



## Text File

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**Committee:** Committee on Finance and Law

**Status:** Passed Finally

Ordinance amending the Pittsburgh Code at Title Two: Fiscal, Article VII: Business Related Taxes, Chapter 258: Payroll Tax, Section 258.01: Definitions, to update language in the city code.

**The Council of the City of Pittsburgh hereby enacts as follows:**

The Pittsburgh Code is hereby amended at Title Two: Fiscal, Article VII: Business Related Taxes, Chapter 258: Payroll Tax, Section 258.01: Definitions, as follows:

**CHAPTER 258: - PAYROLL TAX**

**§ 258.01 - DEFINITIONS.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

- (a) **BUSINESS** means any activity, enterprise, profession, trade or undertaking of any nature conducted or engaged in, or ordinarily conducted or engaged in, with the object of gain, benefit or advantages, whether direct or indirect, to the taxpayer or to another or others. The term shall include subsidiary or independent entities which conduct operations for the benefit of others and at no profit to themselves, nonprofit businesses, and trade associations. A person shall be deemed to be conducting business within the City who engages, hires, employs or contracts with one (1) or more individuals as employees or is self-employed and, in addition, does at least one (1) of the following: (1) maintains a fixed place of business within the City; (2) owns or leases real property within the City for purposes of such business; (3) maintains a stock of tangible, personal property in the City for sale in the ordinary course of business; (4) conducts continuous solicitation within the City related to such business; or (5) utilizes the streets of the City in connection with the operation of such business, other than for the mere transportation from a site outside the City, through the City, to a destination outside of the City. A person shall be deemed to be engaged in business who, in return for rental income, rents, leases or hires real or personal property to others. A person shall not be deemed to be engaged in business solely by reason of the receipt of income from passive investments for which no services were rendered.
- (b) **CHARITY** means a charitable organization that qualifies for tax exemption pursuant to the act of November 26, 1997 (P.L. 508, No 55), known as the "Institutions of Purely Public Charity Act."
- (c) **COMPENSATION** means salaries, wages, commissions, bonuses, net earnings and incentive payments, whether based on profit or otherwise, fees, tips and any other form of remuneration earned for services rendered, whether paid directly or through an agent, and whether in cash or in property or the right to receive property. The compensation of a shareholder in an S Corporation does not include

any dividends received from that S Corporation.

- (d) **EMPLOYEE** means any individual in the service of an employer, under an appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. In addition, for purposes of this tax, and irrespective of the common law tests for determining the existence of an independent contractor relationship, an individual performing work or service for compensation shall be deemed to be an employee of the person for whom the work or service is performed unless: (1) such individual has been and will continue to be free from control or direction over the performance of such work or service, both under his/her appointment or contract of hire or apprenticeship; (2) such work or service is either outside the usual course of the business of the person for which such service is performed; or, (3) such individual is customarily engaged in an independently established trade, occupation, business or profession. A partner or a self-employed person is not an employee.
- (e) **EMPLOYER** means any person conducting business activity within the City, except for a governmental entity. A self-employed person or a partner in a partnership, which does not file payroll expense returns on behalf its partners, are treated as employers.
- (f) **INTERNAL REVENUE CODE** means the Internal Revenue Code of 1986 (Public Law 99-514), as amended.
- (g) **PAYROLL EXPENSE OR AMOUNTS** means all compensation earned by an employee or profits earned by a self-employed individual or a partner in a partnership. When the partnership files on behalf of its partners, its payroll expense shall include: (a) all compensation paid to employees; (b) all guaranteed payments made to partners; and (c) the lesser of profits from the business or draws and distributions made to partners.
- (h) **PARTNER** means an individual who performs services for a partnership. An individual who receives a Form W-2 from the partnership is not a partner but is an employee.
- (i) **PARTNERSHIP** means an unincorporated entity, joint venture, business trust, partnership, or limited liability company, which has two or more owners, and is not classified as a corporation under the Tax Reform Act of 1971, 72 P.S. § 7401, and is not a charity.
- ([h]i) **PERSON** means a corporation, partnership, business trust, limited liability company, other association, estate, trust, foundation or natural person.
- ([i]k) **PROFITS** means a share of net income earned for services rendered from a partnership or received by a self-employed person, [a limited liability company, a business trust or S corporation,] after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with accepted accounting principles and practices, and including, but not limited to, any amount treated as net earnings from self-employment for services rendered. Profits earned by self-employed individuals or partners in a partnership shall be limited to the lesser of draws and distributions received by the individual from the business or net income of the business. Guaranteed payments received by partners shall be treated as profits earned and draws from the business. The profits received by a partner or self-employed person does not include income that is classified as income from passive investments.

(l) **SELF-EMPLOYED PERSON** means an individual who operates a sole-proprietorship or is the single member owner of an unincorporated entity, such as a business trust or limited liability company, that is not classified as a corporation under the Tax Reform Act of 1971, 72 P.S. § 7401, and which is not a charity.

([j]m) **TAX YEAR** means a twelve-month period from January 1 to December 31.

([k]n) **TEMPORARY SEASONAL OR ITINERANT BUSINESS** shall mean an employer whose presence in the City is of a duration of one hundred twenty (120) days or less.

