Compiled as of February 15, 2016

CITY OF PHILADELPHIA
BUSINESS INCOME AND RECEIPTS TAX REGULATIONS[1]

TABLE OF CONTENTS

ARTICLE I

ARTICLE II RETURNS

ARTICLE III TAX ON RECEIPTS

[1] Former Business Privilege Tax ("BPT") was renamed the Business Income and Receipts Tax ("BIRT"), effective May 1, 2012, by Bill No. 110758, signed by the Mayor on December 21, 2011. Except where it already had been updated, the name has been changed throughout by the compiler. The original BPT Regulations were resubmitted to the Department of Records after a hearing on April 9, 1985 (effective April 19, 1985).

ARTICLE IV TAX ON NET INCOME

ARTICLE V CREDITS

ARTICLE I

SECTION 101. DEFINITIONS.

The following words and phrases, when used in these Regulations, have the meanings ascribed to them in this section, except where the contents clearly indicate another or a different meaning.

A. "Affiliated group." One or more chains of corporations connected through stock ownership with a common parent corporation if:

(1) Stock possessing at least eighty (80%) percent of the voting power of all classes of stock and at least eighty (80%) percent of each class of the nonvoting stock of each corporation, except the common parent corporation, is owned directly by one or more of the other corporations.

(2) The common parent corporation owns directly stock possessing at least eighty (80%) percent of the voting power of all classes of stock and at least eighty (80%) percent of each class of the nonvoting stock of at least one of the other corporations.

As used in this definition, "stock" does not include non-voting stock which is limited and preferred as to dividends.

B. "Allocation." The assignment of nonbusiness income (or losses) within or without the City of Philadelphia.

C. "Apportionment." The process of assigning receipts or business income (or losses) within and without the City of Philadelphia by the use of a formula containing one or more apportionment factors.

D. "Business." Carrying on or exercising for gain or profit within Philadelphia any trade, business, including financial business as hereinafter defined, profession, vocation or commercial activity, including the partial or complete liquidation or sale of business assets, or making sales to persons within the City of Philadelphia. "Business" shall not include the following:[2]

1. Those activities conducted by a nonprofit corporation or association organized for religious, charitable or educational purposes, if such activities are directly related to its religious, charitable or educational purposes.

2. The business of any political subdivision, or of any authority created and organized under and pursuant to law of this Commonwealth.

3. The specific business conducted by any public utility operating under the laws, rules and regulations administered by the Pennsylvania Public Utility Commission or conducted by a

[2] Amended by regulation submitted to the Department of Records January 6, 2004 (effective February 5, 2004).

business subject to the jurisdiction of the Interstate Commerce Commission of furnishing or supplying service or services at the rates specified in its tariffs.

4. The business of any insurance company, association or exchange, or any fraternal, benefit or beneficial society of any other state under the laws of which insurance companies, associations or exchanges or fraternal, benefit or beneficial societies of Pennsylvania doing business in such other state are subjected, by reason of the tax imposed by the ordinance, to additional or further taxes, fines, penalties or license fees by such other state.

5. Any employment for a wage or salary.

6. Credit Unions chartered by the U.S. Government or the Commonwealth of Pennsylvania.[3]

7. The business of loading or discharging cargo to or from vessels when conducted on piers, wharves or marine terminal facilities in the Port of Philadelphia and related business activities conducted on such premises such as furnishing dockage, wharfage, truck and/or railroad car loading and unloading, and storage of cargo which is to be loaded onto or has been discharged from vessels at a pier, wharf or marine terminal facility in the Port of Philadelphia.[4]

8. Doing business shall not include rental income generated from real property which is the principal residence of the owner and consists of three or less residential rental units.[5]

9. For tax year 2012 and thereafter, the activities of (i) an investment company (no matter how organized) as defined in subsection 3(a) of the Investment Company Act of 1940, without regard to the exceptions set forth at subsections 3(c)(1), 3(c)(3) with respect to common trusts or similar funds, 3(c)(5)(C), 3(c)(7), 3(c)(9), 3(c)(10), 3(c)(11) or 3(c)(14) of said Act; (ii) an entity or natural person directly or indirectly owning a general partnership interest or managing member interest in a limited liability company in an entity described in subsection (i) that is not publicly traded, to the extent that the activities consist of the exercise of management responsibilities of a general partner or of a managing member in a limited liability company and result in income, gross, net or otherwise, that is measured by or otherwise based on the financial performance of the entity; and (iii) an entity that managers the investments of an investment company described in subsection (i), which investment company has made an election under section 53(a) of the Investment Company Act of 1940 to qualify as a business development company, to the extent that the activities of the managing entity result in the receipt by such entity from the investment company of income, gross, net or otherwise, that is measured by or otherwise based on the financial performance of the investment company, including such income conditioned upon such financial performance. Such performance-based income shall not be included in the gross receipts or net income taxable under these regulations of a person or entity with an ownership interest in an entity described in subsection (iii). Except as otherwise provided by law, the

[3] Amended by regulation submitted to the Department of Records January 21, 1986 (effective February 20, 1986).
[4] Bill No. 877 introduced 4/3/86 amending Section 19-2601 of the Philadelphia Code.
[5] Amended by regulation submitted to the Department of Records April 15, 2014 (effective May 15, 2014).

activities of any such entity or natural person other than the activities described above shall not be excluded from the definition of "business."[6]

10. Any hobby or other not-for-profit activity, as set forth at 26 C.F.R. § 1.183-2 and under Section 19-2601 of The Philadelphia Code. The determination of whether an activity is engaged in for profit is made by reference to objective factors, taking into account all of the facts and circumstances of each case. The relevant, non-exclusive factors set forth in 26 C.F.R. § 1.183-2 and in Section 105 of these regulations are: (i) the manner in which the person carries on the activity; (ii) the expertise of the person carrying on the activity or such person's advisors; (iii) the time and effort expended by the person in carrying on the activity; (iv) the expectation that assets used in the activity may appreciate in value; (v) the success of the person in carrying on other similar or dissimilar activities; (vi) the person's history of income or losses with respect to the activity; (vii) the amount of occasional profits, if any, which are earned from the activity; (viii) the financial status of the person carrying on the activity; and (ix) elements of personal pleasure or recreation in carrying on the activity.[7]

E. "Business Income." Income (or loss) arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income (or loss) from tangible and intangible property if the acquisition, management or disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. In essence, all income which arises from the conduct of trade or business operations of a taxpayer is business income. The income of a taxpayer is business income unless clearly classifiable as nonbusiness income. A Taxpayer's Trade or Business is not limited to corporate charter purpose or principal business activity. A taxpayer may be in more than one trade or business depending upon but not limited to some or all of the following:

(i) The nature of the taxpayer's activities.

(ii) The substantiality of the income derived from activities and transactions and the percentage that income is of the taxpayer's total income for a given tax period.

(iii) The frequency, numbers, or continuity of the activities and transactions involved.

(iv) The length of time the property producing income was owned by the taxpayer.

(v) The taxpayer's purpose in acquiring and holding the property producing income.

F. "Collector." The Revenue Commissioner of the City of Philadelphia.

G. "Corporation." 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.

[6] Added by regulation submitted to the Department of Records on November 13, 2008 (effective December 15, 2008), replaced by regulation submitted to the Department of Records on June 11, 2013 (effective July 11, 2013).
[7] Added by regulation submitted to the Department of Records on December 12, 2011 (effective January 11, 2012).

H. "Cost of Goods." In the case of a retailer or wholesaler, the cost of goods, wares, commodities, and merchandise purchased by the retailer or wholesaler and resold by him, such cost to include all freight-in charges.

I. "Cost of Labor." In the case of a retailer or wholesaler, the cost of the labor of his employees used in receiving, storing, shipping, and delivering the goods, wares, commodities or merchandise purchased for resale and the cost of the salaries or commissions paid to his employees for making the actual sales of the goods, commodities or merchandise.

J. "Dividends." Any distribution made by a corporation to its shareholders in respect of its stock, whether ordinary, extraordinary or in liquidation.

K. "Employee." Any officer of a corporation and any individual who, under the usual common-law rules applicable in determining the employer-employee relationship has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for the purposes of the payroll taxes imposed by the Federal Insurance Contributions Act; except that, since certain individuals are included within the term "employees" in the Federal Insurance Contributions Act who would not be employees under the usual common-law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this definition.

L. "Factors and Commission Merchants." A factor, or commission merchant, is an agent employed to sell goods or merchandise consigned or delivered to him, by or for his principal, for a consideration commonly called factorage or commission. Factors, or commission merchants, as distinguished from selling agents, or merchandise brokers, are deemed to be engaged in a financial business, and shall include in the tax base the gross income derived from operations carried on in such capacity. A factor, or commission merchant, differs from a selling agent, or merchandise broker, in the following respects:

1. A factor, or commission merchant, may sell for his principal in his own name as well as in the name of his principal. On the contrary, a selling agent, or merchandise broker, acting as such, may sell only in the name of his principal.

2. A factor, or commission merchant, is entrusted with possession, management and control of the goods, and has a special property in, and lien on, the goods. The selling agent, or merchandise broker, on the contrary, usually has no such possession, management or control of the goods, nor any such special property or lien.

M. “Financial Business." The services and transactions of private banks and bankers; building and loan associations; savings and loan associations; credit unions; savings banks; banks; bank and trust companies; trust companies; investment companies registered as such with the Federal Securities and Exchange Commission; holding companies; persons registered under the act of December 5, 1972 (P.L. 1280, No. 284) known as the Pennsylvania Securities Act of 1972, including traders, dealers and brokers in money, credits, commercial paper, bonds, notes, securities and stocks, and monetary metals; factors and commission merchants; consumer discount companies; sales finance companies; purchase money lenders.

N. "Foreign Commerce." In general, foreign commerce includes trade between the United States and foreign countries. Trade with territories and possessions of the United States is also considered to be foreign commerce.

O. "Manufacture." The application of skill, science and labor by which raw materials are changed into a new, different and useful article as a result of having undergone a substantial transformation in form, qualities and adaptability in use. The term is limited to that of its common meaning.

P. "Manufacturer." A person whose business consists in part or in its entirety of the sale of goods, commodities, wares, or merchandise of its own manufacture, growth or production.

Q. "Monetary Metal Dealers." Dealers in monetary metals are persons engaged in the business of buying and selling gold and silver in bullion or fine state, as distinguished from buying and selling gold and silver which has been processed or manufactured into products or articles for commercial or industrial use.

R. "Net Income." See Sections 403 and 404 of these provisions.

S. "Net Operating Loss." See Section 411 of these provisions.

T. "Nonbusiness Income." All income (or loss) other than business income.

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

V. "Port of Philadelphia." Piers, wharves and marine terminal facilities entering into or abutting either the Delaware or Schuylkill Rivers which are within the confines of the City of Philadelphia.

W. "Production." The manufacture of personal property.

X. "Receipts." See Section 301 of these provisions.

Y. "Regulated Industry." A person subject to a tax pursuant to Articles VII (Bank Shares Tax), VIII (Title Insurance and Trust Companies Shares Tax), IX (Insurance Premiums Tax) or XV (Mutual Thrift Institutions Tax) of the Tax Reform Code of 1971 or any public utility operating under the laws, rules and regulations administered by the Pennsylvania Public Utility Commission, all or a portion of the activities of which is to furnish or supply service or services at the rates specified in its tariffs, but not including contract carriers.

Z. "Residence of an Estate or Trust." The residence of an estate or trust is deemed to be in the county of the court which has jurisdiction of the estate or trust, if no court has assumed jurisdiction the place of residence of the testator or settlor.

AA. "Retail." The sale of goods, commodities, wares or merchandise other than at wholesale and other than goods, commodities, wares or merchandise of the seller's own manufacture, growth or production.

BB. "Retailer." A person whose business consists in part or in its entirety of the sale of goods, commodities, wares, or merchandise at retail.

CC. "Sale." Transfer of title to goods, wares, commodities or merchandise, regardless of where accomplished, the delivery of which is made within the City of Philadelphia. If the other party to the transaction is within the City of Philadelphia, delivery to a location not maintained by the other party to the transaction outside the City of Philadelphia shall be deemed to be delivery within the City of Philadelphia. "Sale" shall not include any intra-company transfers.

DD. "Software Company." A person whose business is categorized as computer systems design and related services (NAICS 5415, 54151, 541512), computer software publishing (NAICS 51121), internet publishing and broadcasting (NAICS 51611), internet web service provider (NAICS 51811), data processing, hosting and related services (NAICS 518210), and financial transaction processing and clearing (NAICS 52232). [8]

EE. "Taxpayer." A person required by ordinance or regulations to file a Business Income and Receipts Tax Return.

FF. "Tax Measurement Year." The fiscal or calendar year by which the person engaging in business keeps its books and records for federal tax purposes.[9]

GG. "Tax Year." A 12-month period from January 1 to December 31, inclusive.

HH. "Temporary, Seasonal, or Itinerant Business." Any business that is conducted for a total of less than 30 consecutive or intermittent days in any one tax year.

II. "Wholesale." The sale of goods, commodities, wares or merchandise to a dealer or vendor of such goods, commodities, wares or merchandise.

JJ. "Wholesaler." A person whose business consists in part or in its entirety of the sale of goods, commodities, wares or merchandise at wholesale.

SECTION 102. TO WHOM THE ORDINANCE APPLIES.

Both the license and tax provisions of the Ordinance apply to:

(1) Wholesale dealers or vendors.

---

[8] Added by regulation submitted to the Department of Records on November 5, 2013 (effective December 5, 2013), originally added as EE but changed to DD by compiler to maintain alphabetization; remaining definitions given new letters by that regulation. Regulation submitted read "persons;" changed to person by the compiler.

[9] Added by regulation submitted to the Department of Records on January 6, 2004 (effective February 5, 2004); remaining definitions given new letters by that regulation.

(2) Retail dealers or vendors.

(3) Manufacturers.

(4) Persons registered under the Pennsylvania Securities Act of 1972.

(5) Regulated industries, which include banks, title insurance companies, trust companies, insurance companies, mutual thrift institutions, and public utilities.

(6) All other persons doing business in Philadelphia.

SECTION 103. WHAT CONSTITUTES DOING BUSINESS (HAVING NEXUS) IN PHILADELPHIA.[10]

A. GENERAL

The presence of taxable activity in the City within the meaning of the Business Income and Receipts Tax ("BIRT") Ordinance is essentially a factual determination to be made on a case by case basis. In general, taxable activity includes any trade, business, profession, vocation or any manufacturing, commercial, service, financial or utility business or activity that originates from, is carried on through, directed from or otherwise attributable to Philadelphia.

Any person who engages in a taxable activity in Philadelphia or attributable to Philadelphia is subject to this tax whether or not such person is a resident and whether or not such person has a permanent place of business in Philadelphia. Any person is subject to this tax if such person carries on a taxable activity in Philadelphia or attributable to Philadelphia, whether or not such person is licensed to do business in Philadelphia. Whether such taxpayer is subject to the full BIRT tax or only to the Gross Receipts portion depends on the level and the nature of the taxpayer's activity within Philadelphia.

A taxpayer is subject to the Gross Receipts portion of the BIRT when it has sufficient contact with the City to be taxed without violating the United States Constitution. A taxpayer is subject to the Net Income portion of the BIRT when it has sufficient contact with the City to be taxed without violating the United States Constitution and Public Law 86-272. Only the sale of tangible personal property is afforded immunity under Public Law 86-272. The provision of services for a fee, the sale of other than tangible personal property, the leasing, renting, licensing or other disposition of tangible, intangible or any other type of property is not immune from taxation by reason of Public Law 86-272.

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

[10] Former Section 103 deleted and this Section 103 added by regulation submitted to the Department of Records on June 8, 2000 (effective July 8, 2000).

1. Making sales in the City or performing activities in the City which affect sales; and/or

2. Providing services or performing activities in the City which affect the rendition of services in the City; and/or

3. Performing acts regularly and continuously in the City for the purpose of making a profit.

B. NEXUS STANDARDS

Effective July 1, 1998, for the purpose of this tax, no more than an “active presence” is required to constitute “doing business” in Philadelphia. Following is a list of business activities that will subject an out-of-Philadelphia business to the Philadelphia Business Income and Receipts Tax when it engages in any one of such activities. The description of activities in these examples shall not be construed as limiting the meaning of the term “doing business” to those specifically enumerated. Also, the determination of whether or not certain of such activities exceeds “solicitation” depends on the nature of the activity and the facts of each case and has to be made on a case by case basis.

Examples:

1. An out-of-Philadelphia business will be deemed to have created “nexus” if it regularly and systematically conducts business activity in Philadelphia through employees, agents, representatives, independent contractors, brokers or others acting on its behalf, whether or not these individuals or organizations reside in Philadelphia;

a. Regular and systematic business activity exists if 10 or more days of business activity occurs in Philadelphia on an annual (“annual” meaning a 12 month taxable year) basis;

b. Regular and systematic business activity may exist, depending on the facts and circumstances of the taxpayer, if less than 10 days of business activity occur in Philadelphia on an annual (“annual” meaning a 12 month taxable year) basis;

(1) When examining the facts and circumstances of the business activity in Philadelphia, conducting any of the following activities in Philadelphia for between 3 and 10 days on an annual basis will be reputably presumed to constitute regular and systematic business activity:

(a) Soliciting sales;

(b) Making repairs or providing maintenance or service to property sold or to be sold;

(c) Collecting current or delinquent accounts related to sales of tangible personal property through assignment or otherwise;

(d) Installing or supervising installation at or after shipment or delivery;

(e) Conducting training for employees, agents, representatives, independent contractors, brokers or others acting on its behalf, or for customers or potential customers related to sales activities;

(f) Providing customers any kind of technical assistance or service including, but not limited to, engineering assistance, design service, quality control, product inspections, or similar services related to sales activities;

(g) Investigating, handling, or otherwise assisting in resolving customer's complaints related to sales;

(h) Providing consulting services related to sales;

(i) Having goods delivered to Philadelphia in vehicles it owns, rents, leases, uses, or maintains or delivered by a related party acting as its representative;

(2) Conducting any of the activities listed in subparagraph 1.b.(1) in Philadelphia for 10 days or more will constitute regular and systematic business activity.

c. The activities of lawyers, accountants, investment bankers, and other similar <u>independent</u> professionals who perform services in Philadelphia for an out-of-Philadelphia business in their <u>independent professional capacity</u> shall not subject, on its own, the out-of-Philadelphia business to the Philadelphia Business Income and Receipts Tax. These activities, however, would subject the independent professionals to the Business Income and Receipts Tax.

2. If <u>none</u> of the business activities in Philadelphia fall under subparagraph 1.b.(1) and the <u>only</u> contact with Philadelphia is conducting any of the activities listed below for less than 10 days, such contacts will be presumed <u>not</u> to create <u>nexus</u>. Conducting any of the activities listed below for 10 or more days will not necessarily create nexus. Whether or not nexus has been created will depend on the facts and circumstances of the business activity in Philadelphia.

a. Meeting with suppliers of goods or services in Philadelphia;

b. Meeting in Philadelphia with government representatives in their official capacity;

c. Attending occasional meetings in Philadelphia (e.g., Board meetings, general internal corporate policy meetings and training, retreats, seminars and conferences sponsored by others, etc.);

d. Holding recruiting or hiring events in Philadelphia; or

e. Attending and/or participating at trade show in Philadelphia at which no orders for goods are taken and no sales are made.

C. ACTIVE PRESENCE AND SOLICITATION PLUS STANDARDS IN CONNECTION WITH THE SALE OF TANGIBLE PERSONAL PROPERTY

In connection with the sale of tangible personal property, the test for nexus (sufficient contact to be subject to the Business Income and Receipts Tax) will be administered in two steps: Active Presence will subject a taxpayer to at least the Gross Receipts portion of the tax; activity rising to the level of "solicitation plus" will result in the imposition of both the Gross Receipts and Net Income portions of the tax.

1. Active Presence

"Active presence" means purposeful, regular and continuous efforts in Philadelphia in the pursuit or profit or gain and the performance in Philadelphia of activities essential to those pursuits. Limited activities of a taxpayer's sales force in Philadelphia, such as anticipating the needs and requirements of the customer and following up regarding any difficulties the customer may have after delivery, may be sufficient nexus to sustain the levy of this tax. This is true as long as sales force physically performs some activities in Philadelphia, even if the taxpayer's sales force does not take any sales orders from its customers in the City and all orders are made, paid, and fulfilled outside the City. Active presence is deemed to exist to the extent that the activities of the sales force in the City make possible the realization and continuance of valuable contractual relations between the taxpayer and its customers in the City. The maintenance of an office or property in the City is not necessary to establish "active presence". Any person who is otherwise subject to the Business Income and Receipts Tax under the "active presence" test but whose business activities in Philadelphia are limited to mere "solicitation" shall not be subject to the net income portion of the tax.

The following are examples of activities that meet the "Active Presence" standard:

a. Having agents, representatives, independent contractors, brokers or others, acting on behalf of an out-of-Philadelphia business own, rent, lease, use or maintain an office or other establishment in Philadelphia, when such establishment is used in the representation of the out-of-Philadelphia business in Philadelphia and is significantly associated with its ability to establish and maintain a market in Philadelphia;

b. Having employees own, rent, lease, use, or maintain an office or in-home office or other establishment in Philadelphia, even if the business does not pay (directly or indirectly) for the use of the property;

c. Having independent contractors or representatives with in-home offices in Philadelphia, where the business reimburses the independent contractors or representatives only for telephone or travel expenses.

2. Solicitation Plus

When the business activities of a taxpayer in Philadelphia exceed solicitation, the taxpayer is subject to both the gross receipts and the net income portion of the tax. For example, obtaining sales through salespersons who solicit orders on the business's behalf and/or displaying the business's merchandise in leased space on a prolonged or recurring basis is deemed to exceed "solicitation" and would subject the business to both the gross receipts and the net income portion of the tax.

For the purpose of this tax, solicitation means (1) speech or conduct that explicitly or implicitly invites an order; and (2) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order. Ancillary activities are those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders; activities that seek to promote sales are not ancillary.

The following activities meet the "Solicitation Plus" standard:

a. Owning, renting, leasing, maintaining, or having the right to use and using tangible personal or real property physically located in Philadelphia;

b. Having employees own, rent, lease, use, or maintain an office or in-home office or other establishment in Philadelphia, if the use of such property is paid for directly or indirectly by the business;

c. Having independent contractors or representatives with in-home offices in Philadelphia where the business reimburses the independent contractors or representatives for expenses other than just telephone or travel.

D. EXAMPLES OF ACTIVITIES, OTHER THAN THE SALE OF TANGIBLE PERSONAL PROPERTY, WHICH CONSTITUTE DOING BUSINESS IN PHILADELPHIA AND SUBJECT THE TAXPAYER TO THE FULL BUSINESS INCOME AND RECEIPTS TAX

1. Contracting: Performance of a contract in Philadelphia regardless of whether the person brings its own employees into the City, hires local labor, or subcontracts with another.

2. Providing services:

a. Providing any service in Philadelphia, regardless of whether the employees, independent contractors, agents, or other representatives performing the services reside in Philadelphia;

b. Maintaining or repairing property located in Philadelphia whether under warranty or by separate contract; or

c. Installing, erecting, or modifying property in Philadelphia;

3. Inventory in the City: Having an inventory in Philadelphia or having spot inventory for the convenient delivery to customers, even if the bulk or orders are filled from outside of the City;

4. Dealings in real estate: Holding, acquiring, leasing, or disposing of any property located in Philadelphia;

5. Shows and performances: The staging of shows, theatrical performances, or other events in Philadelphia;

6. Transportation:

a. Carrying passengers or freight (any personal property including oil and gas transmitted by pipeline) from one point in Philadelphia to another point inside or outside the City, if pickup or delivery, regardless of origination or ultimate destination, occurs in Philadelphia; or

b. Having facilities and/or employees, independent contractors, agents, or other representatives in Philadelphia, regardless or whether they reside in Philadelphia for:

(1) Storage, delivery, or shipment of goods;

(2) Servicing, maintaining, or repair of vehicles, trailers, containers, and other equipment;

(3) Coordinating and directing the transportation of passengers or freight; or

(4) Doing any other business of the person;

7. Franchisors: Entering into one or more contracts with persons, corporations, or other business entities located in Philadelphia, by which:

a. The franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by the franchisor; and

b. The operation of a franchisee's business pursuant to such plan is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate;

8. Processing: Assembling, processing, manufacturing, or storing goods in Philadelphia;

9. Advertising: Entering Philadelphia to place or display advertising when the advertising is for the benefit of another and in the ordinary course of business (e.g., the foreign corporation makes signs and brings them into Philadelphia, sets them up, and maintains them);

10. Contracting for processing and shipment: Sending materials to a Philadelphia manufacturer, processor, repairer, or printer to be processed and stored in completed form awaiting orders for their shipment;

11. Loan production activities: Soliciting sales contracts or loans, gathering financial data, making credit checks, or performing other financial activities in Philadelphia through employees, independent contractors, or agents, regardless of whether they reside in Philadelphia or have a permanent place of business in Philadelphia;

12. Holding companies: Maintaining a place of business in Philadelphia or managing, directing, and/or performing services in Philadelphia for subsidiaries or investee corporations;

13. Place of business: Maintaining a place of business in Philadelphia;

14. Federal enclaves: Doing business in any area in Philadelphia, even if the area is leased by, owned by, ceded to, or under the control of federal government;

15. Consignments: Having consigned goods in Philadelphia;

16. Leasing: leasing tangible personal property that is used in Philadelphia.

SECTION 104. COMPLETE TERMINATION OR LIQUIDATION OF A BUSINESS.[11]

Liquidation of a business is a taxable activity. A business is deemed to continue engaging in business until all of its normal operations which produce revenue have ceased. In the case of a business which owns inventory, normal operations are deemed to continue until all inventory is liquidated. For the purpose of determining when a business has terminated, the mere collection of accounts receivable or notes receivable by a person who is not engaged in the business of lending money, during the process of liquidation, does not constitute engaging in a taxable activity; however, income received prior to cessation of normal operations must be included in the measure of the tax for any business which continues into the following tax year. For due date of filing and for the period used to file termination/final tax year return, refer to Sections 202 and 203 of this Regulation.

SECTION 105. PERSONS ENGAGED IN HOBBIES AND OTHER NOT-FOR-PROFIT ACTIVITIES.[12]

A. Any hobby or other not-for-profit activity as set forth at 26 C.F.R. § 1.183-2 is excluded from the definition of "Business". A person exclusively engaged in a hobby or other not-for-profit activity as set forth in § 19-2601 of The Philadelphia Code and Section 101(D) of these regulations shall not be required to file a Business Income and Receipts Tax Return.

B. Relevant Factors. In determining whether an activity is engaged in for profit, all facts and circumstances with respect to the activity are taken into account. No one factor is determinative in

[11] Amended by regulation submitted to the Department of Records on December 18, 2009 (effective January 19, 2010).
[12] Added by regulation submitted to the Department of Records on December 12, 2011 (effective January 11, 2012).

making this determination. It is not intended that only the factors described in this paragraph are to be taken into account in making the determination, or that determination is to be made on the basis that the number of factors (whether listed or not listed in this paragraph) indicating a lack of profit objectives exceeds the number of factors indicating a profit objective, or vice versa. Factors which should normally be taken into account include the following:

1. Manner in which the person carries on the activity. The fact that the person carries on the activity in a businesslike manner and maintains complete and accurate books and records may indicate that the activity is engaged in for profit. Similarly, where an activity is carried on in a manner substantially similar to other activities of the same nature which are profitable a profit motive may be indicated. A change of operating methods, adoption of new techniques or abandonment of unprofitable methods in a manner consistent with intent to improve profitability may also indicate a profit motive.

2. The expertise of the person or his advisors. Preparation for the activity by extensive study of its accepted business, economic, and scientific practices, or consultation with those who are expert therein, may indicate that the person has a profit motive where the person carries on the activity in accordance with such practices. Where a person has such preparation or procures such expert advice, but does not carry on the activity in accordance with such practices, a lack of intent to derive profit may be indicated unless it appears that the person is attempting to develop new or superior techniques which may result in profits from the activity.

3. The time and effort expended by the person in carrying on the activity. The fact that the person devotes much of his personal time and effort to carrying on an activity, particularly if the activity does not have substantial personal or recreational aspects, may indicate an intention to derive a profit. A person's withdrawal from another occupation to devote most of his energies to the activity may also be evidence that the activity is engaged in for profit. The fact that the person devotes a limited amount of time to an activity does not necessarily indicate a lack of profit motive where the person employs competent and qualified persons to carry on such activity.

4. Expectation that assets used in activity may appreciate in value. The term "profit" encompasses appreciation in the value of assets, such as land, used in the activity. Thus, the person may intend to derive a profit from the operation of the activity, and may also intend that even if no profit from current operations is derived, an overall profit will result when appreciation in the value of land used in the activity is realized since income from the activity together with the appreciation of land will exceed expenses of operation. See, however, paragraph (d) of 26 C.F.R. § 1.183-1 for definition of an activity in this connection.

5. The success of the person in carrying on other similar or dissimilar activities. The fact that the person has engaged in similar activities in the past and converted them from unprofitable to profitable enterprises may indicate that he is engaged in the present activity for profit, even though the activity is presently unprofitable.

6. The person's history of income or losses with respect to the activity. A series of losses during the initial or start-up stage of an activity may not necessarily be an indication that the activity is not engaged in for profit. However, where losses continue to be sustained beyond the period which customarily is necessary to bring the operation to profitable status such continued

losses, if not explainable_ as due to customary business risks or reverses, may be indicative that the activity is not being engaged in for profit. If losses are sustained because of unforeseen or fortuitous circumstances which are beyond the control of the person, such as drought, disease, fire, theft, weather damages, other involuntary conversions, or depressed market conditions, such losses would not be an indication that the activity is not engaged in for profit. A series of years in which net income was realized would of course be strong evidence that the activity is engaged in for profit.

7. The amount of occasional profits, if any, which are earned. The amount of profits in relation to the amount of losses incurred, and in relation to the amount of the person's investment and the value of the assets used in the activity, may provide useful criteria in determining the person's intent. An occasional small profit from an activity generating large losses, or from an activity in which the person has made a large investment, would not generally be determinative that the activity is engaged in for profit. However, substantial profit, though only occasional, would generally be indicative that an activity is engaged in for profit, where the investment or losses are comparatively small. Moreover, an opportunity to earn a substantial ultimate profit in a highly speculative venture is ordinarily sufficient to indicate that the activity is engaged in for profit even though losses or only occasional small profits are actually generated.

8. The financial status of the person. The fact that the person does not have substantial income or capital from sources other than the activity may indicate that an activity is engaged in for profit. Substantial income from sources other than the activity (particularly if the losses from the activity generate substantial tax benefits) may indicate that the activity is not engaged in for profit especially if there are personal or recreational elements involved.

9. Elements of personal pleasure or recreation. The presence of personal motives in carrying on of an activity may indicate that the activity is not engaged in for profit, especially where there are recreational or personal elements involved. On the other hand, a profit motivation may be indicated where an activity lacks any appeal other than profit. However, it is not necessary that an activity be engaged in with the exclusive intention of deriving a profit or with the intention of maximizing profits. For example, the availability of other investments which would yield a higher return, or which would be more likely to be profitable, is not evidence that an activity is not engaged in for profit. The mere fact that the person is engaged in an activity for purposes or motivations other than solely to make a profit is not evidence that the person's activity is to be treated as not engaged in for profit. Also the fact that the person derives personal pleasure from engaging in the activity is not sufficient to cause the activity to be classified as not engaged in for profit if the activity is in fact engaged in for profit as evidenced by other factors whether or not listed in this paragraph.

C. Examples. The provisions of this section may be illustrated by the following examples:

1. The person is a wealthy individual who is greatly interested in philosophy. During the past 30 years he has written and published at his own expense several pamphlets, and he has engaged in extensive lecturing activity, advocating and disseminating his ideas. He has made a profit from these activities in only occasional years, and the profits in those years were small in relation to the amounts of the losses in all other years. The person has very sizable income from securities (dividends and capital gains) which constitutes the principal source of his livelihood. The

activity of lecturing, publishing pamphlets and disseminating his ideas is not an activity engaged in by the person for profit.

2. The person, very successful in the business of retailing soft drinks, raises dogs and horses. He began raising a particular breed of dogs many years ago in the belief that the breed was in danger of declining, and he has raised and sold the dogs in each year since. The person recently began raising and racing thoroughbred horses. The losses from the person's dog and horse activities have increased in magnitude over the years, and he has not made a profit on these operations during any of the last 15 years. The person generally sells the dogs only to friends, does not advertise the dogs for sale, and shows the dogs only infrequently. The person races his horses only at the "prestige" tracks at which he combines his racing activities with social and recreational activities. The horse and dog operations are conducted at a large residential property on which the person also lives, which includes substantial living quarters and attractive recreational facilities for the person and his family. Since (i) the activity of raising dogs and horses and racing the horses is of a sporting and recreational nature, (ii) the person has substantial income from his business activities of retailing soft drinks, (iii) the horse and dog operations are not conducted in a businesslike manner, and (iv) such operations have a continuous record of losses, it could be determined that the horse and dog activities of the person are not engaged in for profit.

3. A, an independent oil and gas operator, frequently engages in the activity of searching for oil on undeveloped and unexplored land which is not near proven fields. He does so in a manner substantially similar to that of others who engage in the same activity. The chances, based on the experience of A and others who engaged in this activity, are strong that A will not find a commercially profitable oil deposit when he drills on land not established geologically to be proven oil bearing land. However, on the rare occasions that these activities do result in discovering a well, the operator generally realizes a very large return from such activity. Thus, there is a small chance that A will make a large profit from his soil exploration activity. Under these circumstances. A is engaged in the activity of oil drilling for profit.

4. C, a chemist, is employed by a large chemical company and is engaged in a wide variety of basic research projects for his employer. Although the work he engages in for his employer does not concern the development of new plastics, he has always been interested in such development and has outfitted a workshop in his home at his own expense which he uses to experiment in the field. He has patented several developments at his own expense but as yet has realized no income from his inventions or from such patents. C conducts his research on a regular, systematic basis, incurs fees to secure consultation on his projects from time to time, and makes extensive efforts to "market" his developments. C has devoted substantial time and expense in an effort to develop a plastic sufficiently hard, durable, and malleable that it could be used in lieu of sheet steel in many major applications, such as automobile bodies. Although there may be only a small chance that C will invent new plastics, the return from any such development would be so large that it induces C to incur the costs of his experimental work. C is sufficiently qualified by his background that there is some reasonable basis for his experimental activities. C's experimental work does not involve substantial personal or recreational aspects and is conducted in an effort to find practical applications for his work. Under these circumstances. C may be found to
Be engaged in the experimental activities for profit.

ARTICLE II

RETURNS

SECTION 201. WHO MUST FILE A RETURN?

