing by Virtue of Employment, such as:

- 1) Vacation and Holiday Payments

- Such payments are fully taxed to a resident employee, and to a non-resident employee if his employment is entirely within Philadelphia. With respect to a non-resident employee working partly within and partly outside of Philadelphia, the tax is pro-rated on the same basis as that used in computing the tax while actually employed prior to vacation or holiday.

- Illustration: Prior to vacation, if a non-resident employee worked fifty per cent (50%) of his time within Philadelphia and his weekly pay was one hundred dollars (\$100.00), the tax during his vacation period would be on fifty per cent (50%) of his compensation, or fifty dollars (\$50.00) weekly.

- 2) Termination or Severance Payments

- i) Tax Assumed by the Employer

- j) Fellowships

- Payments to a graduate student under the terms of a fellowship, which require any services by the student.

- k) Compensation received in property shall be taxed at its fair market value at the time of receipt.

- l) Board and lodging shall be included at their fair market value. However, the value accepted by the State and Federal Government for payroll tax purposes may be accepted by the Revenue Commissioner. (In the case of domestics and other employees, whose duties require them to live at their place of employment, board and lodging shall not be considered taxable compensation.)

- m) Fringe Benefits

- Any payment which is discriminatory in nature or not uniformly given to each employee (except by equivalent substitute) is taxable at actual, imputed, or fair market value. Tests for non-discrimination may be found in Section 89 of the Internal Revenue Code.

Section 204. Employees' Deductions for Expenses Directly Connected With Employment.

Employees who incur and pay the following expenses directly connected with and incurred in the actual performance of their duties or services may deduct such expenses in computing the amount subject to tax:

- 1) Expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer on account of the performance of services as an employee.
- 2) Transportation expenses paid or incurred by the taxpayer on account of the performance by him of services as an employee.
- 3) Business expenses of an "outside salesman." An outside salesman is an employee who does his selling principally away from the employer's place of business. Such expenses as the cost of telephone and telegraph, secretarial help, entertainment, meals purchased for customers, split commissions, etc., can be deducted.
- 4) Expenses paid or incurred in connection with the performance of services as an employee under a reimbursement or other expense allowance arrangement with the employer provided that:
 - 1) The total expenses are reduced by any amounts reimbursed by the employer.
 - 2) The expenses are attributable to income earned or services performed in Philadelphia.
 - 3) They are ordinary, necessary and reasonable.

Section 205. Resident Employee.

The entire compensation received by an employee for services rendered is subject to this tax. Neither the source of the earnings, nor the place or places in or at which the services were rendered, is material in determining liability for the tax. A resident employee is fully taxed as to all items set forth in Section 203 of these Regulations.

Section 206. Who is a Resident?

For the purpose of this tax, a resident of Philadelphia is a person who is domiciled in this City.

- a) Domicile

Domicile is the place where one lives and has his permanent home and principal establishment, and to which he has the intention of returning whenever he is absent. Actual residence is not necessarily domicile, for domicile is the fixed place of abode which, in the intention of the taxpayer, is permanent rather than transitory. It is the place in which a person has voluntarily fixed the habitation of himself or herself and his or her family, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him or her to adopt some other permanent home. A domicile once established continues until a new one is established through the intent of establishing, and the actual establishing of a new domicile coupled with the abandonment of the old. Every person has one and only one domicile. What constitutes domicile is a question of fact rather than of law, frequently depending on a variety of circumstances. The Department of Revenue may require of individuals claiming domicile outside the City of Philadelphia a statement of information with respect to the particular case. Mailing address, place of voting, statements in license applications, establishment of business and social contacts, marital status, and the like are all evidence of domicile, although no one such item is controlling.

Illustration No. 1: T, who had resided in Philadelphia for 34 years, obtained employment with the Commonwealth of Pennsylvania in Harrisburg, and moved with his family to Harrisburg, where he has remained for the past eight years. In accordance with his rights under the Constitution of this Commonwealth, he retained his voting registration in Philadelphia and voted each year in this City. Under the foregoing circumstances, T evidenced an intention to retain Philadelphia as his permanent domicile and his entire salary was taxable as a resident within the meaning of the Ordinance.

Illustration No. 2: C, a single man, had maintained his home in Philadelphia with his family for many years. He obtained employment as a civilian employee of the U.S. Army of Occupation in Germany and was stationed there for a period of two (2) years prior to his return to Philadelphia. C would be fully taxed on the salary received during the period of employment overseas.

Section 207. Non-Resident Employees.

A non-resident of Philadelphia, i.e., one whose permanent home is outside of Philadelphia, is subject to this tax on salaries, wages, etc., earned for work done or services rendered within the City of Philadelphia. The items subject to tax are those listed and defined in Section 203 of these Regulations.

Section 208. Non-Resident Employed Full-Time in Philadelphia.

The entire compensation earned by a non-resident shall be fully taxed if he performs the services for which he was hired exclusively within the City of Philadelphia. Where such employee actually works by virtue of his contract of employment on a five-day-week basis

(Monday through Friday), he may not, in computing the tax due, exclude from his gross earnings, days, i.e., Saturdays, Sundays, vacation, holidays, for which he is compensated but not required to work.

Section 209. Non-Resident Employee Working Part-Time Within Philadelphia.

Where a non-resident receives compensation for personal services rendered or performed partly within and partly outside the City of Philadelphia, the tax shall attach to that portion of the compensation which is earned within the City in accordance with the following rules of apportionment or allocation:

- a) If the non-resident is paid on a straight salary basis, the tax shall be based on that portion of his compensation which the total number of working days employed within the City of Philadelphia bears to the total number of working days employed within and outside of Philadelphia.

Illustration: E, a resident of New Jersey, was employed on a five-day-week as a television repairman at a weekly salary of \$100.00. His duties required the servicing of customers in Philadelphia and Camden, New Jersey. He worked within Philadelphia approximately three (3) days each week. The tax on his weekly earnings would be \$2.59, computed as follows:

$$\frac{3 \text{ days within Philadelphia}}{5 \text{ working days}} \times \$100 = \$60 \times 4 \frac{5}{16} \% = \$2.59$$

The claim for an apportionment or allocation, to be allowed by the Revenue Commissioner, must be supported by a written statement, such as travel orders signed by the employer setting forth the date or dates the employee was assigned outside the City of Philadelphia.

- b) If the non-resident is paid commissions based on the volume of business transacted by him, the tax is computed on that portion of his entire commissions which the volume of business transacted by the employee within the City of Philadelphia bears to the volume of business transacted by him both within and outside of this City.

Illustration: F, a resident of Chester, PA, was employed as a traveling salesman, receiving \$10,000 in commissions based on volume of sales made by him. He solicited business within Philadelphia and Chester during the year, totaling \$100,000, of which \$60,000 was attributable to Philadelphia. The tax would be \$258.75, computed as follows:

$$\frac{\$60,000 \text{ within Philadelphia}}{\$100,000} \times \$10,000 = \$6,000 \times 4 \frac{5}{16} = \$258.75$$

Generally, the place of solicitation shall, determine whether the business transacted was within or outside of Philadelphia. An exception to this principle is the case of non-resident, full-time insurance agents. As to such agents, the test of taxable commissions received shall be the location of the risk at the time the policy was issued.

- c) If the employee receives both salary and commission, the tax shall be allocated on the basis of working days and volume of business transacted.
- d) The occasional entry into the City of Philadelphia of a non-resident employee, who performs the duties for which he is employed entirely outside the City, but enters the City for the purpose of reporting, receiving instructions, accounting, etc., incidental to his duties outside the City, shall not be deemed to take such employee out of the class of those rendering their services entirely outside the City.
- e) If it is impossible to apportion the earnings as provided above because of the peculiar nature of the services of the employee, or of the unusual basis of compensation, apportionment shall be made in accordance with the facts. Each such employee shall furnish the Revenue Commissioner a detailed statement of facts.

Section 210. Types of Employment Involving Non-Residents.

a) Auditors

Where an auditor travels several times a year from the main office in New York to the Philadelphia office to make audits of records in that office, each audit requiring several days work, the remainder of his time being spent in other cities (where such conduct is an established procedure), the tax must be on a pro-rata basis.

b) Officers of Business Corporations and Other Types of Organizations

A non-resident officer of a corporation performing services outside of Philadelphia, except for occasional visits to the Philadelphia office to examine correspondence, is not subject to the tax. Where an organization meets in Philadelphia, and part of the work required of a non-resident officer of such organization is done by him at his home outside of the City limits, his compensation is taxable inasmuch as the activities for the organization are located in Philadelphia.

c) Federal Employees Working in Government Reservations

Compensation received by non-residents of the City of Philadelphia from the Federal Government for services performed after January 1, 1941, within any Federal reservation situated within the geographical limits of Philadelphia, title to which is in the Federal Government, is taxable income, even though exclusive jurisdiction thereof was granted to the Federal Government by the Commonwealth of Pennsylvania and the City of Philadelphia.

d) Transportation Employees

1) Railroad Train and Engine Service Employees

If it is impossible or impracticable, because of the peculiar nature of the services performed by railroad train and engine service employees, who are non-residents of Philadelphia, working on trains passing through Philadelphia, or on runs which begin or terminate in Philadelphia, as well as the unusual bases of compensation paid to such employees, to apportion their earnings, the following rules of allocation, determined on a daily basis, are prescribed:

a) Services performed on trains passing through the City.

The services performed within the City are merely incidental to the services performed outside the City and the employee shall not be deemed engaged in a taxable activity within the City.

b) Services performed on trains which either begin or terminate in the City.

Where such service is preponderantly outside the City, the employee shall not be deemed to be engaged in a taxable activity within the City. "Preponderant" shall mean in excess of ninety- percent (90%).

In all other cases, where train runs are operated both within and outside of the boundaries of the City, the compensation earned within the City shall be determined on the basis of mileage operated within the City computed in accordance with the basic mileage rate of the particular individual.

Illustration: B, an engineer, on a train operating between Philadelphia and Atlantic City, New Jersey, makes four (4) daily round trips and is paid at the basic rate of three (3) cents per mile. The train travels approximately eight (8) miles within the City limits. The tax per day would be eight (8) cents computed as follows:

$$16 \text{ miles per round trip} \times 4 = 64 \text{ miles per day} \times .03 = \$1.92 \times 4 \frac{5}{16} \% = \$0.08.$$

c) Railroad train and engine service employees who are non-residents and perform all of their work within the limits of the City of Philadelphia are taxable for their entire gross earnings.

The fact that any particular railroad employee affected by the foregoing Regulations may be engaged in interstate commerce is not relevant in determining the taxability of compensation received by him.

2) Employees of Motor Freight and Commercial Transportation other than Railroads and Waterways

Since the circumstances involved in the employment of such employees are substantially analogous to those of railroad train and engine service employees, the regulations applicable thereto shall apply to employees in the aforementioned category.

Illustration: T, a non-resident, is employed by a trucking company in transporting freight between Philadelphia and New York. He picks up the truck fully loaded at the Philadelphia terminus each morning. The distance traveled within the boundaries of the City of Philadelphia daily is approximately 20 miles, while the total mileage covered daily is 200 miles. His daily pay is \$20.00. The tax would be \$.09 per day, computed as follows:

$$\frac{20 \text{ mi. within City}}{200 \text{ tot. mi./day}} \times \$20.00 = \$2.00 \times 4 \frac{5}{16} \% = \$0.09$$

e) Seamen

1) Operating in Foreign or Coastwise Commerce

The wages earned by a non-resident seaman on a ship which is docked at Philadelphia operating exclusively in foreign or coastwise commerce is not to be regarded as income earned in Philadelphia. This is true even though the ship remains in the Port of Philadelphia for a reasonable length of time for the transaction of its business. This paragraph applies to those seamen who are regular members of the crew and not to night relief engineers and mates who relieve the regular crewmembers while a vessel is docked in the Port of Philadelphia and perform all of their services in the City of Philadelphia.

2) Operating on Inland Waterway Barges

Employees who live aboard inland waterway barges whose homeport is the City of Philadelphia are considered residents of Philadelphia and taxable on their entire wages.

