

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2027 Session of
2018

INTRODUCED BY RYAN, DOWLING, DUSH, GROVE, PHILLIPS-HILL, KEEFER,
KLUNK, MUSTIO, SANKEY, WARD, WATSON, MILLARD, A. HARRIS,
LAWRENCE AND STAATS, JANUARY 24, 2018

REFERRED TO COMMITTEE ON FINANCE, JANUARY 24, 2018

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," in personal income tax, repealing provisions
11 relating to definitions, to withholding tax requirement for
12 nonemployer payors, to information statement for nonemployer
13 payors, to information statement for payees, to time for
14 filing payors' returns, to payment of taxes withheld for
15 nonemployer payors, to payor's liability for withheld taxes,
16 to payor's failure to withhold, to amount of withholding tax,
17 to treatment of nonresident partners, members or
18 shareholders, to withholding on income and to annual
19 withholding statement and further providing for requirements
20 concerning returns, notices, records and statements and for
21 additions, penalties and fees.

22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:

24 Section 1. Sections 316, 316.2, 317.1, 317.2, 318.1, 319.1,
25 320.1, 321.2, 324.1(c), 324.2(b) and (c), 324.4 and 324.5 of the
26 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
27 of 1971, are repealed:

1 [Section 316. Definitions.--The following words, terms and
2 phrases, when used in this part, shall have the meanings
3 ascribed to them in this section, except where the context
4 clearly indicates a different meaning:

5 "Payee." The person receiving the payments subject to
6 withholding under this part.

7 "Payments." The term does not include a partner or
8 shareholder's distributive share of income from a partnership or
9 Pennsylvania S corporation.

10 "Payor." The person required to withhold under this part.

11 Section 316.2. Withholding Tax Requirement for Nonemployer
12 Payors.--(a) To the extent not already required to withhold tax
13 on payments under section 316.1, a person that:

14 (1) makes payments of income from sources within this
15 Commonwealth described in section 303(a)(1) or (2) to either a
16 nonresident individual or an entity that is disregarded under
17 section 307.21 that has a nonresident member; and

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

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

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

28 (1) The United States or an agency or instrumentality
29 thereof; or

30 (2) The Commonwealth or an agency, instrumentality or

1 political subdivision thereof.

2 (d) The department may prescribe regulations to implement
3 and clarify the withholding requirement set forth in this
4 section.

5 Section 317.1. Information Statement for Nonemployer
6 Payors.--Every payor required to deduct and withhold tax under
7 section 316.2 shall furnish to a payee to whom the payor has
8 paid income from sources within this Commonwealth during the
9 calendar year a copy of form 1099-MISC required under section
10 335(f)(1). The copy of form 1099-MISC required by this section
11 for each calendar year shall be forwarded to the payee on or
12 before March 1 of the year succeeding the calendar year.

13 Section 317.2. Information Statement for Payees.--Every
14 payee receiving a copy of form 1099-MISC from a payor under
15 section 317.1 shall file a duplicate of such information return
16 with the payee's State income tax return.

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

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

30 Section 320.1. Payor's Liability for Withheld Taxes.--Every

1 payor required to deduct and withhold tax under section 316.2 is
2 hereby made liable for such tax. For purposes of assessment and
3 collection, any amount required to be withheld and paid over to
4 the department and any additions to tax, penalties and interest
5 with respect thereto shall be considered the tax of the payor.
6 All taxes deducted and withheld from payees pursuant to section
7 316.2 or under color of section 316.2 shall constitute a trust
8 fund for the Commonwealth and shall be enforceable against such
9 payor, his representative or any other person receiving any part
10 of such fund.

11 Section 321.2. Payor's Failure to Withhold.--If a payor
12 fails to deduct and withhold tax as prescribed under section
13 316.2 and thereafter the tax which may be credited is paid, the
14 tax which was required to be deducted and withheld shall not be
15 collected from the payor, but the payor shall not be relieved of
16 the liability for any penalty, interest or additions to the tax
17 imposed with respect to such failure to deduct and withhold.

18 Section 324.1. Amount of Withholding Tax.--* * *

19 (c) There shall not be taken into account any share of
20 income of nonresident partner, member or shareholder from
21 sources within this Commonwealth to the extent that the amount
22 was subject to withholding under section 324.4 and to the extent
23 withholding actually occurred under section 324.4 by the time
24 withholding is required to be made by the partnership,
25 association or Pennsylvania S corporation under section 324.

26 Section 324.2. Treatment of Nonresident Partners, Members or
27 Shareholders.--* * *

28 (b) Each nonresident lessor shall be allowed a credit for
29 the nonresident lessor's share of the withholding tax paid by
30 the lessee under section 324.4.

1 (c) The credits under this section shall be allowed for the
2 nonresident lessor's taxable year in which the lessee withheld
3 tax.

4 Section 324.4. Withholding on Income.--(a) Every lessee of
5 Pennsylvania real estate who makes a lease payment in the course
6 of a trade or business to a nonresident lessor shall withhold
7 Pennsylvania personal income tax on rental payments to such
8 nonresident lessor.

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

12 (c) (Reserved).

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

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

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

18 (2) "Lease payment" shall include, but not be limited to,
19 rents, royalties, bonus payments, damage payments, delay rents
20 and other payments made pursuant to a lease, other than
21 compensation derived from intangible property having a taxable
22 or business situs in this Commonwealth. Classification as a
23 "lease payment" under this section is solely for the purposes of
24 establishing withholding requirements and shall not be relevant
25 for a determination as to the proper income classification of
26 any such lease payment.