Every individual, partnership, association, and corporation, and every receiver, trustee, assignee and other person acting in a fiduciary capacity, whether appointed by a court or otherwise, and any combination of persons, carrying on or engaging in any trade, business, profession, vocation or any manufacturing, commercial, service, financial, insurance or utility business or activity in Philadelphia or attributable to Philadelphia, must file a Business Income and Receipts Tax return on the prescribed form available 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.[13]

A person exclusively engaged in a hobby or other not-for-profit activity, excluded from the definition of business set forth in 19-2601 of The Philadelphia Code and in Section 101(D) of these regulations shall not be required to file a return. Any such person may, in response to any enforcement activity of the Department, submit a certification in form satisfactory to the Department (which certification shall include, if the Department so requires, documentation that the person has not taken deductions for such activity on the person's federal tax return) that the person is not engaged in business within the City, as defined in 19-2601 of The Philadelphia Code and in Section 101(D) of these regulations; and, to the extent the person's total receipts derived from hobby or other not-for-profit activity are less than $3,000, the Department shall accept such certification as presumptive proof of no business income. The Department reserves the right to rebut this presumption by evaluating the relevant factors as outlined in Section 105 of these regulations with the particular facts and circumstances. (This provision does not exclude persons engaged in an activity for profit — in Philadelphia or attributable to Philadelphia — whose total receipts are less than $3,000; such persons are subject to the tax and shall be required to file a return.)[14]

SECTION 202. DUE DATES FOR FILING RETURNS AND FOR PAYMENTS OF ACTUAL AND ESTIMATED TAXES.[15]

The Philadelphia City Council by Ordinance amended Chapter 19-2600 of The Philadelphia Code, entitled "Business Income and Receipts Taxes. The Ordinance was approved by the Mayor on November 26, 2002 and applies to tax years 2002 and thereafter. The amendment, among others,

[13] Paragraph added by regulations resubmitted after hearing to the Department of Records on March 22, 1989 (effective April 3, 1989).
[14] Paragraph added by regulation submitted to the Department of Records on December 12, 2011 (effective January 11, 2012).
[15] Caption amended by regulation submitted to the Department of Records on January 6, 2004 (effective February 5, 2004).

eliminates the prepaid structure of the tax, clarifies the time and manner of filing the returns and requires the payment of mandatory estimated tax.[16]

A. Every person engaged in business is required to file a Business Income and Receipts Tax Return for each tax year in business and pay any tax balance due on that tax year on or before the 15th day of April the year following each tax year. In addition, a mandatory estimated tax payment(s) equal to a 100% of the actual tax due of the current tax year shall be paid. The estimated tax for tax years 2003 and 2004 shall be made on or before the 15th day of April of the year following the tax years. For tax years thereafter, estimated tax payments shall be made at such times and on such forms as provided by the Department of Revenue. Failure to make the required estimated payment on the due date shall subject a taxpayer to interest, penalties and costs as provided in Section 19-509 of the Philadelphia Code. Any overpayment of the current year tax shall be applied first to the payment of an estimated tax for the tax year that follows or to other taxes due. A remaining balance, if any, shall be applied to future BIRT years unless the taxpayer requests a refund of the amount.[17]

Example: "A"'s actual 2002 and 2003 BIRT liabilities are $3,000 and $5,000, respectively. When filing its actual 2002 BIRT return due April 15, 2003, "A" shall pay an estimated tax of $3,000 for 2003 privilege year. When filing its 2003 BIRT Return due April 15th 2004, "A" shall pay the $2,000 balance due ($5,000 tax due minus $3,000 estimated payment made) on the 2003 tax year and $5,000 estimated payment for tax year 2004.

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

B. An extension to file the current year tax return will not relieve the taxpayer from the obligation to pay an amount equal to 100% of the current year tax due as an estimated tax for the following tax year on the due date.[18]

Example: "C"s 2003 BIRT liability was $10,000 and "C" is on extension to file 2004 BIRT return. When filing its 2003 BIRT return due April 15, 2004, "C" shall pay an estimated tax of $10,000 for 2004 privilege year. When filing for an extension to file 2004 BIRT return, due April 15, 2005, "C" estimated its 2004 BIRT liability to be $15,000 and shall pay the $5,000 balance due on 2004 BIRT and the $15,000 estimated tax for the 2005 privilege year. When filing its 2004 BIRT return at the end of the extension period, "C" has found its 2004 BIRT liability to be $18,000. "C" shall pay the $3,000 balance due on 2004 BIRT with interest and penalties accruing from April 15, 2005 through the end of the extension period. Interest and penalties shall be imposed on any 2004 BIRT balance paid after the end of the extension period. "C" shall also pay an additional $3,000 to cover the balance due on the estimated tax payment for the 2005 privilege year with interest and penalties accruing from April 15, 2005 to the date of payment.

[16] Added by regulation submitted to the Department of Records on January 6, 2004 (effective February 5, 2004).
[17] Amended by regulation submitted to the Department of Records on January 6, 2004 (effective February 5, 2004).
[18] Added by regulation submitted to the Department of Records on January 6, 2004 (effective February 5, 2004).

C. A person may petition the Department of Revenue for permission to pay less than 100% of the current year tax liability as a mandatory estimated tax for the tax year following the current tax year. The petition must provide an explanation as to why the estimate should be less than a 100%. Acceptable reasons may be unusual, unique or nonrecurring transaction(s) that caused an unusually high current year tax liability or may result in unusually low tax liability in the year following the current tax year. The petition must be filed, using a form provided by the Department, on or before the 20th day of March of the year following the current tax year. A petitioner may presume approval of the petition if the Department does not communicate its disapproval by April 10 of the year following the current tax year. Interest and penalty shall be imposed, and shall not be waived, if the payment is found to be lower than the following year actual tax liability.[19]

Example: "D"s 2003 BIRT liability was $75,000. In the three years prior to 2003, "D"'s BIRT liability were $25,000, $20,000 and $25,000 respectively. In tax year 2003, "D" sold a segment of his business that resulted in a huge capital gain. "D" filed a petition for paying a lower estimated tax for the following tax year stating that the relatively high 2003 BIRT liability was due to the capital gain generated because of the unusual and nonrecurring transaction. "D" estimated its 2004 BIRT liability to be on line with the years prior to 2003 and requested permission to _pay $25,000 estimated tax. The Department granted the petition and "D" paid the $25,000 estimated tax for the 2004 tax year on the due date, April 15, 2004. When filing its 2004 BIRT return, due April 15, 2005, "D" reported its 2004 BIRT liability to be $40,000. "D" shall pay the $15,000 balance due with interest and penalty accruing from April 15, 2004 to the date of payment.

Example: "E"'s 2003 BIRT liability was $50,000. "E" anticipated terminating its Philadelphia operations sometimes in August of 2004 with lower than usual activities in the months prior to termination. "E" filed a petition stating that as a result of this anticipated termination, its 2004 BIRT liability is expected to be no more than $20,000. "E" requested a permission to pay $20,000 estimated tax for 2004 tax year, the Department granted the petition and "E" paid the $20,000 on the due date, April 15, 2004. When filing its 2004 final BIRT return, "E" reported its liability for the year to be $15,000. Assuming that "E" does not owe any tax money to the City, the City shall issue a $5,000 refund check to "E".

Example: Same facts as the example above except that, before filing its 2004 final BIRT return due April 15, 2005, "C" determines its 2004 BIRT liability to be $25,000 (instead of $20,000) and decides to pay the balance on January 1, 2005. "C" shall pay the $5,000 balance due with interest and penalties accruing from April 15, 2004 to January 1, 2005.

D. Terminating Businesses. Every person that has terminated its business during the tax year is required to file a final BIRT return on or before the 15th day of April of the year following the termination year.[20]

E. Persons Engaged in a Temporary, Seasonal, or Itinerant Business. Each person engaged in a temporary, seasonal or itinerant business is required to file a tax return for each tax year within thirty (30) days of the day completing each business during any tax year.[21]

[19] Added by regulation submitted to the Department of Records on January 6, 2004 (effective February 5, 2004).
[20] Added by regulation submitted to the Department of Records on January 6, 2004 (effective February 5, 2004).
[21] Renumbered by regulation submitted to the Department of Records January 6, 2004 (effective February 5, 2004).

SECTION 203. PERIOD USED IN COMPUTING TAX.

The Philadelphia City Council amended Chapter 19-2600 of The Philadelphia Code, entitled "Business Income and Receipts Taxes", by Ordinance which is applicable to tax years 2002 and thereafter clarifying the periods to be used in computation of the tax, ensuring that gains from the termination of business are subject to tax and clarifying the treatment of calendar and fiscal year taxpayers. These aspects of the Ordinance are further clarified under this section of the Regulations.[22]

A. Tax on Net Income

1. Every person subject to the net income portion of the tax shall compute its net income using the net income for the tax measurement year ending in the tax year.[23]

Example: "F" has a calendar tax measurement year. "F"s net income for calendar year 2003 is $1,000. The net income reportable for filing "F's 2003 privilege year tax return, due April 15, 2004, is $1,000.

Example: "G" has a fiscal tax measurement year ending March 31. "G"s net income for fiscal year ending March 31, 2003 is $2,000. The net income reportable for filing "G"'s 2003 privilege year tax return, due April 15, 2004, is $2,000.

2. Persons Engaged in a Seasonal, Temporary or Itinerant Business.[24]

The net income reportable for the tax year shall be the net income for that portion of the tax year in which the business was actually conducted.

B. Tax on Receipts

1. Every person subject to the gross receipts portion of the tax shall compute its taxable receipts using the receipts received for the tax measurement year ending in the tax year.[25]

Example: "H" has a calendar tax measurement year. "H"'s gross receipts for calendar year 2003 is $10,000. The taxable receipts reportable for filing "H"s 2003 privilege year tax return, due April 15, 2004, is $10,000.

Example: "I" has a fiscal tax measurement year ending March 31. "I"'s gross receipts for fiscal year ending March 31, 2003 is $20,000. The taxable receipts reportable for filing "I"'s 2003 privilege year tax return, due April 15, 2004, is $20,000.

[22] Added by regulation submitted to the Department of Records on January 6, 2004 (effective February 5, 2004).
[23] Added, and previous subsections A.1. through A.3. deleted, by regulation submitted to the Department of Records on January 6, 2004 (effective February 5, 2004).
[24] Renumbered by regulation submitted to the Department of Records January 6, 2004 (effective February 5, 2004).
[25] Added, and previous subsections B.1. and B.2. deleted, by regulation submitted to the Department of Records on January 6, 2004 (effective February 5, 2004).

2. Every person engaged in Philadelphia in a temporary, seasonal or itinerant business shall compute his taxable receipts for each tax year on the taxable receipts received by him during that tax year.[26]

C. Certain New Businesses With a Fiscal Tax Measurement Year. Every person who commences engaging in business within Philadelphia in any tax year after 2001 and whose first fiscal year in business within Philadelphia does not end in that tax year shall file a return stating that no tax is due for the tax year.[27]

Example: "J" started doing business within Philadelphia on September l, 2003. "J" has a fiscal tax measurement year ending March 31. "J"s first fiscal year in business within Philadelphia ends on March 31, 2004. Since "J"s first fiscal year does not end in 2003 tax year, the year "J" starts doing business within Philadelphia, "J" shall file the 2003 BIRT Return stating that no tax is due for 2003 tax year.

Example: "K" started doing business within Philadelphia on March 1, 2003. "K" has a fiscal tax measurement year ending September 30. Since "K"s first fiscal year ends on September 30, 2003, the year "K" starts doing business within Philadelphia, "K" shall file its 2003 BIRT return based on the net income and the taxable receipts of the short fiscal year ending in the tax year, that is March 1, 2003 through September 30, 2003.

D. Terminating Businesses. The period used to file the final tax year return depends on whether a person has a calendar or fiscal Tax Measurement Year and, in the case of a person with a fiscal Tax Measurement Year, on whether or not a person starts engaging in business within Philadelphia prior to tax year 2002. Note that under section "C" above, certain new businesses with a fiscal tax measurement year are required to file their first tax year returns stating that there is no tax due. This results in the postponement of payment of taxes on some months until termination of business activity within Philadelphia occurs. For this reason, the months used in filing such businesses' final tax year returns will be more than the number of months in business in their final tax years.[28]

Every person terminating its business activity within Philadelphia during a tax year falls into only one of the following categories for the purpose of filing its final tax year return.

1. All Calendar Year Taxpayers Irrespective of The Starting Date

Every person with a calendar tax measurement year shall file its final tax year return based on the net income and the taxable receipts of the period commencing on the first day of the tax year and ending on the date of termination.

Example: "L" terminated its business activity within Philadelphia on July 15, 2003. "L" shall file its final tax return for 2003 privilege year, due April 15, 2004, based on the net

[26] Renumbered by regulation submitted to the Department of Records January 6, 2004 (effective February 5, 2004).
[27] Added by regulation submitted to the Department of Records January 6, 2004 (effective February 5, 2004).
[28] Added by regulation submitted to the Department of Records January 6, 2004 (effective February 5, 2004).

income and the taxable receipts of the period beginning January 1, 2003 and ending on July 15, 2003.

2. All Fiscal Year Taxpayers Starting Business Within Philadelphia Prior to 2002.

Every person with a fiscal tax measurement year, and who commenced engaging in business within Philadelphia prior to tax year 2002, shall file its final tax return as follows:

a. If the fiscal year ends prior to the termination date within the tax year, the person shall file its final tax year return based on the combined net income and combined taxable receipts of the fiscal tax measurement year ending in the tax year and the short period ending on the termination date, divided by the total number of days in the combined periods, and multiplied by the number of days in business during the final privilege year. Any capital gain or loss reported in either one of the periods shall be taken out of the calculation and be added back to or subtracted from the tax base.

Example (1): "M" has a fiscal tax measurement year ending March 31 and terminated its business within Philadelphia on July 15, 2003. FYE 3/31/03 taxable receipts and net income are $100,000 and $20,000 respectively. The taxable receipts and net income for the short period, 4/01/03 through 7/15/03, are $30,000 and $20,000 respectively. The taxable receipts and net income for the combined period are therefore $130,000 and $40,000 respectively. The total number of days in the combined periods, 4/01/02 through 7/15/03, is 471 and the number of days in business during the final privilege year is 196. Thus, "M"'s taxable receipts shall be $130,000 divided by 471 and multiplied by 196, and "M"'s reportable net income shall be $40,000 divided by 471 and multiplied by 196.

Example (2): Assume the same facts as example (1) except that the short period taxable receipts and net income include $15,000 capital gain respectively. The taxable receipts and the net income shall be reduced by the capital gain resulting in $115, 000 taxable receipts and $25,000 net income. These amounts shall be divided by 471 and multiplied by 196. The $15,000 capital gain shall then be added to the resultant taxable receipts and net income to arrive at the taxable receipts and net income.

b. If termination occurs within a tax year prior to the end of the fiscal tax measurement year ending in that tax year, the person shall file its final year tax return based on the net income and the taxable receipts of the short fiscal year ending on date of termination, divided by the number of days in business within Philadelphia during the short fiscal year, and multiplied by the total number of days in business during the final privilege year. Any capital gain or loss reported in the short fiscal year shall be taken out of the calculation and be added back to or subtracted from the tax base.

Example: "N" has a tax measurement year ending September 30. "N" terminated its business activity within Philadelphia on July 15, 2003. "N"'s taxable receipts and net income for the short period beginning October 1, 2002 and ending July 15, 2003 are $60,000 and $15,000 respectively. The number of days in business during the short fiscal year is 288 and the number of days in business during the final privilege year is 196. Thus, for the 2003 privilege year, "N”'s taxable receipts shall be $60,000 divided by 288 and multiplied by 196, and "N”'s reportable net income shall be $15,000 divided by 288 and multiplied by 196.

3. All Fiscal Year Taxpayers Starting Business Within Philadelphia After 2001.

Every person with a fiscal tax measurement year, who commences engaging in business within Philadelphia after tax year2001, shall file its final tax return as follows

a. If the fiscal year ends prior to the termination date within the tax year, the person shall file its final tax year return based on the combined net income and the combined taxable receipts of the fiscal tax measurement year ending in the tax year and the short period ending on the termination date.

Example: "O" has a fiscal tax measurement year ending March 31 and terminated its business activity within Philadelphia on July 15, 2003. "O" shall file its final tax return for 2003 privilege year, due April 15, 2004, based on the combined net income and the combined taxable receipts of the tax measurement year ending March 31, 2003 and the short period beginning April 1, 2003 and ending July 15, 2003. This means that "O"’s final BIRT return reflects fifteen and half months of business activity within Philadelphia.

b. If termination occurs within a tax year prior to the end of the fiscal tax measurement year ending in the tax year, the person shall file its final year tax return based on the short fiscal year ending on the termination date.

Example: "P" has a tax measurement year ending September 30 and terminated its business activity within Philadelphia on July 15, 2003. "P" shall file its final tax return for 2003 privilege year, due on April 15, 2004, based on the net income and the taxable receipts of the period beginning October 1, 2002, and ending July 15, 2003.

E. Changes In Tax Measurement Year For Persons Starting Business Within Philadelphia Prior To Tax Year 2002.[29]

1. From Calendar To Fiscal.

Every person that changes its tax measurement year from calendar to a fiscal year shall file its tax return for the tax year the change occurs as follows:

a. If the initial short fiscal period is more than 180 days, the taxable receipts and the net income reportable shall be the taxable receipts and the net income for the short fiscal period divided by the number of days in that fiscal period and multiplied by 365. Any capital gain or loss reported in the short fiscal year shall be taken out of the calculation and be added back to or subtracted from the tax base.

Example: During the 2003 tax year, "O" changed its calendar tax measurement year to a fiscal tax measurement year ending July 31. The number of days in the

[29] Added by regulation submitted to the Department of Records on January 6, 2004 (effective February 5, 2004).

initial short fiscal period is therefore 213. "O"'s taxable receipts and net income for the initial short fiscal period, 1/01/03 — 7/31/03, are $10,000 and $1,000 respectively. Thus, the taxable receipts reportable for the 2003 tax year shall be $10,000 divided by 213 and multiplied by 365, and the net income reportable shall be $.1,000 divided by 213 and multiplied by 365.

b. If the initial short fiscal year is 180 days or less, the taxable receipts and the net income reportable shall be the annualized amount of the combined taxable receipts and the combined net income of the calendar year preceding the current tax year and the initial short fiscal year ending in the tax year. Any capital gain or loss reported in either one of the periods shall be taken out of the calculation and be added back to or subtracted from the tax base.

Example: During the 2003 tax year, "P" changed its calendar tax measurement year to a fiscal tax measurement year ending March 31. Since the number of days in the initial short fiscal period is 90, which is less than 180, "P"'s reportable taxable receipts and net income for the 2003 tax year shall be the taxable receipts and the net income for the period beginning January 1, 2002 and ending March 31, 2003, divided by 456 and multiplied by 365.

2 From Fiscal To Calendar.

Every person that changes its tax measurement year from a fiscal year to a calendar year shall file its tax return for the tax year in which the change occurs based on the annualized amount of the combined net income and the combined taxable receipts of the fiscal year ending in the tax year and the short year ending on December 31st of the tax year. Any capital gain or loss reported in either one of the periods shall be taken out of the calculation and be added back or subtracted from the tax base.

Example: During the 2003 tax year, "Q" changed its fiscal tax measurement year ending March 31 to a calendar tax measurement year. "Q"s reportable receipts, and net income, for tax year 2003 BIRT shall be the combined taxable receipts, and combined net income, of the fiscal year ending March 31, 2003 and the short period beginning April 1, 2003 through December 31, 2003, divided by the total number of days in business from 4/01/02 through December 31, 2003, and multiplied by 365.

3. From One Fiscal To Another Fiscal.

Every person that changes its tax measurement year from one fiscal year to another fiscal year shall file its tax return for the tax year in which the change occurs as follows:

a. When the new fiscal year ends in a month that comes later in the same tax year than the month in which the old fiscal year ends, the tax return for the tax year in which the change occurs shall be filed based on the annualized amount of the combined net income, and the combined taxable receipts of the fiscal tax measurement year and the short period ending in the tax year. Any capital gain or loss reported in either one of the periods shall be taken out of the calculation and be added back or subtracted from the tax base.

Example: During the 2003 tax year, "R" changed its tax measurement year ending March 31 to a tax measurement year ending September 30. "R"'s reportable receipts, and net income, for tax year 2003 shall be the taxable receipts, and the net income, of the period beginning April 1, 2002 through September 30,2003, divided by the total number of days in business during the same period and multiplied by 365.

b. When the new fiscal year ends in a month that comes earlier in the tax year than the month in which the old fiscal year ends, the tax return for the tax year in which the change occurs shall be filed based on the following rules:

(i). If the initial short fiscal year is more than 180 days, the taxable receipts and the net income reportable shall be the taxable receipts and the net income for the short fiscal period divided by the number of days in that fiscal period and multiplied by 365. Any capital gain or loss reported in the short fiscal year shall be taken out of the calculation and be added back to or subtracted from the tax base.

(ii). If the initial short fiscal year is 180 days or less, the taxable receipts and the net income reportable shall be the annualized amount of the combined taxable receipts and the combined net income of the old twelve months fiscal year ending in preceding calendar year and the initial short fiscal year ending in the current tax year. Any capital gain or loss reported in either one of the periods shall be taken out of the calculation and be added back or subtracted from the tax base.

Example: During the 2003 tax year, "S" changed its tax measurement year ending September 30 to a tax measurement year ending January 31. Since the initial short fiscal year ending January 31, 2003 is less than 180 days,, "S" shall file its 2003 BIRT return, due April 15, 2004, based on the combined taxable receipts and the combined net income of the twelve month fiscal year ending September 30, 2002 and the initial short fiscal year beginning October 1, 2002 and ending January 31, 2003, divided by 488 and multiplied by 365.

F. Changes In Tax Measurement Year For Persons Staring Business Within Philadelphia After Tax Year 2001.[30]

1. From Calendar To Fiscal.

Every person that changes its tax measurement year from a calendar to a fiscal year shall file its tax return for the tax year in which the change occurs based on the net income and the taxable receipts of the short fiscal year ending in the tax year.

Example: During the 2003 tax year "T" changed its tax measurement year from a calendar year to a fiscal year ending June 30. "T" shall file its 2003 BIRT return, due April 15, 2004, based on the net income and the taxable receipts of the short period beginning on January 1, 2003 and ending June 30, 2003.

[30] Added by regulation submitted to the Department of Records on January 6, 2004 (effective February 5, 2004).

2. From Fiscal To Calendar.

Every person that changes its tax measurement year from a fiscal year to a calendar year shall file its tax return for the tax year in which the change occurs based on the combined net income and the combined taxable receipts of the fiscal year ending in the tax year and the short year ending on December 31st of the tax year.

Example: During the 2003 tax year, "U" changed its fiscal tax measurement year ending March 31 to a calendar tax measurement year. "U" shall file its 2003 return, due April 15, 2004, based on the combined net income and the combined taxable receipts of the fiscal year ending March 31, 2003 and the short period beginning April 1, 2003 through December 31, 2003.

3. From One Fiscal To Another Fiscal.

Every person that changes its tax measurement year from one fiscal year to another fiscal year shall file its tax return for the tax year in which the change occurs as follows:

a. When the new fiscal year ends in a month that comes later in the same tax year than the month in which the old fiscal year ends, the tax return for the tax year in which the change occurs shall be filed based on the combined net income and the combined taxable receipts of the fiscal tax measurement year and the short period ending in the tax year.

Example: During the 2003 tax year, "V" changed its tax measurement year ending March 31 to a tax measurement year ending September 30. "V" shall file its 2003 BIRT return, due April 15, 2004, based on the combined net income and taxable receipts of the tax measurement year ending March 31, 2003 and the short period beginning April 2003 through September 30, 2003.

b. When the new fiscal year ends in a month that comes earlier in the tax year than the month in which the old fiscal year ends, the tax return for the tax year in which the change occurs shall be filed based on the net income and the taxable receipts of the new short fiscal year ending in the tax year.

Example: During the 2005 tax year, "W" changed its tax measurement year ending September 30 to a tax measurement year ending June 30. "W" shall file its 2005 BIRT return, due April 15, 2006, based on the net income and the taxable receipts of the short period beginning on October 1, 2004 and ending June 30, 2005.

SECTION 204. CONSOLIDATED RETURNS.

No Corporation is permitted to use the net income or net loss reported on a consolidated U.S. Corporation Income Tax Return to determine net income or net operating loss for purposes of the Business Income and Receipts Tax.

Likewise, the consolidated net gain or net loss from the operations of more than one corporation, as determined by Net Income Method I, may not be used to determine net income or net operating loss of any corporation for purposes of the Business Income and Receipts Tax.

SECTION 205. CHANGE OF REPORTED NET INCOME BY FEDERAL GOVERNMENT.

Any taxpayer who has elected to file a Business Income and Receipts Tax return on the basis of net income and/or net operating losses as returned to and ascertained by the Federal Government, and who subsequently files an amended return with the Federal Government, or experiences a correction in the amount of net income (or loss) as returned to the Federal Government, shall, within 75 days after filing an amended return or final determination of corrected net income or loss by the Internal Revenue Service or any other agency or court of the United States, file an amended Business Income and Receipts Tax return with the Revenue Commissioner, reporting the corrected net income (or loss), and shall remit any additional tax due.

ARTICLE III[31]

TAX ON RECEIPTS

SECTION 301. DEFINITION OF RECEIPTS.[32]

"Receipts." Cash, credits, property of any kind or nature, received from conducting any business or by reason of any sale made, including re-sales of goods, wares or merchandise taken by a dealer as a trade-in or as part payment for other goods, wares or merchandise or services rendered, or commercial or business transactions without deduction therefrom an account of the cost of property sold, materials used, labor, service or other cost, interest or discount paid or any other expense. For the purpose of determining receipts from the business of insurance, such receipts shall mean those from premiums received from risks within Philadelphia, whether by mutual or stock companies, domestic or foreign, without any deductions there from for any cost or expenses whatsoever; except, premiums shall not include return premiums, dividends paid or credited to policyholders, if such dividends are in the nature of an adjustment of the premiums charged, and premiums received for reinsurance. Receipts of a person engaged in the business of insurance shall also include receipts from rental real estate situated in Philadelphia but shall not include interest, dividend and capital gain receipts. Nothing in this definition shall preclude the taxation of other non-premium business receipts of persons engaged in the business of insurance. For purposes of determining the source of receipts of a Software Company the Market Based Sourcing Rule shall apply in accordance with Section 408(G.1)[33] of these regulations so that the source of receipts from the sale of products and services shall be deemed to be the location where the recipient receives the benefit of the products and services.

SECTION 302. EXCLUSIONS FROM RECEIPTS.

The following receipts shall be excluded from “receipts" as defined in Section 19-2601 of the Philadelphia Code and shall be omitted from the tax base in computing the tax on gross receipts.

(A) Reimbursement of expenses, but only if the taxpayer actually incurred such expenses and did so as agent of another from whom he receives reimbursement in the exact amount he expended.

(B) Taxes collected as agent for the United States of America, Commonwealth of Pennsylvania, or City of Philadelphia, where the customer or ultimate consumer pays the tax. Such taxes shall include but not be limited to:

(1) Federal taxes on admissions and dues;

(2) Federal excise taxes on jewelry, furs and fur articles, toilet preparations and luggage;

---

[31] Internal numbers/letters changed throughout this Article by compiler for consistency with the rest of the BIRT regulations.
[32] Amended to add final sentence by regulation submitted to the Department of Records on November 5, 2013 (effective December 5, 2013).
[33] Internal reference renumbered by regulation submitted to the Department of Records on December 17, 2015 (effective January 19, 2016).

(3) Federal tax on transportation of property;

(4) Federal tax on safe deposit boxes;

(5) Federal tax on gasoline;

(6) Pennsylvania Sales and Use Tax;

(7) Pennsylvania Liquid Fuels Tax;

(8) City of Philadelphia Amusement Tax;

(9) City of Philadelphia Hotel Room Rental Tax;

(10) City of Philadelphia Parking Tax.

(C) The amount of any allowance made for goods, wares or merchandise taken by a dealer as a trade in or as part payment for other goods, wares and merchandise in the usual and ordinary course of business. However where the dealer reports receipts under the Alternative Receipts Tax Computation as provided by Section 305 of these regulations, the allowance for goods, wares or merchandise taken as a trade in or part payment will not be allowed as an exclusion from receipts to be reported under the applicable Alternative Receipts Tax Computation. See Section 305(A)(4) of these regulations.[34]

(D) A broker may exclude any commission paid by him to another broker on account of a contract of purchase or sale initiated, executed or cleared in conjunction with the other broker, except where either is an employee of the other. Likewise, an agent may exclude any commissions paid by him to another agent on account of purchase or sale initiated, executed or cleared in conjunction with the other agent, except where either is an employee of the other. A broker may not exclude a commission paid to an agent, and an agent may not exclude a commission paid to a broker.

(E) An attorney may exclude any fee or portion of a fee paid to another attorney where a matter has been forwarded either from or to the first attorney to or by the second

(F) (1) Receipts or the portion thereof attributable to any item of sale involving the bona fide delivery of goods, commodities, wares and merchandise to a location regularly maintained by the other party to the transaction outside the limits of the City of Philadelphia and not for the purpose of evading payment of the tax or any portion thereof.

(2) Receipts or that portion thereof received for any services actually performed outside the limits of the City of Philadelphia, and not for the purpose of evading payment of the tax or any portion thereof.

[34] Amended by regulation submitted to the Department of Records April 15, 2014 (effective May 15, 2014); internal reference renumbered to reflect compiler's change of section numbers/letters in Articles III and IV for consistency.

(G) In the case of financial businesses or a person which is described as being subject to a tax imposed pursuant to Article VII, VIII, or XV of the Tax Reform Code of 1971:

1) The cost of securities and other intangible property and monetary metals sold, exchanged, paid at maturity or redeemed, but only to the extent of the total gross receipts from securities and other intangible property and monetary metals sold, exchanged, paid out at maturity or redeemed;

2) Moneys or credits received in repayment of the principal amount of deposits, advances, credits, loans and other obligations;

3) Interest received on account of deposits, advances, credits, loans and other obligations made to persons resident or having their principal place of business outside Philadelphia;

4) Interest received on account of other deposits, advances, credits, loans and other obligations but only to the extent of interest expenses attributable to such deposits, advances, credits, loans and other obligations;

5) Payments received on account of shares purchased by shareholders.

(H) Amount of principal received by the holder of bonds at redemption to the extent of the purchase price of the bonds, and moneys or credits received in repayment of the principal amount of deposits, advances, credits, loans and other obligations.

(I) Refunds, credits or allowances given by a seller to a purchaser on account of goods returned or defects in goods sold may be excluded from the seller's gross receipts only if the seller's receipts from the original sale of such goods are or were included in taxable receipts in the current or any previous year’s tax base. If receipts from the sale of goods were or are excluded from taxable receipts by virtue of any provision of these regulations, then any refunds, credits or allowances attributable to such sales may not be excluded from the seller's gross receipts.

(J) Trade discounts allowed to customers may be deducted in ascertaining the amount to be reported as receipts from sales. Trade discounts include:

(1) Discounts deducted from the face amount of the bill as a medium of adjusting the list price;

(2) Discounts unconditionally deducted by customers upon settlement of their bills and allowed as a matter of established custom of a trade, without regard to the due date of such bills or to the form or terms in which such discounts are described or stated on bills or invoices. Discounts allowed to customers as cash discounts for prompt payment of their bills may not be deducted from receipts unless such discounts are taken at the time of sale.

(K) Freight, delivery or other transportation charges may not be deducted from gross receipts except as provided in subsection (L):[35]

(1) If the seller contracts to deliver the property sold to some designated place, or is obligated under the terms of the contract to pay transportation charges to some designated place, the freight, delivery or other transportation charges so incurred by the seller may not be deducted from gross receipts.

(2) If property is sold on terms requiring the seller to deliver such property to a designated place but the purchaser pays the amount of freight, delivery or other transportation charges in the first instance, and deducts such charges from the invoice price in making remittance to the seller, no deduction from gross receipts may be taken therefore by the seller.

(L) Where the seller advances the freight, delivery or other transportation charges for the account of the purchaser in accordance with the terms of the contract of sale, such charges may be excluded from gross receipts provided:

(1) That such charges are the actual charges incurred and are billed as such to purchaser, and

(2) That the books and records of the taxpayer clearly indicate such facts.

(M) Receipts from transactions in foreign commerce (as distinguished from interstate commerce) are excluded only to the extent such transactions may not be taxed under the provisions of the United States Constitution.

(N) Receipts by a corporation which is a member of an affiliated group from other members of the same affiliated group.

Illustration:

A parent corporation owns:
80% of all classes of voting and nonvoting stock of "A" corporation.
55% of all classes of voting and nonvoting stock of "B" corporation.
60% of all classes of voting and nonvoting stock of “C" corporation.
85% of all classes of voting and nonvoting stock of "D” corporation.
Corporation "A” owns 30% of the voting and nonvoting stock of "B" corporation.
Corporation "B" owns none of the voting and nonvoting stock of the affiliated group.
Corporation "C" owns none of the voting and nonvoting stock of the affiliated group.
Corporation "D” owns 25% of the voting and nonvoting stock of “C" corporation.

Receipts by any one of the five affiliated corporations from one or more of the other four affiliated corporations are excludable from gross receipts.

[35] Internal reference renumbered to reflect compiler’s change of section numbers/letters in Article III and IV for consistency.

(O)[36] (1) Dividends, interest and royalties received by one corporation from a corporation of the same affiliated group.

(2) Dividends, interest and royalties received by a corporation or a partnership from a corporation of which the receiving corporation or partnership owns at least twenty (20%) percent of the voting power of all classes of stock and at least twenty (20%) percent of each class of non-voting stock.

Illustration:

On January 2, 2000, “A” Corporation and “B” partnership each owned 25% of the voting and non-voting stock of ‘H’ corporation. On that date, ‘H’ corporation declared a cash dividend. The amount of such dividend, which A Corporation and B partnership received, is excludable from gross receipts.

(P) Receipts by dealers from sales to other dealers in the same line, where the dealer transfers title or possession at the same price for which he acquired the goods, wares or merchandise.

(Q) Commissions and similar charges received by persons registered under the Pennsylvania Securities Act of 1972, on account of transactions effected for persons resident or having their principal place of business outside Philadelphia.

(R) In the case of an insurance business:

1) Premiums received from risks outside Philadelphia;

2) Premiums received from risks inside Philadelphia to the extent they consist of return premiums, dividends paid or credited to policyholders, if such dividends are in the nature of an adjustment of the premiums charged, and premiums received from reinsurance.

3) Receipts derived from rental real estate situated outside Philadelphia.

4) Capital gains.

5) Dividends and interest.

(S) Receipts from the specific business conducted by any public utility operating under the laws, rules, regulations administered by the Pennsylvania Utility Commission or conducted by a business subject to the jurisdiction of the Interstate Commerce Commission of furnishing or supplying service or services at the rates specified in the tariffs.

(T) Receipts from the business of loading or discharging cargo to or from vessels when conducted on piers, wharves or marine terminal facilities in the Port of Philadelphia and from related business activities conducted an such premises such as furnishing dockage, wharfage, truck

[36] Amended by regulation submitted to the Department of Records on May 7, 1999 (effective June 7, 1999).

and/or railroad car loading and unloading, and storage of cargo which is to be loaded onto or has been discharged from vessels at a pier, wharf or marine terminal facility in the Port of Philadelphia.

(U) Receipts or the portion of receipts, attributable to a bonafide delivery of fiber, yarn, fabric or materials that have been dyed by a chemical mechanical process, to a location regularly maintained by the other party to the transaction outside the limits of the City of Philadelphia and not for the purpose of evading or avoiding payment of the tax or any portion thereof.[37]

(V) Distributive share of net income received by a partner from a partnership where the receiving partner's ownership of capital at the end of the year is at least twenty-percent (20%) as reported on Schedule K-1 of Federal Form 1065, of the distributing partnership.