Where, however, employees of such barges are non-residents of the City of Philadelphia, then only that portion of their income prorated in accordance with the work time spent in the Port of Philadelphia is subject to the tax.

3) Operating Between the City of Philadelphia and the State of New Jersey

Non-resident seamen employed on vessels operating between the City of Philadelphia and the State of New Jersey are regarded as earning income from sources within and partly outside of the City of Philadelphia. One-half ($\frac{1}{2}$) of the compensation earned aboard such a

vessel by a non-resident seaman is held to be taxable income.

Subsistence and Maintenance. In computing the tax due the City of Philadelphia on the wages of any seaman, the base to be used is the actual wages paid, be the wages money or property. The base pay should not include the fair value of subsistence and maintenance while on duty as a necessary incident to the employment.

f) Insurance Agents

1) Full-Time Agents

The term "full-time agent" means a person required by the terms of his agency contract either to devote all his time to the solicitation of business for one company, or to offer all of his business to one company and to place with other companies only such business as is not accepted by his full-time company.

a) Basic Commissions

In determining whether the commissions payable by reason of the selling of any policy by a non-resident full-time agent have resulted from work done or services performed or rendered in Philadelphia, the test shall be the location of the risk at the time of issuance of the policy, rather than the actual place of solicitation. In the case of life, accident, and health insurance, the location of risk shall be the residence of the insured. In the case of casualty and fire insurance, the location of the risk shall be the physical location of the property insured.

Commissions received on policies sold to residents are subject to this tax whether they result from policies placed with the company with which he has his full-time contract; from surplus business placed with other companies; or from types of insurance other than life. No commissions received by a non-resident full-time agent on policies sold to non-residents are subject to this tax unless the agent has a place of business within the City of Philadelphia other than the space provided by the company with which he has his full-time contract. In such case, the commissions on all policies other than those placed with this full-time company are subject to this tax as the profits or earnings of an independent business.

b) Renewal Commissions

1. Renewal commissions paid to a full-time agent, who does not occupy the status of an independent contractor within the meaning of these Regulations, on business written by him in other cities at a time the agent was not a resident of Philadelphia, are deemed not taxable.

This ruling applies only to those cases in which the full-time agent is entitled to the renewal commissions regardless of the amount of insurance written by him in the succeeding years.

Where, however, the contract of the agent requires the sale of a minimum amount of new policies in order to entitle the agent to renewal commissions, such commissions when paid are deemed income earned in the City of Philadelphia.

2. Renewal commissions payable on policies of residents of Philadelphia, paid or payable to an agent formerly under contract in Philadelphia, but who at the time the same are paid, or shall become payable, resides and is under contract in another city, are deemed not taxable.
3. The above rulings are applicable to renewal commissions paid or payable on contracts of insurance negotiated or delivered to the insured prior to January 1, 1940.

c) Group Insurance

Commissions paid on the sale of contracts of group insurance are taxable if: (1) the agent negotiating the same is a resident of the City of Philadelphia, without regard to the location of the group; or (2) if the group is located within the City of Philadelphia as a unit, without regard to the residence of the writing agent.

d) Bonuses and Incentive Payments

That proportionate part of all bonuses and incentive payments received by a non-resident agent which bears the same ratio to the total amount of bonuses and incentive payments received by him, as the amount of commissions received by him on policies sold to residents bears to the total amount of commissions received by him on all policies sold, to both residents and non-residents, is subject to this tax.

e) Advances and Drawing Accounts

There are two (2) main types of advances and drawing account payments:

1. Those which impose upon the agent a written obligation to repay if they are not in fact earned.
2. Those which (though offset by commissions as earned) cannot be recovered at law even though the agent fails to produce enough business to justify them.

The first of these two types of advance and drawing account payments is in the nature of a loan and, accordingly, is never subject to this tax. All commissions or bonuses applied toward the repayment of these types of advances and drawing accounts are taxable in accordance with the rules set forth above.

The second type of advance and drawing account payment is taxable

compensation when received, to the extent that it exceeds compensation earned since January 1, 1940, subject to the following jurisdictional rules:

If the agent is still in his first contract year at the beginning of the calendar year, the portion of the advance or drawing account payment to be considered taxable as Philadelphia income shall be computed on the basis of the ratio of his Philadelphia commissions paid and credited, to total commissions paid and credited. In any month in which he fails to earn any commissions, the ratio applied shall be the one determined for the last month in which commissions were credited to him. If he has never earned any commissions (as may be the case in his first contract month), the entire amount of his advance or drawing account payments shall be considered taxable income.

If the agent has been under contract for at least one full year at the beginning of any calendar year, the basis for determining the proportion of his advance or drawing account payments, which is to be considered taxable as Philadelphia income each month during the year, shall be the ratio of aggregate Philadelphia commissions paid or credited to him during the entire preceding calendar year, to the aggregate of all commissions paid or credited during the entire preceding calendar year.

At the end of every calendar year, the company shall redetermine, in the case of each non-resident full-time agent compensated by advances or drawing account payments, the ratio of aggregate Philadelphia commissions paid or credited during the entire year, to the aggregate of all commissions paid or credited during that period, and shall make an appropriate adjustment, plus or minus, in its Return of Tax Withheld for the first quarter of the next succeeding year.

f) Collection of Tax at Source

- 1) It is the duty of all companies doing business in the City of Philadelphia (or general agents in the cases of agents whose contracts are with a general agent alone and to whom payment is made by general agent out of funds of general agent) to deduct or withhold the tax on all compensation paid to both resident and non-resident full-time agents who are employees.

In computing the amount of compensation of any agent which should be subject to the tax it is obliged to withhold, the company (or general agent) withholding the tax shall deduct each month an amount equal to one-twelfth ($\frac{1}{12}$) of the amount stated in writing by the agent to be his estimate of the aggregate of business expenses which should be incurred by him during the current year in earning the taxable compensation which he will receive from the withholding company (or general agent).

- 2) Part-Time and General Insurance Agents

The term "part-time agent" means a person employed under a contract which does

not require him to devote all his time to the solicitation of business for the contracting company.

The term "general insurance agent" means a person who conducts his own independent insurance business, soliciting applications for more than one form of insurance and placing his business with more than one company, and who is not a full-time representative of any company.

Commissions received by a non-resident, part-time agent or a resident general insurance agent on policies sold to residents of Philadelphia is subject to this tax. Such commissions are in the nature of profits or earnings of independent businesses and consequently must be reported (and the tax paid thereon) by these agents in their individual returns filed with the Department on or before April 15th of the year following that in which the commissions were earned. All commissions received by such an agent on policies sold to non-residents are subject to this tax if the agent conducts a Philadelphia business and does not maintain an office outside the City through which policies on the lives of non-residents are sold and in which the records pertaining to such policies are kept. If, on the other hand, the agent has an established bona fide place of business outside of Philadelphia through which he places policies sold to non-residents and in which he keeps the records pertaining to such business, the commissions thereon are not subject to this tax.

3) General Agents and Managers

The term "general agent" means a person who is engaged by a company to develop and manage one of its agencies as his own independent business and whose compensation ordinarily (but not necessarily) is in the nature of commissions and allowances, rather than a salary.

The term "manager" means a person who is engaged by a company as an employee to develop and manage one of its agencies and who ordinarily (but not necessarily) receives salary rather than overriding commissions as compensation for his managerial services.

a) Commissions on Policies Sold by General Agents and Managers Personally

Commissions received by general agents and managers for policies sold by them personally, whether they themselves are residents or non-residents, are to be treated for purposes of this tax in the same manner as commissions on policies sold by full-time agents under contract with such general agents and managers. Any general agent or manager who is the withholding agent as to the commissions paid by him to his full-time agents shall likewise be the withholding agent as to commissions earned by him on policies sold by him personally.

b) Overriding Commissions and Collection Fees

Overriding commissions and collection fees received by general agents are subject to this tax as the earnings or profits of an independent business and accordingly must be reported in their individual returns filed on the 15th of April following the year in which they were received.

If a non-resident general agent of a Philadelphia agency maintains only one office and that office is within the City of Philadelphia, all overriding commissions and collection fees received by him are subject to this tax as the earnings or profits of a Philadelphia business.

However, if a non-resident general agent maintains a branch office outside the City through which policies on the lives of non-residents are sold, and in which records pertaining to the commissions and collection fees under such policies are kept, the over-riding commissions and collection fees under such policies on the lives of non-residents are not subject to this tax.

Section 211. Real Estate Salesmen and Brokers.

- a) Real estate salesmen and brokers who are engaged in the business as employees rather than as independent contractors are not required to file a return for the commissions earned by them. The employer is required to deduct the tax from the commissions earned.
- b) Real estate salesmen or brokers acting as independent contractors are subject to a tax on their net profits in accordance with the rules and regulations therein pertinent.
- c) Real Estate Appraisers. Compensation paid to a real estate committee and/or to a mortgage loan committee by building and loan associations is taxable income subject to withholding by the association.

Employees of trust companies who are employed occasionally by the company as real estate appraisers in addition to their regular employment are deemed not to be engaged in a separate activity. The tax on compensation received for such services shall be withheld by the company together with any other salary received by employees.

- d) Mortgage holdings by licensed real estate brokers, associate brokers, and/or sales personnel are construed to be part of their business activities.

Section 212. Nurses.

- a) Licensed Practical Nurses

A licensed practical nurse engaged in private duty nursing shall be in the same status as any other professional person and is required to file a return upon his net profits.

b) Registered Nurses

A registered nurse is in the same status as any other professional person and is required to file a return upon his net profits.

c) Deduction of Expenses Incurred

Practical and registered nurses may deduct the actual expenses incurred in the earnings of their fees. Cost of uniforms is a deductible item. Also, such things as laundering of uniforms, registration fees, telephone expenses, and transportation.

Section 213. Musicians and Entertainers.

In the field of professional musicians, there has arisen a practice peculiar to the engagement of musicians exclusively through a so-called "contractor." The practice, which arose by prescription by the American Federation of Musicians and of local union regulations, enables the purchaser of music to deal with only one of the number of musicians required for a particular occasion.

a) Contractor

The term contractor means that individual musician through whom the purchaser and the musician negotiate the contract of service and the performance thereof.

The contractor may or may not perform actual musical service under a contract which he has negotiated.

b) Purchaser of Music

The person, partnership, organization, or association for whom or which the musical services are to be performed or furnished, and who exercises an employer's control over the conduct of the musicians. For example, hotels, cafes, taprooms, restaurants, theaters, clubs, radio stations, and radio sponsors.

c) Name Bands or Orchestras

A name band or orchestra is one which is identified or known by a name and which holds itself out to the public as a permanent organization, and, in addition thereto, either (a) has a fixed personnel; or (b) the individual member musician has contracted for his services with the leader or the owner of the band at a fixed salary, by term or by individual engagement, and is a performer over whom the purchaser has no direct control.

d) When a contract for the purchase of music has been executed between a purchaser and a contractor, the musician shall be deemed to be the employee of the purchaser, except in

the case of name bands. In this event, the musicians shall be deemed employees of the leader or owner of the name band.

The purchaser, and in the case of a name band, the leader or owner thereof shall be the person responsible for withholding the tax from the wages paid to the musicians.

e) Entertainers Other Than Musicians

An entertainer, other than a musician, is usually engaged by a purchaser through a booking agent. The booking agent, once the contract of employment has been executed, does not exercise an employer's control over the entertainer.

The owner of a night club, cafe, taproom, theater, or any place which furnishes entertainment to the public or to its patrons, or the promoter of a boxing exhibition or other sporting event, shall be deemed the person liable as the employer of entertainers and shall be determined after examination of the contractual relationship between the parties. In general, variety entertainers who perform special routines in a series of short-term engagements for a number of different owners or operators of night clubs, cafes, restaurants, theaters, and similar establishments free from control except that which is incidental to the continuity of the entertainment programs in which they participate, are not employees of such establishments for purposes of this tax. A well-known entertainer, for example, appearing at a night club in the City of Philadelphia for an engagement of one or two weeks would fall within the category of an independent contractor. On the other hand, an entertainer, such as a singer or piano player, appearing at a nightclub for an extended period would be classified as an employee subject to withholding. Promoters of boxing exhibitions and other sporting events are required to withhold the tax from the compensation paid to the contestants engaged in the particular sporting event.

f) Informational Reports

Where a person does not exercise employer control over a recipient of compensation, that person must file an informational report (Form C-I-S) with the City of Philadelphia in accordance with Section 303(b)(2) of these Regulations.

