

**BERKS COUNTY TAX COLLECTION COMMITTEE**

**TCC Earned Income and Net Profits Tax Regulations**

**Effective January 1, 2012**

**Revised October 29, 2020**

These Regulations supplement the Local Tax Enabling Act, 53 P.S. § 6924.501 *et seq.* (LTEA), and Regulations of the Pennsylvania Department of Community and Economic Development promulgated thereunder. These Regulations are promulgated under authority of LTEA, 53 P.S. § 6924.505(a.1)(7).

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## ARTICLE I – DEFINITIONS

### SECTION 101 – DEFINITIONS

All terms defined in the Enabling Act shall have the meanings set forth therein or herein. If any definition herein is more expansive than the definition in the Enabling Act, the definition herein shall control. The following terms shall have the meaning set forth herein, except where the context clearly indicates a different meaning.

- A. *Collector* – The entity appointed as tax officer pursuant to the Enabling Act to collect Tax within the TCD.
- B. *DCED* – Pennsylvania Department of Community and Economic Development.
- C. *Domicile* – As defined in Section 203 of these Regulations.
- D. *Employee* – Any individual who receives compensation from an Employer for performing an Occupation.
- E. *Employer* – As defined in Section 301 of these Regulations
- F. *Enabling Act* – The Local Tax Enabling Act, as set forth in 53 P.S. § 6924.101 *et seq.* and as amended in the future.
- G. *Enactment* – An ordinance or resolution of a Taxing Authority or another Pennsylvania municipality or school district imposing or otherwise relating to the Tax.
- H. *Nonresident* – A person or business domiciled outside a municipality or school district imposing the Tax.
- I. *Nonresident Tax* – Tax levied by a municipality on a Nonresident based on earned income or net profits derived by an individual from an Occupation engaged in within the boundaries of the municipality. Nonresident Tax is owed to the municipality where the Workplace is located.
- J. *Occupation* – Any work, business, profession, or activity of any kind, including domestic or other services, for which any compensation is received.
- K. *Place of Business* – As defined in Section 301 of these Regulations.
- L. *Regulations* – These Earned Income and Net Profits Tax Regulations.
- M. *Resident* – A person or business domiciled within a municipality or school district imposing the Tax.
- N. *Resident Tax* – The Tax levied by: (1) a municipality on a Resident of that municipality; or (2) a school district on a Resident of that school district.
- O. *TCC* – Berks County Tax Collection Committee.
- P. *TCD* – The tax collection district governed by the TCC under the Enabling Act.
- Q. *Tax* – A tax on earned income or net profits, as defined in the Enabling Act.

The Enabling Act currently defines “earned income” as compensation as required to be reported or as determined by the Pennsylvania Department of Revenue under the Pennsylvania Personal Income Tax Law, 72 P.S. § 7301(d), and § 7303(a)(1), and the Pennsylvania Department of Revenue Regulations, 61 Pa. Code § 101.6a. The Enabling Act expressly states that the amount of any housing allowance provided to a member of the clergy does not constitute “earned income.”

The Enabling Act currently defines “net profits” as net income from the operation of a business other than a corporation as required to be reported or as determined by the Pennsylvania Department of Revenue under the Pennsylvania Personal Income Tax Law, 72 P.S. § 7303(a)(2). The Enabling Act expressly states that “net profits” does not include: (1) income which is not paid for services provided, and is in the nature of earnings from an investment. (2) Income which represents gain on the sale of farm machinery; gain on the sale of livestock held 12 months or more for draft breeding or dairy purposes; or gain on the sale of other capital assets of a farm.

- R. *Tax Return* – A form provided by the Collector for reporting the amount of Tax deducted or owed.
- S. *Taxing Authority* – A school district or municipality that has imposed a Tax and that is included in the TCD.
- T. *Taxpayer* – Any individual on whom Tax is imposed.
- U. *Workplace* – As defined in Section 201 of these Regulations.

## **ARTICLE II – IMPOSITION OF TAX**

### **SECTION 201 – PERSONS SUBJECT TO TAX; TAX RATES**

The persons subject to Tax and applicable Tax rates are as set forth in the applicable Enactment. Persons subject to Tax as set forth in the Enactment might include: (1) as to the Resident Tax, individuals who are Residents of a Pennsylvania municipality or school district; and (2), as to the Nonresident Tax, individuals who are not Residents of a Pennsylvania municipality with respect to any Occupation engaged in within the boundaries of the Pennsylvania municipality. The Nonresident Tax applies to all earned income or net profits derived by an individual who is not a Resident from any work, business, profession, or activity of any kind engaged in within the boundaries of the municipality.

For purposes of the Enabling Act and these Regulations, the “Workplace” generally determines the municipality in which an individual is considered to earn income for purposes of a Nonresident Tax. “Workplace” focuses on the place where work is performed or income is derived by an individual – in contrast to “Place of Business,” which is defined in Section 301 and determines tax collection districts where an employer must register, file returns, and remit Tax. “Workplace” is defined as follows:

1. If an individual generally works at the same fixed location within Pennsylvania during any calendar quarter, the Workplace is such fixed location for that calendar quarter.
2. If an individual generally works at more than one location during any calendar quarter, the Workplace for that calendar quarter is the location within Pennsylvania where the individual generally spends the most work time during that calendar quarter.
3. If there is no location within Pennsylvania that can be identified as the place where the individual generally spends the most work time during a calendar quarter as an employee of the same employer or as an individual subject to the Tax on Net Profits, the Workplace is the location within Pennsylvania where the individual regularly reports to work or from which the individual regularly receives work assignments from the employer during the calendar quarter, or if the individual is subject to the Tax on net profits the primary location from which the individual operates the business during the calendar quarter.
4. The main office to which a company officer reports or at which a company officer receives mail during a calendar quarter is the Workplace of such individual for that calendar quarter.
5. If neither 1, nor 2, nor 3, nor 4 above applies, the individual will be considered to have multiple Workplaces and the Nonresident Tax is owed to each Taxing Authority within which an Occupation is performed, with Tax owed to each Taxing Authority based on earned income or net profits derived from the Occupation engaged in within the boundaries of the Taxing Authority. Examples to which this category applies include: (a) An employee who works within different municipalities for different employers, whether during the same time period or different time periods. (b) An entertainer who earns income from a performance within a municipality. (c) A professional athlete who earns income from participating in an event within a municipality. (d) A speaker who earns income for speaking at an event within a municipality.
6. A Nonresident who performs substantially all of the duties of the Occupation outside of the municipality that imposes the Nonresident Tax will not be considered to have a Workplace within the municipality merely because the individual occasionally comes to a location within the municipality for short times and minimal duties incidental to the individual's primary duties, which are performed outside of the municipality. An example to which this category applies is a company officer whose main office is outside Pennsylvania, but who occasionally visits an office within the municipality for a meeting.
7. Whether or not an individual falls under 5 above, an individual may allocate income to multiple Workplaces based on a reasonable method of allocating income to the place from which derived. Such allocation shall be supported by a written statement explaining the basis for allocation. If the individual is required to file a tax return, the statement shall be filed with the individual's annual

Nonresident tax return. If the individual is not required to file an annual Nonresident tax return because the individual is an Employee whose Employer withheld the full amount of Tax owed, the statement shall be filed with the Employer, and the Employer shall file the statement with the Employer's annual tax return.

8. All earned income or net profit derived from a source within Pennsylvania is Pennsylvania source income for purposes of the Pennsylvania personal income tax, and must be allocated to one or more Workplaces within Pennsylvania for purposes of the Tax.

Information concerning persons subject to Tax and applicable Tax rates in each municipality and school district can be obtained from the Collector internet website, DCED's internet website, or by contacting the Collector, DCED, or the municipality and school district where the person resides or works.

## **SECTION 202 – RULES GOVERNING TAX**

Rules governing imposition, administration, and collection of the Tax are contained in multiple resources, including without limitation: (1) local Tax return forms and instructions; (2) the Enactments; (3) the Enabling Act; (4) these Regulations; (5) policies and procedures of the TCC and the Collector; (6) the Local Taxpayer Bill of Rights, 53 Pa.C.S.A. § 8421 *et seq.*; (7) DCED rules and regulations; and (8) the Pennsylvania personal income tax law as referenced in Section 204.

## **SECTION 203 – RESIDENCE DETERMINATION**

- A. Determination of whether a person is a Resident is based on the definition of "Domicile."
- B. For purposes of the Enabling Act and these Regulations, "Domicile" means the place where a person lives and has a permanent home and to which the person has the intention of returning whenever absent. Actual residence is not necessarily Domicile, for Domicile is the fixed place of abode which, in the intention of the taxpayer, is permanent rather than transitory. Domicile is the voluntarily fixed place of habitation of a person, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some event occurs to induce the person to adopt some other permanent home. In the case of a business, Domicile is that place considered as the center of business affairs and the place where its functions are discharged.
- C. A person having a home within the TCD is presumed to have his or her Domicile at the place where the home is located. Any such person claiming Nonresident status has the burden of proving that his or her Domicile is elsewhere. Similarly, a person who is not a U.S. citizen but possesses a Green Card (evidence that a person who is not a U.S. citizen is authorized to live and work in the U.S. on a permanent basis) is presumed to have his or her Domicile in the U.S. Any such person claiming Domicile outside the U.S. has the burden of proving that his or her Domicile is outside the U.S.

D. The following questions are relevant to determining Domicile:

1. What is the place to which the person has the intention of returning whenever absent?
2. What is the place the person intends as the person's permanent home?
3. How many days and nights has the person spent or does the person generally expect to spend at the home during a calendar year?
4. Does the person have another home? If yes, what is the address and purpose of the other home and number of days and nights the person has spent or generally expects to spend at the other home during a calendar year?
5. Does the person have a spouse or dependent children? If yes, where do they spend the largest number of days and nights during a calendar year?
6. Does the person own a home within the Taxing Authority? If yes, has the person claimed a homestead tax exemption for the home by filing with the County Tax Assessment Office? Has the person claimed a homestead tax exemption for a home in any other geographic area?
7. If the person changed the claimed Domicile from a home within the Taxing Authority to a home outside the Taxing Authority, did the person move furniture and other major items of personal property from the home within the Taxing Authority?
8. What address does the person use as residence for federal income tax returns?
9. Does the person file a Pennsylvania income tax return? If yes, what address is used as residence for this income tax return?
10. Does the person pay income or personal property tax to any government jurisdiction other than the IRS, PA, or the Taxing Authority?
11. What is the address shown on the person's bank account checks?
12. What is the address at which the person receives most personal mail?
13. What is the address stated on the person's passport? Driver license? Motor vehicle registration? Voter registration? Bank accounts? Brokerage accounts? Credit cards? Insurance policies – homeowner, liability, automobile, life, and other?
14. Does the person have a mortgage? If yes, what address is used by the bank for communications?
15. What is the nature of the person's work? Who is the Employer? Where is the Workplace? What address does the Employer record as the person's residence?

16. Does the person belong to a church, club, or other organization? If yes, what are the names and addresses?
  17. Where is the office of the person's primary doctor? Primary lawyer? Primary accountant?
  18. Does the person have a telephone listing in a telephone directory for an address within the Taxing Authority?
- E. Normally it is not difficult to determine the residence of a person because most of the determining factors usually point to only one conclusion. If a person has all of the foregoing factors point to one Taxing Authority as the Domicile, the person is a Resident of that Taxing Authority.