(W) For the tax year 2011 and thereafter, any interest or fees received on loans made under federal New Markets Tax Credit program, section 45D of Internal Revenue Code, 26 U.S.C. § 45D.[38]

(X) For Tax Year 2014, the first $50,000; for Tax Year 2015, the first $75,000; for Tax Year 2016 and thereafter, the first $100,000 in taxable receipts received by any person or business subject to the Business Income and Receipts Tax under Chapter 19-2600 of the Philadelphia Code.[39]

Example 1: A taxpayer operates its business entirely within Philadelphia. The total receipts of the business is $85,000 and the taxable receipts before the statutory exclusion provided under this subsection shall be $85,000. Accordingly,

- For Tax Year 2014, the taxpayer shall exclude $50,000 from the $85,000 taxable receipts and shall pay the gross receipts portion of BIRT on $35,000 of receipts. This represents a 59% reduction in the gross receipts tax base.

- For Tax Year 2015, the taxpayer shall exclude $75,000 from $85,000 taxable receipts and shall pay the gross receipts portion of BIRT on $10,000 of receipts. This represents 88% reduction in the gross receipts tax base.

- For Tax Year 2016 and thereafter, the taxpayer shall exclude the entire $85,000 and pay no gross receipts portion of BIRT. This represents 100% reduction in the gross receipts tax base.

[37] Added by regulation submitted to the Department of Records on November 3, 1998 (effective December 3, 1998, by its terms applicable to tax years 1996 and thereafter).
[38] Added by regulation submitted to the Department of Records on November 2, 2011 (effective December 2, 2011).
[39] Subsection and example added by regulation submitted to the Department of Records on October 1, 2014 (effective November 3, 2014).

SECTION 303. RECEIPTS FROM RENTAL OR LICENSE OF TANGIBLE PERSONAL PROPERTY.

Persons doing business in the City of Philadelphia who own, lease or license tangible personal property which is leased or licensed to others are required to report the gross receipts from the rental or license to use such property according to the following rules:

(A) Where the original situs of the property is within the limits of the City of Philadelphia, the receipts from tangible personal property leased or licensed to others are:

(1) Wholly taxable receipts, if the property is delivered to lessees or licensees within the Commonwealth of Pennsylvania;

(2) Excludable receipts, if the property is delivered to lessees outside of Pennsylvania.

(B) Where the original situs of the property is outside Philadelphia, the receipts from tangible personal property leased or licensed to others are:

(1) Wholly taxable receipts if the property is delivered to a lessee within Philadelphia.

(2) Excludable receipts, if the property is delivered to lessees outside Philadelphia.

(C) The term "original situs," as used herein, means the point at which the property is warehoused when not leased to others and to which point the property is returned upon termination of the lease. If there is no such established point, the term "original situs" shall mean the principal office of the taxpayer.

(D) This Section 303 does not apply to conditional sales of tangible personal property.

SECTION 304. TAXABILITY OF RECEIPTS FROM SALES OF TANGIBLE PERSONAL PROPERTY.

(A) General Rule.

All receipts from the sale of goods, commodities, wares and merchandise shall be included as taxable receipts, except for receipts or any portion of receipts attributable to sales involving the bona fide delivery of goods, commodities, wares or merchandise to a location regularly maintained by the other party to the transaction or his agent outside of Philadelphia, and not for the purpose of evading or avoiding payment of this tax or any portion of this tax.

(B) What Constitute Receipts Excludable By Virtue Of A Bona Fide Delivery To A Location Regularly Maintained By the Purchaser Or His Agent Outside Of Philadelphia?

1) If a delivery occurs within Philadelphia, then the receipts attributable to such sale constitute taxable receipts, unless both the purchaser and seller are located outside of Philadelphia and the delivery is made to the purchaser's customer inside of Philadelphia, in which case the seller's receipts constitute excludable receipts.

2) If a delivery occurs outside of Philadelphia to a location regularly maintained by the purchaser or the purchaser's agents, then the receipts attributable to such sale constitute excludable receipts.

3) If a delivery occurs outside of Philadelphia to the purchaser's customer, or at a location not regularly maintained by the purchaser or his agent, then delivery shall be deemed to be in Philadelphia and the receipts from such sale shall be taxable receipts, unless the purchaser is located outside of Philadelphia, in which case the receipts shall be excluded from taxable receipts.

(C) Delivery By Carrier.

1) Delivery to a common carrier destined for a location shall constitute delivery to that location regardless of which party to the transaction selects or pays the common carrier and regardless of whether the goods are sold "f.o.b. shipping point" or “f.o.b. destination point."

2) Delivery to a contract carrier, under contract to the seller, destined for a location, shall constitute delivery to that location. Delivery to a contract carrier under contract to a party other than the seller, or delivery to an agent (except a common carrier) of the purchaser or the purchaser's customer, or delivery to the purchaser or his employee, where delivery is made to the party or to a vehicle or carrier operated by such parties, shall constitute delivery to such other party at the location where physical possession is transferred, including the location at which the property is placed on such vehicle or carrier.

SECTION 305. ALTERNATIVE RECEIPTS TAX COMPUTATIONS

(A) Taxpayers who are engaged in manufacturing, and/or who make wholesale and/or retail sales are entitled to compute the tax on receipts by one or more of the alternative methods of tax computation provided in subsection (B).[40]

1) For purposes of determining which alternative method or methods may be used by a taxpayer, the classification of a taxpayer as a manufacturer, and/or a wholesaler, and/or a retailer shall be made on the basis of the type or types of sales made by the taxpayer. Each alternative method of computation may be used to compute the gross receipts tax only on that type of sale which qualifies the taxpayer to use that alternative method of computation. For example, a taxpayer who makes wholesale sales and retail sales may elect the wholesaler's alternative method of computation for wholesale sales only. That taxpayer may also elect to use the retailer's alternative method of computation for retail sales only.

2) A taxpayer who elects to use an alternative method of computing the tax on receipts must use that method of computation for all of the taxable receipts of that type. For example, a taxpayer may not elect to use the wholesaler's alternative method for certain of its wholesale sales and use the regular method for its other wholesale sales. Either the alternative method must be used for all taxable wholesale sales or the regular method must be used for all taxable wholesale sales.

[40] Internal reference renumbered to reflect compiler’s change of section numbers/letters in Article III and IV for consistency.

3) A taxpayer who elects to use an alternative method of computing the tax on receipts may deduct only the cost of goods and cost of labor applicable to such receipts. For example, a taxpayer who uses the alternative method to compute the receipts tax on retail sales may not include any costs of goods or labor attributable to wholesale sales or receipts from services. In computing the alternative method tax base, the amount of the costs of goods and costs of labor which are deductible from each type of receipts is computed by multiplying the total cost of goods and cost of labor attributable to that type of receipts by the percentage derived from dividing the taxable receipts of that type by the total receipts of that type.

a. Example:

Wholesales Sales	$1,000,000
Taxable Wholesale Sales	600,000
Total Cost of Goods Attributable to Wholesale Sales	900,000
Total Cost of Labor Attributable to Wholesale Sale	50,000

Applicable Cost of Goods:
600,000/1,000,000 x 900,000 = 540,000

Applicable Cost of Labor:
600,000/1,000,000 x 50,000 = 30,000

4) The allowance for goods, wares or merchandise taken by the dealer as a trade in or part payment will not be allowed as an exclusion from receipts to be reported under the applicable Alternative Receipts Tax Computation. See Section 302(C) of these regulations.[41]

(B) The following expenses are includible in "cost of goods" of a wholesales or retailer:

1) The cost of goods, wares, commodities and merchandise purchased by the retailer or wholesaler and resold by him.

2) Freight charges paid for delivery to the taxpayer. Expenses for delivery to the customer are not includible in cost of goods sold.

3) Direct costs incurred to independent contractors or suppliers who process, repair, recondition, dye, assemble, fabricate, work on or prepare goods, wares, commodities and merchandise owned by and sold by the taxpayer.

4) Container or packaging costs, but only when the container or packaging is an integral part of the thing sold, not only for purposes of transportation to the consumer, but also for purposes of use by the consumer. Incidental wrapping and shipping materials and supplies such as

[41] Amended by regulation submitted to the Department of Records April 15, 2014 (effective May 15, 2014) ; internal reference renumbered to reflect compiler’s change of section numbers/letters in Articles III and IV for consistency.

cartons or boxes in which the individual packages are transported, or which are primarily for the purpose of transportation, are not considered a part of the "cost of goods".

(C) Expenses includable in the "Cost of labor" of a wholesaler or retailer.

1) The following expenses are includible in cost of labor if paid to or on behalf of a taxpayer's own employees who are used in receiving, storing, shipping, delivering and making the actual sales of the goods, wares, commodities or merchandise purchased for resale, including the proportionate part of the expenses paid to or on behalf of officers and administrative employees to the extent that they are engaged directly in receiving, storing, shipping, selling and delivering the goods, wares, commodities or merchandise purchased for resale:

a. Salaries, wages, commissions or other compensation.

b. Contributions by an employer under the Pennsylvania Unemployment Compensation Act.

c. Taxes paid by an employer under the Federal Unemployment Tax Act.

d. Premiums paid by an employer under the Worker's Compensation Act.

e. Taxes paid by an employer under the Federal Insurance Contributions Act.

f. Contributions by an employer into a pension plan, profit sharing plan, savings plan, deferred compensation plan, annuity plan, 401K, I.R.A., etc.

g. Medical, dental and hospital expenses and insurance premiums.

h. Life insurance premiums.

i. Disability income insurance premiums.

j. Payments based upon a percentage of payroll or hourly rate made by an employer to a union or an employee association under a collective bargaining agreement.

k. Uniform and tool allowances.

l. Other benefits provided under the contract of employment.

2) Payments to subcontractors, independent contractors or other persons who are not employees of the taxpayer cannot be deducted as cost of labor.

3) The value of services rendered by an individual proprietor or by partners in a partnership, including guaranteed payments to partners, cannot be deducted as cost of labor.

SECTION 306. RECEIPTS FROM GOVERNMENTAL AGENCIES AND NONPROFIT ORGANIZATIONS.

Receipts from sales made or services rendered to governmental bodies, and to religious, charitable and educational corporations and associations shall not be excluded from the tax base. Commissions from sales of Pennsylvania lottery tickets must be included in the tax base. The law does not grant any exemption to taxpayers transacting business with such agencies or institutions.

SECTION 307. CONDITIONAL AND INSTALLMENT SALES.

(A) A person making conditional sales or other installment sales of property is required to report the total selling price of such sales as gross receipts for the tax year in which the contracts of sale are entered into, without regard to the fact that the seller may arrange to receive payment from the purchaser on an installment basis, or that such contracts may be discounted or pledged with, or sold to, a finance company.

(B) Property Repossessed. Where tangible personal property sold under a conditional or other installment sales contract is repossessed by the seller, and the repossessed property is subsequently sold, the receipts from such sales are to be included in the measure of the tax only to the extent that the amount of the sale exceeds the balance due on the original sale at the time of repossession. No deduction from gross receipts may be taken for any unpaid balance due at the time of repossession.

SECTION 308. CONSIGNMENT TRANSACTION.

The status of a person accounting for receipts from consignment transactions will depend on the terms and conditions expressly set forth in the contract between the consignor and the consignee. Where the contract does not clearly set forth the status of the parties thereto, then the consignor will be deemed to have sold to the consignee at the time the consignee sells the goods to his (the consignee's) customer.

SECTION 309. LEASED DEPARTMENT.

(A) Return by lessor. Where a person leases a department of his business to another, such person may include in his return the gross receipts from business done and sales made by the lessee. When the business of such leased department is included in the return made by the lessor, a schedule must be attached to the return containing the name of the lessee, a description of the department operated, and a statement to the effect that the lessor assumes liability for reporting the gross receipts and paying the tax accruing against the lessee of such department. The lessee, however, is not relieved from his liability under the Business Income and Receipts Tax Ordinance if the lessor fails to make a proper return or fails to pay the tax due. Should a change occur in the ownership or status of any leased department, the lessor shall notify the Commissioner of Revenue promptly.

(B) Return by Lessee. If the lessee wishes to file return independently, such lessee is required to include in his return the entire gross receipts collected by such lessee, without deducting any expenses or commissions charged to him by the lessor. To expedite the examination and audit of returns filed by such lessee, the Commissioner of Revenue may require the lessor to furnish a statement of the entire gross receipts collected on behalf of the lessee.

(C) Lessor's Commission or Rentals. The lessor is required to include in his return all commissions charged to the lessee for services rendered, property furnished or supplied, etc.

SECTION 310. PERSONS ENGAGED IN PROFESSIONS OR VOCATIONS OR IN RENDERING PERSONAL SERVICES.

(A) A person who is engaged in a profession or vocation or in rendering services in Philadelphia in any capacity, other than as an employee of another, or who has an office or place of business in Philadelphia, is subject to tax under the ordinance and all compensation received as a result of such professions, vocations or services which are attributable to Philadelphia must be included in the tax base as follows:

1) Receipts or that portion thereof attributable to any services actually performed within the limits of the City, regardless of where such business activity originated, must be included in the tax base.

2) Receipts or that portion thereof attributable to services actually performed outside the limits of the City, and not for the purpose of evading payment of the tax or any portion thereof, shall be excluded from the tax base.

SECTION 311. PRINCIPAL AND AGENT.

(A) 1) General. Receipts from sales made, or services rendered by an agent for the account of his principal, are to be reported by the principal. It is immaterial in such cases whether the customer or client remits directly to the principal, or to the agent for transmittal to the principal. The agent is required to report as gross receipts only the commissions withheld by him as compensation for his services before remitting to his principal and any commission paid to him after remittance to the principal by the agent or the customer or the client.

2) No deduction from gross receipts may be taken by the principal for commissions paid to, or withheld by, the agent. A manufacturer's representative is taxable on his gross commissions unless his relationship to his principal is that of employer and employee.

(B) Undisclosed principal. A person selling property, including real property, or rendering services, for an unknown or undisclosed principal, is subject to tax as a principal, unless there is disclosed in the agent's return the identity of the principal and amount of the sale made on his behalf.

(C) Conditions as to recognition of agency. A person will be regarded as acting as agent or broker in promoting or soliciting sales or rendering services for the account of a principal only when it appears:

1) That the contract or agreement between such persons clearly established the relationship of principal and agent;

2) That books and records of the agent or broker show the name of the actual owner of the property on whose behalf the sale is made;

3) That the credit risk is assumed by the actual owner of the property; and

4) That the books and records of the agent or broker show the amount of gross sales and the amount of commission due thereon.

(D) Collections by agent. Money or property received by a taxpayer, as agent, for transmittal to a third party is not to be reported by such taxpayer as gross receipt, but any commission received by him for his services as agent must be included in gross receipts.

SECTION 312. PERSONS ERECTING BUILDINGS OR OTHERWISE ALTERING, REPAIRING OR IMPROVING PROPERTY.

(A) General. A general contractor or subcontractor, resident or nonresident, engaged in Philadelphia in the business of erecting buildings, or otherwise altering, repairing or improving real property, is required to report as gross receipts all receipts derived from the performance of such contracts. The amount of receipts to be included in the tax base shall be the full contract price, that is, the total amount received or receivable by way of a fixed determinable amount under the terms of the contract. The contract price will be considered to include all charges made by a general contractor, or subcontractor, for materials, labor, supervision, overhead costs and profits and also any payments made directly by the owner for materials, labor or other obligations for which the contractor becomes liable in the performance of the contract. In the case of a general contractor, no deduction may be made with respect to amounts paid to subcontractors and materialmen.

(B) Cost-plus contracts. A general contractor performing contracts an the basis of "cost-plus-a-fixed-fee" or "cost-plus-a-percentage" or "construction management" is required to report as gross receipts the full contract price as provided in subsection 312(A),[42] unless the owner of the property and/or the general contractor, acting pursuant to authorization by the owner, purchases the materials, or hires all labor or engages all subcontractors, and the owner (a) pledges his credit and is liable in the first instance to the materialmen, suppliers, laborers or subcontractors as distinguished from merely guaranteeing payments to them or undertaking to reimburse the general contractor for the cost of such materials, services or subcontracts, and (b) agrees to make payment directly to the materialmen, suppliers, laborers or subcontractors. Such sales or services will be regarded as made directly to the owner, in which case the general contractor will not be required to include such payments in his gross receipts.

(C) Government contracts. Receipts from the performance of contracts entered into with the City of Philadelphia, or the Commonwealth of Pennsylvania, or the United States Government or any subdivision of such Governments, are to be included in the measure of the tax.

[42] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.

SECTION 313. CONTRACTORS PERFORMING LONG-TERM BUILDING OR CONSTRUCTION CONTRACTS.

(A) Neither the completed contract method nor the percentage of completion method of accounting for income, nor a combination thereof, may be used as the basis for computing gross receipts received during the year used as the measure of the tax. A person who keeps his books on the completed contract or percentage of completion method of accounting, or a combination thereof, must report receipts either on the basis of receipts actually or constructively received (cash basis) during the period used as the measure of the tax, or on the basis of billings rendered (accrual basis) during the period used as the measure of the tax. The method used must be that one which is consistent with the basis used for reporting receipts on the 1984 Mercantile License Tax. A taxpayer who keeps his books on the completed contract or percentage of completion method of accounting, or a combination thereof, and who was not liable for the 1984 Mercantile License Tax, shall report receipts on the accrual basis.

SECTION 314. CONTRACTORS WHO REPAIR, ALTER AND IMPROVE TANGIBLE PERSONAL PROPERTY.

Persons engaged in business in Philadelphia as contractors who repair, alter and improve tangible personal property for the account of others are subject to tax under the provisions of the Business Income and Receipts Tax Ordinance. When contractors perform labor or services on articles of tangible personal property furnished by the other party to the contract, such contractors are required to report only the amount due them for labor or services rendered.

SECTION 315. REAL ESTATE.

(A) Real estate brokers and agents are required to include in taxable receipts the commissions and fees received for services rendered as agent in promoting the purchase and sale of real property for others.

(B) If a person is engaged in the business of taking title to real property and selling same, he is required to include the gross selling price of the property as taxable receipts. The same person may be taxed both as a broker and as a seller, depending on the nature of the transactions. If he acts as a broker or agent, his tax is based on commissions. If he buys and sells real estate either in his own name or in the name of a straw party, he is taxed on the gross selling price of the real estate.

SECTION 316. BUILDINGS, HOTELS, APARTMENT HOUSES, BOARDING HOUSES, NURSING HOMES, ETC.

(A) Persons operating hotels, apartment houses, boarding houses, nursing homes, rooming houses and all other such establishments must include receipts from renting of rooms, furnishing of meals and any other services rendered.

(B) Any person carrying on the business of renting buildings, offices, space, stores, dwellings, houses, etc., shall include gross rentals received in the tax base. No deductions may be made for depreciation, cost of maintenance, repairs, etc.

(C) Persons operating private hospitals, nursing homes and sanitariums are subject to tax. The law exempts such institutions only when they are operated by a non-profit corporation or association organized for religious, charitable or educational purposes.

SECTION 317. INSURANCE COMPANIES.

(A) Insurance companies, whether mutual or stock companies, domestic or foreign, are subject to tax for the privilege of carrying on business in Philadelphia. The tax for the privilege of writing insurance is based on premiums received from risks in Philadelphia, without any deductions therefrom for any cost or expenses whatsoever.

(B) Reinsurance assumed shall not be included in the tax base; reinsurance ceded is not deductible from gross receipts.

(C) Receipts from premiums include gross direct premiums less return premiums thereon. Dividends credited to policyholders may be deducted if such dividends are in the nature of an adjustment of the premiums charged.

(D) Receipts from servicing mortgages, operating hotels and other non-premium business receipts are to be included in the tax base.

SECTION 318. INSURANCE AGENTS, BROKERS AND UNDERWRITERS.

(A) Subject to the provisions of subsections 302(D) and 302(F), agents for insurance companies are required to report as gross receipts the entire commissions received as compensation for their own efforts on policies sold by them directly, and the over-riding commissions received by them upon business produced by brokers or sub-agents.[43]

(B) Brokers or Subagents. Subject to the provisions of subsections 302(D) and 302(F), brokers or sub-agents are required to report as gross receipts the commissions received as compensation for their services.[44]

(C) Employee of a single company. A person who represents a single insurance company is subject to tax hereunder unless he:

1) is considered by the company to be its employee; and

2) does not employ solicitors, subagents or other persons to whom he pays salaries, commissions or other compensation in connection with insurance business solicited.

[43] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.
[44] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.

SECTION 319. THEATERS AND MOTION PICTURE HOUSES.

Persons operating theaters or motion picture houses in Philadelphia, whether as owner or lessee, are required to report as gross receipts the entire box receipts, less admissions taxes collected. No deduction may be taken for commissions, house or film rentals, or any other expenses paid or incurred in connection with exhibitions. Receipts from other sources, such as revenue from the sale of candies, drinks, cigarettes, etc., and commission received on public telephone booths and vending machines, must also be included in the tax base.

SECTION 320. DIVIDENDS.

(A) Except as otherwise provided, where a taxpayer, whether a domestic or foreign corporation or any other type of business entity, maintains its commercial domicile in Philadelphia, all dividends are to be included in the measure of the tax, unless attributable to business conducted at a place of business regularly maintained by the taxpayer outside of Philadelphia. Where the commercial domicile of the taxpayer is located outside of Philadelphia, such receipts are to be excluded unless attributable to business conducted at a place of business regularly maintained by the taxpayer within Philadelphia.

(B) A dividend received in additional stock of the declaring corporation is not to be included in the tax base by a person subject to the provisions of the Business Income and Receipts Tax Ordinances, unless it gives the stockholder an interest different from that represented by his former stockholding. Common stock issued on common stock of the same class, rights and priorities shall be excluded from the tax base, but common stock or preferred stock received as a dividend on preferred stock, or preferred stock received as a dividend on common stock, is subject to inclusion therein at the fair market value thereof.

(C) Dividends received in partial or complete liquidation of a corporation shall be included in the measure of the tax to the extent of the gain realized on the investment. If a loss is sustained, it may not be offset against gross receipts derived from other sources.

SECTION 321. INTEREST.

(A) Except as otherwise provided, where a taxpayer, whether a domestic or foreign corporation or any other type of business entity, maintains its commercial domicile in Philadelphia, all interest received is to be included in the measure of the tax, unless attributable to business conducted at a place of business regularly maintained by the taxpayer outside of Philadelphia. Where the commercial domicile of the taxpayer is located outside of Philadelphia, such receipts are to be excluded unless attributable to business conducted at a place of business regularly maintained by the taxpayer within Philadelphia.

(B) Interest received on obligations of the United States or its possessions or any governmental agency created by act of Congress, or of the Commonwealth, any public authority, commission, board or other agency created by the Commonwealth, any political subdivision of the Commonwealth of any public authority created by such political subdivision is to be excluded from the tax base.

(C) Interest received on obligations of States other than Pennsylvania, or political subdivisions, authorities, commissions, boards or agencies thereof, or of foreign governments, shall be included in the tax base.

SECTION 322. ROYALTIES.

Except as otherwise provided, where a taxpayer, whether a domestic or foreign corporation or any other type of business entity, maintains its commercial domicile in Philadelphia, all patent, copyright and trademark royalties received are to be included in the measure of the tax unless attributable to business conducted at a place of business regularly maintained by the taxpayer outside of Philadelphia. Where the commercial domicile of the taxpayer is located outside of Philadelphia, such receipts are to be excluded unless attributable to business conducted at a place of business regularly maintained by the taxpayer within Philadelphia.

SECTION 323. RECEIPTS FROM SECURITIES TRANSACTIONS.

(A) Except as otherwise provided, where a taxpayer, whether a domestic or foreign corporation or any other type of business entity, maintains his commercial domicile in Philadelphia, all gross profits realized from stocks, bonds and other securities, commodity futures, options, commercial paper, notes or other evidences of indebtedness, monetary metals, royalty interests in oil, gas and mineral deposits, etc., sold, exchanged, paid at maturity or redeemed, are to be included in the measure of the tax, unless attributable to business conducted at a place of business regularly maintained by the taxpayer outside of Philadelphia. Where the commercial domicile of the taxpayer is located outside of Philadelphia, such receipts are to be excluded unless attributable to business conducted at a place of business regularly maintained by the taxpayer within Philadelphia.

1) If losses are sustained from stocks, bonds, etc., sold, exchanged, paid at maturity, or redeemed, such losses may be offset against gains from such transactions but may not be offset against other receipts.

2) For the purpose of determining the gross profit, the cost of stocks, bonds, etc., shall be deducted from the amount realized on sale, exchange, redemption or maturation.

3) The amount realized shall consist of the gross receipts therefrom less any brokerage fees or commissions paid on the transfer.

4) The costs shall consist of the purchase price of the property plus any brokerage fees or commissions paid on acquisition.

(B) Sale by issuing corporations. The proceeds derived by a corporation from the original sale of capital stock do not constitute gross receipts, within the meaning of the Business Income and Receipts Tax Ordinance. However, profits realized from the sale of a corporation's own stock, after issuance and repurchase by the corporation, must be included in the measure of the tax.

(C) Retirement of bonds. When a corporation purchases its own bonds for retirement at a price less than the issuing price or less than face value, the difference between the purchase price and the issuing price or face value must be included in the tax base. Conversely, if a corporation issues bonds at their face value and purchases for retirement any of such bonds at a price in excess of the issuing price of face value, the difference between the issuing price and the purchase price may be deducted, but only to the extent of the profits realized on other securities transactions.

(D) Hedging transactions. Gains or losses realized on hedging transactions are gains or losses from securities transactions within the meaning of this section.

(E) U.S. Government and Pennsylvania Obligations. Profits made on the sale, exchange, redemption or payment at maturity of obligations of the United States or its possessions or any governmental agency created by act of Congress, or of the Commonwealth, any public authority, commission, board or other agency created by the Commonwealth, any political subdivision of the Commonwealth or any public authority created by such political subdivision shall be excluded from the tax base.

SECTION 324. SALE OF CAPITAL ASSETS.

Except as otherwise provided, the gains (not gross proceeds) resulting from the sale of capital assets, such as plant, machinery and equipment, furniture and fixtures, vehicles, etc., are to be included in the tax base if the property is located in Philadelphia at the time of the sale. Losses sustained on such sales may be offset against gains from other sales of capital assets, but may not be offset against gross receipts from other sources. In computing the gains or losses from the sale of a capital asset, the cost of the asset, less allowable depreciation, is deductible from the gross proceeds of the sale.

SECTION 325. PROCEEDS FROM INSURANCE POLICIES.

Amounts received on insurance policies as compensation for business property destroyed or damaged shall be excluded to the extent of the depreciated cost of such property. The excess, if any, together with amounts received on insurance policies as compensation for loss of business or loss of income, shall be included in the tax base.

SECTION 326. PERSONS REGISTERED UNDER THE ACT OF DECEMBER 5, 1972 P.L. 1280 (KNOWN AS THE PENNSYLVANIA SECURITIES ACT OF 1972), REFERRED TO IN THIS SECTION AS SECURITIES DEALERS.

(A) General Rule. Except as otherwise provided, securities dealers are subject to the tax on gross receipts in the same manner and at the same rates as applicable to businesses generally and to financial businesses, subject to the Special Apportionment rules provided in subsection (B).[45]

(B) Special Apportionment Rules.

1) Securities dealers doing business both within and outside Philadelphia shall apportion commissions, brokerage fees and similar charges which are not otherwise excludible pursuant to any other section of these provisions, on the following basis:

[45] Internal reference renumbered to reflect compiler’s change of section numbers/letters in Article III and IV for consistency.

(a) 40 percent of commissions, brokerage fees and similar charges from orders originating from a location of the securities dealer outside of Philadelphia, and transmitted to Philadelphia for execution on a Philadelphia exchange, shall be included in the tax base.

(b) 60 percent of commissions, brokerage fees, and similar charges from orders originating from a location of the securities dealer in Philadelphia, and transmitted for execution on an exchange located outside of Philadelphia, shall be included in the tax base.

(c) 100 percent of commissions, brokerage fees, and similar charges from orders originating from a location of the securities dealer in Philadelphia, and transmitted for execution on an exchange located within Philadelphia, shall be included in the tax base.

2) Gains or losses from the sales of stocks, bonds, other securities, commercial paper, commodity futures, options, notes, or other evidences of indebtedness, monetary metals, royalty interests in oil, gas or mineral deposits, etc., owned by a person registered under the Pennsylvania Securities Act of 1972 or with respect to which it is a participating underwriter, shall be treated for the purposes of determining taxability or excludability, as sales of goods and merchandise. Losses on excludable transactions may not be offset against taxable receipts from other transactions.

(C) Computation of Minimum Tax.

In calculating the minimum tax on securities dealers, a securities dealer may not exclude commissions, brokerage fees and similar charges received on account of transactions effected for persons resident or having their principal place of business outside Philadelphia, as provided in subsection 302(Q).[46] However, to the extent that such receipts are otherwise excludible under any other provision, including subsection 326(B),[47] that portion of such receipts may be excluded from the receipts tax base.

SECTION 327. APPORTIONMENT OF RECEIPTS.

The foregoing provisions of Article III provide for the computation and segregation of taxable receipts properly attributable to the doing of business in Philadelphia. In the event that these provisions as applied do not fairly represent the taxpayer's business activity in Philadelphia or that the taxpayer's receipts both inside and outside Philadelphia are incapable of segregation, the taxpayer may petition for, or the Department may require, the employment of any other method to effect an equitable apportionment of the taxpayer's receipts to accurately and fairly reflect business activity in Philadelphia.

[46] Internal reference renumbered to reflect compiler’s change of section numbers/letters in Article III and IV for consistency.
[47] Internal reference renumbered to reflect compiler’s change of section numbers/letters in Article III and IV for consistency.

ARTICLE IV[48]

TAX ON NET INCOME

SECTION 401. IRREVOCABLE ELECTION OF "NET INCOME" COMPUTATION METHOD.

(A) Net income can be computed by either of two methods, at the option of the taxpayer. Except as otherwise provided in this section, the method which is used by a taxpayer to compute the tax based on net income on the first Business Income and Receipts Tax Return filed by that taxpayer, is the method which must be used by that taxpayer in all consecutive succeeding years.

(B) A taxpayer who has discontinued engaging in business activity in the City of Philadelphia for the period of at least one full tax year (January 1 to December 31) and then recommences engaging in business activity with the City, may elect to use either method of computing net income for the first Business Income and Receipts Tax Return due after recommencing business activity in the City.

SECTION 402. CORPORATIONS PARTICIPATING IN THE FILING OF A CONSOLIDATED RETURN.

In the case of a corporation participating in the filing of a consolidated corporate return to the Federal Government, net income shall mean either:

(A) The income from any business activity as it would have been properly returned to and ascertained by the Federal Government by that corporation on a separate return, subject to the adjustments to net income provided in this Article, and as allocated and apportioned as provided in this Article; or

(B) The net income for that corporation as computed under Net Income Method I.

SECTION 403. NET INCOME METHOD I.[49]

(A) General.

Method I Net Income shall be the net gain from the operation of a business, profession or other activity after provision for all allowable expenses actually incurred in the conduct thereof, either paid or accrued in accordance with the accounting system used, without deduction of taxes based on income, and without deduction of fines and penalties, and as allocated and apportioned as provided in this Article and after adjustment for the distributive share of net income or loss received by one partner from a partnership where the receiving partner’s ownership of capital at the end of the year is at least twenty-percent (20%) as reported on Schedule K-1 of Federal Form 1065 of the distributing partnership. The rules and regulations applicable to determining taxable net

[48] Internal numbers/letters changed throughout this Article by compiler for consistency with the rest of the BIRT regulations.
[49] Amended by regulation submitted to the Department of Records on May 7, 1999 (effective June 6, 1999, by its terms made applicable to tax years 2000 and thereafter).

profits for the Net Profits tax imposed in Chapter 19-1500 of The Philadelphia Code shall be the rules and regulations applicable to determining taxable net income for Net Income Method I.

(B) Adjustments to Net Income[50]

A taxpayer shall deduct the pro rata portion of net income attributable to receipts that are excluded under subsection (W), Section 302 of these Regulations; such deduction is computed as follows:

1) For Tax Year 2014:

The lower of Taxable Receipts or $50,000	x	$\frac{\text{Taxable Net Income}}{\text{Taxable Receipts}}$

2) For Tax Year 2015:

The lower of Taxable Receipts or $75,000	x	$\frac{\text{Taxable Net Income}}{\text{Taxable Receipts}}$

3) <u>For Tax Year 2016 and the years thereafter:</u>

The lower of Taxable Receipts or $100,000	x	$\frac{\text{Taxable Net Income}}{\text{Taxable Receipts}}$

Example 1: A taxpayer is operating a business entirely within Philadelphia. The total receipts and net income of the business is $85,000 and $30,000 respectively. As such, the taxpayer's taxable receipts and taxable net income shall be the same as its total receipts and net income respectively. Based on this information,

- For Tax Year 2014, the lower of taxable receipts, which is $85,000, or $50,000 is $50,000. As such, the taxpayer shall deduct a pro rata share of net income in the amount of $50,000 * ($30,000 / 85,000) = $17,647. The taxable net income after the statutory deduction shall be $30,000 – $17,647 = $12,353. This represents a 59% reduction in taxable net income.

- For Tax Year 2015, the lower of $85,000 taxable receipts or $75,000 is $75,000, and the taxpayer shall deduct a pro rata share of net income in the amount of $75,000 * (30,000 / 85,000) = $26,470. The taxable net income after the deduction shall be $30,000 – $26,470 = $3,530, and this represents 88% reduction in taxable net income.

- For Tax Year 2016 and the years thereafter, the lower of $85,000 taxable receipts or $100,000 is $85,000. Accordingly, the taxpayer shall deduct a pro rata share of net income

[50] Added by regulation submitted to the Department of Records on October 1, 2014 (November 3, 2014).

in the amount of $85,000 * (30,000 / 85,000) = $30,000. This represents a 100% reduction in taxable net income.

Example 2: A Taxpayer's total receipts and net income are the same as Example 1 above except that the taxpayer operates its business both inside and outside Philadelphia with 75% property, 75% payroll and 25% receipts factors within Philadelphia. Accordingly, the taxable receipts is $85,000 * 25% = $21,250. Based on this information,

- For Tax Year 2014, the lower of $21,250 taxable receipts or $50,000 is $21,250. For Tax Year 2014, the applicable apportionment formula is a three-factor formula with a double-weighted receipts factor. Using this apportionment formula, the average apportionment factor shall be (75 + 75 + 25 + 25) \ 4 = 50%, and the apportioned net income before the statutory deduction is $30,000 * 50% = $15,000. Accordingly, the taxpayer shall deduct a pro rata share of net income in the amount of $21,250 * ($15,000 /21,250) = $15,000. As a result of this statutory deduction, the taxable net income for tax year 2014 will be ZERO - a 100% reduction in taxable net income.

- For Tax Year 2015, the lower of $21,250 taxable receipts or $75,000 is $21,250. For Tax Year 2015 and thereafter, the applicable mandatory apportionment formula is single-receipts factor formula. Using this apportionment formula, the apportionment factor will be 25% and the apportioned net income before the statutory deduction will be $30,000 * 25% = $7,500. Accordingly, the taxpayer shall deduct a pro rata share of net income in the amount of $21,250 * (7,500 / 21,250) = $7,500. This represents 100 % reduction in taxable net income.