Section 214. Journeymen Tailors.

Tailors who receive work to perform in their own shops for a specified amount to be paid for each garment are independent contractors. They shall file an annual return on net profit.

Section 215. Individuals Performing Funeral Services.

a) Embalmers

Embalmers are regarded as employees of funeral establishments where there is a continuing relationship between the embalmer and a particular funeral parlor, with the expectance and granting of preference to the interests of the establishment, the furnishing by the funeral parlor of the necessary embalming instruments, fluids, and other supplies, and the exercise of control over the manner in which the embalmer performs the services.

b) Funeral Directors

Funeral directors that are engaged on either a temporary or full-time basis by a funeral establishment are regarded as employees of the establishment engaging them.

c) Pallbearers, Gravediggers, Hairdressers, Organists, Singers

The following rules apply in determining the status of hairdressers, organists, singers, pallbearers, and gravediggers:

- 1) Friends or associates who volunteer, or who are requested by the family or other representative of a deceased person, to perform services of the types mentioned and who receive their compensation, if any, from the family or other representative, will not be regarded as employees.
- 2) Individuals engaged or compensated by a funeral establishment, acting as the agent and for the accommodation of the family or representative of a deceased person, will not be regarded as employees of the establishment, provided the compensation of each individual is shown as a separate charge in the itemization of funeral costs. If such an accounting is not made, the individuals will be regarded as employees of the funeral establishment.
- 3) Individuals performing services which are held out to the public as an integral part of a "complete" funeral service and whose compensation is absorbed in the cost of the "complete" service will be regarded as employees of the funeral establishment.
- 4) Hairdressers furnished by a beauty shop operator, pursuant to an agreement or contract with a funeral establishment, will be regarded as employees of the beauty shop operator.
- 5) "Professional pallbearers" will not be regarded as employees provided: (1) they are not under a continuing employment contract with the funeral establishment;

(2) their services are not furnished as a part of a "complete" service; (3) their compensation is shown as a separate entry in the itemization of funeral costs; and (4) the funeral establishment makes no profit from obtaining and furnishing their services.

- 6) Grave diggers regularly employed by a cemetery association or church, or who are specifically assigned by the entity to funeral establishments or others desiring their services, will be regarded as employees of the association or church by which they are engaged.

d) Drivers

The following rules apply in determining the status of funeral car drivers:

1. Drivers regularly employed by a funeral establishment and individuals engaged on a single assignment or part-time basis to drive automobiles owned or operated by a funeral establishment will be regarded as employees of the establishment.
2. Individual owners of funeral cars engaged to furnish their vehicles and who serve as the drivers of such cars will be regarded as employees of the funeral establishment. In the event an individual owner furnishes a substitute driver, in lieu of performing the services personally, such substitute driver will be regarded as an employee of the funeral establishment.
3. Drivers obtained by a funeral establishment from an automobile livery service, pursuant to a contract covering the furnishing of funeral vehicles and drivers therefor, will be regarded as employees of the entity furnishing the service, rather than as employees of the funeral establishment, unless under the contract the funeral establishment obtains a right of control sufficient to establish the relationship of employer and employee.

Section 216. Ministers and Clergymen.

Salaries paid by organized religious bodies to ministers, clergymen, evangelists, or religious workers are considered taxable salaries on which deductions and remittances should be made to the Department by such organized religious bodies. Where, however, voluntary offerings are made to a clergyman at marriages, baptisms, funeral services, masses, and prayers for the dead, such voluntary offerings are not considered earned income and not subject to the tax.

Section 217. Domestic.

The compensation received by individuals, referred to as "domestics," is subject to the tax. (Prior to the amending Ordinance of September 19, 1951, the employer of such domestics was

required to withhold the City tax). The employer may, with the consent of the domestic, withhold the tax. Where such consent is not obtained, it is the duty of the domestic to file quarterly returns and pay the tax to the Department on the last day of January, April, July, and October.

Where the duties of the domestics require them to live at their place of employment, board and lodging shall not be considered as wages or salary earned.

Section 218. Officers and Employees of the Commonwealth of Pennsylvania.

Salaries paid to the officers and employees of the Commonwealth of Pennsylvania are subject to the tax. The Commonwealth is required to deduct the tax at the source, except as to elected officials.

Section 219. Civilian Employees of the Federal Government.

Salaries received by officers and employees, not in active military service, of the United States Government, are subject to the tax. Such salary shall be taxable though the services of the employee are performed within a Federal area or reservation, i.e., Philadelphia Navy Yard.

Section 220. Net Profits of Businesses, Professions, etc.

a) Taxable Entities

Persons subject to tax on net profits, as defined in Section 101(f) of these regulations, shall be: (a) individuals; (b) partnerships, associations, or other unincorporated enterprises owned by two or more persons; and (c) trusts or estates.

1) Individuals

Any individual engaged in a business, trade, professions, or other activity, carried on for profit, shall pay a tax on the net profits therefrom.

2) Partnerships, Associations

A co-partnership, association, or other unincorporated enterprise owned by two or more persons, engaged in a business, trade, profession, or other activity, shall be subject to a tax on the net profits therefrom. Such partnerships, etc., will be taxed as entities with recognition given to the domicile of the individual partners, members, etc. The following are illustrations of possible combinations of entities, partners, members, etc.

- a. The entity is doing business in Philadelphia and all partners, etc., are residents of the City. The entire net profits are taxable to the entity. It does not matter if the entity is doing business both within and outside of the City.
 - b. The entity is doing business in Philadelphia and its entire business activity is within the City. It also has a mixture of resident and non-resident partners, etc. Again, the entire net profits are taxable to the entity.
 - c. The entity is doing business in Philadelphia and it also has business activity outside of the City. It is comprised of a number of resident and non-resident partners, etc. The entity will be taxable using 100% of the profit distributed to the resident partners and on that portion of the profit distributed to non-resident partners which is allocated to the City using the formula described in Section 222(d) of this regulation.
 - d. Residents of the City of Philadelphia who are engaged in business as individuals may not offset the loss of the individual business against his distributive share of profits from any partnership doing business in Philadelphia of which the person is a member.
 - e. Philadelphia residents who are engaged in business activity as individuals, or partnerships, or a combination thereof, which have no location in and are not doing business in the City, must file in their individual capacity. The resident may offset his distributive share of the profits and losses of the various entities in arriving at the tax due for this return.
 - f. Philadelphia residents who are limited partners in partnerships which are not located in and not doing business in the City shall report their distributive share of such partnership profits by filing a Philadelphia School Income Tax Return.
 - g. Corporations which are members of partnerships, associations, joint ventures, etc., are not subject to the Net Profits tax on their distributive share of the profits from the partnership, etc.
- 3) Trusts or Estates

Every estate or trust (whether the fiduciary is an individual or corporation) must file a return and pay the tax on the net profits if the estate or trust is engaged in any business, trade or activity which would require the filing of a return by an individual or partnership, or receives income subject to tax had it been received by an individual or partnership.

b) Activities Subject to Tax on Net Profits

1) Income from Rentals and/or Sale of Real Estate

a) Income from Rental of Real Estate

The renting of real property to another is subject to tax if the property was deliberately acquired by the lessor for the purpose of renting all, or part of the property to another. If property is purchased for the sole purpose of use by the purchaser as a place of residence and/or for use by the purchaser in the conduct of a business other than the rental of the property, and if the purchaser of the property fails to initiate, or terminates, the residential or other business use for which that property was acquired, and continues to own that property, and rents it to another, then the property shall be presumed to have been deliberately acquired for the purpose of renting it to another, at a date commencing with the initial rental of the property by the purchaser.

Property acquired by gift or devise which is rented to another shall be presumed to have been deliberately acquired for the purpose of renting to another, at a date commencing with the grantee's or devisee's initial rental of the property.

This section shall not include rental activity of a property which meets each of the following criteria: 1) is the principal residence of the owner; 2) is totally residential; and 3) consists of three (3) rental units or less.

If a property is located outside of the geographical limits of the City of Philadelphia, the income from said property is taxable to the extent of the interest of Philadelphia resident beneficiaries therein. (Beneficiaries are persons who are receiving income from the property.)

If the property is located within the limits of the City of Philadelphia, the residence of the beneficiary is immaterial.

b) Income From Sale of Real Estate

The full amount of the gain, loss, or profit from the sale of real estate shall be reported without regard to the length of time of ownership by the owner.

Appreciation in value is part of the overall real estate business activity. The net income recognized from the sale or disposition of property used in business during the course of business operation or at termination of the business will be considered wholly includable in the tax base.

c) Taxable vs. Non-Taxable Status

If a taxpayer is in doubt as to the taxable status of rental income, or the net income derived from the sale of real estate used in business, he shall submit a detailed written statement to the Department for a ruling.

2) Fiduciaries

A fiduciary is a person who holds in trust, property, monies, or properties to which another has a beneficial title or interest, or who receives and controls income for another person or persons.

Commissions or fees received by a fiduciary constitute taxable income where a fiduciary is regularly engaged in a business or profession as a fiduciary, or is engaged in a business or profession commonly regarded as being incidental or collateral thereto, for example, an attorney-at-law, real estate agent, etc.; if such commissions or fees represent a substantial portion of the earnings or income of the fiduciary; or, when the administration of the trust requires a substantial portion of the fiduciary's available working time.

3) Royalties

Income received as a "royalty" is considered taxable under the Ordinance. This type of income consists of monies received by the owner of a patent or private formula for the use of it, or the right to act under it; by the author of a book; or by the owner of a mine for permitting another to remove minerals from it.

4) Persons Engaged in Professions

Where an individual, co-partnership, or association is engaged in the conduct of a profession, i.e., physician, lawyer, dentist, engineer, artist, etc., his income is subject to the net profits tax provision of the Ordinance. Where the individual, in addition to his general practice, is also employed on a fixed salary by an institution, such compensation is subject to withholding by the employer.

Illustration: John Doe, a physician, maintains an office in his home where he examines and treats patients. He is also employed at a salary by a local hospital. His salary would be subject to the withholding tax provision by the hospital and the physician would, in addition, be required to pay on the net profits of his private practice.

Section 221. Net Profits of Residents.

The entire net profits resulting from the conduct or operation of a trade, business, profession, enterprise, undertaking, or other activity by a resident of Philadelphia earned on and after January 1, 1939, are subject to the tax. In determining liability for the tax, the place where the

business is actually conducted, transacted, or operated is immaterial. Thus, an individual whose permanent residence is located in Philadelphia and who has a place of business in Camden, New Jersey, would be required to pay the tax on his entire net profits from such business.

Section 222. Net Profits of Non-Residents.

a) Where Entire Business is Transacted in Philadelphia

A non-resident individual, partnership, association, or other entity conducting or carrying on any business, profession, enterprise, or other activity is required to pay the tax on the entire net profits thereof earned on and after January 1, 1939, if the entire business is conducted or carried on in Philadelphia, even though such non-resident may not maintain a store or office in Philadelphia.