(Ord. 26-2004, eff. 12-20-04; Ord. No. 3-2005, § 1, eff. 1-1-05) § 258.02 - LEVY AND RATE.

For general revenue purposes a tax is hereby levied at the rate of fifty-five hundredths (.55) of a percent on the amount of payroll expense generated as a result of an employer conducting business activity within the City.

(Ord. 26-2004, eff. 12-20-04; Ord. No. 3-2005, § 1, eff. 1-1-05) § 258.03 - COMPUTATION OF TAX.

- (a) For purposes of computation of the tax imposed in Section 258.02, the payroll amount attributable to the City shall be determined by applying an apportionment factor to total payroll expense based on that portion of payroll which the total number of days an employee, partner, member, shareholder or other individual works within the City bears to the total number of days such employee or person works both within and outside the City.
- (b) Tax base. The tax shall be computed on the payroll expense of the previous quarter attributable to the City.
- (c) An employer, which conducts business in the City on a temporary, seasonal or itinerant basis, shall calculate the tax on the total compensation earned while in the City.
- (d) A charitable organization, as defined above, shall calculate the tax that would otherwise be attributable to the City, but shall only pay the tax on that portion of its payroll expense attributable to business activity for which a tax may be imposed pursuant to Section 511 of the Internal Revenue Code. If the charity has purchased or is operating branches, affiliates, subsidiaries or other business entities that do not independently meet the standards of the "Institutions of Purely Public Charity Act", the tax shall be paid on the payroll attributable to such for-profit branches, affiliates or subsidiaries, whether or not the employees are leased or placed under the auspices of the charity's umbrella or parent organization.

(Ord. 26-2004, eff. 12-20-04; Ord. No. 3-2005, § 1, eff. 1-1-05) § 258.04 - PAYMENTS.

An employer subject to the tax shall make a return and shall pay the tax quarterly at such time or times and in such manner as provided in Section 258.06.

(Ord. 26-2004, eff. 12-20-04; Ord. No. 3-2005, § 1, eff. 1-1-05) § 258.05 - REGISTRATION.

Registration. Every person having an office, factory, workshop, branch, warehouse, or other place of business, including banks, schools, hospitals, non-profit, and trade associations, located in the City or outside the City, who, during any tax year, performs work or renders services in whole or in part in the City, who has not previously registered, shall within fifteen (15) days, register with the Treasurer its name and address and shall provide such other information as the Treasurer may require.

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(Ord. 26-2004, eff. 12-20-04; Ord. No. 3-2005, § 1, eff. 1-1-05) § 258.06 - RETURNS.

The first quarterly return, which is due May 31 of the current year, shall be filed and the tax shall be paid based on the amount of payroll expense during the months of January, February, and March of the current year; the second quarterly return, which is due August 31 of the current year, shall be filed and the tax shall be paid based on the amount of payroll expense during the months of April, May, and June of the current year; the third quarterly return, which is due November 30 of the current year, shall be filed and the tax shall be paid based on the amount of payroll expense during the months of July, August, and September of the current year; the fourth quarterly return, which is due February 28 of the succeeding year, shall be filed and the tax shall be paid based on the amount of payroll during the months of October, November, and December of the current year.

An employer which conducts business in the City on a temporary, seasonal or itinerant basis shall file a return and pay the tax within ten (10) days of the completion of the temporary, seasonal, or itinerant business.

(Ord. 26-2004, eff. 12-20-04; Ord. No. 3-2005, § 1, eff. 1-1-05; Ord. No. 42-2015, § 1, eff. 11-10-15) § 258.07 - PENALTIES AND INTEREST.

If for any reason the tax is not paid when due, interest at the rate of six (6) percent per annum on the amount of said tax and an additional penalty of one (1) percent of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid shall be added and collected.

In addition to any other penalties or enforcement proceedings provided for by ordinance for the collection and enforcement of taxes:

- (1) Any employer who willfully makes any false or untrue statement on the employer's return shall be guilty of a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not more than two thousand dollars (\$2,000.00) or to a term of imprisonment of not more than two years, or both;
- (2) Any employer who willfully fails or refuses to file a return required by this chapter shall be guilty of a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than one thousand dollars (\$1,000.00) or to a term of imprisonment of not more than one (1) year, or both; and
- (3) Any person who willfully fails or refuses to appear before the Treasurer or his agent in person with the employer's books, records or accounts for examination when required under the provisions of this Title to do so, or who willfully refuses to permit inspection of the books, records or accounts of any employer in the person's custody or control when the right to make such inspection by the Treasurer or his agent is requested, shall be guilty of a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than five hundred dollars (\$500.00) or to a term of imprisonment of not more than six (6) months, or both.

(Ord. 26-2004, eff. 12-20-04; Ord. No. 3-2005, § 1, eff. 1-1-05) § 258.08 - REPEALS.

All ordinances and parts of ordinances are repealed to the extent they are inconsistent with this ordinance.

(Ord. 26-2004, eff. 12-20-04; Ord. No. 3-2005, § 1, eff. 1-1-05)