
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 926 Session of
2019

INTRODUCED BY GREINER, DUNBAR, RYAN, PICKETT, MILLARD,
ZIMMERMAN, MENTZER, BERNSTINE, LAWRENCE, COX, PEIFER, FEE AND
SANCHEZ, MARCH 25, 2019

REFERRED TO COMMITTEE ON FINANCE, MARCH 25, 2019

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 tax
11 withheld, for withholding tax requirement for nonemployer
12 payors, for information statement for nonemployer payors, for
13 information statement for payees, for time for filing payors'
14 returns, for payment of taxes withheld for nonemployer payors
15 and for liability for withheld taxes, repealing provisions
16 relating to payor's liability for withheld taxes, further
17 providing for bulk and auction sales and transfers and
18 notice, repealing provisions relating to payor's failure to
19 withhold, providing for annual withholding return, repealing
20 provisions relating to withholding on income and to annual
21 withholding statement and further providing for interest and
22 for additions, penalties and fees.

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

25 Section 1. Sections 312, 316.2, 317.1, 317.2, 318.1, 319.1
26 and 320 of the act of March 4, 1971 (P.L.6, No.2), known as the
27 Tax Reform Code of 1971, are amended to read:

1 Section 312. Tax Withheld.--The amount withheld under
2 [section] sections 316.1 and 316.2 shall be allowed to the
3 taxpayer from whose income the tax was withheld as a credit
4 against the tax imposed on him by this article.

5 Section 316.2. Withholding Tax Requirement for Nonemployer
6 Payors and Lessees.--(a) To the extent not already required to
7 withhold tax on payments under section 316.1, a person that[:]
8 makes the following types of payments, who also is required to
9 issue, or voluntarily issues Federal form 1099-MISC for such
10 payments, shall deduct and withhold from the payments an amount
11 equal to the amount of the payment required to be reported on
12 the Federal form 1099-MISC multiplied by the tax rate specified
13 under section 302(b):

14 (1) [makes] payments totaling five thousand dollars (\$5,000)
15 or more of income from sources within this Commonwealth
16 described in section 303(a) (1) or (2) during the calendar year
17 to either a nonresident individual or an entity that is
18 classified as a disregarded entity under section 307.21 that
19 [has] is owned by a nonresident [member; 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;
22 shall deduct and withhold from the payments an amount equal to
23 the net amount of the payments multiplied by the tax rate
24 specified under section 302(b).] individual; or

25 (3) lease payments totaling five thousand dollars (\$5,000)
26 or more for Pennsylvania real estate to a nonresident lessor,
27 either directly or indirectly through a management company or
28 other agent authorized to receive the lease payments on behalf
29 of the nonresident lessor.

30 (b) Withholding of tax by [payors] a payor or lessee is

1 optional and at the discretion of the payor or lessee with
2 respect to [payees who receive payments of less than \$5,000
3 annually from the payor.] payments of income from sources within
4 this Commonwealth of less than five thousand dollars (\$5,000)
5 annually.

6 (b.1) If at the time of payment a payor or lessee cannot
7 reasonably expect total payments of income from sources within
8 this Commonwealth to a payee or lessor to be at least five
9 thousand dollars (\$5,000) during the calendar year, the payor or
10 lessee shall begin to withhold tax once the payor or lessee
11 reasonably expects that total payments of income from sources
12 within this Commonwealth to the payee will be at least five
13 thousand dollars (\$5,000) for the calendar year. The payor or
14 lessee shall not be required to withhold tax on payments made
15 prior to that time.

16 (b.2) A management company or other person that collects
17 lease payments for a lessor may withhold and remit the tax on
18 behalf of the lessee. A management company or other person that
19 withholds tax on behalf of the lessee becomes jointly and
20 severally liable with the lessee for the tax. A lessee is not
21 relieved from liability for withholding tax if the management
22 company or other person fails to withhold and remit the tax.

