

The Borough of Prospect Park recently passed an ordinance to begin collecting a local earned income tax in 2021. The tax will be assessed to Borough residents and non-residents working in the Borough at 1% of earned income and net profits. Non-residents who already pay the tax in their home community will not be double taxed. This rate will be effective as of January 1, 2021.

Pennsylvania law requires employers to withhold and report employee EIT. Quarterly payroll withholding and payment is due within 30 days after the close of each calendar quarter to avoid statutory penalty, interest and Act 192 costs.

Keystone Collections Group, the Act 32 tax officer for municipalities and school districts in Delaware County, will be responsible for collecting the tax and distributing the tax funds to Prospect Park.

Keystone encourages employers to file local payroll taxes online using its Business Portal. Keystone's e-filing systems are accessible at www.KeystoneCollects.com/page/business. Residents can also visit Keystone's website to obtain additional information about the tax payment process.



KEYSTONE collections groupSM

MEMORANDUM

Local Earned Income Tax – Resident, Nonresident, Philadelphia City Wage Tax

Pennsylvania local earned income taxes are assessed and administered pursuant to the Local Tax Enabling Act, codified at 53 P.S. § 6924.101 et seq. (“*LTEA*”). The *LTEA* provides that employers shall “deduct from the compensation due each employee employed at such place of business the greater of the employee’s resident tax or the employee’s nonresident tax as released in the official register.” 53 P.S. § 6924.512(3). An employee’s nonresident tax rate is determined by their “work location”.

The Pennsylvania Department of Community and Economic Development (DCED), which regulates EIT within the Commonwealth of Pennsylvania, provides taxpayers with guidance on issues regarding EIT, including information regarding local withholding. Its website, under “Frequently Asked Questions” provides:

An individual employee’s local Earned Income Tax (EIT) Rate is determined by comparing the employee’s “Total Resident EIT Rate” (for the municipality in which the employee lives) to the “Work Location Non-Resident EIT Rate” (for the municipality in which the employee works). The applicable EIT rate owed and to be withheld is always the higher of the two rates.

Accordingly, a taxpayer’s effective local earned income tax rate is the greater of their resident local earned income tax rate and their nonresident local earned income tax rate. In situations where the nonresident local earned income tax rate exceeds the resident local earned income tax rate, the taxpayer may claim withholdings sufficient to satisfy their resident local earned income tax liability. The additional tax associated with the nonresident local earned income tax is payable to the work location. Remittance of the nonresident local earned income tax is handled by the Tax Officer to which the funds were withheld and remitted on the taxpayer’s behalf. Importantly, taxpayers may not claim refunds for nonresident local earned income taxes.

For example, the City of Allentown assesses a nonresident earned income tax at the rate of 1.28%. This rate exceeds many of the surrounding communities’ resident local earned income tax rate. Accordingly, many taxpayers who work in Allentown but reside elsewhere are withheld at the rate of 1.28%. Such withholdings, to the extent they exceed the taxpayer’s resident tax rate, are payable to the City of Allentown and may not be claimed against the taxpayer’s resident local earned income taxes.

Income taxes paid to the City of Philadelphia under the City Wage Tax represent an exception to this rule. Philadelphia assesses an income tax at the rate of 3.5019% (up from 3.4481%) on

individuals who work but do not reside in the City. Such tax withholdings are never remitted to Tax Officers. That is, the entire nonresident tax is payable to the City of Philadelphia, and no portion applies to a taxpayer's resident local earned income tax liability. Such taxpayers are permitted to claim a credit on their local earned income taxes for all taxes withheld to the City of Philadelphia. In nearly all circumstances, the Philadelphia City Wage Tax credit negates the taxpayer's resident local earned income tax liability, although no refund is available because there is technically no overpayment of tax. The resident municipality therefore does not receive any tax from such taxpayer.

The Philadelphia credit scheme was challenged in Court as unconstitutionally preferential to the City of Philadelphia. However, in *Berks County Tax Collection Committee, et al. v. DCED*, 60 A.3d 589 (Pa. Commw. Ct. 2013), the Pennsylvania Commonwealth Court upheld the Philadelphia "super-credit."