Non-residents are considered to be "conducting" a business in Philadelphia if they: (1) solicit orders; (2) render services or execute or perform contracts; (3) engage in manufacturing; (4) make sales. Thus, a farmer residing in New Jersey with no place of business in Philadelphia would be liable for the tax where he sells his farm products from his truck within the confines of the City of Philadelphia. Where the non-resident has a branch, store, or office located in Philadelphia, he shall be considered to be conducting a business to the full extent of all transactions originating or consummated in, by, or through such Philadelphia branch, office, or store.

b) (deleted)

c) Allocation Where Taxpayer Has Places of Business Inside and Outside of Philadelphia

A non-resident of the City of Philadelphia, who in addition to having a place of business or office outside of Philadelphia also maintains a branch store or office in Philadelphia and transacts business both within and outside of this city, shall be entitled to an apportionment or allocation on his net profits. If the non-resident businessman claims an allocation on the basis of a branch store or office outside the City of Philadelphia, he must be prepared to prove that it is an established, self-sustaining, bona fide branch office to be recognized as such by the Department. This question is one of fact, depending upon the particular circumstances in each case. Certain factors, however, are helpful, i.e., personnel, office equipment, stationery, where records are kept, "holding out" to the public (telephone listing), etc. A "field" office, set up by a non-resident general contractor with offices in Philadelphia at a construction site outside of Philadelphia, is not recognized as a branch office for allocation purposes. It is not an established office but rather temporary in nature.

d) Special Allocation Formula

Where it is impossible to allocate with certainty the net profits subject to tax (by reason of the absence of an office or store within Philadelphia, or because the taxpayer's records do not

disclose the actual net profits where he does have a Philadelphia branch), the Department permits the use of the allocation formula adopted by the Commonwealth of Pennsylvania. This formula is based on three factors to effect a fair and proper apportionment so that only that portion of the net profits attributable to Philadelphia is included in the measure of the tax. These factors are:

1) Real and Tangible Personal Property

The taxpayer computes a percentage on the basis of a fraction using the total average value of all such property located in Philadelphia as the numerator, and the total average value of all such property located within and outside of Philadelphia as the denominator.

2) Wages and Salaries Factor

A percentage is computed on the basis of a fraction using the total amount of wages and salaries paid to employees who work in or from, or attached to places of business located in Philadelphia as the numerator, and the total amount of such wages and salaries paid to all employees within and outside of Philadelphia as the denominator.

3) The Gross Receipts Factor

A percentage is computed on the basis of a fraction using as the numerator gross receipts from sales or services within Philadelphia, and as the denominator all gross receipts from sales or services made within and outside of Philadelphia.

Averaging. The percentages obtained for the three factors hereinabove described are to be added together and the total thereof divided by three to obtain the average of the three percentages. If the numerator and the denominator of any fraction are both zero, the factor is deemed to be non-existent and shall be omitted in calculating the average of the percentages. In such event, the total of the remaining percentages is to be divided by the remaining number of existing factors. If, however, the numerator alone is zero and the denominator is represented by an amount, there is a resultant factor that is zero, which is to be included in the calculation of the average of the percentages.

Illustration.

$$\frac{\text{Avg. Real and Tangible Personal Property in Phila.} - \$ 25,000}{\text{Avg. Real and Tangible within and outside Phila.} - \$100,000} = 25\%$$

$$\frac{\text{Wages, Salaries in Phila.} - \$ 10,000}{\text{Wages, Salaries in and outside Phila.} - \$50,000} = 20\%$$

$$\frac{\text{Gross receipts in Phila.} - \$ 75,000}{\text{Gross receipts in and outside Phila.} - \$ 300,000} = 25\%$$

Total of Percentages = 70%

Average of Percentages (Total of Percentages divided by 3) = $23\frac{1}{3}\%$

The net profits of transportation companies shall be allocated upon the basis of the ratio of the number of miles owned, operated, leased, and/or traveled over in the City of Philadelphia, to the total number of miles owned, operated, and leased as of the end of each calendar or fiscal year.

Allocation or apportionment is permitted, in any event, only for the period during which the taxpayer is or has been a bona fide non-resident of Philadelphia.

e) Alternative Allocation Formula

The Revenue Commissioner may provide for a different method of allocation with due regard to the nature of the business concerned where it appears that any of the prescribed allocation formulae work unfairly or inequitably as to a particular taxpayer or class of taxpayers.

Section 223. Computation of Net Profits.

The net profits of a business, profession, or other activity shall be computed by subtracting from gross receipts, the cost of goods sold and all ordinary and necessary expenses of doing business.

"Gross Receipts" shall include receipts from sales of merchandise, goods, wares, chattels, notes, securities, chose-in-action, services (other than those for services rendered as an employee), commissions (other than those for services rendered as an employee), fees, etc.

"Gross Profit" shall represent the difference between the "gross receipts" and the "cost of goods sold," computed as follows:

Gross Sales or Billings	_____
Less: Returns and Allowances Actually Made	_____
Net Sales or Billings (A)	_____
Opening Inventory	_____
Purchases (Net)	_____
Manufacturing Costs (Labor, Etc., -- Where Applicable).....	_____
Total	_____
Less: Closing Inventory	_____
Cost of Goods Sold (B)	_____
Gross Profit (or Loss) (A)-(B)	_____

Purchases as used in the above example shall reflect the actual cost incurred.

"Business Deductions" are the ordinary and necessary expenses actually incurred in the operation of the business. The following are considered allowable business deductions:

a) Salaries and Wages Paid

Payments made to employees in connection with the owner's trade or business are deductible. Withdrawals by the owner or proprietor of the business are not considered as expense of doing business and, therefore, not allowed as a deduction.

b) Rent

It must be paid for property actually used in the business. If the proprietor owns the building in which the business is conducted, he may not claim this item as a deduction.

c) Interest

Any interest on indebtedness incurred by the business may be deducted. This includes mortgage interest (where proprietor also owns the building) and interest payments on loans made for use in the business.

d) Taxes

There may be claimed as a deduction all taxes directly connected with the operation of the business and on business property if the income of such property is subject to tax. A few examples of deductible taxes are:

- 1) Employer's contributions to Pennsylvania Unemployment Compensation Fund.
- 2) Employer's portion of Social Security Tax Payments.
- 3) Real Estate Tax (where proprietor also owns building in which business is located).

If for any reason the income from property is not subject to tax, then the tax on such property is not deductible. In any event, the following taxes are **not** to be deducted:

- 1) The City Income Tax under the Ordinance approved December 13, 1939, as amended;
- 2) Any Federal, State, or Local Taxes based upon income;
- 3) Gifts, estate, or inheritance taxes; and

- 4) Taxes for local benefits or improvements to property which tend to appreciate the value thereof.

e) Losses

If a loss is claimed, there must be attached to the return a schedule showing in detail the nature of the loss and of the property damaged, destroyed, or stolen; its cost or other valuation; the depreciation sustained prior to the time of the damage, destruction, or theft; the measure of loss; and any recovery through insurance or otherwise.

f) Bad Debts

This item may be claimed as a deduction if it is connected with the business and only where the taxpayer is on an "accrual" basis. It will only be allowed in the year ascertained as worthless and charged off. In no event shall the amount allowed exceed the amount recognized as a deduction for the purpose of the Federal Income Tax.

g) Depreciation

The taxpayer may deduct a reasonable allowance for exhaustion, wear and tear, obsolescence, depreciation, or depletion of property directly connected with the business or profession, provided he completes the information requested, to wit, the nature of the asset; date of acquisition; cost or other basis of valuation; depreciation previously deducted; and the remaining cost or other basis to be recovered. In no instance will the taxpayer be permitted to use as a cost or other basis of valuation an amount in excess of the depreciated or depleted value of the asset as of January 1939. If any difference exists between the amount claimed for depreciation, depletion, obsolescence, etc. in this report and that furnished to the Director of Internal Revenue, it should be clearly shown and the reason therefor stated.

h) Repairs

Any repairs to building, machinery, furniture, equipment, etc., used in the business may be deducted.

"Net Profits" or "Net Loss" shall represent the difference between gross profits and the total of net costs of goods sold and business deductions.

Taxpayer may not set off a net loss from his business, profession, or other activity against a salary, wage, commission, or other compensation received from another.

A "Net Loss" in any year may not be carried over to any other year.

Section 224. Election for Real Estate Entities.

- a) The following election is available to Real Estate Entities. Any Real Estate Entity, on behalf of itself for Business Income and Receipts Tax purposes, and on behalf of residents and non-residents for Net Profits Tax purposes, may make an irrevocable election with the Department of Revenue to use separate accounting, rather than three-factor apportionment, to compute its net income attributable to Philadelphia for purposes of the Business Privilege Tax and to compute net profits attributable to Philadelphia for purposes of the Net Profits Tax. Any Real Estate Entity making this election shall agree to all of the following requirements:
- 1) All building specific expenses shall be accounted for as provided in definition of separate accounting as defined in subsection (f)(7);
 - 2) All non-building specific expenses as defined in subsection (f) of this Section will be allocated to properties inside and outside Philadelphia based on the Real Estate Entity's gross receipts fraction as defined in subsection (f) of this Section;
 - 3) Regardless of the residency (i.e. domicile) of the person(s) subject to Net Profits Tax, the Real Estate Entity, on behalf of such persons, agrees to pay Net Profits Tax using the resident rate for all net profits attributable to Philadelphia; and
 - 4) The Real Estate Entity must pay Net Profits Tax on all net profits attributable to Philadelphia without any exclusions or exceptions otherwise applicable. For example, a Real Estate Entity organized as a partnership shall be subject to the Net Profits Tax on all its net profits attributable to Philadelphia, regardless of the identity of its partners. Likewise, a REIT, having a corporate trustee or a corporate beneficiary shall be subject to the Net Profits Tax on all its net profits attributable to Philadelphia regardless of the identity of the trustee or beneficiary.
- b) Dividends Paid Deduction. For purposes of the Business Income and Receipts Tax, REITs electing to compute net income pursuant to Method II shall, in determining net income, be permitted a deduction for dividends paid as provided by section 857 of the Internal Revenue Code.²
- c) Gain from Sale of Real Property. For purposes of the Business Income and Receipts Tax and the Net Profits Tax, gain from the sale of real property shall be sourced (i.e. allocated) to the location of the real property.
- d) Method of Election. A Real Estate Entity shall be deemed to have made the election provided for in subsection (a) for the tax year in which it files its first return reflecting

² Amended by regulation re-submitted after hearing to the Department of Records on December 18, 2009 (effective December 28, 2009).

the safe-harbor election and all subsequent years, unless such election terminates as provided for in subsection (e).

- e) Termination of Election. The election shall be irrevocable unless the taxpayer discontinues engaging in business activity in the City of Philadelphia for a period of at least one full tax year or no longer meets the qualification requirements in subsection (f)(5) of this Section.
- f) Definitions. For purposes of this Section the following definitions shall apply:
 - 1) “Building specific expenses.” Expenses directly attributable to a particular parcel of real property, including but not limited to depreciation, utilities, maintenance, and taxes, but not including mortgage interest.
 - 2) “Gross receipts fraction.” A fraction, the numerator of which is the taxpayer’s gross receipts attributable to Philadelphia rental properties and mortgage interest income attributable to Philadelphia properties, and the denominator of which is the taxpayer’s total gross receipts attributable to rental properties and mortgage interest income. Gain from the sale of property shall not be included in gross receipts for purposes of this fraction.
 - 3) “Internal Revenue Code.” The Internal Revenue Code of 1986, as amended.
 - 4) “Non-building specific expenses.” All expenses (including mortgage interest expense) other than building specific expenses.
 - 5) “Real Estate Entity.” A REIT or a corporation, association, general partnership, limited partnership, limited liability partnership, trust, joint venture, limited liability company, proprietorship, or similar entity organized under the laws of the United States, the Commonwealth of Pennsylvania, or any other state, territory, or foreign country or dependency, which is engaged in the business of holding, selling, or leasing owned real estate and which:
 - a) derives directly or indirectly seventy-five percent (75%) or more of its annual gross receipts from the ownership, leasing, or disposition of real estate, whether voluntary or involuntary; and
 - b) owns real estate directly or indirectly, the book value of which comprises seventy-five percent (75%) or more of the value of its assets.
 - 6) “REIT.” A real estate investment trust, as defined in section 856 of the Internal Revenue Code.³
 - 7) “Separate Accounting.” The computation of net profits/income attributable to Philadelphia on the basis of the net income specifically attributable to each rental

³ Amended by regulation submitted to the Department of Records December 18, 2009 (effective December 28, 2009).

property located in Philadelphia, and each mortgage on property located in Philadelphia, that is owned by a Real Estate Entity. In the case of each such rental property, the net income attributable to such rental property shall equal the excess of the gross rental income from such property over the sum of the building specific expenses attributable to such property and the non-building specific expenses allocable to such property. In the case of each such mortgage, the net income attributable to such mortgage shall equal the excess of the gross interest income from such mortgage over the non-building specific expenses allocable to such mortgage.