23 (b.3) If a management company or other person is entitled to
24 receive compensation from a lease payment and withholds the
25 compensation, the management company or other person shall remit
26 to the lessor with the balance of the payment any tax required
27 to be withheld under this section. If, after deducting the
28 compensation and other amounts, no portion of the payment is
29 remitted to the lessor, the management company or other person
30 must remit to the lessor within thirty (30) days of receipt of

1 the payment from the lessee any tax required to be withheld on
2 the compensation in accordance with this section. The lessor
3 shall be required to remit and report the tax in accordance with
4 sections 318.1 and 319.1.

5 (b.4) If a payment to a payee is attributable to business
6 engaged in, or services performed both within and without this
7 Commonwealth, the payee shall determine the portion of the
8 payment constituting income from sources within this
9 Commonwealth in accordance with the regulations and provide this
10 information to the payor.

11 (b.5) (1) A payor or lessee shall not be required to
12 withhold under this section if the payee or lessee provides a
13 certification that:

14 (i) the payee or lessor is a Pennsylvania resident; or
15 (ii) the payee or lessor is not subject to tax under this
16 article.

17 (2) The certification may be on a form prescribed by the
18 department or a substitute form as long as the form contains the
19 information necessary for the payor or lessee to determine
20 whether withholding is required and the payee or lessor signs
21 the form.

22 (b.6) If a payee or lessor fails to provide the required
23 information in subsection (b.5) or a payee fails to provide the
24 required information in subsection (b.4), the payor or lessee
25 may withhold tax on one hundred per cent of each payment until
26 the payee or lessor provides the required information. The payor
27 or lessee will not be required to adjust the tax withheld on any
28 payment made prior to receipt of the required information.

29 (b.7) A payor or lessee that in good faith relies upon
30 information that a payee or lessor provides under subsections

1 (b.4) and (b.5) will not be liable for any tax under section
2 320, interest and penalty under this article if the department
3 subsequently determines that the payee or lessor was subject to
4 withholding under this section, or the portion of a payment
5 constituting income from sources within this Commonwealth that
6 the payee provides to the payor is not correct.

7 (c) This section shall not apply to payments made by a payor
8 [to a payee if the payor is] or lessee who is:

9 (1) The United States or an agency or instrumentality
10 thereof; [or]

11 (2) The Commonwealth or an agency, instrumentality or
12 political subdivision thereof[.]; or

13 (3) A lessee under a residential lease.

14 (d) The department may prescribe regulations to implement
15 and clarify the withholding requirement [set forth in] of this
16 section.

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

18 (1) "Lessor" means an individual, estate or trust.

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

27 Section 317.1. [Information Statement for Nonemployer
28 Payors.--Every payor required to deduct and withhold tax under
29 section 316.2 shall furnish to a payee to whom the payor has
30 paid income from sources within this Commonwealth during the

1 calendar year a copy of form 1099-MISC required under section
2 335(f)(1). The copy of form 1099-MISC required by this section
3 for each calendar year shall be forwarded to the payee on or
4 before March 1 of the year succeeding the calendar year.]

5 Information Statement.--(a) Every person required or who
6 volunteers to deduct and withhold tax under section 316.2 shall
7 furnish to a payee or lessor to whom the person has paid income
8 during the calendar year and the department a copy of the
9 Federal form 1099-MISC reporting the payment. A copy of the
10 Federal form 1099-MISC must be provided to the payee or lessor
11 and department in all instances where tax is withheld. The copy
12 of Federal form 1099-MISC required by this section for each
13 calendar year shall be forwarded to the payee or lessor and the
14 department on or before the date the person is required to
15 furnish the form for Federal income tax purposes. The form shall
16 include the amount of the payment subject to withholding under
17 this part and the amount of Pennsylvania tax withheld in
18 accordance with section 316.2.