Of more difficulty is the situation of individuals to whom some of the factors point to one Taxing Authority and others point elsewhere. In these situations, each case must be determined based on its own facts. In order to make a residency determination, the Collector may require an individual to complete a sworn affidavit on a Collector provided form.

Residence is determined by all facts relevant to each case. Contrary to the law applicable to the Pennsylvania personal income tax, spending a specific number of days within the Taxing Authority does not alone make an individual a Resident of the Taxing Authority.

- F. A person can have only one Domicile at any given time. Domicile does not change until an individual moves with the sincere intention of making a new permanent home and abandoning the previous permanent home.

If an individual moves, but intends to stay at the new location only for a fixed or limited time, Domicile does not change. If an individual leaves his or her Domicile to seek new employment intending to remain in the location only if he or she finds employment, there is no Domicile change. In order to establish a new Domicile, the following three conditions must be met:

1. There must be evidence of a firm and definite present intention of the individual to discontinue making the former Domicile as his or her primary home and base of operations.
2. There must be evidence of a firm and definite present intention of the individual to make the new Domicile his or her primary home and base of operations.
3. There must be evidence of actual physical presence and living in the new location.

## **SECTION 204 – WHAT IS TAXED**

- A. General Rule for All Income – Refer to Three Lines on Pennsylvania Personal Income Tax Return. Per the definition in Section 101, we refer to the local tax on earned income and net profits as “Tax,” and the Enabling Act defines this term by reference to the



Pennsylvania personal income tax. The Pennsylvania personal income tax applies to eight different categories of income. Although there are some exceptions, the general rule is that amounts are subject to the local Tax if reportable on a Pennsylvania personal income tax return of a Pennsylvania Resident or Nonresident under two of the eight categories: (1) Amounts reportable on the Pennsylvania return as “**gross compensation**” (currently PA-40 line 1a) are reportable on the local Tax return as “**earned income.**” (2) Amounts reportable on the Pennsylvania return as “**net income from the operation of a business, profession, or farm**” (currently PA-40 line 4) are reportable on the local Tax return as “**net profits.**”

In addition, amounts reportable on the Pennsylvania return as “**net income or loss from rents, royalties, patents, or copyrights**” (currently PA-40 line 6) are sometimes reportable on the local Tax return as “**net profits.**”

The general rule is that amounts reportable on the Pennsylvania return under the other five categories are not subject to Tax. These items and some of the exceptions to the general rule are addressed below.

The general rule is that all payments received for or earnings generated from services or work by an individual within Pennsylvania are subject to Tax. Contrary to the Pennsylvania personal income tax, amounts considered investment income are not subject to Tax.

In order to determine what is subject to the local Tax, individuals and Employers should refer to the applicable 3 lines on their PA-40 Pennsylvania income tax return, namely the lines for “**gross compensation**” (currently PA-40 line 1a); “**net income from operation of a business, profession, or farm**” (currently PA-40 line 4); and “**net income or loss from rents, royalties, patents, or copyrights**” (currently PA-40 line 6). In addition, part of completing the Pennsylvania return and local earned income tax return, individuals and employers should refer to the Pennsylvania Personal Income Tax Law, 72 P.S. § 7301 *et seq.*, the Pennsylvania Department of Revenue Regulations, 61 Pa. Code § 101 *et seq.*, the Enabling Act, these Regulations, and the applicable Enactment. Guidance can also be obtained by reference to the Pennsylvania Personal Income Tax Guide, Pennsylvania income tax return instructions, and other information published by the Pennsylvania Department of Revenue. This information can be obtained from the Department of Revenue’s internet website or by contacting the Department of Revenue. Some of this information might also be available on the Collector’s internet website.

- B. General Rule for Compensation. The general rule is that income reportable as “earned income” on the local Tax return is the same as “gross compensation” reportable on the Pennsylvania return. Generally, this will be the same as state W-2 compensation. However, the Enabling Act expressly states that the amount of any housing allowance provided to a member of the clergy does not constitute “earned income.”
- C. General Rule for Business Income. Although there are some exceptions, the general rule is that income reportable as “net profits” on the local Tax return is the same as “net income from operation of a business, profession, or farm” reportable on the Pennsylvania return. Generally, this includes income from a proprietorship, from a partnership, or

from a limited liability company treated for tax purposes as a partnership, and also includes income characterized as “guaranteed payments.” The exceptions generally relate to circumstances when amounts *are not subject to Tax* because they represent income from mere “**passive**” investments but might be reportable on the Pennsylvania return as “net income from the operation of a business, profession, or farm” (currently PA-40 line 4); or circumstances when amounts *are subject to Tax* because they represent income derived from personal services or work or “**active**” management of property or business and might be reportable on the Pennsylvania return as “net income from rents, royalties, patents, or copyrights” (currently PA-40 line 6). These exceptions are addressed in greater detail below.

The Enabling Act expressly states that “net profits” subject to Tax does not include: (1) income which is not paid for services provided, and is in the nature of earnings from an investment. (2) Income which represents gain on the sale of farm machinery; gain on the sale of livestock held 12 months or more for draft breeding or dairy purposes; or gain on the sale of other capital assets of a farm.

