

Article VIII of the Income Tax Regulations (previously deleted) is being amended to add new Article VIII entitled *Civil Actions for Tax Violations*. Sections 801, 802, 803, 804, 805 and 806 are being added as a result of City Council Bill No. 120775 (enacted on May 16, 2013) that explains the civil actions against Wage Tax/or Net Profit tax violators.

CITY OF PHILADELPHIA
INCOME TAX REGULATIONS

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ARTICLE VIII

[(Deleted*)]

CIVIL ACTIONS FOR TAX VIOLATIONS

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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.
 - (.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

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- (.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 (15) percent 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 (25) percent 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.
- (i) 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.

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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.

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Explanation:

[] Brackets and **bold** indicate matter deleted.

___ Underline and **bold** indicate new matter added.



Date: 10-3-16

Frank Breslin CPA, Revenue Commissioner