19 (b) A person that files a corrected Federal form 1099-MISC
20 for Federal income tax purposes shall file a corrected Federal
21 form 1099-MISC with the department if there would be a change in
22 income from sources within this Commonwealth of a payee or
23 lessor, or if a person erroneously reports income from sources
24 within this Commonwealth or the amount of tax withheld.

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

27 Section 317.2. Information Statement for Payees or
28 Lessors.--Every payee or lessor receiving a copy of Federal form
29 1099-MISC from a payor under section 317.1 shall file a
30 [duplicate of such information return with the payee's] copy

1 with the payee's or lessor's State income tax return.

2 Section 318.1. Time for Filing [Payors'] Nonemployer and
3 Lessee Withholding Returns.--Every [payor] person required or
4 who volunteers to deduct and withhold tax under section 316.2
5 shall file a quarterly withholding return with the department on
6 or before the last day of April, July, October and January for
7 each three-month period ending the last day of March, June,
8 September and December. The quarterly returns shall be filed
9 with the department [in the manner prescribed by regulation.]
10 beginning with the quarter in which the tax is required to be
11 remitted under section 319.1.

12 Section 319.1. Payment of Taxes Withheld for Nonemployer
13 Payors and Lessees.--Every [payor] person withholding tax under
14 section 316.2 shall pay over to the department or to a
15 depository designated by the department the tax required to be
16 deducted and withheld under section 316.2. The time for paying
17 over the withheld tax shall be as set forth in section 319(1),
18 (2), (3) and (4).

19 Section 320. Liability for Withheld Taxes.--[Every] Except
20 as otherwise provided in this part, every person required to
21 deduct and withhold tax or who voluntarily deducts and withholds
22 tax under [section] sections 316.1 and 316.2 is hereby made
23 liable for such tax. For purposes of assessment and collection,
24 any amount required to be withheld and paid over to the
25 department and any additions to tax penalties and interest with
26 respect thereto, shall be considered the tax of the person. All
27 taxes deducted and withheld pursuant to [section 316.1 or under
28 color of section 316.1] sections 316.1 and 316.2 shall
29 constitute a trust fund for the Commonwealth and shall be
30 enforceable against such person, his representative or any other

1 person receiving any part of such fund.

2 Section 2. Section 320.1 of the act is repealed:

3 [Section 320.1. Payor's Liability for Withheld Taxes.--Every
4 payor required to deduct and withhold tax under section 316.2 is
5 hereby made liable for such tax. For purposes of assessment and
6 collection, any amount required to be withheld and paid over to
7 the department and any additions to tax, penalties and interest
8 with respect thereto shall be considered the tax of the payor.
9 All taxes deducted and withheld from payees pursuant to section
10 316.2 or under color of section 316.2 shall constitute a trust
11 fund for the Commonwealth and shall be enforceable against such
12 payor, his representative or any other person receiving any part
13 of such fund.]

14 Section 3. Section 321.1 of the act is amended to read:

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

24 Section 4. Section 321.2 of the act is repealed:

25 [Section 321.2. Payor's Failure to Withhold.--If a payor
26 fails to deduct and withhold tax as prescribed under section
27 316.2 and thereafter the tax which may be credited is paid, the
28 tax which was required to be deducted and withheld shall not be
29 collected from the payor, but the payor shall not be relieved of
30 the liability for any penalty, interest or additions to the tax

1 imposed with respect to such failure to deduct and withhold.]

2 Section 5. The act is amended by adding a section to read:

3 Section 323.1. Annual Withholding Return.--Any person
4 required or who volunteers to withhold tax under this part shall
5 file an annual withholding return at such time and in such
6 manner as the department may prescribe showing the total
7 payments subject to withholding and the total amount of tax
8 deducted, withheld and remitted.

9 Section 6. Sections 324.4 and 324.5 of the act are repealed:

10 [Section 324.4. Withholding on Income.--(a) Every lessee of
11 Pennsylvania real estate who makes a lease payment in the course
12 of a trade or business to a nonresident lessor shall withhold
13 Pennsylvania personal income tax on rental payments to such
14 nonresident lessor.]

