

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2413 Session of 2018

INTRODUCED BY GREINER, RYAN, FEE, MILLARD, DUNBAR, COX,
LAWRENCE, PICKETT, M. QUINN, WHEELAND AND ZIMMERMAN,
MAY 7, 2018

REFERRED TO COMMITTEE ON FINANCE, MAY 7, 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, further providing for
11 definitions, for withholding tax requirement for nonemployer
12 payors, for information statement for nonemployer payors, for
13 payor's liability for withheld taxes, for withholding on
14 income and for annual withholding statement, providing for
15 information statement for lessors, for time for filing
16 lessees' returns, for payment of taxes withheld on lessors,
17 for lessee's liability for withheld taxes and for lessee's
18 failure to withhold and further providing for requirements
19 concerning returns, notices, records and statements and for
20 additions, penalties and fees.

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

23 Section 1. Section 316 of the act of March 4, 1971 (P.L.6,
24 No.2), known as the Tax Reform Code of 1971, is amended by
25 adding a definition to read:

26 Section 316. Definitions.--The following words, terms and

1 phrases, when used in this part, shall have the meanings
2 ascribed to them in this section, except where the context
3 clearly indicates a different meaning:

4 "Income from sources within this Commonwealth." For purposes
5 of nonemployer withholding, as defined in section 301(k)(2).

6 * * *

7 Section 2. Sections 316.2, 317.1, 320.1, 324.4 and 324.5 of
8 the act, added October 30, 2017 (P.L.672, No.43), are amended to
9 read:

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

13 (1) makes aggregate payments of \$5,000 or more of income
14 from sources within this Commonwealth described in section
15 303(a)(1) or (2) during the calendar year to either a
16 nonresident individual or [an entity] a limited liability
17 company that is disregarded [under section 307.21] for Federal
18 income tax purposes that has a nonresident individual member;
19 and

20 (2) is required [under section 335(f)(1) to file a copy of
21 form 1099-MISC with the department regarding the payments] to
22 make a form 1099-MISC return to the Secretary of the Treasury of
23 the United States with respect to those payments;
24 shall deduct and withhold from the payments an amount equal to
25 the [net] amount of the payments required to be reported on the
26 form 1099-MISC multiplied by the tax rate specified under
27 section 302(b).

28 (a.1) For purposes of determining nonemployer withholding on
29 a payment to a payee that relates to business engaged in, or
30 services performed both within and without this Commonwealth,

1 income from sources within this Commonwealth with respect to
2 that payment will be determined by either multiplying the
3 payment times the ratio of days spent in this Commonwealth
4 engaging in business or performing services in this Commonwealth
5 to which the payment relates over total days spent engaging in
6 business or performing services everywhere to which the payment
7 relates or using any other method that results in a fair and
8 equitable determination of income from sources within this
9 Commonwealth.

10 (b) Withholding of tax by payors is optional and at the
11 discretion of the payor with respect to payees who receive
12 payments of income from sources within this Commonwealth of less
13 than \$5,000 annually from the payor. If a payor is not able to
14 determine whether aggregate annual payments of income from
15 sources within this Commonwealth to a payee will be \$5,000 or
16 more at the time of the first payment each calendar year, the
17 payor shall begin to withhold tax once aggregate annual payments
18 of income from sources within this Commonwealth to the payee
19 reach \$5,000. The payor will not be required to withhold tax on
20 payments made prior to that time.

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 (c.1) A payee receiving payments of income from sources
28 within this Commonwealth that are required to be reported on a
29 form 1099-MISC return to the Secretary of the Treasury of the
30 United States shall provide the payor on a form prescribed by

1 the department the information necessary to determine the amount
2 of tax to withhold, including classification of payee, state of
3 residence of individual or member and amount of income upon
4 which to withhold tax when activity takes place within and
5 without this Commonwealth. If the payee fails to provide the
6 required information and the payor reasonably believes that
7 withholding is required under this section, the payor shall
8 withhold tax on 100% of each payment until the payee provides
9 the required information. The payor will not be required to
10 adjust tax withheld on any payment made prior to receipt of the
11 required information.