- For Tax Year 2016 and the years thereafter, the lower of $21,250 taxable receipts or $100,000 is $21,250. Using single-receipts factor formula, the apportionment factor will be 25% and the apportioned net income before the statutory deduction will be $30,000 * 25% = $7,500. Accordingly, the taxpayer shall deduct a pro rata share of net income in the amount of $21,250*(7,500 / 21,250) = $7,500. This represents a 100% reduction in taxable net income.

Example 3: A Taxpayer's total gross receipts and net income are the same as Example 1 and 2 above. The taxpayer does not have a business location within Philadelphia but generates 50% of its receipts from activities within Philadelphia and, accordingly, its taxable receipts will be $85,000 * 50% = $42,500.

- For Tax Year 2014, the lower of $42,500 or $50,000 is $42,500. Using the three-factor apportionment formula with a double-weighted receipts factor, the average apportionment factor = (0 + 0 + 50 + 50) \ 4 = 25%, and the apportioned net income before the statutory deduction will be $30,000 * 25% = $7,500. Accordingly, the taxpayer shall deduct a pro rata share of net income in the amount of $42,500 * ($7,500 / $ 42,500) = $7,500. As a result of this statutory deduction, the taxable net income for tax year 2014 shall be reduced from $7,500 to ZERO - a 100% reduction in taxable net income.

- For Tax Year 2015, the lower of $42,500 or $75,000 taxable receipts is $42,500. Using the single-receipts factor apportionment formula, the apportionment factor will be 50% and the apportioned net income before the statutory deduction will be $30,000 * 50% = $15,000. This means that the taxpayer shall deduct a pro rata share of net income in the amount of $42,500 * ($15,000 / $42,500) = $15,000. This represents 100 % reduction in taxable net income.

- For Tax Year 2016 and the years thereafter, the lower of $42,500 taxable receipts or $100,000 is $42,500. Using the single-sales factor apportionment formula, the taxable net income shall be $15,000, and the taxpayer shall deduct a pro rata share of net income in the amount of $42,500 * ($15,000 / $42,500) = $15,000. This represents 100 % reduction in taxable net income.

Example 4: A Taxpayer's total receipts and net income are $1,000,000 and $500,000 respectively. The taxpayer does not have a business location within Philadelphia but generates 10% of its receipts from activities within Philadelphia and, as a result, its taxable receipts shall be $1,000,000 *10% = $100,000.

- For Tax Year 2014, the lower of $100,000 taxable receipts or $50,000 is $50,000. Using the three-factor apportionment formula with a double-weighted receipts factor, the average apportionment factor = (0 + 0 + 10 + 10) \ 4 = 5%, and the apportioned net income before the statutory deduction will be $500,000 * 5% = $25,000. Accordingly, the taxpayer shall deduct a pro rata share of net income in the amount of $50,000 * ($25,000 / $100,000) = $12,500. As a result of this statutory deduction, the taxable net income for tax year 2014 shall be $12,500; this represents a 50% reduction in taxable net income.

- For Tax Year 2015, the lower of $100,000 taxable receipts or $75,000 is $75,000. Using the single-receipts factor apportionment formula, the apportionment factor will be 10% and the apportioned net income before the statutory deduction will be $500,000 * 10% = $50,000. Accordingly, the taxpayer shall deduct a pro rata share of net income in the amount of $75,000 * ($50,000 / $100,000) = $37,500. This represents a 71% reduction in taxable net income.

- For Tax Year 2016 and the years thereafter, the statutory deduction equals the taxable receipts, which is $100,000. Using the single-sales factor apportionment formula, the taxable net income shall be $50,000, and the taxpayer shall deduct a pro rata share of net income in the amount of $100,000 * ($50,000 / $100,000) = $50,000. This represents 100% reduction in taxable net income.

SECTION 404. NET INCOME METHOD II.

(A) General.

1) Method II Net Income shall be the portion of the taxpayer's adjusted taxable income (or loss) from any business activity as properly returned to and ascertained by the Federal Government prior to giving effect to the exclusion for dividends received and for net operating losses, which is apportioned to Philadelphia, plus the taxpayer's nonbusiness income which is

allocated to Philadelphia. The adjustments to taxable income (or loss) are provided in subsections (B)(1) through (B)(6).[51]

2) Taxable income as properly returned to the Federal Government means the taxable income (or loss) as should have been reported to the Internal Revenue Service on a tax return form, in accordance with the Internal Revenue Code, the Regulations issued thereunder, applicable rulings and court decisions. In the case of a partnership, joint venture, association, syndicate, pool or similar organization, or an S corporation, taxable income from any business activity as returned to and ascertained by the Federal Government shall mean "Ordinary income (loss)" as reported on Form 1065, U.S. Partnership Return of Income, or on Form 1120S, U.S. Income Tax Return for an S Corporation, subject to the following adjustments to reflect items of income and expense passed through separately on Schedule K-1 to the partners, joint ventures, etc., or shareholders:

(a) An increase for:

(.1) Guaranteed payments to partners.

(.2) Dividends qualifying for exclusion.

(.3) Net short-term capital gain.

(.4) Net long-term capital gain.

(.5) Net gain from involuntary conversions due to casualty or theft.

(.6) Other net gain under Section 1231 of the Internal Revenue Code.

(.7) Interest.

(.8) Other dividends.

(.9) Royalties.

(.10) Net rental income.

(.11) Portfolio income.

(b) A decrease for:

(.1) Net short-term capital loss.

(.2) Net long-term capital loss.

(.3) Net loss from involuntary conversions due to casualty or theft.

[51] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency; failure to amend this to include (B)(7) when that section was added appears inadvertent.

(.4) Other net loss under Section 1231 of the Internal Revenue Code.

(.5) Expense deduction for recovery property under Section 179 of the Internal Revenue Code.

(.6) Investment interest expense.

(.7) Depletion.

(.8) Net rental loss.

(.9) Other deductions related to portfolio income.

(3) The above referenced items are not to be construed as an all inclusive list. The tax base is the actual earnings of the business without recognition of Federal characterizations which are commonly referred to as pass through items.

(4) All businesses must allocate non-business income after making the prescribed adjustments to net income.

(B) Adjustments to Net Income.[52] The following adjustments are applicable only to the computation of net income under Method II, and may not be used in computing net income under Method I. These adjustments shall be deducted or added in the order provided hereunder, and shall be computed based on receipts and deductions reflected in the computation of taxable income as properly returned to and ascertained by the Federal Government. If the Amount of any of the adjustments in subsections (B)(1) through (B)(7) is less than zero, the taxpayer shall add that amount to the adjusted net income remaining after making the preceding adjustments (increase net income), or shall deduct that amount from the adjusted net loss remaining after making the preceding adjustments (reduce the net loss), as the case may be. If the amount of any of the adjustments in subsections (B)(1) through (B)(7) is more than zero, the taxpayer shall deduct that amount from the adjusted net income remaining after making the preceding adjustments (decrease net income), or shall add that amount to the adjusted net loss remaining after making the preceding adjustments (increase net loss), as the case may be.[53]

1) A taxpayer shall reduce net income or increase net loss by the amount of interest and dividends earned on and the net gains from the transfer of all direct obligations of the United States Government, Pennsylvania and its political subdivisions, including stocks, bonds and Treasury notes and other direct obligations of the United States Government or Pennsylvania and its political subdivisions, and a taxpayer shall increase net income or reduce net losses by the amount of any net losses from the transfer of all direct obligations of the United States Government or Pennsylvania and its political subdivisions, including stocks, bonds and Treasury notes and other direct obligations of the United States Government or Pennsylvania and its political subdivisions.

---

[52] Amended by regulation submitted to the Department of Records on May 7, 1999 (effective June 6, 1999, by its terms applicable to tax years 2000 and thereafter).
[53] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.

2) A taxpayer shall increase net income or reduce net loss by the amount of any interest expense attributable to direct obligations of the United States Government, Pennsylvania and their political subdivisions, including stocks, bonds, Treasury notes and other direct obligations of the United States Government, Pennsylvania and their political subdivisions, the income from which is exempt from taxation of income under the laws of the United States or of the Commonwealth of Pennsylvania. The increase of income or reduction of net loss under this subsection shall not exceed the deduction claimed in subsection (B)(1) except that if the amount of the adjustment under subsection (B)(1) is less than zero, the adjustment under this subsection shall be zero.[54]

3) A public utility shall deduct net income attributable to the receipts from its specific business operations conducted under the laws, rules and regulations administered by the Pennsylvania Public Utility Commission, derived from furnishing or supplying services at the rates specified in its tariffs. A contract carrier is not a public utility. A taxpayer shall deduct net income attributable to receipts from its specific business operations which are subject to the jurisdiction of the Interstate Commerce Commission derived from furnishing services at the rates specified in its tariffs.

4) A taxpayer shall deduct net income attributable to its receipts from the business of loading or discharging cargo to or from vessels when conducted an piers, wharves or marine terminal facilities in the Port of Philadelphia and from related business activities conducted on such premises such as furnishing dockage, wharfage, truck and/or railroad car loading and unloading and storage of cargo which is to be loaded onto or has been discharged from vessels at a pier, wharf or marine terminal facility in the Part of Philadelphia.

5) When applicable, a corporation or partnership shall deduct the following receipts if, and to the extent, such receipts are included in taxable income as properly returned to and ascertained by the Federal Government as heretofore defined:

(a) Dividends, interest, royalties and distributive share of partnership income received from:

(.1) Another corporation of the same affiliated group, or

(.2) A corporation of which the receiving corporation or partnership owns at least twenty percent (20%) of the voting power of all classes of stock and at least twenty percent (20%) of each class of nonvoting stock.

(.3) A partnership of which the receiving corporation or partnership owns at least twenty percent (20%) of the capital at the end of the year as reported on Schedule K-1 of Federal Form 1065 of the distributing partnership.

(b) A corporation may deduct all other receipts received from another corporation which is a member of the same affiliated group.

[54] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.

(c) The extent to which the receipts described in subsection (B)(5)(b) are included in taxable income (or loss) as properly returned to and ascertained by the Federal Government shall be determined in accordance with a fraction of which the numerator shall be receipts as hereafter described and of which the denominator shall be receipts as hereafter described. The numerator and denominator shall not include any receipts which are not reflected in the computation of taxable income (or loss) as properly returned to and ascertained by the Federal Government, and shall not include any receipts which are reflected in the adjustments to net income (or loss) provided in subsections (B)(1), (B)(3) and (B)(5)(a).[55]

(d) Numerator. Except as otherwise provided, the numerator of the fraction shall include the following receipts:

(.1) Except for receipts described in (B)(5)(a), all receipts from another corporation which is a member of same affiliated group, including but not limited to:

(.a) Gross receipts from the sales exchange or transfer of real property and tangible personal property.

(.b) Gross receipts from intangible personal property sold, exchanged, transferred, paid at maturity or redeemed.

(.c) Gross rents and royalties from real property and tangible personal property.

(.d) Patent, copyright and trademark royalties.

(.e) Commissions, fees, receipts from services rendered and insurance premiums received by insurance companies.

(e) Denominator. Except as otherwise provided, the denominator of the fraction shall include all receipts from whatever source, except that the denominator shall not include any receipts which are not reflected in the computation of taxable income (or loss) as properly returned to and ascertained by the Federal Government, and shall not include any receipts which are reflected in the adjustments to net income (or loss) provided in subsections (B)(1), (B)(3) and (B)(5)(a).[56]

(f) Application of Fraction. The percentage equivalent of the fraction shall be multiplied against the taxable income (or loss) remaining after making the adjustments provided in subsections (B)(1) through (B)(5)(a). If the result is more than zero, the taxpayer shall deduct that amount from the adjusted net income remaining after making the preceding adjustments (reduce the

[55] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.
[56] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.

net income). If the result is less than zero, the taxpayer shall deduct that amount from the adjusted net loss remaining after making the preceding adjustments (reduce adjusted net loss).[57]

6) Taxpayers registered under the Pennsylvania Securities Act of 1972 shall deduct all net income which is not attributable to commissions, brokerage fees and similar charges on account of transactions effected for persons residing or having their principal place of business within the City of Philadelphia, except to the extent that such deductible net income is attributable to income which is otherwise taken as an adjustment to net income under subsections (B)(1), (B)(2) or (B)(5).[58]

7) When applicable, a partnership or corporation receiving a distributive share of a partnership loss from a partnership of which the receiving partnership or corporation owns at least twenty (20) percent of the capital of the distributing partnership at the end of the year, as reported on Schedule K-1 of Federal Form 1065 of the distributing partnership, shall increase net income or reduce net loss of the receiving partnership or corporation to the extent that such loss is included in the net income or net loss of the receiving partnership or corporation.[59]

8) A taxpayer shall deduct the pro rata portion of net income attributable to receipts that are excluded under subsection (X), Section 302 of these Regulations; refer to the formula and the examples provided under subsection 403(B) of these Regulations on how the deduction is computed.[60]

SECTION 405. DIVISION OF INCOME.

(A) Method of division of income. Income shall be divided as follows:

1) Business income is apportioned, subject to the limitations set forth in subsection (B).[61]

2) Nonbusiness income is allocated.

(B) Taxability of Business Income.

1) All of the business income of taxpayers engaged in business solely within Pennsylvania is taxed on an apportioned basis to reflect business income attributable to doing business in Philadelphia.

---

[57] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.
[58] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.
[59] Added by regulation submitted to the Department of Records on May 7, 1999 (effective June 6, 1999, by its terms applicable to tax years 2000 and thereafter).
[60] Added by regulation submitted to the Department of Records on October 1, 2014 (effective November 3, 2014); cross-reference corrected by compiler.
[61] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.

2) For taxpayers engaged in business both within and without Pennsylvania, all business income is presumed to be taxable on an apportioned basis to reflect business income attributable to doing business in Philadelphia. However, this presumption is subject to the "unitary business principle" as interpreted by the courts. A taxpayer may exclude certain business income from apportionable income if the taxpayer can establish:

(a) that such income was earned outside of Pennsylvania;

(b) that such income was earned in the course of activities wholly unrelated (in business and economic sense) to the taxpayer's activities in Pennsylvania; and

(c) generally, that the income was earned in a discrete business enterprise which is not a part of a unitary business of which the taxpayer's Pennsylvania activities form a part.
It is the taxpayer's burden to overcome the presumption that its activities both within and without Pennsylvania are all part of a single unitary business the income of which is fully taxable, on an apportioned basis, in Philadelphia.

(C) Applications. The applications below illustrate the provisions of this rule relating to whether particular income is business or nonbusiness income. The applications used are illustrative only and do not purport to set forth all pertinent facts used in determination of whether particular income is business or nonbusiness income.

1) Rents from real and tangible personal property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is incidental thereto and therefore is includible in the property apportionment factor.

2) Gains or losses from sales of assets. Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property, while owned by the taxpayer, was used in the taxpayer's trade or business.

3) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to such trade or business operations.

4) Dividends. Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to such trade or business operations.

5) Patent, trademark, and copyright royalties. Patent, trademark and copyright royalties are business income where the patent or trademark or copyright with respect to which the royalties were received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the patent or trademark or copyright is related to or incidental to such trade or business operations.

SECTION 406. ALLOCATION OF NONBUSINESS INCOME.

(A) Nonbusiness income (or loss) shall be allocated within or without Philadelphia according to the following rules. Allocable nonbusiness income (or loss) does not include any receipts, net income, gains or losses taken as an adjustment to net income (or loss) under subsections 404(B)(1), 404(B)(5)(a) and 404(B)(6), and does not include receipts or the net income, gains or losses attributable thereto, which are included in the numerator of the fraction used in computing the adjustment under subsection 404(B)(5)(b).[62]

1) (a) Net rents and royalties from real property located in Philadelphia are allocable to Philadelphia.

(b) Net rents and royalties from tangible personal property are allocable to Philadelphia if, and to the extent that, the property is utilized in Philadelphia.

(.1) The extent of utilization of tangible personal property in Philadelphia is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of the physical location of the property in Philadelphia during the rental or royalty period in the income year and the denominator of which is the number of days of the physical location of the property everywhere during all rental or royalty periods in the income year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, the tangible personal property is deemed to be utilized at the situs in which the property was located at the time the rental or royalty payor obtained possession of the property.

2) (a) Capital gains and losses from sales of real property located in Philadelphia are allocable to Philadelphia.

(b) Capital gains and losses from sales of tangible personal property are allocable to Philadelphia if the property had a situs in Philadelphia at the time of the sale.

(c) Capital gains and losses from sales of intangible personal property are allocable to Philadelphia if the taxpayer's commercial domicile is in Philadelphia.

3) Interest and dividends are allocable to Philadelphia if the taxpayer's commercial domicile is in Philadelphia.

4) (a) Patent, copyright and trademark royalties are allocable to Philadelphia if, and to the extent that, the patent or copyright is utilized by the payor in Philadelphia.

(b) A patent is utilized in Philadelphia to the extent that it is employed in production, fabrication, manufacturing, or other processing in Philadelphia or to the extent that a patented product is produced in Philadelphia. If the basis of receipts from patent royalties does not

---

[62] Internal reference renumbered to reflect compiler’s change of section numbers/letters in Article III and IV for consistency.

permit allocation to specific areas or if the accounting procedures do not reflect areas of utilizations the patent is utilized in the jurisdiction in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in Philadelphia to the extent that printing or other publication originates in Philadelphia. If the basis of receipts from copyright royalties does not permit allocation to specific areas or if the accounting procedures do not reflect areas of utilization, the copyright is utilized in the jurisdiction in which the taxpayer's commercial domicile is located.

(d) A trademark is utilized in Philadelphia to the extent that the trademark is applied to the goods in Philadelphia, or if the trademark is not applied to the goods, to the extent that the goods are placed in a package or container bearing the trademark in Philadelphia. If the basis of receipts from trademark royalties does not permit allocation to specific areas or if the accounting procedures do not reflect areas of utilization, the trademark is utilized in the jurisdiction in which the taxpayer's commercial domicile is located.

SECTION 407. COMPUTATION OF TAXABLE NET INCOME OR LOSS.

(A) 1) If the net total amount of nonbusiness income, whether allocable within or without Philadelphia, is more than zero, the taxpayer shall deduct that amount from the adjusted net income (decrease the adjusted net income) to compute the apportionable net income or loss; or shall deduct that amount from the adjusted net loss (increase the adjusted net loss) to compute the apportionable net income or loss.

2) If the net total amount of nonbusiness income, whether allocable within or without Philadelphia, is less than zero, the taxpayer shall add that amount to the adjusted net income (increase the adjusted net income) to compute the apportionable net income or loss; or shall deduct that amount from the adjusted net loss (reduce the adjusted net loss) to compute the apportionable net income or loss.

(B) After apportionment of net income to Philadelphia, nonbusiness income or losses allocable to Philadelphia shall be added to or deducted from apportioned net income or losses to determine taxable net income or loss in accordance with whichever one of the following rules is applicable:

1) Nonbusiness income shall be added to apportioned net income.

2) Nonbusiness income shall be added to apportioned net losses so as to reduce the net loss.

3) Nonbusiness losses shall be deducted from apportioned net income.

4) Nonbusiness losses shall be added to apportioned net losses so as to increase the net loss.

SECTION 408. APPORTIONMENT OF INCOME BY ALL PERSONS OTHER THAN PERSONS WHO ARE SUBJECT TO A TAX PURSUANT TO ARTICLES VII (BANK SHARES TAX), VIII (TITLE INSURANCE AND TRUST COMPANIES SHARES TAX), IX (INSURANCE PREMIUMS TAX) OR XV (MUTUAL THRIFT INSTITUTIONS TAX) OF THE REFORM CODE OF 1971, AND PRIVATE BANKS.

Except as otherwise provided in other sections of this regulation and in subsection (H) of this section, for all Tax Years prior to Tax Year 2015, a taxpayer's net income after adjustments and allocation shall be apportioned to Philadelphia in accordance with a formula composed of a property factor, a payroll factor and a receipts factor. For Tax Year 2015 and thereafter, the Property Factor of subsection (A) and the Payroll Factor of subsection (B) will no longer be used to calculate the apportionment of net income. The apportionment of net income after adjustments (made pursuant to Sections 403 or 404 of these regulations) and allocation (pursuant to Section 406 of these regulations) will be made in accordance with a Single Sales Factor as detailed in subsection (G) of this section.[63]

(A) Property Factor.

1) General. The property factor of the apportionment formula shall include all real and tangible personal property owned and rented by the taxpayer and used during the income year or period in the regular course of the taxpayer's trade or business. The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency. The property factor shall include the average value of property includible in the factor.

Property shall be included in the property factor if it is actually used or is available for or capable of being used during the income period. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includible in the factor. Property or equipment under construction during the tax period (except inventoriable goods in process) shall be excluded from the factor until such property is actually used for the production of income. If the property is partially used for the production of income while under construction, the value of the property to the extent used shall be included in the property factor. Property held for the production of income shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its sale or the lapse of an extended period of time (normally, five years) during which the property is held for sale.

Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of taxpayer's trade or business.

[63] Amended by regulation submitted to the Department of Records on October 8, 2010 (effective November 8, 2010); amended by regulation submitted to Department of Records on October 1, 2014 (effective November 3, 2014); internal reference renumbered to reflect compiler’s change of section numbers/letters in Article III and IV for consistency. Further amended by regulation submitted to the Department of Records on December 17, 2015 (effective January 19, 2016).

Property used in connection with the production of receipts, net income, gains or losses taken as an adjustment to net income (or loss) shall be excluded from the property factor to the extent the property is so used. The method of determining that portion of the value to be included in the factor will depend upon the facts of each case.

2) Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used within Philadelphia during the income period. This amount will be tangible personal property owned plus the value of real and tangible personal property rented (as determined pursuant to subsection (A)(4)(b)).[64] Taxpayer's property in transit between locations of the taxpayer shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the location of destination. The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without Philadelphia during the income period shall be determined for the purposes of the numerator of the factor on the basis of total time within Philadelphia during the income period. An automobile assigned to a traveling employee shall be included in the numerator if the employee's compensation is included in the numerator of the payroll factor.

3) Denominator. The denominator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer everywhere. This amount shall be determined pursuant to the same procedures used to calculate the numerator.

4) Valuation of Property.

(a) Valuation of Owned Property. Property owned by the taxpayer shall be valued at its original cost. As a general rule, "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange or abandonment, etc., provided that any taxpayer subject to the jurisdiction of a regulatory agency shall determine the original cost of its property in accordance with the system of accounts prescribed by the regulatory agency for such taxpayer.

If the original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer.

Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.

Example (1): The taxpayer acquired a factory building in Philadelphia at a cost of $500,000 and 18 months later expended $100,000 for major remodeling of the building. Taxpayer files its return for the current taxable year on the calendar year basis. Depreciation

[64] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.

deduction in the amount of $22,000 was claimed on the building for its return for the current taxable year. The value of the building includible in the numerator and denominator of the property factor is $600,000, as the depreciation deduction is not taken into account in determining the value of the building for purposes of the factor.

Example (2): During the current taxable year, X Corporation merges into Y Corporation in a tax-free reorganization under the Internal Revenue Code. At the time of this merger, X Corporation owns a factory which X built five years earlier at a cost of $1,000,000. X has been depreciating the factor at the rate of two percent per year, and its basis in X's hands at the time of the merger is $900,000. Since the property is acquired by Y in a transaction in which, under the Internal Revenue Code, its basis in Y's hands is the same as its basis in X's, Y includes the property in Y's property factor at X's original cost, without adjustment for depreciation, i.e., $1,000,000.

Example (3): Corporation Y acquires the assets of Corporation X in a liquidation by which Y is entitled to use its stock cost as the basis of the X assets under section 334 (b)(2) of the 1954 Internal Revenue Code (i.e., stock possessing 80 percent control is purchased and liquidated within two years). Under these circumstances, Y's cost of the assets is the purchase price of the X stocks prorated over the X assets.

(b) Valuation of Rented Property. Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. Subrents are not deducted when the subrents constitute business income because the property which produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing such income. Accordingly, there is no reduction in its value. If the subrents taken into account in determining the net annual rental rate produce a negative or clearly inaccurate value for any item of property, another method which will properly reflect the value of rental property may be required by the Department or requested by the taxpayer. In no case, however, shall such value be less than an amount which bears the same ratio to the annual rental paid by the taxpayer for such property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property. If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for such property shall be determined on the basis of a reasonable market rental rate for such property.

Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

Example (1): The taxpayer rents a 20 story office building and uses the lower two stories for its general corporation headquarters. The remaining 18 floors are subleased to others. The rental of the eighteen floors is not incidental to but rather is separate from the operation of the taxpayer's trade or business. The subrents are to be deducted from the rent paid by the taxpayer.

Example (2): The taxpayer rents a 10-story building at an annual rental rate of $1,000,000. Taxpayer occupies two stories and sublets eight stories for $1,000,000 a year. The net annual rental rate of the taxpayer must not be less than two-tenths of the taxpayer's annual rental rate for the entire years or $20,000.

"Annual rental rate" is the amount paid as rental for property for a 12-month period (i.e., the amount of the annual rent). Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the income period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short income period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

Example (1): Taxpayer A, which ordinarily files its returns based on a calendar year, is merged into Taxpayer B on April 30. The net rent paid under a lease with 5 years remaining is $2,500 a month. The rent for the period January 1 to April 30 is $10,000. After the rent is annualized, the net rent is $30,000 ($2,500 x 12).

Example (2): Same facts as in Example (1) except that the lease would have terminated on August 31. In this case the annualized net rent is $20,000 ($2,500 x 8).

"Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes (A) any amount payable for the use of real or tangible personal property or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits, or otherwise; and (B) any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

Example (1): A taxpayer, pursuant to the terms of a lease, pays the lessor $12,000 a year rent plus taxes in the amount of $2,000 and interest on a mortgage in the amount of $1,000. The annual rent is $15,000.

Example (2): A taxpayer stores part of its inventory in a public warehouse. The total charge for the year was $1,000 of which $700 was for the use of storage space and $300 for inventory insurance handling and shipping charges, and C.O.D. collections. The annual rent is $700.

Example (3): A taxpayer, pursuant to the terms of a lease, pays a lessor $1,000 per month as a base rental and at the end of the year pays the lessor one percent of its gross sales of $400,000. The annual rent is $16,000 ($12,000 plus one percent of $400,000 or $4,000).

5) Averaging Property Values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the value at the beginning and ending of the income period. However, the Department may require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the taxpayer's property for the income period. Averaging by monthly values will generally be applied if there is substantial fluctuation in the value of the property during the income period or where property is acquired after the beginning of the income period or disposed of before the end of the income period.

Example: The monthly value of the taxpayer's property was as follows:

January	$ 2,000
February	2,000
March	3,000
April	3,500
May	4,500
June	10,000
July	15,000
August	17,000
September	23,000
October	25,000
November	13,000
December	2,000
Total	$120,000

The average value of the taxpayer's property includible in the property factor for the income year is determined as follows:

$120,000/12 = $10,000

Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of such property as set forth in subsection (1)(d)(ii).

(B) Payroll Factor.

1) General. The payroll factor of the apportionment formula shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period except that to the extent that compensation is paid to employees in connection with the production of receipts, net income, gains or losses taken as an adjustment to net income (or loss), such compensation shall be excluded from the payroll factor. The payroll factor shall not include compensation paid to employees in connection with the production of nonbusiness income. Compensation paid to employees working both in the regular course of taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the compensation is paid for work performed in the regular course of taxpayer's trade or business.

Example (1): The taxpayer uses some of its employees in the construction of a storage building which, upon completion, is used in the regular course of taxpayer's trade or business. The wages paid to those employees are treated as a capital expenditure by the taxpayer. The amount of such wages is included in the payroll factor.

Example (2): The taxpayer owns various securities as an investment separate and apart from its trade or business. The management of the taxpayer's investment portfolio is the only duty of Mr. X, an employee. The salary paid to Mr. X is excluded from the payroll factor.

The total amount "paid" to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid.

The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services provided that such amounts constitute income to the recipient under the Federal Internal Revenue Code.

In the case of employees not subject to the Internal Revenue Code, e.g., those employees in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the Federal Internal Revenue Code.

In filing returns with Philadelphia, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayers shall disclose in the return for the current year the nature and extent of the modification.

2) Numerator. The numerator of the payroll factor is the total amount paid in Philadelphia during the period by the taxpayer for compensation.

3) Denominator. The denominator of the payroll factor is the total amount paid everywhere during the tax period by the taxpayer for compensation. This amount shall be determined pursuant to the same procedures used to calculate the numerator.

4) Compensation Paid in Philadelphia. Compensation is paid in Philadelphia if:

(a) The employee's service is performed entirely within the City; or

(b) The employee's services are performed both within and without the City, and

(.1) the service performed without the City is incidental to the employee's service within the City. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction; or

(.2) the employee's base of operations is in this City; or

(.3) There is no base of operations in any political subdivision in which some part of the service is performed but the place from which the service is directed or controlled is in this City; or

(.4) The base of operations or the place from which the service is directed or controlled is not in any political subdivision in which some part of the service is performed, but the employee's residence is in the City.

The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment or perform any other function necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

(C) Receipts Factor for Tax Year 2014 and Prior Years.[65]

1) Numerator. The numerator of the receipts factor shall be receipts as defined and limited by the provisions dealing with "Tax on Receipts" adjusted as follows:

(a) The following shall not be included in the numerator:

(.1) Receipts, or the net income, gain or losses attributable thereto, which are taken as an adjustment to net income (or loss) pursuant to Section 404;

(.2) Receipts that contribute to net income, gain or loss which constitutes nonbusiness income allocated within or without Philadelphia pursuant to Section 406.

(b) The following receipts shall be included in the numerator:

(.1) Those receipts referred to in subsection 302(G)(4).[66]

2) Denominator. The denominator of the receipts factor shall be receipts as defined and limited by the provisions dealing with "Tax on Receipts", adjusted as follows:

(a) The following shall not be included in the denominator:

(.1) Receipts, or the net income, gain or losses attributable thereto, which are taken as an adjustment to net income (or loss) pursuant to Section 404:

(.2) Receipts that contribute to net income, gain or loss which constitutes nonbusiness income allocated within or without Philadelphia pursuant to Section 406.

[65] Amended by regulation submitted to the Department of Records on December 17, 2015 (effective January 19, 2016).
[66] Internal reference renumbered to reflect compiler’s change of section numbers/letters in Article III and IV for consistency.

(b) The following receipts shall be included in the denominator:

(.1) Those receipts referred to in subsections 302(F), 302(G)(3) and (4) and 302(M).[67]

(D) Excludable Factors (Zero in Numerator or Denominator).

In the event any of the factors has a denominator which is zero or an insignificant amount, that factor shall be omitted from the computation. For this purpose, an insignificant amount shall mean an amount so small that inclusion of the factor would result in an apportionment that does not fairly represent the taxpayer's business activity in Philadelphia. If, however, the numerator is zero and the denominator is represented by an amount which is not insignificant, the resultant percentage is zero, and is includible in the computation.

(E) Weighted Averaging.[68] A weighted average of factors shall be obtained by adding the property factor plus the payroll factor plus twice the sales factor and dividing that total by four. If any factor is excludable as provided in subsection 408 (d),[69] then the weighted average shall be computed as the sum of includible factors (with the sales factor multiplied by two, if it is one of the includible factors) divided by the number of includible factors (with the sales factor, if includible, counted as two includible factors)

Example 1: Corporation W had no property in Philadelphia but the average value of its property everywhere in 19X1 amounted to $275,000. W's payroll in Philadelphia in 19X1 amounted to zero and the total payroll everywhere was $125,000. W reported receipts in Philadelphia in 19X1 of $5,000,000 and receipts everywhere of $8,000,000. The apportionment fraction is computed as follows:

Property	$ 0 275,000	=	0	
Payroll	$ 0 125,000	=	0	
Sales	$5,000,000 8,000,000	=	.625 x 2	= 1.25
Total Percentages		=	1.25	

Average of Percentages
(1.25 ÷ 4) = .3125

[67] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.
[68] Amended by regulation submitted to the Department of Records June 16, 1995 (effective July 16, 1995, by its terms applicable to tax year 1996 and thereafter).
[69] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.

Example 2: Corporation Y had **no** property and **no** payroll assignable **outside** of Philadelphia. Y's average value of property in 19X2 amounted to $275,000 and its total payroll in 19X2 was $125,000. Y reported receipts in Philadelphia in 1994 of $5,000.000 and receipts everywhere of $8,000,000. The apportionment fraction is computed as follows:

Property	$275,000 275,000	=	1.00
Payroll	$125,000 125,000	=	1.00
Sales	$5,000,000 x 2 8,000,000	=	1.25
Total Percentages		=	3.25

Average of Percentages
(3.25 ÷ 4) = .8125

(F) Application of Fraction.[70] The amount of apportioned net income (or loss) to be included in the measure of the tax is determined by multiplying the weighted average of factors computed pursuant to subsection 408 (E)[71] by the net income (or loss) after adjustments and allocation of nonbusiness income.

(G) Single Sales Factor Apportionment.[72] For Tax Year 2015 and the years thereafter, a taxpayer's net income after adjustments (made pursuant to Sections 403 and 404 of these regulations) and allocation (pursuant to Section 406 of these regulations) shall be apportioned based solely on the ratio of Taxable Receipts of the business from within the City of Philadelphia to the total Receipts of the business everywhere. The sourcing of business activity will be in accordance with the definition of Taxable Receipts as defined by Philadelphia Code § 19-2601 and as promulgated under Article III of these regulations. Receipts are as defined by Philadelphia Code § 19-2601 and as promulgated under Article III of these regulations. Only sales/ receipts that generate business income are includible in the numerator and denominator of the factor. Therefore the factor includes business income from the sale of inventory or the performance of services as well as interest, dividends, rentals, royalties, capital gains, or any other income that given the taxpayer's business activity would be classified as business income. For purposes of determining the taxable receipts of the business from within the City of Philadelphia, the source of receipts from the sale by a Software Company (as defined by Section 101DD of these Regulations) of products or services

[70] Amended by regulation submitted to the Department of Records June 16, 1995 (effective July 16, 1995, by its terms applicable to tax year 1996 and thereafter).
[71] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.
[72] Amended by regulation submitted to the Department of Records on December 17, 2015 (effective January 19, 2016).

shall be deemed to be the location where the recipient receives the benefit of the products and services, also known as market based sourcing.[73]

(G.1) Market-Based Sourcing of Service /Sales Revenue Using the Single Sale Factor for Software Companies for Tax Years 2015 and thereafter.[74]

(a) A Software Company (defined by Section 101DD of these regulations) is any entity whose business is categorized under the North American Industry Classification System as computer systems design and related services (NAICS 5415, 54151, 541512), computer software publishing (NAICS 51121), internet publishing and broadcasting (NAICS 51611), internet web service provider (NAICS 51811), data processing, hosting and related services (NAICS 518210), and financial transaction processing and clearing (NAICS 52232).

(b) Under market-based sourcing, the gross receipts of a Software Company from the performance of services are included in the numerator of the Single Sales Apportionment Factor if the recipient of the service receives all of the benefits of the service in Philadelphia. If the recipient of the service receives some of the benefits of the service in Philadelphia, the gross receipts are included in the numerator of the Single Sales Apportionment Factor in proportion and to the extent the recipient receives benefit of the service in Philadelphia.

(c) The gross receipts of a Software Company from the sales of prepackaged or canned software are included in the numerator of the Single Sales Apportionment Factor if the recipient of the product receives all of the benefits of the product in Philadelphia. If the recipient of the product receives some of the benefits in Philadelphia, the gross receipts are included in the numerator of the Single Sales Apportionment Factor in proportion and to the extent the recipient receives benefits in Philadelphia.

