

## AMENDMENTS TO HOUSE BILL NO. 2413

Sponsor: REPRESENTATIVE GREINER

Printer's No. 3508

1 Amend Bill, page 1, lines 10 through 20, by striking out "in  
2 personal income tax, further providing for" in line 10 and all  
3 of lines 11 through 20 and inserting

4 in personal income tax, further providing for tax withheld, for  
5 withholding tax requirement for nonemployer payors, for  
6 information statement for nonemployer payors, for information  
7 statement for payees, for time for filing payor's returns,  
8 for payment of taxes withheld for nonemployer payors, for  
9 liability for withheld taxes, repealing provisions relating  
10 to payor's liability for withheld taxes, further providing  
11 for bulk and auction sales and transfers, notice, repealing  
12 provisions relating to payor's failure to withhold, providing  
13 for annual withholding return, further providing for amount  
14 of withholding tax and for treatment of nonresident partners,  
15 members, or shareholders, repealing provisions relating to  
16 withholding on income and to annual withholding statement,  
17 further providing for requirements concerning returns,  
18 notices, records and statements, for interest and for  
19 additions, penalties and fees.

20 Amend Bill, page 1, lines 23 through 26; pages 2 through 15,  
21 lines 1 through 30; page 16, line 1; by striking out all of said  
22 lines on said pages and inserting

23 Section 1. Sections 312, 316.2, 317.1, 317.2, 318.1 and  
24 319.1 of the act of March 4, 1971 (P.L.6, No.2), known as the  
25 Tax Reform Code of 1971, amended or added October 30, 2017  
26 (P.L.672, No.43), are amended to read:

27 Section 312. Tax Withheld.--(a) The amount withheld under  
28 [section 316.1] sections 316.1 and 316.2 shall be allowed to the  
29 taxpayer from whose income the tax was withheld as a credit  
30 against the tax imposed on him by this article.

31 (b) The credit under subsection (a) shall be allowed for the  
32 person's taxable year in which the tax was withheld.

33 Section 316.2. Withholding Tax Requirement for Nonemployer  
34 Payors and Lessees.--(a) To the extent not already required to

1 withhold tax on payments under section 316.1, a person that  
2 makes the following types of payments, who is also required to  
3 issue or voluntarily issues Federal form 1099-MISC for such  
4 payments shall deduct and withhold from the payments an amount  
5 equal to the amount of the payment required to be reported on  
6 the Federal form 1099-MISC multiplied by the tax rate specified  
7 under section 302(b):

8 (1) [makes] payments totaling \$5,000 or more of income from  
9 sources within this Commonwealth described in section 303(a)(1)  
10 or (2) during the calendar year to either a nonresident  
11 individual or an entity that is classified as a disregarded  
12 entity under section 307.21 that [has a nonresident member; and

13 (2) is required under section 335(f)(1) to file a copy of  
14 form 1099-MISC with the department regarding the payments;  
15 shall deduct and withhold from the payments an amount equal to  
16 the net amount of the payments multiplied by the tax rate  
17 specified under section 302(b).

18 (b) Withholding of tax by payors is optional and at the  
19 discretion of the payor with respect to payees who receive  
20 payments of less than \$5,000 annually from the payor.

21 (c) This section shall not apply to payments made by a payor  
22 to a payee if the payor is:

23 (1) The United States or an agency or instrumentality  
24 thereof; or

25 (2) The Commonwealth or an agency, instrumentality or  
26 political subdivision thereof.

27 (d) The department may prescribe regulations to implement  
28 and clarify the withholding requirement set forth in this  
29 section.] is owned by a nonresident individual; or

30 (2) lease payments totaling \$5,000 or more for real estate  
31 in this Commonwealth to a nonresident lessor either directly or  
32 indirectly through a management company or other agent  
33 authorized to receive the lease payments on behalf of the  
34 nonresident lessor.

35 (b) Withholding of tax by a payor or lessee is optional and  
36 at the discretion of a payor or lessee with respect to payments  
37 of income from sources within this Commonwealth of less than  
38 \$5,000 annually.