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

18 (c) (Reserved).

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

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

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

24 (2) "Lease payment" shall include, but not be limited to,
25 rents, royalties, bonus payments, damage payments, delay rents
26 and other payments made pursuant to a lease, other than
27 compensation derived from intangible property having a taxable
28 or business situs in this Commonwealth. Classification as a
29 "lease payment" under this section is solely for the purposes of
30 establishing withholding requirements and shall not be relevant

1 for a determination as to the proper income classification of
2 any such lease payment.

3 (3) "In the course of a trade or business" shall include any
4 person or business entity making lease payments to a nonresident
5 or agent of a nonresident who collects rent or lease payments on
6 behalf of a nonresident owner other than a tenant of residential
7 property.

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

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

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

23 Section 7. Sections 351(b) and 352(f), (h) and (j) of the
24 act are amended to read:

25 Section 351. Interest.--* * *

26 (b) [If] Except as otherwise provided in Part VII, if any
27 amount of tax required to be withheld by an employer and paid to
28 the department under Part VII of this article is not paid by the
29 due date prescribed under section 319 or 319.1, interest on the
30 amount at the rate established under section 806 of "The Fiscal

1 Code" shall be paid from that date for the period of
2 underpayment.

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

4 (f) (1) Any person required under the provisions of section
5 317 to furnish a statement to an employe who wilfully furnishes
6 a false or fraudulent statement, or who wilfully fails to
7 furnish a statement in the manner, at the time, and showing the
8 information required under section 317 and the regulations
9 prescribed thereunder, shall, for each such failure, be subject
10 to a penalty of fifty dollars (\$50) for each employe.

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

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

21 (4) Any person required to file a copy of Federal form 1099-
22 MISC with the department under the provisions of section
23 [335(f)] 317.1 who wilfully furnishes a false or fraudulent form
24 or who wilfully fails to file the form in the manner, at the
25 time and showing the information required under section [335(f)]
26 317.1 shall, for each such failure, be subject to a penalty of
27 fifty dollars (\$50).

28 (5) Any person required under the provisions of section
29 [335(f)] 317.1 to furnish a copy of Federal form 1099-MISC to a
30 payee who wilfully furnishes a false or fraudulent form or who

1 wilfully fails to furnish a form in the manner, at the time and
2 showing the information required by section [335(f)] 317.1
3 shall, for each such failure, be subject to a penalty of fifty
4 dollars (\$50).

5 (6) Any person required to file an annual statement with the
6 department under the provisions of section [324.5] 323.1 who
7 wilfully furnishes a false or fraudulent statement or who
8 wilfully fails to file the statement in the manner, at the time
9 and showing the information required under section [324.5] 323.1
10 and the regulations prescribed under section [324.5] 323.1
11 shall, for each such failure, be subject to a penalty of fifty
12 dollars (\$50).

13 [(7) Any person required under the provisions of section
14 324.5 to furnish an annual statement to a lessor who wilfully
15 furnishes a false or fraudulent statement or who wilfully fails
16 to furnish a statement in the manner, at the time and showing
17 the information required by section 324.5 and the regulations
18 prescribed under section 324.5 shall, for each such failure, be
19 subject to a penalty of fifty dollars (\$50).]

20 (h) [If] Except as otherwise provided in Part VII, if any
21 amount of tax required to be withheld by [an employer] a person
22 and paid over to the department under section 319 or 319.1 is
23 not paid on or before the due date prescribed for filing the
24 quarterly return under section 318 or 318.1, determined without
25 regard to an extension of time for filing, there shall be added
26 to the tax and paid to the department each month five per cent
27 of such underpayment for each month or fraction thereof from the
28 due date, for the period from the due date to the date paid; but
29 the underpayment shall, for purposes of computing the addition
30 for any month, be reduced by the amount of any part of the tax

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

7 * * *

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

20 Section 8. This act shall take effect immediately.