

City of Wilmington



MICHAEL S. PURZYCKI
Mayor

TO: Employers and Employees of Businesses within the City limits

FROM: J. Brett Taylor, Director of Finance

DATE: November 30, 2020

RE: Interpretation of Earned Income Tax Regulations for Tax Years 2020 and 2021

The following document outlines the City of Wilmington's interpretation of earned income tax and head tax regulations in light of the State of Delaware's Declaration of Emergency impact on remote workplaces for employees of companies doing business in the City.

As with many communities across the nation and globally, the City of Wilmington has been affected by the spread of the coronavirus disease 2019 (COVID-19), a respiratory disease caused by a strain of coronavirus. On March 11, 2020, the World Health Organization elevated COVID-19 from a Public Health Emergency to a 'pandemic'. On March 11, the first case of COVID-19 was confirmed in the State of Delaware. On March 11, 2020 President Trump proclaimed that the COVID-19 outbreak in the United States constituted a national emergency beginning on March 1, 2020. On March 12, 2020, the Governor of Delaware declared a State of Emergency and has subsequently issued emergency orders to contain the spread of the virus, limit gatherings of people, closing several establishments which draw larger numbers of people, and encouraged businesses to utilize remote workplaces to conduct business. Subsequent amendments to the emergency order allowed for Phase II reopening of eating establishments, day cares, and schools, but with conditional social distancing protections in place. Phase II has been extended indefinitely or until drops in cases occur due to social distancing and other protective measures.

The City of Wilmington clarified regulatory guidance in an advertised public comment period on June 10, 2020 with comments due back by July 15, 2020. The City received only three inquiries and had no requested hearings on the matter. The Administrative Board, the body which promulgates administrative regulations, allowed continued discussion until October 13, 2020, whereby the following changes to the guidance were suggested below.

These changes to the earned income tax regulations reflect the following:

- a) Clarifies the terms "work performed or rendered" for the purposes of determining the application of earned income tax on work performed remotely;
- b) Clarifies the apportionment calculation for non-resident wage earners.

Non-resident employees who work for City-based businesses are responsible for paying earned income tax based on the portion of work performed and rendered within the City limits. The City of Wilmington interprets "performed" as work done within the physical limits of the City while services "rendered" is work performed on behalf of the City-based employer, regardless of the employee's location inside or outside the City.

Under the COVID-19 Declaration of Emergency, the City of Wilmington views employees working remotely as temporary, much like other emergencies, such as weather-related events. Therefore, earned income tax will be imposed. Employees whose official work locations are within the City limits are considered for all intents and purposes subject to wage tax UNLESS the employer certifies that the employee did not provide or render services to the employer's location within the City limits during the emergency order in the 2020 tax year.

Once the Declaration of Emergency is lifted, employees who continue to work from home will do so at the employer's convenience and still subject to the wage tax unless the employer certifies that the employee has permanently ceased providing services or rendering services to the employer's location within the City limits.

The same holds true for the head tax. Employers domiciled in Wilmington and to which the employee's work location is documented at the same location are required to pay head tax on employees of 5 or more. Head tax filings may be subject to review by the City of Wilmington to determine if the employee record of work location is in the City of Wilmington.

All refunds and certifications are subject to approval by the Director of Finance for the City of Wilmington. All appropriate documentation must be filed before approvals are finalized.

This rule interpretation will apply to income beginning in the 2020 tax year, retroactive to January 1, 2020 and subsequent tax years until changed through the regulatory process.

Thank you.

JBT/ms

Cc: Robert M. Goff, City Solicitor

CITY OF WILMINGTON DEPARTMENT OF FINANCE
PROPOSED AMENDMENT TO EARNED INCOME TAX REGULATIONS

I. PURPOSE

The Director of Finance wishes to amend section 203 of the City of Wilmington Earned Income Regulations to allow for more efficient and equitable administration of the tax in accordance with the purposes of the statute.

II. BACKGROUND

Section 44-116 of the Wilmington City Code gives director of finance authority to prescribe, adopt, and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of the earned income tax imposed by article V of chapter 44 of the Wilmington City Code.

Section 8-407 of the Charter of the City of Wilmington empowers the Department of Finance to make reasonable regulations as may be necessary and appropriate in the exercise of its powers and the performance of its duties under this Charter or under any statute or ordinance.

Sec. 44-107 provides for the imposition of earned income tax on the following:

- Salaries, wages, commissions and other compensation earned by residents of the City;
- Salaries, wages, commissions and other compensation earned by nonresidents of the City for work done or services performed or rendered in the City;

The City of Wilmington applies earned income tax definitions for “performed and rendered” to mean those service both physically performed while in the limits of the City and/or services rendered by the employee on behalf of employer (including self-employed and limited liability companies) whose personnel location of record is established in the City, regardless of the employee’s physical location.

III. EFFECTIVE DATE

Provided all requirements of section 8-407 of the Charter of the City of Wilmington have been met by June 30, 2020, the provisions of the amended to section 203 of the Earned Income Tax Regulations will apply to earnings taxable in accordance with the taxpayer’s method of accounting on or after July 1, 2020.

III. AMENDMENT

Section 203(D) of the Earned Income Tax Regulations is deleted and replaced with the following:

SECTION 203(D) - TAXABLE EARNINGS OF NONRESIDENT EMPLOYEES BASED IN WILMINGTON

A nonresident employee based in Wilmington must include days or half days worked at home or a remote location outside the City limits as days worked in the City, unless the employer certifies that either the employee worked remotely for the employer’s convenience, or the employer required the employee to work remotely as a condition of employment.

In general, if the employee could have worked at his or her work location in Wilmington but chose to work at a remote location for his or her own convenience, the day or half day shall be regarded as a day worked in the City.

Employers who require employees to work at home or a remote location outside of the City due to but not limited to, workplace and construction work on or utility outages at the employer's premises or situations involving weather-related or government issued public emergencies, making it impossible or unsafe for the employee to report to the workplace, must certify the employee's apportionment and location before the employee may apply for a refund.

If a public emergency has been lifted or eased and the employee elects or employer allows the employee to continue to work from home or a remote location, such days or half days worked at home will be subject to earned income tax, unless the employer certifies that the employee has permanently ceased providing services or rendering services to the employer's location within the City limits.

J. Brett Taylor
Director of Finance
City of Wilmington, Delaware
November 30, 2020