39 (c) If at the time of a payment a payor or lessee cannot  
40 reasonably expect total payments of income from sources within  
41 this Commonwealth to a payee or lessor to be at least \$5,000  
42 during the calendar year, the payor or lessee shall begin to  
43 withhold tax once the payor or lessee reasonably expects that  
44 total payments of income from sources within this Commonwealth  
45 to the payee will be at least \$5,000 during the calendar year.  
46 The payor or lessee will not be required to withhold tax on  
47 payments made prior to that time.

48 (d) A management company acting as an agent for a lessee may  
49 withhold and remit the tax on behalf of the lessee. A management  
50 company that withholds the tax on behalf of the lessee becomes  
51 jointly and severally liable with the lessee for the tax. A

1 lessee is not relieved from liability for withholding tax if the  
2 management company fails to withhold and remit the tax.

3 (e) A management company, agent or payee that withholds its  
4 compensation from a payment from a lessee or other person shall  
5 remit to the lessor or payor with the balance of the payment any  
6 tax required to be withheld under this section. If no portion of  
7 the payment is remitted to the lessor or payor, the management  
8 company, agent or payee must remit the amount of the withheld  
9 tax to the lessor or payor within thirty (30) days of receipt of  
10 the payment from the lessee or other person. The lessor or payor  
11 must remit and report the tax in accordance with sections 318.1  
12 and 319.1.

13 (f) Except as provided in subsection (g), in instances where  
14 a payment to a payee is attributable to business engaged in, or  
15 services performed both within and without this Commonwealth,  
16 the portion of the payment constituting income from sources  
17 within this Commonwealth for withholding purposes shall be  
18 determined by multiplying the payment times the fraction of time  
19 spent in this Commonwealth engaging in business or performing  
20 services in this Commonwealth to which the payment relates over  
21 total time spent engaging in business or performing services  
22 everywhere to which the payment relates. Time spent shall be  
23 measured in days, hours or any other unit of time that results  
24 in a fair and equitable determination of income from sources  
25 within this Commonwealth.

26 (g) If the payment is based upon volume of activity,  
27 including commissions of a salesman, the portion of the payment  
28 constituting income from sources within this Commonwealth would  
29 be apportioned based upon the volume of activity within and  
30 outside this Commonwealth.

31 (h) (1) A payor or lessee is not required to withhold the  
32 tax under this section if the payee or lessee provides a  
33 certification that:

34 (i) the payee or lessor is a resident of this Commonwealth;  
35 or

36 (ii) the payee or lessor is not subject to tax under this  
37 article.

38 (2) The certification may be on a form prescribed by the  
39 department or a substitute form as long as the form contains the  
40 information necessary for the payor or lessee to determine  
41 whether withholding is required, and the payee or lessor signs  
42 the form.

43 (i) If a payment relates to business engaged or services  
44 performed within or outside this Commonwealth, a nonresident  
45 payee shall provide the payor with the portion of the payment  
46 that is attributable to business engaged or services performed  
47 within this Commonwealth as determined in accordance with  
48 subsections (f) and (g).

49 (j) If a payee or lessor fails to provide the required  
50 information under subsection (h) or a payee fails to provide the  
51 required information in subsection (i), the payor or lessee

1 shall withhold tax on one hundred per cent of each payment until  
2 the payee or lessor provides the required information. The payor  
3 or lessee may not be required to adjust the tax withheld on any  
4 payment made prior to receipt of the required information.

5 (k) A payor or lessee that, in good faith, relies upon  
6 information that a payee or lessor provides under subsections  
7 (h) and (i) may not be subject to the imposition of a tax under  
8 section 320, interest and penalty under this article if the  
9 department determines that the payee or lessor was subject to  
10 withholding under this section or the payee erroneously provided  
11 the payor with the amount of a payment constituting income from  
12 sources within this Commonwealth.

13 (l) The department may promulgate regulations necessary to  
14 implement the withholding requirements of this section.

15 (m) This section shall not apply to payments made by a payor  
16 or lessee who is:

17 (1) the United States or an agency or instrumentality  
18 thereof;

19 (2) the Commonwealth or an agency, instrumentality or  
20 political subdivision thereof; or

21 (3) a lessee under a residential lease.

22 (n) For purposes of this section, the term or phrase:  
23 "Lease payment." Includes, but is not limited to, rents,  
24 royalties, bonus payments, damage payments, delay rents and  
25 other payments that are made pursuant to a lease other than  
26 compensation derived from intangible property having a taxable  
27 or business situs in this Commonwealth. Classification as a  
28 "lease payment" under this section is solely for the purpose of  
29 establishing withholding requirements and is not relevant for  
30 determining the proper income classification of the lease  
31 payment.