Example 1- A corporation located in Philadelphia, engaged in writing and testing software, contracts with a company located in Dallas, Texas, engaged in publishing packaged software, to write software that meets the needs of the Dallas based company's software publishing business. The Philadelphia corporation writes and tests the software in its Philadelphia office. The Dallas company uses all the software at its office in Dallas. None of the gross receipts from writing and testing the software are included in the numerator of the Philadelphia corporation's Single Sales Apportionment Factor because none of the benefits of the service is received by the recipient of the service in Philadelphia.

Example 2- A New Jersey corporation contracts with a Delaware computer software company to develop and install custom computer software for a business office of the New Jersey Corporation located in Philadelphia. The Delaware company has business nexus in Philadelphia with sufficient exposure to the net income portion of the Business Income and Receipts Tax. The software will only be used by the business office in Philadelphia. The software development occurs in Delaware. All

[73] Added by regulations submitted to the Department of Records October 1, 2014 (effective November 3, 2014).
[74] Added by regulation submitted to the Department of Records on December 17, 2015 (effective January 19, 2016).

of the gross receipts from the software development and installation are attributable to Philadelphia and are included in the numerator of the Single Sales Apportionment Factor because the recipient of the service received all of the benefit of the service in Philadelphia.

Example 3- A corporation from New York contracts with a computer software company from Virginia to develop and install custom computer software for its own use. The Virginia company has business nexus in Philadelphia with sufficient exposure to the net income portion of the Business Income and Receipts Tax. The software will be used by the New York corporation in its business office located in Philadelphia and in its business office located in New York. The software development occurs in Virginia. The gross receipts from the software development and installation are included in the numerator of the Single Sales Apportionment factor in proportion to the extent the software is used in Philadelphia.

(H) Other Methods of Apportionment. If the regularly applicable apportionment method does not fairly represent the taxpayer's business activity in Philadelphia, the taxpayer may petition for, or the Department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

1) Separate Accounting;

2) The exclusion of one or more additional factors;

3) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this City; or

4) The employment of any other method to effectuate an equitable apportionment of the taxpayer's income.

A departure from the applicable method of apportionment may be permitted only where the method does not accurately and fairly reflect business activity in Philadelphia. An alternative method may not be invoked, either by the Department or the taxpayer, merely because it reaches a different apportionment percentage than the regularly applicable formula. However, if the applicable formula will lead to a grossly distorted result in a particular case, a fair and accurate alternative method is appropriate. The taxpayer seeking to utilize an alternative apportionment method must show by clear and cogent evidence that the regularly applicable formula would result in taxation of net income which is not properly attributable to the doing of business in Philadelphia. This can be shown only, if the regularly applicable formula is demonstrated to operate unreasonably and arbitrarily in attributing to Philadelphia a percentage of income which is out of all proportion to the taxpayer's business activity in Philadelphia. The taxpayer seeking to use an alternative formula must prove that the alternative formula fairly and accurately apportions income to Philadelphia based upon business activity in this City. A departure from the regularly applicable apportionment method will be authorized only in limited and specific cases where unusual fact situations (which ordinarily will be unique and nonrecurring) produce incongruous results under the regularly applicable apportionment provisions.

(I) Pilot Programs:[75] For Tax Year beginning on January 1, 2010 and ending on December 31,2014, the following two pilot programs were initiated to test the feasibility and effectiveness of implementing apportionment methods different from the regularly applicable apportionment method provided in this section:

1) Single Receipts Factor apportionment method for businesses engaged in Research and Development in the Physical, Engineering, and Life Sciences classified in Industry 54171 of NAICS. Single Receipts Factor apportionment means that the apportionment percentage will be determined solely based on business receipts without considering property and payroll as factors.

(a) This industry comprises establishments primarily engaged in conducting research and experimental development in the physical, engineering, and life sciences, such as agriculture, electronics, environmental, biology, botany, biotechnology, computers, chemistry, food, fisheries, forests, geology, health., mathematics, medicine, oceanography, pharmacy, physics, veterinary, and other allied subjects.

(b) For this purpose, the numerator and the denominator of the Single Receipts Factor shall be determined in accordance with the rules provided in subsection (C) of this section.

(c) For Tax Years beginning January 1, 2015 and thereafter, the Pilot Program of subsection (I) 1) is discontinued and apportionment of net income will be calculated in accordance with subsection (G) of this section.

2) Market-Based Sourcing of service revenue for businesses engaged in Computer Systems Design and Related Services classified in Industry 54151 of NAICS for Tax Year 2010 through Tax Year 2014.

(a) This industry comprises establishments primarily engaged in providing expertise in the field of information technologies through one or more of the following: (1) writing, modifying, testing, and supporting software to meet the needs of a particular customer; (2) planning and designing computer systems that integrate computer hardware, software, and communication technologies; (3) on-site management and operation of clients computer systems and/or data processing facilities; and (4) other professional and technical computer related advice and services.

(b) Under Market-Based Sourcing rule, the receipts factor is designed to measure the marketplace for the taxpayer's services. For the purpose of this paragraph, the gross receipts from the performance of services are included in the numerator of the apportionment factor if the recipient of the service receives all of the benefit of the service in Philadelphia. If the recipient of the service receives some of the benefit of the service in Philadelphia, the gross receipts are included in the numerator of the apportionment factor in proportion to the extent the recipient receives benefit of the service in Philadelphia. The adjustments to the numerator and the denominator of the receipts factor provided in paragraph (a) and (b) of subsection (3) of this section shall also apply for this paragraph. The following examples illustrate the application of the Market -

[75] Added by regulation submitted to the Department of Records on October 8, 2010 (effective November 8, 2010); internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency. Further amended by regulation submitted to the Department of Records on December 17, 2015 (effective January 19, 2016).

Based Sourcing rule provided in this subparagraph:

(.1) A corporation located in Philadelphia, engaged in writing and testing software, contracts with a company located in Dallas, Texas, engaged in publishing packaged software, to write software that meets the needs of the Dallas based company's software publishing business. The Philadelphia corporation writes and tests the software in its Philadelphia office. The Dallas company uses all the software at its office in Dallas. None of the gross receipts from writing and testing the software are included in the numerator of the Philadelphia corporation's apportionment factor because none of the benefits of the service is received by the recipient of the service in Philadelphia.

(.2) A New Jersey corporation contracts with a Delaware computer software company to develop and install custom computer software for a business office of the New Jersey Corporation located in Philadelphia. The Delaware company has business nexus in Philadelphia with sufficient exposure to the net income portion of the Business Income and Receipts Tax. The software will only be used by the business office in Philadelphia. The software development occurs in Delaware. All of the gross receipts from the software development and installation are attributable to Philadelphia and are included in the numerator of the apportionment factor because the recipient of the service received all of the benefit of the service in Philadelphia.

(.3) A corporation from New York contracts with a computer software company from Virginia to develop and install custom computer software for its own use. The Virginia company has business nexus in Philadelphia with sufficient exposure to the net income portion of the Business Income and Receipts Tax. The software will be used by the New York corporation in its business office located in Philadelphia and in its business office located in New York. The software development occurs in Virginia. The gross receipts from the software development and installation are included in the numerator of the apportionment factor in proportion to the extent the software is used in Philadelphia.

(c) For the purpose of this paragraph, in conjunction with the market-based receipts factor provided in subparagraph (b) of this paragraph, the regularly applicable property factor provided under subsection (A) and the payroll factor provided under subsection (B) of this section shall be used. A weighted average of these three factors shall be computed in accordance with the rules provided in subsection (E) of this section.

(d) For Tax Years beginning January 1, 2015 and thereafter, the Pilot Program of subsection (I) 2) is discontinued and apportionment of net income will be calculated in accordance with subsection (G.1) of this section.

SECTION 409. RECOMPUTATION OF TAXABLE NET INCOME OR LOSS BY PERSONS REGISTERED UNDER THE PENNSYLVANIA SECURITIES ACT OF 1972, WHO ELECT TO REPORT TAXABLE NET INCOME UNDER METHOD II (SECTION 404).

(A) In addition to the computation of taxable net income, as adjusted, allocated and apportioned in accordance with Sections 404, 405, 406, 407 and 408, each person registered under the Pennsylvania Securities Act of 1972 who elects to report taxable net income under Method II (Section 404), must recompute taxable net income (or loss) pursuant to the minimum tax provisions in the following manner:

1) Adjusted net income (or loss) as computed pursuant to Section 404, shall be increased or decreased by the amount of the adjustment made pursuant to subsection 404(B)(6)[76] as follows:

(a) If the amount of the adjustment made pursuant to subsection 404(B)(6)[77] is less than zero, the taxpayer shall deduct that amount from adjusted net income (decrease net income), or shall add that amount to the adjusted net loss (increase the net loss), as the case may be.

(b) If the amount of the adjustment made pursuant to subsection 404(B)(6)[78] is more than zero, the taxpayer shall add that amount to adjusted net income (increase net income) or add that amount to the adjusted net loss (decrease net loss), as the case may be.

2) The revised adjusted net income as computed in accordance with subsection (a) shall be increased or decreased by the amount of nonbusiness income, as provided in Sections 405, 406 and 407(A).[79]

3) The revised net income after adjustments and allocation shall be apportioned to Philadelphia in accordance with the provisions of Section 408, except that the denominator of the receipts factor shall include those receipts referred to in subsection 302(Q).[80]

4) After apportionment of net income to Philadelphia, nonbusiness or losses allocable to Philadelphia shall be added to or subtracted from apportioned net income or losses in accordance with whichever one of the following rules is applicable:

(a) Nonbusiness income shall be added to apportioned net income.

---

[76] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.
[77] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.
[78] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.
[79] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.
[80] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.

(b) Nonbusiness income shall be added to apportioned net losses so as to reduce the net loss.

(c) Nonbusiness losses shall be deducted from apportioned net income.

(d) Nonbusiness losses shall be added to apportioned net losses so as to increase the net loss.

SECTION 410. APPORTIONMENT OF INCOME BY ALL PERSONS WHO ARE SUBJECT TO A TAX PURSUANT TO ARTICLES VII (BANK SHARES TAX), VIII (TITLE INSURANCE AND TRUST COMPANIES SHARES TAX), IX (INSURANCE PREMIUMS TAX) OR XV (MUTUAL THRIFT INSTITUTIONS TAX) OF THE TAX REFORM CODE OF 1971, AND PRIVATE BANKS.

(A) The net income after adjustments and allocation of persons described as being subject to a tax imposed pursuant to Articles VII, VIII, IX or XV of the Tax Reform Code of 1971, and of private banks, shall be apportioned to Philadelphia in accordance with a fraction of which the numerator shall be Philadelphia receipts as hereafter described, and of which the denominator shall be total receipts as hereafter described.

(B) Numerator. The numerator shall be receipts as defined and limited in Article III: Provided, however, that those receipts excluded from the definition of "Taxable Receipts" pursuant to Section 2 of the "First Class City Business Tax Reform Act" of 1984, and treated as an exclusion pursuant to subsections 302(F)(1) and 302(F)(2) of these Provisions, shall be included in the numerator.[81]

(C) Denominator-Businesses Other Than Insurance Companies. The denominator of the fraction shall include the following receipts to the extent that they are included in taxable income (or loss) as properly returned to and ascertained by the Federal Government, but not including receipts, net income, gains or losses taken as an adjustment to net income (or loss) under subsections 404(B)(1), 404(B)(5)(a), and 404(B)(6), and not including receipts or the net income, gains or losses attributable thereto, which are included in the numerator of the fraction used in computing the adjustment under subsection 404(B)(5)(b):

1) All rents and royalties from real property and tangible personal property.

2) All gains and losses from real property and tangible and intangible personal property sold, exchanged, transferred, paid at maturity or redeemed. If losses are sustained from real property and tangible and intangible personal property sold, exchanged, transferred, paid at maturity or redeemed, such losses may be offset against gains from similar transactions, but may not be deducted from other receipts.

3) All dividends received.

4) All interest received less the interest expense attributable to such interest received.

[81] Internal reference renumbered to reflect compiler’s change of section numbers/letters in Article III and IV for consistency.

5) All patent and copyright royalties.

6) All other receipts.

(D) Denominator-Insurance Companies. The denominator of the fraction shall include the following receipts to the extent that they are included in taxable income (or loss) as properly returned to and ascertained by the Federal Government: All premiums received, all rents from real estate, and all other nonpremium business receipts, but not including return premiums, dividends paid or credited to policyholders if such dividends are in the nature of an adjustment of the premiums charged, and premiums received for reinsurance, not including receipts, net income, gains or losses taken as an adjustment to net income (or loss) under subsections 404(B)(1), 404(B)(5)(a) and 404(B)(6), and not including receipts or the net income, gains or losses attributable thereto, which are included in the numerator of the fraction used in computing the adjustment under subsection 404(B)(5)(b), and not including receipts, or the net income, gains or losses attributable thereto which are allocable within or without Philadelphia under Section 406.

(E) Application of Fraction. The amount of apportioned net income or loss to be included in the measure of the tax is determined by multiplying the percentage equivalent of the fraction by the apportionable net income or loss.

SECTION 411. NET OPERATING LOSSES.

(A) Definition.

1) For taxpayers who have elected to report net income under Method I, a net operating loss means a net loss as computed under Section 403.

2) For taxpayers who have elected to report net income under Method II, a net operating loss means any net loss incurred from the operation of a business, as properly returned to and ascertained by the Federal Government prior to giving effect to the exclusion for dividends received and net operating losses from other tax periods, subject to the same adjustments made applicable to net income, and as allocated and apportioned in accordance with the provisions of Sections 406, 407, 408, 409 and 410. The net operating loss must be apportioned by use of the apportionment factors applicable to the period in which the net operating loss was incurred.

(B) Deduction of Net Operating Losses. Apportioned net operating losses may be deducted from apportioned net income in the tax year to which the apportioned net operating loss is carried forward.

(C) Carry Forward Period. An apportioned net operating loss may be carried forward for three tax years following the tax year for which it was first reported. The earliest apportioned net operating loss must be carried over to the earliest taxable year in which the taxpayer reports taxable apportioned net income before deducting an apportioned net operating loss carried forward. The amount of any apportioned net operating loss in excess of the apportioned net income for any tax year to which it is carried forward may be carried forward to subsequent tax years but may not be carried forward past the third tax year following the tax year for which it was first reported.

(D) Effective Dates for Net Operating Loss Carryforwards.

1) The 1986 tax year shall be the first tax year to which a net operating loss reported for a prior tax year may be carried forward and deducted from net income.

2) The first net operating loss which may be carried forward to a succeeding tax year shall be a net operating loss reported on the 1985 Business Income and Receipts Tax Return. No net operating losses for periods prior to the tax period used as the measure of net income or loss for the 1995 Business Income and Receipts Tax Return may be carried forward and deducted from net income on any Business Income and Receipts Tax Returns.

ARTICLE V

CREDITS

SECTION 501. CREDITS FOR CONTRIBUTIONS TO COMMUNITY DEVELOPMENT CORPORATIONS AND NONPROFITS INTERMEDIARIES.[82]

A. Definitions

1. Applicant. A Business or two Businesses applying jointly that applies to enter into a Contribution Agreement with the City of Philadelphia.

2. Business. Any person or entity subject to the Business Income and Receipts Tax under Philadelphia Code §19-2603, as it may be amended

3. Code. The Philadelphia Code, as amended.

4. Community. A geographic location within the City of Philadelphia (but not the entire City) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation.

5. Contribution Agreement.

a. A written agreement between the Applicant and the City of Philadelphia whereby the Applicant agrees to contribute $100,000 per year for ten consecutive years to a Qualifying Organization that does not already have a Sponsor providing funds under this program. Refer to Section 501(C) for early termination of a Contribution Agreement.

b. In the event that two Businesses apply jointly, the Contribution Agreement shall include:

i. A schedule of Payments, and

ii. The proportionate share of the total annual contribution each Business shall contribute.

6. Ordinance. Philadelphia Code § 19-2604, as it may be amended.

7. Department. Department of Revenue.

[82] Added by regulation submitted to the Department of Records on May 17, 2002 and resubmitted on August 19, 2002 (effective August 29, 2002). Amended by regulation submitted to the Department of Records on March 23, 2010 (effective April 22, 2010), and by regulation submitted to the Department of Records on February 23, 2012 (effective March 26, 2012). Further amended regulation submitted to the Department of Records on August 6, 2015 (effective September 7, 2015). Bill No. 141028 increases the amount of the annual tax credit from $85,000 to $100,000 for tax year 2015 and thereafter. The increase in the amount of the credit shall not apply to contribution agreements executed before 02/18/2015.

8. Economic Development. Activities that increase economic opportunity for individuals or that stimulate or retain businesses or permanent jobs. For purposes of this Tax Credit, economic development does not include activities for the development of housing, education, recreation, or religious facilities, or related activities.

9. Health Department. The Philadelphia Department of Public Health.[83]

10. Qualifying Community Development Corporation ("QCDC"). A QCDC is an organization that meets all of the following requirements:

a. The organization is a nonprofit organization, which has a ruling from the Internal Revenue Service that the organization is exempt from income taxation under the provisions of section 501(c)(3) of the Internal Revenue Code.

b. The organization is organized under Pennsylvania law as a non-profit corporation.

c. The organization is a Community Development Corporation ("CDC") that promotes economic development in economically distressed neighborhoods of Philadelphia. For purposes of this regulation only, examples of economic distress include but are not limited to high unemployment, vacant commercial and/or industrial properties, or blighting effects of deferred public or private maintenance to commercial areas of a neighborhood. The organization engages in community and economic development activities primarily within an identified geographic area within the City of Philadelphia.

d. The organization engages in activities that have the anticipated outcomes of increasing economic opportunity for residents, retaining, growing, or attracting business, or retaining or creating permanent jobs in the identified area.

e. The organization has a five-year plan that clearly states the economic development goals and strategies which address the specific issues of economic distress in its community and has engaged employees or consultants at the time of its application to undertake these activities. To remain a QCDC at time of renewal the organization must document progress in implementation of the plan, which must be updated on a yearly basis.

f. The organization has an organizational budget that indicates additional funding sources equal to or greater than the CDC Tax Credit of $100,000 per year.

g. The organization has prior experience conducting economic development activities in the City of Philadelphia. The "prior experience" requirement can be met if the organization has developed a clearly defined plan for undertaking economic development activities which address the specific issues of economic distress in its community and has engaged employees or consultants at the time of its application to undertake these activities.

[83] Added by regulation filed August 6, 2015 (effective September 7, 2015), subsequent definitions renumbered.

h. The organization must be in full compliance with all applicable City laws, ordinances, and resolutions.

11. Qualifying Nonprofit Organization Engaged in Developing and Implementing Healthy Food Initiatives ("QHFI").[84] A QHFI is an organization that meets all of the following requirements:

a. The organization is a nonprofit organization, which has a ruling from the Internal Revenue Service that the organization is exempt from income taxation under the provisions of section 501(c) (3) of the Internal Revenue Code.

b. The organization is organized under Pennsylvania law as a nonprofit corporation.

c. The organization must have a record of developing and implementing healthy food initiatives within the City of Philadelphia for a minimum of three (3) consecutive years and will continue to develop and implement healthy food initiatives within the City of Philadelphia. These activities include providing Philadelphia residents with easy and affordable access to healthy food in order to alleviate hunger and malnutrition. This includes providing direct goods or services to Philadelphia residents or providing financial, technical, educational, policy and/or related assistance to other Philadelphia entities in furtherance of the above stated purposes.

d. The organization must submit a detailed description of its scope of work for the prior three (3) years that demonstrates it has been substantially engaged in, and will continue to be substantially engaged in developing and implementing healthy food initiatives in the City of Philadelphia.

e. For each healthy food initiative activity, the organization, must identify the start and end date (if applicable), the number and types of paid or non-paid personnel or volunteers involved, including their responsibilities, the specific area where such activity takes place, the target population for which the activity seeks to benefit, and the number of Philadelphia residents and/or entities directly benefiting from the activity.

f. The organization must attach a statement that it does not deny assistance to individuals on the basis of race, color, religion, gender, natural origin, age, disability, or sexual orientation.

g. The organization has an organizational budget that indicates additional funding sources equal to or greater than the CDC Tax Credit of $100,000 per year.

h. The organization must be in full compliance with all applicable City laws, ordinances and resolutions.

i. At any one time no more than two Qualifying Nonprofit Organizations Engaged in Developing and Implementing Healthy Food Initiatives may be designated as recipients

[84] Added by regulation filed August 6, 2015 (effective September 7, 2015), subsequent definitions renumbered.

of contributions for which a business seeks to claim a tax credit pursuant to this section of the regulation.

12. Qualifying Nonprofit Intermediary ("QNPI"). A QNPI is an organization that meets the following requirements:

a. The organization is a nonprofit organization, which has a ruling from the Internal Revenue Service that the organization is exempt from income taxation under the provisions of section 501(c)(3) of the Internal Revenue Code.

b. The organization is organized under Pennsylvania law as a nonprofit corporation.

c. The organization provides financial, technical, policy and/or related assistance to Community Development Corporations undertaking neighborhood economic development activities in economically distressed neighborhoods in Philadelphia. A QNPI must provide assistance to Community Development Corporations with the anticipated outcomes of increasing economic opportunity for residents, retaining, growing, or attracting businesses, or retaining or creating permanent jobs in Philadelphia.

d. The organization has a five-year plan that clearly states the goals and strategies for assisting Community Development Corporations to meet economic development outcomes, and has engaged employees or consultants at the time of its application to implement the plan.

e. The organization has an organizational budget that indicates additional funding sources equal to or greater than the CDC Tax Credit of $100,000 per year.

f. The organization has an established record of providing financial, technical, policy or related assistance to Community Development Corporations undertaking neighborhood economic development activities within the City of Philadelphia.

g. The organization must be in full compliance with all applicable City laws, ordinances and resolutions.

h. At any one time no more than four Qualifying Nonprofit Intermediaries may be designated as recipients of contributions for which a business seeks to claim a tax credit pursuant to this section of the regulation.

13. Qualifying Organization. A Qualifying Commercial Development Corporation, a Qualifying Nonprofit Organization Engaged in Developing and Implementing Healthy Food Initiatives or a Qualifying Nonprofit Intermediary.

14. Sponsor. An Applicant as defined above, that enters into a Contribution Agreement with the City of Philadelphia.

15. Tax Credit. A credit pursuant to subsection (6)(b) of Philadelphia Code §19-2604 against the Business Income and Receipts Tax liability of a Sponsor of a Qualifying Organization, by contributing $100,000 per year over a ten-year period. A credit of $100,000 per year will be applied against the Sponsor's Business Income and Receipts Tax liability for each year the Sponsor contributes $100,000 in cash to a QCDC, QHFI or QNPI. If the Sponsor consists of two Businesses, the Tax Credit is each co-Sponsor's proportionate share of the total contribution as established in the Contribution Agreement, as may be amended.

B. Eligibility

1. Sponsor – Eligibility

a. A Sponsor must be in full compliance with all applicable City laws, ordinances and resolutions.

b. The Sponsor must contribute $100,000 in cash per year in accordance with the Contribution Agreement.

c. The Sponsor may not receive Tax Credits for providing funds to a Qualifying Organization that is already receiving funds under this program.

d. A Sponsor currently participating in the Commonwealth of Pennsylvania Neighborhood Assistance Program/Neighborhood Partnership Program (NAP/NPP) or any successor or similar program shall not use such contributions as credit towards the Contributions to the City of Philadelphia's Business Income and Receipts Tax Credits.

e. Sponsor must be partnered with a Qualified Organization that maintains its eligibility as a QCDC, QHFI or QNPI.

f. On or before October 15th of each year, the Sponsor must submit a renewal application and report form to the Department which at a minimum would include information detailing its payment to the Qualifying Organization for the current tax year, the Qualifying Organization’s expenditures to date, the Qualifying Organization’s activities and accomplishments under this program, and a copy of the Contribution Agreement, if amended. The Sponsor is responsible for obtaining any information or certification requested by the Department from the applicant's partner, the Qualifying Organization. Failure to complete and file the renewal application and report form may result in the Sponsor losing its eligibility to participate in the program for any future tax years.

2. Community Development Corporation, Nonprofit Organization Engaged in Developing and Implementing Healthy Food Initiatives and Nonprofit Intermediary – Eligibility

a. Either a Community Development Corporation meeting the definition of a QCDC, a Nonprofit Organization Engaged in Developing and Implementing Healthy Food Initiatives meeting the definition of a QHFI or a Nonprofit Intermediary meeting the definition of a QNPI is eligible to partner with a Sponsor.

b. To maintain its eligibility on an annual basis, a Qualifying Organization must continue to meet the definition of a QCDC, QHFI or QNPI and must expend the proceeds of the Contribution Agreement in a manner consistent with its status as a QCDC or a QNPI as reported in its annual renewal application.

c. In the event a QCDC, QHFI or QNPI merges with another organization, and subject to the requirements of subsection D below:

The surviving organization shall submit an amended renewal application in accordance with the requirements of paragraph C(5) below to report the effective date of the merger, and, if the Department determines that the surviving organization meets the definition of a QCDC, QHFI or QNPI, the surviving Qualified Organization shall continue the eligibility status of the merging QCDC, QHFI or QNPI;

If both the merging and the surviving organization are existing Qualified Organizations, the surviving QCDC, QHFI or QNPI shall continue its own eligibility status with its own Sponsor and the merging QCDC's, QHFI's or QNPI's Sponsor's Contribution Agreement shall be terminated as of the effective date of the merger, unless the Sponsor of the surviving QCDC, QHFI or QNPI submits an amended renewal application containing an election that the QCDC, QHFI or QNPI has adopted the eligibility status of the merging organization and the merging organization's Sponsor, effective as of the effective date of the merger, in which case the Contribution Agreement of the surviving QCDC, QHFI or QNPI Sponsor shall be terminated;

And further, in the event both the merging and the surviving organization are QCDCs, QHFIs or QNPIs, and the Sponsors of both QCDCs, QHFIs or QNPIs desire to jointly Sponsor the surviving QCDC, QHFI or QNPI, the original Sponsor of the surviving QCDC, QHFI or QNPI shall follow the procedures set forth in Paragraph C(3) below, if both Sponsors desire to Sponsor the surviving QCDC, QHFI or QNPI or if the original Sponsor seeks a new co-sponsor.

C. Termination and Modification of Contribution Agreement and Annual Renewal Application.

1. The Sponsor may terminate its Contribution Agreement with the City at any time, but shall use its best efforts to terminate the Contribution Agreement on or before September 15th of any year. A Sponsor that terminates a Contribution Agreement will not lose any Tax Credits for which it was eligible for prior contributions made under the Contribution Agreement. The terminating Sponsor may not be eligible to apply for any future Tax Credit for contributions to a Qualifying Organization, the exception being, if the Sponsor acquires a co-Sponsor in accordance with the requirements of paragraph C(3) below.

2. If a Sponsor terminates its Contribution Agreement, a new Applicant may apply to receive Tax Credits under this section, provided that such Tax Credits shall be limited to the number of years that are remaining on the terminating Sponsor's Contribution Agreement. The new Applicant must be nominated by the existing Qualifying Organization and must complete and file a Tax Credit application by October 15th (or the due date for Renewal Applications) that is approved by the Department. The new Applicant must enter into a Contribution Agreement with the City under which the Applicant agrees to make cash contributions of $100,000 per year to the same

Qualifying Organization which was the recipient under the terminating Sponsor's Contribution Agreement and for the number of years remaining under that agreement.

3. In the event that a Sponsor that is comprised of a single Business wishes to add another Business as co-Sponsor to its Contribution Agreement:

a. The Sponsor shall issue written notice forthwith to the existing Qualifying Organization of its plan to amend the Contribution Agreement by adding a co-Sponsor willing to enter into a Contribution Agreement. The amended Contribution Agreement should include the proportionate shares of the total contribution of $100,000 that the original Sponsor and the new co-Sponsor agree to contribute annually for the number of years remaining on the original Sponsor's Contribution Agreement.

b. If the original Sponsor is unable or unwilling to enter into a new Contribution Agreement that includes a new co-Sponsor, the original Sponsor shall notify the Qualifying Organization that it will either

(i) continue as Sponsor in accordance with the original Contribution Agreement, or

(ii) terminate the original Contribution Agreement.

4. In the event a Sponsor is two Businesses and one Business terminates the Contribution Agreement under Philadelphia Code §19-2604(6)(e):

a. The terminating Business shall issue written notice forthwith to the City, the non-terminating Business, and the QCDC, QHFI or QNPI of the effective date of the termination.

b. Before any other Applicant may apply, the non-terminating Business shall have the earlier of 90 days from receipt of notice of the termination of the Contribution Agreement and December 15th of any year, but shall use its best efforts to meet the deadline set forth in paragraph C(7) to: (i) apply for the remaining term of the Contribution Agreement, either by itself or jointly with a new Business by following the applicable procedure described in paragraph C(2), above, or (ii) notify the Department in writing that it will not apply.

5. Upon the annual review of the Sponsor's renewal application and report form, the Department will determine before December 31st of each year whether the Sponsor will be eligible to participate in this Tax Credit program for the following year. Failure of the Qualifying Organization to make expenditures of the $100,000 annual contribution in furtherance of its qualified status as a QCDC, QHFI or QNPI may, result in the Sponsor losing its eligibility to participate in this Tax Credit program for any future tax year. A Sponsor that is no longer eligible to participate in this Tax Credit program will not lose any Tax Credit for which it was eligible for prior contributions made under the Contribution Agreement.

6. If a Sponsor is no longer eligible to participate in this Tax Credit program as a result of the disqualification of the QCDC, QHFI or QNPI, new applications for Tax Credit may be submitted to sponsor a new Qualifying Organization. A new Applicant shall be selected in the same

manner prescribed in Section 501(F)(2). A new Applicant may apply to receive Tax Credits under this section, provided that such Tax Credit shall be limited to the number of years that are remaining on the terminating Sponsor's Contribution Agreement. The new Sponsor must enter into a Contribution Agreement with the City under which it agrees to make cash contributions of $100,000 per year to a new QCDC, QHFI or QNPI and for the number of years remaining under the terminated Contribution Agreement.

7. By October 15th of any year, a Sponsor may submit a written proposal to the Revenue Department for approval to amend a Contribution Agreement for the following calendar year, except in the event of a merger of a QCDC, QHFI or QNPI, in which case the Contribution Agreement may be amended during the calendar year.

8. The Department may terminate the Sponsors Contribution Agreement, if the Sponsor has not submitted a renewal application by December 31 of the current year.

D. Tax Credit

1. A Sponsor must calculate its Business Income and Receipts Tax liability in accordance with Philadelphia Code §19-2600.

2. A Sponsor shall receive a Tax Credit of $100,000 per year against its Business Income and Receipts Tax liability for each year the Sponsor contributes $100,000 in cash to a Qualifying Organization under the terms and conditions of this section and the Contribution Agreement. Sponsors with contributions exceeding $100,000 will not be entitled to any additional Tax Credit. Sponsors whose contributions are less than $100,000 will not receive any Tax Credit. Sponsors are encouraged to make their full contributions to the Qualifying Organizations on or before October 15th of each year. However, the full contribution must be made by December 31st of each year.

3. Any Tax Credit not used in the period the contribution was made may not be carried forward or carried backward.

4. No credit will be given to any contribution made prior to receiving approval from the Department.

5. Tax Credit shall be available to up to forty (40) businesses, with respect to contributions to Qualifying CDCs or Qualifying Nonprofit Intermediaries, and up to two (2) businesses, with respect to Qualifying Nonprofit Organizations Engaged in Developing and Implementing Healthy Food Initiatives that enter into a Contribution Agreement with the City.

6. Tax Credits are non transferable and may be used only by the Sponsor.

7. A Sponsor must take the credit on the Tax Year for which the Contribution is made.

8. The Department of Commerce will facilitate the economic development review and monitor the Qualifying Organizations to ensure that the QCDC and QNPI perform the economic development activities set forth in their yearly plan. If the Qualifying Organization fails to address

the economic development objectives or fails to perform the activities set forth in its yearly plan in the Renewal Application the Department will place the Qualifying Organization on one year's probation to allow the Qualifying Organization to rectify the deficiencies. Technical assistance will be provided as needed and as available, however, the main responsibility for becoming compliant resides with the Qualifying Organization. If the Qualifying Organization is still not meeting the economic development objectives or performing the activities of their plan, they will be removed from the program after their probationary year.

9. The Health Department will review and approve the applications received yearly for the Nonprofit Organizations Engaged in Developing and Implementing Healthy Food Initiatives. If the QHFI fails to demonstrate that it has been substantially engaged in developing and implementing healthy food initiatives in the City of Philadelphia as set forth in its yearly plan in the Renewal Application, the Department will place the QHFI on one year's probation to allow the QHFI to rectify the deficiencies. Technical assistance will be provided as needed and as available; however, the main responsibility for becoming compliant resides with the QHFI. If the QHFI is still not meeting the healthy food objectives or performing the activities of their plan, they will be removed from the program after their probationary year.[85]

E. Administrative Requirements

1. No Sponsor may claim or receive a Tax Credit under this section unless the Sponsor is in full compliance with all applicable Philadelphia tax laws, ordinances, and regulations.

2. If a Sponsor makes an annual payment of less than $100,000 to a Qualifying Organization, the Sponsor must petition the Revenue Commissioner to be reinstated in the program. Where the Sponsor consists of two businesses, the remaining co-sponsor which has paid its pro rata contribution must comply with paragraph C(4).

F. Procedure for Obtaining Tax Credit; Notice.[86]

1. An Applicant or Sponsor must complete the Tax Credit application or renewal form provided by the Department and must file the completed form as required by the Revenue Commissioner.

2. The business must file the completed application form with the Department no earlier than 9:00 am, Eastern Time on the date that has been specified by the Department. Applications received by the Department prior to 9:00 am, Eastern Time, will be deemed to have been received by the Department on the date specified by the Department, between the hours of 9:00 am, Eastern Time and 4:00 pm Eastern Time.[87]

3. Applications will be selected on a "first come-first served" basis. When necessary the Department will choose among the applicants that apply on the same date, on a random basis, pursuant to a drawing as specified by the Revenue Commissioner. Applications received on the

[85] Added by regulation submitted to the Department of Records August 6, 2015 (effective September 7, 2015).
[86] Added by regulation submitted to the Department of Records November 24, 2003 (effective December 24, 2003) and amended by regulation submitted to the Department of Records March 23, 2010 (effective April 22, 2010).
[87] Added by regulation submitted to the Department of Records on February 23, 2012 (effective March 26, 2012).

same date by the designee of the Department between 9:00 am, Eastern Time, and 4:00 pm, Eastern Time, will be considered received at the same time. Applications received after 4:00 pm, Eastern Time, on the date designated by the Department, will be considered received on the next business day.[88]

4. If an Applicant submits an incomplete application in good faith, the Applicant will be notified by the Department that the application is incomplete. The Applicant will be allowed 14 calendar days from the mailing date of the notice letter to cure the failure. If within 14 calendar days the failure is not cured to the satisfaction of the Revenue Commissioner, the application will be denied and another Applicant will be selected on a "first come-first served basis" based on existing filed applications.