27 (3) "In the course of a trade or business" shall include any
28 person or business entity making lease payments to a nonresident
29 or agent of a nonresident who collects rent or lease payments on
30 behalf of a nonresident owner other than a tenant of residential

property.

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

(b) Every lessee shall file with the department an annual statement at such time and in such manner as may be prescribed by the department showing the total payments made to each lessor subject to withholding during the preceding taxable year or any portion of the preceding taxable year and the total amount of tax deducted and withheld under section 324.4.

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

Section 2. Sections 335(f) and 352(f), (h) and (j) of the act, amended October 30, 2017 (P.L.672, No.43), are amended to read:

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

(f) The following apply:

(1) Any person who:

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

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

(iii) is required to make a form 1099-MISC return to the

Secretary of the Treasury of the United States with respect to such payments, shall file a copy of such form 1099-MISC with the department and send a copy of such form 1099-MISC to the payee by March 1 of each year or, if filed electronically, by March 31 of each year. If the form 1099-MISC filed by a payor with the Secretary of the Treasury of the United States is not completed in such a manner that State income and State tax withheld information, currently boxes 16 through 18 on Federal form 1099-MISC, is reflected thereon, the payor shall update the copies of form 1099-MISC to be provided pursuant to this section to reflect such information prior to filing it with the department and sending it to the payee.]

(i) makes payments of income from sources within this Commonwealth;

(ii) makes payments of nonemployee compensation or payments under an oil and gas lease under subparagraph (i) to a resident or nonresident individual, an entity treated as a partnership for tax purposes or a single member limited liability company; and

(iii) is required to make a form 1099-MISC return to the Secretary of the Treasury of the United States with respect to the payments shall file a copy of form 1099-MISC with the department and send a copy of form 1099-MISC to the payee by the Federal filing deadline each year.

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

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

1 "Payee." The person receiving the payments subject to
2 withholding under this subsection.

3 "Payments." The term does not include a partner or
4 shareholder's distributive share of income from a partnership or
5 Pennsylvania S corporation.

6 "Payor." The person required to withhold under this
7 subsection.]

8 * * *

9 Section 352. Additions, Penalties and Fees.--* * *

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

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

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

27 (4) Any person required to file a copy of form 1099-MISC
28 with the department under the provisions of section 335(f) who
29 wilfully furnishes a false or fraudulent form or who wilfully
30 fails to file the form in the manner, at the time and showing

1 the information required under section 335(f) shall, for each
2 such failure, be subject to a penalty of fifty dollars (\$50).

3 (5) Any person required under the provisions of section
4 335(f) to furnish a copy of form 1099-MISC to a payee who
5 wilfully furnishes a false or fraudulent form or who wilfully
6 fails to furnish a form in the manner, at the time and showing
7 the information required by section 335(f) shall, for each such
8 failure, be subject to a penalty of fifty dollars (\$50).

9 [(6) Any person required to file an annual statement with
10 the department under the provisions of section 324.5 who
11 wilfully furnishes a false or fraudulent statement or who
12 wilfully fails to file the statement in the manner, at the time
13 and showing the information required under section 324.5 and the
14 regulations prescribed under section 324.5 shall, for each such
15 failure, be subject to a penalty of fifty dollars (\$50).

16 (7) Any person required under the provisions of section
17 324.5 to furnish an annual statement to a lessor who wilfully
18 furnishes a false or fraudulent statement or who wilfully fails
19 to furnish a statement in the manner, at the time and showing
20 the information required by section 324.5 and the regulations
21 prescribed under section 324.5 shall, for each such failure, be
22 subject to a penalty of fifty dollars (\$50).]

23 (h) If any amount of tax required to be withheld by an
24 employer and paid over to the department under section 319 [or
25 319.1] is not paid on or before the due date prescribed for
26 filing the quarterly return under section 318 [or 318.1],
27 determined without regard to an extension of time for filing,
28 there shall be added to the tax and paid to the department each
29 month five per cent of such underpayment for each month or
30 fraction thereof from the due date, for the period from the due

1 date to the date paid; but the underpayment shall, for purposes
2 of computing the addition for any month, be reduced by the
3 amount of any part of the tax which is paid by the beginning of
4 that month. The total of such additions shall not exceed fifty
5 per cent of the amount of tax required to be shown on the return
6 reduced by the amount of any part of the tax which is paid by
7 the return due date and by the amount of any credit against the
8 tax which may be claimed on the return.

9 * * *

10 (j) If any amount of tax required to be withheld by a
11 partnership, association[,], or Pennsylvania S corporation [or
12 lessee] and paid over to the department under section 324 [or
13 324.4] is not paid on or before the date prescribed therefor,
14 there shall be added to the tax and paid to the department each
15 month five per cent of such underpayment for each month or
16 fraction thereof from the due date, for the period from the due
17 date to the date paid; but the underpayment shall, for purposes
18 of computing the addition for any month, be reduced by the
19 amount of any part of the tax which is paid by the beginning of
20 that month. The total of such additions shall not exceed fifty
21 per cent of the amount of such tax.

22 Section 3. The amendment or repeal of sections 316, 316.2,
23 317.1, 317.2, 318.1, 319.1, 320.1, 321.2, 324.1(c), 324.2(b) and
24 (c), 324.4, 324.5, 335(f) and 352(f), (h) and (j) of the act
25 shall apply retroactively to December 30, 2017.

26 Section 4. This act shall take effect in 60 days.