32 "Lessor." An individual, estate or trust.

33 Section 317.1. [Information Statement for Nonemployer  
34 Payors.--Every payor required to deduct and withhold tax under  
35 section 316.2 shall furnish to a payee to whom the payor has  
36 paid income from sources within this Commonwealth during the  
37 calendar year a copy of form 1099-MISC required under section  
38 335(f)(1). The copy of form 1099-MISC required by this section  
39 for each calendar year shall be forwarded to the payee on or  
40 before March 1 of the year succeeding the calendar year.]

41 Information Statement.--(a) Every person required to deduct and  
42 withhold tax under section 316.2 shall furnish to a payee or  
43 lessee to whom the person has paid income during the calendar  
44 year and the department a copy of the Federal form 1099-MISC  
45 reporting the payment. The copy of form 1099-MISC required by  
46 this section for each calendar year shall be forwarded to the  
47 payee or lessor and the department on or before the date the  
48 person is required to furnish the form for Federal income tax  
49 purposes. The form shall include the amount of the payment  
50 subject to withholding under this part and the amount of  
51 Pennsylvania tax withheld in accordance with section 316.2.

1     (b) A person that files a corrected Federal form 1099-MISC  
2 for Federal income tax purposes shall file a corrected Federal  
3 form 1099-MISC with the department if there is a change in  
4 income from sources within this Commonwealth of a payee or  
5 lessor or if a person erroneously reports income from sources  
6 within this Commonwealth or the amount of tax withheld.

7     (c) The Federal form 1099-MISC shall be filed electronically  
8 with the department.

9     Section 317.2. Information Statement for Payees or  
10 Lessors.--Every payee or lessor receiving a [copy of] Federal  
11 form 1099-MISC [from a payor] under section 317.1 shall file a  
12 [duplicate of such information return with the payee's] copy  
13 with his or her State income tax return.

14     Section 318.1. Time for Filing [Payors'] Nonemployer Payer  
15 and Lessee Withholding Returns.--Every [payor] person required  
16 to deduct and withhold tax under section 316.2 shall file a  
17 quarterly withholding return with the department on or before  
18 the last day of April, July, October and January for each three-  
19 month period ending the last day of March, June, September and  
20 December. The quarterly returns shall be filed with the  
21 department [in the manner prescribed by regulation.] beginning  
22 with the quarter in which the tax is required to be remitted  
23 under section 319.1.

24     Section 319.1. Payment of Taxes Withheld for Nonemployer  
25 Payors and Lessees.--Every [payor] person withholding tax under  
26 section 316.2 shall pay over to the department or to a  
27 depository designated by the department the tax required to be  
28 deducted and withheld under section 316.2. The time for paying  
29 over the withheld tax shall be as set forth in section 319(1),  
30 (2), (3) and (4).

31     Section 2. Section 320 of the act is amended to read:

32     Section 320. Liability for Withheld Taxes.--[Every] Except  
33 as otherwise provided in this part, every person required to  
34 deduct and withhold tax or voluntarily deducts and withholds tax  
35 under [section 316.1] sections 316.1 and 316.2 is hereby made  
36 liable for such tax. For purposes of assessment and collection,  
37 any amount required to be withheld and paid over to the  
38 department, any amount voluntarily withheld and paid over to the  
39 department and any additions to tax, penalties and interest with  
40 respect thereto, shall be considered the tax of the person. All  
41 taxes deducted and withheld pursuant to [section 316.1 or under  
42 color of section 316.1] sections 316.1 and 316.2 shall  
43 constitute a trust fund for the Commonwealth and shall be  
44 enforceable against such person, his representative or any other  
45 person receiving any part of such fund.

46     Section 3. Section 320.1 of the act is repealed:

47     [Section 320.1. Payor's Liability for Withheld Taxes.--Every  
48 payor required to deduct and withhold tax under section 316.2 is  
49 hereby made liable for such tax. For purposes of assessment and  
50 collection, any amount required to be withheld and paid over to  
51 the department and any additions to tax, penalties and interest

1 with respect thereto shall be considered the tax of the payor.  
2 All taxes deducted and withheld from payees pursuant to section  
3 316.2 or under color of section 316.2 shall constitute a trust  
4 fund for the Commonwealth and shall be enforceable against such  
5 payor, his representative or any other person receiving any part  
6 of such fund.]