G. Appeal Rights

1. The Department shall mail notice of an adverse decision in accordance with the Contribution Agreement if the Department decides that:

a. An organization is not a Qualifying Organization,

b. A QCDC, QHFI or QNPI is no longer qualified, or

c. A Sponsor is no longer eligible to receive the Tax Credit.

2. Any aggrieved party may challenge an adverse decision of the Department by filing an appeal with the Office of Administrative Review within 30 calendar days of the mailing date of the adverse decision letter.

H. Reporting Requirements

By July 1st of each year, the Revenue Department shall submit a written report to the Mayor, with a copy to the President and Chief Clerk of Council, summarizing the City's experience during the prior calendar year with the Tax Credit provided under this Section.

[88] Added by regulation submitted to the Department of Records on February 23, 2012 (effective March 26, 2012).

SECTION 502. JOB CREATION TAX CREDIT[89]

A) Definition[90]

1. Annual Wage, Total salaries, wages, and other compensation subject to the Philadelphia City Wage Tax as defined under §19-1500 of the Philadelphia Code and the Department's Income Tax Regulations.

2. Applicant. A business as defined in Section 101(D) of these regulations and subject to the Business Income and Receipts Tax.

3. Base period. The three years preceding the date on which a business may begin creating New Jobs that may be eligible for Job Creation Tax Credits.[91]

4. Code. The Philadelphia Code.

5. Department. Department of Revenue.

6. Returning Citizen. A person previously convicted of a felony, or who was incarcerated for any conviction, or who is currently on probation or parole for any conviction or who is currently in a work release program or programmed for work release.

7. Job Creation Tax Credits. Tax credits for which the Department has issued a certificate under Section 19-2604 (7) of the Code.

8. New Job.[92] A full time job created by a company within the City and County of Philadelphia within five (5) years from the Start Date, the average hourly rate, excluding benefits, for which must be equal to at least the higher of:

(i) 150% of the federal minimum wage or, for any jobs created beginning January 1, 2015,

(ii) $12.00 multiplied by the CPI Multiplier. The CPI Multiplier shall be calculated annually by the Director of Finance, for wages to be provided on and after January 1 of each year by dividing the most recently published Consumer Price Index for all Urban Consumers (CPI-U) All Items Index, Philadelphia, Pennsylvania, by the most recently published CPI-U as of January 1, 2015.

For any Application for Job Creation Tax Credit filed with the Department on or after September 15, 2015, the term “New Job” does not include any job that by virtue of a merger, acquisition, reorganization or any other change in ownership or entity is transferred from a business entity (that had previously filed a BIRT return as required by Chapter 19-2600 of the Code) to a successor

---

[89] Added by regulation submitted to the Department of Records February 13, 2003 (effective March 17, 2003).
[90] Amended by regulations submitted to the Department of Records June 22, 2005 (effective July 22, 2005), February 7, 2007 (effective March 9, 2007), and September 10, 2015 (effective October 13).
[91] Amended by regulation submitted to the Department of Records on December 11, 2012 (effective January 10, 2013).
[92] Amended by regulation submitted to the Department of Records March 20, 2015 (effective April 20, 2015).

business entity. The term will also not include any job or position that belonged to a business entity that had previously terminated their business activity in Philadelphia and subsequently restarts business activity in Philadelphia within five years of the original business termination date.[93]

Employment opportunities for returning citizens must be contracted for a minimum period of at least 180 days.[94]

9. Start Date. The date on which a business may begin creating New Jobs that may be eligible for Job Creation Tax Credits. The Start Date will be the first day of the calendar quarter in which an application is submitted, unless the applicant requests and the Department agrees to a later start.

10. Tax Credit Certificate.[95] Certificate issued to Applicant by Department after a New Job has been determined to be created and has been retained for at least twelve months.

11. Year One. A one-year period immediately following the Start Date.

12. Year Two. A one-year period immediately following the end of Year One.

13. Year Three. A one-year period immediately following the end of Year Two.

14. Year Four. A one-year period immediately following the end of Year Three.

15. Year Five. A one-year period immediately following the end of Year Four.

B) Program Requirements

1. The Applicant must agree to create within the City of Philadelphia at least twenty-five (25) New Jobs or to increase its number of full time employees by at least twenty-percent (20%) within five (5) years from the Start Date.

2. Applicants have five years from the Start Date to create the New Jobs. Tax credits are granted only after the New Jobs are created.

3. Applicant must agree to maintain existing operations and the operations related to the Job Creation Tax Credits in the City of Philadelphia for a period of five (5) years from the date the company first submits its Tax Credit Certificate to the Department.

C) Eligibility[96]

[93] Added by regulation submitted to the Department of Records on August 6, 2015 (effective September 7, 2015).
[94] Amended by regulation submitted to the Department of Records on December 11, 2012 (effective January 10, 2013).
[95] Amended by regulation submitted to the Department of Records March 20, 2015 (effective April 20, 2015).
[96] Amended by regulation submitted to the Department of Records March 20, 2015 (effective April 20, 2015).

In order to be eligible to receive Job Creation Tax Credits, a company must have a current Job Creation Tax Credit Certificate from the Commonwealth of Pennsylvania for New Jobs located in the City of Philadelphia or demonstrate each of the following criteria:

1. The ability to create the number of New Jobs required by the Department within five (5) years from the Start Date. The jobs created must have at least fifty percent (50%) of its wages subject to the tax imposed by Philadelphia Code § 19-1502(1)(a) or § 19-1502(1)(b).

2. The financial stability of the company and the projects financial viability.

3. The intent to maintain operations in the City of Philadelphia for a period of five (5) years from the date the company submits its Tax Credit Certificate to the Department.

4. An affirmation that the business decision to expand or locate in the City of Philadelphia was due in a large part to the availability of a Job Creation Tax Credit.

D) Application and Approval Process[97]

1. Applicant must complete and submit to the Department a Job Creation Tax Credit Application wherein the Applicant agrees to create at least twenty-five (25) New Jobs or to increase the Applicant's number of full time employees by at least twenty percent (20%) within five (5) years of the Start Date. In addition to completing the Job Creation Tax Credit Application, the Applicant will include the following items:

    a. A description of the project.

    b. The number of New Jobs to be created by the Applicant within the five (5) year period from the Start Date.

    c. The amount of private capital investment in the project.

    d. An affirmation that the decision to expand or locate in the City of Philadelphia was due in large part to the availability of the Job Creation Tax Credit.

    e. The desired Start Date to begin creating New Jobs that may be eligible for tax credits.

    f. Financial statements for the last three years or a letter from a certified public accountant that includes the following liquidity ratios from the most recent annual financial statement: current ratio, quick ratio and debt equity ratio. This information is required if the Applicant, upon submitting the application, employs more than twenty-five (25) individuals or plans to create more than twenty-five (25) New Jobs.

---

[97] Amended by regulation submitted to the Department of Records on December 11, 2012 (effective January 10, 2013).

g. Such other information as the Department may from time to time deem appropriate.

2. If the Department approves the company's application, the Department will issue a commitment letter to the company. Upon acceptance of the conditions listed in the commitment letter, the business must sign and return the letter to the Department.

E) Commitment Letter[98]

1. The Department and the approved Applicant will execute a commitment letter. The commitment letter shall contain the following:

   a. A description of the project.

   b. The number of jobs created.

   c. The amount of private investment in the project.

   d. The maximum job creation tax credit amount the company may claim.

   e. A signed statement that the company intends to maintain its operation in the City of Philadelphia for five years from the date the company submits its first Tax Credit Certificate to the Department.[99]

   f. Such other information as the Department deems appropriate.

2. After a commitment letter has been signed by both the Department and the business, and the Department has verified that New Jobs have been created pursuant to that commitment, the business shall receive a Job Creation Tax Credit Certificate reflecting the number of jobs created and filing information.

F) Tax Credits[100]

1. Tax Credit Amounts

   a. Basic Maximum Amount. An Applicant may claim a Job Creation Tax Credit in an amount equal to two percent (2%) of the annual wages paid for each New Job, excluding benefits or one thousand ($1000) dollars for each New Job created,

[98] Amended by regulation submitted to the Department of Records on December 11, 2012 (effective January 10, 2013).
[99] Amended by regulation submitted to the Department of Records on June 11, 2013 (effective July 11, 2013).
[100] Amended by regulation submitted to the Department of Records on June 22, 2005 (effective July 22, 2005), by regulation submitted to the Department of Records on February 7, 2007 (effective March 9, 2007), and by regulation submitted to the Department of Records on December 11, 2012 (effective January 10, 2013).

whichever is higher, up to the maximum job creation amount specified in the commitment letter. In the case of new employment opportunities for Returning Citizens, the tax credit is five-thousand ($5,000) dollars for each New Job created or two (2) percent of the annual wages paid for each New Job excluding benefits, whichever is higher, up to the maximum job creation amount specified in the commitment letter.

b. Special Tax Credit Opportunity for Job Creation in 2010 and 2011. In connection with any application filed after June 24, 2009, an applicant may claim a tax credit in the amount of $3,000 or the amount permitted under subparagraph (a), whichever is higher, for each New Job created in 2010 or 2011, up to the maximum job creation amount specified in the commitment letter.

c. Special Tax Credit Opportunity for Job Creation in 2012 and 2013. In connection with any application filed after January 5, 2011, an applicant may claim a tax credit in the amount of $3,000 or the amount permitted under subparagraph (a), whichever is higher, for each New Job created in 2012 or thereafter, up to the maximum job creation amount specified in the commitment letter.

d. Special Tax Credit Opportunity for Job Creation in 2012 and each year thereafter. In connection with any application filed after March 14, 2012, an applicant may claim a tax credit in the amount of $5,000 or the amount permitted under subparagraph (a), whichever is higher, for each New Job created in 2012 or thereafter, up to the maximum job creation amount specified in the commitment letter.[101]

e. Special Tax Credit Opportunity for Job Creation in 2015. In connection with any application for a Job Creation Tax Credit filed after October 29, 2014, a business may claim in each of five (5) years a tax credit in the amount of $5,000 or the amount permitted under subparagraph (a), whichever is higher, for each new job created in 2015, up to the maximum job creation amount specified in the commitment letter.[102]

2. Methodology to Determine Annual Wages Paid

a. Annual wages paid shall be wages paid for the first twelve (12) months of employment for each New Job created during the job creation periods and subject to the Philadelphia City Wage Tax withholding imposed by Chapter 19-1500 of the Code. For each New Job created, the wages must be paid for a period of twelve months before the 2% tax credit shall be calculated, even if the twelve months are not consecutive months.

b. In the event the twelve month period to calculate annual wages paid does not end within the year for which job creation was determined but ends within the first

[101] Amended by regulation submitted to the Department of Records on June 11, 2013 (effective July 11, 2013).
[102] Added by regulation submitted to the Department of Records March 20, 2015 (effective April 20, 2015).

quarter of the next job creation year, wages paid to the respective person or persons in the first quarter of the next job creation year may be used to calculate annual wages paid for the year which job creation was determined. In no instance may the wages paid in the second quarter or subsequent quarters of the next job creation year be used to calculate annual wages paid for the prior job creation year.

c. For each New Job created, the twelve month period to determine annual wages paid shall begin with the employee's earliest date of employment at the applicant's base of operations in Philadelphia during the job creation period. In the event an applicant's Start Date – as defined in Section 502(A) of these regulations – is a date that is prior to the actual date the applicant maintains operations (i.e., opens and office) in Philadelphia, the period to determine annual wages paid shall begin on the date within the quarter that the applicant began to maintain a base of operations in Philadelphia. Wages paid to an employee hired prior to the employer having a base of operations in Philadelphia are not includible in determining annual wages paid, even if the employee is hired on the applicant's Start Date.

d. When the New Job created is filled by multiple persons within the twelve month period i.e., an employee is terminated, the wages paid to each employee for the twelve month period shall be combined. Example: Employee A is hired in January 20X1 and terminated in May 20X1; Employee B is hired in June 20X1 as a replacement and remains employed through December 20X1 and thereafter; Employee A's Philadelphia taxable wages from January through May 20X1 are $40,000; Employee B's Philadelphia taxable wages for June through December 20X1 are $30,000; Annual wages paid for the New Job created would be $70,000.

e. When the New Job created is filled by multiple persons but wages, because of various dates of hire, are not paid for all months within the twelve month period, the business shall wait until twelve months of wages have been paid before the 2% tax credit shall be calculated.

f. When it is determined that a New Job is created although no employee hired within the job creation period has twelve months of paid wages, wages may be combined for employees with different job classifications to calculate annual wages paid for each New Job created provided 1) the salary for each job classification is within the same pay range, 2) the jobs are created within the same year but a replacement was not hired or 3) a job was terminated within the same year but a replacement was not hired and 4) combining the wages of the employees amount to twelve months of paid wages.

g. Employees whose wages are combined for a particular job creation year in order to calculate annual wages paid as prescribed in subparagraph (a) and the two-percent (2%) tax credit for a New Job created in that particular year, and the employees are still employed in subsequent job creation year(s), wages paid to such employees may not be used to determine the tax credit for a New Job verified as created in the subsequent job creation year(s).

3. The credit must be claimed within five (5) years of receiving the Tax Credit Certificate from the Department, but in no case can it be longer than eight (8) years from the Start Date. Credits not claimed within this period will be forfeited.

4. An Applicant may only apply the tax credit against its total Business Income and Receipts Tax liability. Cash refunds will not be issued for unused credits.

G) Job Creation[103]

1. A business has five (5) years from the Start Date to create the number of New Jobs specified in the commitment letter. The base employment will be determined using an employee affidavit submitted by the Applicant that identifies full time employment levels for the three years preceding the Start Date. The full time employment numbers for each year will be averaged. The base full time employment will be the higher of the average full time employment level during the Base Period or the full time employment level at the Start Date.

2. To determine job creation, the Department will review the employment affidavit filed by the Applicant for the four calendar quarters of Year One commencing with the Start Date. The average employment by quarter during Year One will be compared with the base employment to determine the number of New Jobs for which tax credits can be claimed. In Year Two the Department will review the employment affidavit filed by the Applicant for the four calendar quarters of Year Two. The average employment by quarter during Year Two will be compared with the average employment by quarter of Year One to determine the number of New Jobs for which tax credits may be claimed. In Year Three, the Department will review the employment affidavit filed by the Applicant for the four calendar quarters of Year Three. The average employment by quarter during Year Three will be compared with the average employment by quarter of Year Two to determine the number of New Jobs for which tax credits may be claimed. In Year Four, the Department will review the employment affidavit filed by the Applicant for the four calendar quarters of Year Four. The average employment by quarter during Year Four will be compared with the average employment by quarter of Year Three to determine the number of New Jobs for which tax credits may be claimed. In Year Five, the Department will review the employment affidavit filed by the Applicant for the four-calendar quarters of Year Five. The average employment by quarter during Year Five will be compared with the average employment by quarter of Year Four to determine the number of New Jobs for which the credits may be claimed.

3. New Jobs shall be deemed created in only those years when the wages of each new employee hired due to the tax credit exceeds 150% of the federal minimum wage created within the City and County of Philadelphia. Failure to create the required

---

[103] Amended by regulation submitted to the Department of Records on December 11, 2012 (effective January 10, 2013).

number of New Jobs specified in the commitment letter by the end of year five may result in the imposition of penalties.

4. Every Applicant is directed and required to give to the Department proof of verification of job figures, such proof to be provided by, but not limited to, a review of tax returns filed with other taxing authorities, unemployment compensation filings, payroll records, or other company employment records. A Job Creation Tax Credit Certificate may be requested one year following the Start Date specified in the commitment letter, provided the business has created one or more jobs. The business shall request issuance of a Job Creation Tax Credit Certificate by submitting a form as prescribed by the Department which shall include an employment affidavit. The business shall submit an employment affidavit annually for a five (5) year period, commencing with the end of Year One, even if New Jobs are not created for the particular period. Tax Credit Certificates will be issued only after the Department has determined a New Job has been created and only up to the maximum job creation number specified in the commitment letter.

<u>Examples</u>[104]

1) A taxpayer, with a base employment number of 50, filed a JCTC application on March 1, 2010 for the creation of 30 New Jobs in Philadelphia with a Start Date of January 1, 2010, and, accordingly, a Commitment Agreement was fully executed. The taxpayer has created 5 New Jobs on February 1, 2010, another 5 on June 1, 2011 and 10 more on March 1, 2012. The annual wages paid for each of the 20 new jobs created was $60,000. In July 2013, the taxpayer requested issuance of a Job Creation Tax Credit Certificate and the Department has verified creation of the jobs.

   <u>Question</u>: Determine the JCTC amount the Revenue Department shall issue to the taxpayer.

   <u>Answer</u>:

   In general, under subparagraph 502(F)(1)(b) of this Section, if an applicant fulfils the eligibility requirement, it may claim a Basic Maximum Amount equal to two percent (2%) of the annual wages paid for each New Job or one thousand ($1000) dollars for each New Job created, whichever is higher, up to the maximum job creation specified in the commitment letter. Under subparagraph 502(F)(1)(b) of this Section, in connection for any JCTC application filed after June 24, 2009, for "Job Creation in 2010 and 2011," a business may claim "a tax credit in the amount of $3,000 … up to the maximum job creation amount specified in the commitment letter."

   The taxpayer filed the application after June 24, 2009 and, therefore, the taxpayer is entitled to receive $3,000 credit for each of the 5 jobs created in 2010 and for each of the 5 jobs created in 2011. The taxpayer is entitled to receive only the basic maximum amount of $1,000 or 2% of the annual wages paid for each of the 10 jobs created in 2012. As such, taxpayer shall receive $1,200 (which is 2% of $60,000) credit for each of the 10 jobs

[104] Added by regulation submitted to the Department of Records March 20, 2015 (effective April 20, 2015).

created in 2012. As a result, the Department will issue JCTC certificate to the taxpayer in the amount of $42,000 [i.e., (10 * $3,000) + 10 * $1,200)].

2) The same taxpayer in Example 1 above filed another JCTC application on December 1, 2014 for the creation of 20 new jobs and signed a Commitment Agreement with the City accordingly. Taxpayer created 15 jobs on July 1, 2015 and 20 more on January 15, 2016, for a total of 35 additional jobs. In March 2017, the taxpayer requested issuance of a Job Creation Tax Credit Certificate and the Department has verified the creation of these jobs.

   Question: Determine the JCTC amount the Revenue Department shall issue to the taxpayer.

   Answer:

   Out of the 30 new jobs the taxpayer committed to create under the first JCTC Commitment Agreement, the taxpayer had created only 20 jobs prior to filing a second JCTC application in December 2014. At the time of filing its first JCTC application, the taxpayer had a base employment number of 50 and has created 20 new jobs prior to its second application. As a result, for the purpose of its second application, the taxpayer's base employment number is 70.

   The taxpayer has to fulfill its first commitment before claiming any credit under its second application. The 15 new jobs created in 2015 are still within the 5 years limitation period to create new jobs under the first agreement and, as such, 10 of these jobs shall be used toward satisfying taxpayer's first commitment to create 30 new jobs. Thus, taxpayer shall receive a one-time $1,000 basic maximum amount or 2% of the annual wages paid, whichever is higher, for each of these 10 jobs.

   The remaining 5 new jobs created in Tax Year 2015 shall be used to satisfy the job creation commitment under the second Agreement. Accordingly, the taxpayer shall receive, in accordance with subparagraph 502(F)(1)(e) of this Section, $5,000 for each of these 5 new jobs (a total of $25,000) for Tax Year 2015 and additional $25,000 for Tax Year 2016. As long as the taxpayer maintains the level of employment and timely requests for issuance of the JCTC certificate, the taxpayer shall receive $5,000 JCTC for each of these 5 jobs for 3 more years. Under paragraph 502(F)(3) of this Section, the credit must be claimed within five (5) years of receiving the Tax Credit Certificate from the Department, but in no case can it be longer than eight (8) years from the Start Date. Credits not claimed within this period will be forfeited.

   Fifteen of the 20 new jobs the taxpayer created in Tax Year 2016 shall count to satisfy the commitment under the second Agreement to create 20 new jobs. However, since these jobs are not created in Tax Year 2015, the taxpayer cannot take advantage of the provision of subparagraph 502(F)(1)(e) of this section, which is a Special Tax Credit provision for jobs creation in 2015 only in connection with an application filed after October 29, 2014. The taxpayer shall receive for each of these 15 jobs a one-time $5,000 ($75,000 total) under subparagraph 502(F)(1)(d), which is a Special Tax Credit Opportunity for Job Creation in 2012 and each year thereafter in connection with any application filed after March 14, 2012. In total, the Department will issue JCTC certificates for $200,000 for the jobs created under the second agreement ((5 jobs x $5,000 x 5 years) + (15 jobs x $5,000)) provided that all terms of the program are met.

Under the second Agreement, the taxpayer committed to create 20 new jobs. In total, the taxpayer created 35 new jobs – 15 in 2015 and 20 in 2016. As explained above, out of the 15 new jobs created in 2015, the first 10 were counted towards fulfilling the first commitment for creation of 30 jobs (20 of which were created in tax years 2010 through 2012); the remaining 5 jobs created in 2015 and the first 15 out of the 20 jobs the taxpayer created in 2016 are counted towards fulfilling the second Commitment Agreement. As such, out of the 35 new jobs the taxpayer create in 2015 and 2016, the first thirty (30) are counted to fulfill in full the two job creation Commitment Agreements the taxpayer entered with the City. The taxpayer shall not receive any JCTC credit for the remaining 5 jobs created in 2016 as these jobs are in excess of the total new jobs the taxpayer committed to created under the two agreements.

In total, the taxpayer created 55 new jobs from the time of their first JCTC agreement and will received credits totaling $242,000 for 50 of those jobs; provided all program terms are met.

3) A taxpayer, with a base employment number of 10, filed its first JCTC application on December 1, 2014 for the creation of 20 New Jobs in Philadelphia and signed a fully executed Commitment Agreement with the City accordingly. The taxpayer had created 5 New Jobs on September 1, 2014, another 5 on October 15, 2014 and 17 more on July 1, 2015. The average hourly rate for each of the 27 new jobs created was $15.00. In September 2016, the taxpayer requested issuance of a Job Creation Tax Credit Certificate and the Department has verified creation of the jobs.

Question: Determine the JCTC amount the Revenue Department shall issue to the taxpayer.

Answer:

The 5 jobs the taxpayer created on September 1, 2014 do not count toward the job creation under the JCTC Commitment Agreement the taxpayer signed with the City and, as such, the taxpayer is not entitled to any JCTC for these 5 jobs. This is because these jobs were created prior to the Start Date, the date on which a business may begin creating New Jobs that may be eligible for JCTC under the JCTC Commitment Agreement the Taxpayer signed with the City. Under the JCTC ordinance, the Start Date shall be the first day of the calendar quarter in which an application is submitted. In this case, the application is submitted on December 1, 2014 and, therefore, the Start Date is October 1, 2014.

The 5 jobs the taxpayer created on October 15, 2014 were created after the Start Date and would count towards the job creation under the Agreement. However, since these jobs were created not in Tax Year 2015, the taxpayer cannot take advantage of the Special Tax Credit provision for job creation in 2015 under subparagraph 502(F)(1)(e)and shall only receive one-time $5,000 for each of these 5 jobs under subparagraph 502(F)(1)(d).

Under the Commitment agreement, the taxpayer signed to create 20 New Jobs beginning at the Start Date, created 5 new jobs in October, 2014 and shall receive JCTC for these 5 jobs as indicated above. Out of the 17 new jobs the taxpayer created in Tax Year 2015, only 15 would qualify the taxpayer for JCTC. The taxpayer shall not receive any JCTC for the remaining 2 jobs as these are in excess of the maximum 20 jobs the taxpayer is allowed to receive JCTC under the Agreement. Accordingly, the taxpayer shall receive, in accordance with subparagraph 502(F)(1)(e) of this Section, $5,000 for each of these 15 new jobs (a total of $75,000) for Tax Year 2015. As long as the taxpayer maintains the level of employment and timely requests for issuance of the JCTC certificate, the taxpayer shall receive $75,000 JCTC for these 15 jobs for 4 more years.

In total, the taxpayer created 22 new jobs and, under JCTC agreement, will receive credits totaling $400,000 for 20 of those jobs ((5 jobs x $5,000) + (15 jobs x $5,000 x 5 years)), provided all program terms are met.

H) Limitations[105]

1. At least 25% of all Job Creation Tax Credits that can be approved in any year shall be available to Applicants with fewer than twenty-five (25) employees or to create employment opportunities for Returning Citizens.

2. An Applicant will not receive tax credits for New Jobs created prior to the Start Date.

3. The use of tax credits may neither be assigned nor transferred to any other business or subsidiary of the business awarded tax credits.

4. An Applicant may not receive tax credits for relocating operations from one location in Philadelphia to another location in Philadelphia.

5. Tax credits may not be converted to cash.

6. No business may claim or receive a tax credit under this section unless the business is in full compliance with all Philadelphia tax laws, ordinances and regulations.

7. The total amount of all Job Creation Tax Credits available in any year for commitment under § 19-2604(7)(c)(3) of the Code shall not exceed 2% of all revenues collected by the City through the gross receipts and net income components of the Business Income and Receipts Tax during the previous year.[106]

I) Penalties

[105] Amended by regulation submitted to the Department of Records on June 22, 2005 (effective July 22, 2005).
[106] Amended by regulation submitted to the Department of Records on June 11, 2013 (effective July 11, 2013).

1. Failure to maintain operations. An Applicant that receives Job Creation Tax Credits and fails to substantially maintain existing operations and the operations related to the Job Creation Tax Credits in the City of Philadelphia for a period of five (5) years from the date the Applicant first submits a Job Creation Tax Credit Certificate to the Department shall be required to refund to the City of Philadelphia the total amount of credit or credits granted.

2. Failure to create New Jobs. An Applicant that receives Job Creation Tax Credits and fails to create the approved number of New Jobs within five (5) years of the Start Date will be required to refund to the City of Philadelphia the total amount of credit or credits granted.

3. Waiver. The Department may waiver the penalties outlined in subsections (1) and (2) above if it is determined that an Applicant's operations were not maintained or the New Jobs were not created because of circumstances beyond its control. Such circumstances include natural disasters, acts of terrorism, unforeseen industry trends, or a loss of a major supplier or market.

SECTION 503. RESERVED

SECTION 504. PHILADELPHIA RE-ENTRY EMPLOYMENT PROGRAM ("PREP") FOR RETURNING CITIZENS TAX CREDIT [107]

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

1. "Applicant." A business as defined in Section 101 (D) of these regulations.

2. "Code." The Philadelphia Code.

3. "Department." Department of Revenue.

4. "Returning Citizen." A person previously convicted of a felony, or who was incarcerated for any conviction, or who is currently on probation or parole for any conviction.

5. "Qualifying Employee." For any given tax year, a Returning Citizen is a "Qualifying Employee" of a business or a Qualifying Exempt Organization if he or she is either a Part-time or a Full- time Qualifying Employee, and meets all of the following criteria:

a. Is employed by the business or by the Qualifying Exempt Organization during the tax year in a position where either (A) compensation is equivalent to those wages and benefits, including sick leave, holiday and vacation absences, and tuition benefits., afforded regular employees in comparable positions as part of the Employer's regular payroll process; or, if a comparable position does not exist, (B) the average hourly rate., excluding benefits, is at least 150% of the federal minimum wage, and the employment package includes the same benefits as are provided to other full-time employees and tuition support for GED, Community College or other post-secondary education, or vocational/technical education or training, of at least $2,000 during each of the first two years of employment and $1,000 during the third year of employment.

b. Earns wages that are subject to the tax on wages imposed by Chapter 19-1500 of the Code.

c. Was first hired by the business or by the Qualifying Exempt Organization after the business entered into a PREP Tax Credit Agreement as required by subsection 504(C);

d. Was released from incarceration in the City no more than seven years before being hired by the business or by the Qualifying Exempt Organization; or from incarceration elsewhere in the Commonwealth no more than three years before being hired by the business or by the Qualifying Exempt Organization;

e. Was a Philadelphia resident for at least one year before being incarcerated,

[107] Added by regulation submitted to the Department of Records on August 3, 2011 (effective September 2, 2011) and amended by regulation submitted to the Department of Records on September 10 (Effective October 13, 2015).

and has been a Philadelphia resident either continuously since being released from incarceration or for at least three years before being hired;

f. Before being hired by the business or by the Qualifying Exempt Organization, executed a PREP Employee's Agreement as required by subsection 504(E); and

g. Has been certified by R.I.S.E. as a Qualifying Employee in accordance with subsection 504(D).

6. "Qualifying Full-Time Employee." For any given tax year, a Returning Citizen is a "Qualifying Full-Time Employee" of a business or a Qualifying Exempt Organization if he or she is employed by the business or by the Qualifying Exempt Organization during the tax year for at least thirty-seven and one-half hours per week.

7. "Qualifying Part-Time Employee"" For any given tax year, a Returning Citizen is a "Qualifying Part-time Employee" of a business or a Qualifying Exempt Organization if he or she is employed by the business or by the Qualifying Exempt Organization during the tax year for at least twenty hours per week, but fewer than thirty-seven and one-half hours per week.

8. "Qualifying Exempt Organization." For any given tax year, a "Qualifying Exempt Organization" is an Organization that:

a. Has been certified as an organization exempt from taxation under the Internal Revenue Code of 1986, as amended, and is exempt from taxation under Chapter 19-2600 of the Code (Business Income and Receipts Taxes);

b. Employs a Qualifying Employee; and

c. Has been certified by R.I.S.E. as a Qualifying Exempt Organization in accordance with subsection (504)(F).

9. "R.I.S.E." The Mayor's Office of Re-Integration Services ("R.I.S.E."), or any other agency or office as the Mayor shall designate to perform the function assigned to R.I.S.E. by Section 19-2604 (9) of the Code.

10. "Tax Year." As defined in Section 101 of these regulations.

B. Calculation of Tax Credits.

1. a. Beginning in tax year 2008 and for all tax years thereafter, a business shall receive a tax credit for each certified Qualifying Employee who has been employed by the business for more than six (6) months.

b. Beginning in tax year 2010 and for all tax years thereafter, a business shall receive a tax credit for a contribution of at least $10,000 made in a given tax year to a Qualifying Exempt Organization for each Qualifying Full-time Employee employed by the Qualifying Exempt Organization for at least six (6) months, or for a contribution of at least $5,000 made in a given tax year to a Qualifying Exempt Organization for each Qualifying Part-time Employee employed by the Qualifying Exempt Organization for at least six (6) months. A Qualifying Exempt Organization cannot receive a contribution from more than one business for each qualifying employee employed by the organization. The tax credit provided for in this subparagraph shall also apply to a business that executed a PREP Tax Credit Agreement with the Department during the tax years 2008 and 2009.

2. The tax credit provided for in subsection (504)(B)(1)(a) shall be in the amount of $10,000 multiplied by the percentage of the tax year that the Qualifying Full-time Employee was employed by the business or shall be in the amount of $5,000 multiplied by the percentage of the tax year that the Qualifying Part-time Employee was employed by the business, subject to the limits in subsection (504)(B)(3). The tax credit provided for in subsection (504)(B)(1)(b) shall be in the amount of $7,000 multiplied by the percentage of the tax year that the Qualifying Full-time Employee was employed by the Qualifying Exempt Organization, or shall be in the amount of $3,500 multiplied by the percentage of the tax year that the Qualifying Part-time Employee was employed by the Qualifying Exempt Organization, subject to the limits in subsection (504)(B)(3). The percentage of a tax year shall be calculated by dividing the total number of full calendar weeks during the tax year that the Qualifying Employee was employed by the business or Qualifying Exempt Organization by fifty-two (52).[108]

3. a. The tax credit provided for in subsections (504)(B)(1)(a) and (504)(B)(1)(b) is available for a total of thirty-six (36) months of employment of a Qualifying Full- time Employee or Qualifying Part-time Employee. The thirty-six (36) month employment period begins on the initial date of hire. In no instance may the thirty- six months of employment occur over a period exceeding six years from the initial date of hire.[109]

b. The maximum amount of tax credits a business may receive for any one Qualifying Full-time Employee under subsection (504)(B)(1)(a) over all tax years is $30,000. The maximum amount of tax credits a business may receive for any one Qualifying Part-time Employee under subsection (504)(B)(1)(a) over all tax years is $15,000.[110]

c. The maximum amount of tax credits any business may receive for making a contribution to a Qualified Exempt Organization under subsection (504)(B)(1)(ii) shall not exceed $21,000 for any one Qualifying Full-time Employee. The maximum amount of tax credits any business may receive for making a contribution to a Qualified Exempt Organization under subsection (504)(B)(1.)(ii) shall not exceed $10,500 for any one Qualifying Part-time Employee.

4. Tax credits shall be taken against total Business Income and Receipts Tax liability, and a business may claim the PREP Credit for each Qualifying Full-time or Part-time Employee or contribution to a Qualifying Exempt Organization, as approved by the City of Philadelphia, for a period not to exceed five (5) years from the date the business executes a PREP Tax Credit

---

[108] Amended by regulation submitted to the Department of Records on December 12, 2011 (effective January 11, 2012).
[109] Amended by regulation submitted to the Department of Records on December 12, 2011 (effective January 11, 2012).
[110] Amended by regulation submitted to the Department of Records on December 12, 2011 (effective January 11, 2012).

Agreement. Any unused credit may be carried forward for three years from the date of hire of the qualifying employee by the business, or the date of the contribution to the exempt organization. In no instance may the period to claim the tax credit be longer than eight (8) years from the date the business executes a PREP Tax Credit Agreement. Credits not claimed by the business within this period will be forfeited. Cash refunds will not be issued for any unused credits.

5. A business receiving tax credits under Section 502 (Job Creation Tax Credit) for a given tax year shall not be eligible to receive tax credits under this Section 504 for that same tax year for the same employee.

6. The tax credits awarded to the business may neither be assigned nor transferred to any other business, including a subsidiary or other affiliate of the business.