- g) Qualified REIT Subsidiary. For purposes of this section, a corporation which is a qualified REIT subsidiary, as defined in I.R.C. section 856(i)(2), shall not be treated as a separate corporation, and all assets, liabilities, and items of income and deduction of a qualified REIT subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the real estate investment trust.

Section 225. Tax Rates.⁴

- a) Refer to §19-1502(1)(a) of the Philadelphia Code for Residents Income Tax rates on Salaries, Wages, Commissions And Other Compensation earned. In accordance with Philadelphia Code §19-2803(1)(a), an additional 1.5% Pennsylvania Intergovernmental Cooperation Authority (“PICA”) Tax must be added for the total tax rate.

Illustration:

Residential tax rate under §19-1502(1)(a) from July 1, 2017 and thereafter: 2.3907%
Add PICA Tax rate under §19-2803(1)(a): 1.5%

Total Wage Tax rate applicable to Residents: 3.8907%

- b) Refer to §19-1502(1)(b) of the Philadelphia Code for Non-Residents Income Tax rates on Salaries, Wages, Commissions And Other Compensation earned.
- c) Refer to §19-1502 (2)(a) of the Philadelphia Code for Residents Tax Rates on Net Profits Earned in Businesses, Professions Or Other Activities. In accordance with Philadelphia Code §19-2803(1)(b), an additional 1.5% PICA Tax must be added for the total tax rate.

Illustration:

Residential tax rate under §19-1502(2)(a) from July 1, 2017 and thereafter: 2.3907%
Add PICA Tax rate under §19-2803(1)(b): 1.5%

⁴ Added by regulation submitted to the Department of Records on August 3, 2017 (effective September 5, 2017), as a result of City Council Bill Nos. 130444 (enacted on June 25, 2013), 150167 (enacted on June 18, 2015), 160175 (enacted on June 16, 2016), and 170198 (enacted on June 14, 2017).

Total NPT rate applicable to Residents: 3.8907%

- d) Refer to §19-1502(2)(b) of the Philadelphia Code for Non-Residents Tax Rates on Net Profits Earned in Business, Professions or Other Activities.

Article III Returns and Payment of Tax

Section 301. Who Must File a Tax Return?

- a) Every person who is employed on a salary, wage, commission, or other compensation, which is subject to tax, and which tax his employer is not required to withhold;
- b) Every person engaged in any business, profession, or other activity, the net profits of which are subject to tax;
- c) Each employer within the City of Philadelphia who employs one or more persons on a salary, wage, commission, or compensation basis.
- d) Every employer having a place of business within the Commonwealth of Pennsylvania who employs one or more persons who are residents of the City of Philadelphia.

Section 302. (Deleted).⁵

Section 303. Returns and Deposits Required to be Filed.

- a) Returns by Employees if Wage Tax is Not Deducted by Employers

- 1) Quarterly Tax Returns by Employees

If City Wage Tax is not deducted by the employer (the Federal Government; non-resident employers with no business or personal address in Philadelphia), the employee shall, on or before the last day of January, April, July, and October of each year, make and file a return on a form furnished by or obtainable from the Department of Revenue, setting forth the aggregate amount of salaries, wages, commissions, and other compensation subject to the tax earned by him during the three months ending on the last day of the month preceding as follows:

⁵ See separate section of Department of Revenue Regulations and Ordinances entitled "General Section."

PERIOD COVERED RETURN AND PAYMENT DUE

January, February, March	April 30
April, May, June	July 31
July, August, September	October 31
October, November, December	January 31

Summarizing, an employee files his own return if he:

- a) Maintains a legal residence in Philadelphia, is employed outside the City by an employer other than the Federal government, and his employer is not obliged to withhold the tax;
- b) Maintains legal residence outside Philadelphia and is employed full-time or part-time within the City by an employer (other than a Federal governmental department) not required to withhold the tax;
- c) Maintains legal residence in Philadelphia and is employed either inside or outside the City by a department, board, agency, or other instrumentality of the U.S. Government.
- d) Maintains legal residence outside Philadelphia and is employed either full-time or part-time inside Philadelphia by a department, board, agency, or other instrumentality of the U.S. Government.
- e) Maintains legal residence in Philadelphia and is employed as an elected official either inside or outside Philadelphia by a department, board, agency, or other instrumentality of the Commonwealth of Pennsylvania.⁶
- f) Maintains legal residence outside Philadelphia and is employed as an elected official inside Philadelphia by a department, board, agency, or other instrumentality of the Commonwealth of Pennsylvania.⁷

The person making the return shall at the time of filing pay the total amount shown by the return to be due.

2) Annual Information Returns by Employees.

Every employee from whose compensation his/her employer is not required to withhold the City Income Tax shall, annually, on or before April 15th, file a true and correct information return for the previous calendar year, along with a copy of his/her Form W-2 of the Federal Internal Revenue Service showing the following information:

⁶ The Wage Tax is withheld by the Commonwealth from all appointed employees.

⁷ The Wage Tax is withheld by the Commonwealth from all appointed employees.

- 1) Name and address of employee;
- 2) Name and address of employer;
- 3) Total salaries, wages, etc., received (prior to payroll deductions) from the employer;
- 4) Social Security account number of employee;
- 5) Beginning and separation dates of less-than-calendar year employment.

b) Returns by Persons Engaged in Business, Professions, etc.

1) Annual Returns of Net Profits Tax

Every person engaged in any business, profession, or other activity, the net profits of which are subject to the tax imposed by the Philadelphia Code, operating on a calendar year basis, shall, on or before May 15th of each year beginning before 1980, and on or before April 15th of each year beginning after 1980, make and file a return on a form furnished by or obtainable from the Department of Revenue, setting forth the net profits earned during the preceding year. (For computation of net profits, see Section 223).

The person making the return shall at the time of filing pay the total amount shown by the return to be due.

a) Calendar Year Returns

A return for a calendar year shall report the net profits earned during the period beginning January 1st and ending December 31st.

b) Fiscal Year Returns

If the fiscal year of a business, profession, or other activity differs from the calendar year, the tax shall be applicable to the net profits of the fiscal year. A fiscal year will be recognized only if it ends on the last day of some calendar month and has been or is being recognized by the Director of Internal Revenue for the purpose of the Federal Income Tax.

The return shall be made within one hundred thirty-five (135) days from the end of any fiscal year ending on or before December 31, 1980, and within one hundred five (105) days from the end of any fiscal year ending after December 31, 1980.

c) Basis Used in Filing Return

- a. Cash
- b. Accrual

c. Long-term Contract or Installment

If the books and records of the taxpayer are kept on an "accrual," "long-term contract," or "installment" basis and this basis is used in the filing of the Federal Income Tax Return, such basis must be used for the purpose of this tax.

The taxpayer may not change from an accrual to a cash basis, or vice-versa, without written permission first being obtained from the Department of Revenue.

The method shall reflect the gain (or loss) resulting from the activity of a business, profession, or enterprise which occurs during the usual operations; inclusive of the sale, exchange, or disposition of assets of an ongoing or terminated entity. Transactions must be identifiable, necessary, and reasonable to the business, after allowance for applicable costs.

d) If Taxpayer Has More Than One Place of Business

A person engaged in a business, profession, or other activity that maintains more than one place of business shall file one return and attach a schedule showing the computation of the net profits from the various locations at which the taxpayer conducts his business.

e) If Taxpayer Terminates Business During Year

If the taxpayer shall terminate his business during the year, the return shall be filed and the tax paid within one-hundred five (105) days after such termination.

f) Persons Temporarily Engaged in Business

If the taxpayer is engaged in a temporary, seasonal, or itinerant business, the return shall be filed and the tax paid upon the completion of said business.

g) Reconciliation With Federal Return

The taxpayer shall set forth, in a separate schedule to be attached to the return, all items of income which were not included as taxable under the City Ordinance, but which were reported on the Federal Income Tax return as taxable.

h) Report of Changes Made in Federal Return

If, as a result of an examination by the Internal Revenue Service, items of unreported business income have been assessed and/or items of business expense disallowed by the Internal Revenue Service in connection with a U.S. Income Tax Return originally filed with the Internal Revenue Service by a taxpayer, a report of such change shall be filed in the form of an information return by the

taxpayer with the City, within seventy-five (75) days of receipt by the taxpayer of the final notice of such change from the U.S. Internal Revenue Service.

2) Information Returns Concerning Transactions With Other Persons

Any persons engaged in a trade, business, profession, or other activity, and in the course thereof, paying to another person (except corporations) commissions, fees, compensation (on which City Wage Tax has not been withheld), rents, and/or royalties, aggregating \$600 or more in any taxable year, must file a return of information for each recipient, which shall set forth the following:

- 1) Name and address of payor;
- 2) Name and address of recipient;
- 3) Amount of payment;
- 4) Federal Tax Identification Number of payor;
- 5) Type of activity; and
- 6) City of Philadelphia tax account numbers.

The return shall have a copy of the Federal Form 1099 issued to the other person and filed on or before the 28th day of February of the year following the calendar year during which the payments made. It shall be filed on the basis of the calendar year even though the payor is on a fiscal year basis.

When the number of forms issued exceeds fifty (50), then the data must be provided on a magnetic tape in the format described in Internal Revenue Service Publication 1220. The section of the magnetic tape described as Record Name: Payer/Transmitter "A" Record shall have inserted in tape positions 32 through 43 the payer's City of Philadelphia Tax Account Number.

For those payers using floppy disks as the magnetic storage media, you must provide a floppy disk meeting the Internal Revenue Service specifications. In addition, you must place a batch file entitled "PHILA.DAT" with your Federal Identification Number in positions 1 to 9 and the last seven (7) digits of your City of Philadelphia Tax Account Number in positions 11 to 17.

Persons who issue less than 50 forms may also provide the information on magnetic tape in the same format as above.

Rents paid directly to a landlord (other than a corporation) in the course of the tenant's business must be reported. However, the tenant is not required to submit the information return if the rent is paid to a real estate agent. In such case, the agent must file the return.

The payor is not required to report the following:

- 1) Payments of any type to a corporation.
- 2) Distributions or salaries to partners.
- 3) Distributions to beneficiaries of any estate or trust.
- 4) Rent paid by tenant to a real estate agent.
- 5) Salaries, wages, other compensation on which City Wage Tax was deducted.
- 6) Payments for merchandise, telegrams, telephone, freight, storage, and similar charges.
- 7) Payments to a non-resident who does not have a Philadelphia place of business, for services rendered outside Philadelphia; provided that the payor shall report not only payments for services rendered in Philadelphia by recipients having a place of business in Philadelphia, but total payments to such recipients.
- 8) Payments not made in the course of a business, trade, profession, or other activity.
- 9) Payments made to employees by way of expense reimbursement for which an accounting has been made by the employee to the employer.
- 10) Dividends and interest payments.
- 11) Payments of commissions made by fire insurance companies or other companies insuring property to general agents, except when specifically directed by the Revenue Commissioner to be reported.

c) Employer’s Returns and Deposits of Tax Withheld for Resident Employers and Non-Resident Employers Subject to Section 404

1) Quarterly Returns of Tax Withheld

Every employer who has withheld an aggregate of City Wage Tax of \$350 or less during any calendar month on salaries, wages, commissions, and other compensation in accordance with the provisions of the Philadelphia Code shall, on or before the last day of April, July, October, and January of each year, make a return and pay to the Department of Revenue the amount of tax actually deducted for the three (3) months ending on the last day of the month preceding.

PERIOD COVERED	RETURN AND PAYMENT DATE
January, February, March	April 30th
April, May, June	July 31st
July, August, September	October 31st
October, November, December	January 31st

The return shall be on a form furnished by or obtainable from the Department of Revenue, and shall set forth the following information during all or any part of the period covered by the return:

- (a) Total number of taxable employees;
- (b) Total salaries, wages, etc. paid;
- (c) Total non-taxable salaries, wages, etc.;
- (d) Total taxable salaries, wages, etc. paid;
- (e) Total tax actually withheld; and
- (f) Tax paid with the return.

Where the entire earnings for the year are paid by one and the same employer and the tax has, in each instance, been withheld or deducted by the employer from the gross amount of compensation without adjustment for expenses, it shall not be necessary for such employee to file a return for the year. In every case in which gross compensation is or has been adjusted for expenses, the employee must file a return.