12 (d) The department may prescribe regulations to implement
13 and clarify the withholding requirement set forth in this
14 section.

15 Section 317.1. Information Statement for Nonemployer
16 Payors.--(a) Every payor required to deduct and withhold tax
17 under section 316.2 shall furnish to a payee to whom the payor
18 has paid income from sources within this Commonwealth during the
19 calendar year and the department a copy of form 1099-MISC
20 [required under section 335(f)(1)]. The copy of form 1099-MISC
21 required by this section for each calendar year shall be
22 forwarded to the payee and the department on or before [March 1
23 of the year succeeding the calendar year.] the date the payor is
24 required to furnish the payee and the Secretary of the Treasury
25 of the United States with a copy of the form 1099-MISC for
26 Federal income tax purposes.

27 (b) If the form 1099-MISC filed by the payor with the
28 Secretary of the Treasury of the United States is not completed
29 in such a manner that State income and State tax withheld
30 information, currently boxes 16 through 18 on form 1099-MISC, is

1 reflected thereon, the payor shall update the copies of form
2 1099-MISC to be provided pursuant to this section to reflect
3 such information prior to filing it with the department and
4 sending it to the payee.

5 (c) If a payor files a corrected form 1099-MISC with the
6 Secretary of the Treasury of the United States that would change
7 the income from sources within this Commonwealth of a payee, or
8 if a payor erroneously reports income from sources within this
9 Commonwealth or the amount of tax withheld, the payor shall file
10 a corrected form 1099-MISC with the department.

11 (d) If the payor is required to perform electronic filing
12 for Pennsylvania employer withholding purposes, form 1099-MISC
13 shall be filed electronically with the department. The payor may
14 file form 1099-MISC electronically in other instances.

15 Section 320.1. Payor's Liability for Withheld Taxes.--Every
16 payor required to deduct and withhold tax under section 316.2 is
17 hereby made liable for such tax. In determining the amount of
18 tax withheld, a payor may rely upon the information that a payee
19 provides on the form prescribed in section 316.2(c.1). For
20 purposes of assessment and collection, any amount required to be
21 withheld and paid over to the department and any additions to
22 tax, penalties and interest with respect thereto shall be
23 considered the tax of the payor. All taxes deducted and withheld
24 from payees pursuant to section 316.2 or under color of section
25 316.2 shall constitute a trust fund for the Commonwealth and
26 shall be enforceable against such payor, his representative or
27 any other person receiving any part of such fund.

28 Section 324.4. Withholding on Income.--(a) [Every lessee of
29 Pennsylvania real estate who makes a lease payment in the course
30 of a trade or business to a nonresident lessor shall withhold

1 Pennsylvania personal income tax on rental payments to such
2 nonresident lessor.] Every lessee of Pennsylvania real estate
3 who meets the following requirements shall deduct and withhold
4 from each lease payment an amount equal to the amount of the
5 payment required to be reported on the form 1099-MISC multiplied
6 by the tax rate specified under section 302(b):

7 (1) makes aggregate lease payments in the course of a trade
8 or business to a lessor that is a nonresident individual,
9 nonresident individual of a single member limited liability
10 company classified as a disregarded entity for Federal income
11 tax purposes, nonresident trust subject to this tax and a
12 nonresident estate in the amount of \$5,000 or more during the
13 calendar year; and

14 (2) is required to make a form 1099-MISC return to the
15 Secretary of the Treasury of the United States with respect to
16 those payments.

17 (b) [Every lessee shall withhold from each payment made to a
18 lessor an amount equal to the net amount payable to the lessor
19 multiplied by the tax rate specified under section 302(b).] A
20 lessor receiving payments to which this section applies shall
21 provide the lessee on a form prescribed by the department the
22 information necessary to determine the amount of tax to
23 withhold, including classification of lessor, state of residence
24 of individual, member or entity and amount of rental income upon
25 which to withhold tax. If the lessor fails to provide the
26 required information and the lessee reasonably believes that
27 withholding is required under this section, the lessee shall
28 withhold tax on 100% of a lease payment. The lessee will not be
29 required to adjust tax withheld on any payment made prior to
30 receipt of the required information.