7 Section 4. Section 321.1 of the act is amended to read:

8 Section 321.1. Bulk and Auction Sales and Transfers,  
9 Notice.--[(a) An employer] A person that is liable for filing  
10 returns in accordance with the provisions of this part and  
11 either sells or causes to be sold at auction, or sells or  
12 transfers in bulk, fifty-one per cent or more of any stock of  
13 goods, wares or merchandise of any kind, fixtures, machinery,  
14 equipment, buildings or real estate held by or on behalf of the  
15 employer shall be subject to the provisions of section 1403 of  
16 "The Fiscal Code."

17 Section 5. Section 321.2 of the act is repealed:

18 [Section 321.2. Payor's Failure to Withhold.--If a payor  
19 fails to deduct and withhold tax as prescribed under section  
20 316.2 and thereafter the tax which may be credited is paid, the  
21 tax which was required to be deducted and withheld shall not be  
22 collected from the payor, but the payor shall not be relieved of  
23 the liability for any penalty, interest or additions to the tax  
24 imposed with respect to such failure to deduct and withhold.]

25 Section 6. The act is amended by adding a section to read:

26 Section 323.1. Annual Withholding Return.--A person required  
27 to withhold tax under this part shall file an annual withholding  
28 return in a time and in such manner as the department may  
29 prescribe showing the total payments subject to withholding and  
30 the total amount of tax deducted, withheld and remitted.

31 Section 7. Sections 324.1 and 324.2 of the act, amended  
32 October 30, 2017 (P.L.672, No.43), are amended to read:

33 Section 324.1. Amount of Withholding Tax.--(a) The amount  
34 of tax withheld [from nonresidents and the amount of the  
35 withholding tax payable] under section 324 shall be equal to the  
36 income from sources within this Commonwealth of the partnership,  
37 association or Pennsylvania S corporation which is allocable to  
38 nonresident partners, members or shareholders multiplied by the  
39 tax rate specified in section 302(b).

40 (b) There shall not be taken into account any item of  
41 income, gain, loss or deduction to the extent allocable to any  
42 partner, member or shareholder who is not a nonresident.

43 [(c) There shall not be taken into account any share of  
44 income of nonresident partner, member or shareholder from  
45 sources within this Commonwealth to the extent that the amount  
46 was subject to withholding under section 324.4 and to the extent  
47 withholding actually occurred under section 324.4 by the time  
48 withholding is required to be made by the partnership,  
49 association or Pennsylvania S corporation under section 324.]

50 Section 324.2. Treatment of Nonresident Partners, Members or  
51 Shareholders.--[(a)] Each nonresident partner, member,

1 shareholder or holder of a beneficial interest shall be allowed  
2 a credit for such partner's, member's, shareholder's or holder  
3 of a beneficial interest's share of the withholding tax paid by  
4 the partnership, association or Pennsylvania S corporation. Such  
5 credit shall be allowed for the partner's, member's,  
6 shareholder's or holder of a beneficial interest's taxable year  
7 in which, or with which, the partnership, association or  
8 Pennsylvania S corporation taxable year (for which such tax was  
9 paid) ends.

10 [(b) Each nonresident lessor shall be allowed a credit for  
11 the nonresident lessor's share of the withholding tax paid by  
12 the lessee under section 324.4.

13 (c) The credits under this section shall be allowed for the  
14 nonresident lessor's taxable year in which the lessee withheld  
15 tax.]

16 Section 8. Sections 324.4 and 324.5 of the act are repealed:

17 [Section 324.4. Withholding on Income.--(a) Every lessee of  
18 Pennsylvania real estate who makes a lease payment in the course  
19 of a trade or business to a nonresident lessor shall withhold  
20 Pennsylvania personal income tax on rental payments to such  
21 nonresident lessor.

22 (b) Every lessee shall withhold from each payment made to a  
23 lessor an amount equal to the net amount payable to the lessor  
24 multiplied by the tax rate specified under section 302(b).

25 (c) (Reserved).