- D. Subchapter S Corporations. Although reported on the Pennsylvania return as “net income from the operation of a business, profession, or farm,” net income from a Subchapter S corporation is generally not subject to Tax, whether or not distributed as a dividend. However, W-2 compensation paid to an individual by a Subchapter S corporation is subject to Tax. In addition, if an individual providing services to or actively involved in management or conduct of the business of a Subchapter S corporation does not receive appropriate W-2 compensation for services rendered, Subchapter S income allocated to the individual is subject to Tax to the extent necessary to reflect appropriate compensation, whether or not distributed.
- E. Limited Liability Companies. For purposes of Pennsylvania income tax law, a limited liability company (LLC) may elect treatment as a Subchapter C corporation, a Subchapter S corporation, or if there are multiple members as a general partnership. A single member LLC is a disregarded entity unless it elects treatment as a Subchapter C corporation or a Subchapter S corporation. Income from a single member LLC owned by an individual is reported on the Pennsylvania return as “net income from the operation of a business, profession, or farm,” and is reported on the local Tax return as “net profits.” If an LLC elects treatment as a Subchapter C or S corporation, income of the LLC members will be treated in the same manner as income from the type of corporation elected. If an LLC elects treatment as a general partnership, income from the LLC will be reported on the Pennsylvania return as “net income from the operation of a business, profession, or farm,” and is reported on the local tax return as “net profits.”
- F. Limited Partnerships. Although reported on the Pennsylvania return as “net income from the operation of a business, profession, or farm,” income from a limited partnership interest is generally not subject to Tax, whether or not distributed. However, if the individual is actively involved in management or conduct of the business of the company, the income is subject to Tax and reportable on the local Tax return as “net profits,” whether or not distributed.

- G. Net Income from Rents, Royalties, Patents, and Copyrights. Amounts reported on the Pennsylvania return as “net income from rents, royalties, patents, or copyrights” (currently PA-40 line 6) might or might not be subject to Tax.

As to rents, the amount is subject to Tax if the individual is actively involved in management of the property, in which case the amount is generally reportable on the Pennsylvania return as “net income from the operation of a business, profession, or farm” and on the local Tax return as “net profits.” However, the amount is not subject to Tax if the individual is a mere passive owner not actively involved in management of the property, in which case the amount is generally reportable on the Pennsylvania return as “net income from rents, royalties, patents, or copyrights.” Generally, amounts will be considered rents not subject to Tax if derived from mere passive or investment ownership of property without the furnishing by the owner of significant services. Generally, paying for heat, lighting, electric service, elevators, cleaning of public access and exit areas, trash collection, and property maintenance are not significant services. The Pennsylvania personal income tax publications provide additional guidance on applying these rules.

Amounts reported on the Pennsylvania return as “net income from royalties, patents, or copyrights” are considered “net income from the operation of a business, profession, or farm” subject to Tax and reportable on the local Tax return as “net profits” if the income is derived from intellectual property developed by the individual Resident or Nonresident to whom the amounts are payable. For example, royalties and other fees received by authors, composers, and inventors are subject to Tax and reportable on the local Tax return as “net profits” even though reported on the Pennsylvania return as “net income from royalties, patents, or copyrights.”

- H. Income Not Taxed. The following five categories of income are subject to Pennsylvania personal income tax but generally not subject to Tax: interest income (currently PA-40 line 2); dividend and capital gain distribution income; net gain from sale, exchange, or disposition of property (currently PA-40 line 3); estate or trust income (currently PA-40 line 7); and gambling or lottery winnings (currently PA-40 line 8).

## **SECTION 205 – LOSSES AND DEDUCTIONS**

- A. Except as set forth below, for purposes of determining “net profits,” a loss from the operation of one business may be used to offset net income from the operation of another business.
- B. Losses resulting from activities the income from which is not subject to Tax may not be used to offset net income. This includes losses from a Subchapter S corporation, a limited liability company, a limited partnership, property rental, and other activities where the individual is a mere “passive” owner or investor and is not “actively” involved in the management or conduct of the business.
- C. A loss from the operation of a business conducted by one spouse may not be used to offset net income from the operation of a business by another spouse.

- D. A loss may not be used to offset net income if the loss is incurred in connection with an activity that is a hobby or otherwise is not a true business conducted with the intent to generate a source of income.
- E. A loss in one year may not be carried backward or forward to another year.
- F. A loss from the operation of a business may not be used to offset “earned income.”
- G. Deductions are allowed only to the extent allowed as deductions against “compensation” or “net income from the operation of a business, profession, or farm” on the Pennsylvania personal income tax return.

## SECTION 206 – RESIDENT AND NONRESIDENT TAX EXEMPTION OR CREDITS

- A. Resident and Nonresident Tax. The Enactments impose Tax on “earned income” or “net profits.” As to the Resident Tax, Tax applies without regard to the place where the income was earned. However, tax exemptions or credits might apply to potentially reduce or eliminate the amount of Tax owed. As to the Nonresident Tax, the Tax is based on the Workplace where income is earned. However, tax exemptions or credits might apply to potentially reduce or eliminate the amount of Tax owed.
- B. Credit to Pennsylvania Residents Against Nonresident Tax for Tax Paid to Municipality or School District of Residence. Subject to the limits in Section 206F and in this Section 206B, Tax on income paid to a municipality or school district by a Resident thereof shall be credited to and allowed as a deduction from the Nonresident Tax owed by such person to a municipality that taxes Nonresidents. The credit is limited to the combined Resident Tax rate levied under the Enabling Act Chapter 3 by a municipality and school district that tax the Resident times the Taxpayer’s income taxed by the municipality that taxes Nonresidents. The credit shall be applied only to the extent that the income taxed by the municipality or school district of the Taxpayer’s residence represents earned income or net profits.

*Example* Municipality A imposes a 1.5% Nonresident Tax (1% under Enabling Act Chapter 3 + .5% under Act 47)  
 Municipality B + School District C impose a combined 1% Resident Tax (under Enabling Act Chapter 3)  
 Taxpayer X lives in B/C; works/earns \$100,000 in B/C;  
 and works/earns \$100,000 in A  
 Taxpayer X owes B/C \$2,000 Resident Tax  
 Taxpayer X owes A \$1,500 Nonresident Tax - \$1,000 credit = \$500

*Note:* Based on the limits in Section 206F, the credit would remain at \$1,000 even if B/C impose an additional .5% Resident Tax under Act 24.