1 (c) (Reserved).

2 (d) The withholding of tax under this section is optional
3 and at the discretion of the lessee with respect to payments to
4 a lessor who receives less than \$5,000 annually on a lease. If a
5 lessee is not able to determine whether aggregate annual
6 payments to a lessor will be \$5,000 or more at the time of the
7 first payment each calendar year, the lessee shall begin to
8 withhold tax once aggregate annual payments to a lessor reach
9 \$5,000. The lessee will not be required to withhold tax on
10 payments made prior to that time.

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

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

14 (2) "Lease payment" shall include, but not be limited
15 to, rents, royalties, bonus payments, damage payments, delay
16 rents and other payments made pursuant to a lease, other than
17 compensation derived from intangible property having a
18 taxable or business situs in this Commonwealth.

19 Classification as a "lease payment" under this section is
20 solely for the purposes of establishing withholding
21 requirements and shall not be relevant for a determination as
22 to the proper income classification of any such lease
23 payment.

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

29 Section 324.5. Annual Withholding Statement.--[(a) Every
30 lessee shall furnish to each lessor an annual statement at such

1 time and in such manner as may be prescribed by the department
2 showing the total payments made by the lessee to the lessor
3 during the preceding taxable year and showing the amount of the
4 tax deducted and withheld from the payments under section 324.4.

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

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

14 (a) Every lessee required to deduct and withhold tax under
15 section 324.4 during the calendar year shall furnish to the
16 lessor and the department a copy of form 1099-MISC. A copy of
17 form 1099-MISC required by this section for each calendar year
18 shall be forwarded to the payee and the department on or before
19 the date the payor is required to furnish the payee and the
20 Secretary of the Treasury of the United States with a copy of
21 the form 1099-MISC for Federal income tax purposes.

22 (b) If the form 1099-MISC filed by a lessee with the
23 Secretary of the Treasury of the United States is not completed
24 in such a manner that State income and State tax withheld
25 information, currently boxes 16 through 18 on form 1099-MISC, is
26 reflected thereon, the lessee shall update the copies of form
27 1099-MISC to be provided pursuant to this section to reflect
28 such information prior to filing it with the department and
29 sending it to the lessee.

30 (c) If a lessee files a corrected form 1099-MISC with the

1 Secretary of the Treasury of the United States that would change
2 the amount of lease payments from Pennsylvania real estate, or
3 if a lessee erroneously reports lease payments from Pennsylvania
4 real estate or the amount of tax withheld, the lessee shall file
5 a corrected form 1099-MISC with the department.

6 (d) If the lessee is required to perform electronic filing
7 for Pennsylvania employer withholding purposes, the form 1099-
8 MISC shall be filed electronically with the department. The
9 lessee may file the form 1099-MISC electronically in other
10 instances.

11 Section 3. The act is amended by adding sections to read:

12 Section 324.6. Information Statement for Lessors.--Every
13 lessor receiving a copy of form 1099-MISC from a lessee under
14 section 324.4 shall file a duplicate of such information return
15 with the lessor's State income tax return.

16 Section 324.7. Time for Filing Lessees' Returns.--Every
17 lessee required to deduct and withhold tax under section 324.4
18 shall file a quarterly withholding return on or before the last
19 day of April, July, October and January for each three-month
20 period ending the last day of March, June, September and
21 December. The quarterly returns shall be filed with the
22 department in the manner prescribed by regulation.

23 Section 324.8. Payment of Taxes Withheld on Lessors.--Every
24 lessee withholding tax under section 324.4 shall pay over to the
25 department or to a depository designated by the department the
26 tax required to be deducted and withheld under section 324.4.
27 The time for paying over the withheld tax shall be as set forth
28 in sections 319(a) (1), (2), (3) and (4).