7. The following are examples of calculation of tax credits:

a. A Qualifying Employee is employed April 1, 20X1 - June 30, 20X1 inclusive, is rehired to work September 15, 20X1 - December 20, 20X1. The employee is employed for more than six (6) months in the same tax year. The tax credit, assuming the following facts, would be calculated as follows:

i. The employee is employed full-time by a business. The tax credit would be: $10,000 x 26/52 = 10,000 x 50% = $5,000;

ii. The employee is employed part-time by a business. The tax credit would be $5,000 x 26/52 = 5,000 x 50% = $2,500;

iii. The employee is employed full-time by a Qualifying Exempt Organization; a business contributes $10,000 to the Organization. The tax credit would be: $7,000 x 26/52 = 7,000 x 50% = $3,500;

iv. The employee is employed full-time by a Qualifying Exempt Organization; a business contributes $15,000 to the Organization. The tax credit would be: $7,000 x 26/52 = 7,000 x 50% = $3,500;

v. The employee is employed part-time by a Qualifying Exempt Organization; a business contributes $5,000 to the Organization. The tax credit would be $3,500 x 26/52 = 3,500 x 50% = $1,750;

vi. The employee is employed part-time by a Qualifying Exempt Organization; a business contributes $15,000 to the Organization. The tax credit would be $3,500 x 26/52 = 3,500 x 50% $1,750.

b. A Qualifying Employee works November 1, 20X1 to March 31. 20X2, inclusive, is rehired November 1, 20X2 and then terminated as of March 31, 20X3. The Qualifying Employee worked a total of ten (10) months. The tax credit, assuming the following facts:

i. The employee is employed full-time by a business. The tax credit would be calculated as follows:

20X1 (11/1 - 12/31/X1) = $10,000 x 8/52 10,000 x 15% = $1,500

20X2 (1/1 -3/31/X2; 11/1 - 12/31/X2) = $10,000 x 20/52 = 10,000 x 38% = $3,800;

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

The business is eligible for the tax credit after 11/30/X2 - after the employee has been employed for more than six (6) months. The tax credit may be claimed against BIRT liability for tax returns due after 11/30/X2. The total tax credit over all three tax years for each Qualifying Employee would be $7,600.

ii. The employee is employed part-time by a business. The tax credit would be calculated as follows:

20X1 (11/1 - 12/31/X1) = $5,000 x 8/52 = 5,000 x 15% = $750;

20X2 (1/1 - 3/31/X2; 11/1 - 12/31/X2) = $5,000 x 20/52 = 5,000 x 38% = $1,900;

20X3 (1/1 - 3/31/X2) = $5,000x 12/52 = 5,000x 23% = $1,150

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

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

20X1 (11/1 - 12/31/X1) = $7,000 x 8/52 = 7,000 x 15% = $1,050;

20X2 (1/1 - 3/31/X2, 11/1 - 12/31/X2) = $7,000 x 20/52 = 7,000 x 38% = $2,660;

20X3 (1/1 - 3/31/X3) = $7,000 x 12/52 = $7,000 x 23% = $1,610;

The business is eligible for a tax credit after 11/30/X2 - after the employee has been employed for at least six (6) months. The business may claim the tax credit against BIRT liability for tax returns due after 11/30/X2. The tax credit calculated at 12/31/X2 would be $3,710 (1,050 + 2,660). The business would be eligible for an additional tax credit for

20X3 equal to $1,610. The total tax credit over all three tax years for each Qualifying Employee would be $5,320. If the business contributes more than $10,000 in a given tax year to the Organization for each Qualifying Full-time employee, the tax credit percentage for each year for each employee would also be multiplied by $7,000.

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

20X1 (11/1 - 12/31/X1) = $3,500 x 8/52 = 3,500 x 15% = $525;

20X2 (1/1 - 3/31/X2, 11/1 - 12/31/X2) = $3,500 x 20/52 = 3,500 x 38% = $1,330;

20X3 (1/1 - 3/31/X3) = $3,500 x 12/52 = $3,500 x 23% = $805;

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

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

1. To be eligible to receive tax credits, a business must first execute a PREP Tax Credit Agreement with the Revenue Department that:

a. Details all the terms and conditions of the PREP Tax Credit as set forth in this subsection;

b. Sets forth the business' agreement to notify the Revenue Department within one week after any Qualifying Employee is no longer employed by the business or by the Qualifying Exempt Organization, which notification shall include an explanation as to why the Qualifying Employee's employment terminated;

c. Sets forth the business' commitment, as required under subsection 504(H), (A) to maintain its operations in the City of Philadelphia for five (5) years from the date of the agreement, and the business' agreement to repay any tax credits it receives if it violates such commitment, and (B) to repay those tax credits earned for a contribution to a Qualifying Exempt Organization if that Qualifying Exempt Organization fails to maintain its operations in the City of Philadelphia for five (5) years from the date of the agreement.

2. The Returning Citizen employed by the business or by the Qualifying Exempt Organization must be certified by R.I.S.E. as a Qualifying Employee as defined in subsection 504(A)(5).[111]

3. The business or Qualifying Exempt Organization shall employ each certified Qualifying Employee for at least six (6) months. The Qualifying Employee shall be employed for more than six (6) months before a tax credit shall be calculated.

4. The Qualifying Employees shall be employed in a position where either a) compensation is equivalent to those wages and fringe benefits, including sick leave, holiday and vacation absences, and tuition benefits afforded regular employees in comparable positions; or, if a comparable position does not exist, b) the average hourly rate, excluding benefits, is at least 150% of the federal minimum wage, and the employment package includes the same benefits as are provided to other full-time employees and tuition support for GED, Community College or other post-secondary education, or vocational/technical training, of at least $2,000 during each of the first two years of employment and $1,000 during the third year of employment.

5. The business and the Qualifying Exempt Organization shall substantially maintain existing operations (i.e., place of business) and the operations related to the tax credits within the City of Philadelphia for a period of five years from the date the business executes a PREP Tax Credit Agreement.

6. No business may claim or receive PREP Tax Credit(s) if the business is not in full compliance with all applicable Philadelphia tax laws, ordinances and regulations.

D. Certification of Qualifying Employees; Maximum Number Permitted.

1. After a business has executed a PREP Tax Credit Agreement, it shall make application to R.I.S.E. on a form required by R.I.S.E. for each employee it wishes to have certified as a Qualifying Employee.

2. R.I.S.E. shall certify all persons who meet the definition of Qualifying Employee, except:

a. The number of certified Qualifying Employees at any one time shall not exceed 1,000, provided that if the City administers a program that provides employers based upon their employment of Returning Citizens under terms and conditions which the Revenue Commissioner finds are substantially equivalent to the terms and conditions of the PREP Tax Credit provided under this Section, then the total number of certified Qualifying Employees plus the total number of employees under such grant program shall not exceed 1,000 at any one time; and

b. R.I.S.E. shall not certify a Returning Citizen as a Qualifying Employee if it finds any of the following:

[111] Amended by regulation submitted to the Department of Records on December 12, 2011 (effective January 11, 2012).

.1 the hiring of the Returning Citizen is displacing another employee of the business, and that the primary reason for such displacement is to obtain PREP tax credits;

.2 the Qualified Exempt Organization to which a contribution has been made under subsection 504(B)(1)(b) would hire the Returning Citizen notwithstanding receipt of the contribution.[112]

3. The certification of a Qualifying Employee shall expire after such employee has been employed as a Qualifying Employee by any employer for a total of thirty-six months, or when the Qualifying Employee is no longer employed by the business, and a Qualifying Employee whose certification has expired shall no longer count against the maximum number of certified Qualifying Employees.

4. After an organization is certified by R.I.S.E. as a Qualifying Exempt Organization, it shall make an application to R.I.S.E. on a form required by R.I.S.E. for each employee it wishes to have certified as a Qualifying Employee.

5. The hiring of the Returning Citizen may not displace another employee and the primary reason for such displacement may not be to obtain PREP Tax Credits. In determining whether an employee has been displaced, the City will consider the facts and circumstances i.e., whether the Returning Citizen was hired to replace an employee who: voluntarily terminated employment, was terminated due to misconduct, was terminated due to poor performance, or was terminated in a reduction in work force due to lack of work.

E. PREP Employee's Agreement

1. To be a Qualifying Employee, a Returning Citizen must have executed an agreement with the City that sets forth:

a. A package of basic education and job training and retention and support services that the City has designed for the Returning Citizen;

b. The Returning Citizen's agreement to participate in life skills and basic financial management training, as well as meet all of his or her outstanding child support and other legal obligations.

F. Certification of Qualifying Exempt Organization.

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

2. An organization shall commit to notifying the Department of Revenue and the business within one week after any Qualifying Employee is no longer employed by the Qualifying

[112] Amended by regulation submitted to the Department of Records on December 12, 2011 (effective January 11, 2012).

Exempt Organization, which notification shall include an explanation as to why the Qualifying Employee's employment terminated.

G. Issuance of PREP Tax Certificate and PREP Tax Credits

1. A business shall make a request to the Department for the issuance of and to claim the PREP Tax Credit, after the business either has received certification from R.I.S.E. for each Qualifying Employee employed by the business for more than six months or has contributed at least $10,000 or $5,000 in a given tax year to a certified Qualifying Exempt Organization that has employed certified Qualifying Employees for at least six months in the given tax year.

2. A business shall calculate, in accordance with subsection 504(B), the PREP Tax Credit for each certified Qualifying Employee hired by the business or the Qualifying Exempt Organization.

3. A business must submit a signed and completed Certification Form for Issuance of PREP Tax Credit Certificate to the Department that includes the following:

a. Certification that the business is maintaining its obligations in accordance with the terms and conditions of the PREP Tax Credit Agreement and is in compliance with the Department's requirements;

b. Copy of the certification issued by R.I.S.E. for each Qualifying Employee and Qualifying Exempt Organization;

c. List of each certified Qualifying Full-Time and Part-Time Employee for which the tax credit is calculated - including employee's name, social security number, employment period dates, and tax credit amount;

d. List of each certified Qualifying Exempt Organization to which a contribution is made - including the name, social security number, employment period dates for each Qualifying Full-Time and Part-Time Employee hired by the Organization, the Organization's Employer Identification Number, the contribution amount, the date of the contribution, a copy of both sides of the cancelled contribution check and the tax credit calculated for each contribution and for each Qualifying Employee.

4. Upon review of the documentation submitted and verification of the business's tax credit calculations, the business shall be notified and a PREP Tax Credit Certificate shall be issued by the Department.

5 To claim the tax credit the business must submit the original copy of the Business Income and Receipts Tax Return to the appointed division in the Department and attach a copy of the PREP Tax Credit Certificate and Attachment A - indicating the amount of credit being claimed and the amount of any unused tax credits.

6. The tax credit shall be taken against the Business Income and Receipts Tax liability for Business Income and Receipts Tax Returns due after the issuance of the PREP Tax Credit Certificate.

H. Penalties.

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

2. Qualifying Exempt Organization failure to maintain operations. A business which receives tax credits for a contribution to a Qualifying Exempt Organization under subsection (504)(B)(1)(b) shall be required to refund to the City of Philadelphia the total amount of tax credits granted based on that contribution if the Qualifying Exempt Organization fails to substantially maintain existing operations and the operations related to the tax credits in the City of Philadelphia for a period of five (5) years from the date the business executes a PREP Tax Credit Agreement, unless the Department of Revenue determines that the Qualifying Exempt Organization's operations were not substantially maintained because of circumstances beyond the Qualifying Exempt Organization's control, including natural disasters, acts of terrorism, or unforeseen social or economic trends.[113]

[113] Amended by regulation submitted to the Department of Records on December 12, 2011 (effective January 11, 2012).

Section 505. Sustainable Business Tax Credit.[114]

A. Definitions.

1. "B Corporation." Any corporation or other corporate entity certified as a B Corporation by B Lab Company, a Pennsylvania non-profit corporation.

2. "Department." Department of Revenue.

3. "MOS." The Mayor's Office of Sustainability, or such other Office as the Mayor may designate to perform the functions assigned by § 19-2604(10) of the Philadelphia Code.

4. "Sustainable Business." A "sustainable business" as defined by § 19-2604(10)(a)(ii) of the Philadelphia Code.

B. Application.

1. For purposes of the Sustainable Business Tax Credit pursuant to § 19-2604 (10) of the Philadelphia Code, businesses shall apply for certification as a Sustainable Business to MOS on the form specified by MOS, and posted on its website.

2. All available annual certifications shall be granted by MOS on a first-come, first-served basis. Applications shall be available online, and shall be submitted electronically in such manner as specified in the application. Once all available certifications as provided by Philadelphia Code § 19-2604(10)(b)(ii) are granted by MOS, no further applications will be accepted.

3. Applications shall be made available by February 1 of the calendar year following the tax year for which certification is being sought. No application shall be accepted by MOS after April 15 of the calendar year following the tax year for which certification is being sought.

4. In considering any application, MOS may direct the applicant to furnish any information in support of or in addition to the information required under subsection C, that MOS, in its discretion, deems necessary to determine eligibility. Failure to provide any information so requested, within such reasonable time as MOS shall specify in its request, shall be grounds for denying certification.

5. The application shall indicate that by signing it, the applicant is certifying the truth of its contents, and further, that the applicant is current on all taxes due the City and School District of Philadelphia, or, with respect to any delinquency on such tax, or interest or penalties thereon, has entered into, and is in compliance with a payment agreement with the Department or the Law Department.

[114] Added by regulation submitted to the Department of Records on February 7, 2013 (effective March 11, 2013).

C. Eligibility. Applicants shall establish eligibility in either of the following ways:

1. Current certification by B Lab Company indicating that the Applicant is a B Corporation.

2. Submission of evidence that establishes that the Applicant conducts itself as a Sustainable Business. For purposes of this subsection C.2., a Sustainable Business is a business that gives substantial consideration to employee, community, and environmental interests in its practices, products, and services. MOS shall consider the following factors in determining whether an applicant is a Sustainable Business:

   a. Line and conduct of business:

      i. The product or services provided by the Applicant.

      ii. The Applicant's business model.

      iii. How the Applicant interacts with its employees and community.

      iv. The Applicant's impact on the environment.

      v. Transparency in the Applicant's corporate governance structures and processes.

   b. The manner in which the Applicant's core business purposes meet the following sustainability criteria, as applicable.

      i. Providing low-income or underserved individuals or communities with beneficial products or services.

      ii. Promoting economic opportunity for individuals or communities, beyond the creation of jobs in the normal course of business.

      iii. Preserving the environment.

      iv. Improving human health.

      v. Promoting the arts, sciences or advancement of knowledge.

      vi. Increasing the flow of capital to entities with a public benefit purpose.

   c. Sustainability certifications, if any, granted to the Applicant by an organization other than B Lab, including the criteria for the certification, and reasons why the certification is relevant to the criteria set forth under this subsection C.2.

D. Tax Credits. For tax years 2012 through 2017, an eligible business shall receive a tax credit of $4,000, which may only be used against the tax based upon annual receipts. Any unused tax credits may not be carried forward.

E. Certification. MOS shall review applications until all available annual certifications have been granted. MOS shall provide notice of each certification to the applicant and to the Department. A businesses (sic) certified as a Sustainable Business by MOS shall attach a copy of the MOS certification to its BIRT return for the tax year for which the credit is sought.

F. Renewal. A Sustainable Business certification shall expire at the end of the tax year for which it was granted, unless the Applicant submits a renewal form by December 1 of the year preceding the tax year for which renewal is sought. Such renewal form shall include all information required by MOS, as well as any information that would materially alter any response given in the original application.

G. Philadelphia City and School Tax Compliance. No Sustainable Business tax credit shall be granted to any business where such business is not either current on all applicable City and School District of Philadelphia taxes, or subject to and in compliance with a payment agreement for all delinquent taxes with the Department or the Law Department.

Section 506. Reserved.

Section 507. Single Sales Factor Apportionment Tax Credit.[115]

A. Definitions. In this Section, the following definitions shall apply:

1. Code. The Philadelphia Code

2. Current Business Income and Receipts Tax Liability. A business' liability for the net income portion of the Business Income and Receipts Tax if, pursuant to Revenue Department ("Department") regulations, taxable income is apportioned, in whole or in part, based on factors other than the ratio of taxable receipts of the business from within the City of Philadelphia to the total receipts of the business, and furthermore, for software companies, if market based sourcing is not used for determining the taxable receipts from within the City.

3. Single Sales Factor Apportionment Liability. A business' liability for the net income portion of the Business Income and Receipts Tax if the business' taxable income was apportioned based solely on the ratio of taxable receipts of the business from within the City of Philadelphia to the total receipts of the business. For purposes of determining the taxable receipts of the business from within the City of Philadelphia for purposes of this subsection (A)(3), the source of receipts from the sale by a software company of products or services shall be deemed to be the location where the recipient receives the benefit of the products and services, also known as market based sourcing – see Section 408(H)(2)(b)[116] of these regulations.

4. Tax Year. As defined in Section 101 of these regulations.

B. Tax Credit

1. Pursuant to §19-2604(12)(b)(i) of the Code, businesses shall be eligible to receive a non-refundable Single Sales Factor Apportionment Tax Credit against their Business Income and Receipts Tax liability, starting in tax year 2013. Any unused tax credits may not be carried forward.

2. Pursuant to §19-2604(12)(b)(ii) of the Code.

    a. The Single Sales Factor Apportionment Tax Credit shall be calculated as follows: For the given tax year, a business shall determine its Current Business Income and Receipts Tax Liability minus its Single Sales Factor Apportionment Liability, which resulting number shall be the "single sales factor apportionment tax credit base."

    b. The amount of the Single Sales Factor Apportionment Tax Credit shall be calculated as follows: for tax years 2013 and 2014, the Single Sales Factor Apportionment Tax Credit amount shall be whatever percentage of the single sales factor apportionment tax credit base as is determined by the Department by regulation to be fiscally prudent in light of

[115] Added by regulation submitted to the Department of Records on November 5, 2013 (effective December 5, 2013).
[116] Internal reference renumbered to reflect compiler's change of section numbers/letters in Article III and IV for consistency.

the City's budget needs – see subsection 507(B)(3); and for tax year 2015 and thereafter, the Single Sales Factor Apportionment Tax Credit amount shall be 100% of the single sales factor apportionment tax credit base; provided that there shall be no credit in any year in which, pursuant to Department regulations, taxable income is apportioned exclusively based on the formula set forth in the definition of Single Sales Factor Apportionment Liability.

3. To be fiscally prudent in light of the City's budget needs, the Department has determined for tax year 2013 and tax year 2014 that the Single Sales Factor Apportionment Tax Credit amount shall be zero-percent of the single sales factor apportionment tax credit base.[117]

4. For Tax Years 2015 and thereafter, the Single Sales Factor Tax Credit provided by this section is discontinued and in its place the Department has adopted a Single Sales Factor Apportionment pursuant to Section 408(G) of these regulations.[118]

[117] Amended by regulations submitted to the Department of Records October 1, 2014 (effective November 3, 2014).
[118] Add by regulations submitted to the Department of Records December 17, 2015 (effective January 19, 2016).

Section 508. Credit for Employment of Returning Veterans of the Armed Forces.[119]

A. Definitions. In this Section, the following definitions shall apply:

1. "Code." The Philadelphia Code.

2. "Department." Department of Revenue

3. "Qualifying Employee." A Veteran who:

   a. Is employed by a business in a position where he or she earns wages that are subject to the tax under Chapter 19-1500 of the Code and the Department's Income Tax Regulations – for purposes of this Section, the majority of the wages earned by a nonresident of Philadelphia must be subject to tax under Chapter 19-1500 and the Department's Income Tax Regulations;

   b. Receives compensation that is either (i) equivalent to those wages and benefits, including sick leave, holiday and vacation absences, and tuition benefits, afforded regular employees in comparable positions as part of the Employer's regular payroll process; or, if a comparable position does not exist, (ii) at an average hourly rate, excluding benefits, of at least 150% of the federal minimum wage, and the employment package includes the same benefits as are provided to other full-time employees; and

   c. Is hired between July 1, 2012, and June 30, 2014, inclusive.

   d. Examples. "Veteran" is as defined under subsection 508(A)(7) and under §19-2604(13)(a) of the Code. Assumptions – The Veteran receives compensation in accordance with subsection 508(A)(3)(b) and is hired between the dates specified in subsection 508(A)(3)(c).

      i. A business has a location within and outside Philadelphia. A Veteran, a resident of Philadelphia, is hired to work 100% at the location outside Philadelphia. As a resident of Philadelphia, the wages earned by the Veteran would be subject to the tax under Chapter 19-1500 of the Code and the Department's Income Tax Regulations, regardless of where he or she works – meets the criteria specified in subsection 508(A)(3)(a). The Veteran would be a Qualifying Employee. (The Veteran would no longer be a Qualifying Employee if he or she became a nonresident.)

      ii. A business has a location within and outside Philadelphia. A Veteran, a nonresident of Philadelphia, is hired to work at the location within Philadelphia and works 100% within Philadelphia. As a nonresident of Philadelphia working entirely within Philadelphia, he or she earns wages that are subject to the tax

[119] Added by regulation submitted to the Department of Records on December 11, 2012 (effective January 10, 2013).

under Chapter 19-1500 of the Code and the Department's Income Tax Regulations – meets the criteria specified in subsection 508(A)(3)(a). The Veteran would be a Qualifying Employee.

iii. A business has a location within and outside Philadelphia. A Veteran, a nonresident of Philadelphia, is hired to work at the location within Philadelphia but occasionally performs work or renders services outside Philadelphia. As a nonresident of Philadelphia working within and outside Philadelphia, he or she earns wages that are partially subject to the tax under Chapter 19-1500 of the Code and the Department's Income Tax Regulations. The Veteran would meet the criteria specified in subsection 508(A)(3)(a) and be a Qualifying Employee if he or she works at least 51% of more of the time within Philadelphia.

iv. A business does not have a location within Philadelphia but does business within and outside Philadelphia. A Veteran, a nonresident of Philadelphia, is hired who works 100% within Philadelphia. As a nonresident working entirely in Philadelphia, he or she earns wages that are subject to the tax under Chapter 19-1500 of the Code and the Department's Income Tax Regulations – meets the criteria specified in subsection 508(A)(3)(a). The Veteran would be a Qualifying Employee. (The Veteran would no longer be a Qualifying Employee if he or she began to work within and outside Philadelphia and worked less than 51% of the time within Philadelphia.)

v. A business does not have a location within Philadelphia but does business within and outside Philadelphia. A Veteran, a resident of Philadelphia, is hired and works100% outside Philadelphia. As a resident of Philadelphia, the wages earned by the Veteran would be subject to the tax under Chapter 19-1500 of the Code and the Department's Income Tax Regulations, regardless of where he or she works – meets the criteria specified in subsection 508(A)(3)(a). The Veteran would be a Qualifying Employee. (The Veteran would no longer be a Qualifying Employee if he or she became a nonresident and worked less than 51% of the time within Philadelphia.)

4. "Qualifying Full-Time Employee." A Qualifying Employee who is employed by a business for at least thirty-seven and one-half hours per week.

5. "Qualifying Part-Time Employee." A Qualifying Employee who is employed by a business for at least twenty hours per week, but fewer than thirty-seven and one-half hours per week.

6. "Tax Year". As defined in Section 101 of these regulations.

7. "Veteran." A person who has received an honorable discharge from any branch of the United States Armed Forces; who has served a minimum of six months in active full-time duty within ten years prior to their hiring; and who has met the qualifications under the Vow to Hire Heroes Act of 2011 as part of the federal Work Opportunity Tax Credit (WOTC).

B. Application. In order to receive a credit under §19-2604(13) of the Code, a business must file an application in the form and manner prescribed by the Department that includes:

1. The location of employment and proof that the individual to be hired is a Veteran as defined under §19-2604(13)(a) of the Code and under subsection 508(A). Such proof, for each individual, shall include:

    a. DD Form 214 (or equivalent) issued by the U.S. Department of Defense, discharge papers, etc., or documentation for service-connected disability (i.e., documents issued by the Veterans Administration that are issued on the agency's letterhead, or have an agency stamp, and include a signature and contact information from the individual at the agency who verified the disability information); and

    b. Copy of the federal form filed with the applicable State Workforce Agency (SWA) to pre-screen and to make a request to certify an individual as a member of a targeted group for purposes of qualifying for the federal Work Opportunity Tax Credit (WOTC); and

    c. Documentation that the individual is a "Qualified Veteran" as defined in Section 51(d)(3) of the Internal Revenue Code and has met the qualifications under the Vow to Hire Heroes Act of 2011 as part of the federal WOTC i.e., certification issued by the applicable SWA – if such documentation (certification) is available at the time the business submits its application to the Department. Otherwise, such documentation must be submitted by the business at the time of requesting the tax credit.

2. The total number of Veterans – as defined under subsection 508(A) – hired or expected to be hired between July 1, 2012 and June 30, 2014, inclusive, and that may meet the definition a Qualifying Employee as defined in subsection 508(A).

3. Such other information as the Department may require.

C. Calculation of Tax Credits.

1. A business shall receive a tax credit for each Qualifying Employee who has been employed by the business for more than six months.

2. The tax credit provided for in subsection 508(C)(1) shall be in the amount of $2,000 multiplied by the percentage of the tax year that the Qualifying Full-time Employee was employed by the business; or $1,000 multiplied by the percentage of the tax year that the Qualifying Part-time Employee was employed by the business; subject to the limits in subsection 508(C)(3). The percentage of a tax year shall be calculated by dividing the total number of full calendar weeks that the Qualifying Employee was employed by the business during the tax year by fifty-two (52). ("Tax Year" is as defined under Section 101 of these regulations.)

3. Conditions.

    a. The tax credit provided for in subsection 508(C)(1) is available for a total of twenty-four months of employment of a Qualifying Full-time Employee or Qualifying Part-time Employee. The twenty-four (24) month period begins on the initial date of hire. In no instance may the twenty-four (24) months of employment occur over a period exceeding four (4) years from the initial date of hire.

    b. The maximum amount of tax credits a business may receive for any one Qualifying Full-time Employee under subsection 508(C)(1) over all tax years is $4,000. The maximum amount of tax credits a business may receive for any one Qualifying Part-time Employee under subsection 508(C)(1) over all tax years is $2,000.

4. Tax credits shall be taken against total business income and receipts tax liability. Any unused credit may be carried forward for three years from the date of hire of the Qualifying Employee.

5. A business receiving tax credits under § 19-2604(7) of the Code and Section 502 of these regulations (Credit for New Job Creation) or under § 19-2604(9) of the Code and Section 504 of these regulations (Philadelphia Re-Entry Employment Program for Ex-offenders ("PREP") Tax Credit) for a given tax year shall not be eligible to receive tax credits under §19-2604(13) of the Code and under this Section 508 for that same tax year for the same employee.

6. Examples. The following are examples of the calculation of tax credits and determining whether a business shall receive a tax credit.

    a. A Qualifying Employee is hired August 1, 2012. The employee is temporarily laid-off (terminated) October 31, 2012 and then rehired July 1, 2013. The employee is permanently terminated September 30, 2013. The business would not be eligible to receive a tax credit – the Qualifying Employee has not been employed by the business for more than six months. No tax credit would be calculated.

    b. A Qualifying Employee employed July 1, 2012 – September 30, 2012, inclusive, is rehired to work December 14, 2012 – April 15, 2013. The business is eligible to receive a tax credit on or after 3/15/13 – after the Qualifying Employee has been employed for more than six (6) months. The tax credit, assuming the following facts, would be calculated as follows:

        i. The Qualifying Employee is employed full-time.

        2012 (7/1/12 – 9/30/12; 12/14/12 – 12/31/12) = $2,000 x 15/52 = $2,000 x 29% = $580;

        2013 (1/1/13 – 4/15/13) = $2,000 x 15/52 = $2,000 x 29% = $580;

        The tax credit may be taken against the business's Business Income and Receipts Tax (BIRT) liability for tax returns due on or after 3/15/13. The $580 tax credit calculated for 2012 may be claimed on the 2012 BIRT Return due 4/15/13 – a tax return due after the Qualifying Employee has been employed for more than six months. The business would be eligible for an additional credit for 2013 equal to $580. The tax credit available at the end of tax year 2013 would be $1,160 (580 + 580), if the business did not claim the $580 against the BIRT liability for tax year 2012. The total tax credit over all tax years would be $1,160.

ii. The Qualifying Employee is employed part-time.

2012 (7/1/12 – 9/30/12; 12/15/12 – 12/31/12) = $1,000 x 15/52 = $1,000 x 29% = $290;

2013 (1/1/13 – 4/15/13) = $1,000 x 15/52 = $1,000 x 29% = $290;

The tax credit may be taken against the business's BIRT liability for tax returns due on or after 3/15/13. The $290 tax credit calculated for 2012 may be claimed on the 2012 BIRT Return due 4/15/13 – a tax return due after the Qualifying Employee has been employed for more than six months. The tax credit available at the end of tax year 2013 would be $580 (290 + 290), if the business did not claim the $290 against the BIRT liability for tax year 2012. The total tax credit over all tax years would be $580.

c. A Qualifying Employee is hired by a business June 30, 2014 and is employed through December 31, 2017. The business is eligible for a tax credit on or after 12/31/14 – after the Qualifying Employee has been employed for more than six (6) months. The tax credit, assuming the following facts, would be calculated as follows:

i. The Qualifying Employee is employed full-time.

2014 (6/30/14 – 12/31/14) = $2,000 x 26/52 = $2,000 x 50% = $1,000

2015 (1/1/15 – 12/31/15) = $2,000 x 52/52 = $2,000 x 100% = $2,000

2016 (1/1/16 – 6/30/16) = $2,000 x 26/52 = $2,000 x 50% = $1,000

2016 (7/1/16 – 12/31/16) = $0; 1/1/17 – 12/31/17 = $0; the business would not receive a tax credit for these months. The tax credit provided for in subsection 508(C)(1) is available for a total of twenty-four (24) months of employment. The employee's twenty-four (24) months of employment ended 6/30/16.

The credit may be taken against Business Income and Receipts Tax (BIRT) liability for tax returns due on or after 12/31/14. The $1,000 tax credit calculated for 2014 may be claimed on the 2014 BIRT Return due 4/15/15 – a tax return due after the Qualifying Employee has been employed for more than six months. The tax credit available at the end of tax year 2015 would be $3,000 (1,000 + 2,000), if the business did not claim the $1,000 against the BIRT liability for tax year 2012. Assuming the business did not claim the tax credits calculated for 2014 and 2015, the tax credit available at 12/31/16 would be $4,000 (1,000 + 2,000 + 1,000). The total tax credit over all tax years would be $4,000.

ii. The Qualifying Employee is employed part-time.

2014 (6/30/14 – 12/31/14) = $1,000 x 26/52 = $1,000 x 50% = $500

2015 (1/1/15 – 12/31/15) = $1,000 x 52/52 = $1,000 x 100% = $1,000

2016 (1/1/16 – 6/30/16) = $1,000 x 26/52 = $1,000 x 50% = $500

2016 (7/1/16 – 12/31/16) = $0; 2017 (1/1/17 – 12/31/17) = $0; the business would not receive a tax credit for these months. The tax credit provided for in subsection 508(C)(1) is available for a total of twenty-four (24) months of employment. The employee's twenty-four (24) months of employment ended 6/30/16.

The credit may be taken against Business Income and Receipts Tax (BIRT) liability for tax returns due after 12/31/14. The $500 tax credit calculated for 2014 may be claimed on the 2014 BIRT Return due 4/15/15 – a tax return due after the Qualifying Employee has been employed for more than six months. The tax credit available at the end of tax year 2015 would be $1,500 (500 + 1,000), if the business did not claim the $500 against the BIRT liability for tax year 2014. Assuming the business did not claim the tax credits calculated for 2014 and 2015, the tax credit available at 12/31/16 would be $2,000 (500 + 1,000 + 500). The total tax credit over all tax years would be $2,000.

d. A Qualifying Employee is hired by a business July 1, 2012. The employee works July 1, 2012 to November 30, 2013, inclusive; is rehired January 1, 2014 and then terminated July 31, 2015. The business is eligible to receive a tax credit on or after 1/1/13 – after the Qualifying Employee has been employed for more than six (6) months. The tax credit, assuming the following facts, would be calculated as follows:

i. The Qualifying Employee is employed full-time.

2012 (7/1 – 12/31/12) = $2,000 x 26/52 = $2,000 x 50% = $1,000;

2013 (1/1 – 11/30/13) = $2,000 x 48/52 = $2,000 x 92% = $1,840;

2014 (1/1 – 7/31/14) = $2,000 x 30/52 = $2,000 x 58% = $1,160;

2014 (8/1 – 12/31/14) = $0; 2015 (1/1 – 7/31/15) = $0; the business would not receive a tax credit for these months. The tax credit provided for in subsection 508(C)(1) is available for a total of twenty-four (24) months of employment. The employee's total twenty-four (24) months of employment ended 7/31/14.

The credit may be taken against Business Income and Receipts Tax (BIRT) liability for tax returns due on or after 1/1/13. The business would be eligible to take the $1,000 calculated for 2012 on the 2012 BIRT Return due 4/15/13; the Qualifying Employee was employed for more than six months on 1/1/13, prior to the due date of this return. The total tax credit over all tax years would be $4,000.

ii. The Qualifying Employee is employed part-time.

2012 (7/1 – 12/31/12) = $1,000 x 26/52 = $1,000 x 50% = $500

2013 (1/1 – 11/30/13) = $1,000 x 48/52 = $1,000 x 92% = $920

2014 (1/1 – 7/31/14) = $1,000 x 30/52 = $1,000 x 58% = $580

2014 (8/1 – 12/31/14) = $0; 2015 (1/1 – 7/31/15) = $0; the business would not receive a tax credit. The tax credit provided for in subsection 508(C)(1) is available for a total of twenty-four (24) months of employment. The employee's twenty-four (24) months of employment ended 7/31/14.

The credit may be taken against BIRT liability for tax returns due on or after 1/1/13. The business would be eligible to take the $500 calculated for 2012 on the 2012 BIRT Return due 4/15/13; the Qualifying Employee was employed for more than six months on 1/1/13, prior to the due date of this return. The total tax credit over all tax years would be $2,000.

e. A Qualifying Employee is hired by a business July 1, 2012. The employee works July 1, 2012 to October 31, 2012, inclusive; is rehired September 1, 2013 and then terminated October 31, 2015. The business is eligible to receive a tax credit on or after 11/1/13 – after the Qualifying Employee has been employed for more than six (6) months. The tax credit, assuming the following facts, would be calculated as follows:

i. The Qualifying Employee is employed full-time.

2012 (7/1 – 10/31/12) = $2,000 x 17/52 = $2,000 x 33% = $660;

2013 (9/1 – 12/31/13) = $2,000 x 17/52 = $2,000 x 33% = $660;

2014 (1/1 – 12/31/14) = $2,000 x 52/52 = $2,000 x 100% = $2,000;

2015 (1/1 – 4/30/15) = $2,000 x 17/52 = $2,000 x 33% = $660;

2015 (5/1 – 10/31/15) = $0; the business would not receive a tax credit for these months. The tax credit provided for in subsection 508(C)(1) is available for a total of twenty-four (24) months of employment. The employee's total twenty-four (24) months of employment ended 4/30/15.

The business would not be eligible to take the $660 calculated for 2012 on the 2012 BIRT Return due 4/15/13; the Qualifying Employee was not employed for more than six months on or before 4/15/13. The business may, however, take the tax credit against Business Income and Receipts Tax (BIRT) liability for tax returns due on or after 11/1/13 (i.e., 2013 BIRT Return due 4/15/14). The business would be eligible to receive a tax credit for tax year 2013 equal to $1,320 (660 + 660). The tax credit available at 12/31/14 would be $3,320 (660 + 660 + 2,000), provided the business did not take the $1,320 tax credit available for tax year 2013. The total tax credit over all tax years would be $3,980.

ii. The Qualifying Employee is employed part-time.

2012 (7/1 – 10/31/12) = $1,000 x 17/52 = 1,000 x 33% = $330;

2013 (9/1 – 12/31/13) = $1,000 x 17/52 = 1,000 x 33% = $330;

2014 (1/1 – 12/31/14) = $1,000 x 52/52 = 1,000 x 100% = $1,000;

2015 (1/1 – 4/30/15) = $1,000 x 17/52 = $1,000 x 33% = $330;

2015 (5/1 – 10/31/15) = $0; the business would not receive a tax credit for these months. The tax credit provided for in subsection 508(C)(1) is available for a total of twenty-four (24) months of employment. The employee's twenty-four (24) months of employment ended 4/30/15.

The business would not be eligible to take the $330 calculated for 2012 on the 2012 BIRT Return due 4/15/13; the Qualifying Employee was not employed for more than six months on or before 4/15/13. The business may, however, take the tax credit against BIRT liability for tax returns due on or after 11/1/13 (i.e., 2013 BIRT Return due 4/15/14). The business would be eligible to receive a tax credit for tax year 2013 equal to $660 ($330 + $330). The tax credit available at 12/31/14 would be $1,160 (330 + 330 + 1,000), provided the business did not take the $660 tax credit available for tax year 2013. The total tax credit over all tax years would be $1,990.