- C. Credit to Pennsylvania Residents Against Resident Tax for Philadelphia Tax. Subject to the limits in Section 206F and in this Section 206C, Tax on income paid by a Resident of a Taxing Authority to Philadelphia shall be credited to and allowed as a deduction from the Resident Tax owed by such person to the Taxing Authorities where the Resident is

domiciled. The credit is limited to the combined Resident Tax rate levied under the Enabling Act Chapter 3 by the Taxing Authorities where the Resident is domiciled times the Taxpayer's income taxed in Philadelphia.

*Example* Philadelphia imposes a 3.94% nonresident tax  
Municipality B + School District C impose a combined 1% Resident Tax  
(under Enabling Act Chapter 3)  
Taxpayer X lives in B/C; works/earns \$100,000 in B/C;  
and works/earns \$100,000 in Philadelphia  
Taxpayer X owes Philadelphia \$3,940 nonresident tax  
Taxpayer X owes B/C \$2,000 Resident Tax - \$1,000 credit = \$1,000

*Note:* Based on the limits in Section 206F, the credit would remain at \$1,000 even if B/C impose an additional .5% Resident Tax under Act 24.

- D. Credit to Pennsylvania Residents Against Resident Tax for Tax Paid to Political Subdivisions Located in Other States. Subject to the limits in Section 206F and in this Section 206D, Tax paid on income by a Resident of a Taxing Authority to any political subdivision located outside Pennsylvania shall be credited to and allowed as a deduction from the Tax owed by such person to the Taxing Authorities where the Resident is domiciled. The credit is limited to the combined Resident Tax rate levied under Enabling Act Chapter 3 by the Taxing Authorities where the Taxpayer is domiciled times the Taxpayer's income taxed in the out-of-state political subdivision. The credit shall be applied only to the extent that the income taxed by the out-of-state political subdivision represents income subject to Tax. This credit is available regardless of whether the state in which the out-of-state political subdivision is located is a reciprocal state.

*Example* Municipality D in another state imposes a 1.25% nonresident tax  
Municipality B + School District C impose a combined 2% Resident Tax  
(1% under Enabling Act Chapter 3 + 1% under Act 24)  
Taxpayer X lives in B/C; works/earns \$100,000 in D  
Taxpayer X owes D \$1,250 nonresident tax  
Taxpayer X owes B/C \$2,000 Resident Tax - \$1,000 credit = \$1,000

*Note:* Based on the limits in Section 206F, credit may be taken against the 1% Resident Tax imposed under Enabling Act Chapter 3 but not the 1% Resident Tax imposed under Act 24.

- E. Credit to Pennsylvania Residents Against Resident Tax for Tax Paid to Other States. Subject to the limits in Section 206F and in this Section 206E, Tax on income paid by a Resident of a Taxing Authority to another state of the United States shall be credited to and allowed as a deduction from the Tax owed by such person to the Taxing Authorities where the Resident is domiciled. The credit is limited to the combined Resident Tax rate levied under Enabling Act Chapter 3 by the Taxing Authorities where the Resident is domiciled times the Taxpayer's income taxed in the other state. The credit shall be applied only to the extent it exceeds the amount of the credit that can be taken against the Resident's Pennsylvania income tax for tax on income paid to the other state, and only to the extent that the income taxed by the other state represents income subject to Tax.

Example State E is a nonreciprocal state and imposes a 4% nonresident tax  
Municipality B + School District C impose a combined 1% Resident Tax  
(under Enabling Act Chapter 3)  
Taxpayer X lives in B/C; works/earns \$100,000 in E  
Taxpayer X owes E \$4,000 nonresident tax  
Taxpayer X receives credit of \$3,070 against PA income tax  
Taxpayer X owes B/C \$1,000 – (\$4,000 - \$3,070) credit = \$70

A state that has a reciprocal income tax agreement with Pennsylvania (a “reciprocal state”) excuses a Pennsylvania resident from paying income tax to the reciprocal state on compensation subject to employer withholding and earned in the reciprocal state. Accordingly, this credit is not available for compensation subject to employer withholding earned by a Pennsylvania resident in a reciprocal state such as Maryland. Except for compensation subject to employer withholding earned by a Pennsylvania resident in a reciprocal state, this credit is available regardless of whether the other state is a reciprocal state.

F. Other Rules Relating to Credits.

1. A Taxpayer is not entitled to a payment if the Taxpayer has total available credits in an amount that exceeds the Taxpayer’s Tax.
2. Evidence of payment is required in order to take any tax credit.
3. No credit is allowed for Tax paid by Residents of Taxing Authorities based on income earned in Pittsburgh. A Taxpayer who works in Pittsburgh but lives elsewhere will be subject to withholding under Section 303.
4. No credit is allowed for tax paid to other countries.
5. Based on 53 P.S. § 6926.323(b), the credits described in Sections 206 B and C apply, but the credits described in Sections 206 D and E do not apply against the amount of additional income tax levied after June 27, 2006 by school districts or Taxpayer liability incurred after June 27, 2006 pursuant to the Taxpayer Relief Act, Act 1 of 2006, 53 P.S. § 6926.101 *et seq.* Except as stated in the preceding sentence, based on 53 P.S. § 6924.317, the credits described in Sections 206 B, C, D, and E apply only against income tax amounts levied and otherwise payable under authority of Chapter 3 of the Enabling Act, and do not apply against additional income tax amounts levied pursuant to other authority such as Act 24 (occupation tax conversion), Act 442 (open space tax), Act 177 (home rule tax), and Act 47 (distressed municipality tax). Based on 53 P.S. § 6924.317, the credit described in Section 206B is available only for payment of a Resident Tax amount levied under authority of Chapter 3 of the Enabling Act and not for payment of a Resident Tax amount levied pursuant to other authority such as Act 24 (occupation tax conversion), Act 442 (open space tax), Act 177 (home rule tax), and Act 47 (distressed municipality tax).