2) Monthly Returns of Tax Withheld

If an employer required to deduct the tax imposed by the Philadelphia Code withholds an aggregate amount of tax from \$350 to \$16,000 during any month, he is required to remit the actual amount of tax so withheld to the Department of Revenue on or before the fifteenth (15th) day of each succeeding month. The remittance shall be accompanied by a return on forms furnished by or obtainable from the said Department and shall furnish such information as the Department may require, i.e., number of taxable employees, total salaries paid, non-taxable salaries, taxable salaries, actual tax deducted, tax paid with the return.

3) Deposits and Returns of Tax Withheld by Employers Required to Make Intermediate Deposits

- a) Any employer who shall be required to withhold an aggregate of City Wage Tax of more than \$16,000 per month on salaries, wages, commissions, and other compensation paid to his employees is required to deposit the actual tax withheld with the Department of Revenue within three (3) banking days following each date of payment for each pay period. However, if the said employer makes payroll payments to employees more frequently than weekly, he shall not be required to deposit the tax withheld more often than once in every seven (7) day period. The employer shall accompany such deposit with a depository return supplied by or obtainable from the Department of Revenue and shall furnish such information as the Department may require.

In determining "banking days," any local banking holidays observed by authorized commercial banks, as well as Saturdays, Sundays, and legal holidays shall be excluded.

Illustrations:

1. Corporation "X" pays all its employees on Friday of each week. The deposit of the tax withheld on Friday must be made by the corporation on or before the Wednesday succeeding the Friday pay date, provided no banking holiday falls on Monday, Tuesday, or Wednesday.
2. Corporation "Y," which has a large number of employees, divides its weekly payroll into two pay dates — one on Wednesday and the other on Friday. The deposit of the tax withheld on Wednesday shall be made together with the tax withheld on Friday, on or before the Wednesday succeeding the Friday payment date, provided no banking holiday falls on Monday, Tuesday, or Wednesday. Thus, tax withheld on Wednesday, June 8, 1994 and on Friday, June 10, 1994 would be deposited by Wednesday, June 15, 1994.

With respect to late deposits by an employer of withheld taxes, there shall be added a penalty of ten percent (10%) of the amount of the underpayment. This payment shall be in addition to the penalties provided for by Section 19-508 of the Philadelphia Code.

4) Annual Information Returns by Employers

Annually, on or before the last day of February, every employer who has filed returns of tax withheld and remitted the tax throughout the preceding year, shall be required to file an Employer's Annual Reconciliation of Philadelphia Wage Tax Withheld, along with a copy of Form W-2 of the Internal Revenue Service for each employee, other listings or EDP tapes, setting forth the following information:

- (a) Name and address of employer;
- (b) Employer's Federal Identification Number;
- (c) Full name and residence address of each employee;
- (d) Employee's Social Security Number;
- (e) Total wages paid during the year (before any deductions); and
- (f) Employer's City Account Number.

When the number of forms issued exceeds two-hundred and fifty (250), then the data must be provided on a magnetic tape in the same format as transmitted to the Internal Revenue Service, except there shall be inserted in that portion of the record labeled "Code E - Employer Record" in positions 15 through 23 the employer's City of Philadelphia Tax Account Number.

Taxpayers using floppy disks as the magnetic storage media must provide a floppy disk meeting the Internal Revenue Service specifications. In addition, a batch file entitled "PHILA.DAT" must be placed with the taxpayer's Federal Identification Number in positions 1 to 9 and the last seven digits of the taxpayer's City of Philadelphia Tax Account Number in positions 11 to 17.

Persons who issue less than 250 forms may also provide the information on magnetic tape in the same format as above.

The total wages, salaries, etc. reported for each employee, shall be for the entire calendar year, January 1st through December 31st.

d) Employer's Returns and Deposits of Tax Withheld for Employers of Residents of the City of Philadelphia Having a Place of Business Within the Commonwealth of Pennsylvania but Excluding Employers Subject to Section 303(c)

1) Withholding Returns and Filing Dates

Employers paying compensation must file (on a semi-monthly, monthly, or quarterly basis) signed deposit statements on forms provided by the Department and forward a remittance in payment of the City of Philadelphia Wage Tax required to be withheld. The frequency of filing depends on the aggregate amount of tax expected to be withheld for the quarter.

Remittances and deposit statement should be forwarded in accordance with instructions issued by the Department. The place of deposit for each employer is included in the information the Department provides to all employers. If the packet of forms is lost or damaged, a request for duplicate forms listing the name and identification number of the employer should be sent to the Department. Employers who have never received a packet of these preprinted forms should obtain the proper forms from the Department of Revenue.

(a) Quarterly Filing of Tax Withheld

If the expected withholding is less than \$300 during a quarter, the filing may be on a quarterly basis. Quarterly filings are due on or before April 30, July 31, October 31, and January 31 for the quarters ending on March 31, June 30, September 30, and December 31.

(b) Monthly Filing of Tax Withheld

Monthly filing is required if total tax expected to be withheld during the quarter is at least \$300 but less than \$1,000. Monthly filers must file on or before the 15th day of the succeeding month for all months except December. December filing is due on or before the next January 31st.

(c) Semi-Monthly Filing of Tax Withheld

Semi-monthly filing is required if total tax withheld during the quarter is expected to be \$1,000 or more. Semi-monthly filers must file within three (3) banking days after the 15th and the last day of the month.

(d) Annual Information Returns by Employers

The provisions of Section 303(c)(4) shall apply.

e) Estimated Net Profits Tax

1. Returns and Payments of Estimated Tax

- (a) Each person whose net profits are subject to the tax imposed by this Chapter shall be required to file returns and pay estimated tax on account of the net profits due for the current taxable year.

- 2. For the purposes of this Chapter, the term "estimated tax" means the amount of net profits tax which a person calculated to be his tax due under this Chapter for the preceding taxable year.

3. Calendar Year Taxpayers

- (a) Returns and payments of estimated tax for taxable years beginning after December 31, 1980 shall be due and payable as follows:
 - i. The first installment of one-fourth ($\frac{1}{4}$) of the estimated tax shall be due and payable on or before April 15 of the taxable year.
 - ii. The second installment of one-fourth ($\frac{1}{4}$) of the estimated tax shall be due and payable on or before June 15 of the taxable year.

4. Fiscal Year Taxpayers

- (a) Persons who report net income for a fiscal year period other than a calendar year shall make returns and payments of estimated tax for taxable years beginning after December 31, 1980 as follows:
 - i. The first installment of one-fourth ($\frac{1}{4}$) of the estimated tax shall be due and payable within $3\frac{1}{2}$ months after the beginning of the taxable fiscal year.

- ii. The second installment of one-fourth ($\frac{1}{4}$) of the estimated tax shall be due and payable within $5\frac{1}{2}$ months after the beginning of the taxable fiscal year.

5. Credits for Excessive Estimated Payments

- (a) Any estimated payments which exceed a person's tax liability for the taxable year shall be applied as a credit against the estimated tax for the following taxable year to the extent of the estimated tax due for the following taxable year.
- (b) The amount of any estimated payments which exceed the estimated tax for the following year shall be refunded to the taxpayer.

6. Provisions not Applicable

The provisions of Section 19-1505 shall not be applicable to a person for a taxable year if:

- (a) Such person was not engaged in business in the preceding taxable year; or
 - (b) Such person's net profits tax liability for the preceding taxable year does not exceed \$100; or
 - (c) Such person terminated his business activity prior to the due date of the net profits tax return for the preceding taxable year.
7. Any person who terminates his business activity prior to the due date of any estimated payment shall not be required to make any additional estimated payments for that taxable year.

Section 304. Employer/Payroll Services - Electronic Filing and Payment.⁸

- (a) Effective January 1, 2011 through December 31, 2011, any employer that remits an average of \$20,000 or more per month will be required to file the tax return and remit the

⁸ Added by regulation submitted to the Department of Records on December 28, 2010 (effective January 27, 2011), as a result of City Council Bill No. 100224 (enacted on June 30, 2010), amended by regulation submitted to the Department of Records on November 2, 2011 (effective December 2, 2011).

attending tax payment electronically through electronic funds transfer ("EFT"). Effective January 1, 2012 and thereafter, the Department may periodically determine or change the parameters for employers to electronically file tax returns and remit the attending tax payments electronically through EFT. These parameters will be posted to the Department's website and employers will be notified of the changes. EFT includes automated clearinghouse ("ACH") debits and/or credits and any other means or technologies that may be available to obtain the funds due the City in an efficient manner. The Department may by policy or announcement provide for additional electronic means/technologies as they become available.

- (b) The application of the Department's electronic filing and payment parameters for a particular employer will be determined by using the employer's filings and payments for the immediate prior calendar year. If there is no filing for the prior calendar year, the Department may set the parameters and notify the employer.
- (c) Any employer who is required by this Regulation to electronically file a return and fails to do so will be subject to a penalty of \$500 for each occurrence. Every month that the employer fails to electronically file will constitute a separate occurrence. This penalty is in addition to any penalty due under Philadelphia Code §19-509(4)(e).
- (d) Any employer who is required by this Regulation to make an electronic payment and fails to comply shall, in addition to any interest, penalties, and fees owed under Philadelphia Code §19-509, be subject to a penalty for each occurrence as follows:
 - 1. If the amount to be paid electronically is less than or equal to \$10,000: five percent (5%) of the amount to be paid electronically.
 - 2. If the amount to be paid electronically is more than \$10,000 but less than \$50,000: five hundred dollars (\$500).
 - 3. If the amount to be paid electronically is \$50,000 or more: one percent (1%) of the amount to be paid electronically.

Every month that the employer fails to make electronic payments will constitute a separate occurrence.

- (e) Payroll Services — All Payroll Services preparing tax returns and remitting the tax on behalf of any their clients will be required to electronically file and electronically pay the tax on behalf of their clients in accordance with the provisions of subsection (a) based on the filing frequencies and dollar thresholds as provided in Section 303(d) of these Regulations. The Payroll Services will be required to electronically file the return and electronically remit the tax despite the fact that their client's tax filing and payment obligation does not rise to the electronic filing and tax payment parameters as specified by the Department under the authority of subsection (a). Failure of a Payroll Service to electronically file and electronically pay the tax on behalf of their client will not subject that client to the penalties provided for by subsections (c), (d)(1), (d)(2), and (d)(3), provided the client does not meet the electronic filing and tax parameters as specified by the Department under the authority of subsection (a).

Article IV

Withholding Tax at Source

Section 401. Conditions Under Which Employer Must Deduct Tax.

It is the duty of each employer (as hereinbefore defined) who employs one or more persons on a salary, wage, commission, or other compensation basis to deduct monthly, or more often, at the time of the payment of such compensation, the tax on such salary, wage, bonus, incentive payment, commissions, or other compensation due by said employer to said employee. The tax shall be deducted by the employer from (a) all compensation paid to non-resident employees for activities in the City of Philadelphia, and (b) from salaries paid to employees, resident in the City of Philadelphia regardless of the place where the services are rendered.

An employer is required to withhold the tax imposed by the Philadelphia Code if he:

- (a) Is an employer as defined herein;
- (b) Employs one or more persons; and
- (c) Pays a salary, wage, commission, or other compensation without regard to the amount thereof, in consideration of services rendered by the employee to him.

Additionally, the employee must either (a) reside within Philadelphia, or (b) render all or part of his services within Philadelphia.

Section 402. Advances on Account of Commissions.

An employer is required to withhold the tax on the full amount of any advances made to an employee on account of commissions which are in excess of commissions earned, provided there is no obligation to repay the difference.

Section 403. Allowances for Expenses Claimed by Employee.

An employer required to withhold the tax (on compensation paid to an employee) may, in determining the amount on which the tax is to be withheld:

- (a) Ignore any amount allowed and paid by the employer to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services, provided that such expenses are allowable under Section 204 of the Regulations; or
- (b) Deduct any amount necessarily incurred and expended by the employee in the actual performance of his services, for which expense he is not to be or has not been reimbursed by the employer; however, in either case, such expense is allowable under Section 204 of the Regulations and the employee shall furnish the employer, before said deduction is made, an itemized statement of the expenses claimed.