D. Certification of Qualifying Employees; Maximum Number Permitted.

1. The number of certified Qualifying Employees at any one time shall not exceed 500.

2. The certification of a Qualifying Employee shall expire after such employee has been employed as a Qualifying Employee by any employer for a total of twenty-four months, or when the Qualifying Employee is no longer employed by the business, and a Qualifying Employee whose certification has expired shall no longer count against the maximum number of certified Qualifying Employees.

3. A business shall notify the Department within one week after any Qualifying Employee is no longer employed, which notification shall include an explanation as to why the Qualifying Employee's employment terminated.

4. The Department shall not accept requests to certify a Qualifying Employee when the number of certified Qualifying Employees at any one time reaches the maximum number permitted under §19-2603(13)(d) of the Code and under subsection 508(D)(1). The Department shall, however, in the interim, accept an application submitted by a business in accordance with subsection 508(B). Such applicants shall be notified by the Department, at the time the application is received, that the Department has certified the maximum number of Qualifying Employees permitted but shall notify the applicant accordingly when the number of certified Qualifying Employees drops below the maximum number permitted.

5. The certification of a Qualifying Employee, once the number of certified Qualifying Employees has reach the maximum number permitted under 508(D)(1), shall be processed by the Department according to the postmark date of the application required to be submitted under subsection 508(B). At the time the number of certified Qualifying Employees drops below the maximum number permitted, such applicants shall be notified

accordingly and may, as instructed by the Department, submit a request for certification in accordance with subsection 508(E)(2).

E. Certification Requirements for Qualifying Employees.

1. A business must have submitted an application to the Department as required by subsection 508(B) and proof that each individual is a Veteran, as defined in subsection 508(A); and

2. For each Veteran a business wishes to have certified as a Qualifying Full-time Employee or Qualifying Part-time Employee, a business shall provide, on a form as prescribed by the Department, the following information:

   a. Employee’s Name;

   b. Social Security Number (SSN);

   c. Date of hire;

   d. Employment status – Full-time (employed for at least 37.5 hours per week) or Part-time (employed for at least 20 hours per week, but fewer than 37.5 hours per week);

   e. Average hourly rate;

   f. Affirmation that the Veteran earns wages and receives compensation as described in subsection 508(A)(3)(a) and 508(A)(3)(b).

1. Upon review of all information and documentation required to be submitted under subsections 508(B), 508(E)(1) and 508(E)(2), the Department shall accordingly certify each individual who qualifies as a Qualifying Full-time Employee or Qualifying Part-time Employee for purposes of the Credit for Employment of Returning Veterans of the Armed Forces – subject to the limitations provided under subsection 508(D).

F. Issuance of Credit for Employment of Returning Veterans of the Armed Forces.

1. After a business has received written certification from the Department for the Qualifying Employee and after the Qualifying Employee has been employed by the business for more than six (6) months, the business may make a request to the Department for the issuance of and to claim the tax credit.

2. A business shall calculate the tax credit for each certified Qualifying Full-time Employee or Qualifying Part-time Employee in accordance with subsection 508(C). On a form prescribed by the Department, the business shall submit the detail of the tax calculations which shall include the following information for each Qualifying Employee:

   a. Employee’s name;

b. Social security number (SSN);

c. Employment location;

d. Employment period dates i.e., date of hire, date of termination;

e. Employment status i.e., Full-time (employed for at least 37.5 hours per week) or Part-time (employed for at least 20 hours per week, but fewer than 37.5 hours per week);

f. Tax credit amount calculated;

g. Tax credit amount claimed;

h. Certification statement signed by authorized representative;

i. Such other information the Department may deem appropriate.

3. Upon review of the tax credit calculations submitted in accordance with 508(F)(2), a business shall be notified accordingly by the Department.

4. To claim the tax credit, a business shall submit the original copy of the Business Income and Receipts Tax Return to the appointed division in the Department and attach a copy of the form prescribed in 508(F)(2) which shall indicate the total amount of tax credit being claimed and the amount of any unused tax credits.

5. The tax credit shall be taken against Business Income and Receipts Tax liability for Business Income and Receipts Tax Returns due after the certified Qualifying Full-time Employee or Qualifying Part-time Employee has been employed by the business for more than six (6) months. Any unused credit may be carried forward for three (3) years from the initial date of hire of the Qualifying Employee.

6. No business shall receive the tax credit if the business is not in full compliance with all applicable Philadelphia tax laws, ordinances and regulations.

7. The Department may request to examine the books and records (i.e., payroll records, employment contracts, employment benefit packages, etc.) used by a business to prepare the documentation required to be submitted under subsections 508(B), 508(E) and 508(F).

Section 509. Life Partner and Transgender Care Health Benefits Tax Credits[120]

A. Definitions. For purposes of this Section, the following definitions shall apply:
   1. "Code." The Philadelphia Code.
   2. "Life Partner." As defined in §1-103 of the Code.
   3. "Life Partnership." As defined in §1-103 of the Code.
   4. "Tax Year." As defined in Section 101 of these regulations.
   5. "Transgender Care." Medically necessary treatment for gender dysphoria and gender identity disorder, including office visits, laboratory tests, prescription drugs, hormone treatments, counseling, and transitional surgeries necessary for the treatment of either.

B. Eligibility for Life Partner Health Benefits Tax Credit. The Life Partner Health Benefits Tax Credit provided under §19-2604(14) of the Code is effective beginning with Tax Year 2013 and shall only be awarded to businesses that meet all of the following criteria:
   1. Health insurance coverage is made available for the Life Partners of its employees and children of such Life Partners, on the same basis and to the same extent as such business makes health insurance coverage available for spouses of employees, and children of such spouses.
   2. During the three (3) tax years immediately prior to the tax year for which the business first claims a credit pursuant to §19-2604(14) of the Code, the business did not make health insurance coverage available for the Life Partners of its employees, and children of such Life Partners, on the same basis and to the same extent as such business made health insurance coverage available for spouses of employees, and children of such spouses.

   Examples – The following examples are based on the assumptions that a business meets all eligibility criteria, unless otherwise stated; "tax year" is a 12-month period beginning January 1 and ending December 31, inclusive.

   Example No. 1

   On January 1, 2013, a business purchased health insurance coverage which makes coverage available as described in subsection 509(B)(1); such coverage continues to be available in subsequent tax years. The business would be eligible to be awarded a

[120] Added by regulation submitted to the Department of Records on August 15, 2013 (effective September 16, 2013).

tax credit for tax year 2013 because the coverage is continuously available for a full tax year.

Example No. 2

On either January 1, 2010, January 1, 2011 or January 1, 2012, a business makes health insurance coverage available as described in subsection 509(B)(1). In tax year 2013, the business would not be eligible to be awarded a Life Partner Health Benefits Tax Credit because such coverage was available at a point in time during the three tax years immediately preceding tax year 2013.

Example No. 3

On July 1, 2013, a business purchased health insurance coverage which makes coverage available as described in subsection 509(B)(1); such coverage is continuously available for subsequent tax years. The business is eligible for a Life Partner Health Benefits Tax Credit as provided under subsection 509(B). The business would not be eligible to claim a tax credit for 2013, as provided under subsection 509(E), because the coverage is not continuously available for a full tax year. The business would, however, be eligible to claim a tax credit for tax years 2014 and 2015.

C. Eligibility for Transgender Care Health Benefits Tax Credit. The Transgender Care Health Benefits Tax Credit provided under §19-2604(14) of the Code shall only be awarded to businesses that meet all of the following criteria:

1. Health insurance coverage is made available for transgender care on the same basis and to the same extent as the business makes health insurance coverage available for other medically-necessary treatment. For purposes of this Section, the term "transgender care" shall have the meaning as defined under §19-2604(14)(c) of the Code and subsection 509(A).
2. During the three (3) tax years immediately prior to the tax year for which the business first claims a credit pursuant to §19-2604(14) of the Code, the business did not make health insurance coverage available for transgender care on the same basis and to the same extent as such business made health insurance coverage available for other medically necessary treatments.

Examples – The following examples are based on the assumptions that a business meets all eligibility criteria, unless otherwise stated; "tax year" is a 12-month period beginning January 1 and ending December 31, inclusive.

Example No. 1

On January 1, 2013, a business purchased health insurance coverage which makes coverage available as described in subsection 509(C)(1); such coverage continues to be available in subsequent tax years. The business would be eligible to be awarded a tax credit for tax year 2013 because the coverage is continuously available for a full tax year.

Example No. 2

On January 1, 2010, January 1, 2011 or January 1, 2012, a business makes health insurance cover available as described in subsection 509(C)(1). In tax year 2013, the business would not be eligible to be awarded a Transgender Care Health Benefits Tax Credit because such coverage was available at a point in time during the three tax years immediately preceding tax year 2013.

Example No. 3

On July 1, 2013, a business purchased health insurance coverage which makes coverage available as described in subsection 509(C)(1); such coverage is continuously available for subsequent tax years. The business is eligible for a Transgender Care Health Benefits Tax Credit as provided under subsection 509(C). The business would not be eligible to claim a tax credit for 2013, as provided under subsection 509(E), because the coverage is not continuously available for a full tax year. The business would, however, be eligible to claim a tax credit for tax years 2014 and 2015.

D. Application. Application for the Life Partner or Transgender Care Health Benefits Tax Credit shall be on such form or forms as prescribed by the Department, and shall include documentation that the business meets the eligibility criteria specified under §19-2604(14)(b) or §19-2604(14)(c) of the Code and subsections 509(B) or 509(C) of these regulations. A business may apply for either credit or for both credits. Eligibility for each credit shall be determined independently.

1. Application for Life Partner Health Benefits Tax Credit. A business shall submit an application, as prescribed by the Department, which shall include the following:

a. Certification statement signed by an authorized representative which certifies the following facts:

    i. The health benefits plan does not include exclusionary language regarding coverage for an employee’s Life Partner or for the children of such Life Partners.

    ii. The business makes health insurance coverage available for the Life Partners of its employees, and children of such Life Partners, who are a member of a Life Partnership verified pursuant to §9-1123 of the Code (relating to verification of life partnership); and that such coverage is made available on the same basis and to the same extent as the business makes available for spouses of employees and children of such spouses;

    iii. Employees enrolled to have such health insurance coverage for their Life Partner, or for the children of such Life Partner, have provided the business with a copy of either the “Life Partnership Acceptance Letter” or the ceremonial “Certificate of Life Partnership” or any other official document that the Life Partner received from the City of Philadelphia Commission on Human Relations which verifies that a Life Partner has been registered and that the Life Partnership is recognized as such under the Fair Practices Ordinance pursuant Chapter 9-1100 of the Code; and

    iv. During the three (3) tax years immediately preceding the tax year for which the business first would have been eligible a credit pursuant to §19-2604(14) of the Code, the business did not make health insurance coverage available for the Life Partners of its employees, and children of such Life Partners, on the same basis and to the same extent as the business made health insurance coverage available for spouses of employees and children of such spouses.

b. Date health insurance coverage became available for the Life Partners of employees and the children of such Life Partners;

c. Amount expended by the business during the tax year to purchase health benefits for the Life Partners and the children of such Life Partners.

d. Calculation of the Life Partner Health Benefits Tax Credit, on a form as prescribed by the Department;

e. Such other documentation or information as the Department may require.

2. Application for Transgender Care Health Benefits Tax Credit. A business shall submit an application, as prescribed by the Department, which shall include the following:

a. Certification statement signed by an authorized representative which certifies the following facts:

i. The business makes health insurance coverage available for Transgender Care on the same basis and to the same extent as the business makes health insurance coverage available for other medically-necessary treatment;

ii. The transgender care coverage available is as defined under subsection 509(A); the health benefits plan does not include exclusionary language regarding transgender care as described under §19-2604(14)(c) of the Code and subsection 509(A); and

iii. During the three (3) tax years immediately preceding the tax year for which the business first would have been eligible to claim a credit pursuant to §19-2604(14) of the Code, the business did not make health insurance coverage for Transgender Care on the same basis and to the same extent as the business made such coverage available for other medically necessary treatment.

b. Date health insurance coverage became available for Transgender Care;

c. Amount expended by the business during the tax year to include Transgender Care coverage in the health insurance coverage provided to employees.

d. Calculation of the Transgender Care Health Benefits Tax Credit, on a form as prescribed by the Department;

e. Such other documentation or information as the Department may require.

E. Tax Credit.

1. For any full tax year in which a business continuously meets the eligibility criteria set forth in subsection (509)(B) or subsection (509)(C), the business shall be eligible to

claim a non-refundable tax credit against its Business Income and Receipts Tax ("BIRT") liability for such tax year as follows:

   a. Life Partner Health Benefits Tax Credit. The lesser of $4,000 or 25% of the amount expended by the business during the tax year to purchase health benefits for the Life Partners of its employees and the children of such Life Partners.
   b. Transgender Care Health Benefits Tax Credit. The lesser of $4,000 or 25% of the amount expended by the business during the tax year to include transgender care coverage in the health insurance coverage provided to employees.

2. No business may claim a tax credit under this Section 509 in any year other than as provided in subsection (509)(E)(1)(a) with respect to the Life Partner Health Benefits Tax Credit, or subsection (509)(E)(1)(b) with respect to the Transgender Care Health Benefits Tax Credit. No business may claim either of the tax credits under this Section 509 in more than two (2) years, and, with respect to each credit, such years shall be consecutive.
3. Computation of Tax Credits – The following examples are based on the assumptions that a business meets all eligibility criteria specified in subsection 509(B) or subsection 509(C), unless otherwise stated. "Tax year" is a 12-month period beginning January 1 and ending December 31, inclusive.

Example No. 1

On January 1, 2013, a business purchased health insurance coverage for employees costing $500,000 which makes coverage available as described either under subsection 509(B) or subsection 509(C); the cost of the plan without coverage of either Life Partners and children of such Life Partners or transgender care would have been $400,000. Employees contributed $20,000 through payroll deductions towards the cost of such coverage during tax year 2013. Computation of the Life Partner or Transgender Care Health Benefits Tax Credit would be as follows:

- Tax Year 2013
    - Lesser of $4,000; or

    - 25% of the amount expended by the business during the tax year to make such coverage available i.e., \$500,000 - \$400,000 = \$100,000; \$100,000 - \$20,000 = \$80,000; \$80,000 x 25% = \$20,000;
    - The credit available to be claimed by the business would be \$4,000 with respect to each tax credit.
- Tax Year 2014
    - If the difference in costs for insurance with and without the benefits is the same in Tax Year 2014 as they were in 2013, and the employee contributions remained the same, the same \$4,000 credit is available to be claimed with respect to each tax credit.
- Tax Year 2015
    - The business would not be eligible to claim a tax credit. No business may claim either of the tax credits provided under this Section 509 in more than two consecutive tax years.

Example No. 2

Assuming the same facts as in Example No. 1, but also assuming that for the tax year ending December 31, 2014, the amount expended for health insurance coverage was \$550,000. The cost of the plan without coverage of either Life Partners and children of such Life Partners or transgender care would have been \$440,000. Computation of the Life Partner or Transgender Care Health Benefits Tax Credit would be as follows:

- Tax Year 2013
    - Lesser of \$4,000; or
    - 25% of the amount expended by the business during the tax year to make such coverage available i.e., \$500,000 - \$400,000 = \$100,000; \$100,000 - \$20,000 = \$80,000; \$80,000 x 25% = \$20,000;
    - The credit available to be claimed by the business would be \$4,000 with respect to each tax credit.
- Tax Year 2014
    - Lesser of \$4,000; or
    - 25% of the amount expended by the business during the tax year to make such coverage available i.e., \$550,000 - \$440,000 = \$110,000; \$110,000 - \$20,000 = \$90,000; \$90,000 x 25% = \$22,500;
    - The credit available to be claimed by the business would be \$4,000 with respect to each tax credit.
- Tax Year 2015

    - The business would not be eligible to claim a tax credit. No business may claim either of the tax credits provided under this Section 509 in more than two consecutive tax years.

Example No. 3

On January 1, 2014, a business changed its existing health insurance plan in order to make coverage available for the Life Partners of its employees and for transgender care. The cost of the health insurance plan was increased by $50,000 to make such coverage available; $40,000 of the increase is attributable to making coverage available for Life Partners and children of Life Partners; and $10,000 is attributable to including coverage for transgender care. Such health insurance coverage continues to be available as of the end of tax year 2016. Computation of the tax credit would be as follows:

- Tax Year 2014
    - Life Partner Health Benefits Tax Credit
        - Lesser of $4,000; or
        - 25% of the amount expended by the business during the tax year to purchase health benefits for the Life Partners and children of Life Partners i.e., $40,000 x 25% = $10,000;
        - The credit available to be claimed would be $4,000.

    - Transgender Care Health Benefits Tax Credit
        - Lesser of $4,000; or
        - 25% of the amount expended by the business during the tax year to include transgender care in the health coverage provided to employees i.e., $10,000 x 25% = $2,500;
        - The credit available to be claimed would be $2,500.

  The total tax credits available to be claimed by the business for tax year 2014 would be $6,500.

- Tax Year 2015
    - If the amount expended for and costs of benefits for 2015 is the same as the amount expended for tax year 2014, the total tax credits available to be claimed by the business would also be $6,500.
- Tax Year 2016
    - The business would not be eligible to claim a tax credit. No business may claim either of the tax credits provided under this Section 509 in more than two tax years, and with respect to each credit, such years must be consecutive.

Example No. 4

Assuming the same facts as in Example No. 3, but also assuming that employees enrolled for such health coverage contributed $2,500 during tax year 2014 towards the cost of each type of coverage, the computation would be as follows:

- Tax Year 2014
  - Life Partner Health Benefits Tax Credit
    - Lesser of $4,000; or
    - 25% of the amount expended by the business during the tax year to purchase health benefits for the Life Partners and children of Life Partners i.e., $40,000 - $2,500 = $37,500; $37,500 x 25% = $9,375;
    - The credit available to be claimed would be $4,000.
  - Transgender Care Health Benefits Tax Credit
    - Lesser of $4,000; or
    - 25% of the amount expended by the business during the tax year to include transgender care in the health coverage provided to employees i.e., $10,000 - $2,500 = $7,500; $7,500 x 25% = $1,875;
    - The credit available to be claimed would be $1,875.

  The total tax credits available to be claimed by the business for tax year 2014 would be $5,875.
- Tax Year 2015
  - If the amount expended for and costs of benefits for 2015 is the same as the amount expended for tax year 2014, the total tax credits available to be claimed by the business would also be $5,875.
- Tax Year 2016
  - The business would not be eligible to claim a tax credit.

Example No. 5

On July 1, 2013, a business changed its existing health insurance plan in order to make coverage available for the Life Partners of its employees. The cost of the health insurance plan was increased by $50,000, to make such coverage available. Coverage continued past tax year 2015. Computation of the tax credit would be as follows

- Tax Year 2013
  - The tax credit would be $0. The business is not eligible to claim (calculate) a tax credit – the coverage is not available for a full tax year.
- Tax Year 2014
  - Lesser of $4,000; or
  - 25% of the amount expended by the business during the tax year to purchase health benefits for the Life Partners of its employees and the children of such Life Partners i.e., $50,000 x 25% = $12,500;

    - The credit available to be claimed by the business would be $4,000.
- Tax Year 2015
    - Same as for tax year 2014.
- Tax Year 2016
    - The business would not be eligible to claim a tax credit. No business may claim either of the tax credits provided under this Section 509 in more than two consecutive tax years.

Example No. 6

On July 1, 2013, a business changed its existing health insurance plan in order to make coverage available for the Life Partners of its employees and for transgender care. The cost of the health insurance plan was increased by $100,000 to make such coverage available; $75,000 of the increase is attributable to making coverage available for Life Partners and children of Life Partners; and $25,000 is attributable to including coverage for transgender care. Employees enrolled for such health coverage contributed $10,000 during the tax year towards the cost of the coverage. Coverage continued past tax year 2015.

Computation of the tax credit would be as follows:

- Tax Year 2013
    - The tax credit for the Life Partner Health Benefits Tax Credit and the Transgender Care Health Benefits Tax Credit would be $0. The business is not eligible to claim a tax credit because the coverage is not available for a full tax year.
- Tax Year 2014
    - Life Partner Health Benefits Tax Credit
        - Lesser of $4,000; or
        - 25% of the amount expended by the business during the tax year to purchase health benefits for Life Partners and the children of Life Partners i.e., $75,000 - $10,000 = $65,000; 65,000 x 25% = $16,250;
        - The credit available to be claimed would be $4,000.
    - Transgender Care Health Benefits Tax Credit
        - Lesser of $4,000; or
        - 25% of the amount expended by the business during the tax year to include transgender care coverage i.e., $25,000 - $10,000 = $15,000; $15,000 x 25% = $3,750;
        - The credit available to be claimed would be $3,750.

The total tax credits available to be claimed by the business for tax year 2014 would be $7,750.

- Tax Year 2015
    - If such health insurance coverage is available as of the end 2015 and the amount expended is the same as expended for tax year 2014, the total tax credits available to the business for tax year 2015 would also be $7,750.
- Tax Year 2016
    - The business would not be eligible to claim a tax credit. No business may claim either of tax credits provided under this Section 509 in more than two tax years, and with respect to each credit, such years must be consecutive.

4. Limitation on Aggregate Claims. In the event that the aggregate amount of tax credits under §19-2604(14) of the Code to which all businesses are entitled in any tax year under §19-2604(14)(e)(i) of the Code would exceed $2,000,000, the amount of tax credit awarded to any business under §19-2604(14)(e)(i) and subsection (509)(E)(1) of these regulations shall instead be computed as follows: (A) obtaining a reduction factor by dividing $2,000,000 by the aggregate amount of all tax credits sought in that year under subsection (509)(E)(1); and (B) multiplying the amount of the tax credit to which a business would be entitled under subsection (509)(E)(1) by the reduction factor. The Department shall notify any business, entitled to a tax credit under §19-2604(14)(e)(i) of the Code, whose tax credit is affected by the Department's computation of a reduction factor.
5. Unused tax credits provided under §19-2604(14) of the Code and this Section (509) may not be carried forward.
6. A business may neither assign nor transfer tax credits to any other business, including a subsidiary or other affiliate of the business.

F. Repayment of Credits.

1. A business shall repay any Life Partner Health Benefits Tax Credits claimed for a tax year pursuant to §19-2604(14) of the Code and subsection 509(E) if, at any time within three (3) years from the end of such tax year, the business ceases to make health benefits available for the Life Partners of its employees, and children of such Life Partners, on the same basis and to the same extent as the business makes such benefits available for spouses of employees, and children of such spouses. A business shall repay any Transgender Care Health Benefits Tax Credits claimed for a tax year pursuant to §19-2604(14) of the Code and subsection 509(E) if, at any time within three (3) years from the end of such tax year, the business ceases to make transgender

care benefits available on the same basis and to the same extent as the business makes health insurance coverage available for other medical needs.

2. Conditions Required to Avoid Automatic Forfeiture of Tax Credits Claimed.
    a. After a business has claimed a tax credit pursuant to §19-2604(14) of the Code and subsection 509(E) for a tax year or for a maximum of two (2) consecutive tax years, a business shall provide affirmation to the Department for each of the three (3) tax years following the tax year, or the two consecutive tax years, for which the tax credit was claimed. The affirmation statement must be signed by an authorized representative and shall be submitted to the Department no later than June 30th following the end of each three (3) respective tax years.
    b. Such affirmation shall state that the business either has continued to make health benefits available for the Life Partner of its employees and children of such employees, on the same basis and to the same extent as the business makes such benefits available for spouses, and children of such spouses, and/or has continued to make transgender care benefits available on the same basis and to the same extent as the business makes health insurance coverage available for other medical needs.
    c. Failure to comply with the conditions set forth in subsection 509(F)(2) for any of the three (3) tax years following the tax year, or consecutive two (2) tax years, for which a business has claimed a tax credit pursuant to §19-2604(14) of the Code shall result in automatic forfeiture by a business of any tax credit claimed.

G. Approval Process and Issuance of Tax Credits
1. The provisions for the Life Partner and Transgender Care Health Benefits Tax Credits, pursuant to §19-2604(14) of the Code, are effective beginning with Tax Year 2013. The Department shall not award a business the Life Partner Health Benefits Tax or the Transgender Health Benefits Tax Credit for a tax year prior to Tax Year 2013.
2. Upon review of the application, calculation of the tax credits, and other documentation submitted by a business in accordance with subsection 509(D), a business shall be notified by the Department whether its application has been approved.

3. After a business's application has been approved by the Department and after a business has continuously met, for a full tax year, the eligibility criteria set forth in subsection 509(B) or subsection 509(C), a business may claim the tax credits provided under subsection 509(E) against its BIRT liability for such tax year.
4. For issuance of the Life Partner or Transgender Care Health Benefits Tax Credit, an approved applicant shall submit the original signed copy of the BIRT Return to the appointed unit in the Department with correspondence indicating the amount of credit to be claimed against its BIRT liability for such tax year and whether the credit being claimed is the Life Partner Health Benefits Tax Credit or the Transgender Care Health Benefits Tax Credit or both tax credits. If a business is claiming both credits, the business must specify the amount of each credit. Cash refunds will not be issued for unused credits.
5. No business shall receive a Life Partner Health Benefits Tax Credit or Transgender Care Health Benefits Tax Credit if the business is not in full compliance with all applicable Philadelphia tax laws, ordinances and regulations.
6. The Department may request to examine the books and records (i.e., health benefits plan, payroll and withholding records, health insurance quotes, insurance contracts, purchase invoices/cancelled checks) used by a business to report information and prepare documentation required to be submitted under subsection 509(D) and to calculate the tax credits as provided under subsection 509(E).

Section 510. Distressed Business Tax Credit.[121]

(a) Definitions – For purposes of this section, the following terms are defined as follows:

1. Distressed Business. A business that meets the eligibility criteria set forth in this section. The Distressed Business location must be within the physical limits of the City of Philadelphia.

[121] Added by regulation submitted to the Department of Records on December 16, 2015 (effective January 15, 2016).

2. Lost Net Income and Sales/Receipts. The reduction between the net income and sales/receipts of a distressed business at the location where and in the tax year in which the business obstruction occurred, and the average net income and sales/receipts of the distressed business in the two preceding tax years.

3. Public Works Project. A publicly-funded construction project undertaken by the United States, the Commonwealth of Pennsylvania, the City, or other governmental or quasi-governmental agency, for the benefit or use of the general public. For purposes of this definition, "other governmental or quasi-governmental agency" shall include the Delaware River Port Authority and the Southeastern Pennsylvania Transportation Authority. Public Works shall not include privately-owned utilities.

(b) Eligibility – The credit as provided by this section shall only apply to businesses that meet all of the following criteria:

1. Proximity. The business must be within 100 feet of the site of a public works project.

2. Business obstruction. For at least thirty (30) days, the public works project must substantially obstruct customer access to the place of business, or substantially obscure the place of business such that the existence of the place of business or the fact that the business is open may not be ascertained from the street.

3. Lost net income and sales/receipts. A business must suffer loss of net income in an amount that is at least 10% of the business's total net income and loss of sales/receipts in the amount that is at least 10% of the business's total sales/receipts in the tax year in which the business obstruction occurred.

(c) Application – A taxpayer wishing to apply for the credit under this section must complete an application on a form as provided by the Department and must include documentation that the business meets all eligibility criteria for this credit. Such documentation includes photographs depicting the business obstruction, evidence of the proximity of the Public Works Project to the Distressed Business Location, Lost net income and sales/receipts, the time duration of the business obstruction and such other proof as the Department may require. The application must be received on or before the due date of the Business and Income Tax return for the Tax Year in which the obstruction occurred.

(d) Tax Credit - Starting in Tax Year 2015, for any tax year in which a distressed business experiences a business obstruction caused by a Public Works Project, such business shall be eligible for a credit against its Business Income and Receipts Tax liability, in the amount of 20% of the business's Lost sales/receipts amount, up to $20,000 but no more than the after tax loss in net income. Unused Distressed Business Tax Credits may not be carried forward and the credit is non-refundable.

(e) Calculation of Net Income attributable to the Distressed Business Location – The net income attributable to the Distressed Business location is the business entity's current year BIRT net income after the allocation of nonbusiness income (pursuant to Section 406) and apportionment (pursuant to Section 408), but before the Statutory Net income deduction (pursuant to Section 403) and any available loss carry forwards (pursuant to Section 411), multiplied by the ratio of sales/receipts attributable to the Distressed Business location to sales/receipts attributable to all Philadelphia locations.

Example 1

A corporation (with a total of 20 retail stores in 5 states) is seeking the Distressed Business Tax Credit attributable to one (1) of their three (3) Philadelphia locations. The corporation has an overall Federal Net Income (before the dividends received deduction and net operating loss) of $100,000. The corporation in apportioning net income to Philadelphia for purposes of calculating the BIRT Net Income tax base (using Single Sales/Receipts Factor Apportionment) has calculated a Philadelphia Apportionment percentage of fifteen percent (15%). There is no nonbusiness income subject to allocation. Therefore the current year net income reported on line 9 of Schedule B of the 2015 BIRT is $15,000 (i.e. $100,000 * 15%). The calendar year 2015 sales/receipts for the three (3) Philadelphia retail stores is as follows:

Store 1 (Distressed Business location)	$ 15,000
Store 2	$ 60,000
Store 3	$ 75,000
Total Sales	$150,000

The net income attributed to the Distressed Business location is the BIRT current year net income of $15,000 multiplied by the ratio of the sales of the Distressed Business location to sales of all Philadelphia locations (i.e. $15,000/$150,000 = 10%). Therefore, the net income attributed to the Distressed Business location is $1,500 (i.e. $15,000 *10%). This methodology (applied to the 2015 BIRT) will also be applied to the calculation of the net income attributed to the Distressed Business location for the 2013 and 2014 tax years and be used to determine the average net income for the Distressed Business location.

(f) Calculation of Lost Sales/Receipts– In order to determine the Lost Sales/Receipts it will be necessary to determine the sales /receipts attributable to the Distressed Business location for the Tax Year in which the obstruction occurred and for the immediate two (2) prior Tax Years. The average sales /receipts for the Distressed Business Location for the immediate two (2) prior Tax Years will be compared to the sales /receipts in the Tax Year of the obstruction to determine the Lost Sales for the Distressed Business location and in turn the Lost Sales Percentage. The business must suffer in the obstruction Tax Year at the Distressed Business location a loss of sales/receipts that is at least ten percent (>=10%) of the average Sales /Receipts for the location for the immediate two (2) prior Tax Years.

Example 2

Continuing with Example 1 above, Store 1 (the Distressed Business location) had $15,000 in sales for Tax Year 2015- the year of the obstruction. For Tax Years 2013 and 2014, Store 1 had sales of $85,000 and $90,000 respectively. The average sales for Tax Years 2013 and 2014 is $87,500 (i.e. $85,000 + $90,000 = $175,000/2= $87,500). The Lost Sales/Receipts for Tax Year for the Distressed Business location is $72,500 (i.e. $87,500 -

$15,000). The Lost Sales/Receipts percentage is 82% (i.e. $72,500/$87,500 = 82%). Since this loss percentage is >= to 10%, the corporation can continue to calculate the tax credit.

(g) Calculation of Lost Net Income - In order to determine the Lost Net Income it will be necessary to determine the net income attributed to the Distressed Business location as calculated pursuant to subsection (e) of this section for the Distressed Business location for the Tax Year in which the obstruction occurred and the immediate two (2) prior Tax Years. The average net income attributed to the Distressed Business Location for the immediate two (2) prior Tax Years will be compared to the net income in the Tax Year of the obstruction to determine the Lost Net Income and in turn the Lost Net Income Percentage. The business must suffer in the obstruction Tax Year a loss of Net Income at the Distressed Business location that is at least ten percent (>=10%) of the average Net Income for the location for the immediate two (2) prior Tax Years.

Example 3

Continuing with the same facts as Examples 1 and 2 above, but adding the additional data for Tax Years 2013 and 2014 for Philadelphia Stores 2 and 3

	2013	2014	2015
Current Year Net Income - All Philadelphia Locations	$40,000	$50,000	$15,000
Store 1 Sales/Receipts (Distressed Business location)	$95,000	$80,000	$15,000
Store 2 Sales/Receipt	$70,000	$65,000	$60,000
Store 3 Sales/Receipts	$85,000	$90,000	$75,000
Total Sales/Receipts	$250,000	$235,000	$150,000
Net Income for Distressed Business location	$15,200	$17,021	$1,500

In accordance with the methodology of subsection (e), the Net Income for the Distressed Business location is calculated by multiplying the Current Year BIRT Net Income by the ratio of the sales at the Distressed Business location to all Philadelphia sales. Therefore, the Net Income for the Distressed Business location for Tax Years 2013 and 2014 is calculated as follows:

Tax Year 2013 $40,000 * $95,000/$250,000 = $15,200

Tax Year 2014 $50,000 * $80,000/$235,000 = $17,021.

Average of 2013/2014 = $15,200 + $17,021 = $32,221/2 = $16,110

Tax Year 2015 $15,000 * $15,000/$150,000 = $1,500

Lost Net Income = $16,110 - $1,500 = $14,610

Lost Net Income % = $14,610/$16,110 = 90%

Since this loss percentage is >= to 10%, the corporation can continue to calculate the tax credit.

(h) Calculation of the Effective Income Tax Rate – The effective income tax rate is the average rate at which the business entity is taxed on its pre-tax net income. The rate is calculated by dividing the total of all net income taxes paid (Federal, state and local) by the total Federal pre-tax net income of the entity. The net income base of the Business Income and Receipts Tax is to be included in the calculation.

Example 4 - Continuing from Example 3

As noted in Example 1, the corporation's overall pre-tax Federal net income is $100,000. The corporation has paid $40,000 in total Federal, state, and local net income taxes in the five (5) states in which it is doing business. The corporation has an overall effective net income tax rate of 40%. This tax rate is determined by dividing the total Federal, state and local income tax paid for the tax year by the overall corporate pre-tax net income (i.e. $40,000/$100,000). This effective net income tax rate can then be used to calculate the Lost Net Income (net of taxes). The Lost Net Income (net of taxes) is $14,610 * 60% = $8,766.

(i) Calculation of the Distressed Business Tax Credit – The credit is 20% of the business's Lost sales/receipts amount, up to $20,000 but no more than the after tax loss in net income.

Example 5 – continuing with the same facts as Examples 1 through 4

Lost Sales/Receipts $72,500 * 20% = $14,500 (not to exceed $20,000)

Lost Net Income (net of tax) = $8,766

The credit in our fact pattern is $8,766 since 20% of the Lost Sales/Receipts cannot (i.e. $14,500) cannot exceed the Lost Net Income (net of tax).

(j) Tax Credit Cap – In the event that the aggregate amount of the Distressed Business Tax Credits to which businesses are entitled to in any tax year would exceed $1,000,000, the amount of tax credit awarded to any single Distressed Business shall instead be computed as follows: (1) obtaining a reduction factor by dividing $1,000,000 by the aggregate amount of all Distressed Business Tax Credits provisionally approved in that tax year; and (2) multiplying the amount of the tax credit to which a Distressed Business would be entitled by the reduction factor.

(k) Unused Distressed Business Tax Credits may not be carried forward.

(l) Tax Compliance – In order for a Distressed Business to receive the credit as provided by this section, the business must be in compliance with all applicable City and School District of Philadelphia taxes.