6. Because the maximum tax rate permitted to be levied under the Enabling Act Chapter 3 is 1%, except in the case of credit against a tax levied by a school district under the Taxpayer Relief Act, the tax credit amount can never exceed 1% of income (or any lower combined rate imposed by the applicable school district and municipality under the Enabling Act Chapter 3). In the case of credit for Philadelphia tax, the income used to determine the tax credit amount is the income earned in Philadelphia or out of state. The credit for Philadelphia or out of state tax does not reduce Tax owed based on income not earned in Philadelphia or out of state.

### **ARTICLE III – EMPLOYER WITHHOLDING AND REMITTANCE**

#### **SECTION 301 – EMPLOYER REGISTRATION**

Within 15 days after becoming subject to these Regulations, every Employer shall register with the Collector the name and address of the employer and such other information as the Collector may require.

An Employer is subject to these Regulations if the Employer: (1) has a Place of Business within the TCD; and (2) employs one or more persons, other than domestic servants, for compensation.

For purposes of the Enabling Act and these Regulations, “Place of Business” determines the tax collection districts where an Employer must register, file returns, and remit Tax. “Place of Business” focuses on the Employer – in contrast to “Workplace,” which is defined in Section 201 and determines the municipality in which an individual is considered to earn income for purposes of Nonresident Tax. “Place of Business” is defined to include, without limitation: (1) any location at which any property of the Employer, including, without limitation, inventory, samples, computers, or other electronic devices, is regularly located, held, stored, or maintained; and (2) any location from which an Employee regularly conducts business for the Employer including without limitation, an Employee’s home if the Employer regularly mails or emails directions to the Employee at the home, or the Employee regularly mails or emails business communications to the Employer, Employer customers, or Employer vendors from the home.

The Enabling Act defines “Employer” to include every person or entity employing one or more persons, other than domestic servants, for any type of compensation. For purposes of the Enabling Act and these Regulations, “Employer” includes certain persons or entities not considered common law employers. (1) “Employer” includes a person or entity who or which engages a person who does not have a regular fixed workplace within Pennsylvania, such as an entertainer, professional athlete, or speaker, to perform services at a location within Pennsylvania. The owner or operator of a club, theater, or other venue that provides entertainment or conducts events shall be deemed the Employer of the person performing the services if such person or entity engages the person performing the services. If the owner or operator has leased or otherwise made the venue available to another person or entity who or which engages the person performing the services, such other person or entity shall be deemed the Employer of the person performing the services. Such Employer must register and deduct the Tax from the compensation paid to the person performing the services. (2) “Employer” also includes a person or entity who or which engages the services of an individual considered a “statutory employee” under the Internal Revenue Code, 26 U.C.S. § 3121, such as certain

corporate officers, commission vehicle drivers, full-time traveling salespersons, full-time life insurance sales agents, and home workers, even though such individuals might be considered common law independent contractors.

### **SECTION 302 – EMPLOYEE CERTIFICATE OF RESIDENCY**

Every Employer subject to these Regulations shall require each Employee who is or becomes domiciled in Pennsylvania or has a Workplace within Pennsylvania to complete a certificate of residency on a Collector provided form, which shall be an addendum to the Federal Employee's Withholding Allowance Certificate (Form W-4). The Employer shall also require any such Employee who changes address or Domicile to complete a new certificate of residency. The certificate of residency form shall be as provided by the Collector. The Employer shall retain certificate or residency forms and provide a copy to the Collector upon request.

### **SECTION 303 – EMPLOYER REQUIRED WITHHOLDING**

Every Employer subject to these Regulations, at the time of payment shall deduct from the compensation due each Employee who is domiciled within the TCD or has a Workplace within the TCD: the greater of the Employee's combined Resident Tax or the Employee's Nonresident Tax determined from the official register published by DCED on its Internet website. "Workplace" is defined in Section 201.

### **SECTION 304 – EMPLOYER VOLUNTARY WITHHOLDING**

When not required to withhold under Section 303 and not required to withhold and remit to the Collector for another tax collection district, an Employer may voluntarily withhold and remit to Collector the Resident Tax or Nonresident Tax owed by an Employee. For example, this would apply to an Employer whose only places of business are outside Pennsylvania, within Philadelphia, or within a tax collection district that has not appointed a county-wide tax collector.

### **SECTION 305 – EMPLOYER QUARTERLY RETURNS**

Except as set forth in Section 306, within 30 days following the end of each calendar quarter, every Employer subject to these Regulations shall file a quarterly return on a Collector provided form and pay to the Collector the amount of Tax deducted during the preceding calendar quarter to the Collector.

### **SECTION 306 – MULTI-SITE EMPLOYER OPTION; MONTHLY RETURNS**

Notwithstanding Section 305, the provisions of this Section 306 shall apply if an Employer has more than one Place of Business in more than one tax collection district. Within 30 days following the last day of each month, the Employer may file the return otherwise required by Section 305 and pay the total amount of Tax deducted from Employees at all Workplaces within a tax collection district during the preceding month to the Collector for either the tax collection district in which the Employer's payroll operations are located or authorized by DCED regulation. The return and Tax deducted shall be filed and paid electronically. The Employer must file a notice of intention to file combined returns and make combined payments with the tax collector for each Workplace at least one month before filing its first combined return or making



its first combined payment. The Employer must comply with additional requirements of DCED regulations. This Section shall not be construed to change the location of an Employee's Workplace for purposes of Nonresident Tax liability.