Section 404. Non-Resident Employers.

An employer with a legal residence outside of Philadelphia is an "employer within the City" and is required to deduct the tax if the said employer maintains an office or other business address in Philadelphia or is otherwise subject to service of legal process.

If a corporation maintains a branch in Philadelphia and another branch outside the City, it must also withhold the tax from employees residing in Philadelphia but working at the employer's out-of-city branch, even if the payroll records and place of payment are outside the City.

An employer whose legal residence is within the City of Philadelphia with his sole place of business outside of the City of Philadelphia wherein he employs residents of Philadelphia, is obliged to deduct the tax from such resident employees.

Section 405. Withholding, Where Non-Resident Employee is Entitled to Allocation.

Where a non-resident employee receives compensation for personal services rendered or performed partly within and partly outside the City of Philadelphia, the withholding agent shall deduct and withhold that portion of the compensation which is earned within the City in accordance with the following rules of apportionment:

- (a) If the non-resident is a travelling salesman, agent or other employee whose compensation on the basis of commissions depends directly on the volume of business transacted by him, the withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the City of Philadelphia bears to the volume of business transacted by him both within and outside of the City of Philadelphia.
- (b) The deducting and withholding of personal service compensation of all other employees (including officers of corporations) shall attach to the portion of the personal service compensation of such employee which the total number of working days employed within the City of Philadelphia bears to the total number of working days employed within and outside the City.
- (c) If it is impossible to apportion the earnings as provided above because of the peculiar nature of the services of the employee or of the unusual basis of compensation, apportionment shall be made in accordance with the facts and the tax deducted and withheld accordingly. With respect to each such employee (or group of employees similarly or identically circumstanced), the employer shall furnish the Department a detailed statement of facts.
- (d) Withholding is not required where the non-resident employee occasionally enters the City of Philadelphia merely for the purpose of reporting, receiving instructions, accounting, etc. incidental to the duties performed outside.

Section 406. Employers of Domestics.

Employers of persons performing domestic services shall not be obliged to withhold the tax. However, the employer may voluntarily withhold with the consent of the domestic. The compensation received is, in any event, taxable under the Ordinance. If the tax is not withheld, the domestic shall be required to file a return and pay the tax on the last day of April, July, October, and January of each year.

Section 407. Liability of Employers.

Any employer required to withhold the tax shall be personally liable for payment of tax in the event he fails, refuses, or neglects to withhold. Furthermore, the failure of any employer to deduct the tax and to make a return shall not relieve the employee from payment of such tax where payment cannot, for some reason, be obtained from such employer.

Section 408. Amount To Be Withheld Where Fractional Part of Cent Involved.

In deducting and withholding the tax at source and in the payment of any tax due under the Income Tax Ordinance, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

Article V Income Inequality Initiative – Earned Income Tax Credit⁹

Section 501. Income Inequality Initiative – Definitions.

- a) For purposes of this Article the following definitions shall apply:
- 1) Department. The City of Philadelphia Department of Revenue.
 - 2) EITC. The Federal Earned Income Tax Credit.
 - 3) EITC Notice. A form, prepared by the Department, that provides, in clearly understandable language and format, notice of the availability of and benefits from the EITC, and a description of the services available from the City to assist in applying for the EITC along with contact information.
 - 4) Non-payroll worker. An independent contractor, self-employed person, or sole proprietor.
 - 5) Same time. The time before the last date that a Federal form W-2 or Federal form 1099 can timely be provided to an employee and non-payroll worker respectively.

Section 502. Duty to Provide Notice of Earned Income Tax Credit Program.

- a) Beginning with calendar year 2015 and each year thereafter:
- 1) Each employer shall provide each employee residing within the City of Philadelphia from whom it withholds Wage Tax an EITC Notice at the same time that it provides the employee with his or her Federal W-2 or comparable form. This requirement applies to all Philadelphia employers and to any non-Philadelphia employer that is required to file a Business Income and Receipts Tax return as required by Philadelphia Code § 19-2600. An electronic version of the EITC Notice is acceptable.

⁹ Added by regulation submitted to the Department of Records on December 16, 2015 (effective January 15, 2016), as a result of City Council Bill No. 140448 (enacted on September 10, 2014).

- 2) A person or business that is required to provide a non-payroll worker residing in Philadelphia with a Federal form 1099 or comparable form shall provide each such worker with both the Federal form 1099 and an EITC Notice at the same time. An electronic version of the EITC Notice is acceptable.
- 3) The Department shall notify each employer subject to subsection (1) and each person or business subject to subsection (2) of the requirements of this Section, and shall provide a downloadable version of the EITC Notice on its website.
- 4) Penalty for failure to provide EITC Notice – Pursuant to Section 1-109(1) of the Philadelphia Code, any employer or business who fails to timely provide the EITC Notice as required by this Section will be subject to a fine of not more than \$300 for each employee or non-payroll worker who fails to receive such notice.

Article VI Miscellaneous Provisions¹⁰

Section 601. Refunds and Forgiveness of Poverty Income.

- a) Definitions — For purposes of this section, the following terms are defined as follows:
 - 1) Low Income Non-Resident. A non-resident who is entitled to refund and/or forgiveness of taxes pursuant to the 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.
 - 2) Low Income Resident. A resident who is entitled to refund and/or forgiveness of taxes pursuant to the 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.
 - 3) State Low-Income Tax Provisions. The Commonwealth of Pennsylvania's law providing for the refund and forgiveness of the Pennsylvania Personal Income Tax ("PIT") based on poverty income as 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, NC. 32) and as amended from time to time. (See 72 P.S. 7304).
- b) Wage Tax—Beginning with calendar year 2015 and for each calendar year thereafter, the rate of Wage Tax imposed on a low-income non-resident and a low-income resident shall be one-half of one percent (0.5%) less than the rate imposed on a non-resident and resident, respectively, during such periods.
- c) Net Profits Tax—Beginning with calendar year 2015 and for each calendar year thereafter, the rate of Net Profit Tax imposed on a low-income non-resident and a low-

¹⁰ Added by regulation submitted to the Department of Records on February 8, 2016 (effective March 9, 2016), as a result of City Council Bill No 14010 (enacted June 17, 2014).

income resident shall be one-half of one percent (0.5%) less than the rate imposed on a non-resident and resident, respectively, during such periods.

- d) Earnings Tax—Beginning with calendar year 2015 and for each calendar year thereafter, the rate of Earnings Tax imposed on a low-income non-resident and a low-income resident shall be one-half of one percent (0.5%) less than the rate imposed on a non-resident and resident, respectively, during such periods.
- e) Upon approval of a complete application on the appropriate form or return specified by the Department, a low-income non-resident and a low-income resident shall be entitled to a refund or credit of any Wage Tax, Earnings Tax, and/or Net Profit Tax paid or due in excess of the rates specified in subsections (b) and (c) of this Section. An application shall not be deemed complete until all information required by the Department has been provided by the applicant and verification of the Pennsylvania PIT Schedule SP data has been provided by the Commonwealth of Pennsylvania.
- f) Any person who is requesting a refund or credit as specified by this Section who has filed a Pennsylvania PIT Schedule SP (“Special Tax Forgiveness”) with the Pennsylvania Department of Revenue for the relevant calendar year must attach a signed copy of that schedule to the Department's form. The Department shall use any data from the Pennsylvania PIT Schedule SP verified by the Commonwealth of Pennsylvania to determine eligibility for the refund as provided by this Section.
- g) Appeal process for denied applications—Tax Review Board. If the Department has determined that an applicant is ineligible for the refund or credit, the low-income resident and/or low-income non-resident may appeal the Department's decision to the Tax Review Board. A petition for review must be filed with the Tax Review Board within sixty (60) days after the mailing date of the Department's denial notice or letter. Every petition for review must state the reasons upon which the petitioner relies and must include certification by the petitioner that the facts set forth therein are true and correct.
- h) No refund shall be granted if there are insufficient funds in the employer’s Wage Tax account.
- i) No refund shall be granted to an applicant that is not compliant with all City of Philadelphia taxes and water charges.
- j) Penalty for false applications/fraud—Pursuant to Section 1-109(1) of the Philadelphia Code, any applicant who knowingly makes a false or fraudulent application or tax return will be subject to a fine of not more than \$300. If a refund or credit is granted and the Department subsequently discovers that a false or fraudulent application or tax return was filed, the applicant shall be subject to all taxes rightfully due, as well as all interest, penalties, costs, and fines as allowed by applicable law.
- k) Employer Disclosures—For calendar year 2015 and for each calendar year thereafter, each employer that withholds the Wage Tax shall provide each employee from whom it withholds the tax a copy of the application (as prepared by the Department) at the same time it provides the employee with his or her Federal Form W-2.
 - 1) For purposes of this subsection, "same time" is defined as the time before the last date that a Federal Form W2 can timely be provided to an employee.
 - 2) Disclosures may be either in paper or electronic formats.

- 3) Penalty for failure to provide disclosure materials—Pursuant to Section 1-109(1) of the Philadelphia Code, any employer who fails to provide an employee with a copy of the application, as required this subsection, shall be subject to a fine of not more than \$300 for each employee who fails to receive the application.
- l) Employer Withholding—Notwithstanding the refund as provided by this Section, an employer must continue to withhold and remit the full Wage Tax rate on a low-income non-resident and a low-income resident as would be applicable to a non-resident and resident, respectively.

Article VII (Deleted)¹¹

Article VIII Civil Actions for Tax Violations¹²

Section 801. Definitions.

The following words and phrases when used in this Article shall have the meaning given to them unless the text clearly indicates otherwise:

- a) "Damages" means the amount of principal, interest, and penalty due and unpaid on a Philadelphia Wage Tax violation or a Philadelphia Net Profits Tax violation.
- b) "Philadelphia Wage Tax Violation" means the failure of any business, employer, or person liable therefore to timely and fully remit Philadelphia Wage Taxes in violation of these Regulations and Philadelphia Code Chapters 19-1500 and 19-2800.
- c) "Philadelphia Net Profits Tax Violation" means the failure of any business, employer, or person liable therefore to timely and fully pay the Philadelphia Net Profits Tax in violation of these Regulations and Philadelphia Code Chapters 19-1500 and 19-2800.
- d) "Knowing and Knowingly" means 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.
- e) "Proceeds" means the damages (including any multiplier) and fines, as provided in this Article, but not attorneys' fees and costs.

Section 802. 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.

¹¹ See separate section of Department of Revenue Regulations and ordinance entitled "General Section."

¹² Added by regulation submitted to the Department of Records on October 12, 2016 (effective November 14, 2016), as a result of City Council Bill No. 120775 (enacted May 16, 2013).

- .2) Knowingly commits a Philadelphia Net Profit Tax violation.
 - .3) Conspires with another to violate Section 19-1509(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.
- b) The court may assess less than three (3) times the amount of damages sustained because of the act of such business, employer, or person, but no less than two (2) times the amount of damages sustained because of the act of such business, employer, or person, if the court determines that the business, employer, or person fully cooperated with any investigation of such violation.

Section 803. Civil Actions.