29 Section 324.9. Lessee's Liability for Withheld Taxes.--Every
30 lessee required to deduct and withhold tax under section 324.4

1 is liable for such tax. In determining the amount of tax to
2 withhold, a lessee may rely upon the information that a lessor
3 provides on the form prescribed in section 324.4(b). For
4 purposes of assessment and collection, any amount required to be
5 withheld and paid over to the department and any additions to
6 tax, penalties and interest with respect thereto shall be
7 considered the tax of the lessee. All taxes deducted and
8 withheld from lessors pursuant to section 324.4 or under color
9 of section 324.4 shall constitute a trust fund for the
10 Commonwealth and shall be enforceable against such payor, his
11 representative or any other person receiving any part of such
12 fund.

13 Section 324.10. Lessee's Failure to Withhold.--If a lessee
14 fails to deduct and withhold tax as prescribed under section
15 324.4 and thereafter the tax which may be credited is paid, the
16 tax which was required to be deducted and withheld shall not be
17 collected from the lessee, but the lessee shall not be relieved
18 of the liability for any penalty, interest or additions to the
19 tax imposed with respect to such failure to deduct and withhold.

20 Section 4. Section 335(f) of the act, amended October 30,
21 2017 (P.L.672, No.43), is amended and the section is amended by
22 adding a subsection to read:

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

25 [(f) The following apply:

26 (1) Any person who:

27 (i) makes payments of Pennsylvania source income that fall
28 within any of the eight classes of income enumerated in section
29 303(a);

30 (ii) makes such payments to an individual, an entity treated

1 as a partnership for tax purposes or a single member limited
2 liability company; and
3 (iii) is required to make a form 1099-MISC return to the
4 Secretary of the Treasury of the United States with respect to
5 such payments, shall file a copy of such form 1099-MISC with the
6 department and send a copy of such form 1099-MISC to the payee
7 by March 1 of each year or, if filed electronically, by March 31
8 of each year. If the form 1099-MISC filed by a payor with the
9 Secretary of the Treasury of the United States is not completed
10 in such a manner that State income and State tax withheld
11 information, currently boxes 16 through 18 on Federal form 1099-
12 MISC, is reflected thereon, the payor shall update the copies of
13 form 1099-MISC to be provided pursuant to this section to
14 reflect such information prior to filing it with the department
15 and sending it to the payee.

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

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

22 "Payee." The person receiving the payments subject to
23 withholding under this subsection.

24 "Payments." The term does not include a partner or
25 shareholder's distributive share of income from a partnership or
26 Pennsylvania S corporation.

27 "Payor." The person required to withhold under this
28 subsection.]

29 (f.1) (1) Except in instances where sections 317, 317.1 and
30 324.5 apply, any payor who makes aggregate payments of five

1 thousand dollars (\$5,000) or more of income from sources within
2 this Commonwealth, as defined in section 301(k), that fall
3 within any of the eight classes of income enumerated in section
4 303(a) to a payee who is an individual, an entity classified as
5 a partnership for Federal income tax purposes, or an entity
6 classified as a disregarded entity for Federal income tax
7 purposes, and is required to make a form 1099-MISC return to the
8 Secretary of the Treasury of the United States with respect to
9 such payments, shall file a copy of such form 1099-MISC with the
10 department. The payor shall not be required to report State
11 income and State tax withheld information, currently boxes 16
12 through 18 on form 1099-MISC.

13 (2) A copy of form 1099-MISC required by this section for
14 each calendar year shall be forwarded to the department on or
15 before the date the payor is required to furnish the Secretary
16 of the Treasury of the United States with a copy of the form
17 1099-MISC for Federal income tax purposes.

18 (3) If the payor is required to perform electronic filing
19 for Pennsylvania employer withholding purposes, the form 1099-
20 MISC shall be filed electronically with the department. The
21 payor may file the form 1099-MISC electronically in other
22 instances.