### **SECTION 307 – DELINQUENT EMPLOYERS; MONTHLY RETURNS**

Any Employer who, for two of the preceding four quarterly periods, has failed to deduct the proper amount of Tax, or has failed to pay over the proper amount of Tax as required by Section 305, may be required by the Collector to file returns and remit Tax monthly. In such cases, payments of Tax shall be made to the Collector on or before the last day of the month succeeding the month for which Tax was required to be withheld.

### **SECTION 308 – EMPLOYER ANNUAL RETURNS AND WITHHOLDING STATEMENTS**

On or before February 28 of the succeeding year, every Employer shall file with the Collector:

- A. An annual return showing, for the period beginning January 1 of the current year and ending December 31 of the current year, the total amount of compensation paid, the total amount of Tax deducted, the total amount of Tax paid to the Collector and any other information required by the Collector.
- B. An individual withholding statement, which may be integrated with the Federal Wage and Tax Statement (Form W-2), for each Employee employed during all or any part of the period beginning January 1 of the current year and ending December 31 of the current year, setting forth the Employee residence address and Social Security number, the amount of compensation paid to the Employee during the period, the amount of Tax deducted, the amount of Tax paid to the Collector, the numerical code prescribed by DCED for the TCD, and any other information required by the Collector. Every Employer shall furnish one copy of the individual withholding statement to the Employee for whom it is filed.
- C. With respect to any Employee who has elected to allocate income to multiple Workplaces under Section 201 above, the Employee's written statement explaining the basis for allocation shall be filed with the Employer's annual tax return.

### **SECTION 309 – EMPLOYER DISCONTINUANCE OF BUSINESS**

Any Employer who discontinued business prior to December 31 of the current year shall, within 30 days after the discontinuance of business, file returns and withholding statements required under this Section and pay all Tax due.

### **SECTION 310 – EMPLOYER AND OFFICER LIABILITY**

An Employer who willfully or negligently fails or omits to make the deductions required by this Article shall be liable for payment of Tax which the Employer was required to withhold to the extent that Tax has not been recovered from the Employee. If the Employer is a partnership, the partners thereof, and if the Employer is a corporation, limited liability company, or other organization or entity, all officers thereof, and any other person responsible for tax matters, shall

have the same liability as the Employer. The failure or omission of any Employer to make the required deductions shall not relieve any Employee from payment of Tax or from complying with the requirements for filing of returns.

### **SECTION 311 – PAYROLL SERVICE ELECTRONIC FILING REQUIREMENT**

Firms engaged by Employers to process payroll and tax remittances shall submit tax information and payments on or before the required due date in an electronic format prescribed by the Collector.

### **SECTION 312 – ELECTRONIC FILING REQUIREMENT – EMPLOYERS NOT USING A PAYROLL SERVICE**

All Employers shall submit tax information and payments on or before the required due date in an electronic format prescribed by the Collector. Employers with 10 or less employees may request relief from electronic filing provided they can document that electronic filing is a hardship.

## **ARTICLE IV – INDIVIDUAL RETURNS**

### **SECTION 401 – ANNUAL RETURNS BY RESIDENT TAXPAYERS**

- A. On or before April 15 of each year every person domiciled within the TCD at any time during the previous calendar year and having earned income or net profits shall file with the Collector an annual return for the previous calendar year on a Collector provided form showing all earned income and net profits received or earned.
- B. Every such person shall file a return even if the compensation was subject to tax withholding by an Employer and even if no additional tax remains due.
- C. If a person resides in more than one tax collection district during the calendar year, the person must file an annual return with the tax collector for each tax collection district.
- D. The taxable income subject to Resident Tax of a Taxpayer who resides in a political subdivision for only a portion of the calendar year shall be an amount equal to the Taxpayer's taxable income multiplied by a fraction, the numerator of which is the number of calendar months during the year that the individual resides in the political subdivision, and the denominator of which is 12. A Taxpayer shall include in the numerator any calendar month during which the Taxpayer resides for more than half the calendar month. A day that a Taxpayer's Domicile changes shall be included as a day the individual is in the new Domicile and not the old Domicile. If the number of days in the calendar month in which the individual lived in the old and new Domicile are equal, the calendar month shall be included in calculating the number of months in the new Domicile.
- E. The Taxpayer shall file with the annual return information specified in Collector's tax return instructions or otherwise requested by Collector.

- F. After filing with the Collector a copy of the federal or Pennsylvania approval for filing on a fiscal year basis, a Taxpayer may file returns and pay tax on the same fiscal year basis used for Pennsylvania income tax purposes. When a return is made for a fiscal year, the return shall be filed within 105 days from the end of the fiscal year.