- (a) Actions by the City Solicitor. If the City Solicitor determines that a business, employer, or person violated or is violating the provisions of this Article, he or she may institute a civil action against that business, employer, or person in a court of competent jurisdiction.
- (b) Actions by Private Persons. Any person may submit a proposed civil complaint, alleging violations of this Article, to the City Solicitor or to such other officer of the City whom the Mayor designates to investigate such complaints.
- (c) Investigations of Proposed Private Actions. The City Solicitor, or an officer designated by the Mayor under this Article to investigate complaints, is authorized to investigate the allegations in the proposed civil complaint and may request any additional information from the person who submitted the proposed civil complaint in order to investigate the allegations set forth therein. After the investigation has been completed, the City Solicitor may:
- .1) Bring a civil action, based upon the facts alleged in the complaint, against one or more of the defendants named therein; or
 - .2) Enter into an agreement with the person who submitted the proposed complaint, or the person's attorney, to file a civil action for the person and the City, in the name of the City, based upon the facts alleged in the complaint, against one or more of the defendants named therein. An agreement pursuant to this subsection (.2) shall not be subject to the provisions of Chapter 17-1400 (relating to Non-Competitively Bid Contracts).
 - .3) Decline to commence a civil action under this Article and decline to designate the person who submitted the proposed complaint to commence a civil action under this Article; or
 - .4) Proceed in any other manner the City Solicitor deems appropriate.
- (d) Certain Actions Barred. Subsections (803)(c)(.1) (relating to claims brought in the name of the City) and (803)(i) (relating to awards from proceeds) shall not apply to claims, records, or statements made pursuant to any proposed civil complaint:
- .1) Based upon allegations or transactions which are, or have been, the subject of any criminal, civil, or administrative action or proceeding;

- .2) Derived from public disclosure of allegations or transactions in a criminal, civil or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation or from allegations or transactions disclosed by the news media and likely to be seen by the City officials responsible for addressing such claims, unless the private party who submitted the civil complaint is the primary source of the information;
 - .3) Based upon information discovered by an employee of the City, state, or federal government in the course of his or her employment; or
 - .4) Based upon information discovered by a contractor engaged by the City to collect taxes, except as such Contractor may be expressly authorized by the City to proceed under this Article; or
 - .5) Against the Federal government, the Commonwealth of Pennsylvania, the City or any officer or employee of those governmental entities acting within the scope of his or her employment; or
 - .6) Solely concerning any filing or payment that is not yet at least one year overdue.
- (e) Nothing in this Article shall be construed as authorizing anyone, other than the City Solicitor or a person or attorney designated by the City Solicitor pursuant to this Section, to commence a civil action to represent the City under this Article.
- (f) **Related Actions.** Regardless of whether the City Solicitor has commenced a civil action or another party has been designated to do so, the City Solicitor may elect to pursue any alternative action with respect to the presentation of the claims alleged in the civil complaint.
- (g) **Rights of the Parties.**
- .1) If the City Solicitor elects to commence a civil action, then the City Solicitor shall have sole authority for prosecuting and settling the action and may move to dismiss or may settle the action, notwithstanding the objections of any person who submitted the proposed civil complaint upon which such civil action is based.
 - .2) If the City Solicitor authorizes a private person or his attorney pursuant to subsection (803)(c)(.2) of this Section, then the private person or his attorney may conduct the action in the name of the City, upon such terms as the City Solicitor may impose, including, but not limited to, any requirement that the Department of Revenue first issue an assessment for the tax liability sought to be collected under this Article, and that the private person cooperate in supplying any information material to such assessment. Such person may seek to collect the applicable City Taxes imposed under Section 19-1502 of the Philadelphia Code, as well as treble damages and attorneys' fees and costs. However, the City Solicitor may move to dismiss the action, notwithstanding the objection of such person, provided such person has an opportunity to be heard. The City Solicitor may settle the action with the defendant notwithstanding the objections of the person initiating the action, if after providing such person with an opportunity to be heard, the court approves the settlement.
 - .3) The court may issue an order restricting the participation of a person designated to commence a civil action under this Article, notwithstanding the objections of such person, if the court determines, after providing such person an opportunity

to be heard, that such person's unrestricted participation during the course of the litigation would interfere with or unduly delay the prosecution of the case or would be repetitious or irrelevant, or upon a showing by the defendant or the City that such person's unrestricted participation, during the course of the litigation, would be for purposes of harassment or would cause the defendant undue burden.

- .4) The court may issue a stay of any civil action brought under this Article if the action will interfere with any investigation or prosecution of a criminal matter arising out of the same facts or for any other reason the court deems appropriate.
 - .5) The City Solicitor may, in his or her discretion, file a complaint under seal and maintain its confidentiality, and may require any private person filing a complaint to file such complaint under seal and maintain its confidentiality, for such period of time deemed necessary by the Solicitor and permitted by the court.
- (h) Under no circumstances shall the City be bound by an act of a person designated to commence a civil action under this Article.
- (i) Award from Proceeds.
- .1) If the City Solicitor either elects to commence a civil action based on a private person's proposed civil complaint, or settles the case substantially based on a private person's proposed civil complaint, then the person or persons who submitted the complaint collectively shall be entitled to receive fifteen percent (15%) of the proceeds recovered by the City in the civil action or in settlement.
 - .2) If the City Solicitor elects not to proceed with a civil action and enters into an agreement with a private person or his attorney pursuant to subsection (803)(c)(.2) of this Section, then the private person or persons collectively shall be entitled to receive twenty-five percent (25%) of the proceeds recovered by the City in the civil action or in settlement of such action.
 - .3) In determining the share of the proceeds to which a person submitting a proposed civil complaint is entitled, the court may consider the following factors:
 - A. The extent to which such person contributed to the prosecution of the action, either in time, effort, or finances;
 - B. Any unreasonable delay by such person in submitting the proposed civil complaint;
 - C. Whether the person has been charged with criminal conduct arising from his or her role in the alleged Philadelphia Wage Tax violation and/or Philadelphia Net Profits Tax violation, in which case such person shall not receive any share of the proceeds of the action if convicted on the charges; and
 - D. Fundamental fairness and any other factors the court deems appropriate.
 - .4) In no case shall any private person be entitled to any share of the proceeds recovered by the City pursuant to a judgment or settlement if (A) the evidence and allegations presented by such person in connection with the civil action prove unfounded, substantially duplicate information already possessed by the City (unless the City authorizes such private person to proceed to litigate an action based on such information), or do not materially contribute to obtaining the judgment or settlement; or (B) such private person does not fully cooperate with the City in pursuing a claim under

this Article or in providing any information material to imposition of an assessment for the tax liability sought to be collected under this Article.

(j) Attorneys' Fees and Costs.

- .1) In the event the City or a private person bringing an action in the name of the City prevails in a civil action commenced pursuant to this Article, the court shall award reasonable attorneys' fees and court costs.
- .2) The City shall not be liable for any expenses, attorneys' fees, or costs that a person or a person's attorney incurs in connection with a civil action pursuant to this Article.

Section 804. Retaliatory Action Prohibited.

- (a) No employer shall discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and condition of employment because of lawful acts done by the employee in furtherance of an action under this Article, including investigation for, initiation of, testimony for, or other assistance in an action filed or to be filed under this Article.
- (b) Any employee who is found to have suffered retaliatory action as defined in this subsection (804) shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, up to two (2) times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

Section 805. Court Rules.

Any rules adopted by the court that differ from the procedures set forth in this Article shall supersede the procedures set forth herein.

Section 806. Applicability of this Article.

Nothing in this Article limits the rights of an injured person to recover damages under any other applicable law or legal theory.

Article IX

Section 901. Applicability.

The Income Tax Ordinance approved December 13, 1939 and its amendments shall not apply to any person or property as to whom or which it is beyond the legal power of Council to impose the tax or duties therein provided for. Thus, the net profits of corporations, domestic or foreign, may not be taxed by the City.

Article X

Section 1001. Construction.

With respect to construction, the Income Tax Ordinance approved December 13, 1939 contains the following:

"If any sentence, clause or section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses or sections or parts of this Ordinance. It is hereby declared as the intent of the Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein."

Article XI

Payment of Tax by Federal Employees Through Labor Unions, and Employees' Associations

Section 1101. Definitions.

- (a) "Labor Union" means any financially responsible group of Federal employees, incorporated or unincorporated, which is authorized to bargain collectively on behalf of its membership with the United States Government and shall include those organizations which are composed of supervisory employees as well as non-supervisory employees.
- (b) "Employees' Association" means any financially responsible group of Federal employees permanently organized for the purpose of aiding and assisting its members to obtain any kind of benefits for and on their behalf which will improve their conditions financially or otherwise; and shall include, but not be limited to, credit unions, organizations created for the purpose of improving the education and abilities of employees, veteran posts, beneficial associations, or any other bona fide group or society which requires as a prerequisite for membership that the person be an employee of the Government of the United States.
- (c) "Financially Responsible" means that the Labor Union or Employees' Association is financially solvent, i.e., that its assets exceed its liabilities; and said Union or Association is in a position to pay its liabilities as they become due; and further, that such Union or Association does not have, in the opinion of the Commissioner, a record for such failure to meet its financial obligations with reasonable promptness, thereby making it unfeasible or impracticable to enter into an agreement with such Union or Association under this Ordinance.
- (d) "Member of Labor Union or Employees' Association" means a member of a Labor Union or Employees' Association who is in fact a duly accredited member of such Union or Association; or whom such union or Association has, in writing, consented to represent with respect to the payment of the current and delinquent Wage Taxes, whether or not he is actually a member.

Section 1102. Waiver of Interest and Penalty.

Waiver of Interest and Penalty on Delinquent Wage Taxes — No Refund. Every agreement entered into by the Revenue Commissioner with a Labor Union or Employees' Association shall contain a provision for the waiver of interest and penalty due on all delinquent Wage Taxes owed by members of said Union or Association who come under this agreement. However, any interest and penalty paid to the City by any such member prior to the entry of said agreement shall not be refunded to said member nor shall said member be entitled to receive a credit for the payment of such interest and penalty against any taxes due or which may become due and payable after the date of said agreement.

Section 1103. Returns.

- (a) Filing of Current Wage Tax Returns. Every Labor Union or Employees' Association who enters into an agreement under this Ordinance shall file monthly or quarterly returns on a form provided by the Revenue Commissioner and remit, with the return, current Wage Taxes received from its members. If the return is made on a monthly basis, such monthly return with the tax shall be due on the twenty-fifth (25th) day of the month following the month during which the tax was collected. If the return is made on a quarterly basis, such quarterly return with the tax shall be due on the last day of the month following the end of the calendar quarter during which the tax was collected. Said Labor Union or Employees' Association shall also file an annual information return, as provided in Section 303(c)(3) of the Regulations promulgated under the Wage and Income Tax Ordinance.
- (b) Filing of Delinquent Wage Tax Returns. The Revenue Commissioner, or his duly designated agent, will arrange with the Labor Union or Employees' Association for a schedule of payments to be made of the delinquent Wage Taxes owed by its members to the City. Such schedule must be made with the consent of the member and is to be based upon the member's earnings or salary received from the Federal Government. Such schedule shall consist of equal periodic payments at each pay period of the member.

Section 1104. Failure to Pay.

Default in Making Payments in Accordance with Schedule. In the event a member of a Labor Union or Employees' Association covered by this agreement shall be in default in making his payments in accordance with the schedule as arranged between the Revenue Commissioner and such Union or Association with the consent of the member, then the Revenue Commissioner may at his discretion reinstate the statutory interest and penalty of the defaulting member as set forth under the Wage and Income Tax Ordinance and the Regulations promulgated thereunder.

Section 1105. Right to Examine Records of Labor Union or Employees' Association.

Inspection of Records. Every agreement entered into by the Revenue Commissioner with a Labor Union or Employees' Association shall contain a provision giving the Revenue Commissioner, or his duly designated agent, the right to inspect during reasonable business hours the financial records of such Union or Association with respect to the current and delinquent Wage Taxes received from its members and remitted to the City.

Section 1106. Termination of Employment.

Right of Member when His Employment with the Federal Government Terminates. In the event a member of a Labor Union or Employees' Association, who has come under this agreement, terminates his employment with the Federal Government, said person may continue to make payments of his delinquent Wage Taxes to the City in accordance with his schedule as previously arranged and no interest or penalty on such delinquent taxes will be assessed against him.

Section 1107. (Deleted)

Section 1108. The Agreement.

- (a) Authorization to Enter Into Agreement with Labor Unions or Employees' Associations. The Revenue Commissioner is authorized under this Ordinance to enter into an agreement on behalf of the City of Philadelphia with any financially responsible Labor Union or Employees' Association representing employees of the United States Government with respect to the payment of their current and delinquent Wage Taxes owed to the City.
- (b) Standard Form of Agreement. A standard form of agreement, pursuant to the Ordinance, has been prescribed by the Revenue Commissioner with the approval of the City Solicitor. The Revenue Commissioner, if he deems it to be in the best interest of the City, may, with the approval of the City Solicitor, make appropriate changes, additions, and deletions to this standard form of agreement.