26 (d) The withholding of tax under this section is optional  
27 and at the discretion of the lessee with respect to payments to  
28 a lessor who receives less than \$5,000 annually on a lease.

29 (e) For purposes of this section, the term or phrase:

30 (1) "Lessor" shall include an individual, estate or trust.

31 (2) "Lease payment" shall include, but not be limited to,  
32 rents, royalties, bonus payments, damage payments, delay rents  
33 and other payments made pursuant to a lease, other than  
34 compensation derived from intangible property having a taxable  
35 or business situs in this Commonwealth. Classification as a  
36 "lease payment" under this section is solely for the purposes of  
37 establishing withholding requirements and shall not be relevant  
38 for a determination as to the proper income classification of  
39 any such lease payment.

40 (3) "In the course of a trade or business" shall include any  
41 person or business entity making lease payments to a nonresident  
42 or agent of a nonresident who collects rent or lease payments on  
43 behalf of a nonresident owner other than a tenant of residential  
44 property.

45 Section 324.5. Annual Withholding Statement.--(a) Every  
46 lessee shall furnish to each lessor an annual statement at such  
47 time and in such manner as may be prescribed by the department  
48 showing the total payments made by the lessee to the lessor  
49 during the preceding taxable year and showing the amount of the  
50 tax deducted and withheld from the payments under section 324.4.

51 (b) Every lessee shall file with the department an annual

1 statement at such time and in such manner as may be prescribed  
2 by the department showing the total payments made to each lessor  
3 subject to withholding during the preceding taxable year or any  
4 portion of the preceding taxable year and the total amount of  
5 tax deducted and withheld under section 324.4.

6 (c) Every lessor shall file a duplicate of the annual  
7 statement furnished by the lessee under this section with the  
8 lessor's State income tax return.]

9 Section 9. Section 335(f), amended October 30, 2017  
10 (P.L.672, No.43), is amended to read:

11 Section 335. Requirements Concerning Returns, Notices,  
12 Records and Statements.--\* \* \*

13 [(f) The following apply:

14 (1) Any person who:

15 (i) makes payments of Pennsylvania source income that fall  
16 within any of the eight classes of income enumerated in section  
17 303(a);

18 (ii) makes such payments to an individual, an entity treated  
19 as a partnership for tax purposes or a single member limited  
20 liability company; and

21 (iii) is required to make a form 1099-MISC return to the  
22 Secretary of the Treasury of the United States with respect to  
23 such payments, shall file a copy of such form 1099-MISC with the  
24 department and send a copy of such form 1099-MISC to the payee  
25 by March 1 of each year or, if filed electronically, by March 31  
26 of each year. If the form 1099-MISC filed by a payor with the  
27 Secretary of the Treasury of the United States is not completed  
28 in such a manner that State income and State tax withheld  
29 information, currently boxes 16 through 18 on Federal form 1099-  
30 MISC, is reflected thereon, the payor shall update the copies of  
31 form 1099-MISC to be provided pursuant to this section to  
32 reflect such information prior to filing it with the department  
33 and sending it to the payee.

34 (2) If the payor is required to perform electronic filing  
35 for Pennsylvania employer withholding purposes, the form 1099-  
36 MISC shall be filed electronically with the department.

37 (3) As used in this subsection, the following words and  
38 phrases shall have the meanings given to them in this paragraph  
39 unless the context clearly indicates otherwise:

40 "Payee." The person receiving the payments subject to  
41 withholding under this subsection.

42 "Payments." The term does not include a partner or  
43 shareholder's distributive share of income from a partnership or  
44 Pennsylvania S corporation.

45 "Payor." The person required to withhold under this  
46 subsection.]

47 \* \* \*

48 Section 10. Section 351 of the act is amended to read:

49 Section 351. Interest.--\* \* \*

50 (b) [If] Except as otherwise provided in Part VII, if any  
51 amount of tax required to be withheld [by an employer] and paid

1 to the department under Part VII of this article is not paid by  
2 the due date prescribed under section 319 or 319.1, interest on  
3 the amount at the rate established under section 806 of "The  
4 Fiscal Code" shall be paid from that date for the period of  
5 underpayment.