#### **SECTION 402 – ANNUAL RETURNS BY NONRESIDENT TAXPAYERS**

- A. Nonresident Tax is owed by a Nonresident on earned income or net profits derived by the individual from an Occupation engaged in within the boundaries of a Taxing Authority that imposes Nonresident Tax. Nonresident Tax is owed to the Taxing Authority where the Workplace is located.
- B. A Nonresident subject to Nonresident Tax is required to file a tax return if, and only if, the Nonresident is not entitled to a tax credit for Resident Tax that negates the full amount of the Nonresident Tax that would be owed in the absence of the credit and: (1) the Nonresident is an Employee whose Employer has not withheld the full amount of Nonresident Tax owed based on earned income; or (2) the Nonresident owes Nonresident Tax based on net profits. Examples of individuals required to file a Nonresident Tax return include: (a) An Employee who is a Nonresident and whose Employer’s only places of business are outside Pennsylvania, within Philadelphia, or within a tax collection district that has not appointed a county-wide tax collector, and whose Employer has declined to voluntarily withhold and remit Nonresident Tax. (b) An Employee who is a Nonresident and whose Employer has for some other reason failed to withhold Nonresident Tax or the proper amount of Nonresident Tax. (c) A self-employed individual who is a Nonresident and who has a Workplace within a Taxing Authority that imposes Nonresident Tax but whose residence is within an area where a Resident Tax on earned income and net profits is not imposed. (d) A self-employed individual who is a Nonresident and who has a Workplace within a Taxing Authority that imposes Nonresident Tax at a rate higher than the Resident Tax rate applicable where the individual resides.
- C. Nonresidents who owe Nonresident Tax are required to file with the Collector annual and quarterly returns on a Collector provided form at the same times as applicable to Resident Taxpayers.

#### **SECTION 403 – REQUIREMENT TO AMEND RETURNS**

If the amount of “net compensation,” “net income from the operation of a business, profession or farm,” or “net income from rents, royalties, patents, or copyrights” is changed (whether as a result of an amended return, assessment, audit, or otherwise) in a manner resulting in an increase in income for purposes of Pennsylvania income tax for any period, the Resident or Nonresident shall, within 30 days after such change, file an amended annual return with the Collector reflecting additional Tax owed for the corresponding period.

## **SECTION 404 – INDIVIDUAL QUARTERLY RETURNS**

Every Taxpayer with earned income or net profits not subject to Employer withholding shall file by April 15 a declaration of estimated income not subject to withholding during the year. The Taxpayer shall file quarterly returns on April 15, June 15, and September 15 of the current year, and January 15 of the succeeding year, and pay to the Collector in four equal quarterly installments the Tax due on the estimated income. A Taxpayer who first anticipates any such income after April 15 shall file the declaration on or before the first quarterly return due date that follows the date on which the Taxpayer first anticipates such income. Quarterly returns are not required if the individual's total income subject to Tax for a year is less than \$12,000.

As provided in Section 503, a Taxpayer who fails to file quarterly returns and make required quarterly payments is subject to interest, penalties, and fines as set forth in the Enabling Act, 53 P.S. § 6924.509(i). The interest and penalty amount shall be applied based on the requirement to pay in four equal quarterly installments Tax owed for the year. However, an individual shall not be subject to interest, penalties, or fines if: (1) the individual has paid in each quarterly installment an amount equal to 90% of the Tax owed for the year, divided by 4, minus any Tax payments for the year made by Employer withholding; (2) the individual has paid in each quarterly installment an amount equal to 100% of the Tax owed for the prior year, divided by 4, minus any Tax payments for the year made by Employer withholding; or (3) quarterly installments represent Tax owed on the actual amount of income earned during each calendar quarter.

## **SECTION 405 – MULTIPLE TAX RATES**

Multiple tax rates might apply to a Taxpayer during a calendar year due to a tax rate change by a Taxing Authority, or a Taxpayer moving between areas with different rates or working in different municipalities with different rates.

## **ARTICLE V – ADMINISTRATION**

### **SECTION 501 – TAXPAYER AND EMPLOYER RECORDS**

Taxpayers and Employers are required to keep records sufficient to allow filing accurate returns and to justify all information reported on returns in the event of a request for information or audit by the Collector. Such records shall be preserved for at least 6 years after the end of the calendar year to which the records apply.

### **SECTION 502 – FAILURE TO RECEIVE FORMS**

Failure of a Taxpayer or Employer to receive returns or other forms shall not excuse failure to file any required returns or information or to pay Tax owed.

### **SECTION 503 – INTEREST, PENALTIES, AND FINES**

Taxpayers and Employers are subject to interest, penalties, and fines as set forth in the Enabling Tax, 53 P.S. § 6924.509(i).

**SECTION 504 – DELINQUENT TAX COLLECTION COSTS**

Taxpayers and Employers are required to pay delinquent tax collection costs according to a schedule of delinquent tax collection costs that has been approved by the TCC and as otherwise authorized by applicable law.

**SECTION 505 – REFUNDS**

A Taxpayer who has made an overpayment may request a refund on the annual tax return that shows the overpayment. In addition, a Taxpayer may request a refund by written request explaining the facts relating to the overpayment. A refund request must be made within the later of: (1) Three (3) years after the due date for filing the return for the Tax for which the refund is requested. (2) One (1) year after actual payment of the Eligible Tax for which the refund is requested. Taxpayers are encouraged, but are not required, to file a simple written request for a refund prior to filing a formal tax refund petition with the Tax Appeal Board. Refunds will only be made in the amount of \$1.00 or more.

**SECTION 506 – TAXPAYER AND EMPLOYER RIGHTS AND OBLIGATIONS**

Additional rights and obligations of Taxpayers and Employers are explained in a Taxpayer Bill of Rights Disclosure Statement available on the Collector internet website or by written request to the Collector.

**SECTION 507 – RULINGS AND APPEALS**

A Taxpayer or Employer may submit to the Collector a written request for interpretation of the applicable Enactment or these Regulations, or a determination with respect to an obligation of or amount owed by the Taxpayer or Employer. If a Taxpayer or Employer is dissatisfied with a decision of the Collector relating to the assessment, collection, refund, or withholding of Tax, the Taxpayer or Employer may file an appeal to the TCC Tax Appeal Board. Any such appeal must be filed in accordance with the rules set forth in the TCC Tax Appeal Board Regulations (including use of the form of Tax Appeal Petition attached to the Tax Appeal Board Regulations). The Tax Appeal Board Regulations are available on the Collector internet website and will also be mailed or emailed to any person on written request.