23 (4) If a payor timely furnishes the department with a
24 correct copy of the form 1099-MISC, the department is prohibited
25 from seeking any information regarding State income and State
26 tax withheld information, currently boxes 16 through 18 on form
27 1099-MISC, from the payor. The department shall obtain that
28 information only from the payee.

29 (5) As used in this subsection, the following words and
30 phrases shall have the meanings given to them in this paragraph

1 unless the context clearly indicates otherwise:

2 "Payee." A person receiving a payment or payments subject to
3 information reporting under this subsection.

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

7 "Payor." A person required to file a form 1099-MISC with the
8 Secretary of the Treasury of the United States reporting a
9 payment or payments of income from sources within this
10 Commonwealth, as defined in section 301(k), that fall within any
11 of the eight classes of income enumerated in section 303(a).

12 * * *

13 Section 5. Section 352(f), (h) and (j) of the act, amended
14 October 30, 2017 (P.L.672, No.43), are amended to read:

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

16 (f) (1) Any person required under the provisions of section
17 317 to furnish a statement to an employe who wilfully furnishes
18 a false or fraudulent statement, or who wilfully fails to
19 furnish a statement in the manner, at the time, and showing the
20 information required under section 317 and the regulations
21 prescribed thereunder, shall, for each such failure, be subject
22 to a penalty of fifty dollars (\$50) for each employe.

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

27 (3) Every partnership, estate, trust or Pennsylvania S
28 corporation required to file a return with the department under
29 the provisions of section 330.1 or 335(c) who furnishes a false
30 or fraudulent return or who fails to file the return in the

1 manner and at the time required under section 330.1 or 335(c)
2 shall be subject to a penalty of \$250 for each failure.

3 (4) Any person required to file a copy of form 1099-MISC
4 with the department under the provisions of section [335(f)]
5 317.1, 324.5 or 335(f.1) who wilfully furnishes a false or
6 fraudulent form or who wilfully fails to file the form in the
7 manner, at the time and showing the information required under
8 section [335(f)] 317.1, 324.5 or 335(f.1) shall, for each such
9 failure, be subject to a penalty of fifty dollars (\$50).

10 (5) Any person required under the provisions of section
11 [335(f)] 317.1, 324.5 or 335(f.1) to furnish a copy of form
12 1099-MISC to a payee who wilfully furnishes a false or
13 fraudulent form or who wilfully fails to furnish a form in the
14 manner, at the time and showing the information required by
15 section [335(f)] 317.1, 324.5 or 335(f.1) shall, for each such
16 failure, be subject to a penalty of fifty dollars (\$50).

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

24 (7) Any person required under the provisions of section
25 324.5 to furnish an annual statement to a lessor who wilfully
26 furnishes a false or fraudulent statement or who wilfully fails
27 to furnish a statement in the manner, at the time and showing
28 the information required by section 324.5 and the regulations
29 prescribed under section 324.5 shall, for each such failure, be
30 subject to a penalty of fifty dollars (\$50).]

1 (h) If any amount of tax required to be withheld by an
2 employer, payor or lessor and paid over to the department under
3 section 319 [or], 319.1 or 324.8 is not paid on or before the
4 due date prescribed for filing the quarterly return under
5 section 318 [or], 318.1 or 324.7, determined without regard to
6 an extension of time for filing, there shall be added to the tax
7 and paid to the department each month five per cent of such
8 underpayment for each month or fraction thereof from the due
9 date, for the period from the due date to the date paid; but the
10 underpayment shall, for purposes of computing the addition for
11 any month, be reduced by the amount of any part of the tax which
12 is paid by the beginning of that month. The total of such
13 additions shall not exceed fifty per cent of the amount of tax
14 required to be shown on the return reduced by the amount of any
15 part of the tax which is paid by the return due date and by the
16 amount of any credit against the tax which may be claimed on the
17 return.

18 * * *

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

1 Section 6. This act shall take effect immediately.