6 Section 11. Section 352(f), (h) and (j) of the act, amended  
7 October 30, 2017 (P.L.672, No.43), are amended to read:

8 Section 352. Additions, Penalties and Fees.--\* \* \*

9 (f) (1) Any person required under the provisions of section  
10 317 to furnish a statement to an employee who wilfully furnishes  
11 a false or fraudulent statement, or who wilfully fails to  
12 furnish a statement in the manner, at the time, and showing the  
13 information required under section 317 and the regulations  
14 prescribed thereunder, shall, for each such failure, be subject  
15 to a penalty of fifty dollars (\$50) for each employee.

16 (2) Any person required to furnish an information return who  
17 furnishes a false or fraudulent return or who fails to file or  
18 provide an information return shall be subject to a penalty of  
19 two hundred fifty dollars (\$250).

20 (3) Every partnership, estate, trust or Pennsylvania S  
21 corporation required to file a return with the department under  
22 the provisions of section 330.1 or 335(c) who furnishes a false  
23 or fraudulent return or who fails to file the return in the  
24 manner and at the time required under section 330.1 or 335(c)  
25 shall be subject to a penalty of \$250 for each failure.

26 (4) Any person required to file a copy of form 1099-MISC  
27 with the department under the provisions of section [335(f)]  
28 317.1 who wilfully furnishes a false or fraudulent form or who  
29 wilfully fails to file the form in the manner, at the time and  
30 showing the information required under section [335(f)] 317.1  
31 shall, for each such failure, be subject to a penalty of fifty  
32 dollars (\$50).

33 (5) Any person required under the provisions of section  
34 [335(f)] 317.1 to furnish a copy of form 1099-MISC to a payee  
35 who wilfully furnishes a false or fraudulent form or who  
36 wilfully fails to furnish a form in the manner, at the time and  
37 showing the information required by section [335(f)] 317.1  
38 shall, for each such failure, be subject to a penalty of fifty  
39 dollars (\$50).

40 (6) Any person required to file an annual statement with the  
41 department under the provisions of section [324.5] 323.1 who  
42 wilfully furnishes a false or fraudulent statement or who  
43 wilfully fails to file the statement in the manner, at the time  
44 and showing the information required under section [324.5] 323.1  
45 and the regulations prescribed under section [324.5] 323.1  
46 shall, for each such failure, be subject to a penalty of fifty  
47 dollars (\$50).

48 [(7) Any person required under the provisions of section  
49 324.5 to furnish an annual statement to a lessor who wilfully  
50 furnishes a false or fraudulent statement or who wilfully fails  
51 to furnish a statement in the manner, at the time and showing

1 the information required by section 324.5 and the regulations  
2 prescribed under section 324.5 shall, for each such failure, be  
3 subject to a penalty of fifty dollars (\$50).]

4 (h) [If] Except as otherwise provided in Part VII, if any  
5 amount of tax required to be withheld by [an employer] a person  
6 and paid over to the department under section 319 or 319.1 is  
7 not paid on or before the due date prescribed for filing the  
8 quarterly return under section 318 or 318.1, determined without  
9 regard to an extension of time for filing, there shall be added  
10 to the tax and paid to the department each month five per cent  
11 of such underpayment for each month or fraction thereof from the  
12 due date, for the period from the due date to the date paid; but  
13 the underpayment shall, for purposes of computing the addition  
14 for any month, be reduced by the amount of any part of the tax  
15 which is paid by the beginning of that month. The total of such  
16 additions shall not exceed fifty per cent of the amount of tax  
17 required to be shown on the return reduced by the amount of any  
18 part of the tax which is paid by the return due date and by the  
19 amount of any credit against the tax which may be claimed on the  
20 return.

21 \* \* \*

22 (j) If any amount of tax required to be withheld by a  
23 partnership, association[, ] or Pennsylvania S corporation [or  
24 lessee] and paid over to the department under section 324 [or  
25 324.4] is not paid on or before the date prescribed therefor,  
26 there shall be added to the tax and paid to the department each  
27 month five per cent of such underpayment for each month or  
28 fraction thereof from the due date, for the period from the due  
29 date to the date paid; but the underpayment shall, for purposes  
30 of computing the addition for any month, be reduced by the  
31 amount of any part of the tax which is paid by the beginning of  
32 that month. The total of such additions shall not exceed fifty  
33 per cent of the amount of such tax.

34 Section 12. This act shall take effect immediately.